

NO. 07-10-00519-CR AND 07-10-00520-CR

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL A

APRIL 27, 2011

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THE STATE OF TEXAS, APPELLANT

v.

DAVID NEAL DUNCAN, APPELLEE

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FROM THE 251ST DISTRICT COURT OF RANDALL COUNTY;

NO. 20,170-C; HONORABLE DON R. EMERSON, JUDGE

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Before CAMPBELL and HANCOCK and PIRTLE, JJ.

**ORDER ON ABATE AND REMAND**

Pending before us is the State's motion to abate the appeal and remand the matter back to the trial court so that findings of fact and conclusions of law can be filed. The record reflects that the State timely filed a request for findings of fact and conclusions of law. However, none were ever filed. In State v. Cullen, 195 S.W.3d 696, 699 (Tex.Crim.App. 2006), the Court of Criminal Appeals held that, "[u]pon the request of the losing party on a motion to suppress evidence, the trial court shall state its essential findings." In Cullen, the Court explained that the trial court's refusal to state its

findings and conclusions prevented the court of appeals from a meaningful review of the decision to grant or deny the motion to suppress. Id. at 698.

Accordingly, we abate the appeal and remand the matter back to the trial court. See TEX. R. APP. P. 44.4. We further direct the Honorable Don R. Emerson, sitting by assignment as judge of the 251st Judicial District Court, Randall County, Texas, to execute findings of fact and conclusions of law in this cause as required by Cullen. We also direct him to execute his findings and conclusions and file them with the clerk of this court, via a supplemental clerk's record, on or before May 27, 2011. Upon the filing of the supplemental clerk's record containing the findings and conclusions, the appeal will be reinstated.

It is so ordered.

Per Curiam

Do not publish.