

NO. 66059-4-I

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

---

---

STATE OF WASHINGTON,

Respondent,

v.

CAROL MAGEE,

Appellant.

---

---

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

The Honorable Vickie Churchill, Judge

---

---

BRIEF OF APPELLANT

---

---

JENNIFER M. WINKLER  
Attorneys for Appellant

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

2017 JUN 15 12:42:15  
CLERK OF COURT  
APPELLATE DIVISION

**TABLE OF CONTENTS**

	Page
A. <u>ASSIGNMENT OF ERROR</u> .....	1
<u>Issue Pertaining to Assignment of Error</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	3
BECAUSE THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 3.5, THIS COURT SHOULD REMAND FOR THE ENTRY OF FINDINGS AND CONCLUSIONS. ....	3
D. <u>CONCLUSION</u> .....	5

**TABLE OF AUTHORITIES**

	Page
<u>WASHINGTON CASE</u>	
<u>State v. Cannon</u> 130 Wn.2d 313, 922 P.2d 1293 (1996).....	3
<u>State v Head</u> 136 Wn.2d 619, 964 P.2d 1187 (1998).....	3, 4
<u>State v. Hescoek</u> 98 Wn. App. 600, 989 P.2d 1251 (1999).....	4
<u>State v. Mallory</u> 69 Wn.2d 532, 419 P.2d 324 (1966).....	4
<u>State v. Smith</u> 68 Wn. App. 201, 842 P.2d 494 (1992).....	3
 <u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
CrR 3.5.....	1, 2, 3, 5

A. ASSIGNMENT OF ERROR

The trial court violated CrR 3.5<sup>1</sup> by failing to file written findings of fact and conclusions of law following a hearing on the admissibility of the appellant's statements to police.

Issue Pertaining to Assignment of Error

CrR 3.5 requires entry of written findings of fact and conclusions of law following a hearing on the admissibility of statements of the accused. The trial court failed to enter written findings and conclusions after conducting such a hearing. Should this Court remand for entry of written findings and conclusions?

B. STATEMENT OF THE CASE

The State charged Carol Magee with second degree malicious mischief, alleged to have occurred January 21, 2010. CP 32-33. The

---

<sup>1</sup> CrR 3.5 states:

(a) Requirement for and Time of Hearing. When a statement of the accused is to be offered in evidence, the judge at the time of the omnibus hearing shall hold or set the time for a hearing, if not previously held, for the purpose of determining whether the statement is admissible. . . .

. . . .

(c) Duty of Court To Make a Record. After the 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) conclusion as to whether the statement is admissible and the reasons therefore.

charges arose out of a dispute over whether a Puget Sound Energy (PSE) transformer was placed illegally on Magee's Whidbey Island property. RP 229, 232-38. The charging document alleged that neighbors saw Magee strike a "power pedestal" with her truck. Supp. CP \_\_\_\_ (sub no. 2, Motion for Issuance of Summons).

Magee waived her right to counsel and represented herself at trial. CP 28-31. Before trial, the State moved to admit Magee's pre-arrest statements to a police officer, and the court held a CrR 3.5 hearing on the admissibility of the statements. Supp. CP \_\_\_\_ (sub no. 21, State's Motions in Limine); RP 8, 96-115.

Sergeant Russ Lindner testified that, before arresting Magee, he asked for her side of the story while she remained inside a fence on her property. Magee was not under arrest or handcuffed at the time, and Lindner did not threaten or make promises to induce Magee's statements. RP 98-99.

In contrast, Magee testified that Lindner told her "[e]ither you can come down to the . . . jail with me or I will come back with a SWAT team." RP 110. Lindner did not explain why Magee was being arrested. RP 110-11.

The court orally ruled Magee's statements were admissible. RP 115.

Lindner testified at trial that Magee told him she called PSE to complain about the transformer. According to Magee, the PSE representative told her the transformer would only be moved if Magee paid PSE \$2,500. Magee told the representative that if PSE didn't remove the transformer, she would. RP 196-97.

The jury convicted Magee as charged. CP 12. The court sentenced Magee to 30 days in jail, within the standard range, and ordered her to pay \$1,382.80 in restitution to PSE. CP 3-11.

C. ARGUMENT

BECAUSE THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 3.5, THIS COURT SHOULD REMAND FOR THE ENTRY OF FINDINGS AND CONCLUSIONS.

CrR 3.5(c) states that "[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) conclusion as to whether the statement is admissible and the reasons therefor." These findings and conclusions are mandatory and the failure to enter them is error. State v. Smith, 68 Wn. App. 201, 211, 842 P.2d 494 (1992).

The purpose of written findings and conclusions is to ensure efficient and accurate appellate review. State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996); see State v Head, 136 Wn.2d 619, 622, 964

P.2d 1187 (1998) (“A prosecuting attorney required to prepare findings and conclusions will necessarily need to focus attention on the evidence supporting each element of the charged crime, as will the trial court. That focus will simplify and expedite appellate review.”).

The absence of written findings and conclusions in Magee’s case prohibits effective appellate review. Even detailed oral findings are not a suitable substitute for the written findings. “A court’s oral opinion is not a finding of fact.” State v. Hescoek, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). Rather, a trial court’s oral opinion is merely an expression of the court’s informal opinion when rendered. Head, 136 Wn.2d at 622. An oral opinion is not binding unless it is formally incorporated in the written findings, conclusions and judgment. Id. (citing State v. Mallory, 69 Wn.2d 532, 533, 419 P.2d 324 (1966)). Remand for entry of written findings and conclusions is the appropriate remedy. Head, 136 Wn.2d at 624.

D. CONCLUSION

Because the trial court failed to follow CrR 3.5, this Court should remand for entry of proper findings of fact and conclusions of law. Ms. Magee reserves the right to file a supplemental brief should the court's written findings reveal additional grounds for appeal.

DATED this 16<sup>TH</sup> day of May, 2011.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER M. WINKLER

WSBA No. 35220

Office ID No. 91051

Attorneys for Appellant

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

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 66059-4-1
	)	
CAROL MAGEE,	)	
	)	
Appellant.	)	

---

**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 16<sup>TH</sup> DAY OF MAY, 2011, 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.

- [X] GREGORY BANKS  
ISLAND COUNTY PROSECUTING ATTORNEY  
P.O. BOX 5000  
COUPEVILLE, WA 98239
  
- [X] CAROL MAGEE  
543 HOUSTON ROAD  
COUPEVILLE, WA 98239

**SIGNED** IN SEATTLE WASHINGTON, THIS 16<sup>TH</sup> DAY OF MAY, 2011.

x *Patrick Mayovsky*

2012 MAY 16 PM 4:16