

NO. 71293-4-I

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

REC'D

MAY 19 2014

King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

ARLIN BRUNSON,

Appellant.

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

The Honorable Julia Garratt, Judge

BRIEF OF APPELLANT

JENNIFER M. WINKLER  
Attorney for Appellant

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COURT OF APPEALS  
STATE OF WASHINGTON

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A. ASSIGNMENT OF ERROR

The trial court violated CrR 3.5(c) by failing to file written findings of fact and conclusions of law.

Issue Pertaining to Assignment of Error

CrR 3.5(c) requires entry of written findings of fact and conclusions of law at the conclusion of a CrR 3.5 hearing on the admissibility of the statements of an accused. The trial court failed to enter written findings and conclusions after the appellant's CrR 3.5 hearing. Should this Court remand for entry of written findings and conclusions?

B. STATEMENT OF THE CASE

The State charged Arlin Brunson with the third degree assault of a police officer who was helping another officer forcefully remove him from a truck. CP 1-4; RCW 9A.36.031(1)(g). A jury convicted Brunson as charged. CP 10. The court sentenced him within the standard range. CP 33-38.

Before trial, the court held a hearing under CrR 3.5 to determine the admissibility of Brunson's statements to police officers. RP 10-62. The court ruled orally that Brunson's statements were admissible: Some of the statements were admissible because he was not yet in custody. Others were admissible because they were not the product of

interrogation. RP 65-66. Both categories of statements were used against him at trial. E.g. 3RP 153, 155, 160, 164-65.

C. ARGUMENT

THE TRIAL COURT ERRED BY FAILING TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 3.5.

The trial court held a CrR 3.5 hearing to determine whether Brunson's statements were the product of police coercion. But the court failed to enter written findings of fact or conclusions of law as required by CrR 3.5(c). This court must remand this matter for the entry of written findings of fact and conclusions of law, as the law requires.

CrR 3.5(c) provides, "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 therefor." This rule plainly requires written findings of fact and conclusions of law. The trial court gave an oral ruling that Brunson's statements to arresting officers were admissible, but no written findings or conclusions were ever entered. The trial court's failure to enter written findings and conclusions violated the clear requirements of CrR 3.5(c).

"It must be remembered that a trial judge's oral decision is no more than a verbal expression of his [or her] informal opinion at that time.

It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned.” Ferree v. Doric Co., 62 Wn.2d 561, 566-67, 383 P.2d 900 (1963). Moreover, an oral ruling “has no final or binding effect, unless *formally incorporated into* the findings, conclusions, and judgment.” Id. at 567 (emphasis added).

“When a case comes before this court without the required findings, there will be a strong presumption that dismissal is the appropriate remedy.” State v. Smith, 68 Wn. App. 201, 211, 842 P.2d 494 (1992).<sup>1</sup> This is so because the court rules promulgated by our supreme court “provide[] the basis for . . . needed consistency” and a “uniform approach.” State v. Head, 136 Wn.2d 619, 623, 964 P.2d 1187 (1998). Indeed, “[a]n appellate court should not have to comb an oral ruling to determine whether appropriate ‘findings’ have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.” Id. at 624. Where a defendant cannot show actual prejudice from the absence of written findings and conclusions, however, the

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<sup>1</sup> Although Smith involved the suppression of evidence under CrR 3.6, the Smith court “agree[d] that the State’s obligation is similar under both CrR 3.5 and CrR 3.6 and that cases applying CrR 3.5 can furnish appropriate guidance.” Smith, 68 Wn. App. at 205. Thus, Smith’s mandate of written findings under CrR 3.6 should apply with equal force in the CrR 3.5 context.

appropriate remedy is remand for entry of written findings of fact and conclusions of law. Id.

In this case, the trial court did not enter written findings or conclusions following the CrR 3.5 hearing and provided only an oral ruling. This court must therefore remand this matter to the trial court for entry of the findings and conclusions required by CrR 3.5(c).

D. CONCLUSION

This Court should remand for the entry of appropriate findings.

DATED this 19<sup>TH</sup> day of May, 2014.

Respectfully submitted,

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Attorneys for Appellant

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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 19<sup>TH</sup> DAY OF MAY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ARLIN BRUNSON  
4023 CORLISS AVENUE N.  
SEATTLE, WA 98103

**SIGNED** IN SEATTLE WASHINGTON, THIS 19<sup>TH</sup> DAY OF MAY, 2014.

x *Patrick Mayovsky*

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