

FILED
Aug 31, 2016
Court of Appeals
Division I
State of Washington

NO. 74468-2-I

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

STATE OF WASHINGTON,

Respondent,

v.

LAWRENCE SMALLEY,

Appellant.

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

The Honorable James C. Cayce, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

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

Issue Pertaining to Assignment of Error

CrR 3.5(c) requires written findings of fact and conclusions of law after a hearing on the voluntariness of a defendant's statement. No findings or conclusions were filed in this case. Must this case be remanded for entry of the required findings and conclusions?

B. STATEMENT OF THE CASE

The King County prosecutor charged appellant Lawrence Smalley with second degree assault-domestic violence, for allegedly striking his then girlfriend, Ophelia Harris, with his car on August 1, 2015. CP 1-7. The matter was heard by a jury before the Honorable James D. Cayce, October 27, 2015, through November 5, 2015. 1RP 78-466. The jury found Smalley guilty as charged. CP 37-38; 1RP¹ 464-66.

Pretrial, the trial court held a CrR 3.5 hearing to determine the admissibility at trial of Smalley's statements to law enforcement following his arrest. 1RP 54-77. In an oral ruling at the conclusion of the hearing, the court found Smalley's statements admissible. 1RP 77. No written

¹ There are nine volumes of verbatim report of proceedings referenced as follows: 1RP - eight-volume consecutively paginated set from the dates of October 22, 26-28, 2015 & November 2-5, 2015; and 2RP - November 24, 2015 (sentencing).

findings of fact and conclusion of law memorializing this ruling, however, have been filed to date.

On November 24, 2015, Smalley was sentenced to five months in jail, which he had completed by the time of the sentencing hearing. CP 40-47; 2RP 8-10. Smalley appeals. CP 50-54.

C. ARGUMENT

THE TRIAL COURT FAILED TO ENTER WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW UNDER CrR 3.5

Before trial, the court held a hearing under CrR 3.5 to determine admissibility of Smalley's post-arrest statements to law enforcement officers. 1RP 54-77. The court, however, failed to enter written findings or conclusions as required by CrR 3.5. That court rule provides in part:

(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.

Under the plain language of CrR 3.5 **Error! Bookmark not defined.**, written findings of fact and conclusions of law are required. Here, the court followed CrR 3.5's mandate to hold a hearing on the admissibility of the statements and rendered an oral decision, but failed to enter the required written findings and conclusions.

The oral decision is “no more than a verbal expression of [the court’s] 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, 567, 383 P.2d 900 (1963). Consequently, the court’s decision is not binding “unless it is formally incorporated into findings of fact, conclusions of law, and judgment.” State v. Hescok, 98 Wn. App. 600, 606, 989 P.2d 1251 (1999) (quoting State v. Dailey, 93 Wn.2d 454, 459, 610 P.2d 357 (1980)).

“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). Although Smith involved a CrR 3.6 hearing, its reasoning applies equally to CrR 3.5 hearings. See Smith, 68 Wn. App. at 205 (“[T]he State’s obligation is similar under both CrR 3.5 and CrR 3.6). But where no actual prejudice would arise from the failure of the court to file written findings and conclusions, the remedy is remand for entry of the written order. State v. Head, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998). Here, no findings of fact and conclusions of law were filed after the CrR 3.5 hearing, and remand for entry of the findings and conclusions is appropriate. Id.

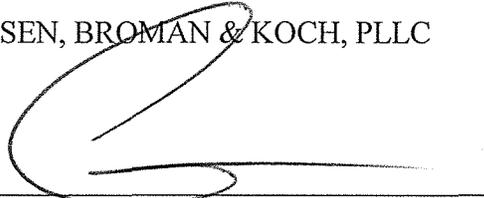
D. CONCLUSION

Remand is necessary for entry of written findings of fact and conclusions of law, as required under CrR 3.5.

DATED this 31st day of August, 2016.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A large, stylized handwritten signature in black ink, appearing to be 'C. Gibson', written over a horizontal line.

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