IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, v. CHARLES E. SUCH, Respondent.	No. 40492-3-II UNPUBLISHED OPINION

Worswick, A.C.J. — The State of Washington appeals a trial court order granting Charles Such's motion to suppress his written statements admitting crimes of malicious mischief and arson. We affirm.

FACTS

On the evening of January 7, 2010, the Montesano Police Department received a report of a fire in a dumpster at the Montesano Park and Ride. Thriftway employees working nearby told the officers who responded that Such and a juvenile with him had told them about the fire. The officers contacted Such and the juvenile on the street and asked them to come to the police station to talk further.

Over the next several hours, Officer Shane Green interviewed Such. Green used police statement forms to read Such his *Miranda*[1] warnings, and he wrote statements for Such on those forms admitting that he had started several recent fires. Green read over the statements with

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Such, and Such signed them.

The next day at the jail, Officer Nicholas Fosse questioned Such about another fire. After reading Such his *Miranda* warnings, he obtained a statement admitting involvement in another arson. Again, Fosse wrote the statement and Such signed it. Based on the written admissions, the State charged Such with four counts of second degree arson and two counts of third degree malicious mischief.

Such is partially deaf and mute. Because he did not have a sign language interpreter present when he talked to the police, he moved to suppress the statements, claiming that they were not knowing, voluntary, or intelligent. The trial court granted the motion, entering the following findings:

> 1. The unequivocal evidence established to the court at this hearing follows:
>
> - the defendant is deaf-mute and the officers on January 6, 2010, due to prior contacts with the defendant and his family, knew the defendant was a deaf-mute;
> - that at no time throughout the entire police contact did the officers utilize the services of a sign language interpreter;
> - the officers were not skilled in sign language;
> - the officers had no knowledge whether the defendant had any lip reading ability;
> - the officers had no knowledge of the defendant's educational level;
> - the officers noted that the defendant's oral "speech" communication skills consisted of garbled words, grunts, nods of the head, and use of his hands.
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> . . .
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> 15. Throughout this hearing and based on this court's observation of the demeanor of the witness's [sic], the convoluted manner of communication between the defendant and the officers during the interviews as to the defendant's rights and subsequent statements obtained, the contradictory testimony of the officers regarding the defendant's ability to hear and speak, the acknowledgment by both officers that prior to this contact they were aware the defendant was a deaf-mute,

> the failure to utilize the services of an interpreter during the investigative interviews, the lack of evidence of the defendant's skills regarding lip reading, if any, and education level, and the lack of the officers' skills regarding signing and lip reading, this court is not convinced by a preponderance of the evidence that the defendant knowingly, intelligently, and voluntarily waived his rights on either occasion.

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The trial court also found that the CrR 3.5 decision effectively terminated the case. The State appeals.

ANALYSIS

The State bears the burden of proving by a preponderance of the evidence that the defendant's confession was voluntary. *State v Braun*, 82 Wn 2d 157, 162, 509 Pd 742 (1973). The court must determine voluntariness from the totality of the circumstances under which a defendant confessed, including police conduct and the defendant's physical condition, age, mental abilities, and physical experience. *State v. Aten*, 130 Wn.2d 640, 663-64, 927 P.2d 210 (1996).

Upon review, we must determine whether substantial evidence supports the trial court's findings of fact, and whether those findings support the conclusions of law. *State v. Broadaway*, 133 Wn.2d 118, 130-31, 942 P.2d 363 (1997). Substantial evidence is evidence of sufficient quantity that a rational fair-minded person could believe the finding to be true. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Any unchallenged findings are verities on appeal. *Hill*, 123 Wn.2d at 647. Credibility determinations are the prerogative of the trial court, and they are not subject to review. *State v Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The State assigns error to two findings: (1) that Such is a deaf-mute and (2) that he speaks in only grunts

and garbled speech. It also argues that the trial court erred in failing to find that Such could read at an age-appropriate level. We accept as verities the findings that the nature of the officers' testimony was contradictory, that the officers were not skilled in sign language, that the officers had no knowledge of whether the defendant had any lipreading ability and no knowledge of his educational level.

There is substantial evidence that the defendant was at least partially deaf and mute because both officers answered in the affirmative when the trial court asked each of them that specific question. With respect to the finding that Such spoke in grunts and garbled speech, the record includes several accounts of Such's communication difficulties. Officer Fosse acknowledged that although Such could make words that he could understand, it was difficult, and sometimes he had to ask Such to repeat himself several times. Officer Green also acknowledged that Such's speech was less than clear, and that his speech pattern was difficult to understand. Green also testified that a third officer was unable to effectively communicate with Such. This is sufficient evidence to convince a rational, fair-minded fact-finder of the truth of the finding.

As to the failure to find that Such could read at an age-appropriate level, the trial court correctly concluded that there was no evidence to support such a finding. The State presented no evidence regarding Such's educational background. Officer Fosse testified that he wrote down some words that Such could not understand when he spoke them and that Such was able to read them and respond to the question. This evidence, however, is hardly enough for the trial court to determine Such's reading ability. And even if Such was able to read what was written, there was

insufficient evidence to show that he could articulate any confusion he might have had. A finding that he could read at an age-appropriate level would not have been determinative of the voluntariness of a waiver.

We find that substantial evidence supports each of the challenged factual findings. These findings, together with the unchallenged findings, support the trial court's conclusion that Such did not knowingly, intelligently, and voluntarily waive his constitutional right to remain silent.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Worswick, A.C.J.

We concur:

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Quinn-Brintnall, J.

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Johanson, J.