

REC'D

APR 28 2014

King County Prosecutor NO: 70910-1-1
Appellate Unit

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

STATE OF WASHINGTON,

Respondent,

v.

LONNIE JOHNSON,

Appellant.

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Barbara Linde, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court violated CrR 3.5 (c) by failing to file written findings of fact and conclusions of law following its decision to admit appellant's out of court statements to police officers.

2. The trial court violated CrR 3.6 (b) by failing to file written findings of fact and conclusions of law following its denial of a motion to suppress after an evidentiary hearing.

Issues Pertaining to Assignments of Error

1. The trial court failed to enter written findings of fact and conclusions of law after a hearing to determine the admissibility of the appellant's statements to police under CrR 3.5. Should this Court remand for entry of written findings and conclusions sufficient to satisfy the requirement of CrR 3.5(c)?

2. The trial court failed to file written findings of fact and conclusions of law following its denial of a motion to suppress after an evidentiary hearing. Should this Court remand for entry of written findings and conclusions?

B. STATEMENT OF THE CASE

Appellant Lonnie Johnson was charged in King County with one count of residential burglary. CP 1-7. The State alleged Johnson entered a home and stole jewelry, a computer, and a tablet. CP 1-7.

Following a pretrial CrR 3.5 hearing, some of Johnson's statements to police were held admissible. 2RP¹ 61. Other statements Johnson made to police were excluded because his waiver of Miranda rights was not knowing, intelligent, and voluntary. 2RP 62. No written CrR 3.5 findings of fact and conclusions of law, however, were ever entered.

The stop and detention of Johnson, as well as, the procedure used by police to identify Johnson to witnesses were also held admissible. 2RP 35-37, 54-57. No written CrR 3.6 findings of fact and conclusions of law were entered.

A jury found Johnson guilty as charged. CP 71; 6RP 4-7. The trial court sentenced Johnson to a prison based drug offender sentencing alternative of 36.75 months in prison, and 36.75 months of community custody. CP 85-95; 7RP 18-22. Johnson timely appeals. CP 97-108.

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – July 29, 2013; 2RP – July 30, 2013; 3RP – July 31, 2013; 4RP – August 1, 2013; 5RP – August 5, 2013; 6RP – August 6, 2013; 7RP – September 13, 2013.

C. ARGUMENT

THE TRIAL COURT'S FAILURE TO FOLLOW CrR 3.5 (c) and CrR 3.6 (b) WARRANTS A REMAND FOR ENTRY OF PROPER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW.

After a hearing to determine the admissibility of a defendant's statements, the trial court must enter written findings of undisputed and disputed facts, conclusions as to the disputed facts, and the conclusion as to whether the statement is admissible along with reasons therefore. CrR 3.5 (c).² These findings and conclusions are mandatory. State v. Cunningham, 116 Wn. App. 219, 227, 65 P.3d 325 (2003). The same is true of the court's findings and conclusions after a hearing on a pretrial suppression motion. CrR 3.6 (b)³; State v. Tagas, 121 Wn. App. 872, 875, 90 P.3d 1088 (2004). The trial court and the prevailing party share the responsibility to see that appropriate findings and conclusions are entered. State v. Vailencour, 81 Wn. App. 372, 378, 914 P.2d 767 (1996)

² CrR 3.5(c) provides: "After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor."

³ CrR 3.6(b) provides: "If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law."

(regarding analogous CrR 6.1 (d), which requires entry of written findings of fact and conclusions of law after bench trial.).

The trial court held a hearing to determine whether to admit Johnson's statements to police. The court found admissible some of Johnson's statements. 2RP 61-62. The trial court also held a hearing on a motion to suppress evidence. The court denied the motion. 2RP 35-37, 54-57. The court did not enter written findings of fact and conclusions of law. This was error.

The purpose of written findings and conclusions is to promote efficient and precise appellate review. State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996); see State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998) ("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. That focus will simplify and expedite appellate review.").

The absence of written findings and conclusions in Johnson's case prohibits effective appellate review. And although the trial court entered oral findings, those findings are not a suitable substitute. "A court's oral opinion is not a finding of fact." State v. Hescoek, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). Rather, a court's oral opinion is merely an expression of the court's informal opinion when rendered. Head, 136

Wn.2d at 622. An oral opinion is not binding unless it is formally incorporated in the written findings, conclusions and judgment. Head, 136 Wn.2d at 622 (citing State v. Mallory, 69 Wn.2d 532, 533, 419 P.2d 324 (1966)).

A trial court's failure to enter written findings and conclusions requires remand for entry of the required findings. Head, 136 Wn.2d at 624. Remand is thus the appropriate remedy here.

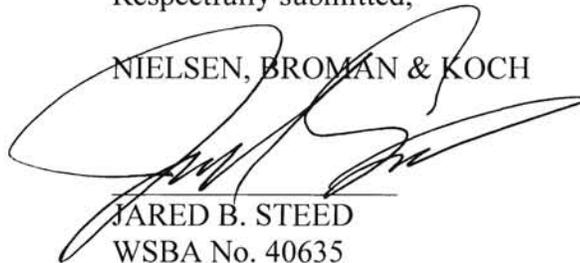
D. CONCLUSION

For the reasons discussed above, this Court should reverse Johnson's conviction and remand for a new trial.

DATED this 28th day of April, 2014.

Respectfully submitted,

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Respondent,)	
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v.)	COA NO. 70910-1-I
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LONNIE JOHNSON,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28TH DAY OF APRIL 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL AND/OR VIA EMAIL.

[X] LONNIE JOHNSON
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SIGNED IN SEATTLE WASHINGTON, THIS 28TH DAY OF APRIL 2014.

x *Patrick Mayovsky*

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