IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 62861-5-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
A.M.R. (DOB: 12-05-90),	)	UNPUBLISHED
	)	
Appellant.	)	FILED: November 9, 2009
	)	
	)	

Cox, J. — A.R. appeals her adjudication and disposition for disorderly conduct on her motion for revision before a superior court judge. Because there is no showing of prejudice with respect to the failure of the juvenile court commissioner to enter written findings and conclusions, that error was harmless. The superior court's de novo review of the record, including the court commissioner's oral ruling, did not exceed the permissible scope of review under RCW 2.24.050 when the court adjudicated A.R. guilty of disorderly conduct based on accomplice liability. We affirm.

A.R. was present during an after-school fight involving several young women. A videotape of the fight does not show A.R. physically involved in the fight, but does show her supporting the instigator by yelling at and challenging the two young women who were attacked. As the fight was breaking up, A.R. yelled, "all you guys are is bitches" at the two young women.

The State charged A.R. in juvenile court with two counts of assault in the fourth degree and one count of disorderly conduct. After a three-day hearing before a juvenile court commissioner, the commissioner acquitted A.R. of the two assault charges. But the commissioner found that A.R. was guilty of disorderly conduct. The commissioner did not enter written findings of fact and conclusions of law.

A.R. moved to revise the commissioner's decision, specifically requesting a trial de novo in superior court. The superior court judge reviewed the transcript of the juvenile court hearing, the commissioner's oral ruling, and the parties' briefing. The judge also heard oral argument. The judge then revised the decision, finding that A.R. was guilty of disorderly conduct as an accomplice rather than as a principal.

A.R. appeals.

JuCR 7.11

A.R. argues that the superior court erred by reviewing the court commissioner's oral ruling rather than reversing and remanding the case for entry of written findings of fact and conclusions of law. The State properly concedes error. Because there is no showing of prejudice, we conclude that the error is harmless.

Juvenile court rule (JuCR) 7.11(c) requires the juvenile court to state its findings of fact and enter its decision on the record.[1] JuCR 7.11(d) requires the

[1] JuCR 7.11(c) ("Decision on the Record. The juvenile shall be found guilty or not guilty. The court shall state its findings of fact and enter its decision on the record. The findings shall include the evidence relied upon by the court in reaching its

juvenile court to enter written findings of fact and conclusions of law on the record in a case that is appealed.[2] RCW 2.24.050 requires that when a party moves to revise a decision by a court commissioner, that "revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner."[3]

Citing State v. Charlie[4] and State v. Alvarez,[5] A.R. argues that the appropriate remedy for the juvenile court's failure to enter written findings of fact and conclusions of law is to reverse the superior court's order and remand the case back to the commissioner for entry of written findings and conclusions. On this record, we disagree.

Generally, in order to justify reversal based on the absence of findings and conclusions, the appellant must show that the absence of findings and conclusions resulted in prejudice.[6] In Charlie, the juvenile court commissioner failed to enter written findings and conclusions when the case was appealed to the superior court.[7] The superior court also failed to enter written findings and

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decision.").

[2] JuCR 7.11(d) ("Written Findings and Conclusions on Appeal. The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.").

[3] RCW 2.24.050.

[4] 62 Wn. App. 729, 815 P.2d 819 (1991).

[5] 128 Wn.2d 1, 904 P.2d 754 (1995).

[6] Charlie, 62 Wn. App. at 733 (quoting State v. Witherspoon, 60 Wn. App. 569, 572, 805 P.2d 248 (1991); State v. Bennett, 62 Wn. App. 702, 814 P.2d 1171 (1991); State v. Royster, 43 Wn. App. 613, 719 P.2d 149 (1986)).

[7] Charlie, 62 Wn. App. at 731.

conclusions.[8] Findings were ultimately entered well after Charlie appealed.[9]

On appeal, this court concluded that both the juvenile court commissioner and the superior court should have entered findings of fact and conclusions of law.[1] This court also concluded that reversal for the absence or tardiness of findings and conclusions normally requires a showing of prejudice.[11] There, the prejudice was "the errors committed throughout the process, and the appearance of unfairness in entering findings after the appellant [had] framed the issues in his brief."[12]

In Alvarez, the trial court did enter written findings and conclusions, but "the findings did not state ultimate facts on each element of the offense [as] required under JuCR 7.11(d)."[13] On appeal this court upheld the defendant's conviction despite the insufficient findings of fact because the conviction was supported by the evidence.[14] The defendant then appealed to the supreme court, urging that court to reverse the conviction and dismiss the charges because the findings of fact did not satisfy the requirements of JuCR 7.11(d).[15] The supreme court rejected the defendant's argument, concluding that this court was correct in remanding the case "to the trial court for revision of findings to adequately state ultimate facts and in affirming Appellant's conviction of

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[8] Id.
[9] Id.
[1] Id. at 732.
[11] Id. at 733.
[12] Id.
[13] Alvarez, 128 Wn.2d at 19.
[14] Id. at 3-4.
[15] Id. at 16.

harassment because there was sufficient evidence in the record for a rational trier of fact to find the necessary element."[16]

Neither Alvarez nor Charlie supports A.R.'s argument that the sole remedy for the commissioner's failure to enter written findings is reversal and remand for entry of written findings and conclusions. As Charlie states, reversal is only appropriate if the appellant shows that the absence or tardiness of written findings resulted in prejudice.[17] Moreover, Alvarez indicates that the appropriate remedy is for a reviewing court to affirm a conviction if it is supported by the evidence in the record and, if necessary, remand for entry of additional findings on the existing record.[18]

Here, A.R. has not shown that the absence of written findings by the juvenile court commissioner resulted in prejudice. Moreover, she does not contend that there is insufficient evidence in the record to support her conviction for disorderly conduct as an accomplice.

In any event, on a motion for revision, the superior court's review is de novo on the record before the court commissioner.[19] As A.R. correctly pointed out in her Memorandum in Support of Motion to Revise, on revision a superior court judge is not required to defer to the fact finding of a court commissioner but may re-determine both the facts and the legal conclusions drawn from those facts on independent review of the record.[2] Once the superior court makes a

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[16] Id. at 19.
[17] Charlie, 62 Wn. App. at 733.
[18] Alvarez, 128 Wn.2d at 19.
[19] State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004).
[2] Clerk's Papers at 215 (citing In re Marriage of Dodd, 120 Wn. App. 638, 645,

decision on revision, the appeal is from the superior court's decision, not the commissioner's.[21] Thus, the focus of our review is the superior court's findings of fact and conclusions of law. In this case, unlike the facts in Charlie, the superior court entered findings and conclusions in making its decision revising the commissioner's decision. The absence of findings and conclusions of the court commissioner in this case is harmless error.

SUPERIOR COURT REVISION OF COMMISSIONER'S RULING

A.R. also argues that the superior court erred by considering a new issue, accomplice liability, at the hearing on motion for revision. We hold that the superior court did not exceed the permissible scope of review when it adjudicated her guilty on the basis of accomplice liability.

"On revision, the superior court reviews both the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner."[22]

Here, at the hearing on revision, the superior court judge considered the trial record, including the court commissioner's oral ruling and the parties' briefing, and heard oral argument. The judge then determined that A.R. was guilty of acting as an accomplice to disorderly conduct. This ruling differed from that of the commissioner in that the latter's ruling appears to have been based on A.R. acting as a principal. It is undisputed that the revision court did not go

86 P.3d 801 (2004)).

[21] Ramer, 151 Wn.2d at 113 (citing State v. Hoffman, 115 Wn. App. 91, 101, 60 P.3d 1261 (2003)).

[22] Id. at 113.

outside the record established below. On this record, we conclude that the superior court judge did not exceed the permissible scope of review under RCW 2.24.050 by revising the commissioner's ruling to base adjudication on accomplice liability.[23]

Relying on In re Marriage of Moody,[24] A.R. argues that because "principal" and "accomplice" are different theories of liability and the State did not raise the issue of accomplice liability in the juvenile court proceeding, the superior court judge erred. Because that case is distinguishable, we disagree.

In Moody, a court commissioner denied the appellant's motion to vacate and re-open a property settlement and maintenance agreement and to stay the finalization of his marital dissolution.[25] In the initial proceeding before the court commissioner, the appellant argued that (1) he had not received independent legal advice when he entered into the agreement, (2) that a 1993 modification was invalid because it was not supported by additional consideration, and (3) that the agreement was invalid because he had reconciled with his wife after signing it.[26] In the revision proceeding before the superior court, the appellant tried to supplement the record with new evidence. The new evidence was offered to support the theory that his wife and her attorney had acted fraudulently and that the decree of legal separation and the property settlement and maintenance agreement were therefore illegal.[27] Another new issue was

[23] RCW 2.24.050.
[24] 137 Wn.2d 979, 976 P.2d 1240 (1999).
[25] Id. at 985.
[26] Id.
[27] Id.

whether the court had authority to approve his agreement to designate his wife the beneficiary of his federal life insurance policy.[28] The trial court judge refused to consider the new evidence and new issues.[29]

On appeal, the supreme court concluded that the superior court judge correctly refused to consider the new issues and new evidence advanced by the appellant,[3] noting that RCW 2.24.050 limits review "to the record of the case and the findings of fact and conclusions of law entered by the court commissioner."[31] That court went on to reiterate that "[g]enerally, a superior court judge's review of a court commissioner's ruling, pursuant to a motion for revision, is limited to the evidence and issues presented to the commissioner."[32]

Here, there was no new evidence before the superior court judge. He reviewed the record that was before the commissioner, no more. Unlike Moody, the court was not asked to consider new evidence. Rather, in the words of the statute, the review was of the "records of the case."

In Moody, the appellant attempted to introduce a legal theory based on new evidence that was separate and distinct from the theory that he initially advanced. Here, by comparison, A.R. could have been convicted as both a principal and an accomplice based on the same record. In fact, as the State points out in its brief, the court commissioner could have found A.R. guilty as an accomplice to disorderly conduct on the same charging information.[33]

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[28] Id. at 993 n.5.
[29] Id. at 991.
[3] Id. at 993.
[31] Id. at 992.
[32] Id. at 992-93.

State v. Rodriguez[34] is illustrative. There, the appellant was charged with assault.[35] The court subsequently found the appellant guilty as an accomplice, and she appealed, alleging that she had not been informed of the natures of the charges against her.[36] This court held that a criminal defendant's right to be informed of the natures of the charges against him/her is not violated when a defendant is found guilty as an accomplice even though the information did not expressly charge aiding or abetting or refer to other persons.[37] "[I]nformation which charges an accused as a principal adequately apprises him or her of potential accomplice liability."[38]

Based on the record presented to the superior court, A.R.'s conviction resulted from her activities during a multi-party after-school fight between a handful of girls including A.R. and two sisters. A.R. admits that she was present during the fight. A video tape of the fight does not show whether A.R. was physically involved in the fight, but it does show her supporting the instigator by yelling at the sisters. As the fight was breaking up, A.R. yelled "all you guys are is bitches" at the two young women.

On this record, accomplice liability is apparent. The fact that defense counsel was unprepared to respond to the judge raising the issue at the revision hearing does not mean that the issue was not readily apparent. In this sense, it

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[33] Brief of Respondent at 9.
[34] 78 Wn. App. 769, 898 P.2d 871 (1995).
[35] Id. at 770-71.
[36] Id. at 771-72.
[37] Id. at 771-74.
[38] Id. at 774.

was not a "new issue" based on new evidence. As we read Moody, it prohibits the introduction of new issues based on new evidence on revision. Because that is not the case here, Moody does not control.

We affirm the adjudication and disposition.

Cox, J.

WE CONCUR:

Schindler, CJ

Ellington, J