

71906-8

71906-8

NO. 71906-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

MILAN STRIBRNY,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES CAYCE

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**BRIEF OF RESPONDENT**

---

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APPROVED FOR FILING  
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1/15/2019

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A. ISSUES PRESENTED

1. Conduct, in addition to making false statements, is required to support a charge of obstructing a law enforcement officer. Stribrny provided false information about his accomplice when officers contacted him, but he was physically cooperative, cordial, and respectful. Should his conviction for obstructing a law enforcement officer be vacated and the case remanded to amend the Non-Felony Judgment and Sentence to strike any reference to that crime?

2. 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 FACTS

1. PROCEDURAL FACTS

The State charged the defendant, Milan Stribrny, with malicious mischief in the second degree, obstructing a law

enforcement officer, and making a false or misleading statement to a public servant. CP 9-10. The State alleged that Stribny damaged the wiring and controls in an elevator at the Sound Transit Auburn Rail Station, rendering it temporarily inoperable. CP 4-6. The State further alleged that he lied to police on two separate occasions about the identity of the other suspect involved in the vandalism. CP 4-6. Stribny was found guilty of all three crimes after a trial by jury. CP 55-57.

Stribny's sentences for all three counts were essentially identical and were set to run concurrently. CP 62-68, 71-73. For the malicious mischief conviction, the trial court imposed a standard range sentence of 60 days of confinement, which was converted to 30 days of CCAP Enhanced and 240 hours of community restitution.<sup>1</sup> CP 62-68. Likewise, Stribny's sentences for the misdemeanor convictions consisted of 60 days of confinement, which was converted to 30 days of CCAP Enhanced and 30 days of community service. CP 71-73.

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<sup>1</sup> The Judgment and Sentence refers to CCAP Enhanced, which is shorthand for the Community Center for Alternative Programs.

## 2. SUBSTANTIVE FACTS

One of the elevators at the Auburn Transit Station was vandalized on May 14, 2012. 3RP 114-15.<sup>2</sup> The wiring had been damaged so extensively that the elevator doors did not function. 3RP 116-17. The estimated repairs totaled \$4,303.35. 3RP 122-23.

Surveillance video captured two suspects damaging the elevator at around 4:30 that morning. 3RP 130; 4RP 8-9. In an effort to identify the suspects, King County Sheriff's Detective Stephan Shipley took screenshots of the surveillance video and emailed the pictures to a regional law enforcement distribution list. 4RP 15, 19-20. In response, Auburn Police Sergeant Lester Muterspaugh informed Shipley that one of the suspects in the video could have been Stribrny. 4RP 20; 6RP 37.

On June 5, 2012, Tina Winchester, the mother of Stribrny's son, identified Stribrny as one of the suspects in still images taken from the video. 4RP 21-24, 87-88. Winchester provided Shipley and King County Sheriff's Detective Paula Bates with Stribrny's current address in Federal Way. 4RP 27.

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<sup>2</sup> The verbatim report of proceedings consists of three volumes, which will be referred to in this brief 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); 9RP (5/2/14).

On June 11, 2012, Shipley and Bates went to the address that Winchester provided, knocked on the door, and asked for Stribrny. 4RP 27-28. Stribrny came to the door and agreed to speak with the detectives in the front yard. 4RP 28. At first, Stribrny denied knowing anything about the vandalism at the transit center, but his story changed and he eventually admitted to being involved in the incident. 4RP 29. Stribrny told the detectives that Jason Spalding was the other person captured on video damaging the elevator. 4RP 30. Stribrny gave a written statement about what had happened. 4RP 94.

Stribrny was handcuffed after 15 minutes of conversation with police, but he spoke with the detectives for about an hour. 4RP 31, 34. The detectives had planned on taking him to jail, but instead released Stribrny at the conclusion of their conversation because he was cooperative, cordial, and respectful throughout their interaction. 4RP 34-36. Stribrny also expressed concern about missing visitation with his son. 4RP 36.

The next day, Shipley and Bates tried to find Jason Spalding, the person Stribrny had named as his accomplice. 4RP 37-38. They spent hours investigating Spalding's identity and

location before ultimately determining that he was not involved in the crime. 4RP 37-38.

On June 13, 2012, Shipley called Stribrny and confronted him about lying about the identity of the second suspect. 4RP 38. Stribrny eventually explained that he had "a beef" with Spalding and was trying to get him in trouble. 4RP 39. Then, he named Nathan Wilson as the other person involved in damaging the elevator. 4RP 39. Shipley researched Wilson and learned that he was in custody at SCORE.<sup>3</sup> 4RP 40. Shipley and Bates contacted Wilson at the jail and determined that he was not the other person in the video, based on his height and weight. 4RP 41.

Shipley called Stribrny and confronted him about lying to police again. 4RP 41. Stribrny maintained that he had been with Wilson on the day of the incident and refused to give Shipley the true name of the other person involved in the crime. 4RP 42. The second person on the surveillance video was never identified. 4RP 42.

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<sup>3</sup> At trial, the witness referred to "SCORE," which is an acronym for the South Correctional Entity.

C. ARGUMENT

1. THE STATE AGREES THAT THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE CHARGE OF OBSTRUCTING A LAW ENFORCEMENT OFFICER.

Stribrny contends that there was insufficient evidence to sustain his conviction for obstructing a law enforcement officer. The State agrees that there was insufficient evidence of conduct, in addition to Stribrny's false statements, to support this charge.

Evidence is sufficient to support a conviction if, considered in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

A person is guilty of obstructing a law enforcement officer if the person "willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties." RCW 9A.76.020(1). In State v. Williams, the Washington Supreme Court held that making false statements to police was

insufficient to sustain a conviction under this statute, and that some conduct in addition to pure speech was required. 171 Wn.2d 474, 485-86, 251 P.3d 877 (2011). In Williams, the defendant admitted to driving away from a car dealership without paying, but gave his brother's name to police when asked to identify himself. Id. at 476. The court vacated Williams's conviction because there was insufficient evidence that his actions, as opposed to his false statements alone, interfered with the investigation. Id. at 475, 486.

On the other hand, failing to act can be construed as conduct for purposes of this statute. See State v. Steen, 164 Wn. App. 789, 801-02, 265 P.3d 901 (2011). Willful failure to obey a lawful police order, where such failure to obey hinders, delays, or obstructs an officer, is sufficient evidence of conduct for purposes of the obstruction statute. See Id. (defendant's refusal to open a trailer door and exit the trailer with hands up is "conduct" that is punishable under the obstruction statute).

In cases where the defendant lied to or misled police, there must also be evidence that the suspect's conduct hampered law enforcement's efforts. For example, a defendant's refusal to identify himself, coupled with threatening an officer and lunging at an officer, supports an obstruction conviction. State v. Turner, 103

Wn. App. 515, 525-26, 13 P.3d 234 (2000). Similarly, giving a false name and refusing to comply with police orders to keep one's hands in view and exit a vehicle is sufficient to support an arrest for obstruction. State v. Contreras, 92 Wn. App. 307, 316, 966 P.2d 915 (1998).

Here, Stribrny was charged with obstructing for giving the detectives false information about the identity of the other suspect on June 11, thereby delaying the investigation. 4RP 30, 37-38; CP 9. Shipley and Bates spent hours trying to find Spalding and confirm his identity, only to determine that Stribrny had lied about Spalding's involvement. 4RP 37-38. Although Stribrny's false statements clearly hindered the investigation into the identity of the other perpetrator, Stribrny was physically cooperative, cordial, and respectful. 4RP 36. He was handcuffed and a patrol car arrived to take him to jail, but the detectives ultimately decided to release him because of his agreeable behavior. 4RP 36.

There was no evidence that Stribrny's conduct interfered with law enforcement's investigation. As a result, his obstruction conviction should be vacated.

2. STRIBRNY WAS NOT PREJUDICED BY THE  
DELAY IN ENTRY OF CrR 3.5 FINDINGS.

Stribrny 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 3, 2014, and Stribrny cannot show any prejudice. Supp. CP \_\_ (Sub 76, CrR 3.5 Findings of Fact and Conclusions of Law) (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 Stribrny's appeal. There is no resulting prejudice.

Nor can Stribrny establish unfairness or prejudice resulting from the content of these findings. A review of the findings illustrates that the State did not tailor them to address the defendant's claims on appeal. Supp. CP \_\_ (Sub 76) (Appendix A). The language of the findings is consistent with the trial court's oral ruling. 3RP 108-09. Moreover, the trial prosecutor who drafted the findings of fact had no knowledge of the issues in this appeal. Supp. CP \_\_ (Sub 75, Declaration of Deputy Prosecuting Attorney) (Appendix B).

In light of the above, Stribrny cannot demonstrate an appearance of unfairness or prejudice. The trial court's CrR 3.5 findings of fact and conclusions of law are properly before this Court.

D. CONCLUSION

For all the foregoing reasons, the State agrees that Stribrny's conviction for obstructing a law enforcement officer should be vacated, and the State asks this Court to remand for amendment of the Non-Felony Judgment and Sentence to strike any reference to that charge. The State further asks this Court to

find that Stribrny was not prejudiced by the entry of CrR 3.5 findings  
of fact and conclusions of law.

DATED this 8<sup>th</sup> day of December, 2014.

Respectfully submitted,

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By:   
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## Appendix A

**FILED**  
KING COUNTY, WASHINGTON

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SUPERIOR COURT CLERK  
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 13-1-02204-1 KNT

vs.

MILAN JOSEPH STRIBRNY,

Defendant,

WRITTEN FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON CrR 3.5  
HEARING

A hearing on the admissibility of the defendant's statement(s) was held on March 11, 2014 before the Honorable Judge James Cayce.

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 chose to testify.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON 3.5 HEARING- 1

1 After considering the evidence submitted by the parties and hearing argument, the court  
2 enters the following findings of fact and conclusions of law as required by CrR 3.5.

3 A. FINDINGS OF FACT:

- 4 1. On June 11, 2012 Detective Shipley contacted the defendant at the residence of Tina and  
5 Donnell Armstrong, in Federal Way, during daytime hours. The defendant had  
6 previously been identified as a possible suspect in a case involving damage to a Sound  
7 Transit elevator that Detective Shipley was investigating.
- 8 2. Detective Shipley's partner, Detective Paula Bates, was also present.
- 9 3. Detective Shipley and Detective Bates were driving an unmarked police vehicle and  
10 were dressed in plain clothes.
- 11 4. Detective Shipley knocked on the door to the residence and was met by one of the  
12 Armstrongs. He asked to speak with the defendant and the defendant came to the door.
- 13 5. Detective Shipley told the defendant that he was investigating an incident that occurred  
14 in Auburn and asked to speak to him outside. The defendant agreed to step outside and  
15 speak with Detective Shipley.
- 16 6. The conversation between Detective Shipley and the defendant occurred in the front yard  
17 of the residence. The defendant was not placed in handcuffs and was not initially under  
18 arrest. No threats or promises were made to the defendant by either detective and no  
19 weapons were displayed.
- 20 7. During the conversation, which lasted approximately 15-20 minutes the defendant made  
21 several statements to Detective Shipley and Detective Bates admitting his involvement  
22 in the elevator damage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
ON 3.5 HEARING- 2

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- 1 8. After admitting his involvement in causing damage to the elevator, Detective Shipley
- 2 informed the defendant he was under arrest and placed him in handcuffs.
- 3 9. After being placed under arrest, Detective Bates read the defendant his Miranda
- 4 warnings using a pre-printed suspect statement form. The rights were properly
- 5 administered.
- 6 10. After being read his Miranda rights the defendant agreed to continuing speaking with
- 7 detectives. He did not express any confusion.
- 8 11. During the conversation that followed the defendant gave a number of statements
- 9 concerning his involvement in damaging the elevator.
- 10 12. After speaking with detectives the defendant also provided a written statement
- 11 reiterating what he had verbally told detectives.
- 12 13. No threats or promises were made to the defendant after he was placed under arrest.
- 13 14. At no point in the defendant's interaction with detectives did he request an attorney or
- 14 indicate that he did not want to talk with detectives.
- 15 15. At some point after the defendant was placed in handcuffs Tina Armstrong arrived
- 16 home. Although she was not directly involved in the conversation she did have contact
- 17 with detectives and was in a position to hear the interaction between the defendant and
- 18 detectives.
- 19 16. The defendant was released from custody at the scene.
- 20 17. After the defendant was placed under arrest a uniformed deputy in a marked patrol car
- 21 came to the scene and stood by, parked across the street. The deputy left after detectives
- 22 decided to release the defendant at the scene rather than booking him into jail.

- 1 18. On June 13, 2012 Detective Shipley contacted the defendant by phone to further discuss  
2 the investigation. Detective Shipley had determined that information the defendant had  
3 previously provided concerning the name of the other involved party was false.
- 4 19. During the phone conversation, which lasted about 10 minutes, the defendant made a  
5 number of statements to Detective Shipley about the case.
- 6 20. On June 26, 2012, Detective Shipley again contacted the defendant by phone to discuss  
7 the case.
- 8 21. The second phone conversation lasted about 5 minutes, during which the defendant  
9 made statements to Detective Shipley about the case.
- 10 22. No threats or promises were made to the defendant during either phone call.

11  
12 And, having made those Findings of Fact, the Court also now enters the following:  
13

14 B. CONCLUSIONS OF LAW:

- 15 1. Detective Stephen Shipley and Detective Paula Bates testified at the CrR 3.5 hearing.  
16 The Court found their testimony to be credible.
- 17 2. Tina Armstrong testified at the CrR 3.5 hearing. The Court found her testimony to be not  
18 credible.
- 19 3. The defendant testified at the CrR 3.5 hearing. The Court found his testimony to be not  
20 credible.
- 21 4. The statements made by the defendant to Detective Shipley and Detective Bates on June  
22 11, 2012, prior to being read Miranda warnings were non-custodial and were not the

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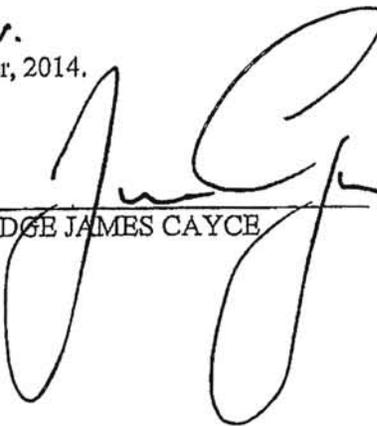
product of interrogation, therefore, no Miranda warnings were required. The statements are admissible in the State's case in chief.

5. The statements made by the defendant to Detective Shipley and Detective Bates, both oral and written, on June 11, 2012, post Miranda warning, were voluntarily made after a knowing, intelligent and voluntary waiver of his Miranda rights. Therefore, the statements are admissible in the State's case in chief.

6. Statements made by the defendant to Detective Shipley via phone on June 13 and June 26, 2012 were non-custodial, Miranda warnings were not required. The defendant's statements during each of the phone calls are admissible in the State's case in chief.

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

Signed this 3<sup>rd</sup> day of ~~October~~ Nov., 2014.

  
\_\_\_\_\_  
JUDGE JAMES CAYCE

Presented by:

  
\_\_\_\_\_  
CANDICE DUCLOS, WSBA # 42662  
Deputy Prosecuting Attorney

Approved as to form:

  
\_\_\_\_\_  
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## Appendix B

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	No. 13-1-02204-1 KNT
	)	
vs.	)	
	)	DECLARATION OF DEPUTY
MILAN JOSEPH STRIBRNY,	)	PROSECUTING ATTORNEY
	)	
	)	
	)	
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	)	

I, Candice Duclos, the undersigned, hereby declare that I am 18 years of age, I am competent to testify in a court of law, and I am familiar with the facts contained herein:

1. I am a Deputy Prosecuting Attorney with the King County Prosecutor's Office.
2. I was the trial attorney in the above captioned case.
3. I was contacted by my office's appellate unit on October 9, 2014 and informed that findings of fact and conclusions of law, pursuant to CrR 3.5 could not be located in the electronic court record or the original prosecutor's file. I verified that the documents were not included in the electronic court file. I searched my electronic files and could not locate these documents.

1 4. On October 9, 2014, I obtained transcripts for the day of trial that contained the pretrial  
2 hearings in this case. I reviewed the transcripts for that day and located the portions relevant to  
3 the findings of fact and conclusions of law pursuant to CrR 3,5.

4 5. On October 12, 2014, I drafted findings of fact and conclusions of law based on the transcripts  
5 referenced in (4) above and requested a hearing to enter the findings before the trial judge, the  
6 Honorable James Cayce.

7 6. I presented these findings and conclusions to David Hancock, the defendant's trial attorney,  
8 via email. We did not discuss the appeal.

9 7. On November 3, 2014 I presented these findings and conclusions to the trial judge, the  
10 Honorable James Cayce. The findings were signed by both parties.

11 6. I have not reviewed the appellate file or any documents related thereto in the above captioned  
12 case. I have not spoken with anyone regarding the appellate issues being raised in the above  
13 captioned case. I have no knowledge of any appellate issue being raised in this matter.

14  
15 Under penalty of perjury under the laws of the State of Washington, I certify that the foregoing is  
16 true and correct. Signed and dated by me this 3<sup>rd</sup> day of November, 2014, at Kent, Washington.

17  
18 

19 CANDICE DUCLOS, WSBA #42662  
20 Deputy Prosecuting Attorney

21  
22  
23  
DECLARATION OF DEPUTY PROSECUTING  
ATTORNEY - 2

Daniel T. Satterberg, Prosecuting Attorney  
Norm Maleng Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

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 Jennifer Winkler, 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. Milan Joseph Stribny, Cause No. 71906-8, 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 8 day of December, 2014.



Bora Ly  
Done in Seattle, Washington

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