

NO. 35050-9-III

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DAGGETT,

Appellant.

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

The Honorable Gary Libey, Judge

BRIEF OF APPELLANT

DAVID B. KOCH
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

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A. ASSIGNMENT OF ERROR

The trial court erred under JuCR 7.11(d) when it failed to enter written trial findings and conclusions.

Issue Pertaining to Assignment of Error

JuCR 7.11(d) requires the juvenile court to enter written findings of fact and conclusions of law. In appellant's case, the court failed to comply with this requirement. Is remand appropriate?

B. STATEMENT OF THE CASE

The Whitman County Prosecutor's Office charged 12-year-old Michael Daggett with Assault in the Fourth Degree for unwanted contact with a friend while the two played together in a swimming pool. CP 1-8.

That friend, A.U., testified that she, Michael,¹ and Michael's older sisters went to the swimming pool together on August 8, 2016. RP 7-8. A.U. is two grades ahead of Michael in school. RP 6, 15, 45. According to A.U., she and Michael were engaged in horseplay and Michael repeatedly grabbed her from beneath the water. RP 9. At first Michael was grabbing her ankles. RP 9, 18. But he began to touch her farther up her leg and, when he touched her knees, she

¹ "Mr. Daggett" does not seem appropriate for a 12-year-old boy.

told him to stop. RP 10, 17-18. When he then touched her inner thigh, she told him to stop again. RP 11. According to A.U., Michael did not stop, eventually swimming up underneath her and touching her vagina from behind. RP 10-12, 24-25. A.U. testified she was shocked and, when she told him not to do that again, Michael gave her a “flirty” but “Yeah, I just did that” look. RP 12.

A.U. admitted she has a habit of overreacting. RP 25. But she told one of Michael’s sisters and at least some of the lifeguards on duty what had happened, and Michael subsequently apologized. RP 12-14, 34-35.

One of the lifeguards testified that, after hearing A.U.’s claim, she spoke to Michael, who denied touching A.U. inappropriately and added, “If I did I didn’t mean to.” RP 35, 36-37. The lifeguard made Michael apologize anyway, believing that would be the best way to resolve the situation. RP 36. Neither of the two lifeguards who testified at trial recalled hearing A.U. tell Michael “no” or “stop” and neither recalled having to reprimand Michael in any way while he was in the pool. RP 36, 41.

Michael testified in his own defense. RP 45. He denied grabbing any part of A.U.’s body (ankles, knees, thighs, or vagina) and denied touching her by accident. RP 48-49. He also denied that

she had ever told him to stop touching her. RP 49. The first he heard about the allegation was when his sister asked him about it after he had finished swimming, was dressed, and exited the locker room. RP 50. He told the lifeguard it did not happen, but he apologized anyway because the lifeguard made him and he feared the consequences if he didn't. RP 50.

Following closing arguments, the Honorable Gary Libey made an oral ruling finding A.U. credible and finding Michael guilty of Assault in the Fourth Degree. RP 57-59.

The prosecutor indicated Michael had no other criminal history and, recognizing detention might not be appropriate, merely asked for 12 months' probation and 150 hours of community service. RP 60. A representative from probation indicated this resolution seemed appropriate. RP 62. Defense counsel asked for no detention and something less than 150 community service hours. RP 63.

Judge Libey placed Michael on probation for one year and ordered 100 hours of community service. RP 64-65; CP 13-21. Michael timely appealed. CP 22-31.

C. ARGUMENT

THE TRIAL COURT HAS VIOLATED JuCR 7.11(d).

When a juvenile appeals a conviction, the trial court must enter written trial findings and conclusions. JuCR 7.11 provides, in pertinent part:

(c) Decision on the Record. The juvenile shall be found guilty or not guilty. The court shall state its findings of fact and enter its decision on the record. The findings shall include the evidence relied upon by the court in reaching its decision.

(d) 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 (c),(d).

This rule requires that the court, in a juvenile adjudicatory hearing, enter formal findings and conclusions regarding each element of the offense charged. State v. Souza, 60 Wn. App. 534, 537, 805 P.2d 237, review denied, 116 Wn.2d 1026 (1991). The purpose of written findings is to allow the reviewing court to determine the basis on which the case was decided and to review

any issues raised on appeal. State v. Pena, 65 Wn. App. 711, 715, 829 P.2d 256 (1992), overruled on other grounds, State v. Alvarez, 128 Wn.2d 1, 19-21, 904 P.2d 754 (1995).

Because the court has failed to enter written findings and conclusions, it has not complied with the rule. The only question is the remedy. In Souza, this Court held that remand to the trial court is appropriate so that, if warranted by the evidence, the court can enter the missing findings and conclusions. Souza, 60 Wn. App. at 540-41. In Alvarez, 128 Wn.2d at 18-19, the Washington Supreme Court adopted the Souza approach. Once the necessary findings and conclusions have been entered, either party may then appeal. State v. Head, 136 Wn.2d 619, 626, 964 P.2d 1187 (1998).

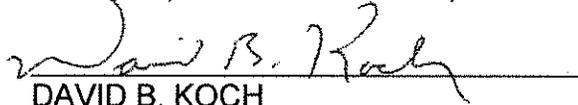
D. CONCLUSION

This case should be remanded for noncompliance with JuCR
7.11(d).

DATED this 12th day of July, 2017.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in cursive script, appearing to read "David B. Koch", is written over a horizontal line.

DAVID B. KOCH
WSBA No. 23789
Office ID No. 91051

Attorney for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

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Address:
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Seattle, WA, 98122
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