IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 66059-4-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
CAROL ANNE MAGEE,	)	
	)	
Appellant.	)	FILED: April 23, 2012

Grosse, J. — Failure to enter written findings of fact and conclusions of law as required by CrR 3.5 amounts to harmless error when, as here, the court's oral findings are sufficient for appellate review. Accordingly, we affirm.

FACTS

The State charged Carol Magee with second degree malicious mischief. The charges arose out of an incident in which Magee used her truck to repeatedly strike a Puget Sound Energy (PSE) electric transformer that was located on the road to her home. Neighbors called the police and videotaped the incident. A police officer contacted Magee outside of her home and asked her if she had any information about the incident. Magee told the officer that the power box was illegally on her property and that she had asked PSE to remove it. Magee also said that she had spoken with a PSE representative on the phone who told her that they would move the box if she paid the cost of moving it. Magee said that her response to this was, "You move the box or I'll move it for you."

Magee waived her right to counsel and proceeded to trial pro se. Before

trial, the court held a CrR 3.5 hearing to determine the admissibility of her statements to the officer. The trial court ruled that the statements were admissible and made the following oral findings and conclusions:

> When Sgt. [Russ] Lindner came up to the fence, he testified that he believed that the fence was chained and padlocked. You were on one side of it; he was on the other side. And he asked you what your version of events were.
>
> Whatever the statements were made, were made while you were not under arrest. You were not in custody. And no Miranda[1] warnings were necessary until you were under arrest.
>
> We're not talking about any statements that were made after arrest; we're talking about statements that were made while you were on one side of the fence and he was on the other.
>
> I will find that those statements were voluntary. That you were not in custody at that time. That you were free to leave. That any answers made to the questions of what – what is your version, I believe that is, of events [that] were made without any threats or promises and are admissible.

A jury found Magee guilty as charged. She appeals.

ANALYSIS

Magee seeks remand for entry of proper findings of fact and conclusions of law in support of the court's CrR 3.5 ruling. She correctly notes that the court did not enter written findings and conclusions as required by CrR 3.5. But as the State contends, such error is harmless if the court's oral findings after a CrR 3.5 hearing are sufficient for appellate review.[2] Here, the court's oral findings are clear and comprehensive and there is substantial evidence in the record to support the findings. Thus, written findings would be just a mere formality. Accordingly, the lack of CrR 3.5 findings amounts to harmless error.[3]

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[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
[2] State v. Miller, 92 Wn. App. 693, 703, 964 P.2d 1196 (1998).
[3] State v. Trout, 125 Wn. App. 403, 415, 105 P.3d 69 (1997).

Statement of Additional Grounds

Magee also raises several issues in a statement of additional grounds. The State first contends that we should decline review of Magee's statement of additional grounds because it was not timely filed. On May 17, 2011, the clerk of this court notified Magee that her statement of additional grounds was due within 30 days. Magee filed her statement of additional grounds on June 20, 2011. While this was technically past the 30 day deadline by just a few days, we are satisfied that she substantially complied with this deadline. We further note that we granted the State an extension of time to respond to the statement of additional grounds. Accordingly, we review the issues raised.

Magee first contends that the judge in her case should have been disqualified. RCW 4.12.050 permits a party to establish by motion and affidavit that a judge is prejudiced against the party and the party cannot have a fair and impartial trial before that judge. The statute requires that such an affidavit of prejudice be filed before the judge makes any discretionary rulings in the case.[4] CrR 8.9 further provides:

> Any right under RCW 4.12.050 to seek disqualification of a judge will be deemed waived unless, in addition to the limitations in the statute, the motion and affidavit is filed with the court no later than thirty days prior to trial before a pre-assigned judge. If a case is reassigned to a different judge less than forty days prior to trial, a party may then move for a change of judge within ten days of such reassignment, unless the moving party has previously made such a motion.

[4] RCW 4.12.050(1) ("[B]efore the judge presiding has made any order or ruling involving discretion, but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso.").

As the State correctly notes, Magee did not file an affidavit of prejudice in this case. Accordingly, she has waived the right to do so and may not raise this issue for the first time on appeal.

Magee next appears to challenge the order of restitution, asserting, "The prosecuting attorney proceeded as if no arrangement had begun for restitution of the damage to [the] transformer. It was on my regular power bill—paid on monthly." The State asked for restitution in the amount of $1,382.80 for the damage to the transformer. This was based on testimony from a PSE claims agent, who provided a cost breakdown for the damage to the transformer. Magee did not provide any argument or evidence at trial or sentencing that she had already been billed by PSE for the damage to the electrical transformer. She has simply attached to her brief copies of notices from PSE and collections notices about an overdue bill. None of these were part of the record below nor did Magee make a motion to supplement the appellate record with this information. Thus, her claim is without support.

Magee next contends that the judge improperly advised the jury during voir dire that the parties could not define the term "easement," when the prosecutor asked jurors whether they thought having an easement meant having a property interest. Magee asserts that this portion of void dire was not transcribed, but in fact this appears in the verbatim report of proceedings as follows:

> [PROSECUTOR]: Does anyone know what an easement is?
> . . . .
> And so does – does someone -- If someone had an easement, would they have a property interest, would you think?

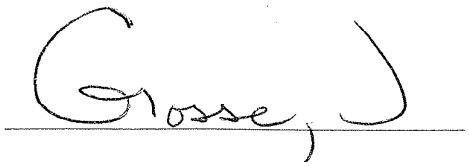
When it was Magee's turn to question the jurors, the following exchange occurred:

> CAROL A. MAGEE: Hmm. Does this have to be a question? Or can I give a definition of easement?
> THE COURT: No. You have to -- I -- I will give any definitions or description of law. You have to ask questions.
> CAROL A. MAGEE: Okay. Thank you, Your Honor. Would you give the definition of an easement for them?
> THE COURT: No. It's not part of this case. So . . .[.]

Magee fails to show that the trial court erred by declining to define "easement" during voir dire. She never proposed a jury instruction defining the term nor did she offer argument of its relevance. Indeed, the elements of the crime of malicious mischief do not include anything relating to an easement.

Finally, Magee asserts that the trial judge never advised her at sentencing that her notice of appeal must be filed within 30 days of the entry of judgment. But as the prosecutor correctly notes, this issue is moot because the appeal is currently before us for review.

We affirm the judgment and sentence.



WE CONCUR: