

NO. 71710-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

PABLO DELACRUZ-PEREZ,

Appellant.

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COURT OF APPEALS
STATE OF WASHINGTON
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Monica J. Benton, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred under CrR 3.5 when it failed to enter written findings of fact and conclusions of law.

Issue Pertaining to Assignment of Error

CrR 3.5(c) requires the trial court to enter written findings of fact and conclusions of law following an evidentiary hearing. Did the trial court err when it failed to do so?

B. STATEMENT OF THE CASE

The King County Prosecutor's Office charged Pablo Delacruz-Perez and Alexis Sanchez-Balbuena with (count 1) Robbery in the First Degree and (count 2) Assault in the Second Degree, alleging they participated in beating and then stealing from Matthew Koesema on July 2, 2013. CP 1-10, 12-13.

The court held a hearing under CrR 3.5 to determine the admissibility of certain statements Delacruz-Perez made following his arrest. At that hearing, the State called two witnesses involved in the arrest and subsequent interrogation: Bellevue Police Detective Jeffrey Christiansen and Bellevue Police Officer Craig Hanaumi. 1RP 27-48. The court ruled the statements admissible. 1RP 52. To date, written findings and conclusions have not been filed.

Evidence at trial revealed that on the evening of July 2, 2013,

while walking back to his apartment in the Crossroads neighborhood of Bellevue, Koesema was approached by an individual – whom he later identified as Delacruz-Perez – and asked if he was selling drugs. 3RP 5-6, 29, 31, 37, 70-76, 199. Koesema indicated he was not. 3RP 37. Koesema continued on and, almost immediately thereafter, another individual – whom he recognized as Sanchez-Balbuena – approached him, accused him of selling drugs, and tried to punch him. 3RP 40-43, 47, 69. Koesema used a Taser device he was carrying to fend off the attack and ran away. 3RP 43-49. He tripped, however, and was then repeatedly punched and kicked by at least four individuals. 3RP 49- 53.

During the attack, Koesema lost his phone, wallet, a ring, and his glasses and they were never recovered. 3RP 54, 81-83. He conceded he did not know if these items simply fell to the ground or they were intentionally taken from him. 3RP 100. Both Delacruz-Perez and Sanchez-Balbuena claimed they were somewhere else during the attack and presented witnesses to establish their alibis. 4RP 77-79; 5RP 10-15. Cell phone data, however, suggested Delacruz-Perez had been in the Crossroads area around the time of the attack. 4RP 4-25. At trial, the State used Delacruz-Perez's statements, which suggested he knew why he was being arrested

even before police told him. 3RP 203-208; 4RP 65; 5RP 76-77.

Jurors acquitted Delacruz-Perez and Sanchez-Balbuena of robbery, but convicted both men of assault. 6RP 3-9; CP 48-49.

The court imposed a standard range 13-month sentence, and

Delacruz-Perez timely filed his Notice of Appeal. CP 53, 60.

C. ARGUMENT

THE TRIAL COURT FAILED TO ENTER WRITTEN
FINDINGS OF FACT AND CONCLUSIONS OF LAW.

CrR 3.5(c) states that "[a]fter [a CrR 3.5] hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor."

These findings and conclusions are mandatory and the failure to enter them is error. State v. Smith, 68 Wn. App. 201, 211, 842 P.2d 494 (1992). When the court has failed to enter required findings, the proper remedy is remand. State v. Head, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998). Once the necessary findings and conclusions have been entered, either party may then appeal. Head, 136 Wn.2d at 626.

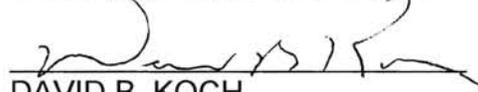
D. CONCLUSION

Delacruz-Perez's case should be remanded for noncompliance with CrR 3.5(c).

DATED this 17th day of October 2014.

Respectfully submitted,

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