

NO. 63119-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

M.W. (DOB: 5-10-1994),

Appellant.

2009 AUG 31 AM 11:44

COURT OF APPEALS
STATE OF WASHINGTON
FILED

BRIEF OF RESPONDENT

JANICE E. ELLIS
Prosecuting Attorney

CHARLES F. BLACKMAN
Deputy Prosecuting Attorney
Attorney for Respondent

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I. ISSUES

1. A juvenile defendant was convicted at an adjudicatory hearing of attempted first-degree robbery. Findings of fact and conclusions of law did not enter until after appellant submitted his opening brief. The sole remedy he sought was remand for their entry. Since findings have now entered, is this issue moot?

II. STATEMENT OF THE CASE

The appellant was convicted of one count of attempted first-degree robbery. 1 CP 20-21. The charge arose out of intimidating behavior and the display of what looked like a real firearm. 1 CP 17-19. The facts are as set forth in the attached findings. 2 CP ___ (sub 68); see also BOA 1-3 (appellant's statement of facts).

III. ARGUMENT

A. SINCE FINDINGS AND CONCLUSIONS HAVE NOW BEEN ENTERED, THE SOLE ISSUE RAISED BY APPELLANT IS MOOT.

CrR 6.1(d) requires a trial court to enter findings of fact and conclusions of law after a bench trial. JuCR 7.11(d) requires the entry of findings and conclusions after fact-finding in juvenile court if the case is appealed. This juvenile-court case was appealed. 1 CP 2-3.

A failure to enter any findings of fact after a bench trial requires a remand for the entry of proper findings where the appellant raises the issue. State v. Head, 136 Wn.2d 619, 622-23, 964 P.2d 1187 (1998). This is to facilitate appellate review. Id. at 622-23. In such a situation, this will be the only remedy available. Id. at 624. Obviously such findings must be based solely on evidence already taken. Id. at 625.

Appellant asks for remand for entry of findings, a remedy consistent with Head. Here, however, findings have now entered, albeit after appellant submitted his opening brief. That renders his requested remedy moot. Issues are moot when the court can no longer provide effective relief and only abstract questions remain. Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972); State v. Sansome, 127 Wn. App. 630, 636, 111 P.3d 1251 (2005). Because the judgment and sentence (“order of adjudication”) is consistent with the written findings, there is no need to vacate it, either. Compare 2 CP ___ (sub 68) with 1 CP 4-16.

IV. CONCLUSION

Findings having now been entered, the order of adjudication should be affirmed.

Respectfully submitted on August 28, 2009.

JANICE E. ELLIS
Snohomish County Prosecutor

by: 

CHARLES FRANKLIN BLACKMAN, #19354
Deputy Prosecuting Attorney
Attorney for Respondent

FILE.

2009 AUG 18 PM 3: 11

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH



CL13130548

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY
JUVENILE DIVISION

THE STATE OF WASHINGTON,

Plaintiff,

v.

WATKINS, MAURICE Q.
DOB: 05/10/1994

Respondent.

No. 08-8-00166-1

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came before the Court on November 5, 2008, for a bench trial. The Court considered the testimony of witnesses, the exhibits introduced into evidence, and the arguments of counsel. Being fully advised, the Court now makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On February 1, 2008, about 7:00 p.m., Luke Wechselberger was at a kiosk in the Alderwood Mall, Lynnwood, WA, with two of his friends looking at iPod cases. Luke had his iPod out. Luke and his friends were approached by the respondent, Maurice Watkins, and three other juvenile males who were with Maurice. ^{off} Luke and his friends did not know the respondent or the males with him; they had no history together.
2. The respondent saw Luke's iPod and indicated to Luke words to the effect of "can I see your iPod." Luke said, "No." Luke and his friends left the kiosk and began walking

down the mall and were followed by the respondent and the group of males with him.

The respondent's group were making comments loud enough to be heard by Luke and

his friends. Someone in the respondent's group ^{stated they} made a comment to the effect of

^{ed} wanting to take the iPod or get Luke's iPod or that they were going to take it. The

respondent was with the group while these comments were made.

3. The respondent's group followed Luke and his friends around the mall for fifteen to twenty minutes. ^{Group's} ~~Pods~~ of people do not generally follow other ^{group} ~~Pods~~ of people in the mall; that is intimidating behavior.

4. One of the members of the respondent's group had a backpack on his back. When Luke and his friends came near the Abercrombie store, the respondent pulled what appeared to be a gun out of the backpack and showed it to Luke and his friends. The statement was made by someone in the respondent's group that it was a real gun with big bullets. Even if the respondent did not make the comment, the statement was made in the respondent's presence.

5. The gun displayed by the respondent was marked as Exhibit 1 and admitted as evidence. ^{The} Exhibit looks like a real gun. The police later determined that the gun was not a real gun, however even the police believed that it appeared to be a real gun. All six witnesses agreed that the gun looked like a real gun.

6. The respondent and some of the members of his group knew it was not a real gun and lied ^{to the victim} saying it was a real gun for the purpose of scaring Luke and his friends. ^{The reason} ~~Why~~

^{the defendant} ~~else do you~~ display a gun and ^{said} say it's real; with big bullets ^{was} other than to scare ^{Luke into} them? ^{giving him the iPod.}

^{Why do you follow someone in the mall for fifteen to twenty minutes in a group and then}

^{The only reason to follow} display a gun ^{is} other than to scare them?

7. Luke and his friends, Erick St. Onge and Hunter Fitzgerald, stated that they were afraid when the gun was displayed. After the gun was displayed, Luke and Erick ran some distance and were followed by the respondent in to the REI store.

8. The group that the respondent was in did the above acts. The respondent was present traveling with the group following Luke and his friends. The respondent's presence was encouraging the group and the respondent was ready to assist and at times did assist in the acts that occurred.

9. The above facts have been proved beyond a reasonable doubt.

II. CONCLUSIONS OF LAW

1. This Court has jurisdiction over this proceeding.

2. The Respondent is guilty of the crime of Attempted 1° Robbery, as charged in the Information.

07H 3. The respondent did ^{the above} acts with intent to commit theft; to try to take personal property from the person of another against that person's will by the use or threatened use of immediate force, violence of fear of injury, and in the commission of the crime did display what appeared to be a firearm or other deadly weapon. The respondent took part in some of the acts, was present during the rest of the acts done by the group and was ready to assist. The respondent is guilty by accomplice liability and direct liability.

DATED this 18 day of August, 2009.

Presented by:



JOHN J. JUHL, WSBA# 18951
Deputy Prosecuting Attorney



JUDGE



**Snohomish County
Prosecuting Attorney
Janice E. Ellis**

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August 28, 2009

Richard D. Johnson, Court Administrator/Clerk
The Court of Appeals - Division I
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600 University Street
Seattle, WA 98101-4170

2009 AUG 31 11:11:44
STATE OF WASHINGTON
COURT OF APPEALS

**Re: STATE v. M.W. (DOB: 5-10-1994)
COURT OF APPEALS NO. 63119-5-I**

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

**CHARLES F. BLACKMAN, #19354
Deputy Prosecuting Attorney**

cc: Nielsen, Broman & Koch
Appellant's attorney

I have mailed a properly stamped envelope
delivered to the attorney for the defendant that
contains a copy of this document.

I certify under penalty of perjury under the laws of the
State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office
this 28th day of August 2009

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IN THE COURT OF APPEALS
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DIVISION I

THE STATE OF WASHINGTON,

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No. 63119-5-I

AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 20th day of August, 2009, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I
ONE UNION SQUARE BUILDING
600 UNIVERSITY STREET
SEATTLE, WA 98101-4170

DAVID KOCH
NIELSEN, BROMAN & KOCH
1908 EAST MADISON STREET
SEATTLE, WA 98122

containing an original and one copy to the Court of Appeals, and one copy to the attorney for the appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

2009 AUG 31 11:44
STATE OF WASHINGTON
FILED
CLERK OF COURT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 28th day of August, 2009.



DIANE K. KREMENICH
Legal Assistant/Appeals Unit