

NO. 71293-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ARLIN BRUNSON,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JULIA GARRATT

2011 JUL 18 PM 2:53
COURT OF APPEALS
STATE OF WASHINGTON
K

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

BENJAMIN CARR
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
PROCEDURAL FACTS.....	1
C. <u>ARGUMENT</u>	2
THE TRIAL COURT HAS ENTERED WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 3.5	2
D. <u>CONCLUSION</u>	4

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

Nordstrom Credit, Inc. v. Dep't of Revenue,
120 Wn.2d 935, 845 P.2d 1331 (1993)..... 3

State v. Gaddy, 114 Wn. App. 702,
60 P.3d 116 (2002), aff'd on other grounds,
152 Wn.2d 64, 93 P.3d 872 (2004) 3

State v. Hill, 123 Wn.2d 641,
870 P.2d 313 (1994)..... 3

Statutes

Washington State:

RCW 9A.36.031 1

Rules and Regulations

Washington State:

CrR 3.5..... 1, 2, 3

A. ISSUE PRESENTED

Though the trial court initially failed to enter written findings and conclusions after the CrR 3.5 hearing, the trial court has now entered such findings and conclusions. The defendant has not been prejudiced by the late filing of the findings and conclusions. Given the absence of any other assignments of error, is there any reason to remand this case?

B. STATEMENT OF THE CASE

PROCEDURAL FACTS.

Defendant Arlin Brunson was charged with third degree assault of a police officer after he kicked a uniformed Bothell police officer multiple times. CP 1-4; RCW 9A.36.031(1)(g). A jury convicted Brunson as charged. CP 10. Brunson was given a standard range sentence. CP 33-38.

Prior to trial, the court held a hearing pursuant to CrR 3.5 to determine whether Brunson's statements to police officers were admissible at trial. RP 10-62. After hearing from multiple officers who overheard the statements, the court ruled that Brunson's

statements were admissible. RP 65-66. The court made an oral record that some of the statements were made prior to the defendant being placed in custody. Id. The court ruled that other statements were admissible because they were not the product of custodial interrogation. Id. The statements were offered against Brunson at trial. E.g., 3RP 153, 155, 160, 164-65.

Though the trial court did not immediately file written findings of fact and conclusions of law in support of its oral rulings after the CrR 3.5 hearing, such findings and conclusions have now been filed. Supp. CP 82.

C. ARGUMENT

THE TRIAL COURT HAS ENTERED WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 3.5.

While the trial court did not initially enter written findings of fact or conclusions of law as required by CrR 3.5, the court has now done so. In the meantime, Brunson has suffered no prejudice as a result of the delay.

Unchallenged findings of fact are verities on appeal and an appellate court reviews only those facts to which the appellant has assigned error. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). An appellate court reviews whether substantial evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law. Nordstrom Credit, Inc. v. Dep't of Revenue, 120 Wn.2d 935, 939, 845 P.2d 1331 (1993).

A delay in filing findings of fact and conclusions of law is reversible only if the delay prejudiced a defendant or the findings of fact and conclusions of law were "tailored to meet the issues presented in [the defendant's] appellate brief." State v. Gaddy, 114 Wn. App. 702, 705, 60 P.3d 116 (2002), aff'd on other grounds, 152 Wn.2d 64, 93 P.3d 872 (2004).

In this case, the trial court has now entered written findings of fact and conclusions of law that are supported by substantial evidence in the record and by the court's own oral findings and conclusions at the time of the hearing. Brunson cannot and does not claim that the delay in filing resulted in prejudice to him. As such, any breach of CrR 3.5 has now been remedied without prejudice to the defendant.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Brunson's assault conviction.

DATED this 16 day of July, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
BENJAMIN CARR, WSBA #40778
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

1
2
3
4
5
6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 STATE OF WASHINGTON,)
8)

9 Plaintiff,)

No. 12-1-04628-6 SEA

10 vs.)

11 ARLIN BRUNSON,)

12 Defendant,)

13 SUPPLEMENTAL
DESIGNATION OF CLERK'S
PAPERS OR EXHIBITS TO BE
SENT TO COURT OF APPEALS

COA NO. 71293-4-I

14 To: The Superior Court Clerk

15 Please prepare and transmit to the Court of Appeals, Division I, the following
16 documents and exhibits:

17 Sub No. or <u>Exhibit No.</u>	<u>Description of Document/Exhibit</u>	<u>Date Filed or Admitted</u>
18 82	WRITTEN FINDINGS OF FACT AND 19 CONCLUSIONS OF LAW REGARDING 20 THE ADMISSIBILITY OF DEFENDANT'S 21 STATEMENTS UNDER CrR 3.5	07/14/14

22 Dated this 16th day of July, 2014.

23 

24 BENJAMIN CARR, WSBA # 40778

SUPPLEMENTAL DESIGNATION OF CLERK'S
PAPERS OR EXHIBITS TO BE SENT TO COURT OF
APPEALS - 1

Daniel T. Satterberg, Prosecuting Attorney
APPELLATE UNIT
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9650, FAX (206) 296-9009

Deputy Prosecuting Attorney
Attorneys for Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SUPPLEMENTAL DESIGNATION OF CLERK'S
PAPERS OR EXHIBITS TO BE SENT TO COURT OF
APPEALS - 2

Daniel T. Satterberg, Prosecuting Attorney
APPELLATE UNIT
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9650, FAX (206) 296-9009

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

ARLIN BRUNSON,

Defendant.

No. 12-1-04628-6 SEA

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW
REGARDING THE ADMISSIBILITY
OF DEFENDANT'S STATEMENTS
UNDER CrR 3.5

A hearing on the admissibility of the defendant's statement(s) was held on September 30, 2013 before the Honorable Julia Garratt.

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 declined to testify at the hearing.

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT TO CrR 3.5- 1

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429
Phone 206-205-7401 Fax 206-205-7475

ORIGINAL

1 After considering the evidence submitted by the parties and hearing argument, to wit:
2 testimony of Bothell Police Officers William Marshall and Erik Martin, the court enters the
3 following findings of fact and conclusions of law as required by CrR 3.5.

4 1. UNDISPUTED FACTS:

- 5 1. On August 16, 2012, Bothell police responded to a QFC grocery store parking lot
6 in Bothell, Washington, to investigate a reported "threat with a gun" incident.
- 7 2. Officer Martin was the first officer on scene. Off. Martin contacted defendant
8 Arlin Brunson, who was standing near some bushes in the parking lot. A pickup
9 truck was parked approximately 25 feet away from Brunson.
- 10 3. When Off. Martin contacted Brunson, he believed based on the 911 report that
11 Brunson was likely the victim of or witness to the threat incident. Brunson was
12 not initially suspected in any incident.
- 13 4. On first impression, Brunson appeared scared and fidgety.
- 14 5. Off. Martin approached on foot and asked Brunson what had happened. Brunson
15 was not placed in custody, nor was anything said that would suggest to Brunson
16 that he was not free to leave. Brunson was simply standing outside, where he had
17 been when Off. Martin arrived.
- 18 6. Brunson said *he had been in a fight and that after the fight he had been chased by*
19 *one of the participants who had a gun.* Brunson added that *the person with the*
20 *gun was now gone.* Brunson added that *Bothell police were a joke.*
- 21 7. Brunson turned and walked away toward the pickup truck, then sat in the
22 passenger seat and closed the door. It took Brunson only a few seconds to reach
23 the truck.
- 24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

8. As Brunson walked away, Off. Martin called out after him, asking Brunson for his name and trying to obtain more information about the threat incident. Brunson said nothing.
9. John Torres had been standing near the rear of the pickup truck when Off. Martin arrived. Once Brunson got in the truck, Torres approached Off. Martin and told Off. Martin that he (Torres) was the owner of the truck, that he was the 911 caller, that he had seen the threats incident and knew that Brunson was somehow involved in a fight, that he had initially offered to give Brunson a ride home after the incident, but that now he wanted Brunson out of his truck because Brunson was acting strangely.
10. Around the same time, Officer Marshall arrived on the scene as backup. As Off. Marshall approached and began speaking with Torres, Off. Martin attempted again to make contact with Brunson, who was still sitting in the passenger seat of the truck.
11. Off. Martin stood outside the closed passenger door of the truck. The window was rolled down.
12. Off. Martin asked for Brunson's name. Brunson *refused to give it*, and asked *whether he was being detained or if he was free to leave*. Off. Martin told Brunson that he was now being detained as part of an assault/threat investigation.
13. Off. Martin asked again for Brunson's name. Brunson again *refused to provide his name*. Brunson yelled out the open driver's side door to Torres that *he wanted to leave, and that Torres should get in so they could go*. Torres did not get back in the truck.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

14. Off. Martin asked multiple additional times for Brunson's name. Eventually, Brunson *yelled his name* at Off. Martin. Amidst profanity, Brunson also *yelled out his birthdate*. Off. Martin ran Brunson's personal information through a police database.

15. Throughout the course of Off. Martin's interaction with Brunson, which lasted 1 to 2 minutes, Brunson became increasingly irritable and profane.

16. While Off. Martin was checking on Brunson, Torres informed Off. Marshall that Torres kept a gun in the car, behind the seat. Off. Marshall communicated to Off. Martin that Brunson needed to be removed from the truck immediately, and gave a sign to Off. Martin that there was a gun in the truck. Both officers noted that Brunson appeared to overhear the comment about a gun.

17. Around that same time, dispatch informed Off. Martin that Brunson had outstanding misdemeanor warrants out for his arrest.

18. Off. Martin opened the passenger door and told Brunson to get out. Brunson physically refused.

19. Off. Martin reached toward Brunson to get him out of the truck. Brunson yelled that *he wasn't getting out of the truck*. Brunson turned his body, leaned back, and put his feet up in the direction of Off. Martin. Off. Martin attempted to grab one of Brunson's feet, but Brunson began "bicycle-kicking." Brunson kicked Off. Martin 3 or 4 times.

20. While he kicked, Brunson yelled that *he was going to kick all of the officers' asses*.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- 21. Off. Marshall jumped in to assist. Off. Martin and Off. Marshall worked together to drag Brunson out of the truck through the open driver's side door.
- 22. During this process, Brunson continued to swear, call the police *pigs*, and threaten to *beat the officers' asses*.
- 23. Once Brunson was handcuffed, he was not read his Miranda warnings.
- 24. Because Brunson continued to be assaultive, the officers placed him immediately into the back of a patrol car. Once inside, Brunson continued to kick at the windows, swear, and threaten to *beat the officers' asses*.
- 25. Brunson's statements in the back of the patrol car were not the product of any questioning by officers.
- 26. When Brunson continued to kick and attempt to damage the patrol car, officers pulled him back out of the car and affixed on him a "hobble strap," shackling his ankles to his wrists.
- 27. As the hobble strap was being placed on him, Brunson attempted to kick officers again. He continued to shout *profanity* and *challenge the officers to a fight*.
- 28. Brunson's statements during the placement of the hobble strap were not the product of any questioning by officers.
- 29. Once the hobble strap was placed on him, Brunson was placed back in the patrol car and he became more subdued.
- 30. Brunson was asked no further questions by officers and made no further statements of note.

2. FINDINGS OF FACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1. Brunson's initial statements to police regarding his involvement in a fight and his opinion of Bothell police were non-custodial statements made in a social setting.
2. At the time of Brunson's initial statements, he was not the subject of any investigation, nor was he being detained.
3. In light of the 911 report and Torres' statements to officers, Off. Martin began investigating Brunson's involvement in a fight.
4. Moreover, in light of Torres' statements to officers, Off. Martin began to observe and investigate a potential trespass by Brunson in Torres' truck.
5. Off. Martin's demand for Brunson's name and date of birth was a reasonable one in the context of his investigation.
6. While Brunson was sitting in the truck and Off. Martin was demanding his name, Brunson was informed that he was being detained as part of an investigation. Brunson's situation did not resemble that associated with formal arrest.
7. The presence of the gun in the truck, especially when combined with Brunson's agitated state, his stated desire to leave, and the inherent mobility of a truck, created exigent circumstances sufficient for Off. Martin to remove Brunson from the truck.
8. Confirmation of an outstanding warrant for Brunson's arrest also provided Off. Martin probable cause to arrest Brunson.
9. Brunson's statements to police while he was kicking Off. Martin were spontaneous statements. Moreover, during the time Brunson was kicking Off. Martin, he had not yet been placed under arrest.
10. The defendant was placed under arrest but not advised of his constitutional rights.

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT TO CrR 3.5- 6

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429
Phone 206-205-7401 Fax 206-205-7475

1 11. The defendant's statements while being handcuffed and after being placed in the
2 back of the patrol car were not the product of custodial interrogation. The
3 statements were spontaneously made by Brunson.

4 12. Off. Martin's testimony is credible.

5 13. Off. Marshall's testimony is credible.

6
7 3. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE DEFENDANT'S
8 STATEMENT(S):

9 1. Brunson's statements prior to getting in the truck were made during the course of
10 a social contact with Off. Martin. The situation had not risen to that of an
11 investigative detention. State v. Young, 135 Wn.2d 498, 957 P.2d 681 (1998).

12 2. Brunson's statements while in the truck were made during the course of an
13 investigative detention by Off. Martin. Because Brunson was detained but not yet
14 in custody, he was not required to be read his constitutional rights. Terry v. Ohio,
15 392 US 1, 20 L.Ed.2d 889 (1968).

16 3. Brunson's statements made after being removed from the truck were custodial,
17 but not the products of interrogation. As such, Miranda v. Arizona, 384 US 436,
18 86 S.Ct. 1602 (1966), is inapplicable.

19 4. Brunson's statements are admissible in the State's case-in-chief pursuant to CrR
20 3.5. They may still be subject to evidentiary objections.

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

23 Signed this 14 day of July, 2014.

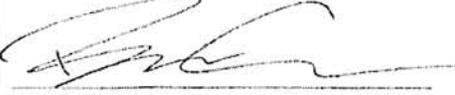
24
WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT TO CrR 3.5- 7

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429
Phone 206-205-7401 Fax 206-205-7475

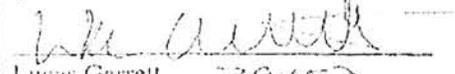
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24


JUDGE
Julia Garratt

Presented by:



Benjamin Carr
Deputy Prosecuting Attorney
Approved as to facts:



Lucas Garrett 38452
Counsel for Defendant

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT TO CrR 3.5- 8

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429
Phone 206-205-7401 Fax 206-205-7475

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,)
)
 Respondent,) No. 71293-4-I
)
 vs.)
) CERTIFICATE OF SERVICE
 ARLIN BRUNSON)
)
 Appellant.)
)

STATE OF WASHINGTON)
) ss.
 COUNTY OF KING)

On this day I caused to be delivered via ABC Legal Messenger Service, a copy of the Respondent's Brief and this Certificate of Service, with instructions to serve said documents on the following party by 4:00 p.m. on July 18, 2014:

Clerk of the Court
Court of Appeals, Division One
One Union Square
600 University Street
Seattle, WA 98101

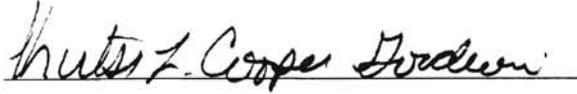
On this day I deposited in the mails of the United States a properly addressed and stamped envelope containing a copy Respondent's Brief and this Certificate of Service

Said envelope was directed to:

CONFIDENTIAL
JUL 20 2014
11:00 AM
JUL 20 2014
11:00 AM
JUL 20 2014
11:00 AM

1 Eric Nielsen
Nielsen, Broman and Koch PLLC
2 1908 E Madison St
Seattle, WA 98122
3

4 Dated this 17th day of July, 2014.

5
6 

7 Kirtsi Cooper Goodwin, Paralegal
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23