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NOV 09 2012

King County Prosecutor
Appellate Unit

NO. 68993-2-I

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

STATE OF WASHINGTON,

Respondent,

v.

E. G.,

Appellant.

10:41:01

NOV 09 2012

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

The Honorable Barbara Mack, Judge

BRIEF OF APPELLANT

JENNIFER J. SWEIGERT
Attorney for Appellant

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A. ASSIGNMENT OF ERROR

The trial court failed to enter written findings of fact and conclusions of law after the hearing under 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. Should this case be remanded for entry of the required findings and conclusions?

B. STATEMENT OF THE CASE

1. Procedural Facts

The King County prosecutor charged appellant E.G. with one count of criminal trespass in the first degree and one count of minor in possession of alcohol by exhibiting the effects of alcohol in a public place. CP 20-23. After a hearing in juvenile court, E.G. was adjudicated guilty of both charges. CP 26, 27-29, 34. The court imposed local sanctions. CP 27. Notice of appeal was timely filed. CP 30.

2. Substantive Facts

E.G. and his brother were asked to leave Southcenter Mall after a security officer spied them wearing their pants sagging down with exposed undergarments in violation of the mall's code of conduct. RP 33. Upon speaking with them, the security officer noticed the smell of alcohol on their

breath. RP 28. He also believed their belligerent reaction and slurred speech were signs of intoxication. RP 31. Because of their intoxication, profanity, and dress code violation, he told them to leave the mall and not to return for the rest of the day. RP 33, 36. The security officer felt they were ignoring him, so he called for backup. RP 33. He did not know whether they actually left. RP 37.

About an hour later, the same officer spotted the brothers again in the mall near the food court. RP 39. Because he had already evicted them for the day, this time he notified Tukwila police. RP 39. Officer Murphy responded and also noticed the smell of alcohol, along with watery eyes and poor coordination. RP 83. He escorted them to the mall security office where he questioned the boys about their names and dates of birth. RP 86. He did not inform them of their constitutional rights to silence or to an attorney. RP 86.

At the adjudication hearing, Officer Murphy's testimony was interrupted for a hearing under CrR 3.5 to determine whether the boys' statements regarding their age were admissible. RP 85-96. Ultimately, the court concluded the boys' statements about their age were in response to

routine booking questions rather than custodial interrogation subject to the strictures of Miranda v. Arizona.¹ RP 159-167.

After the adjudicatory hearing, the court entered written findings of fact and conclusions of law. CP 31-35. However, these written findings and conclusions did not include findings or conclusions regarding the admissibility of the statements made to police. CP 31-35.

C. ARGUMENT

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

During the course of the adjudication, the juvenile court heard a hearing under CrR 3.5 to determine whether E.G.'s statements to police were the product of police coercion. RP 5-6, 85-96, 160-62. 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, written findings of fact and conclusions of law are required. The criminal rules apply in juvenile court adjudications so long as not inconsistent with the juvenile court rules or statutes. JuCr 1.4(a). Here, the juvenile court followed CrR 3.5's mandate

¹ Miranda v. Arizona, 384 U.S. 436, 458, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

to hold a hearing on the admissibility of E.G.'s 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. Hescocock, 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.

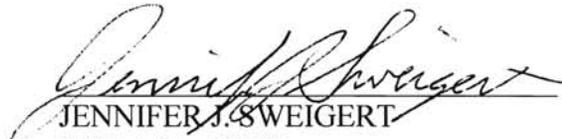
D. CONCLUSION

For the foregoing reasons, this Court should remand for entry of findings of fact and conclusions of law from the CrR 3.5 hearing.

DATED this 7th day of November, 2012.

Respectfully submitted,

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STATE OF WASHINGTON,)	
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Respondent,)	
)	
v.)	COA NO. 68993-2-1
)	
E.G.,)	
)	
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 9TH DAY OF NOVEMBER, 2012, 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.

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3512 S. JUNEAU STREET
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SIGNED IN SEATTLE WASHINGTON, THIS 9TH DAY OF NOVEMBER, 2012.

x Patrick Mayovsky