

FILED
Court of Appeals
Division III
State of Washington
12/19/2017 11:27 AM
35411-3-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ROGER LEWIS, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENTS OF ERROR

1. The court erred in failing to enter written findings of fact and conclusions of law after a bench trial, in violation of CrR 6.1(d).
2. The trial court erred in failing to enter written findings of fact and conclusions of law after admitting appellant's statements to police, in violation of CrR 3.5(c).

II. ISSUE PRESENTED

1. Are the written findings of fact and conclusions of law that were filed after appellant's opening brief consistent with the court's oral ruling, or are they prejudicial and create an appearance of unfairness?
2. Should this Court set a new briefing schedule in order for the appellant to raise issues regarding the findings of fact and conclusions of law entered after the filing of his opening brief?

III. STATEMENT OF THE CASE

Procedural history.

The State charged defendant Roger Lewis with one count of attempt to elude a police vehicle, with the enhancement of putting his passenger, Rochelle Sprinkle, in a position of being threatened with physical injury or harm by the actions he took in attempting to elude. CP 6, 110-112. Lewis waived his right to a jury trial. CP 19; RP 6-9.

A CrR 3.5 hearing was conducted, and the trial court ruled that the statements Mr. Lewis made to police were admissible. RP 34-35. The defense attorney approved the written findings of fact and conclusions of law regarding the 3.5 hearing by email on April 24, 2017. RP 104.

The trial court found Mr. Lewis guilty as charged after a bench trial on April 19, 2017. CP 62-76; RP 148-51. The defense attorney approved the bench trial findings of fact and conclusions of law by email on May 2, 2017. RP 109.

The defendant filed a motion for reconsideration of the special enhancement portion of the verdict on April 27, 2017. CP 21-27. The State filed its response on May 3, 2017. CP 113-120. Before sentencing, the court heard argument on the defendant's motion to reconsider, RP 155-166, and denied the same, RP 166-69. CP 46-47.

Mr. Lewis was sentenced to a drug offender sentencing alternative (DOSAs) of 18.75 months imprisonment and 18.75 months of community custody. CP 62-76; RP 182. Mr. Lewis timely filed his appeal. CP 77-94.

The written findings of fact and conclusions of law for the 3.5 hearing and bench trial were entered by the trial court on November 1, 2017, after appellant filed his brief. The State filed a supplemental designation of clerk's papers on November 6, 2017.

Substantive facts.

On March 8, 2016, at approximately 3:30 a.m., Washington State Patrol Trooper Darren Britton was on duty wearing a Washington State Patrol uniform and driving a fully marked patrol vehicle equipped with functioning emergency lights and siren. RP 18, 20. While driving westbound on Interstate 90 east of the Argonne Exit in Spokane County, Washington, Trooper Britton observed a Ford Explorer travelling westbound without a license plate. RP 18, 19, 40. He was unable to tell if the paper affixed to the back window was a temporary permit. RP 19, 40, 64-65. In an attempt to determine if the vehicle had a temporary permit, Trooper Britton activated his lights near the Argonne off-ramp to initiate a traffic stop. RP 19, 40. The Ford Explorer took the Argonne off-ramp and appeared to be stopping. RP 20, 41; Ex. 1.¹ However, instead of coming to a complete stop, it rolled through the red stoplight and turned left onto northbound Argonne Road. RP 20-21, 41, 48; Ex. 1. Instead of pulling into the many parking areas available on Argonne Road, Mr. Lewis continued

¹ On December 18, 2017, the State filed a second supplemental designation of clerk's papers and exhibits, including the dash-cam video entered as Plaintiff's Exhibit 1. The State's response to the bill of particulars is calculated to be CP 110-112; and the response to defendant's motion for reconsideration should be CP 113-120, and will be referenced herein as such.

driving.² RP 21. Trooper Britton activated his siren in an attempt to stop Mr. Lewis. RP 43, 55-56. Mr. Lewis continued driving, running a red light at Argonne and Trent, RP 41; turning left into a residential neighborhood at Grace Avenue, running four stop signs and travelling at speeds of 35 to 40 miles per hour in a 25 to 30 mile per hour zone, RP 42, 48; and looping back to Argonne Road heading north, RP 42.³ While driving north, Mr. Lewis travelled between 50 to 75 miles an hour, reaching, at one point, up to 85 miles per hour, running red lights and stop signs, and not staying in his lane of travel. RP 42-45, 49, 52, 89. Instead of properly using the roundabout located at Mt. Spokane Park Drive on State Route 206, Mr. Lewis drove straight through, over the roundabout's curbing and concrete. RP 90, 45, 53. Mr. Lewis finally pulled over about three quarters of a mile north of the roundabout. RP 90.

² Mr. Lewis admitted he was driving the Ford Explorer involved in this case. RP 111.

³ Mr. Lewis testified his passenger, Rochelle E. Sprinkle, told him to turn into the residential neighborhood and where to make turns as he was unfamiliar with the area. RP 108.

IV. ARGUMENT

A. THE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED AFTER APPELLANT'S OPENING BRIEF CORRECTLY REFLECT THE TRIAL TESTIMONY AND COURT'S ORAL RULING. THE DELAYED ENTRY OF THE FILING IS NOT PREJUDICIAL NOR DOES IT CREATE AN APPEARANCE OF UNFAIRNESS.

Written findings of fact and conclusions of law, although disfavored, may be submitted and entered while an appeal is pending as long as the defendant is not prejudiced and they are not tailored to meet any issues raised by appellant in the opening brief. *State v. McGary*, 37 Wn. App. 856, 861, 683 P.2d 1125 (1984); *State v. Pray*, 96 Wn. App. 25, 30-31, 980 P.2d 240 (1999). As long as the findings of fact and conclusions of law are supported by the record, no reversal is required. *State v. Lopez*, 105 Wn. App. 688, 695, 20 P.3d 978 (2001).

In *Lopez*, the defendant argued the findings of fact and conclusions of law which were filed after his opening brief, were significantly altered to bolster the elements of the charge. *Id.* at 694. This Court found that even though the last finding was different from the oral finding, it had actually made it less clear than the oral ruling, and therefore was not prejudicial. *Id.* at 694-95. This Court concluded that since the defendant could not show any prejudice from the late filing of the findings of fact and conclusions of law, reversal was not required. *Id.* at 695.

In *State v. Cannon*, 130 Wn.2d 313, 922 P.2d 1393 (1996), the written findings of fact and conclusions of law were not entered by the trial court until almost two years after the defendant was sentenced and after the opening brief was filed. *Id.* at 329. The Supreme Court noted that a comparison to the findings and conclusions of law with the trial court's ruling showed the State did not tailor or alter them to meet any issues or arguments; therefore, there was no prejudice. *Id.* at 330.

In the present case, the findings of fact and conclusions of law were not entered and filed until after the appellant's opening brief was filed, even though they had been previously reviewed and approved by defense counsel on April 24, 2017 (CrR 3.5 hearing FFCL), and May 2, 2017 (bench trial FFCL). The State neither tailored nor altered any findings and conclusions, and the record supports this. Therefore, Mr. Lewis cannot show any prejudice by such late filing.

B. SHOULD THIS COURT ALLOW THE APPELLANT TO FILE AN AMENDED BRIEF NOW THAT THE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW HAS BEEN FILED WITH THE COURT?

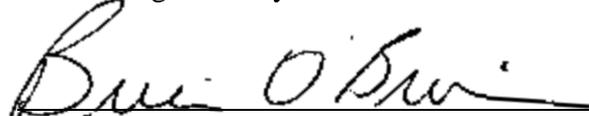
Because the findings of fact and conclusions of law have now been filed, this Court should allow Mr. Lewis time to file a supplemental brief in order to allow him to raise any issues regarding the findings and conclusions.

V. CONCLUSION

The late filing of findings of fact and conclusions of law regarding both the CrR 3.5 hearing and the bench trial did not prejudice the defendant. This Court should provide the defendant an opportunity to raise any additional errors arising from such filing.

Dated this 19 day of December, 2017.

LAWRENCE H. HASKELL
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Brian C. O'Brien", written over a horizontal line.

Brian C. O'Brien #14921
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

ROGER LEWIS,

Appellant.

NO. 35411-3-III

CERTIFICATE OF MAILING

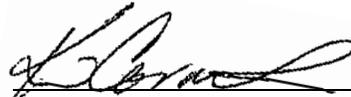
I certify under penalty of perjury under the laws of the State of Washington, that on December 19, 2017, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Jared B. Steed

steedj@nwattorney.net; sloanej@nwattorney.net

12/19/2017
(Date)

Spokane, WA
(Place)


(Signature)

SPOKANE COUNTY PROSECUTOR

December 19, 2017 - 11:27 AM

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