

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 34844-0-III

STATE OF WASHINGTON, Respondent,

v.

CAESAR ARROYO, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

Contrary to the requirement of CrR 3.6(b), the trial court did not enter written findings of fact and conclusions of law after the hearing on Arroyo's pretrial motion to suppress evidence. Accordingly, reversal and/or dismissal is required.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred in failing to enter written findings of fact and conclusions of law after the hearing on Arroyo's motion to suppress evidence.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: Is the record adequate to permit appellate review of the trial court's ruling on Arroyo's motion to suppress evidence? NO.

IV. STATEMENT OF THE CASE

The State charged Caesar Arroyo with Attempting to Elude Pursuing Police Vehicle (Count 1), Driving Under the Influence (Count 2), and Driving While License Suspended or Revoked in the First Degree (Count 3). CP 151-2. Arroyo filed a pretrial motion to suppress evidence resulting from an unlawful search of a camp trailer. CP 112. The trial court's ruling on the motion is not reflected in the record, and the trial

court did not enter written findings of fact and conclusions of law. The evidence challenged in the suppression motion was introduced at trial. I RP 183. Arroyo was convicted on all counts. CP 43-45. He was sentenced to 18 months confinement. CP 7. Arroyo now appeals, and has been found indigent for this purpose. CP 1, 16.

V. ARGUMENT

I. The trial court erred by failing to enter written findings on Arroyo's suppression motion.

A trial court, after hearing a motion to suppress evidence, is required to enter written findings. CrR 3.6(b) reads, "If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law." The purpose of CrR 3.6 is to make a record of the court's ruling and the reasons for it. *State v. Hoffman*, 116 Wn.2d 51, at 95, 804 P.2d 577 (1991). Here, testimony was taken at the suppression hearing, and there were several disputed issues of fact, including the location of the officers and the location of the car and a camp trailer in which Arroyo was found. But no findings were ever entered; thus, the record does not reflect how the court resolved these issues.

In order for a defendant to have a meaningful opportunity to appeal, the record must reflect not only the trial court's rulings, but also

the reasons behind the ruling, and the facts underlying the rationale. *State v. Cruz*, 88 Wn. App. 905, 908, 946 P.2d 1229, 1230 (1997). Because of the lack of formal findings, it is impossible for this court – or Arroyo’s appellate counsel – to know what the trial court’s theory was, or what facts the trial court found to be established by the testimony at the suppression hearing. *State v. Smith*, 68 Wn. App. 201, 842 P.2d 494, 498 (1992). Failing to timely enter findings and conclusions undermines a defendant’s constitutional right to a speedy appeal, and may warrant outright reversal. *Id.* at 208.

In *Smith*, the court denied the motion to suppress via an oral ruling, but no findings and conclusions were entered. The oral ruling itself was unclear as to the trial court’s basis for denying the suppression motion: before lunch the judge said that the U-Haul’s mobility created an exigent circumstances exception to the warrant requirement, and after lunch the judge continued his oral ruling, this time indicating that the marijuana in the U-Haul was discovered inadvertently incident to a *Terry* stop.

On appeal, the *Smith* court reasoned that reversal of the conviction was justified because of the prejudice to Smith of the delay of multiple years between the event (October 1990) the trial (May 1991), and a possible entry of findings on remand after the appellate opinion was issued

(November 1992). *Smith*, 68 Wn. App. at 208. Similarly here, there would be more than two years of delay between the events leading to the arrest (June 2015), the trial (November 2016) and a possible remand for entry of findings (early 2018). Defendants are entitled to an appeal “without unnecessary delay.” Wa. Const. art. I, § 10. Such a long delay is prejudicial to Arroyo, and unnecessary; the rules requiring timely entry of findings and conclusions following a suppression motion are long-established, and both the State and the trial court should have understood the significance of timely entering the findings from *Smith*, decided more than two decades ago. Consequently, Arroyo’s convictions should be reversed.

Besides prejudicial delay, there is another reason that a remand for entry of findings is inappropriate: The danger that said findings, entered years after the evidentiary hearing, would be tailored to the State’s needs, and to undermine Arroyo’s appeal. *Smith*, 68 Wn. App. at 209. The lack of written findings of fact on a material issue is the State’s fault, not Arroyo’s. Where lack of findings results in unnecessary delay or renders the reviewing court unable to be sure what the court’s theory was, or what facts it found to be established by the testimony, dismissal is the appropriate remedy. *Smith*, at 208.

II. Appellate costs should not be imposed due to Arroyo's indigency.

Pursuant to the General Court Order dated June 10, 2016 and Title 17 of the Rules on Appeal, Arroyo respectfully requests that due to his continued indigency, the court should decline to impose appellate costs in the event he does not prevail. His report as to continued indigency is filed contemporaneously with this brief and shows that he lacks assets and income, has little education, and works primarily in restaurants.

In *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), the Washington Supreme Court recognized that if a defendant meets the GR 34 standard for indigency, “courts should seriously question that person’s ability to pay LFOs.” *Id.* at 839. The *Blazina* decision responded to growing national attention to the societal burdens associated with imposing unpayable legal financial obligations on indigent defendants, including “increased difficulty in reentering society, the doubtful recoupment of money by the government, and inequities in administration.” 182 Wn.2d at 835. Under Washington’s system, unpaid obligations accrue interest at 12% per annum and can be subject to collection fees, creating the perverse outcome that impoverished defendants who pay only \$25 per month toward their obligations will, on

average, owe more after ten years than at the time of the initial assessment. *Id.* at 836. As a result, unpaid financial obligations can become a burden on gaining (and keeping) employment, housing, and credit rating, and increase the chances of recidivism. *Id.* at 837.

The presumption of indigence continues throughout review. RAP 15.2(f).

The Court of Appeals has recognized that in the absence of information from the State showing a change in the appellant's financial circumstances, an award of appellate costs on an indigent appellant may not be appropriate. *State v. Sinclair*, 192 Wn. App. 380, 393, 367 P.3d 612, *review denied*, 185 Wn.2d 1034 (2016). The Supreme Court has additionally recognized that application of RAP 14.2 should "allocate appellate costs in a fair and equitable manner depending on the realities of the case." *State v. Stump*, 185 Wn.2d 454, 461, 374 P.3d 89 (2016).

Finally, in recognition of the hardships imposed by large appellate cost awards, the Supreme Court has recently revised RAP 14.2 to provide that unless the Commissioner receives evidence of a substantial change in the appellant's financial circumstances, the original determination that the appellant lacks the ability to pay should control and costs should not be imposed on indigent appellants.

Under these circumstances, this court should exercise its discretion under RAP 14.2 to decline to impose appellate costs. Arroyo has been found indigent for appeal and has complied with this court's General Order. Under the *Sinclair* standard as well as revised RAP 14.2, an appellate cost award is inappropriate in this case.

VI. CONCLUSION

For the foregoing reasons, Arroyo respectfully requests that the court REVERSE his convictions and DISMISS the charges.

RESPECTFULLY SUBMITTED this 17 day of October, 2017.


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CERTIFICATE OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Caesar Arroyo, DOC # 395957
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And, pursuant to prior agreement of the parties, by e-mailing a copy to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 17 day of October, 2017 in Walla Walla,
Washington.



Andrea Burkhart