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King County Prosecu NO. 71906-8-I  
Appellate Unit

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

STATE OF WASHINGTON,

Respondent,

v.

MILAN STRIBRNY, JR.,

Appellant.

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

The Honorable James Cayce, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State presented insufficient evidence of obstructing a law enforcement officer.

2. The trial court violated CrR 3.5(c) by failing to file written findings of fact and conclusions of law.

Issues Pertaining to Assignments of Error

1. Because some conduct in addition to making false statements is required to prove the charge of obstructing a law enforcement officer, did the State present insufficient evidence to support the charge?

2. CrR 3.5(c) requires entry of written findings of fact and conclusions of law at the conclusion of a CrR 3.5 hearing on the admissibility of the statements of an accused. The trial court failed to enter written findings and conclusions after the appellant's CrR 3.5 hearing. Should this Court remand for entry of written findings and conclusions?

B. STATEMENT OF THE CASE<sup>1</sup>

1. Procedural facts

The State charged Milan Stribrny, Jr. with second degree malicious mischief, a felony, as well as obstructing a law enforcement officer and making a false statement to a public servant, both gross misdemeanors. The charged crimes were alleged to have occurred May 12, June 11, and June 13, respectively. CP 9-10.

Following a CrR 3.5 hearing, the court ruled all of Stribrny's statements to police were admissible. 3RP 6-109. However, the court never filed written findings and conclusions.

Following a trial, a jury found Stribrny guilty as charged. CP 55-57. The court sentenced him within the standard range on the felony count and ran the misdemeanor sentences concurrent to that count and to each other. CP 71-79.

Stribrny timely appeals. CP 69-70.

2. Trial testimony

In May of 2014, security personnel at Sound Transit's Auburn transit facility noticed that an elevator had been damaged. 3RP 126.

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<sup>1</sup> This brief refers to the verbatim report of proceedings as follows: 1RP – 3/6/14; 2RP – 3/10/14; 3RP – 3/11/14; 4RP – 3/12/14; 5RP – 3/13/14; 6RP – 3/17/14; 7RP – 3/18/14; 8RP – 3/19/14; and 9RP – 5/2/14.

Police obtained surveillance video which showed two people vandalizing the elevator on May 12 at around 4:23 a.m. 3RP 130; 4RP 8. During the incident, cables attached to the sensors on the doors were ripped out. 3RP 114-18. The State presented testimony that Sound Transit spent over four thousand dollars to repair the elevator. 3RP 123.

King County Sheriff's Office Detective Stephan Shipley emailed still shots from the video to a law enforcement distribution list. 4RP 20. He received a response from an Auburn police sergeant who thought he recognized one of the men as Stribny. 4RP 20; 6RP 36-41.

Hoping to locate Stribny, on June 5, Shipley and his partner, Detective Paula Bates, contacted Tina Winchester, Stribny's former girlfriend and the mother of his young child. 4RP 21; 6RP 10. Winchester told the detectives one of the men looked like Stribny.<sup>2</sup> 6RP 11. In particular, Winchester thought the man's clothing, hair, and facial hair matched Stribny's. 6RP 12.

Winchester provided Detective Shipley the name of friends of Stribny who lived in the area, Tina and Donnell Armstrong. 4RP 27. Shipley and Bates went to the Armstrong residence on June 11. 4RP 27.

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<sup>2</sup> According to the detectives, they did not provide a name before asking Winchester to identify the man. 4RP 49. According to Winchester, the detectives told her the man was Stribny and she just need to confirm it. 6RP 19-20, 31.

Stribrny happened to be there and agreed to talk to the detectives outside.  
4RP 28.

According to Shipley, Stribrny initially denied he was involved in damaging the elevator. 4RP 29-30. Eventually, however, Stribrny admitted to holding the elevator doors open while another man, Jason Spalding, did all the damage. 4RP 30. According to Stribrny, he met Spalding by chance at the transit center. Spalding seemed angry and asked Stribrny to hold the elevator doors while Spalding ripped out the wiring. 4RP 30. Stribrny complied because he feared Spalding. 4RP 30. During the interview, Stribrny signed a written statement to that effect. 4RP 33, 96, 105-06.

The detectives arrested Stribrny's after he admitted involvement. They called for a uniformed officer to transport Stribrny to jail. 4RP 36. The detectives relented, however, based on Stribrny's cooperative demeanor and his plea that he would miss a visit with his son if he were incarcerated. 4RP 36, 99.

The next day, Shipley investigated Spalding's involvement. Based on his investigation, he concluded Spalding was not the second man in the video. 4RP 38. On June 13, Shipley called Stribrny and confronted him. 4RP 38. Stribrny eventually admitted Spalding was not involved and explained he wanted to get Spalding in trouble due to a prior dispute. 4RP

39. Stribrny eventually told Shipley the other man was Nathan Wilson, the brother of a former girlfriend. 4RP 39.

Shipley determined Wilson was not the second man and called Stribrny again later that month. Stribrny continued to insist Wilson was involved. 4RP 41-42. The identity of the man who ripped out the elevator wires was never discovered. 4RP 42.

Winchester testified at trial. She told the detectives about her tumultuous relationship with Stribrny. 6RP 22-23. At the time of the interview with the detectives, Winchester was frustrated with Stribrny because he had obtained a parenting plan, which thwarted Winchester's plans to leave Washington state. 6RP 26.

For his part, Shipley denied having any in-depth discussion of Winchester and Stribrny's custody dispute. 4RP 50-51. He acknowledged Winchester may have mentioned a parenting plan, but he did not consider it significant to the case. 4RP 51-52.

Winchester testified Stribrny denied involvement in the incident. 6RP 12. He had, however, also discouraged Winchester from testifying. 6RP 13-14, 17, 27.

Stribrny's mother and grandfather testified Stribrny was at home in Arlington, far from Auburn, the early morning hours of May 12. 6RP 59-

60, 85-86. Similarly, they testified Stribrny was not the man in the video and they had never seen Stribrny wear such clothing. 6RP 55-57, 82-85.

Stribrny took the stand. He confirmed he was asleep in Arlington at the time the elevator was damaged. 6RP 94-95. According to Stribrny, Detective Shipley brought up Stribrny's young son early in the interview and suggested Stribrny would lose custody if he did not admit involvement. 6RP 98-99, 112. Stribrny made a statement admitting he was present, and naming Spalding as the second man, because he was trying to appease the detectives. 6RP 99. He also feared new charges because he had pleaded to other charges months earlier and knew additional charges could have more serious consequences for him. 6RP 100.

Stribrny received a call from Shipley a few days after the initial interview accusing Stribrny of misidentifying Spalding.<sup>3</sup> 6RP 104-05. Stribrny told Shipley if the second man was not Spalding he did not know who he was. 6RP 105. Stribrny mentioned Nathan Wilson not because Wilson was involved in vandalism, but because Stribrny was with Wilson later that day. 6RP 105, 116.

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<sup>3</sup> Stribrny maintained that he did not positively identify Spalding at the first interview but rather told the detectives the man "looked like" Spalding. 6RP 111.

C. ARGUMENT

1. INSUFFICIENT EVIDENCE SUPPORTS THE OBSTRUCTING CHARGE.

Due process requires the State to prove beyond a reasonable doubt each element of the crime charged. U.S. Const. Amend. 14; State v. Hundley, 126 Wn.2d 418, 421, 895 P.2d 403 (1995). In a challenge to the sufficiency of the evidence, the question is whether, when the evidence is viewed in the light most favorable to the State, “any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.” State v. Budik, 173 Wn.2d 727, 733, 272 P.3d 816 (2012) (quoting State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009)).

To determine whether the State has proved each element of the offense, this Court begins by interpreting the underlying criminal statute. Budik, 173 Wn.2d at 733. This Court reviews issues of statutory interpretation de novo. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). Of paramount importance in such analysis is the Legislature’s intent in adopting the statute. Rental Housing Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 536, 199 P.3d 393 (2009).

Two similar crimes exist under chapter 9A.76 RCW. The first, RCW 9A.76.020 makes the willful hindrance, delay, or obstruction of a “law enforcement officer in the discharge of his or her official powers or

duties” a gross misdemeanor. Conviction under this statute requires “some conduct in addition to making false statements.” State v. Williams, 171 Wn.2d 474, 486, 251 P.3d 877 (2011). In contrast, RCW 9A.76.175 makes it a gross misdemeanor to make a false or misleading material statement to a public servant. A “material statement” is a written or oral statement “reasonably likely to be relied upon by [the] public servant in the discharge of his or her official powers or duties.”

Williams is instructive and controls the result here. Williams was arrested for theft. Asked by the arresting officer to identify himself, Williams gave his brother's name instead of his own. He said he was unable to remember, or produce, any other identifying information. The police learned that he had given a false name by obtaining a physical description of the brother. Williams was charged with, among other things, obstructing a law enforcement officer. Williams, 171 Wn.2d at 475. The Supreme Court reversed his conviction, however, holding that the state constitution requires “conduct in addition to pure speech in order to establish obstruction of an officer.” Id. at 485.

Here as in Williams the “conduct” supporting the obstruction charge was a false statement. While additional conduct occurred as a result of Stribny’s false statement, it was conduct by the detectives who investigated whether Spalding was involved. See 7RP 35 (prosecutor’s

closing argument, describing “grief” Shipley went through in investigating whether Spalding was involved). But this is no different than the situation in Williams, where Williams’s statement led to police investigation of the brother’s physical attributes, ultimately revealing that Williams had provided a false name. As Williams makes clear, conduct by the officer, or the fact that a false statement caused an officer “grief,” or inconvenience, does not transform the original false statement into something more than a statement.

Moreover, unlike cases that distinguish Williams, Detectives Shipley and Bates described Stribrny as physically cooperative. 4RP 62, 99; see, e.g., State v. Steen, 164 Wn. App. 789, 801, 265 P.3d 901 (2011) (split decision holding that reasonable jury could have found that ignoring the officers’ lawful orders to exit a trailer with hands up was willful conduct amounting to obstruction), review denied, 173 Wn.2d 1024 (2012); see also State v. Contreras, 92 Wn. App. 307, 309-10, 316, 966 P.2d 915 (1998) (during investigation of suspected vehicle prowling, defendant not only gave a false name but refused to comply with orders to keep his hands in view and exit the vehicle).

Incidentally, because the conduct occurred on different dates, the State may have been able to charge two counts of making a false statement

rather than one count of obstructing and one count of making a false statement. Instead, the State chose to charge an inapplicable crime.

Because Williams controls, this Court should reverse and dismiss the obstruction charge. 171 Wn.2d at 486.

2. THE TRIAL COURT ERRED BY FAILING TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 3.5.

The trial court held a CrR 3.5 hearing to determine whether Stribny's statements were the product of police coercion. 3RP 6-109. But the court failed to enter written findings of fact or conclusions of law as required by CrR 3.5(c). This Court must remand this matter for the entry of written findings and conclusions, as the law requires.

CrR 3.5(c) provides, "Duty of Court to Make a Record. After the 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." This rule requires written findings of fact and conclusions of law. The trial court gave a brief oral ruling that Stribny's statements to arresting officers were admissible but no written findings or conclusions were ever entered. 3RP 108-09. The trial court's failure to enter written findings and conclusions violated the clear requirements of CrR 3.5(c).

“It must be remembered that a trial judge’s oral decision is no more than a verbal expression of his [or her] informal opinion at that time. It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned.” Ferree v. Doric Co., 62 Wn.2d 561, 566-67, 383 P.2d 900 (1963). Moreover, an oral ruling “has no final or binding effect, unless *formally incorporated into* the findings, conclusions, and judgment.” Id. at 567 (emphasis added).

“When a case comes before this court without the required findings, there will be a strong presumption that dismissal is the appropriate remedy.” State v. Smith, 68 Wn. App. 201, 211, 842 P.2d 494 (1992).<sup>4</sup> This is so because the court rules promulgated by our supreme court “provide[] the basis for . . . needed consistency” and a “uniform approach.” State v. Head, 136 Wn.2d 619, 623, 964 P.2d 1187 (1998). Indeed, “[a]n appellate court should not have to comb an oral ruling to determine whether appropriate ‘findings’ have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.” Id. at 624. Where a defendant cannot show actual prejudice from the absence of written findings

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<sup>4</sup> Although Smith involved the suppression of evidence under CrR 3.6, the Smith court “agree[d] that the State’s obligation is similar under both CrR 3.5 and CrR 3.6 and that cases applying CrR 3.5 can furnish appropriate guidance.” Smith, 68 Wn. App. at 205. Thus, Smith’s mandate of written findings under CrR 3.6 should apply with equal force in the CrR 3.5 context.

and conclusions, however, the appropriate remedy is remand for entry of written findings of fact and conclusions of law. Id.

In this case, the trial court did not enter written findings or conclusions following the CrR 3.5 hearing and provided only an oral ruling. This Court must therefore remand this matter to the trial court for entry of the findings and conclusions required by CrR 3.5(c).

D. CONCLUSION

For the foregoing reasons, this Court should reverse Stribny's conviction for obstructing a law enforcement officer. In any event, this Court should remand for entry of appropriate findings and conclusions.

DATED this 8<sup>TH</sup> day of October, 2014.

Respectfully submitted,

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

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 71906-8-1
	)	
MILAN STRIBRNY,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 8<sup>TH</sup> DAY OF OCTOBER 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MILAN STRIBRNY  
38425 SWEDE HEAVEN ROAD  
ARLINGTON, WA 98223

SIGNED IN SEATTLE WASHINGTON, THIS 8<sup>TH</sup> DAY OF OCTOBER 2014.

x Patrick Mayovsky

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