

NO. 12-15-00198-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*DEVAUGNDRA RASHAD MILLER,
APPELLANT*

§ *APPEAL FROM THE 3RD*

V.

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,
APPELLEE*

§ *ANDERSON COUNTY, TEXAS*

MEMORANDUM OPINION

Devaugndra Rashad Miller appeals his convictions for aggravated robbery, aggravated kidnapping, burglary of a habitation, and injury to an elderly individual. In his sole issue, Appellant argues that the trial court erred by failing to file findings of fact and conclusions of law after hearing his motion to suppress. We affirm.

BACKGROUND

Appellant was charged by indictment with aggravated robbery, aggravated kidnapping, burglary of a habitation, and injury to an elderly individual. He pleaded “not guilty,” and the matter proceeded to a jury trial. Ultimately, the jury found Appellant “guilty” as charged and assessed his punishment at imprisonment for fourteen years, fourteen years, ten years, and ten years, respectively. This appeal followed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In Appellant’s sole issue, he argues that the trial court erred by failing to file findings of fact and conclusions of law after hearing his pretrial motion to suppress. Appellant’s motion to suppress raised a question as to the voluntariness of his statements to the police. After a hearing

on the evidence, the trial court orally denied the motion. No findings of fact or conclusions of law were included in the original appellate record.

When a question is raised as to the voluntariness of a defendant's statements, the trial court must make an independent finding in the absence of the jury as to whether the statement was made under voluntary conditions. TEX. CODE CRIM. PROC. ANN. art. 38.22 § 6 (West Supp. 2016). If the trial court finds that the statement was voluntary and holds it admissible as a matter of law and fact, it must enter an order stating its conclusion as to whether the statement was voluntarily made, along with the specific finding of facts upon which the conclusion was based. *Id.*

The court of criminal appeals has held that "written findings are required in all cases concerning voluntariness. [Section 6 of article 38.22] has no exceptions." *See Vasquez v. State*, 411 S.W.3d 918, 920 (Tex. Crim. App. 2013). When such findings are not filed, a court of appeals errs by not abating for them, even where neither party requested written findings at any level of the proceedings. *See id.*

Here, we did not find the trial court's findings and conclusions in the record. Therefore, we abated the case and remanded it for preparation of an order stating the trial court's conclusions and findings of fact. *See id.* The order was prepared and included in a supplemental clerk's record certified to this Court. We allowed Appellant and the State time to file supplemental briefs based on those conclusions and findings. The time for filing supplemental briefs expired, and none were filed.

Because the trial court has now complied with Section 6 of article 38.22, we conclude that any error in its previous failure to file the required findings and conclusions is cured. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22 § 6. Accordingly, we overrule Appellant's sole issue.

DISPOSITION

Having overruled Appellant's sole issue, we *affirm* the trial court's judgment.

GREG NEELEY
Justice

Opinion delivered January 25, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JANUARY 25, 2017

NO. 12-15-00198-CR

DEVAUGNDRA RASHAD MILLER,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. 31978)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Greg Neeley, Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.