71407-4

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NO. 71407-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

JAMES TYLER, JR.,

Appellant.

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

The Honorable David R. Needy, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred under CrR 3.5 when it failed to enter written findings of fact and conclusions of law.

Issue Pertaining to Assignment of Error

CrR 3.5(c) requires the trial court to enter written findings of fact and conclusions of law following an evidentiary hearing. Did the trial court err when it failed to do so?

B. STATEMENT OF THE CASE

The Skagit County Prosecutor's Office charged James Tyler, Jr., with four counts of Rape of a Child in the Third Degree (counts 1 through 4), Furnishing Liquor to a Minor (count 5), and two counts of Communication with a Minor for Immoral Purposes (counts 6 and 7). CP 8-10.

The charges stemmed from allegations made by R.I., who claimed that in 2011, when she was 15 years old, she met Tyler – a U.S. Army soldier in his late 20s – on a dating website. This led to several consensual sexual encounters, some of which involved the consumption of alcohol. CP 3-5.

The court held a hearing under CrR 3.5 to determine the admissibility of statements Tyler made to law enforcement regarding

the allegations against him. 1RP[1] 25-36. The State called one witness: Special Agent Courtnee Downs, a member of the U.S. Army Criminal Investigations Division. 1RP 28. In 2012, while stationed in Kuwait, Agent Downs received a request from the Mount Vernon Police Department to interview Staff Sergeant Tyler – also stationed in Kuwait by that time – regarding R.I's accusations. 1RP 29-31, 35.

Downs testified that Tyler was escorted to her office and agreed to a video recorded interview. 1RP 31, 35. Downs advised Tyler of his Miranda[2] rights and then interviewed him for two hours. Downs testified that Tyler never indicated that he wished to stop talking, never indicated confusion regarding his rights, and never requested a lawyer. 1RP 32-34.

The defense focused on the fact Tyler did not appear to be completely engaged or paying attention when Downs discussed his right to an attorney. 1RP 37. Following argument from the parties, the Honorable David Needy nonetheless found the statements admissible. 1RP 36-38. To date, written findings and conclusions have not been filed.

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[1] This brief refers to the verbatim report of proceedings as follows: 1RP – October 28-31 and November 1, 2013; 2RP – October 29 and December 5, 2013.

[2] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

At trial, Mount Vernon Police Detective Brandon Young testified that he first became aware of R.I. in September 2011. 1RP 59-60. R.I. did not provide a statement regarding Tyler, however, until March 2012. 1RP 62. Based on R.I.'s statement, Young collected receipts from two Skagit County motels for April 15, 2011, April 23, 2011, June 4, 2011, and June 11, 2011, each of which had Tyler listed as the guest. 1RP 63-66. Young forwarded his investigation materials to Kuwait and asked the Army to interview Tyler. 1RP 62-63, 65.

Agent Downs testified to the circumstances regarding the interview of Tyler in Kuwait, and the recording of that interview was played for jurors. During the interview, Tyler acknowledges the relationship. 1RP 41-45; exhibit 4. Tyler also provided a typed statement at that time in which he again acknowledged the consensual sexual relationship. 1RP 49-50; exhibits 5-6.

R.I. testified that she was born on October 30, 1995. 1RP 79. She first met Tyler in 2011 using an online website (xxx cupid.com) when she was 15 years old, although she knew she was supposed to be at least 18 to create an account. 1RP 80, 104. She lied about her age at the time, clicking on a box affirming she was 18 or older. 1RP 81. Her goal was to meet older men, and

this was not the only website she used to do so. 1RP 80, 91, 93.

R.I. conceded she, rather than Tyler, may have initiated contact on the site. The two then messaged each other back and forth.[3] 1RP 82. Within a week or two, they arranged a meeting in Mt. Vernon and planned to have sex. According to R.I., before that meeting she told Tyler, in a text message, that she was actually 15. 1RP 83, 86, 90, 92. She knew Tyler was 28. 1RP 85. Tyler picked her up at her home, drove her to a motel, and they had consensual sex. 1RP 84. The two met for sex several times thereafter at motels and, on one occasion, at R.I.'s home. According to R.I., Tyler sometimes provided alcoholic beverages. 1RP 86-89. The encounters stopped when Tyler was deployed. 1RP 89.

Tyler testified in his own defense. 1RP 101. He set up a profile on xxxcupid.com to meet women for sex. 1RP 104-106. Everyone understands this is the website's purpose. 1RP 106. About three weeks later, R.I. contacted him through the site. 1RP 104. After the two exchanged messages and agreed to have sex,

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[3] Detective Young never contacted the website operator even though doing so could have provided access to communications between R.I. and Tyler. 1RP 68-70, 75-77.

Tyler drove from Lacey, picked her up, and R.I. selected the motel, where they had sex. 1RP 102, 107-108, 117.

According to Tyler, during one of the subsequent encounters, R.I. told him she was 16 years old, but the two continued to have sex thereafter. 1RP 109, 119.[4] Tyler conceded there was alcohol present at some of the encounters, which R.I. consumed. 1RP 110-111, 115. He denied that R.I. ever claimed to be just 15. 1RP 113, 119.

Jurors were instructed that it is a defense to Rape of a Child in the Third Degree that Tyler reasonably believed R.I. was at least 16 years old when they had sex. CP 33.

Jurors acquitted Tyler of Rape of a Child in counts 1 and 2 and failed to reach a verdict on counts 3 and 4. CP 44-47. Jurors found Tyler guilty of Furnishing Liquor to a Minor (count 5). CP 48. Finally, on the two counts of Communicating with a Minor for Immoral Purposes, jurors could not reach a verdict on count 6, but convicted Tyler on count 7. CP 49-50.

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[4] At one point during Tyler's testimony, the verbatim report of proceedings attributes to Tyler testimony that R.I. told him she was 15. 1RP 109. Subsequent questions and testimony, all of which are premised on R.I. telling Tyler she was 16, suggests this lone reference to 15 is a typo. See 1RP 109, 113-114, 119.

Judge Needy imposed 45 days in jail, followed by 12 months community custody, and Tyler timely filed his Notice of Appeal. 2RP 36; CP 64-65, 78-95.

C. ARGUMENT

THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW.

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). When the court has failed to enter required findings, the proper remedy is remand. State v. Head, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998). Once the necessary findings and conclusions have been entered, either party may then appeal. Head, 136 Wn.2d at 626.

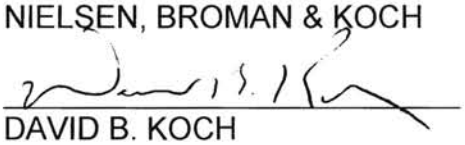
D. CONCLUSION

Tyler's case should be remanded for noncompliance with CrR 3.5(c).

DATED this 17th day of November 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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Respondent,	)	
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v.	)	COA NO. 71407-4-I
	)	
JAMES TYLER,	)	
	)	
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 19TH DAY OF NOVEMER 2014, 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 AND/OR VIA EMAIL.

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SIGNED IN SEATTLE WASHINGTON, THIS 19TH DAY OF NOVEMER 2014.

x Patrick Mayovsky