

NO. 63119-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

M. W.,

Appellant.

2009 JUN 29 PM 3:53

FILED
COURT OF APPEALS
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY,
JUVENILE DIVISION

The Honorable Anita L. Farris, Judge

BRIEF OF APPELLANT

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RULES

JuCR 7.11	1, 3, 5
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A. ASSIGNMENTS OF ERROR

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

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 Snohomish County Prosecutor's Office charged juvenile appellant M. W. with one count of Attempted Robbery in the First Degree. CP 20-21. The case proceeded to a bench trial before the Honorable Anita Farris. 1RP 3.¹

According to fifteen-year-old L.W., he and his friends were at the Alderwood Mall on the evening of February 1, 2008. 1RP 19-20. As L.W. stood near a kiosk intending to purchase a case for his iPod, M.W. asked to see his iPod. L.W. said no and continued with his purchase of the case. 1RP 20-21. L.W. and his friends walked away, but M.W. and three of his friends followed them in

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – November 5, 2008; 2RP – February 5, 2009.

the mall. 1RP 21-23, 29. According to one of L.W.'s friends, M.W. and his friends continued to make comments about wanting the iPod, but he thought they were merely joking around. 1RP 36.

According to L.W., M.W. and his friends suggested that everyone step inside an Abercrombie & Fitch Store, but the store was dark inside and L.W. declined. Instead, he stayed outside in the main public area of the mall. 1RP 22-23. One of the boys in M.W.'s group – three of whom were African-American and one of whom appeared to be of Middle Eastern descent – called L.W. a “cracker.” 1RP 22, 24. At some point, M.W. reached into a backpack one of his friends was carrying and partially removed a gun, revealing only the butt. 1RP 23-24. According to L.W., M.W. said, “this one shoots the big bullets.” 1RP 24.

L.W. believed that M.W. was trying to steal his iPod. He and another friend in the group ran to a nearby REI store. When M.W. and his group entered the store, employees asked them to leave and they did. 1RP 25, 37-38. Police were called and contacted M.W. 1RP 8-9. The owner of the backpack consented to a search and officers found an air pellet gun inside, which looked like a real firearm. 1RP 9-10, 15, 18-19.

In an oral ruling, Judge Farris found M.W. guilty of attempted robbery. 1RP 65-69. M.W. received a standard range disposition of 15 to 36 weeks' detention. CP 5, 14. M.W. timely filed his Notice of Appeal. CP 2-3. As of the filing of this brief, no written findings and conclusions have been filed under JuCR 7.11(d).

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

M.W.'s case should be remanded for noncompliance with JuCR 7.11(d).

DATED this 29th day of June 2009.

Respectfully submitted,

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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 29TH DAY OF JUNE 2009, 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.

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EVERETT, WA 98201

- [X] M.W.
DENNEY JUSTICE JUVENILE CENTER
2801 10TH STREET
EVERETT, WA 98201

SIGNED IN SEATTLE WASHINGTON, THIS 29TH DAY OF JUNE 2009.

x *Patrick Mayovsky*