IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28607-0-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
KEVIN EUGENE GRENZ,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, C.J. — On December 1, 2008, a Whitman County sheriff questioned Kevin Grenz about allegations that Mr. Grenz had sexually abused his daughter K.L.G. The interview took place at Mr. Grenz's stepmother's home. Mr. Grenz had previously pleaded guilty to molesting K.L.G.; however, the sheriff was investigating allegations of different instances of abuse. Before questioning, the sheriff told Mr. Grenz that he was not obligated to answer questions and that he was not under arrest.

Mr. Grenz made incriminating statements during this interview. Following the interview, the State charged Mr. Grenz with first degree child molestation. Mr. Grenz challenged the admissibility of his incriminating statements, arguing that he should have

received *Miranda*[1] warnings and that because of his hearing impairment, his statements were not voluntarily made. The trial court found the statements admissible. Mr. Grenz was convicted and now appeals.

We conclude that Mr. Grenz was not in custody or under arrest and, thus, *Miranda* warnings were not required. We also conclude that Mr. Grenz's hearing impairment did not impact the voluntariness of his statements. We, therefore, affirm the trial court and the conviction for first degree child molestation.

FACTS

CrR 3.5 Hearing. At the CrR 3.5 hearing, Whitman County Sheriff Brett Myers testified that on December 1, 2008, he contacted Mr. Grenz at Mr. Grenz's stepmother's house. Sheriff Myers asked Mr. Grenz if he would be willing to speak with him. Mr. Grenz agreed and invited Sheriff Myers into the home. Once inside, Sheriff Myers asked Mr. Grenz's stepmother for permission to speak with Mr. Grenz in her home. She also agreed. Sheriff Myers and Mr. Grenz sat down facing each other, approximately three feet apart.

According to Sheriff Myers, he explained to Mr. Grenz that he needed to speak with Mr. Grenz, but that Mr. Grenz was under no obligation to speak with the sheriff.

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

Sheriff Myers told Mr. Grenz that he was not under arrest, and Mr. Grenz could choose whether to voluntarily speak with Sheriff Myers. The sheriff said he was very clear and Mr. Grenz appeared to understand his explanation.

Sheriff Myers then indicated to Mr. Grenz that he was there to discuss K.L.G., Mr. Grenz's daughter. The sheriff told Mr. Grenz that K.L.G. had recently come forward with new allegations of sexual abuse against Mr. Grenz that were more serious and different than any previous allegations. Sheriff Myers said that Mr. Grenz responded by stating that he knew he had gotten carried away but that it had already been taken care of, and his attorney had advised him that he could not get in trouble again because it would be double jeopardy. Sheriff Myers testified that he repeatedly explained to Mr. Grenz that this concerned new allegations involving sexual intercourse—including that Mr. Grenz had allegedly forced K.L.G. to perform oral sex for Mr. Grenz when K.L.G. lived with him—rather than simply the molestation allegations that were previously made by K.L.G.

Sheriff Myers reported that Mr. Grenz then stated that his relationship with K.L.G. had gotten carried away and that, at one point, Mr. Grenz had turned his affection to K.L.G. instead of his wife. Mr. Grenz added that this was partially his wife's fault because she had been in a car accident and Mr. Grenz then had to look to his daughter for

love and affection. Eventually, Mr. Grenz told Sheriff Myers that he wanted to speak with his attorney. At that point, the sheriff ended the conversation, left the home, and referred the charges to the prosecutor's office.

Sheriff Myers testified that during this meeting with Mr. Grenz, the sheriff spoke loudly, slowly, and deliberately and that the answers he received from Mr. Grenz were responsive to the questions Mr. Grenz was asked. Sheriff Myers also stated that he had approximately six previous contacts with Mr. Grenz and there were no communication problems during the previous contacts.

During the hearing, Mr. Grenz argued that even though coercion may not have been present, Mr. Grenz's statements were involuntary because he did not understand Sheriff Myers' questions because of his hearing impairment. The State argued that the totality of the circumstances demonstrated that Mr. Grenz's statements were voluntarily given. The court agreed with the State and concluded in a detailed oral ruling that Mr. Grenz was not in custody so as to require *Miranda* warnings, there was no showing of coercion, and whether Mr. Grenz understood Sheriff Myers went to the weight to be given to his statements by a jury rather than the admissibility of the statements.

Mr. Grenz appealed. One week prior to the filing of Mr. Grenz's opening brief, the court entered written findings of fact and conclusions of law relating to the

admissibility of Mr. Grenz's statements.

Facts Pertaining to Statement of Additional Grounds for Review. Mr. Grenz filed a statement of additional grounds for review that raised several independent issues. Mr. Grenz had previously pleaded guilty to second degree assault with sexual motivation for an incident that occurred in 2001 also involving K.L.G.

After arraignment, Mr. Grenz sent a handwritten document to the court stating, among other things, that he was renouncing all signatures he had made on legal documents. Based on the content of the document, the court revoked Mr. Grenz's conditions of release and ordered that he have a competency evaluation. Mr. Grenz was found competent to stand trial. After being found competent, Mr. Grenz originally pleaded guilty to second degree child molestation. The court informed Mr. Grenz that under recently-revised Washington law, Mr. Grenz qualified as a persistent offender and could be subject to a higher sentence than that detailed in the plea agreement. The court allowed Mr. Grenz to withdraw his plea.

ANALYSIS

Prearrest Statements. The well-known *Miranda* warnings are a prophylactic protection against the inherently coercive nature of custodial interrogation. *See Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). When either custody

or interrogation are not present, *Miranda* warnings are unnecessary. *Id.* at 444. Here, Mr. Grenz alleges that he was in custody while being interrogated and, thus, should have been given the *Miranda* warnings. Only the question of custody is in dispute. We review the determination of custodial status de novo. *State v. Lorenz*, 152 Wn.2d 22, 36, 93 P.3d 133 (2004).

The Supreme Court in *Miranda*, stated that "[b]y custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. Washington applies the same standard. A custodial interrogation involves express questioning, or its functional equivalent, initiated after a person is in custody or otherwise significantly deprived of his freedom. *State v. Hawkins*, 27 Wn. App. 78, 82, 615 P.2d 1327 (1980). "'Custody' for *Miranda* purposes is narrowly circumscribed and requires 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *State v. Post*, 118 Wn.2d 596, 606, 826 P.2d 172, 837 P.2d 599 (1992) (quoting *Minnesota v. Murphy*, 465 U.S. 420, 430, 104 S. Ct. 1136, 79 L. Ed. 2d 409 (1984)). The question of custody is an objective inquiry and the psychological state of the defendant is not considered. *See State v. Sargent*, 111 Wn.2d 641, 649, 762 P.2d 1127 (1988).

Here, Sheriff Myers asked Mr. Grenz if he could speak with him. Mr. Grenz agreed and invited Sheriff Myers into the home. While inside, the sheriff told Mr. Grenz that he was under no obligation to speak with the sheriff and Mr. Grenz could end the conversation at any time. Mr. Grenz appeared to understand Sheriff Myers who spoke loudly, slowly, and deliberately because he knew Mr. Grenz had a hearing impairment.

In *Beckwith v. United States*, the Supreme Court found that a similarly cooperative interview between federal agents and the suspect of a crime in the suspect's home did not require *Miranda* warnings where there was no indication that the agents behaved in a way that acted to overbear the suspect's will. *Beckwith v. United States*, 425 U.S. 341, 96 S. Ct. 1612, 48 L. Ed. 2d 1 (1976). There is nothing in the record to support Mr. Grenz's contention that he was "in[] custody or otherwise significantly deprived of his freedom" during his exchange with Sheriff Myers. *Hawkins*, 27 Wn. App. at 81. And under the factual circumstances presented here, there was no inherently compelling pressure that would require *Miranda* warnings as a prerequisite to the admissibility of Mr. Grenz's statements.

"When a trial court determines a confession is voluntary, that determination is not disturbed on appeal if there is substantial evidence in the record from which the trial court could have found the confession was voluntary by a preponderance of the

evidence." *State v. Aten*, 130 Wn.2d 640, 664, 927 P.2d 210 (1996).

"To be voluntary for due process purposes, the voluntariness of a confession is determined from a totality of the circumstances under which it was made. Factors considered include a defendant's physical condition, age, mental abilities, physical experience, and police conduct." *Id.* at 663-64 (footnote omitted).

The court's oral ruling sufficiently indicates its reasons for admitting Mr. Grenz's prearrest statements as voluntary. The court stated:

> I see nothing in the record here from the evidence presented that makes me even suspect that the sheriff did anything at all here to overcome the Defendant's freewill.
>
> He wasn't handcuffed. He was not placed in any circumstances that could be associated with a custodial situation.
>
> Particularly, given the fact that the sheriff told him that he was free to leave that he didn't have to talk and particularly given the fact that Mr. Grenz invited the sheriff to enter his step mother's [sic] home and to conduct the discussion there.
>
> I'm satisfied that the Defendant understood the questions. He may have had—he did express his understanding of what the law was. He may have been under a misunderstanding as to whether statements that he made could be used against him later on or could have incriminated him. But that was not based on anything that Sheriff Myers said to him.
>
> As a matter of fact, Sheriff Myers was careful to tell him that what he wanted to talk about was different from previous charges that the Defendant had faced. And that these could lead to new charges. So, he did —well, the Defendant may have had some misunderstanding as to the legal affect of the previous conviction here and whether new charges relating to his daughter would constitute double jeopardy that was his own misunderstanding that wasn't based upon anything that he was told by Sheriff Myers here.
>
> . . . .

> There is a question here—an argument which I'm not excepting [sic] here today, but an argument that because of the hearing impairment, Mr. Grenz did not understand or was confused by the questions, but based upon the questions and the responses that the sheriff testified were made his responses appeared to be right on point, to be very responsive. And I'm satisfied that he did understand the questions, he wasn't confused. But even though the Court is admitting that statements [sic], the argument that he didn't understand is certainly something that could be argued to the jury and goes to the weight, although the Court does not feel it goes to the admissibility.

Report of Proceedings (Sept. 30, 2009) at 52-55. The court's oral ruling also recognized as fact, Sheriff Myers' undisputed testimony, described above. Mr. Grenz failed to offer any rebuttal evidence showing that his statements were involuntary, or the sheriff was overreaching or lacked credibility.

In sum, the court in its oral ruling demonstrated that it considered the appropriate factors outlined in *Aten*. *Aten*, 130 Wn.2d at 664. The court's ruling was also supported by sufficient evidence in the record for it to find, by a preponderance of the evidence, that under a totality of the circumstances, Mr. Grenz's statements were voluntarily made. The court did not err by admitting Mr. Grenz's prearrest statements.

Written Findings and Conclusions. Mr. Grenz asserts that it was error for the court to fail to enter written findings of fact as it is required to do following a CrR 3.5 hearing. As such, he requests that this court remand the case. While the trial court is required to make written findings of fact and conclusions of law under CrR 3.5(c), a

court's failure to comply with this requirement is harmless if the court's oral findings are sufficient to allow for appellate review. *State v. Cunningham*, 116 Wn. App. 219, 226, 65 P.3d 325 (2003). Here, the court made detailed findings and conclusions in its oral ruling. The court fully articulates its reasoning for finding Mr. Grenz's statements admissible. If necessary, the court's specific oral findings of fact would provide a sufficient basis for this court's review.

Here, however, the court did enter written findings of fact and conclusions of law on June 21, 2010, one week before Mr. Grenz filed his opening brief. The late entry of CrR 3.5 findings and conclusions is not reversible error unless the delay prejudiced the defendant or the findings were tailored to address the issues raised on appeal. *State v. Cannon*, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996). Mr. Grenz did not file a reply brief discussing the content of the delayed written findings or how these findings prejudiced his appeal; however, it is apparent that the written findings entered on June 21, 2010, were substantially based upon the State's proposed findings of fact and conclusions of law which were filed on November 17, 2009. As such, the content was established before the filing of Mr. Grenz's appeal, and it is apparent that the delayed written findings were not tailored to any issues raised in the appeal. Mr. Grenz has failed to show that the tardiness of the written findings of fact and conclusions of law prejudiced

his appeal, demanding reversal.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

In his statement of additional grounds for review, Mr. Grenz asserts several errors related to double jeopardy, false testimony, prosecutorial misconduct, ineffective assistance of counsel, pretrial release, right to privacy, and sufficiency of the evidence. Mr. Grenz's arguments are unpersuasive.

We affirm the conviction for first degree child molestation.

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

_____
Kulik, C.J.

WE CONCUR:

_____ _____
Sweeney, J. Korsmo, J.