

NO. 71710-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

PABLO DELACRUZ-PEREZ,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MONICA J. BENTON

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Findings of fact and conclusions of law may be submitted and entered while an appeal is pending if, under the facts of the case, there is no appearance of unfairness and the defendant is not prejudiced. Here, the findings of fact were entered by the trial court while the appeal was pending and are consistent with the trial court's oral ruling. Did the trial court properly enter written findings in this case?

B. STATEMENT OF THE CASE

The State charged the defendant, Pablo Delacruz-Perez, and his codefendant, Alexis Sanchez-Balbuena, with robbery in the first degree and assault in the second degree. CP 12-13. The State alleged that they had taken Matthew Koesema's personal property while violently beating him. CP 5-9. The case proceeded to trial. 1RP 3¹; Supp. CP __ (Sub 63A, Clerk's Minutes).

1. CrR 3.5 HEARING.

A pre-trial CrR 3.5 hearing was held to determine the admissibility of Delacruz-Perez's statements. 1RP 27-49. Bellevue

¹ The verbatim report of proceedings consists of seven volumes, which will be referred to in this brief as follows: 1RP (2/10/14); 2RP (2/12/14); 3RP (2/13/14); 4RP (2/18/14); 5RP (2/19/14); 6RP (2/20/14); 7RP (2/28/14).

Police Officer Craig Hanaumi and Bellevue Police Detective Jeffrey Christiansen testified on behalf of the State. 1RP 27-48. Hanaumi testified that when he saw Delacruz-Perez at Red Robin in Issaquah, Delacruz-Perez greeted the officer with "What's up G." 1RP 44. Hanaumi arrested Delacruz-Perez and advised him of his right to counsel, but the officer did not ask Delacruz-Perez any questions. 1RP 43-45. As they walked to the patrol car, Delacruz-Perez said, "You guys came all the way out here for this shit?" 1RP 44.

Christiansen contacted Delacruz-Perez at the police station and read Delacruz-Perez his constitutional rights. 1RP 30-31. Delacruz-Perez waived his rights and he expressed no confusion about them. 1RP 31. He denied involvement in the incident and told Christiansen that he had stayed home, at the apartment that he shares with his family, from 8:00 p.m. on the evening of the incident until the next morning. 1RP 32. Delacruz-Perez provided Christiansen with his phone number. 1RP 34. When Christiansen explained that Delacruz-Perez's cell phone records would show his location during the incident, Delacruz-Perez asked how that worked. 1RP 35. After Christiansen explained geographic cell

tower data, Delacruz-Perez indicated that he did not want to say anything more. 1RP 35-36.

Delacruz-Perez chose not to testify at the CrR 3.5 hearing. 1RP 48-49. At the conclusion of the hearing, the trial court orally ruled that the statements made to Hanaumi were unsolicited and voluntary. 1RP 52. The court found that Delacruz-Perez's statements to Christiansen were admissible because there was neither a violation of Miranda² nor a violation of the constitutional right to remain silent. 1RP 52. Written findings of fact and conclusions of law were entered on November 5, 2014. Supp. CP __ (Sub 94, CrR 3.5 Findings of Fact and Conclusions of Law) (Appendix A).

2. TRIAL TESTIMONY.

Matthew Koesema returned to his apartment complex in the Crossroads area of Bellevue on July 2, 2013, at around 11:45 p.m. 3RP 6-8, 25, 31-32. While walking up a flight of stairs inside the complex, Koesema was confronted by Delacruz-Perez. 3RP 37. Delacruz-Perez asked Koesema if he had been selling dope in the

² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

area and Koesema told him no. 3RP 36-37. Delacruz-Perez threatened to beat Koesema if he was lying. 1RP 39.

As Koesema continued up the stairs, Sanchez-Balbuena approached him, assumed a fighting stance, and yelled that Koesema was the person who had been selling drugs. 3RP 40-42. Sanchez-Balbuena tried to punch Koesema, but Koesema deployed his taser for protection. 3RP 43, 47-48. Koesema tried to run to his apartment for safety but he tripped over a rock and fell to the ground. 3RP 48-49.

At that time, four people approached Koesema and attacked him while he was on the ground. 3RP 49. Two of the assailants were Delacruz-Perez and Sanchez-Balbuena. 3RP 49, 61-62. Koesema was struck about a dozen times before he was able to escape. 3RP 52, 56. During the course of the assault, items such as Koesema's cell phone, wallet, and class ring were taken from his pants pocket. 3RP 53-54, 81. As a result of the incident, Koesema suffered two rib fractures and significant head trauma. 3RP 146, 153.

When Delacruz-Perez was arrested on July 4, 2013, he said, "You guys came all the way out here for this shit?" 4RP 65. At the police station, he denied any involvement in the crime by claiming

that he had been at home in Sammamish that night. 3RP 201-03. But Delacruz-Perez's cell phone records established that he was near Koesema's apartment complex in Crossroads during the incident. 4RP 10-24.

The jury convicted both defendants of assault in the second degree and acquitted both defendants of robbery in the first degree. 6RP 3-9; CP 48-49. The trial court sentenced Delacruz-Perez to a standard range term of 13 months of confinement. CP 50-53. Delacruz-Perez appeals. CP 60.

C. ARGUMENT

1. DELACRUZ-PEREZ WAS NOT PREJUDICED BY THE DELAY IN ENTRY OF CrR 3.5 FINDINGS.

Delacruz-Perez asks that his case be remanded for entry of findings of fact and conclusions of law under CrR 3.5(c). There is no need for remand because the trial court entered written findings on November 5, 2014, and Delacruz-Perez cannot show any prejudice. Supp. CP __ (Sub 94) (Appendix A).

Findings of fact and conclusions of law may be submitted and entered while an appeal is pending if the delay does not prejudice the defendant and there is no indication that the findings

and conclusions were tailored to meet the issues presented on appeal. State v. Quincy, 122 Wn. App. 395, 398, 95 P.3d 353 (2004), review denied, 153 Wn.2d 1028 (2005).

A delay in the entry of the findings does not by itself establish a valid claim of prejudice. In State v. Smith, the court held that the State's request at oral argument for a remand to enter the findings would have caused unnecessary delay and was thus prejudicial. 68 Wn. App. 201, 208-09, 842 P.2d 494 (1992). Here, unlike Smith, the court entered findings that have not delayed resolution of Delacruz-Perez's appeal. There is no resulting prejudice.

Nor can Delacruz-Perez establish unfairness or prejudice resulting from the content of these findings. The language of the findings is consistent with the trial court's oral ruling. 1RP 52; Supp. CP ___ (Sub 94) (Appendix A). Thus, the trial court's CrR 3.5 findings of fact and conclusions of law are properly before this Court.

D. CONCLUSION

For the foregoing reasons, the State asks this Court to find that Delacruz-Perez was not prejudiced by the entry of CrR 3.5 findings of fact and conclusions of law.

DATED this 11 day of December, 2014.

Respectfully submitted,

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Appendix A

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SUPERIOR COURT CLERK
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DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

PABLO DELACRUZ-PEREZ,

Defendant.

No. 13-C-11622-3 SEA

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.5
MOTION TO SUPPRESS THE
DEFENDANT'S STATEMENTS

A hearing on the admissibility of the defendant's statements was held on February 10, 2014 before the Honorable Judge Monica Benton.

The court informed the defendant that:

(1) he may, but need not, testify at the hearing on the circumstances surrounding the statement; (2) if he does testify at the hearing, he will be subject to cross examination with respect to the circumstances surrounding the statement and with respect to his credibility; (3) if he does testify at the hearing, he does not by so testifying waive his right to remain silent during the trial; and (4) if he does testify at the hearing, neither this fact nor his testimony at the hearing shall be mentioned to the jury unless he testifies concerning the statement at trial. After being so advised, the defendant did not testify at the hearing.

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 1

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ORIGINAL



1 After considering the evidence submitted by the parties and hearing argument, to wit: the
2 testimony of Det. Christiansen and Officer Hanaumi of the Bellevue Police Department and the
3 written and signed waiver of rights form signed by the defendant; the court enters the following
4 findings of fact and conclusions of law as required by CrR 3.5.

5 1. THE UNDISPUTED FACTS: The defendant was arrested at his place of work at around
6 8 PM on July 4, 2013, by Officer Hanaumi based on probable cause for a felony assault against
7 Matthew Koesema that had been previously established through the investigation of Det.
8 Christiansen. Officer Hanaumi contacted the manager of the restaurant where the defendant
9 worked, who sent the defendant out to speak with police. The defendant acknowledged Officer
10 Hanaumi by saying "what up G?" The defendant was escorted outside the building and placed
11 into custody for the assault. Officer Hanaumi informed the defendant he was under arrest for
12 Assault 2nd Degree and that he had a right to legal counsel. Officer Hanaumi did not read the
13 defendant his full Miranda warnings, as he did not intend to ask the defendant any questions or
14 engage him in any conversation regarding the incident. The defendant was handcuffed and lead
15 to the patrol car. As he was being walked to the patrol car, the defendant stated "you guys came
16 all the way out here for this shit?" This statement was not in response to any questioning by
17 officers. Officer Hanaumi notified Det. Christiansen of the defendant's arrest. The defendant
18 made no other statements to Officer Hanaumi.

19
20 Officer Hanaumi transported the defendant to Bellevue Police's holding facility. Det.
21 Christiansen contacted the defendant there, brought him to an interview room, and read him his
22 Miranda rights verbatim from a pre-printed form. The defendant acknowledged those rights, and
23 waived them verbally and in writing. The defendant did not appear confused about those rights

24 WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 2

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1 and at no point did he request an attorney. Det. Christiansen told the defendant why he was
2 arrested, including the date, location and name of the person assaulted. The defendant stated that
3 he had no involvement in the assault and had been at home at his apartment where he lives with
4 his mother and other relatives from 8:00 p.m. onward. He claimed that he did not leave the
5 apartment until the next morning. The defendant provided the address of that apartment as 14321
6 SE 6th Street, Unit M-106. The defendant said the phone number that belonged to the phone on
7 his person at the time of his arrest was (425) 777-5802 and that he had been using that cellular
8 phone for approximately one week. Det. Christiansen explained that he was going to obtain the
9 records for that phone number, which would likely show that the defendant was not at home, but
10 in the Crossroads area at the time of the assault. The defendant inquired how his cellular records
11 would do that, and Det. Christiansen explained historical cellular tower data and how it provided
12 rough geographical data on the phone's whereabouts. At that point the defendant indicated that
13 he did not want to say anything more. Det. Christiansen memorialized their conversation in a
14 written statement and provided it to the defendant to review. The defendant indicated it was
15 accurate, but declined to sign the statement. The defendant was not asked any further questions
16 and made no further statements to law enforcement.

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18 2. THE DISPUTED FACTS: None.

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20 3. CONCLUSIONS AS TO THE DISPUTED FACTS: None.

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24 WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.5 MOTION TO
SUPPRESS THE DEFENDANT'S STATEMENT(S) - 3

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1
2 4. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE DEFENDANT'S
3 STATEMENT(S):

4 a. ADMISSIBLE IN STATE'S CASE-IN-CHIEF

5 A The following statements of the defendant made to Officer Hanaumi are
6 admissible in the State's case-in-chief:

7 "what up G?"

8 "you guys came all the way out her for this shit?"

9 These statements are admissible because they were not the result of
10 custodial interrogation therefore Miranda warnings were not required. They were
11 unsolicited and voluntary.

12 A The following summary of statements the defendant made to Det.
13 Christiansen are admissible in the State's case-in-chief:

14 **He had no involvement in the assault and had been at home at his apartment**
15 **where he lives with his mother and other relatives from 8 PM onward. He**
16 **did not leave the apartment until the next morning. The address of that**
17 **apartment was 14321 SE 6th Street, Unit M-106. The phone number that**
18 **belonged to the phone on his person at the time of his arrest was (425) 777-**
19 **5802 and he had been using that cellular phone for approximately one week.**
20 **He inquired how his phone records would establish his whereabouts, and**
21 **then indicated he did not wish to say anything more once that was explained**
22 **to him.**

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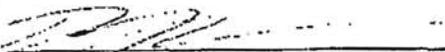
These statements are admissible because they were made after Miranda warnings were given and the defendant made a knowing and voluntary waiver of his rights.

In addition to the above written findings and conclusions, the court incorporates by reference its oral findings and conclusions.

Signed this 5 day of ~~October~~ ^{November}, 2014.


JUDGE Superintendent

Presented by:


Daniel J. Carew, WSBA #45726
Deputy Prosecuting Attorney


Jennifer Cruz, WSBA # 26438
Attorney for Defendant

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David Koch, the attorney for the appellant, at Nielsen, Broman & Koch PLLC, 1908 E Madison Street, Seattle, WA, 98122, containing a copy of the Brief of Respondent, in State v. Pablo Delacruz-Perez, Cause No. 71710-3, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 11 day of December, 2014.



Bora Ly
Done in Seattle, Washington