



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00160-CR

TRUITT RUSSELL COOK, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

**On Appeal from Criminal District Court Number Four
Tarrant County, Texas
Trial Court No. 1442298R, Honorable Michael Thomas, Presiding**

July 15, 2016

ORDER OF ABATEMENT AND REMAND

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

The State has filed a motion seeking abatement and remand of the case to the trial court for preparation of findings of fact and conclusions of law pursuant to Texas Code of Criminal Procedure article 38.22, § 6.¹ According to a certificate attached to the motion, appellant Truitt Russell Cook does not oppose the motion. We will grant the motion.

Appellant filed his appellate brief on June 24, 2016. In his first issue he argues the trial court erred by admitting his statement because it was obtained by law

¹ TEX. CODE CRIM. PROC. ANN. art. 38.22, § 6 (West Supp. 2015).

enforcement after he invoked his right to remain silent. The trial court denied appellant's motion to suppress the statement and did not make findings of fact and conclusions of law under article 38.22, § 6. In his brief, appellant, like the State, seeks abatement and remand of the case for findings and conclusions.

When the voluntariness of a statement is challenged, article 38.22, § 6 requires the trial court make written findings of fact and conclusions of law regarding the voluntariness of the challenged statement. TEX. CODE CRIM. PROC. ANN. art. 38.22, § 6; *Urias v. State*, 155 S.W.3d 141, 142 (Tex. Crim. App. 2005). The findings and conclusions are mandatory regardless whether the defendant objected to their absence. *Urias*, 155 S.W.3d at 142; *Wicker v. State*, 740 S.W.2d 779, 783 (Tex. Crim. App. 1987). “[T]he trial court need not make findings of fact with minute specificity as to every alleged and hypothetical possibility for physical or mental coercion. But the trial court must make findings of fact and conclusions of law adequate to provide an appellate court with a basis upon which to review the trial court’s application of the law to the facts.” *Wicker*, 740 S.W.2d at 783 (citations and internal quotation marks omitted).

When a trial court fails to make findings of fact and conclusions of law in compliance with article 38.22, § 6, an appellate court must abate the appeal and remand the cause to permit compliance with the statute. See TEX. CODE CRIM. PROC. ANN. art. 38.22, § 6; *Urias v. State*, 155 S.W.3d 141, 142 (Tex. Crim. App. 2005) (noting the mandatory nature of art. 38.22, § 6, and requiring a trial court to file findings of fact and conclusions of law regardless of whether the defendant requested them or objected to their absence).

Accordingly, the appeal is abated and remanded to the trial court. The trial court is directed to take all steps reasonably necessary to comply with article 38.22, § 6, which steps include the creation of pertinent findings of fact and conclusions of law addressing the voluntariness of appellant's statements, the trial court's decision, stated on the record, that the appellant's statement "complied with 38.22" and its denial of the motion to suppress. The trial judge may review the reporter's record to refresh his recollection of the reasons for his ruling. *Wicker*, 740 S.W.2d at 784. The trial court shall undertake all steps reasonably necessary to ensure that a complete supplemental reporter's record, if any, and supplemental clerk's record are developed and filed with this court. These records are to include the aforementioned findings of fact and conclusions of law. The trial court shall cause the supplemental clerk's record and reporter's record, if any, to be filed with the clerk of this court on or before August 19, 2016. Should additional time be needed to perform these tasks, the trial court may request same on or before that date.

Appellant also has requested leave to file a supplemental brief. The request is granted, and appellant's supplemental brief shall be filed within fourteen days of the date this court gives notice that the appeal is reinstated. The State's brief shall be filed within thirty days of the date appellant files his supplemental brief.

It is so ordered.

Per Curiam

Do not publish.