IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27319-9-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
F.G.H.,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Brown, J. — Following a bench trial, the court convicted 12-year-old F.G.H. of several counts of burglary and theft. F.G.H. appeals, contending he did not knowingly, voluntarily, and intelligently waive his *Miranda*[1] rights before confessing to police. We disagree and affirm.

FACTS

While investigating a possible burglary, Officer Sam Masters brought F.G.H. to the police station. Officer Masters read F.G.H. his *Miranda* warnings, including the juvenile warnings. Officer Masters had no difficulty communicating with F.G.H. and he believed F.G.H. had no difficulty understanding and communicating with him. F.G.H.

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

told Officer Masters he understood the warnings and he wanted to make a statement. F.G.H. then told Officer Masters that he was involved in a burglary and that he and another individual kicked in the door of a residence, went inside, and took several guns.

The State charged F.G.H. with one count of first degree burglary, eleven counts of theft of a firearm, and one count of second degree theft. F.G.H. challenged the admissibility of his statement under CrR 3.5. The court allowed the statement, finding the confession was willingly given and not forced or coerced.

The court later found F.G.H. guilty of one count of first degree burglary, ten counts of theft of a firearm, and one count of second degree theft (the court dismissed one of the theft of a firearm charges). F.G.H. appealed.

ANALYSIS

The issue is whether the trial court erred in finding F.G.H.'s confession was admissible.

As an initial matter, the State argues this issue is raised for the first time on appeal contrary to RAP 2.5(a). During the CrR 3.5 hearing, defense counsel noted repeatedly the risk of confusing F.G.H. with several other individuals who were being investigated for the burglary and thefts without a specific challenge to statement voluntariness. The trial court failed to enter written findings and conclusions to help shed light on defense counsel's objection to the admissibility of the statement. *See*

CrR 3.5(c) (trial court "shall set forth in writing" its decision). Nevertheless, the omission of written findings of fact and conclusions of law is harmless if the court's oral ruling is sufficient for appellate review. *State v. Miller,* 92 Wn. App. 693, 703, 964 P.2d 1196 (1998). The court, here, orally ruled that F.G.H. was willing to speak and his confession was not coerced or forced. Because the trial court ruled on the voluntariness of F.G.H.'s confession, this issue has been preserved for appeal.

In determining whether a juvenile has voluntarily waived *Miranda* rights, we consider the totality of the circumstances. *State v. Allen,* 63 Wn. App. 623, 626, 821 P.2d 533 (1991). In determining whether a juvenile's confession is voluntary, we consider the totality of the circumstances, including the juvenile's age, experience, education, background, intelligence, and capacity to understand the warning, the nature of his rights, and the consequences of waiving his rights. *State v. Furman,* 122 Wn.2d 440, 450, 858 P.2d 1092 (1993).

"The State bears the burden of proving voluntariness by a preponderance of the evidence." *State v. Braun,* 82 Wn.2d 157, 162, 509 P.2d 742 (1973). If substantial evidence exists in the record from which the trial court could have found by a preponderance of the evidence that the confession was voluntary, we will not disturb the trial court's voluntariness determination on appeal. *State v. Aten*, 130 Wn.2d 640, 664, 927 P.2d 210 (1996).

Here, F.G.H. told the officer he understood his rights and wanted to make a

statement. Officer Masters testified he had no problem communicating with F.G.H. and he believed F.G.H. had no difficulty understanding him. While F.G.H. was only 12-years-old, nothing in the record shows that he lacked the intelligence or capability to understand the right to remain silent. F.G.H. argues 12-year-olds are too young, in general, to understand the full consequence of the exercise or waiver of their constitutional rights. But, "the test is whether a person knew he had the right to remain silent, and that anything he said could be used against him in a court of law, not whether he understood the precise legal effect of his admissions." *Dutil v. State,* 93 Wn.2d 84, 90, 606 P.2d 269 (1980). Moreover, "If a juvenile understands that he has a right, after he is told that he has that right, and that his statements can be used against him in a court, the constitutional requirement is met." *Id.* Under the totality of the circumstances, we conclude F.G.H. was capable of waiving his right to remain silent. Substantial evidence supports this finding and this finding supports the court's conclusion that F.G.H.'s confession was voluntary. There was no error in admitting the confession at F.G.H.'s bench trial.

Affirmed.

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.

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Brown, J.

WE CONCUR:

Schultheis, C.J.

Korsmo, J.