

FILED
Court of Appeals
Division III
State of Washington
11/27/2017 10:14 AM

NO. 34844-0-III

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

STATE OF WASHINGTON

PLAINTIFF/RESPONDENT,

V.

CAESAR ARROYO

DEFENDANT/APPELLANT

BRIEF OF RESPONDENT

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A. STATEMENT OF THE CASE

1. Pre-Trial History

The Defendant, Caesar Arroyo, was charged in Okanogan County Superior Court case number 15-1-00208-1 with Count 1: Attempting to Elude a Pursuing Police Vehicle; Count 2: Driving Under the Influence; and Count 3: Driving While License Suspended/Revoked in the First Degree. [CP 4] Prior to trial, the Defendant filed a motion to suppress evidence. [CP 66]

The suppression hearing was held on Friday, October 28th 2016 before the Honorable Judge Christopher Culp. Testimony was presented from two investigating officers, and legal argument was made by both parties. Judge Culp indicated that he would review what he believed was the most relevant case law, particularly *State v. Seagull*, and then announce his ruling on Monday, October 31st 2016 (the scheduled trial readiness hearing). [RP 34: 16-18]

On Monday, October 31st 2016 Judge Culp announced his findings of facts and conclusions of law in open Court before the parties, and in the presence of the Defendant. The recited oral findings of facts and conclusions were specific. It took the Court around fifteen minutes to announce these findings and explain the reasoning behind its conclusions of law. [Supplemental RP 2 – 11] Judge Culp noted that the matter still

appeared to be left scheduled for trial, and asked for the assigned prosecutor to assist in drafting the formal findings of facts for written entry. The written findings of fact and conclusions of law were not entered before the jury trial began on November 1st 2016. The Defendant was found guilty as charged at a jury trial on November 2nd 2016.

2. Appellate History

The Defendant filed his notice of appeal on November 4th 2016. On September 5th 2017, the Defense produced verbatim reports of proceedings for the 10/28/16 motion, 11/1/16 jury trial, and 11/2/16 sentencing hearing. On October 17th 2017 the Defense filed their brief. The thrust of the Defendant's brief is that the Trial Court erred because there was no record of any findings of fact or conclusions of law.

On October 19th 2017, the State noticed that while Appellate counsel requested transcripts for the motion hearing, jury trial, and sentencing; they did not do so for the Court's ruling on the motion hearing. The State located the Court's ruling on the 3.6 hearing. A transcript was then generated and disclosed on October 26th 2017.

B. QUESTIONS ON REVIEW

1. Did the Court make Findings of Fact and Conclusions of Law?
2. What Impact did any Failure to Enter Findings of have?
3. What is the Appropriate Remedy?

C. ARGUMENT

1. **The Trial Court made Findings of Facts and Ruled on Conclusions of Law.**

The State concedes that findings of fact and conclusions of law were not entered in a formal written format with the Court's signature block. These findings of fact and conclusions should have been formally entered in written form. CrR 3.6(b)

However, the Court *did* make findings of fact and conclusions of law. At the conclusion of the motion hearing the Court alerted counsel that it would take the matter under advisement and announce its ruling the next judicial day, which was the Defendant's scheduled readiness hearing. *See* Appendix A: CP 86, Minutes of 10/28/16; and RP 34. At the readiness hearing, and in the presence of the Defendant and counsel, the Court announced its factual findings and conclusions of law. Appendix B: CP 87, Minutes of 10/31/16. Supplemental RP.

Therefore, while the Defense is correct that written findings were not entered, the Defense is incorrect in stating that these were never actually made or addressed on the record. *Cf. Def. Br. at 2.*

2. Because the Courts Oral ruling is both Clear and Comprehensive, the Absence of the Written Order is Harmless Error.

The State is cognizant that there was a failure here in preparing a written order for the Court's signature. CrR 3.6 does require written findings of facts and conclusions of law. However, when the Court's oral ruling is so clear and comprehensive that written findings are a mere formality, there is harmless error. "CrR 3.6 [and 3.5]...require a clear and comprehensive oral opinion so that the appellate court is left with no doubt as to the court's findings." *State v. Smith*, 68 Wn. App. 201, 206, 842 P.2d 494, 497 (1992); and *State v. Cruz*, 88 Wn. App. 905, 908, 946 P.2d 1229, 1230 (1997).

Here, the Court made a detailed oral record of its factual findings. This is reflected in the Clerks papers and transcript of the 10/31/16 ruling. *See* CP 87 and [Supplemental RP 3:9- RP 6:4].

In its oral ruling on conclusions of law, the Court's legal analysis focused exclusively on the case of *State v. Seagull*. (95 Wn.2d 898, 632 P.2d 44, 1981). The Court stated that *Seagull* was controlling case law.

[Supplemental RP 2-3]. The Court then itemized the different factors it considered. [Supplemental RP 6-10]

The focus on this single case is important because it makes the issue clear for Appellate counsel and the reviewing Court. *See State v. Pulido*, 68 Wn. App. 59, 63, 841 P.2d 1251, 1253 (1992). At the motions hearing the Court informed the parties that the essential issue depended on *State v. Seagull*. [RP 34-35]. Appellate counsel was and is able to review 1: The pleadings in support of the 3.6 hearing; 2: The testimony presented at the 3.6 hearing by the two officers; 3: The arguments advanced by both parties; 4: The Findings of Fact made by the Court; and 5: The Conclusions of law.

The findings of fact here dovetail the evidentiary hearing. They were specific and clearly delineated from the conclusions of law. *Cf. State v. Smith*, 68 Wn. App. 201, 207, 842 P.2d 494, 498 (1992). The Conclusions of Law were specific and comprehensive. The Court announced its reasoning by numerically going down a list of factors endorsed in *Seagull*. This is recorded in the transcript of 10/31/2016. Appellate counsel is well positioned to evaluate the Court's decision-making and make any argument it feels necessary.

Because counsel received the transcripts detailing findings and conclusions of law, they cannot argue prejudice. *See State v. Head*, 136

Wn.2d 619, 624, 964 P.2d 1187, 1190 (1998). The record is before the parties and this Appellate Court.

3. Because the Record is Adequate for Appellate Review, there is No Need for Remand.

The Defendant on appeal asks that this Court reverse and dismiss. That remedy is inappropriate in the case. Dismissal *was* the remedy in State v. Smith (1994). In that particular case the record was muddled and ambiguous as to what reasoning the trial Court used when it denied a defendant's motion to suppress. State v. Smith, 68 Wn. App. 201, 207, 842 P.2d 494, 497 (1992).

The record in the present case is so complete that remand for formal entry of the written findings of facts and conclusions of law is neither necessary nor helpful. This would amount to virtually transposing the Supplementary VRP's onto different sheets of paper. *See again* Supplementary RP. Although the State is amenable to this process, it believes this would not actually facilitate Appellate review.

A separate remedy would be to permit the State to enter written findings of facts and conclusions of law under RAP 9.10. As the record of the 11/31/2016 decision is comprehensive, the State believes there is no reason to expect that the formal written findings of fact or conclusions

would be contested. There is no realistic opportunity for the State to tailor the factual findings or conclusions to pollute arguments on appeal. No substantive arguments have been raised at this time. Again, although the State is amenable to entering these findings under RAP 9.10, the State believes that the record is so complete that this remedy is unnecessary in the present case.

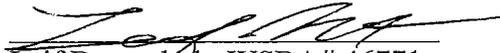
The truth is that the present case is virtually identical to State v. Smith (1994). In that case the assigned prosecutor neglected to have findings of facts or conclusions of law entered. However, the oral record was sufficiently complete there for the Appellate Court and counsel to review the trial court's decisions and reasoning. That case was affirmed with no need for remand. State v. Smith, 76 Wn. App. 9, 13, 882 P.2d 190, 193 (1994). The issue here is identical. The assigned prosecutor likely failed to enter written findings, but a review of the record is sufficiently clear and comprehensive for the parties and Appellate Court. There has been no prejudice and there is no need for remand.

D. CONCLUSION

The State, as Respondent, requests this Court deny the Appellant's Motion to Reverse and Dismiss.

Dated this 27th day of November, 2017

Respectfully Submitted:



Leif Drangsholt, WSBA# 46771
Deputy Prosecuting Attorney
Okanogan County, Washington

Appendix A:

10/28/2016 Clerk's Minutes

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Record Certification: I certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control. Okanogan County Clerk, by COVzanbrunt Deputy - # pages 2

FILED
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Okanogan County, WA
10-28-16

IN THE SUPERIOR COURT OF OKANOGAN COUNTY

State of Washington Plaintiff v. Arroyo, Caesar Defendant	NO. 15-1-00208-1 CLERK'S CRIMINAL MINUTES
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Defendant: Present Not Present In Custody Out of Custody Absence Excused

JUDGE: <input checked="" type="checkbox"/> C CULP <input type="checkbox"/> H RAWSON <input type="checkbox"/> _____ (VIS JUDGE) <input type="checkbox"/> _____ (PRO TEM)	PRESENT PARTICIPANTS: PROSECUTOR: Caldwell DEFENSE ATTY: Worgyn INTERPRETER: _____ CLERK: Fitzgerald
COUNSEL: <input type="checkbox"/> WAIVED <input type="checkbox"/> REQUESTED <input type="checkbox"/> APPOINTED <input type="checkbox"/> DENIED <input type="checkbox"/> PRESENT	ON FOR: _____ WARRANT ID: _____ <input checked="" type="checkbox"/> PRELIMINARY <input checked="" type="checkbox"/> 3.5/3.6 HEARING <input type="checkbox"/> ARRAIGNMENT <input type="checkbox"/> MT TO CONT. <input type="checkbox"/> OMNIBUS <input type="checkbox"/> PLEA <input type="checkbox"/> SENTENCING <input type="checkbox"/> STATUS CONFERENCE <input type="checkbox"/> REVIEW OF: <input type="checkbox"/> BAIL HEARING: _____ <input type="checkbox"/> RESET DATES: _____ <input type="checkbox"/> ADMIT/DENY
ACTION BY THE COURT: <input type="checkbox"/> ADVISED OF RIGHTS <input type="checkbox"/> PROBABLE CAUSE ESTABLISHED <input type="checkbox"/> PC NOT ESTABLISHED <input type="checkbox"/> REMANDED TO DISTRICT COURT <input type="checkbox"/> BAIL SET \$ _____ <input type="checkbox"/> PERSONAL RECOGNIZANCE AUTHORIZED <input type="checkbox"/> MOTION TO CONT. <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> BENCH WARRANT ISSUED-BAIL: \$ _____ <input type="checkbox"/> BENCH WARRANT QUASHED <input type="checkbox"/> AFFIDAVIT OF PREJUDICE FILED	HEARING DATES SET: ARRAIGNMENT: _____ OMNIBUS: _____ STATUS CONFERENCE: _____ READINESS: <u>Out 31st</u> REVIEW: _____ TRIAL DATE: _____ OUTSIDE DATE: _____ OTHER HEARING: _____

DEFENDANT ENTERED NOT GUILTY PLEA TO ALL COUNTS
 DEFENDANT ENTERED GUILTY PLEA
 COURT ACCEPTED PLEA AGREEMENT AND STATEMENT OF PLEA ON GUILTY
 COURT FINDS GUILTY ON PLEA
 COURT SIGNED: JUDGMENT AND SENTENCE SUSPENDED SENTENCE
 OTHER: _____

VERBAL ORDER FROM THE BENCH:

SPECIAL MINUTES: DWLS - elude - DV - State; Hwy Patrol - Bruchan ask - June 23, 2016 - court officer, omak, see other Police Officers ASK about the vehicle, Black car was the one that was eluded the Officer, time of day - Dark, 3 male in the camper in the yard, Def cross - were we the camper, back yard. Did the owner of the House let you go to the back yard No. Officer, State, could the camper or car be seen at the front of the House Hwy Patrol - DeLano - June 23. - It was about 10:45 pm. He turn lights on, have Black pull over, ASK about the driver of Black car, continued to elude. the Officer, Address, his license. Spoke to Mr. Arroyo about this black car. Offize Bruchan told

that he found the ~~...~~
the OFFICERS enter the camper. Ask if OFFICER was told not to enter
the back yard. Def. Did you ask for permission to enter the yard. NO
OFFICER.

State. Fact are the Fact of an older case - ^{"Seegal's"} entering a place w/out
permission. Quotes Law. OFFICERS had the right to search the yard.

Def. Camper/trailer - with Flash light. back yard not opened to the
Public, - must have obtain a search warrant. The camper/trailer
cant be seen by the road.

Crt. Officer entered the camper/trailer after the 3 males left,
rule from the bench. Monday. Readiness.
OFFICERS had right to be at the residence. Question
did the Officer have the right. Crt Read "Seegal"
to rule Monday. Goes over charges.

Crt. Mr Arroyo back to Jail

Appendix B:

10/31/2016 Clerk's Minutes

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Record Certification: I certify that the electronic copy is a correct copy of the original, on the date filed in this office, and was taken under the Clerk's direction and control. Okanogan County Clerk, by COZvanbrunt Deputy - # pages 1

FILED
Okanogan County Clerk
Okanogan County, WA
10/31/2016

IN THE SUPERIOR COURT OF OKANOGAN COUNTY

State of Washington Plaintiff	NO. 15-1-00208-1
V ARROYO, CAESAR Defendant	CLERK'S CRIMINAL MINUTES

Defendant: Present Not Present In Custody Out of Custody Absence Excused

JUDGE: <input checked="" type="checkbox"/> CHRISTOPHER E. CULP <input type="checkbox"/> HENRY A. RAWSON <input type="checkbox"/> _____ <input type="checkbox"/> _____	PRESENT PARTICIPANTS: PROSECUTOR: CALDWELL, JOSEPH M. DEFENSE ATTY: WARGIN, JASON R INTERPRETER: _____ CLERK: <u>ZUB</u>
COUNSEL: <input type="checkbox"/> REQ. <input type="checkbox"/> APPOINTED <input type="checkbox"/> PRESENT	ON FOR: IF - READINESS
ACTION BY THE COURT: <input type="checkbox"/> ADVISED OF RIGHTS <input type="checkbox"/> PROBABLE CAUSE ESTABLISHED <input type="checkbox"/> PC NOT ESTABLISHED <input type="checkbox"/> REMANDED TO DISTRICT COURT <input type="checkbox"/> BAIL SET \$ _____ <input type="checkbox"/> PERSONAL RECOGNIZANCE AUTHORIZED <input type="checkbox"/> MOTION TO CONT <input type="checkbox"/> DEFENSE <input type="checkbox"/> PROS. ATTY. <input type="checkbox"/> BENCH WARRANT ISSUED-BAIL: \$ _____	HEARING DATES SET: ARRAIGNMENT: _____ OMNIBUS: _____ STATUS CONFERENCE: _____ READINESS: _____ REVIEW: _____ TRIAL DATE: _____ OUTSIDE DATE: _____ OTHER HEARING: _____

<input type="checkbox"/> DEFENSE WAIVED FORMAL READING <input type="checkbox"/> DEFENDANT ENTERED NOT GUILTY PLEA TO ALL COUNTS <input type="checkbox"/> DEFENDANT ENTERED GUILTY PLEA <input type="checkbox"/> COURT ACCEPTED PLEA AGREEMENT AND STATEMENT OF PLEA ON GUILTY <input type="checkbox"/> COURT FINDS GUILTY ON PLEA <input type="checkbox"/> COURT SIGNED: <input type="checkbox"/> JUDGMENT AND SENTENCE <input type="checkbox"/> SUSPENDED SENTENCE OTHER: _____
--

VERBAL ORDER FROM THE BENCH: _____

SPECIAL MINUTES: court denies ^{del} motion to suppress, offers
explanation

leave set

PROOF OF SERVICE

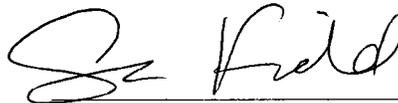
I, Shauna Field, do hereby certify under penalty of perjury that on the 27th day of November, 2017, I provided email service to the following by prior agreement (as indicated), a true and correct copy of the Brief of Respondent:

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