

**NO. 48268-1-II**

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

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STATE OF WASHINGTON,

Respondent,

v.

**A.G.,**

Appellant

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

The Honorable Keith Harper, Judge

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**BRIEF OF APPELLANT**

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A. ASSIGNMENT OF ERROR

The trial court failed to enter written findings of fact and conclusions of law contrary JuCR 7.11(d).

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether AG's case should be remanded to the trial court for entry of findings of fact and conclusions of law required by JuCR 7.11(d)?

C. STATEMENT OF THE CASE

After a confrontation with the police, 12 year-old A.G. faced two criminal charges: assault in the second degree with a deadly weapon<sup>1</sup> and making a false or misleading statement to a public servant.<sup>2</sup> RP<sup>3</sup> 14-41; CP 1-2.

A juvenile court judge heard AG's trial and found A.G. committed both offenses beyond a reasonable doubt. RP 55-62; CP 3.

The court imposed a standard range disposition of 15-36 weeks. RP 67, 68; CP 6. AG appeals all portions of his disposition order. CP 13.

Contrary to JuCR 7.11(d), no written findings of fact and conclusions of law supporting the court's verdict are filed.

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<sup>1</sup> RCW 9A.36.021(1)(c)

<sup>2</sup> RCW 9A.76.175

<sup>3</sup> This appeal has a single volume of verbatim. RP 1-79.

D. ARGUMENT

1. THE JUVENILE COURT'S FAILURE TO FILE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO JuCR 7.11(d) REQUIRES REMAND.

*Summary of Argument.* Because the trial court did not enter written findings of fact and conclusions of law to support its verdict, AG's case must, at the very least, be remanded to the trial court for their entry.

JuCR 7.11(d) directs that following an adjudication of a juvenile's guilt, the juvenile court must enter written findings of fact and conclusions of law if the respondent files a notice of appeal:

Written Findings and Conclusions on Appeal. The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.

JuCR 7.11(d) is crystal clear. *State v. Witherspoon*, 60 Wn. App. 569, 571, 805 P.2d 248, 249 (1991).

Where the State fails to file findings under JuCR 7.11(d), an appearance of unfairness results, which may require reversal of the adjudication of guilt. *State v. Royal*, 122 Wn.2d 413, 422, 858 P.2d 259 (1993). If failing to file the required findings of fact and conclusions of

law results in prejudice, dismissal is required. *State v. Naranjo*, 83 Wn. App. 300, 302, 921 P.2d 588 (1996).

“A court’s oral opinion is not a finding of fact.” *State v. Hescock*, 98 Wn. App. 600, 605, 989 P.2d 1251 (1999). The trial court’s oral decision is not binding ‘unless it is formally incorporated into findings of fact, conclusions of law, and judgment.’ *Id.* at 606 (citing *State v. Dailey*, 93 Wn.2d 454, 549, 610 P.2d 357 (1980)). The *Hescock* court acknowledged that remand may be allowed where findings and conclusions are incomplete. *Id.* (citing *State v. Head*, 136 Wn.2d 629, 964 P.2d 1187 (1998)). The appellate court should not have to comb through oral rulings to determine if appropriate findings were made, nor should an appellant be forced to interpret oral rulings. *Head*, 136 Wn.2d at 624.

Under JuCR 7.11(d), the State had to submit findings of fact and conclusions of law to the juvenile within 21 days after AG filed his notice of appeal. His notice of appeal was filed on November 12, 2015. CP 13. AG’s counsel mailed a copy of the Notice of Appeal to the Jefferson County Prosecutor’s Office the same day. Supplemental Designation of Clerk’s Papers, Certificate of Mailing (sub. nom. 29). To date, six months later, no findings of fact and conclusions of law have been filed.

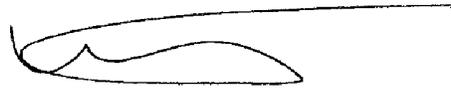
Although remand is the typical remedy, the *Head* court recognized the possibility that reversal may be appropriate when the individual can

show actual prejudice resulting from the absence of findings and conclusions or following remand for entry of the same. *Head*, 136 Wn.2d at 624-25. AG requests this court remand for entry of written findings of fact and conclusions of law, and reserves the right to offer further argument depending on the content of any written findings and conclusions. *Id.* at 625-26.

E. CONCLUSION

This court should remand the matter to the trial court for entry of written findings and conclusions of law on the non-jury trial.

Respectfully submitted May 9, 2016.



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Attorney for A.G.

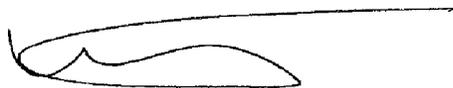
**CERTIFICATE OF SERVICE**

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Brief of Appellant to (1) Jefferson County Prosecutor's Office, at prosecutors@co.jefferson.wa.us and mhaas@co.jefferson.wa.us; (2) the Court of Appeals, Division II; and (3) I mailed it to A.G., c/o Echo Glen, 33010 SE 99th Street, Snoqualmie, WA 98065.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed May 9, 2016, in Winthrop, Washington.



Lisa E. Tabbut, WSBA No. 21344  
Attorney for A.G., Appellant

**LISA E TABBUT LAW OFFICE**

**May 09, 2016 - 4:42 PM**

**Transmittal Letter**

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Court of Appeals Case Number: 48268-1

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Objection to Cost Bill

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