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Washington State
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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RICHARD EVERETT HALEY, Appellant.	No. 50005-1-II UNPUBLISHED OPINION

JOHANSON, P.J. — Richard Everett Haley appeals his convictions for three counts of first degree child rape and three counts of first degree incest. He also appeals the trial court's imposition of exceptional consecutive sentences. Haley argues that the trial court erred when it (1) improperly tailored its bench trial findings of fact and conclusions of law, (2) admitted Haley's statements to law enforcement that were obtained in violation of his *Miranda*[1] rights, (3) accepted his invalid jury trial waiver, and (4) ordered an exceptional sentence without making the requisite findings and conclusions. Haley also (5) provides two arguments in his statement of additional grounds (SAG). Because Haley's arguments fail, we affirm the convictions and remand for resentencing.

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

FACTS

I. BACKGROUND FACTS

BLH was born in 1998. In 2006, Haley was a convicted sex offender and lived next door to his two daughters, including BLH, and his wife from whom he was legally separated at the time.

In 2016, after Haley got out of prison for another offense, BLH alleged that Haley repeatedly sexually abused and raped her when she was between six and eight years old. BLH participated in a forensic interview to report these incidents.

After BLH reported the abuse, Jefferson County Detective Shane Stevenson began an investigation. In May 2016, Haley came to the sheriff's office as part of his sex offender registration requirement. After the registration process was complete, Detective Stevenson took Haley into an interview room to "talk to him about a separate matter." 3 Verbatim Report of Proceedings (VRP) at 446. Detective Stevenson "read him his constitutional rights," and Haley indicated he understood and waived his rights and wanted to speak to Detective Stevenson. 3 VRP at 446.

Detective Stevenson proceeded to tell Haley about BLH's allegations from the forensic interview, including a claim that after one rape, Haley took BLH outside of his home, made her pick blackberries, and threatened to sexually assault her again if she did not help. Haley's immediate response was that he had never picked blackberries with BLH, but then he said maybe he had picked blackberries one time. At that point in the interview, Detective Stevenson confronted Haley about being worried more about the blackberries than he was about the allegations of rape. Haley responded, "'Well, there are no blackberries on the . . . property'" but

that "'actually there are some. Down the hill.'" 3 VRP at 447. Haley then denied that he had any sexual contact with BLH. Following this interview, Detective Stevenson arrested Haley.

The State charged Haley with three counts of first degree child rape, one count of first degree child molestation, three counts of first degree incest, and one count of second degree incest.

II. CrR 3.5 HEARING

In January 2017, the trial court held a CrR 3.5 hearing regarding Haley's statements to Detective Stevenson during the interrogation. Detective Stevenson testified to the above facts about the interrogation, including that he "read [Haley] his constitutional rights" and "asked him if he understood his rights and if he was willing to speak with me and he said that he did understand his rights and he was willing to speak with me." 2 VRP at 164. On cross-examination, Detective Stevenson confirmed that he advised Haley of his right to remain silent. Haley did not sign a written waiver of his rights.

Following Detective Stevenson's testimony, defense counsel agreed that Haley voluntarily spoke to Detective Stevenson but asserted that Haley's statements about the blackberry bushes were inadmissible. Specifically, defense counsel argued that Haley's statements would require discussion of the context in which the statements were made, including Detective Stevenson's inadmissible hearsay summarizing BLH's forensic interview. The trial court ruled that Haley's statements during the interrogation were admissible and made after a knowing, voluntary waiver. The trial court stated,

> The officer then read the defendant his *Miranda* constitutional rights. The defendant acknowledged that he understood those rights. The officer asked if he would be willing to talk to him and the defendant said yes, he would be willing to talk to him.
>
> . . . [A]nd during the course of the conversation there was no evidence at all that -- one, that the officer exerted any kind of duress or coercion, or anything like

> that upon the defendant. And there was no evidence that the defendant was being forced to answer any questions, or that he was being forced to give any statement, or that he was not voluntarily having this conversation with the officer. . . .
>
> . . . I think the statements about the blackberries, as I understood the testimony, those were spontaneous responses by the defendant in response to the officer's statements about what was alleged.
>
> . . . But even if they weren't the conversation was entirely voluntary and there was no duress or anything else. . . . [T]here was nothing that was said or done suggesting that these statements would not be admissible under any theory.

2 VRP at 193-94.

The trial court did not enter any written findings of fact or conclusions of law following the CrR 3.5 hearing.

III. JURY TRIAL WAIVER

Before trial, Haley filed a written jury waiver that stated as follows,

> I understand that I have the right to trial by jury unless I waive my right to a jury trial. I hereby waive my jury trial right and request that my guilt or innocence be decided by a Judge.

Clerk's Papers (CP) 67.

When defense counsel presented Haley's jury trial waiver to the trial court, defense counsel stated that he and Haley "have had lengthy, extensive discussions. . . . And I've expressed my strong preference for a trial by jury. He's adamant that he'd prefer trial to the Bench." 1 VRP at 93. Counsel also asserted that he had discussed the "pros and cons" of a bench trial with Haley, and Haley was "steadfast in his decision" to pursue a bench trial despite defense counsel's recommendation to have a jury trial. 1 VRP at 93.

The trial court then entered into a colloquy with the defendant about the waiver. Haley confirmed the accuracy of defense counsel's statements about Haley's waiver decision. Haley stated that he understood that he had a right to a jury trial by 12 jurors and that most people consider

that a valuable right. Haley understood that "in most criminal cases, and particularly in most serious criminal cases, most defendants prefer to have a jury trial and not simply have it heard by a judge." 1 VRP at 95. Haley stated that he understood that if he waived his right to a jury trial, he would not be able to change his mind and the judge would hear the evidence and apply the law to each count and determine whether Haley was guilty. Haley agreed that he still wanted to waive his right to a jury trial and that he was not threatened, coerced, or promised anything in exchange for his waiver. The trial court asked Haley whether he had spoken to defense counsel about advantages and disadvantages of waiving the jury trial, and Haley said, "[Y]es." 1 VRP at 97. The trial court also asked Haley if he needed more time to talk privately with defense counsel about the waiver, and Haley said, "I honestly don't believe there's anything else to talk about, Your Honor. I feel that we've . . . discussed it thoroughly." 1 VRP at 97.

After this exchange, the trial court ruled that "your waiver of your right to a jury trial is knowingly, and intelligently, and voluntarily waived." 1 VRP at 97.

IV. TRIAL

A. STATE'S TESTIMONY

In January 2017, the case proceeded to a bench trial. The State presented testimony by BLH; Dana Richardson,[2] who is BLH's mother and Haley's ex-wife; and Detective Stevenson.

1. BLH'S TESTIMONY

BLH was 18 at the time of trial. At the time of the incidents, BLH lived with her mother and sister in a fifth wheel next door to her father Haley, who lived in an adjacent trailer. BLH

[2] The parties' briefs and other materials sometimes refer to Dana Richardson by her former name, Dana Haley. We use the name that she provided during testimony.

testified in detail about numerous incidents during which Haley, her father, forced her to receive anal sex and perform oral sex.

BLH described one incident when her sister was not home and her mother was leaving to go to a housekeeping job. BLH hid in the trunk of her mom's mini-van to avoid being alone with her father because she feared his abuse. BLH's mother found BLH in the trunk and told BLH that she could not go in the car, and BLH cried. Once her mother left, Haley forced BLH to have anal sex, and she described the pain and her emotional response in detail. After the incident, Haley forced BLH to go outside and pick blackberries in the thorny bushes. Although it was painful, BLH picked the berries because Haley told her "'[i]f you don't pick the blackberries we'll do the other thing instead.'" 2 VRP at 226. BLH believed Haley was threatening to sexually assault her again.

BLH described in detail another incident in which Haley grabbed BLH by the shoulders and forced her to perform oral sex until she vomited, and then he beat her with a belt and anally raped her. She described the pain as "[b]urning. Stinging. Nausea." 2 VRP at 231.

The abuse continued until Haley was arrested in another matter. BLH could not remember other specific incidents in as much detail, but she remembered Haley fondling her breasts and looking at her private parts to see if she had developed more or started puberty yet.

When the State asked BLH why she did not tell her mother or other people about the abuse, BLH provided several reasons. She said the abuse "would break [my mother's] heart." 2 VRP at 220. Haley had threatened BLH that if anyone found out about the abuse, the family may become homeless and the Haley family would stop providing financial support. Haley also imposed physical punishment using belts and spanking if she failed to obey him, and BLH was afraid he

would use some of his weapons to hurt her. Haley also told BLH that if she told others about the abuse, they would not love her anymore. BLH didn't go to law enforcement about the abuse because she was scared.

BLH has attempted suicide numerous times and received in-patient mental health treatment to cope with mental health issues related to the sexual abuse.

Before trial, BLH participated in an interview with a Kitsap County law enforcement officer detailing the abuse. BLH partially recalled an investigation a number of years before during which she did not disclose sexual abuse by Haley because she was afraid.

On cross-examination, BLH stated that she enjoyed watching crime dramas on television every week. She stated that she has regularly engaged in self-harm since age six and made approximately 20 suicide attempts, but no one has noticed them. She suffers from anxiety attacks. BLH visited Haley in prison between three and six times. BLH initially stated that she wrote to Haley only three times while he was incarcerated. Defense counsel showed BLH exhibits containing numerous letters, cards, and drawings that BLH produced and sent to her father over the course of years that he was in prison. BLH said she had sent more mail to him than she initially remembered, and she did not remember that she sent so many letters and drawings until she saw them.

BLH also testified on cross-examination that during the prior investigation when she did not disclose the abuse, BLH was asked by law enforcement about whether Haley touched her inappropriately. She testified that she "never answered their question." 2 VRP at 304. She still loved him because he was her father, and they had fun sometimes. She was afraid and uncomfortable around law enforcement during the interview.

On redirect, BLH said that she was both afraid of and loved Haley. She said he was the only father she had ever known. She stopped sending cards and letters around 2012 because she realized he was no longer a threat to her. After Haley went to prison, BLH and her mother and sister were homeless for a while but then were able to support themselves, so she realized she did not need Haley anymore. When she realized she "could survive without his support as a provider," she stopped sending letters. 2 VRP at 311.

2. RICHARDSON'S TESTIMONY

Richardson, BLH's mother, testified that she was not aware that Haley abused BLH at the time the alleged abuse occurred. Haley provided financial support to the family and loaned Richardson money. Richardson feared Haley. At some point, BLH told Richardson about the abuse, and Richardson confronted Haley during a phone call while Haley was in prison. Haley "admitted he did." 2 VRP at 357. When Haley allegedly made an admission to Richardson about his prior abuse, "he didn't use [BLH's] name. He just said yes, I did. . . . So it could have been . . . any of the girls." 2 VRP at 359. BLH wanted to be around Richardson as a child and expressed reluctance about spending time alone with Haley.

On cross-examination, Richardson could not remember when BLH had initially disclosed the abuse to her. Defense counsel extensively cross-examined Richardson about inconsistencies in the timeline of when she learned various details about Haley's alleged abuse of BLH and Richardson's disclosures to Detective Stevenson. Richardson also testified that Haley admitted to some kind of abuse of his daughters in the 2015 phone call when he was in prison, but he didn't specify that he abused BLH or that he had anally raped her.

3. DETECTIVE STEVENSON'S TESTIMONY

Detective Stevenson testified about his investigation. BLH made disclosures about the abuse to a friend. That friend reported the abuse allegations to BLH's school, and the school contacted law enforcement. Another officer in Kitsap County conducted a forensic interview of BLH, and after Detective Stevenson received the report, he investigated the case. He interviewed Haley at the county jail and confronted Haley with one of the rape allegations. Detective Stevenson told Haley about BLH's claim that after the rape, Haley forced her to pick blackberries. Haley disputed that he picked blackberries with BLH and then acknowledged that he did pick berries one time. The detective described Haley's reaction as "odd." 3 VRP at 454. Haley disputed that there were blackberry bushes on the property, then acknowledged there were. Detective Stevenson found the response odd and showing a lack of concern for BLH.

In the course of his investigation, Detective Stevenson confirmed that Haley and BLH lived in adjacent trailers during the relevant time period. Detective Stevenson also learned that there were berry bushes like BLH described on the property.

On cross-examination, Detective Stevenson said that during his interview of Haley, Haley eventually denied sexually assaulting BLH. And Detective Stevenson discussed some inconsistencies regarding which details of abuse Haley allegedly confessed to Richardson during their phone call.

B. DEFENSE TESTIMONY

Defense counsel presented testimony by Haley's mother and a detective who interviewed BLH in 2007 regarding prior sexual abuse allegations. Haley's mother, Betty Haley, testified that she did not want Haley to go back to prison and when BLH visited Haley, she seemed happy.

Deputy David Miller testified that he investigated abuse allegations in 2007. At the time, he conducted an interview with BLH and she said no one had ever touched her inappropriately. He did not specifically ask her during the interview whether Haley had touched her inappropriately. BLH also stated in the interview that Haley creeped her out.

C. CLOSING ARGUMENTS

In its closing argument, the State asserted that no corroborating evidence is required to convict a person of a sex crime. The State argued that BLH "could explain in a very compelling way exactly why she didn't disclose at that time." 3 VRP at 592. And the State discussed BLH's testimony regarding the specific incidents of anal and oral sex, including the specific details about the pain she experienced. The State discussed how BLH chose not to disclose the details of her abuse out of concern for her mother. In addition, the State argued that the letters and drawings that BLH sent to Haley do not undermine her testimony that he engaged in heinous acts of sexual violence against her.

Defense counsel argued that BLH is a deeply disturbed person who admitted to serious mental health issues. Defense counsel identified inconsistencies in BLH's testimony and argued it was suspicious that BLH never needed medical treatment for the alleged rapes and for her alleged acts of self-harm. He argued that there was no corroboration of BLH's testimony, other than the unreliable testimony by Richardson that Haley confessed during a phone call to some kind of sexual misconduct against his daughters. Defense counsel argued that the delay in reporting, BLH's mental health issues, and BLH's many letters to Haley rendered her testimony not credible.

V. ORAL RULING

The trial court rendered oral findings of fact and conclusions of law. During its oral ruling, the trial court provided a detailed summary of the testimony, including several paragraphs when it discussed Detective Stevenson's testimony about his interview of Haley and the discussion of the blackberry bushes. As the trial court discussed testimony, it provided credibility determinations regarding the witnesses that are consistent with the credibility determinations provided in the court's written findings discussed below. Relevant here, the trial court orally ruled that BLH was credible concerning the sexual abuse allegations and that any alleged confession that Haley made to Richardson was unreliable and not part of the court's decision.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The trial court entered written findings of fact and conclusions of law in compliance with CrR 6.1(d) only after this appeal was filed. The trial court provided nine pages summarizing testimony presented at trial. Six pages summarized BLH's detailed testimony. More than a page of the summary provides Detective Stevenson's testimony, including four paragraphs about the Detective's interview with Haley and Haley's response about the blackberry bushes. After summarizing the evidence, the trial court provided the following findings of fact:

> The court finds that BLH's testimony regarding the sexual assault allegations was credible. Although BLH has a number of issues, those issues probably arose from [Haley's] conduct. While BLH's testimony may not have been accurate about how many suicide attempts she made and she may have exaggerated in that respect, it did not affect her credibility with respect to the sexual assault allegations. [BLH] was less than twelve years old at the time of the sexual assaults. [Haley] was at least twenty-four months older than [BLH]. [Haley] knew [BLH] to be his descendant.
>
> Regarding [Richardson's] testimony that [Haley] confessed to hurting the girls in a phone call with [Richardson] while [Haley] was incarcerated, the court finds it's likely that at some time a phone call occurred. However, the court finds the testimony about the confession to be vague and unreliable. The court does not

> base[] its decision on the alleged confession by [Haley]. At various points, [Richardson's] testimony was not credible. Apparently [Richardson] is still intimidated by [Haley] and didn't want to put herself in a worse light than she had to. It appeared to be hard for [Richardson] to explain how daughter had a number of issues over a period of time and did not recognize any of them.
>
> With respect to Betty June Haley's testimony, the court found her testimony not credible.
>
> Regarding retired Deputy David Miller's testimony, the court listened to the tape of that interview. The court interprets the question to BLH as whether "anyone" had molested her, rather than specifically about her father. BLH appeared to be subdued and didn't say . . . much about the father nor what they did together.
>
> BLH's testimony concerning the allegation of Child Molestation was vague, with no real time frame. BLH's testimony was vague with respect to the alleged ongoing pattern of sexual abuse.

CP at 266-67.

The conclusions of law were as follows:

> Based on the facts as outlined above, the court finds [Haley] Guilty of the following counts:
>
> Count I: Rape of a Child in the First Degree (First allegation of anal rape);
>
> Count II: Rape of a Child in First Degree (Oral sex);
>
> Count III: Rape of a Child in First Degree (Second allegation of anal rape);
>
> Count V: Incest in the First Degree;
>
> Count VI: Incest in the First Degree;
>
> Count VII: Incest in First Degree.
>
> Based on the facts as outlined above, the court finds [Haley] Not Guilty with respect to the following counts:
>
> Count IV: Child Molestation;
>
> Count VIII: Incest in Second Degree (correlating with the count of Child Molestation).
>
> In addition, the court concludes that the evidence was insufficient to find a pattern of ongoing abuse with respect to any of the counts.

CP at 268.

VII. SENTENCING

In March, the sentencing court imposed a standard range sentence of 318 months based on an offender score of 9+ points for the three first degree child rape convictions. On the same date, the sentencing court also sentenced Haley to 60 months for a second degree incest conviction to

which Haley pleaded guilty in a separate cause number. The sentencing court ordered the sentence of 60 months to run consecutive to, rather than concurrent with, the 318-month first degree child rape sentence. The sentencing court did not provide any findings of fact or conclusions of law supporting the exceptional consecutive sentence.

Haley filed a timely notice of appeal.

ANALYSIS

I. BENCH TRIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties agree that the trial court violated CrR 6.1(d) by failing to enter findings of fact and conclusions of law following the bench trial. And the parties agree that the trial court remedied this error by entering findings and conclusions after Haley filed his appeal. But Haley argues that the written findings were improperly tailored to rebut his appellate arguments. Haley's arguments fail because the written findings were not tailored.

A. PRINCIPLES OF LAW

Generally, the failure to enter written findings and conclusions is an error that may be corrected after an appeal is filed. *State v. Pruitt*, 145 Wn. App. 784, 794, 187 P.3d 326 (2008). But reversal is warranted if the appellant can show actual prejudice from belated entry of findings. *Pruitt*, 145 Wn. App. at 794. "The [appellant] may show prejudice by establishing that the belated findings were tailored to meet the issues raised in the appellant's opening brief." *Pruitt*, 145 Wn. App. at 794. Where findings of fact are almost identical to or closely mirror the court's oral ruling, the findings are not improperly tailored. *See State v. Ritter*, 149 Wn. App. 105, 108-09, 201 P.3d 1086 (2009); *State v. Portomene*, 79 Wn. App. 863, 865, 905 P.2d 1234 (1995).

B. FINDINGS NOT TAILORED

1. FINDING REGARDING *MIRANDA* RIGHTS

Haley asserts that the following finding from the bench trial was tailored to address his arguments about the CrR 3.5 hearing and admission of statements obtained in violation of *Miranda*:

> He interviewed [Haley] at the Jefferson County jail, when [Haley] came to the Sheriff's office to register as a sex offender. Detective Stevenson indicated he wanted to speak with [Haley] about another matter and shut the door for privacy. Detective read [Haley] his *Miranda* rights and explained in detail one of the rape allegations.

CP at 265.

Comparing these written findings to the trial court's oral ruling does not suggest these findings were tailored. In fact, the written findings are almost identical to the trial court's oral ruling:

> He interviewed [Haley] at the jail. The jail -- he had come to the office to register as [a sex offender], and after that process was completed the officer told him he needed to talk to him about another matter. Shut the door for privacy. Read [Haley] his *Miranda* Rights. Explained in detail the allegations of at least one of the alleged rapes.

VRP (Feb. 3, 2017) at 18.

Given the fact that the challenged written finding is nearly identical to the oral ruling, Haley has failed to show that the written findings were tailored to address his assignments of error. *Ritter*, 149 Wn. App. at 108-09.

2. "FINDINGS" REGARDING BLACKBERRY BUSHES

Haley next argues that the trial court tailored the written findings to omit discussion of Haley's custodial statements about the blackberry bushes and thus downplay the prejudice that Haley experienced as a result of the statements' admission. To support this argument, Haley

quotes the oral ruling that summarized Detective Stevenson's testimony and asserts that the written ruling contains no such language and thus was tailored to deemphasize the trial court's reliance on the statements.

However, contrary to Haley's assertion, the written ruling contains over a page of summary of Detective Stevenson's testimony that tracks closely with the oral ruling, including four paragraphs about the detective's interview with Haley and Haley's response about the blackberry bushes. Given the fact that the challenged written finding is substantially identical to the oral ruling that summarized the trial testimony, Haley has failed to show that the written findings were tailored to address his assignments of error. *Ritter*, 149 Wn. App. at 108-09.

II. CrR 3.5 Hearing

Haley argues that the trial court improperly admitted his statements that were obtained without a valid waiver of his *Miranda* rights. We hold that although the trial court erroneously admitted Haley's statements, the error was harmless.[3]

A. Principles of Law

CrR 3.5 governs generally the admissibility of "a statement of the accused." CrR 3.5(a); *State v. Williams*, 137 Wn.2d 746, 751, 975 P.2d 963 (1999). A trial court is required to enter written findings and conclusions following a CrR 3.5 hearing. CrR 3.5(c). Failure to comply with CrR 3.5's writing requirement is an error, but the error is harmless if the trial court's oral findings

[3] The trial court erred when it failed to enter findings of fact and conclusions of law following the suppression hearing. *State v. Grogan*, 147 Wn. App. 511, 516, 195 P.3d 1017 (2008). However, the oral ruling is extensive and sufficient for appellate review. *See Grogan*, 147 Wn. App. at 516.

are sufficient to allow appellate review. *State v. Grogan*, 147 Wn. App. 511, 516, 195 P.3d 1017 (2008); *State v. Cunningham*, 116 Wn. App. 219, 226, 65 P.3d 325 (2003).

Under *Miranda*, a suspect in custody "'must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.'" *State v. Brown*, 132 Wn.2d 529, 582, 940 P.2d 546 (1997) (quoting *Miranda*, 384 U.S. at 479). However, there is no requirement that law enforcement use the precise language stated in *Miranda*. *Brown*, 132 Wn.2d at 582. "The question is whether the warnings reasonably and effectively conveyed to a suspect his rights as required by *Miranda*." *Brown*, 132 Wn.2d at 582.

Custodial statements made by an accused are excluded unless preceded by a full advisement of rights and a knowing, intelligent, and voluntary waiver of rights. U.S. CONST. amend. V; *Miranda*, 384 U.S. at 469-73; *State v. Athan*, 160 Wn.2d 354, 380, 158 P.3d 27 (2007). A reviewing court will not disturb a trial court's conclusion that a waiver was voluntarily made if the trial court found by a preponderance of the evidence that the statements were voluntary and substantial evidence in the record supports the finding. *Athan*, 160 Wn.2d at 380. Evidence is substantial when it is sufficient to persuade a fair-minded person of the truth of the stated premise. *State v. Thetford*, 109 Wn.2d 392, 396, 745 P.2d 496 (1987).

B. COURT ERRED

Haley argues that the trial court erred when it admitted statements into evidence that Haley made during custodial interrogation without proof that the interrogating officer adequately warned Haley of his *Miranda* rights. And Haley asserts that Detective Stevenson's testimony at the CrR

3.5 hearing that he read Haley his "'constitutional rights'" and "'right to remain silent'" was not substantial evidence supporting that Haley received and waived all of his *Miranda* rights. Brief of Appellant at 19. In connection with this argument, Haley assigns error to the following factual finding from the court's oral ruling at the suppression hearing:

> The officer then read [Haley] his *Miranda* constitutional rights. [Haley] acknowledged that he understood those rights. The officer asked if he would be willing to talk to him and [Haley] said yes, he would be willing to talk to him.

2 VRP at 193.

Haley is correct that the trial court's finding that Detective Stevenson "read [Haley] his *Miranda* constitutional rights" is not supported by substantial evidence. 2 VRP at 193; *see Thetford*, 109 Wn.2d at 396. Although testimony supported that Detective Stevenson notified Haley of his right to remain silent, the record does not support that Haley received notice that "'anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.'" *Brown*, 132 Wn.2d at 582 (quoting *Miranda*, 384 U.S. at 479).

As such, the evidence was not sufficient to persuade a fair-minded person that Haley was notified of each of his *Miranda* rights before making his custodial statements. *Thetford*, 109 Wn.2d at 396. Thus, the trial court erred when it admitted the custodial statements without substantial evidence that Haley knowingly, intelligently, and voluntarily waived his *Miranda* rights. *Athan*, 160 Wn.2d at 380.

C. NO PREJUDICE

The parties dispute whether the trial court's admission of Haley's custodial statements was reversible error. Specifically, the parties dispute whether the trial court erred when it admitted

Haley's response when Detective Stevenson confronted him about BLH's allegations, including Haley's statements about the blackberry bushes and his failure to immediately deny the rape allegations. We hold that the error was harmless beyond a reasonable doubt.

A trial court's admission of a defendant's statement obtained in violation of *Miranda* is an error of constitutional magnitude. *State v. Rhoden*, 189 Wn. App. 193, 202, 356 P.3d 242 (2015). Constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error. *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). Constitutional error is presumed to be prejudicial, and the State bears the burden of proving that the error was harmless. *Guloy*, 104 Wn.2d at 425. When reviewing whether constitutional error is harmless, courts look at the untainted evidence to determine whether it is so overwhelming that it necessarily leads to a finding of guilt. *Guloy*, 104 Wn.2d at 426. Courts will reverse if there is any reasonable chance that the use of inadmissible evidence was necessary to reach the guilty verdict. *Guloy*, 104 Wn.2d at 426.

According to Haley, admission of his statements when confronted by Detective Stevenson with rape allegations, including his statements about the blackberry bushes, was prejudicial because it was "evidence of guilt in the court's eyes." Br. of Appellant at 20. To support this, Haley quotes the portion of the trial court's oral ruling that summarized Detective Stevenson's trial testimony, including his testimony about Haley's responses during the interrogation.

However, the portion of the trial court's oral ruling quoted by the State is merely the court's summary of the testimony and does not indicate that the trial court relied on that testimony to support its conclusions. The trial court's oral and written findings of fact both demonstrate that the trial court relied on BLH's credible testimony to support its verdict and did not articulate nor

rely on any findings regarding Haley's responses to the rape allegations, including his statements about the blackberry bushes, to support its conclusions. The trial court found that "BLH's testimony regarding the sexual assault allegations was credible." CP at 266. BLH's credible testimony established that Haley raped BLH on at least three occasions. The trial court made no findings about Haley's alleged reaction when confronted with accusations of the rape, which shows that the tainted evidence about Haley's reaction had no impact on the trial court's decision. Instead, the trial court relied solely on BLH's untainted testimony.[4] BLH's detailed testimony, if believed, overwhelmingly supports Haley's guilt. *See Guloy*, 104 Wn.2d at 426.

The State proved that there is no reasonable chance that the use of inadmissible evidence was necessary to reach the guilty verdict, and there is no reasonable doubt that the trial court would have reached the same result in the absence of the error. *Guloy*, 104 Wn.2d at 425. The State has proved that the *Miranda* violation was harmless beyond a reasonable doubt because the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt. *See Guloy*, 104 Wn.2d at 426.

III. JURY TRIAL WAIVER

Haley argues that the trial court violated his right to a jury trial when it accepted his invalid jury trial waiver. We disagree.

[4] BLH's credible testimony is alone sufficient to establish rape and incest. *See* RCW 9A.44.020(1); *State v. Chenoweth*, 188 Wn. App. 521, 535-37, 354 P.3d 13 (2015).

A. PRINCIPLES OF LAW

We review de novo whether a criminal defendant's constitutional right to a jury trial has been violated. *State v. Ramirez-Dominguez*, 140 Wn. App. 233, 239, 165 P.3d 391 (2007). The State has the burden of proving the waiver was valid. *State v. Wicke*, 91 Wn.2d 638, 645, 591 P.2d 452 (1979).

A valid jury trial waiver must be in writing or presented orally on the record. *Ramirez-Dominguez*, 140 Wn. App. at 240. Oral waivers on the record are sufficient if made knowingly, intelligently, voluntarily, and free from improper influences. *Ramirez-Dominguez*, 140 Wn. App. at 240 (citing *State v. Stegall*, 124 Wn.2d 719, 724-25, 881 P.2d 979 (1994)).

When reviewing the validity of a jury trial waiver, we consider whether the defendant was informed of his constitutional right to a jury trial as well as the facts and circumstances of the waiver, including the experience and capabilities of the accused. *Ramirez-Dominguez*, 140 Wn. App. at 240 (citing *City of Seattle v. Williams*, 101 Wn.2d 445, 451, 680 P.2d 1051 (1984)). Defense counsel's statement that the defendant knowingly, intelligently, and voluntarily waives his jury trial rights is also relevant. *Ramirez-Dominguez*, 140 Wn. App. at 240. A jury waiver is constitutionally valid on a showing of either a personal statement from the defendant expressly agreeing to the waiver, or an indication that the trial judge or defense counsel has discussed the issue with the defendant before the attorney's own waiver. *Stegall*, 124 Wn.2d at 729.

B. WAIVER VALID

Haley acknowledges that he was informed of his right to a jury trial and that he provided a written waiver and engaged in a colloquy with the trial court. But he asserts that the waiver was invalid because it did not "reveal whether or not [Haley] understood that under the Washington

constitution, there had to be complete unanimity in order to enter a guilty verdict." Br. of Appellant at 27. Haley argues that without notification of this specific aspect of jury trials in Washington, he could not provide a knowing, voluntary, and intelligent waiver.

Haley provides no authority that supports that a defendant needs to be informed about Washington's unanimity requirement for a jury trial waiver to be knowing, voluntary, and intelligent. To the contrary, a valid waiver must show only "a personal expression" of waiver by the defendant or "an indication that either counsel or the judge discussed this right with the defendant." *Stegall*, 124 Wn.2d at 731.

Here, the record supports that Haley's waiver was knowing, voluntary, and intelligent because he personally expressed his waiver and consulted extensively with counsel before the waiver was made. Haley expressed in both written and oral statements that he waived his jury trial right and preferred a bench trial. In addition, the trial court engaged in a detailed colloquy in which Haley, both directly and through his attorney, expressed his desire to have the case heard by the trial court. Haley's counsel stated that he and Haley

> have had lengthy, extensive discussions. . . . And I've expressed my strong preference for a trial by jury. He's adamant that he'd prefer trial to the Bench." 1 VRP at 93. Counsel also stated that he had "met with Mr. Haley out at the jail the evening before last and again had a lengthy discussion/argument with Mr. Haley about the pros and cons of a Bench Trial, my preference for a trial by jury. . . . [H]e's steadfast in his decision and would like to try this to the Bench on the 30th, Your Honor.

1 VRP at 93.

In addition, after defense counsel submitted Haley's written waiver, the trial court then entered into a colloquy with Haley that reviewed the jury trial right and confirmed that Haley intended to waive it and was not coerced or otherwise being pressured to waive the right. During

the colloquy, Haley stated that he understood from discussions with defense counsel the advantages and disadvantages of waiving the jury trial.

Haley's jury trial waiver was knowing, voluntary, and intelligent and thus the trial court did not err by accepting the waiver. *Stegall*, 124 Wn.2d at 725-30.

IV. CONSECUTIVE SENTENCES

Haley argues that the sentencing court erred when it ordered exceptional consecutive sentences without making the necessary findings and conclusions to impose an exceptional sentence. The State concedes that the sentencing court erred. We accept the State's concession and remand for resentencing.

With a few exceptions not applicable here, sentences for two or more "current offenses" shall be served concurrently and "[c]onsecutive sentences may only be imposed under the exceptional sentence provisions of [former] RCW 9.94A.535 [2005]." RCW 9.94A.589(1)(a); *In re Pers. Restraint of Finstad*, 177 Wn.2d 501, 507, 301 P.3d 450 (2013). Under former RCW 9.94A.535, a trial court may impose an exceptional sentence if "there are substantial and compelling reasons justifying an exceptional sentence." In such a case, the trial court must "set forth the reasons for its decision in written findings of fact and conclusions of law." Former RCW 9.94A.535. Our Supreme Court has stated that "[w]hile the [Sentencing Reform Act of 1981, ch. 9.94A RCW] does not formally define 'current offense,' the term is defined functionally as convictions entered or sentenced on the same day." *Finstad*, 177 Wn.2d at 507 (citing RCW 9.94A.525(1)).

Haley was sentenced on the same day for his first degree rape convictions and second degree incest convictions from a different cause number, so these are both "current offenses" for

which the sentences are presumptively concurrent. *See* RCW 9.94A.589(1)(a); *Finstad*, 177 Wn.2d at 507. The sentencing court failed to find "substantial and compelling reasons justifying an exceptional sentence" and failed to "set forth the reasons for its decision in written findings of fact and conclusions of law." Former RCW 9.94A.535.

Because the trial court failed to make the necessary findings before imposing an exceptional consecutive sentence, we accept the State's concession that the trial court erred and remand for resentencing.

STATEMENT OF ADDITIONAL GROUNDS

I. PROSECUTORIAL MISCONDUCT

Haley argues in his SAG that the prosecutor engaged in misconduct when he "said something to the judge at closing argument that was misconduct." SAG at 1. While a SAG need not include citations to the record or legal argument, the appellant must "inform the court of the nature and occurrence of the alleged errors." RAP 10.10(c); *State v. Alvarado*, 164 Wn.2d 556, 569, 192 P.3d 345 (2008). Furthermore, we are "not obligated to search the record in support of claims made in a defendant's statement of additional grounds for review." RAP 10.10(c). We cannot review a SAG claim if it is too vague to properly inform us of the claimed error. *State v. Bluehorse*, 159 Wn. App. 410, 436, 248 P.3d 537 (2011). Because Haley's SAG argument is too vague to inform us of the claimed error, we do not address it further. *Bluehorse*, 159 Wn. App at 436.

II. DETECTIVE STEVENSON'S INCONSISTENT TESTIMONY

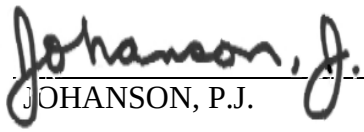
Haley argues that Detective Stevenson provided testimony that was inconsistent with a prior police report. Haley argues that Stevenson did so in order to make his testimony consistent with Richardson's testimony. Haley appears to challenge Detective Stevenson's testimony regarding Richardson's prior statements during an interview that Haley had confessed to sexual misconduct with his daughters during a phone call. And Haley appears to rely on the fact that, on cross-examination, Detective Stevenson acknowledged some discrepancies between his written report of Richardson's disclosures and his testimony.

We defer to the trier of fact to resolve issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Haley's claim attacks the credibility of Detective Stevenson's statements. The argument fails because credibility determinations are not reviewable. *Walton*, 64 Wn. App. at 415-16. In addition, the trial court explicitly found that the evidence about Haley's alleged confession to Richardson was unreliable, and the trial court did not consider this evidence in its decision. Haley has failed to establish any error related to Detective Stevenson's testimony about the confession.

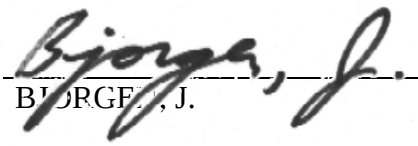
We affirm the convictions and remand for resentencing.

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 in accordance with RCW 2.06.040, it is so ordered.



JOHANSON, P.J.

We concur:



BJORGEN, J.

SUTTON, J.