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NO. 69449-9-I

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

REC'D

MAY 08 2013

King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

COREY SCHUMACHER.

Appellant.

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

The Honorable Jim Rogers, Judge

BRIEF OF APPELLANT

JARED B. STEED
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A. ASSIGNMENT OF ERROR

The trial court erred in failing to enter written Findings of Fact and Conclusions of Law pursuant to CrR 3.5(c).

Issue Pertaining to Assignment of Error

Following a hearing under CrR 3.5 to determine the admissibility of statements by the accused, the trial court is required to enter written findings of fact and conclusions of law setting forth the basis for its decision. Where a CrR 3.5 hearing was held but no written findings or conclusions were filed, should this Court remand for entry of written findings and conclusions?

B. STATEMENT OF THE CASE

Appellant Corey Schumacher was charged in King County with three counts of first-degree child molestation and two counts of second-degree child molestation. CP 14-16; 2RP 3-4. The Stated alleged Schumacher molested complaining witnesses S.H. and S.B. several times between 2006 and 2011. CP 14-16; 2RP 3-4.

Following a pretrial CrR 3.5 hearing, Schumacher's custodial statements were held admissible. 2RP 71-72.¹ No written findings of fact and conclusions of law, however, were ever entered.

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – April 19, 2012, May 11, 2012, and June 13, 2012 (jury verdict); 2RP –

One count of second-degree child molestation against S.B. was dismissed during trial. CP 26-27; 6RP 19. A jury found Schumacher guilty of one count each of first-degree and second-degree child molestation as to S.B., and guilty of one count of second-degree child molestation as to S.H. CP 49-51; 1RP 19-10. The jury was unable to reach a verdict and one count of first-degree child molestation as to S.H. was dismissed. CP 60; 1RP 20, 27. The trial court imposed determinative sentences of 98 months on each first-degree child molestation conviction and 75 months on the second-degree child molestation conviction. CP 62-72; 7RP 14. Schumacher timely appeals. CP 74-92.

C. ARGUMENT

REMAND IS REQUIRED FOR ENTRY OF WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO CrR 3.5(c).

After a hearing to determine the admissibility of the accused's statements, the trial court must enter written findings of facts and conclusions of law. CrR 3.5(c).² Written findings and conclusions are

May 23, 2012; 3RP – June 5, 2012; 4RP – June 6, 2012; 5RP – June 7, 2012; 6RP – June 11 and 12, 2012; 7RP – June 13, 2012 (morning session) and August 31, 2012.

² CrR 3.5(c) provides:

(c) Duty of Court To Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2)

mandatory. State v. Cunningham, 116 Wn. App. 219, 227, 65 P.3d 325 (2003). The trial court and the prevailing party share the responsibility to see that appropriate findings and conclusions are entered. State v. Vailencour, 81 Wn. App. 372, 378, 914 P.2d 767 (1996) (regarding analogous CrR 6.1 (d), which requires entry of written findings of fact and conclusions of law after bench trial).

Here, the trial court held a hearing to determine whether to admit Schumacher's statements to police. The court concluded they were admissible, but failed to enter the required written findings and conclusions.

The purpose of written findings and conclusions is to promote efficient and precise appellate review. State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996); State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998) (written findings necessary to simplify and expedite appellate review). The absence of written findings and conclusions prohibits effective appellate review.

Although the trial court entered oral findings,³ such findings are not a suitable substitute; a court's oral opinion is not a finding of fact.

the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.

³ 2RP 69-75

State v. Hescok, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). Rather, a court's oral opinion is merely an expression of the court's informal opinion when rendered. Head, 136 Wn.2d at 622. An oral opinion is not binding unless it is formally incorporated in the written findings, conclusions and judgment. Head, 136 Wn.2d at 622 (citing State v. Mallory, 69 Wn.2d 532, 533, 419 P.2d 324 (1966)).

A trial court's failure to enter written findings and conclusions requires remand for entry of them. Head, 136 Wn.2d at 624. Here, because the trial court failed to enter written findings and conclusions, remand is the appropriate remedy.

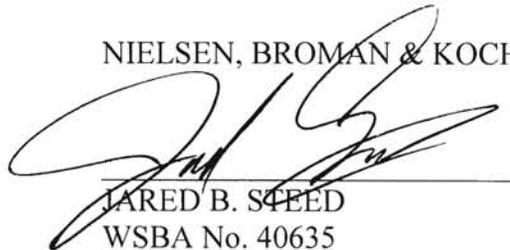
D. CONCLUSION

Because the trial court failed to follow CrR 3.5(c), this Court should remand for entry of written findings of fact and conclusions of law.

DATED this 8th day of May, 2013.

Respectfully submitted,

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Attorneys for Appellant

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 69449-9-1
)	
COREY SCHUMACHER,)	
)	
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 8TH DAY OF MAY, 2013, 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] COREY SCHUMACHER
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WASHINGTON CORRECTIONS CENTER
P.O. BOX 900
SHELTON, WA 98584

SIGNED IN SEATTLE WASHINGTON, THIS 8TH DAY OF MAY, 2013.

X *Patrick Mayovsky*