

No. 68352-7-I

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

STATE OF WASHINGTON,

Respondent,

v.

KAREN ELIZABETH AMADOR,

Appellant.

APPELLATE
COURT
DIVISION ONE
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[Signature]

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

APPELLANT'S OPENING BRIEF

MAUREEN M. CYR
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

C. STATEMENT OF THE CASE 1

D. ARGUMENT..... 5

THE TRIAL COURT ERRED IN FAILING TO ENTER
WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF
LAW FOLLOWING MS. AMADOR’S BENCH TRIAL 5

E. CONCLUSION..... 7

TABLE OF AUTHORITIES

Cases

State v. Head, 136 Wn.2d 619, 964 P.2d 1187 (1998) 5, 6

Rules

CrR 6.1(d)..... 1, 5, 6, 7

A. ASSIGNMENT OF ERROR

The trial court erred in failing to enter written findings of fact and conclusions of law following the bench trial in Karen Amador's case.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

CrR 6.1(d) requires the trial court to enter written findings of fact and conclusions of law following a bench trial in a criminal case. The purpose of the rule is to enable effective appellate review. Did the trial court violate CrR 6.1(d), and preclude effective appellate review, by failing to enter written findings and conclusions following the bench trial in Ms. Amador's case?

C. STATEMENT OF THE CASE

Karen Amador was the manager of the Whatcom Falls Mini-Mart in Bellingham from August 2008 to September 2009. RP 447. Inside the mini-mart was an automated teller machine (ATM). RP 245. The owner of the mini-mart owned the ATM and was entitled to keep the fee charged for each transaction. RP 246-47.

Every day that she worked, Ms. Amador was responsible for determining how much money was in the ATM and adding cash to the machine so that it always contained between \$1,000 and \$2,000. RP

451-52, 468. She would take the cash that she put into the machine out of the amount of money she deposited into the bank every day. RP 26-30. She would enter the amount of cash she put into the machine into a spreadsheet on the computer. RP 451-52. Every day the amount of money she entered into the spreadsheet matched the amount of money she actually put into the machine. RP 480.

Megan Lingbloom, the assistant manager, would go through the same process on those days that Ms. Amador did not work. RP 399-402.

One day in late August or early September 2009, Kevin Weatherill, the owner of the mini-mart, reviewed the books and noticed that, according to the records, the ATM should currently have about \$20,000 cash in it. RP 25-26. He contacted Ms. Lingbloom, who told him that the ATM actually had only about \$120 in it. RP 35. Mr. Weatherill asked the service provider for the ATM to run a transaction history for the machine for the past several months. RP 36-38. Mr. Weatherill used that information to create a reconciliation report. RP 37-38, 40. He compared the amount of money the manager reportedly put into the ATM every day and compared it to the amount of money disbursed each day from the machine as reported by the ATM service

provider. RP 38. Those amounts were basically the same. RP 38. But the total amount of money the manager recorded as being taken out of the deposit was more than the money reportedly put into the machine. RP 38. Mr. Weatherill claimed most of the discrepancies occurred on the days that Ms. Amador had been scheduled to work. RP 69, 71.

The State charged Ms. Amador with one count of first degree theft under former RCW 9A.56.030(1)(a) (2007) and RCW 9A.56.020(1)(a). CP 23-24. Ms. Amador waived her right to a jury trial and a bench trial followed. CP 29.

At trial it was established that Mr. Weatherill had created several different reconciliation reports that he gave to police. RP 41. Each report set forth a markedly different amount of total loss. RP 362-64, 368. The amount of reported loss ranged from \$15,340 to \$20,820. RP 362-64.

The testimony also showed that other people besides Ms. Amador had access to the computer spreadsheet on which the manager entered the amount of cash put into the ATM machine each day. RP 403. Those people included the assistant manager as well as Mr. Weatherill's wife, who did the invoicing. RP 403. In addition, the system was password-protected but according to Ms. Lingbloom, the

password was a word that anyone could have figured out. RP 423.

Many people came in and out of the office where the computer was kept. RP 423.

Mr. Weatherill testified he never had any reason to distrust Ms. Amador before he discovered the discrepancies set forth in the reconciliation report. RP 502-03. Ms. Lingbloom also testified she found Ms. Amador to be trustworthy. RP 413. She never saw Ms. Amador take money from the store or deal with the cash reports for the ATM in an inappropriate manner. RP 426. Ms. Lingbloom had even recommended Ms. Amador for the manager position because she thought she had a good work ethic. RP 415.

Ms. Amador testified she had not been aware that any money was missing from the store. RP 483. When she put money into the machine every day and did the books, the amounts matched. RP 480.

At the end of the trial, the judge provided an oral ruling finding Ms. Amador guilty which consisted of a single sentence. RP 575. The judge simply stated, "In my opinion the circumstantial evidence, particularly the documents speaks loudly, and I'm satisfied that the State has met the high level of proof to prove guilt beyond a reasonable doubt, and, therefore, I am so finding." RP 575. The judge never

entered written findings of fact or conclusions of law and never explained the particular evidence he relied on to find each element of the crime.

D. ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO ENTER
WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOLLOWING MS.
AMADOR'S BENCH TRIAL

Following a bench trial in a criminal case, the judge has a mandatory duty to enter written findings of fact and conclusions of law. CrR 6.1(d) provides:

In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

The purpose of CrR 6.1(d)'s requirement of written findings of fact and conclusions of law is to enable an appellate court to review the questions raised on appeal. State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). A trial court's oral opinion is no more than an oral expression of the court's informal opinion at the time rendered. Id. An oral opinion has no binding effect unless formally incorporated into written findings, conclusions and judgment. Id. In addition, appellate

review is facilitated by written findings and conclusions. Id. “A prosecuting attorney required to prepare findings and conclusions will necessarily need to focus attention on the evidence supporting each element of the charged crime, as will the trial court.” Id. That focus will simplify and expedite appellate review. Id. at 622-23.

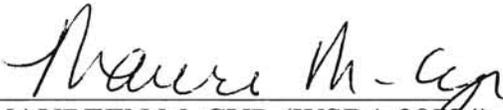
Here, the trial court entered no written findings and conclusions as required by CrR 6.1(d). The court provided only an oral ruling, which has no binding effect. Head, 136 Wn.2d at 622. In addition, the oral ruling does not set forth the particular evidence the judge relied on to find each element of the charged crime. RP 575. Under these circumstances, effective appellate review is impossible.

The remedy for a court’s failure to enter written findings and conclusions pursuant to CrR 6.1(d) is to remand for entry of such findings and conclusions. Head, 136 Wn.2d at 624. On remand, the trial court is not bound by its earlier oral decision. Id. at 625. It is free to determine that, despite its earlier ruling, a conviction is not appropriate after specifically addressing the evidence relating to each of the elements of first degree theft. Id.

E. CONCLUSION

Because the trial court did not enter written findings and conclusions as required by CrR 6.1(d), the case should be remanded for entry of such findings and conclusions.

Respectfully submitted this 19th day of October 2012.


MAUREEN M. CYR (WSBA 28424)
Washington Appellate Project - 91052
Attorneys for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 68352-7-I
)	
KAREN AMADOR,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18TH DAY OF OCTOBER, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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WHATCOM COUNTY PROSECUTOR'S OFFICE
311 GRAND AVENUE
BELLINGHAM, WA 98225 | <input checked="" type="checkbox"/> | U.S. MAIL |
| | | <input type="checkbox"/> | HAND DELIVERY |
| | | <input type="checkbox"/> | _____ |
|
 | | | |
| <input checked="" type="checkbox"/> | KAREN AMADOR
7 INDIAN MEADOW CT
BELLINGHAM, WA 98229 | <input checked="" type="checkbox"/> | U.S. MAIL |
| | | <input type="checkbox"/> | HAND DELIVERY |
| | | <input type="checkbox"/> | _____ |

SIGNED IN SEATTLE, WASHINGTON THIS 18TH DAY OF OCTOBER, 2012.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
☎(206) 587-2711