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Court of Appeals  
Division I  
State of Washington

NO. 71608-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

MOHAMED A. AHMED,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CAROL A. SCHAPIRA

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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A. ISSUE PERTAINING TO AHMED'S SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. Whether substantial evidence supports the trial court's written findings of fact 3, 4, 5 and 6 and supports the conclusions of law that could be deemed findings of fact?

B. ARGUMENT

1. SUBSTANTIAL EVIDENCE SUPPORTS THE NECESSARY FINDINGS OF FACT.

Ahmed assigns error to the trial court's written findings of fact, entered while his appeal was pending, and contends that substantial evidence does not support findings of fact 3, 4, 5 and 6 or some of the conclusions of law, to the extent that they could be deemed findings of fact. Because the officers' testimony and video support the findings, Ahmed's claims should be rejected.

The appellate court reviews a trial court's findings of fact for substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Substantial evidence means that there is "a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." Id. Unchallenged findings of fact are verities on appeal. Id. The reviewing court must defer to the trial court's determination of the credibility of the

witnesses or persuasiveness of the evidence. State v. Maxfield,  
125 Wn.2d 378, 385, 886 P.2d 123 (1994).

- a. Substantial Evidence Supports Findings Of  
Fact 3, 5 And 6, And Conclusions Of Law B7,  
C2 And C3.
  - i. Finding of fact 3 and conclusion of law  
B7.

Ahmed first assigns error to the portion of finding of fact 3  
that "Ahmed was uncooperative and refused to provide Officer  
Harris with his identification." CP 120. He also assigns error to a  
portion of conclusion of law B7, to the extent it could be deemed a  
finding of fact, that Ahmed was "uncooperative." CP 121.

The trial court's finding that Ahmed was uncooperative is  
supported by the testimony of Officers Lloyd Harris and Jacob  
Leenstra, as well as the video. Harris testified that Ahmed was  
uncooperative because, by the time Leenstra arrived, Harris had  
asked Ahmed for identification multiple times, and Ahmed had not  
provided it. 6RP 20. Ahmed never provided his identification, but  
he asked Harris other questions that showed he understood that  
Harris was an officer and was stopping him. 6RP 18-20; Ex. 21.<sup>1</sup>

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<sup>1</sup> Exhibit 21 is a DVD containing Harris' in-car video under the file named  
7403@20130821220222.

Similarly, Leenstra testified that Ahmed appeared to understand the questions, but to not want to accept them as asked. 6RP 95. Leenstra also testified that Ahmed chose to talk over him as Leenstra read the Miranda<sup>2</sup> rights, instead of listening and acknowledging his rights. 6RP 98. The video corroborates the testimony of Officers Harris and Leenstra. Ex. 21 at 1:20-2:24; Ex. 25 at 2:00-4:55.<sup>3</sup>

ii. Finding of fact 5.

The relevant portion of finding of fact 5 states, "Mr. Ahmed was asked if he understood his rights twice and did not reply. Instead he proceeded to ask the officers questions." CP 120.

Harris testified that Ahmed appeared to understand the questions Harris asked him, but responded with his own questions. 6RP 21. Harris elaborated that he believed that Ahmed knew exactly what Harris was asking about. 6RP 21. He also testified that while Ahmed was read his rights, Ahmed appeared to understand what was going on because he was answering some of Harris' questions and deflecting others. 6RP 28. Leenstra also

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<sup>2</sup> Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

<sup>3</sup> Exhibit 25 is a DVD with files containing Officer Leenstra's in-car video under the file named 7479@20130821220247.

testified that Ahmed “chose to talk over me rather than listening and acknowledging his rights.” 6RP 98.

The video also supports that Ahmed asked questions after he was read his rights rather than answering whether he understood his rights. Ex. 21 at 1:20-2:24; Ex. 25 at 2:00-4:55. The initial Brief of Respondent details Ahmed’s questions and answers on the video. See Br. of Resp. at 6, 17-18.

iii. Finding of fact 6.

The relevant portion of finding of fact 6 states, “He was tracking the conversation with the officers and appeared to comprehend the circumstances.” CP 121.

The officers’ testimony listed above supporting finding of fact 5 also supports this finding. 6RP 21, 28, 98. Harris further testified that Ahmed did not appear confused at all. 6RP 28. And Leenstra testified that Ahmed did not appear confused about his rights. 6RP 99, 129.

The video also supports this finding, as it shows Ahmed responding appropriately to questions and asking relevant questions of his own. Ex. 21 at 1:20-2:56; Ex. 25 at 2:24-4:55; see Br. of Resp. at 17-18. For example, Ahmed responded to Harris’ initial greeting with, “I’m doing okay.” Ex. 21 at 1:20-30.

Later, when told he was under arrest for robbery, Ahmed stated, “No, I didn’t do [none] of this.” Ex. 25 at 2:24-56.

iv. Conclusion of law C2.

Conclusion of law C2 states, in relevant part, that Ahmed “was tracking what the officers were saying and responded to the parts that he found were important. The officers’ conduct in advising the defendant of his rights was appropriate.” CP 122.

Because conclusion of law C2 is essentially the same as findings of fact 5 and 6, the above evidence that supports these findings also supports this conclusion of law.

v. Conclusion of law C3.

Conclusion of law C3 states, “Mr. Ahmed did not ask any questions about his Miranda rights, did not show any confusion, and did not indicate that he did not want to speak to officers.” CP 122. Ahmed assigns error only to the portion that Ahmed did not show any confusion. Reply Br. of App. at 2.

Again, the officers’ testimony that Ahmed did not appear confused is substantial evidence to support this finding, as noted above. 6RP 21, 27-28, 98-99. The video also supports the finding, as it shows that Ahmed and his responses to the questions were

appropriate to the conversation. Ex. 21 at 1:20-2:56; Ex. 25 at 2:24-4:55; see Br. of Resp. at 17-18.

For all of the above findings, the trial court based its findings on the testimony of the officers and Ahmed. These findings relied to a great extent on the trial court's credibility determinations. The trial court did not find Ahmed credible. 7RP 83-84. Instead, the court adopted the findings of fact based on the officers' testimony and found the officers credible. 7RP 77-85, 123-30; CP 121. Such credibility determinations are not reviewable on appeal. Substantial evidence supports the trial court's findings.

b. Substantial Evidence Supports The Necessary Portions Of Findings Of Facts 4 And 5.

Ahmed assigns error to the portion of finding of fact 4 that both officers frisked Ahmed for weapons before arresting him. CP 120. Both officers testified that they frisked Ahmed, so this finding is supported by substantial evidence. 6RP 21-22, 26, 96. But only Harris found the wine bottle, so only his frisk is at issue. 6RP 21-22.

Next, Ahmed assigns error to the portions of findings of fact 4 and 5 that the officers felt cold, hard, cylindrical objects during the frisk and that multiple wine bottles were found prior to arrest.

CP 120. Ahmed also assigns error to the portions of conclusions of law B8 and B9 that include these facts. CP 122.

Harris testified that he felt only one hard, cylindrical object and only one wine bottle was found prior to arrest. 6RP 21-22. Harris found a total of three bottles of wine, but the other bottles were found post-arrest. 6RP 23. The video supports his testimony. Ex. 25 at 2:00-2:25. Thus, substantial evidence supports that only one object was felt during the frisk and that one bottle was found prior to arrest. However, this does not affect the analysis of the legality of the frisk, and Ahmed and the State have already addressed the frisk in terms of Harris finding only one bottle.

C. CONCLUSION

For the reasons cited above, substantial evidence supports the findings of fact to which Ahmed assigns error.

DATED this 10<sup>th</sup> day of March, 2015.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Richard Lechich, the attorney for the appellant, at Richard@washapp.org, containing a copy of the Supplemental Brief of Respondent, in State v. Mohamed A Ahmed, Cause No. 71608-5, 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 18<sup>th</sup> day of March, 2015.

U Brame

Name:

Done in Seattle, Washington