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NO. 69449-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

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COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
COREY SCHUMACHER,
Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE JIM ROGERS

BRIEF OF RESPONDENT

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ORIGINAL

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A. ISSUE PRESENTED

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. Has the trial court properly entered written findings in this case?

B. STATEMENT OF THE CASE

PROCEDURAL FACTS.

Defendant Corey Schumacher was charged by amended information with three counts of child molestation in the first degree and two counts of child molestation in the second degree.

CP 14-16. The State dismissed one count of second degree child molestation during the course of trial. CP 26-27; 6RP 19.¹

Trial occurred in May and June of 2012. The court held a pre-trial hearing pursuant to CrR 3.5 hearing to determine the admissibility of Schumacher's statements. 2RP 34-73. The court found that Schumacher's custodial statements were admissible.

¹ This brief adopts the appellant's format for referencing the verbatim report of proceedings cited in appellant's footnote 1.

2RP 69-73. The jury found Schumacher guilty as charged in counts 1, 2, and 3. CP 49-51. The jury was unable to reach a verdict on count 4. CP 60. The court imposed a standard range sentence. CP 62-72.

C. ARGUMENT

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

Schumacher argues that his case should be remanded for entry of findings of fact and conclusions of law under CrR 3.5. This argument should fail because the trial court entered written findings on June 25, 2013, and Schumacher cannot show any prejudice. Supp. CP __ (Sub 106) (App. A).

Findings of fact and conclusions of law may be submitted and entered while an appeal is pending if there is no prejudice to the defendant by the delay and 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).

The delay in the entry of the findings does not in and of 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). However, unlike Smith, here the court entered findings that have not delayed resolution of Schumacher's appeal. There is no resulting prejudice.

Nor can Schumacher 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 106) (App. A). The language of the findings is consistent with the trial court's oral ruling. 2RP 69-73.

In light of the above, Schumacher 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 of the foregoing reasons, the State respectfully asks this Court to affirm Schumacher's conviction.

DATED this 2 day of July, 2013.

Respectfully submitted,

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