

65823-9

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No. 65823-9-I

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

STATE OF WASHINGTON, Respondent,

vs.

ALEXJANDRA ROCHE, Appellant.

BRIEF OF RESPONDENT

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A. ASSIGNMENTS OF ERROR

None.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Whether remand is necessary when the trial court entered the requisite CrR 3.5 findings of fact and conclusions of law on February 24th, 2011.

C. FACTS

1. Procedural facts

Alexandra Roche was charged with one count of organized retail theft in the second degree and one count of possessing less than 40 grams of marijuana on April 8th, 2009. CP 61-64. Roche pled guilty to the marijuana charge but not guilty to the organized retail theft charge. CP 54-58.

The trial court held on CrR 3.5 hearing to determine the admissibility of various statements Roche made to the police following apprehension for theft at the local mall. RP 3-32-33. The trial court ruled Roche's statements admissible and requested the state to draft findings. Id. Trial court did not enter proposed findings however, until February 24th, 2011, after Roche filed her opening brief requesting this matter be remanded for entry of CrR 3.5 findings. See, Supp CP ____.

D. ARGUMENT

- 1. The requisite CrR 3.5 findings of fact and conclusions of law have now been entered by the trial court in this case. Remand for entry of findings is no longer necessary.**

Roche requests this matter be remanded back to the trial court for entry of the findings of fact and conclusions of law pursuant to CrR 3.5. The trial court entered the required findings however, albeit belatedly, on February 24th, 2011. Supp. CP __ (findings). Remand for entry of findings is therefore, not necessary. The state requests Roche's conviction be affirmed on appeal in the event Roche chooses to not raise additional issues on appeal.

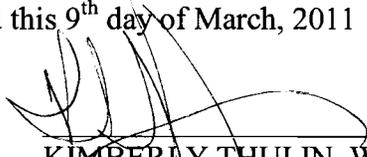
CrR 3.5(c) requires: "[a]fter [a CrR 3.5] hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) the conclusion as to whether the statement is admissible and the reasons therefore." Appellate courts rely on the trial court's findings and conclusions "to ensure efficient and accurate appellate review." State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996). Late findings may be entered while an appeal is pending so long as the defendant is not prejudiced by the later entry of the findings. *Id.* at 329.

Roche was not prejudiced by the late findings entered in this case. First, unlike Cannon, where there was a two year delay in entering the findings, the findings in this case were entered within a year of Roche's conviction. Additionally, Roche only raised one issue in her opening brief-the failure to enter requisite CrR 3.5 findings and the trial deputy prosecutor did not have access to Roche's opening brief. Supp CP ___ (affidavit of Anna Gigliotti). Thus, the belated findings of fact could not have been impermissibly tailored. Finally, Roche was represented by counsel when these findings were entered and thus given an opportunity to object or raise concerns regarding the findings considered by the court. Finally, Roche may still have the opportunity to brief additional issues now that these findings have been entered. State v. Head, 136 Wn.2d 619, 626, 964 P.2d 1187 (1999).

E. CONCLUSION

For the reasons set forth above, the State respectfully requests that this Court affirm Roche's conviction for organized retail theft in the event Roche chooses not to brief additional issues.

Respectfully submitted this 9th day of March, 2011



KIMBERLY THULIN, WSBA #21210
Appellate Deputy Prosecutor
Attorney for Respondent

CERTIFICATE

I certify that on this date I placed in the mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the document to which this certificate is attached, to appellant's counsel DAVID B. KOCH, addressed as follows:

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Audrey R. Koss 03/09/2011
Legal Assistant Date