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Court of Appeals
Division I
State of Washington

NO. 71928-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

FIDEL BAUTISTA-GONZALEZ,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES D. CAYCE

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
1. PROCEDURAL FACTS	2
2. SUBSTANTIVE FACTS	3
C. <u>ARGUMENT</u>	9
1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN FINDING W.C. COMPETENT TO TESTIFY	9
a. Relevant Facts	9
b. The Trial Court Properly Exercised Its Discretion In Finding That W.C. Understood The Obligation To Speak The Truth On The Witness Stand	16
c. Any Error Was Harmless	24
2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING THE MAJORITY OF L.C.'S AND W.C.'S HEARSAY STATEMENTS	29
a. The Trial Court Properly Exercised Its Discretion In Finding That W.C.'s And L.C.'s Hearsay Statements Were Spontaneous Within The Meaning Of The <u>Ryan</u> Factors	32
i. Relevant facts	32
ii. The statements were spontaneous	36

iii.	Any error was harmless.....	40
b.	This Court Should Decline To Review Bautista-Gonzalez's Claim That The Trial Court Abused Its Discretion In Admitting L.C.'s Hearsay Statements About Sexual Abuse Of W.C.	43
i.	Relevant facts.....	43
ii.	Bautista-Gonzalez may not raise this claim for the first time on appeal.....	46
iii.	Any error in the admission of the challenged hearsay statements was harmless.....	47
D.	<u>CONCLUSION</u>	49

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Allen, 70 Wn.2d 690,
424 P.2d 1021 (1967)..... 16, 17, 19, 21, 24

State v. Ashurst, 45 Wn. App. 48,
723 P.2d 1189 (1986)..... 40, 47

State v. Avila, 78 Wn. App. 731,
899 P.2d 11 (1995)..... 17

State v. Borland, 57 Wn. App. 7,
786 P.2d 810 (1990)..... 20, 31, 36

State v. Brousseau, 172 Wn.2d 331,
259 P.3d 209 (2011)..... 24

State v. C.J., 148 Wn.2d 672,
63 P.3d 765 (2003)..... 21, 25, 26, 28, 31, 32

State v. Cunningham, 93 Wn.2d 823,
613 P.2d 1139 (1980)..... 47

State v. Emery, 174 Wn.2d 741,
278 P.3d 653 (2012)..... 16

State v. Ferguson, 100 Wn.2d 131,
667 P.2d 68 (1983)..... 46, 47

State v. Henderson, 48 Wn. App. 543,
740 P.2d 329 (1987)..... 36

State v. Hunt, 48 Wn. App. 840,
741 P.2d 566 (1987)..... 26, 27

State v. Jones, 112 Wn.2d 488,
772 P.2d 496 (1989)..... 27

<u>State v. Karpenski</u> , 94 Wn. App. 80, 971 P.2d 553 (1999).....	21, 22, 23
<u>State v. Kirkman</u> , 159 Wn.2d 918, 155 P.3d 125 (2007).....	46
<u>State v. Luckett</u> , 73 Wn. App. 182, 869 P.2d 75 (1994).....	40, 47
<u>State v. O'Hara</u> , 167 Wn.2d 91, 217 P.3d 756 (2009).....	46
<u>State v. Rohrich</u> , 132 Wn.2d 472, 939 P.2d 697 (1997).....	20
<u>State v. Ryan</u> , 103 Wn.2d 165, 691 P.2d 197 (1984).....	30, 31, 32, 36, 37, 38, 39, 40
<u>State v. S.J.W.</u> , 149 Wn. App. 912, 206 P.3d 355 (2009), <u>aff'd on other grounds</u> , 170 Wn.2d 92, 239 P.3d 568 (2010).....	16, 17
<u>State v. Swan</u> , 114 Wn.2d 613, 790 P.2d 610 (1990).....	28, 32, 36, 38, 39, 40
<u>State v. Woods</u> , 154 Wn.2d 613, 114 P.3d 1174 (2005).....	16
<u>Trueax v. Ernst Home Ctr., Inc.</u> , 124 Wn.2d 334, 878 P.2d 1208 (1994).....	46, 47
<u>Other Jurisdictions:</u>	
<u>State v. Ruiz</u> , 131 N.M. 241, 34 P.3d 630 (Ct. App. 2001).....	37, 38

Statutes

Washington State:

RCW 5.60.020..... 16
RCW 5.60.050..... 16, 24
RCW 9A.04.110 30
RCW 9A.44.120 25, 26, 27, 28, 30, 31, 32, 39, 40, 43
RCW 13..... 30

Rules and Regulations

Washington State:

ER 601 16
RAP 2.5..... 46, 47

A. ISSUES PRESENTED

1. The party challenging a child's competency to testify bears the burden of establishing that the child is incapable of accurately perceiving and remembering facts or of relating them truthfully in court. The defendant contends that nine-year-old W.C. was incapable of relating facts truthfully in court, but the evidence established that W.C. understood the obligation to speak the truth on the witness stand and was able to distinguish truth from falsity. Did the trial court properly exercise its discretion in finding W.C. competent to testify?

2. In evaluating the reliability of a child's hearsay statement about sexual abuse, one of the factors a trial court considers is whether the statement was "spontaneous," which the courts have interpreted to mean not made in response to leading or suggestive questions. L.C. and W.C. made an initial disclosure of abuse to their mother that was completely unprompted, and then subsequently made consistent statements to their mother and others in response to non-leading, non-suggestive questioning. Did the trial court properly exercise its discretion in finding that all of L.C.'s and W.C.'s statements were "spontaneous"?

3. The erroneous admission of hearsay is a nonconstitutional error so long as the declarant testifies at trial, and thus may not be raised for the first time on appeal. The defendant challenges the admission of child hearsay statements on appeal on a basis that was not raised in the trial court, but the declarant testified at trial and any error in admitting the statements was harmless. Should this Court decline to review this claim on the grounds that it was not properly preserved, and if not, was any error harmless?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged the defendant, Fidel Bautista-Gonzalez, with four counts of rape of a child in the first degree—two involving victim L.C. and two involving victim W.C. CP 228-29. A jury found Bautista-Gonzalez guilty as charged on all counts. CP 252-55. He received concurrent standard range indeterminate sentences of 318 months to life in prison on each count, and timely appealed. CP 285, 288, 295.

2. SUBSTANTIVE FACTS.

L.C. and W.C. were two and four years old, respectively, when their mother, Andrea C.,¹ began dating the defendant, Fidel Bautista-Gonzalez, in 2009. 2RP² 173; 16RP 60. Andrea and her daughters moved in with Bautista-Gonzalez, and lived with him off and on over the next several years. 16RP 60-62. Andrea loved and trusted Bautista-Gonzalez, and at his suggestion she began routinely leaving the girls in his care while Andrea attended her thrice-weekly Alcoholic Anonymous ("AA") meetings. 16RP 52-53.

In December of 2011, when L.C. was four and W.C. was six, L.C. became sick and had blisters around her anus and vagina. 16RP 62-63. Andrea took her to the doctor, where L.C. tested positive for herpes simplex type two, a sexually transmitted disease. 16RP 63. A follow-up examination at Seattle Children's Hospital revealed that the quantity of lesions and the absence of any antibodies in her blood indicated that L.C. was experiencing a

¹ L.C. and W.C.'s mother is referred to by her first name throughout this brief to protect her daughters' privacy. No disrespect is intended.

² The report of proceedings comprises 23 volumes, and will be referred to as follows: 1RP (1/7/14), 2RP (1/8/14), 3RP (1/9/14), 4RP (1/13/14), 5RP (1/14/14), 6RP (1/16/14), 7RP (2/10/14), 8RP (2/18/14), 9RP (2/19/14), 10RP (2/20/14), 11RP (2/24/14), 12RP (2/25/14), 13RP (Excerpt from 2/25/14), 14RP (2/26/14), 15RP (Excerpt from 2/26/14), 16RP (2/27/14), 17RP (3/3/14), 18RP (3/4/14), 19RP (3/5/14), 20RP (Excerpt from 3/5/14), 21RP (Excerpt from 3/6/14), 22RP (3/6/14); and 23RP (5/9/14).

primary outbreak of the herpes virus and had been exposed to it through genital-to-genital contact sometime in the previous several weeks. 16RP 9-14, 21, 31. Additionally, the concentration of the blisters around L.C.'s anus suggested that she had likely contracted the virus through anal penetration by the genitalia of an infected person. 16RP 16.

Together, Andrea and hospital staff filed a report with the police and with Child Protective Services (CPS). 16RP 115-16. Andrea asked all the men in her family to be tested for herpes, though she did not suspect Bautista-Gonzalez at all. 16RP 116. In the end, he was the only one who received a positive result, with testing confirming that Bautista-Gonzalez was infected with herpes simplex types one and two. 2RP 177; 10RP 53. Andrea's own test revealed that she too had somehow contracted herpes. 16RP 65.

L.C. and W.C. were both interviewed by child interview specialist Carolyn Webster in December 2011, but neither disclosed any sexual abuse. 12RP 66-67, 72. However, Webster, as well as the detective and the CPS representative who watched the interview through a two-way mirror, observed that L.C. was happy to talk about other men in her life, but refused to answer and complained of a stomach ache when questioned about Bautista-

Gonzalez. 10RP 37; 12RP 70; 16RP 119. Suspecting that Bautista-Gonzalez had sexually abused L.C., CPS required Andrea to move herself and her daughters out of his house. 16RP 118. Andrea complied, and moved in with her mother until she was able to buy her own home in 2012, at which point CPS closed Andrea's case. 16RP 119.

Over the next year, Bautista-Gonzalez slowly began reentering Andrea's life, and she became convinced that it could not have been he who gave L.C. herpes. 16RP 121. In April 2012 they began dating again, and Bautista-Gonzalez again began babysitting L.C. and W.C. during Andrea's AA meetings, as well as staying overnight with Andrea and the girls almost every weekend. 16RP 123-24. In November 2012, Andrea and Bautista-Gonzalez broke up for the last time over Andrea's desire to delay marriage in favor of going back to school. 2RP 179; 16RP 126.

However, Andrea stayed in contact with Bautista-Gonzalez, who occasionally came over and helped out. 16RP 127-28. On one such occasion in early January 2013, he came over at Andrea's request to put insulating plastic over the windows of her home. 16RP 128. Andrea herself was not home, as Bautista-Gonzalez had agreed to watch L.C. and W.C. while Andrea went to

her AA meeting. 16RP 129. Although Bautista-Gonzalez had indicated that he would be able to finish all the windows in the two hours Andrea was gone, she returned home to find that only some of the windows had been done. 16RP 129-30. Although Bautista-Gonzalez left more abruptly than usual, neither L.C. nor W.C. gave any indication that anything was wrong. 16RP 130. The last day Andrea had any contact with Bautista-Gonzalez was January 19, 2013.

In early February, when L.C. was five and W.C. had recently turned eight, Andrea was reading the girls a bedtime story when W.C. asked out of the blue whether Andrea had "what boys have," and then felt Andrea's crotch and said, "[N]o, you don't have it." 17RP 6. Andrea asked W.C. how she knew what boys have, and W.C. responded that "boys have the bananas and girls have the flowers," which were the terms Andrea had used with the girls for penises and vaginas, respectively. 16RP 131-32; 17RP 6. Andrea responded by confirming that boys have penises, when L.C. interrupted and said "just like Fidel has." 17RP 6.

Andrea asked L.C. if she had seen Bautista-Gonzalez's penis, and L.C. replied, "[W]hen he used to do uh-uh-uh to us." 17RP 8. "Uh-uh-uh" was a term L.C. and W.C. had used for sex

since once hearing Andrea and Bautista-Gonzalez having sex when the girls were younger. 17RP 8; 16RP 133. When Andrea asked L.C. to explain what had happened, L.C. appeared scared and began answering, "I don't know." 17RP 9. When Andrea asked what Bautista-Gonzalez had done and whether it hurt, L.C. responded, "[I]t only hurt when he did it on my butt, not when he did it on my flower." 17RP 12. L.C. indicated that Bautista-Gonzalez had done the same thing to W.C. 17RP 12. When Andrea asked W.C. if Bautista-Gonzalez had done "uh-uh-uh" to her, W.C. indicated that he had, and that it had only hurt "when he would do it in my butt." 17RP 12. At that point, Andrea stopped asking questions and put the girls to bed. 17RP 12.

The next day, Andrea filed a police report, and Bautista-Gonzalez was arrested. 10RP 60-62; 17RP 14. Interviews for L.C. and W.C. with child interview specialist Carolyn Webster were scheduled for two days later. 17RP 16. However, Andrea feared that L.C. and W.C. would refuse to speak to Webster about the abuse, as had happened in the 2011 interviews, and that the police would not believe their allegations without proof of what they had said. 17RP 18.

As a result, Andrea borrowed her sister's video camera the night before the interviews with Webster, and filmed L.C. and W.C. as she asked them to repeat what they had previously told her about Bautista-Gonzalez. 17RP 18; CP 143 (transcript of video).³ During this recording, L.C. disclosed that one instance of abuse occurred on the day that Bautista-Gonzalez put plastic on the windows, and that he had told them to keep it a secret or else Andrea might kick them. 17RP 19; CP 144-45. Andrea gave the video to the assigned detective the next day. 17RP 22.

During the videotaped interviews with Webster the next day, L.C. and W.C. both disclosed multiple instances of vaginal and anal rape by Bautista-Gonzalez. 12RP 76-77; CP 121. Their statements were consistent with what they had told their mother, and each included additional details they had not told their mother, such as descriptions of how Bautista-Gonzalez's body was positioned during some of the rapes, how his penis felt, how he had wiped L.C.'s vaginal area clean after the rapes, the fact that he had put his penis in L.C.'s mouth, and how he had held W.C. during some of the rapes. 13RP 3-66; 15RP 23-30, 35, 58-70.

³ Although most of the videos played at trial were transcribed as part of the report of proceedings, the video taken by Andrea was not. 17RP 18. Because it was admitted without redactions, this brief will refer to the transcript that was used by the parties in pretrial motions for the Court's convenience. CP 143-48, 320.

At trial, both L.C. and W.C. testified, and many of their prior statements to Andrea, Webster, and a physician were admitted. 14RP 5, 33; 15RP 3-71; 16RP 78-80; 17RP 6-12. Bautista-Gonzalez testified and denied the allegations. 18RP 28-30.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN FINDING W.C. COMPETENT TO TESTIFY.

Bautista-Gonzalez contends that the evidence was insufficient for the trial court to find it more likely than not that W.C. was capable of distinguishing truth from falsity, and that the court therefore abused its discretion in finding W.C. competent to testify. This claim should be rejected. Because Bautista-Gonzalez failed to establish that W.C. was unable to understand or carry out the obligation to speak the truth on the witness stand, the trial court properly exercised its discretion in finding her competent to testify.

a. Relevant Facts.

Prior to trial, a hearing was held to determine whether W.C. was competent to testify about the alleged sexual abuse by Bautista-Gonzalez.⁴ 1RP 7-8. The trial court heard testimony from

⁴ Bautista-Gonzalez also challenged L.C.'s competency in the trial court, but he does not assign error to the trial court's finding that L.C. was competent. 1RP 7; CP 48-50; Brief of Appellant at 1.

W.C., Andrea, Webster, and two experts from the University of Washington's Fetal Alcohol Syndrome Clinic, where W.C. was evaluated in August 2013. 1RP 8, 17, 65; 2RP 98, 154; 3RP 218.

The testimony established that W.C., who turned nine years old on the first day of trial, has an average I.Q. 1RP 23; 2RP 98. She does not meet the criteria for full Fetal Alcohol Syndrome, but she does suffer from Attention Deficit Hyperactive Disorder and a significant language learning disability stemming from prenatal alcohol exposure. 1RP 18-21. As a result of her language impairment, W.C. has much greater difficulty understanding language and using language to express her thoughts than the average child her age. 1RP 23. She has difficulty understanding long or complex sentences, and sometimes does not understand subtleties of vocabulary that the average child her age would understand, such as the distinction between terms of temporal gradation like "often" and "ever," or the fact that "yesterday" specifically refers to the day before today rather than just sometime in the past. 1RP 80, 85-87.

Dr. John Thorne, the speech language pathologist who examined W.C. at the clinic, testified that despite her impairment, W.C. should be able to understand linguistically simple questions

about an event. 1RP 69-70; 2RP 296. He also stated that, although W.C. is likely to have more difficulty using words to express her memory of an event than the average child her age, even children with severe language impediments successfully communicate their intended message as much as 80 to 90 percent of the time. 2RP 290.

Although the testing administered at the Fetal Alcohol Syndrome Clinic revealed W.C.'s deficits in the use of language, it did not test her ability to accurately perceive and recall events in her life, her ability to understand the difference between truth and falsity, or her reliability as a witness. 1RP 24, 90; 2RP 279, 284-85. Thorne opined that there was no reason W.C. would not be able to understand the obligation to tell the truth on the witness stand if it were explained in simple language that W.C. could understand. 2RP 285.

At the competency hearing, W.C. testified that she understood what it meant to promise to tell the truth, and that it was bad to tell a lie. 2RP 108. Although she was unable at one point to articulate why it was bad to lie, she stated that it was important to tell the truth in court "because we got to tell the truth" and that she was in court "because I'm here to tell the truth." 2RP 108, 111-12.

She was able to respond to simple questions and accurately described past events, such as how she celebrated Christmas and her birthday, and what presents she received on each occasion. 2RP 99-101, 104-08. Her mother's subsequent testimony confirmed that W.C. had testified truthfully about those events. 2RP 159-66.

At one point, W.C. was shown a blue pen, and the following exchange occurred:

Q: Okay. What if I told you that this pen was pink?
Would I be telling the truth, or would I be telling a lie?

A: Telling the truth.

Q: I'd be telling the truth?

A: Yes.

Q: What color is this pen?

A: Blue.

Q: Okay. So if I said that it was pink, I said this pen is pink, would I be telling the truth?

A: Yes.

2RP 109. Thorne later testified that although a child with a communication disorder like W.C.'s might misunderstand a linguistically complex question and answer in a way that appears to indicate the child believes something false to be true, that does not necessarily indicate that the child is in fact unable to distinguish truth from falsity. 2RP 293. Even a linguistically simple question

about the color of an object could result in a similar breakdown of communication for numerous reasons. 2RP 295.

Andrea testified during the competency hearing that she had talked to her daughters about the importance of telling the truth in court, and that W.C. has no history of lying about serious subjects, such as who broke an expensive toy or who locked the cat in a closet, as opposed to trivial topics, such as whether W.C. had eaten her vegetables. 2RP 156, 159, 171. Andrea testified that, when W.C. was younger and her language skills were less developed, it had been difficult to understand her and thus difficult to tell when she was not being truthful. 2RP 159, 166. However, these days Andrea could tell when W.C. was not being truthful. 2RP 171. Andrea confirmed that W.C. responds best to specific questions requiring simple answers, such as “was it sunny, or was it raining?” as opposed to general questions with more abstract terms, such as “how was the weather today?” 2RP 168.

After hearing the various witnesses’ testimony, observing W.C. on the stand, and watching the videotaped child interviews from 2011 and 2013, the trial court found W.C. competent to testify. 5RP 375; 6RP 415. The court noted that W.C.’s ability to respond appropriately was much greater when questions were presented in

simple ways than when the questions were more complex, and that her competency had improved between her 2011 interview and her 2013 interview, and again between the 2013 interview and her pretrial testimony 11 months later. 6RP 413-14. The court acknowledged that some of W.C.'s statements provided fodder for cross-examination about her truthfulness and argument about the weight the jury should give to her testimony, but specifically found that W.C. "can and does understand" the obligation to speak the truth on the witness stand. 6RP 415.

When she testified before the jury seven weeks later, W.C. again truthfully described her birthday celebration and her school, and promised to tell the truth. 14RP 6-8, 14. When asked if she knew why she was in court that day, W.C. responded, "Because I'm here to tell the truth." After addressing the substance of the sexual abuse, W.C. stated that Bautista-Gonzalez had told her not to tell her mother about it because Andrea "might hit my butt." 14RP 22. When W.C. was asked if she was afraid that her mom might hit or kick her, she responded, "No. She would just want me to tell the truth for her." 14RP 22.

When asked on cross-examination what her mom had told her about what she should say in court, W.C. responded, "To tell

the truth.” 14RP 29. Later, the following exchange occurred on re-cross-examination:

Q: I will be very quick, [W.C.]. What does it mean to tell the truth?

A: To tell the truth.

Q: Let me ask it this way. What does it mean to tell a lie?

A: My mom said that me and my sister can't tell a lie.

Q: And why not?

A: Because that would be lying.

Q: Is it better to tell the truth or is it better to tell a lie?

A: Better to tell the truth.

14RP 32.

In her testimony, W.C. gave only brief descriptions of the abuse, stating that Bautista-Gonzalez had “put his penis in [her] vagina” more than once and had “put his penis in [her] butt,” and that both felt “bad.” 14RP 20-22. The jury heard identical or substantially similar statements in the video of W.C.'s 2013 interview with Carolyn Webster, in Andrea's testimony about what W.C. had told her during the girls' initial disclosure, and in the video made by Andrea two days after the initial disclosure. 15RP 60, 64-67; 17RP 12, 19; CP 144-46.

b. The Trial Court Properly Exercised Its Discretion In Finding That W.C. Understood The Obligation To Speak The Truth On The Witness Stand.

Every person, regardless of age, is presumed competent to testify. State v. S.J.W., 170 Wn.2d 92, 100, 239 P.3d 568 (2010); RCW 5.60.020; ER 601. The party challenging a potential witness's competency bears the burden of establishing that the potential witness is "of unsound mind, or intoxicated at the time of their production for examination," or "appear[s] incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly." RCW 5.60.050; S.J.W., 170 Wn.2d at 102.

A trial court's determination of a witness's competency will not be reversed on appeal absent a manifest abuse of discretion. State v. Allen, 70 Wn.2d 690, 692, 424 P.2d 1021 (1967). A trial court abuses its discretion only when no reasonable judge would have reached the same conclusion. State v. Emery, 174 Wn.2d 741, 765, 278 P.3d 653 (2012). Although a trial court determines competency pre-trial, on appeal this Court examines the entire record to review that determination. State v. Woods, 154 Wn.2d 613, 617, 114 P.3d 1174 (2005).

Five factors, first set out in Allen, inform a trial court's determination of whether a child is incapable of receiving just impressions of the facts or of relating them truly. S.J.W., 170 Wn.2d at 102. Those factors examine whether the child has: "(1) an understanding of the obligation to speak the truth on the witness stand; (2) the mental capacity at the time of the occurrence concerning which he is to testify, to receive an accurate impression of it; (3) a memory sufficient to retain an independent recollection of the occurrence; (4) the capacity to express in words his memory of the occurrence; and (5) the capacity to understand simple questions about it." Allen, 70 Wn.2d at 692.

All that is required to meet the first Allen factor is a witness's on-the-record promise to tell the truth or acknowledgement of the importance of telling the truth in court. State v. S.J.W., 149 Wn. App. 912, 925, 206 P.3d 355 (2009) (factor satisfied because witness responded affirmatively when asked whether he promised to tell the truth), aff'd on other grounds,⁵ 170 Wn.2d 92, 239 P.3d 568 (2010); State v. Avila, 78 Wn. App. 731, 736, 899 P.2d 11 (1995) (factor satisfied because five-year-old witness "responded

⁵ In S.J.W., the supreme court granted review solely to address which party bears the burden of proof as to a child witness's competency, and denied review of the court of appeals' determination that the witness was competent. State v. S.J.W., 170 Wn.2d 92, 96-97, 239 P.3d 568 (2010).

affirmatively when the prosecutor asked her if it is important to tell the judge the truth about things”).

Here, the evidence strongly supports the trial court’s finding that W.C. understood the obligation to speak the truth on the witness stand. 6RP 415. W.C. was sworn in at the beginning of her pretrial testimony like every other witness, and repeatedly indicated her understanding of the need to tell the truth, affirmatively promised to tell the truth, and indicated her understanding that lying was wrong. 2RP 98 (sworn in), 108 (Q: Do you understand what it means [to promise to tell the truth]? A: Yes. Q: [I]s it good or bad to tell a lie? A: Bad.), 110-11 (Q: [D]o you understand that it’s important that you tell the truth today? Do you? A: Yes. Q: [C]an you tell me why that’s important? A: Because we got to tell the truth.), 112 (Q: [D]o you know why you’re here in court? A: Because I’m here to tell the truth.), 113 (Q: [Y]ou understand that it’s important to tell the truth about what happened with Fidel; right? A: Yes. Q: And can you promise all of us that you will tell the truth about that? A: Yes.), 117 (“[W]e’re here to tell the truth.”), 122 (Q: Can you tell me what [the word lie] means? A: It means when you lie, it’s not even nice to lie. Q: What did [your mom] tell you? A: She tell [sic] me to tell the truth. Q: And are you

telling the truth today? A: Yes.) W.C. made similar statements during her trial testimony. 14RP 9, 14, 22, 24, 31-32.

Furthermore, W.C.'s testimony about her daily life and past events such as her birthday and Christmas was confirmed to be true by her mother's testimony. 2RP 99-108, 159-66. The only part of W.C.'s testimony that cast any doubt on whether the first Allen factor was satisfied came when W.C. was asked to consider a hypothetical scenario involving false statements about the color of a blue pen. 2RP 109. When asked questions such as "So if I said that it was pink, I said this pen is pink, would I be telling the truth?" W.C. answered, "Yes," and stated that the prosecutor would be telling the truth. 2RP 109.

It is not clear what caused W.C. to answer incorrectly, but Dr. Thorne testified that such a miscommunication could be caused by any number of factors related to W.C.'s language disorder. 3RP 295. It appears that even Bautista-Gonzalez's trial counsel did not interpret W.C.'s comments as indicative of confusion between truth and lies, as he highlighted her statements about the pen most when arguing that she was incapable of receiving accurate impressions of facts. 6RP 402-04.

In light of W.C.'s difficulty processing long or abstract questions, it is entirely possible that W.C. misinterpreted the question to be asking whether, if the pen were pink, it would be truthful to say that the pen was pink. This possibility is reinforced by the fact that, when asked the linguistically simple and concrete question, "What color is this pen?", she answered truthfully and accurately that it was blue. 2RP 109.

The trial court, which had the benefit of observing W.C. on the stand, did not feel that her answers about the pen indicated an inability to tell the difference between a truth and a lie, and found that she "can and does understand" the obligation to speak the truth on the witness stand. 6RP 415. As this Court has noted,

There is probably no area of law where it is more necessary to place great reliance on the trial court's judgment than in assessing the competency of a child witness. The trial judge is in a position to assess the body language, the hesitation or lack thereof, the manner of speaking, and all the intangibles that are significant in evaluation but are not reflected in a written record.

State v. Borland, 57 Wn. App. 7, 11, 786 P.2d 810 (1990),
abrogated on other grounds by State v. Rohrich, 132 Wn.2d 472,
939 P.2d 697 (1997). In light of the abundant evidence that W.C.
understood the obligation to speak the truth on the witness stand,

the trial court properly exercised its discretion in finding that the first Allen factor was met.

Bautista-Gonzalez relies solely on State v. Karpenski, 94 Wn. App. 80, 971 P.2d 553 (1999), abrogated on other grounds by State v. C.J., 148 Wn.2d 672, 63 P.3d 765 (2003), for his contention that the trial court abused its discretion in finding W.C. competent. Brief of Appellant at 13-15. In Karpenski, the family of the seven-year-old witness, Z, testified that Z had a long history of making up extremely detailed stories about things that had never happened (such as a family trip to Hawaii) and refusing to accept that the stories were not true. Karpenski, 94 Wn. App. at 83-87.

When Z testified at a pretrial competency hearing, he promised to tell the truth without making up stories, but then told a story on the witness stand in which he insisted that he and his two-year-old brother had been born on the same day in 1989. Id. at 94-96. The trial court noted that Z seemed to be unable to distinguish dreams from reality, but nevertheless found him competent because he was able to remember and answer questions about an actual event. Id. at 97. The trial court did not acknowledge the requirement that a witness be able to understand the obligation to tell the truth on the witness stand. Id.

The court of appeals in Karpenski observed that competency requires not only the ability to understand the obligation to speak the truth, but also the ability to distinguish truth from falsehood so that the obligation to speak the truth can be carried out. Id. The court of appeals thus framed its inquiry as whether, viewing the record in the light most favorable to the State, a trial judge could reasonably find it to be more likely true than not true that Z was able to distinguish truth from falsity. Id. at 105-06. Given the history reported by Z's family and his testimony in court, the court of appeals ruled that the only reasonable view of the record was that Z was, at the time of trial, unable to distinguish truth from falsity. Id. at 106.

In arguing that W.C. was similarly unable to distinguish truth from falsity, Bautista-Gonzalez relies in large part on statements she made in her 2013 and 2011 interviews with Carolyn Webster. However, the competency inquiry examines a witness's ability to understand and carry out the obligation to speak the truth on the witness stand at the time she testifies. Id. at 101. The December 2011 interview occurred when W.C. was six years old, more than two years before trial, and the February 2013 interview occurred when W.C. was eight, 11 months before W.C.'s pretrial testimony

and more than a year before her trial testimony. W.C.'s statements in those interviews do not indicate a persistent inability to distinguish truth from falsity, nor do they suggest that she was unable to distinguish truth from falsity at the time of trial.

Furthermore, unlike in Karpenski, in this case W.C.'s mother testified that W.C. is generally a truthful child, particularly about important topics. 2RP 159-60, 171-72. Finally, unlike Z's testimony in Karpenski, W.C.'s pretrial testimony did not demonstrate that she was presently unable to distinguish truth from falsity. At most, it demonstrated that she continued to struggle with understanding long or complex questions, or hypothetical questions. But whenever W.C. was asked simple questions about concrete facts, such as the color of the pen, or details about school, Christmas, or her birthday party, W.C. answered truthfully and accurately. 2RP 99-109. Viewing the record in the light most favorable to the State, a trial judge could reasonably find it to be more likely true than not true that W.C. was able to distinguish truth from falsity.

Given that, and the multitude of statements by W.C. indicating that she understood the obligation to tell the truth on the witness stand, Bautista-Gonzalez failed to establish that W.C. was "incapable of receiving just impressions of the facts . . . or of

relating them truly.” RCW 5.60.050. The trial court therefore properly exercised its discretion in finding the first Allen factor satisfied and finding W.C. competent.

c. Any Error Was Harmless.

Even if this Court were to determine that the trial court abused its discretion in finding W.C. competent to testify, the error was harmless, because W.C.’s in-court statements about the sexual abuse were cumulative of her statements to others that were properly admitted under the child hearsay exception. A trial court’s error in allowing an incompetent witness to testify 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. Brousseau, 172 Wn.2d 331, 363, 259 P.3d 209 (2011).

In her testimony, W.C. gave only brief descriptions of the abuse, stating that Bautista-Gonzalez had “put his penis in [her] vagina” more than once and had “put his penis in [her] butt,” and that both felt “bad.” 14RP 20-22. The jury heard identical or substantially similar statements in the video of W.C.’s 2013 interview with Carolyn Webster, in Andrea’s testimony about what W.C. had told her during the girls’ initial disclosure, and in the video

made by Andrea two days after the initial disclosure.⁶ 15RP 60, 64-67; 17RP 12, 19; CP 144-46.

The statutory child hearsay exception allows for a child's hearsay statements about sexual abuse against the child to be admitted when certain requirements are met, one of which is that "[t]he child either: (a) Testifies at the proceedings; or (b) Is unavailable as a witness: PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act." RCW 9A.44.120(2). The corroboration requirement is not mandated by the Confrontation Clause, but was included by the legislature "to reduce the risk that the emotional appeal of a child's out of court statement would result in an erroneous conviction." C.J., 148 Wn.2d at 686-87.

As discussed in section C.2 below, W.C.'s hearsay statements to her mother and Carolyn Webster describing the sexual abuse were properly admitted under the child hearsay exception. Had W.C. been found incompetent to testify, she would

⁶ For example, in the video of W.C.'s 2013 interview with Carolyn Webster, W.C. stated that Bautista-Gonzalez's "banana" hurt her "in [her] butt" because it was "hard" and it also "hurt [her] flower." W.C. gave additional details about how Bautista-Gonzalez was lying on her, moving, and "saying uhh with his banana" when his "banana" hurt her "butt." 15RP 60, 64-67.

have been unavailable within the meaning of RCW 9A.44.120. C.J., 148 Wn.2d at 685. Her hearsay statements would still have been properly admitted so long as there was corroborative evidence of the acts. RCW 9A.44.120(2)(b).

In the context of RCW 9A.44.120(2)(b), “corroborative evidence is that which would support a logical and reasonable inference that the act of abuse described in the hearsay statement occurred.” C.J., 148 Wn.2d at 687. When determining whether there is corroborative evidence of the act claimed by the child declarant, the trial court is not constrained by formal evidentiary considerations. Id. Sufficient corroborative evidence may take the form of direct or circumstantial evidence, such as physical evidence of sexual contact or a victim’s precocious knowledge of sexual activity. Id. The corroborative evidence need not be sufficient to support a conviction; the requirement is “analogous to the rule requiring independent corroborative proof of the corpus delicti prior to admission of a confession.” State v. Hunt, 48 Wn. App. 840, 849, 741 P.2d 566 (1987).

Here, W.C.’s hearsay statements about the abuse were corroborated by her behavior and precocious sexual knowledge. Andrea testified that since 2011, she had observed W.C.

masturbating several times, and that W.C. had also had difficulty controlling her bladder in the fall of 2012, which was highly uncharacteristic of her. 2RP 191-92; 17RP 23.

Andrea also testified that, although L.C. and W.C. had walked in on Andrea and Bautista-Gonzalez having sex under a blanket, they would not have been able to see exactly what was going on, and that she had never explained the mechanics of sex to her daughters prior to their disclosure of the sexual abuse. 16RP 133-34. Nevertheless, W.C. accurately described the mechanics of sex to Carolyn Webster, including the fact that Bautista-Gonzalez's penis was "hard" when it was in her "butt," and that she was on her stomach and Bautista-Gonzalez was lying on top of her and moving and saying "uhh." 15RP 60, 64-67. Precocious sexual knowledge or behavior can provide the corroboration required by RCW 9A.44.120(2)(b). See State v. Jones, 112 Wn.2d 488, 497, 772 P.2d 496 (1989); Hunt, 48 Wn. App. at 849-50.

W.C.'s statements about the abuse were also corroborated by L.C.'s direct observation of some of the grooming behavior and sexual abuse. L.C. told Dr. Wiester and Carolyn Webster that she had seen Bautista-Gonzalez "put[ting] his banana in [W.C.'s] flower" in their mother's room before Bautista-Gonzalez told her to

leave the room, that she had seen him showing W.C. adult films in which men and women were doing “private stuff,” and that she had seen him put his “banana” in W.C.’s mouth. 16RP 78-80; CP 137-38. See State v. Swan, 114 Wn.2d 613, 629, 790 P.2d 610 (1990) (cross-corroboration between two victims’ statements about the same incidents of abuse, for which both victims were present, supplies a reasonable inference that the abuse described did occur).

Finally, W.C.’s statements included assertions that Bautista-Gonzalez had abused L.C. as well, which were corroborated by medical evidence that L.C. contracted herpes type two in late 2011 through anal penetration by an infected person, testimony that Bautista-Gonzalez had herpes type two in late 2011, and Andrea’s testimony that she observed redness in L.C.’s vaginal area in 2012 that appeared unrelated to her herpes. 10RP 53; 15RP 16; 16RP 9-16, 135-38. See C.J., 148 Wn.2d at 688 (medical evidence suggestive of sexual abuse sufficiently corroborative of abuse allegations).

Together, all of this corroborative evidence of the acts described in W.C.’s hearsay statements was more than sufficient to satisfy RCW 9A.44.120(2)(b). The hearsay statements would thus

have remained admissible even if W.C. had been found incompetent to testify.

W.C.'s in-court testimony was cumulative of, and less detailed than, her hearsay statements in the video-recorded interviews that were admitted at trial. 14RP 20-22; 15RP 60, 64-67; 17RP 12, 19; CP 144-46. Moreover, the video recordings of W.C. making the hearsay statements to her mother and Carolyn Webster offered the jury the same opportunity to assess W.C.'s demeanor while she spoke about the abuse that the jury received when W.C. testified. A pretrial finding that W.C. was incompetent to testify would thus have had no effect on the amount or type of information available to the jury regarding the abuse against W.C., and the outcome of the trial would have been the same. Any error in finding W.C. competent to testify was therefore harmless beyond a reasonable doubt.

2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING THE MAJORITY OF L.C.'S AND W.C.'S HEARSAY STATEMENTS.

Bautista-Gonzalez contends that the trial court erred in admitting hearsay statements by W.C. and L.C. following their initial disclosure because the statements were not spontaneous enough

to satisfy the fourth Ryan⁷ factor. He also contends that the trial court erred in admitting certain portions of the video of L.C.'s 2013 interview with Carolyn Webster because they contained statements by L.C. about abuse of W.C. These claims should be rejected. The statements were spontaneous as that term is used in the context of child hearsay, and the trial court properly exercised its discretion in admitting them. Most of the challenged portions of L.C.'s 2013 interview were never admitted at trial; for the portions that were admitted, Bautista-Gonzalez has not preserved his claim for review, and any error was harmless because the challenged portions were cumulative of other properly admitted evidence.

RCW 9A.44.120 governs the admissibility of a child sex abuse victim's hearsay statements. It states, in relevant part:

A statement made by a child when under the age of ten describing any act of sexual contact performed with or on the child by another, describing any attempted act of sexual contact with or on the child by another, or describing any act of physical abuse of the child by another that results in substantial bodily harm as defined by RCW 9A.04.110, not otherwise admissible by statute or court rule, is admissible in evidence in dependency proceedings under Title 13 RCW and criminal proceedings, including juvenile offense adjudications, in the courts of the state of Washington if:

⁷ State v. Ryan, 103 Wn.2d 165, 691 P.2d 197 (1984).

- (1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and
- (2) The child either:
 - (a) Testifies at the proceedings; or
 - (b) Is unavailable as a witness:
PROVIDED, That when the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

RCW 9A.44.120. This statute was enacted “to give trial courts greater discretion in determining the trustworthiness of a child victim’s out of court statement,” in recognition of the fact that the typical lack of witnesses other than the victim and perpetrator makes the sexual abuse of children one of the most difficult crimes to detect and prosecute. C.J., 148 Wn.2d at 680-81.

In evaluating a Confrontation Clause challenge to RCW 9A.44.120 in a case where the child victim did not testify, the supreme court in State v. Ryan identified nine factors that it felt were useful in evaluating the reliability of a hearsay statement. 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984). Since then, this Court has recognized that only the first five of those factors are truly helpful in evaluating the admissibility of a child’s hearsay statements about sexual abuse. Borland, 57 Wn. App. at 20. The first five Ryan factors are: (1) whether the declarant, at the time of

making the statement, had an apparent motive to lie; (2) whether the declarant's general character suggests trustworthiness; (3) whether more than one person heard the statement; (4) the spontaneity of the statement; and (5) whether trustworthiness is suggested from the timing of the statement and the relationship between the declarant and the witness. C.J., 148 Wn.2d at 683-84; Ryan, 103 Wn.2d at 175-76.

Not every Ryan factor need be satisfied in order for a child victim's hearsay statement to be admissible under RCW 9A.44.120. Swan, 114 Wn.2d at 652. A trial court's ruling on the admissibility of child hearsay statements under RCW 9A.44.120 will not be overturned absent an abuse of discretion. Id. at 665.

a. The Trial Court Properly Exercised Its Discretion In Finding That W.C.'s And L.C.'s Hearsay Statements Were Spontaneous Within The Meaning Of The Ryan Factors.

i. Relevant facts.

The initial disclosure by W.C. and L.C. alluding to the sexual abuse was made to their mother spontaneously in the midst of a bedtime story. 17RP 6. Andrea asked general, non-leading follow-up questions to determine what exactly the girls had experienced, and their answers indicated that Bautista-Gonzalez had put his penis in each girl's vagina and anus, and the anal penetration had

“hurt.” 17RP 8-12. The girls used the word “banana” for penis, “flower” for vagina, “butt” for anus, and “uh-uh-uh” for the act of sex. 16RP 131-32; 17RP 6-12.

Andrea did not discuss the abuse any further with the girls until two days later,⁸ when she set up a video camera and filmed L.C. and W.C. as she asked them to “tell me again” “what you told me . . . the other night, about Fidel.” 17RP 12-19; CP 143. With no more prompting than that, L.C. stated, “He was saying uh and he would touch my butt and my flower and he wanted to keep a secret.” Andrea then asked a series of questions to try to get more detail, at times asking L.C. or W.C. to reaffirm certain details, but Andrea’s questions never asked the girls to confirm any information they had not already given in response to open-ended questions.⁹ CP 143-48. The statements by L.C. and W.C. on the video were consistent with their initial disclosure to Andrea several days earlier. 17RP 8-12; CP 143-48.

⁸ Andrea testified that she misstated the date in the video recording, and it was actually taken on February 7, 2013, the night before the girls were interviewed by Carolyn Webster. 17RP 16, 19.

⁹ The one exception occurred after Andrea asked if the abuse had occurred more than once. L.C. responded that she didn’t know how many times the abuse had occurred. CP 144. Andrea asked if it was “not always but sometimes,” and L.C. nodded. CP 144. Andrea then asked if it was “when mama was in her meeting,” which was a detail neither girl had yet mentioned. CP 144. L.C. gave a nonresponsive answer indicating that it occurred when Fidel would come over and Andrea was not there, and referenced a specific incident on the day Bautista-Gonzalez had helped put plastic on the windows. CP 145.

The next day, L.C. and W.C. made additional statements to Carolyn Webster. Webster asked L.C. very general, non-leading questions such as "tell me why you came to see me today." 21RP 13. W.C. required more targeted but still non-leading questions such as, "Has anyone touched or done something to your butt?" 15RP 58. When L.C. and W.C. responded by referencing sexual abuse, Webster used non-leading questions to ask the girls to give more detail about their responses, such as "what happened?" and "tell me about that." 15RP 18-40, 58-69. L.C.'s and W.C.'s statements to Webster were consistent with their prior statements to Andrea during the initial disclosure and with their statements in the video that Andrea made. 15RP 18-40, 58-69; 17RP 8-12; CP 143-48.

Additionally, both L.C. and W.C. described for Webster additional details about the abuse that they had not previously disclosed to Andrea. 15RP 18-40, 58-69; 17RP 8-12; CP 143-48. L.C. talked for the first time about how her and Bautista-Gonzalez's bodies were positioned during some of the rapes, how his penis felt, the fact that he had wiped her vaginal area clean afterwards, and the fact that Bautista-Gonzalez had also put his penis in her mouth. 15RP 23-30, 35. W.C. talked for the first time about how

Bautista-Gonzalez's penis felt, where in the house the rapes occurred, how their clothes were arranged and their bodies were positioned during the rapes, and how he had held W.C. during some of the rapes. 15RP 58-70.

During a sexual assault examination at Harborview Medical Center several weeks later, L.C. made more statements about the abuse.¹⁰ 16RP 78-80. Dr. Rebecca Wiester asked L.C. to talk about "stuff that happened to [her] that is not okay." 16RP 78. L.C. responded, "Fidel, he has been doing private stuff to me and my sister, he has been doing sex with us." 16RP 78. Wiester used careful non-leading questions to prompt L.C. to give more details, and L.C. described vaginal, anal, and oral penetration by Bautista-Gonzalez. 16RP 79-80. At no point did Wiester suggest answers to L.C. or try to influence her memory. 16RP 78-80. L.C.'s statements to Wiester were consistent with L.C.'s prior statements to Webster and Andrea. 15RP 18-40; 16RP 78-80; 17RP 8-12; CP 143-48.

In its pretrial ruling that the statements by L.C. and W.C. were admissible under the child hearsay exception, the trial court noted that the sixth through ninth Ryan factors were not helpful in

¹⁰ W.C. was also examined and interviewed by Wiester, but W.C. declined to answer Wiester's questions. 16RP 91.

assessing the admissibility of child hearsay about sexual abuse, and agreed with the State's analysis that the remaining five factors all indicated that the hearsay statements were reliable and should be admitted. 6RP 417, 429-30; CP 17-18. The trial court explicitly adopted the State's analysis that the statements were spontaneous. 6RP 429; CP 18.

ii. The statements were spontaneous.

This Court has held that "Ryan compels a less narrow definition of 'spontaneous,'" than is used in other contexts, "one that considers the entire context in which the child makes the statement." State v. Henderson, 48 Wn. App. 543, 550, 740 P.2d 329 (1987). Thus, a child's statement that volunteers information in response to a question that is neither leading nor suggestive qualifies as "spontaneous" in the context of the Ryan factors. Id.; Borland, 57 Wn. App. at 15; see Swan, 114 Wn.2d at 649-50. Moreover, where a child makes statements about the abuse in response to open-ended questions in one context, and subsequently makes the same or similar statements in response to leading questions in another context, the use of leading questions does not automatically render the child's responses unreliable. Swan, 114 Wn.2d at 650, 652.

Here, L.C.'s and W.C.'s statements to their mother during the initial disclosure were undeniably spontaneous, and Bautista-Gonzalez does not contend otherwise on appeal. 17RP 8-12. When Andrea questioned the girls on video two days later, she began the conversation with a simple request to repeat what they had told her earlier, and L.C. responded by again describing the core details of the abuse. CP 143. Andrea's follow-up questions remained non-leading, except when asking L.C. or W.C. to confirm what they had just said. CP 143-48.

Andrea did not suggest to the girls the information that they conveyed in their responses, and the girls' statements were entirely consistent with and largely identical to their statements during the initial disclosure. CP 143-48; 17RP 8-12. Thus, their statements on the video were spontaneous within the meaning of the Ryan factors.

Bautista-Gonzalez contends that because L.C.'s and W.C.'s statements on the video were in response to questioning by their mother, they were not spontaneous within the meaning of the fourth Ryan factor. Brief of Appellant at 17. He relies on Ryan and a New Mexico court of appeals case, State v. Ruiz, 131 N.M. 241, 34 P.3d 630 (Ct. App. 2001), for support. Although Ryan appeared to

suggest that statements could not be spontaneous if they were in response to questioning, the supreme court has since clarified that such is not the case. See Swan, 114 Wn.2d at 649-50. Thus, Bautista-Gonzalez's reliance on Ryan is misplaced.

The Ruiz court did not address the Ryan factors at all, but rather evaluated whether the defendant in that case had a good faith belief that a victim's mental health records would provide evidence that the victim fabricated her allegations, entitling him to subpoena the records. Ruiz, 131 N.M. at 249. In that case, another victim had suggested that victim S.G. might also have been abused by Ruiz. Ruiz, 131 N.M. at 244. When S.G. was interviewed, she initially denied any abuse, but changed her story after her mother intervened in the interview with "repeated questioning and blandishments" and assistance "in recalling memories." Id. at 244, 250. The appellate court noted that "[t]he possibility of undue influence on S.G.'s testimony is troubling in this case," and concluded that the trial court should have allowed Ruiz to subpoena the victim's records for an in camera review. Id. at 250.

Neither the facts nor the holding of Ruiz suggest that Andrea's questions in the video were leading or suggestive, or that

her daughters' responses were not spontaneous within the meaning of the Ryan factors. The trial court thus properly exercised its discretion in finding the statements spontaneous and in admitting them under RCW 9A.44.120.

Bautista-Gonzalez contends, without citation to the record or authority, that all of L.C.'s and W.C.'s "subsequent" statements, and "every statement after these initial statements," were not spontaneous because they were also made in response to questioning. Brief of Appellant at 19-20. In the absence of a citation to the record, it is not clear whether he challenges only the statements in the video by Andrea, or the later statements to Webster and Wiester as well.

The girls' subsequent statements to Webster and Wiester, which were consistent with their statements on Andrea's video and in the initial disclosure, were made in response to carefully crafted neutral and non-leading questions, and were thus spontaneous. 15RP 18-40, 58-69; 16RP 78-80. Even if the statements to Andrea on the video had not been spontaneous, that would not have rendered the later statements to Webster and Wiester non-spontaneous, in light of the fact that all of the statements were consistent with the spontaneous initial disclosure. See Swan, 114

Wn.2d at 650, 652. The trial court thus properly exercised its discretion in finding all of L.C.'s and W.C.'s hearsay statements to be spontaneous and admitting them under RCW 9A.44.120.

iii. Any error was harmless.

Even if this Court were to determine that the trial court abused its discretion in finding the hearsay statements to be spontaneous, the trial court still properly exercised its discretion in admitting the statements because the remaining applicable factors were met. See Swan, 114 Wn.2d at 652 (not every Ryan factor need be satisfied in order for statement to be admissible). And even if this Court were to find that, in this case, the absence of spontaneity rendered the statements unreliable under RCW 9A.44.120, any error in admitting the statements was harmless in light of the other evidence presented at trial.

Because L.C. and W.C. testified, any error in admitting their hearsay statements was not of constitutional magnitude, and thus was harmless absent a reasonable probability that the outcome of the trial would have been different had the error not occurred. See State v. Ashurst, 45 Wn. App. 48, 54, 723 P.2d 1189 (1986); State v. Luckett, 73 Wn. App. 182, 184, 869 P.2d 75 (1994).

If this Court were to determine that the trial court abused its discretion only as to the statements in the video made by Andrea, then there is no reasonable probability that the error affected the verdicts relating to W.C.,¹¹ because the statements on the video were cumulative of L.C.'s and W.C.'s trial testimony and their statements to Andrea in the initial disclosure; and were cumulative of and less detailed than their statements to Webster and Wiester. 14RP 19-22, 45-49; 15RP 18-40, 58-69; 16RP 78-80; 17RP 8-12; CP 143-48.

If this Court were to determine that the trial court abused its discretion as to all the hearsay statements that occurred after the initial disclosure to Andrea, then the error would still be harmless. The jury would still have heard L.C.'s and W.C.'s trial testimony, in which L.C. described multiple acts of vaginal, oral and anal rape and W.C. described multiple acts of vaginal and anal rape, and would have heard about the girls' initial disclosure to Andrea, in which both girls reported vaginal and anal rape and L.C. indicated it happened multiple times. 14RP 19-22, 45-49; 17RP 8-12.

The jury would also have seen L.C.'s and W.C.'s 2011 videotaped interviews with Carolyn Webster, in which L.C.

¹¹ Bautista-Gonzalez seeks reversal of only those convictions in which W.C. was the victim. Brief of Appellant at 24.

noticeably shut down every time she was asked about Bautista-Gonzalez, and would have heard about all of the indirect corroborating evidence, such as Bautista-Gonzalez's herpes diagnosis and the fact that L.C. contracted the same type of herpes through anal penetration in 2011; Bautista-Gonzalez's nervous reaction when Andrea pointed out redness on L.C.'s vaginal area in 2012; and W.C.'s unusual masturbation and bladder control problems during the charging period. 10RP 53; 12RP 70; 16RP 14-16, 135-38; 17RP 23-26.

Although much of this evidence relates most directly to L.C., strong evidence that L.C. was telling the truth about her own abuse suggests that she was also telling the truth when she told her mother that Bautista-Gonzalez had raped W.C. as well. The evidence corroborating the abuse of L.C. also corroborated the abuse against W.C. because it supported the conclusion that Bautista-Gonzalez used the same scheme to abuse both girls. Thus, even if none of the hearsay evidence following the initial disclosure had been admitted, there is not a reasonable probability that the verdicts relating to W.C. would have been different, and any error in admitting the hearsay was harmless.

- b. This Court Should Decline To Review Bautista-Gonzalez's Claim That The Trial Court Abused Its Discretion In Admitting L.C.'s Hearsay Statements About Sexual Abuse Of W.C.

Bautista-Gonzalez contends that the trial court abused its discretion in admitting various portions of L.C.'s 2013 video interview, in which L.C. references abuse of W.C., on the grounds that the child hearsay exception in RCW 9A.44.120 does not cover a child victim's statements about abuse against another victim. Brief of Appellant at 20-23. However, only a small number of the challenged statements were actually admitted at trial, and Bautista-Gonzalez did not object to those few statements at trial on the basis he raises in his appeal. This Court should therefore decline to review his claim.

- i. Relevant facts.

After the trial court ruled that L.C.'s 2013 video interview with Carolyn Webster would be generally admissible under the child hearsay exception, Bautista-Gonzalez objected to the admission of certain statements within the video for a variety of reasons. 7RP 3-15. He filed a marked-up copy of the video's transcript, detailing exactly which lines he wanted redacted, and orally gave a line-by-line explanation of the basis for each objection. Pretrial Ex. 19 (attached as Appendix A); 7RP 4-15. Bautista-Gonzalez objected

to the following lines solely on the grounds that L.C. lacked first-hand knowledge of the information she was conveying:

L.C.: Like my mom's friend did privates to my sister and me. He, he's been doing it all to my sister and my, and me.

C. Webster: Ummm.

Pretrial Ex. 19 at 9; 7RP 5. He argued that L.C.'s surrounding statements indicated that she was merely relaying information W.C. had told her. 7RP 5. The trial court denied the request for redaction, finding that L.C.'s statements as a whole indicated that she had first-hand knowledge of Bautista-Gonzalez's abuse of W.C. 7RP 6. Bautista-Gonzalez did not request redaction of L.C.'s next statement, wherein she said, "And my mama said she's gonna call the cops and the cops are gonna call my mom's friend." Pretrial Ex. 19 at 9.

Bautista-Gonzalez raised only the same objection regarding lack of first-hand knowledge for the following statements:

C. Webster: Ummm.

L.C.: And he was also doing our butt and our flower but it hurted [sic] when he did our butt but it didn't hurt when he, he did our flower.

C. Webster: Okay. Well I wanna hear some more about that okay? You said mom's friend Fidel did privates to you and your sister?

L.C.: (Shakes head yes.)

C. Webster: How do you know he did it to your sister?

L.C.: Because, because, because I just, she just told me everything about the true about her.

Pretrial Ex. 19 at 10; 7RP 5. The trial court again denied the request for redaction, finding that other portions of the interview established that L.C. did in fact have first-hand knowledge of the events she was describing. 7RP 6.

Bautista-Gonzalez did challenge many of L.C.'s statements in the video on the grounds he now raises on appeal, arguing that they were inadmissible under the child hearsay exception because they described abuse of another person rather than abuse of L.C. herself. 7RP 13. On that basis, he requested redaction of portions of the video that include the remaining statements that he now challenges on appeal.¹² 7RP 13; Pretrial Ex. 19 at 27-31. The trial court granted that request (to which the State had partially agreed) almost in its entirety. 7RP 13-15; Pretrial Ex. 19 at 28, 31. As a result, the remaining statements Bautista-Gonzalez challenges on

¹² The remaining statements Bautista-Gonzalez challenges on appeal are lines 11 through 23 on page 28 of pretrial exhibit 19, and lines 12 through 22 on page 31. Brief of Appellant at 22-23.

appeal were not included in the video when it was admitted at trial.

15RP 40, 42.¹³

- ii. Bautista-Gonzalez may not raise this claim for the first time on appeal.

Appellate courts generally will not consider an issue that is raised for the first time on appeal. State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). An objection in the trial court on different grounds than those argued on appeal is not sufficient to preserve the alleged error. Trueax v. Ernst Home Ctr., Inc., 124 Wn.2d 334, 339, 878 P.2d 1208 (1994); State v. Ferguson, 100 Wn.2d 131, 138, 667 P.2d 68 (1983) (appellate court will not reverse trial court's evidentiary ruling on the basis that the trial court should have ruled differently "under a different rule which could have been, but was not, argued at trial"). In order to have a claim reviewed for the first time on appeal, a defendant must demonstrate that the error is (1) manifest, and (2) of constitutional dimension. State v. O'Hara, 167 Wn.2d 91, 98, 217 P.3d 756 (2009); RAP 2.5.

¹³ When the video was played for the jury, everything from page 27, line 8, to page 30, line 1, had been redacted, as well as lines 8 through 22 on page 31. 15RP 40, 42; Pretrial Ex. 19 at 27-31.

Of the statements Bautista-Gonzalez challenges on appeal, only those from pages nine and ten of the pre-redaction transcript were actually admitted at trial. Pretrial Ex. 19 at 9-10; 15RP 16-18, 40, 42. Bautista-Gonzalez objected to those statements only on the basis that L.C. lacked first-hand knowledge of the events described; he never objected to them on the basis he asserts on appeal, that they impermissibly describe abuse against someone other than L.C. 7RP 5-6. As a result, he has not preserved the alleged error for review. Trueax, 124 Wn.2d at 339; Ferguson, 100 Wn.2d at 138.

The improper admission of hearsay statements, when the declarant testifies at trial, is not an error of constitutional dimension. See Ashurst, 45 Wn. App. at 54; Luckett, 73 Wn. App. at 184. Bautista-Gonzalez thus cannot meet the requirements of RAP 2.5(a), and this Court should decline to review his claim.

- iii. Any error in the admission of the challenged hearsay statements was harmless.

A non-constitutional error is harmless if there is not a reasonable probability that the outcome of the trial would have been materially affected had the error not occurred. State v. Cunningham, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980). The only

substantive statements about the abuse that are contained in the challenged statements from pages nine and ten of pretrial exhibit 19 are statements that Bautista-Gonzalez “did privates to my sister and me” and “he was also doing our butt and our flower but it hurted [sic] when he did our butt but it didn’t hurt when he, he did our flower.” Pretrial Ex. 19 at 9-10.

L.C.’s assertion that W.C. was a victim of the abuse was completely cumulative of L.C.’s and W.C.’s statements in the initial disclosure (which are not the subject of a hearsay challenge on appeal) and in the video made by Andrea, as well as of W.C.’s trial testimony, W.C.’s hearsay statements to Carolyn Webster, and L.C.’s hearsay statements to Rebecca Wiester, all of which were properly admitted at trial as discussed in the sections above. 14RP 19-22; 15RP 58-69; 16RP 78-80; 17RP 8-12; CP 143-48. Thus, even if this Court reaches the merits of Bautista-Gonzalez’s claim and concludes that the trial court abused its discretion in admitting some of the challenged statements, the error was harmless because there is no reasonable probability that the outcome of the trial would have been different had the error not occurred.

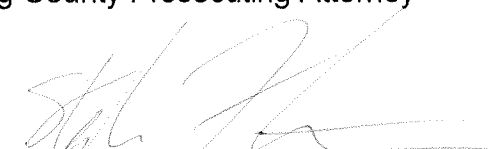
D. CONCLUSION

Bautista-Gonzalez seeks reversal of only his convictions involving W.C. For all of the foregoing reasons, the State respectfully asks this Court to affirm those convictions.

DATED this 16th day of April, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
STEPHANIE FINN GUTHRIE, WSBA #43033
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Appendix A

Pretrial Exhibit 19

(Defendant's Proposed Redactions to Transcript of
L.C.'s 2013 Interview with Carolyn Webster)



Primal only

*Proposed
REVISIONS*

State/ Deft Exhibit 19
13-1-01373-4 KNT
State of WA
vs
Fidel Bautista-Gonzalez

FILED
KING COUNTY, WASHINGTON

FEB 18 2014

SUPERIOR COURT CLERK
BY **Stephanie Walton**
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KING COUNTY,

Plaintiff,

No. 13-1-01373-4 KNT

TRANSCRIPT OF INTERVIEW WITH
LUNA CUADROS

FIDEL BAUTISTA-GONZALEZ,

Defendant.

11

12

13

14

UNKNOWN: And...

15

L. CUADROS: Do lots of kids come here?

16

UNKNOWN: Lots of kids. You see all these pictures.

17

L. CUADROS: Oh do...

18

UNKNOWN: Yeah you can draw a picture if you want to put one up here.

19

L. CUADROS: I wanna draw.

20

UNKNOWN: Yeah you can draw, too.

21

C. WEBSTER: Well let's do this actually what we're gonna do is we're gonna talk first

22

and then we're gonna draw during the break okay?

23

L. CUADROS: Okay.

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 1
1310-016

Daniel T. Satterberg, Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429
Phone 206-205-7401 Fax 206-205-7475

Proposed
REDACTIONS

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
FIDEL BAUTISTA-GONZALEZ,)
)
Defendant.)
)
)
)
)

No. 13-1-01373-4 KNT
TRANSCRIPT OF INTERVIEW WITH
LUNA CUADROS

UNKNOWN: And...
L. CUADROS: Do lots of kids come here?
UNKNOWN: Lots of kids. You see all these pictures.
L. CUADROS: Oh do...
UNKNOWN: Yeah you can draw a picture if you want to put one up here.
L. CUADROS: I wanna draw.
UNKNOWN: Yeah you can draw, too.
C. WEBSTER: Well let's do this actually what we're gonna do is we're gonna talk first
and then we're gonna draw during the break okay?
L. CUADROS: Okay.

1 C. WEBSTER: Okay alright and let's keep these here okay. No it's okay.
2 UNKNOWN: Let's put these over here and then Wara you're gonna come with and Luna
3 you're gonna stay and talk to Carolyn okay.
4 C. WEBSTER: Come here Luna come sit in this chair right here just where your mom was
5 sitting okay? Perfect.
6 UNKNOWN: And then we can start you know a movie or something over here while
7 she's in here.
8 C. WEBSTER: Okay. Alright so...
9 L. CUADROS: You know...
10 C. WEBSTER: ...oh go ahead.
11 L. CUADROS: ...everybody that's a grown up calls my mom Andrea, and my sister and
12 me call my mom mama.
13 C. WEBSTER: Oh okay alright. Well Luna what I just did is I turned on two video
14 cameras and they're gonna record us when we talk today okay?
15 L. CUADROS: Oh.
16 C. WEBSTER: And then there's a detective and the detective is gonna watch when we
17 talk, too, and that's gonna help me remember what we talk about, okay?
18 L. CUADROS: Oh.
19 C. WEBSTER: But what we're gonna do first today is I wanna get to know you better
20 'cause I've never met you before.
21 L. CUADROS: I've never met you before, too.
22 C. WEBSTER: Okay tell me how old you are?
23 L. CUADROS: Five.

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 2
1310-016

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1 C. WEBSTER: Okay and when is your birthday?
2 L. CUADROS: After my mom's birthday it's my birthday.
3 C. WEBSTER: After mom's birthday? Okay and Luna tell me things that you like to do.
4 L. CUADROS: I like to go play with my friends.
5 C. WEBSTER: Uhmm.
6 L. CUADROS: I like to like go to the park.
7 C. WEBSTER: Okay.
8 L. CUADROS: I like to go swimming.
9 C. WEBSTER: Oh okay.
10 L. CUADROS: I like to, I like to, I like to, I like to hmm I like to play with toys every day.
11 C. WEBSTER: Uhmm.
12 L. CUADROS: That's all.
13 C. WEBSTER: And where are places that you like to go?
14 L. CUADROS: Places?
15 C. WEBSTER: Uhmm.
16 L. CUADROS: I like to go to like school.
17 C. WEBSTER: Okay.
18 L. CUADROS: And daycare and stores.
19 C. WEBSTER: Uh-huh.
20 L. CUADROS: And like gas stations and, and for things. That's where I like to go to.
21 C. WEBSTER: Now did you go to school yesterday?
22 L. CUADROS: Yes.

23

24

1 C. WEBSTER: Uhmm, well tell me what you did at school yesterday. Tell me about it
2 from the beginning all the way to the end?
3 L. CUADROS: We eat lunch first.
4 C. WEBSTER: Uhmm.
5 L. CUADROS: Then we go to the playground. Then we eat lunch again. And then we go
6 to, then we go to like P.E., or music, or library.
7 C. WEBSTER: And what did you do yesterday?
8 L. CUADROS: I went to music.
9 C. WEBSTER: Oh okay.
10 L. CUADROS: Music is where I sing lots of songs.
11 C. WEBSTER: Oh so tell me about when you did music, what did you do when you first
12 got to music?
13 L. CUADROS: All of my friends and me lined up in our, the boys line, line was right here,
14 the girls line were like this.
15 C. WEBSTER: Uhmm, okay and then what did you do next?
16 L. CUADROS: Then we went back to class and we got every, everything out of the closet
17 our backpack, our jackets.
18 C. WEBSTER: Oh and then what happened?
19 L. CUADROS: And then we just go home.
20 C. WEBSTER: Oh okay and what did you do in music class tell me about that?
21 L. CUADROS: We (unintelligible) lots of songs and it's about a camel.
22 C. WEBSTER: Oh songs about a camel oh that's neat.
23 L. CUADROS: And also a frees one.

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 4
1310-016

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Kent, Washington 98032-4429
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1 C. WEBSTER: Say that again?
2 L. CUADROS: Also, a, a free song.
3 C. WEBSTER: A free song?
4 L. CUADROS: Yeah like you, like if you say go, go, go, go freeze, I like that song
5 because I like it because you go, go then you walk and you freeze and then
6 you just freeze, and then you don't go anywhere.
7 C. WEBSTER: Oh I've never heard that song before okay alright.
8 L. CUADROS: I've heard a camel song.
9 C. WEBSTER: What's the camel song?
10 L. CUADROS: It's about a camel who has ten camels on its, on its back.
11 C. WEBSTER: Uh-huh.
12 L. CUADROS: It's a song about Lisa's camel has ten camels, Lisa's camel has ten camels,
13 Lisa's camels has ten camels, so go Lisa go.
14 C. WEBSTER: Oh.
15 L. CUADROS: Lisa's camel has nine camels, all of them are gonna disappear but when
16 it's zero camels then it will say go Lisa, go Lisa has a horse.
17 C. WEBSTER: Hahaha that's funny alright.
18 L. CUADROS: Yeah it's a funny song.
19 C. WEBSTER: Oh that's neat and then Luna tell me who you live with?
20 L. CUADROS: My mom and my dad.
21 C. WEBSTER: Your mom and your dad?
22 L. CUADROS: Yeah.
23 C. WEBSTER: Okay. Does anybody else live with you, your mom, and your dad?
24

1 L. CUADROS: That's all.
2 C. WEBSTER: Okay and you told me your mom's name is...
3 L. CUADROS: Also my sister.
4 C. WEBSTER: Oh and your sister. You told me your mom's name is Andrea, Andrea
5 how do you...
6 L. CUADROS: Andrea.
7 C. WEBSTER: Andrea thank you for...
8 L. CUADROS: Or you can say Andrea.
9 C. WEBSTER: Okay what's your dad's name?
10 L. CUADROS: Monkey.
11 C. WEBSTER: Monkey?
12 L. CUADROS: Yeah.
13 C. WEBSTER: Okay does he have another name?
14 L. CUADROS: No.
15 C. WEBSTER: Okay.
16 L. CUADROS: I don't know.
17 C. WEBSTER: What do other people call him?
18 L. CUADROS: I don't know.
19 C. WEBSTER: Okay and your sister's name is Wara?
20 L. CUADROS: Wara or Wara.
21 C. WEBSTER: Okay.
22 L. CUADROS: Or you can say Wara or Wara Alecia.
23 C. WEBSTER: Okay.

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 6
1310-016

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1 L. CUADROS: She's the star and I'm the moon.

2 C. WEBSTER: Oh okay well that's neat. Well thank you for letting me get to know you

3 better. I'm gonna tell you some rules about our talk today okay? So the

4 first rule today Luna is that if I ask you a question and it sounds weird and

5 you don't know what I mean you can just say hey I don't know what you

6 mean and then I'll try to ask my question better, okay?

7 L. CUADROS: Okay.

8 C. WEBSTER: So we're gonna practice that. If I said to you Luna what's your gender

9 what would you say to me?

10 L. CUADROS: I don't know what the means.

11 C. WEBSTER: Very good now I'll ask that better okay? That just means are you a boy or

12 a girl?

13 L. CUADROS: Oh.

14 C. WEBSTER: Yeah are you a boy or a girl?

15 L. CUADROS: A girl.

16 C. WEBSTER: Very good. And if I ask a question and you don't know the answer you

17 can just say I don't know. Or if you can't remember you can say I can't

18 remember because there's guessing the answers today, okay?

19 L. CUADROS: Okay.

20 C. WEBSTER: So like if I said Luna what's the name of my sister?

21 L. CUADROS: I don't know.

22

23

24

1 C. WEBSTER: That's right 'cause I haven't told you her name very good. But if I ask a
2 question and you do know the answer I want you to go ahead and tell me
3 the answer, okay?
4 L. CUADROS: (Shakes head yes.)
5 C. WEBSTER: Okay, and then I want you to know that I make mistakes sometimes. If I
6 get something wrong I want you to tell me that I'm wrong. So if I said
7 Luna you're ten years old.
8 L. CUADROS: No I'm five years old.
9 C. WEBSTER: Nice job correcting me good job. And then when I ask you questions
10 today I don't know the answers to those questions because I don't know
11 what happens to kids before they come see me so it's really important that
12 I hear it from you, okay?
13 L. CUADROS: Okay.
14 C. WEBSTER: Now I'm gonna tell you about a boy named Joe and some cookies, okay?
15 L. CUADROS: (Shakes head yes.).
16 C. WEBSTER: So Joe came home and he ate all the cookies. And then his mom said
17 what happened to the cookies? And Joe said the dog ate the cookies.
18 When Joe said that the dog ate the cookies what was Joe doing?
19 L. CUADROS: I don't know.
20 C. WEBSTER: Okay when Joe said that the dog ate the cookies was Joe telling the truth
21 or was Joe telling a lie?
22 L. CUADROS: He was telling a lie.
23 C. WEBSTER: And how come that was a lie, Luna?
24

1 L. CUADROS: Because he did not want his mom to get mad.
2 C. WEBSTER: Okay and is it better to tell the truth or is it better to tell a lie?
3 L. CUADROS: It's better to tell the truth.
4 C. WEBSTER: How come?
5 L. CUADROS: Because mommy's don't know what, why because they're gonna have to
6 start all over and they're gonna get tired to cook.
7 C. WEBSTER: They're gonna okay they're gonna start all over and get tired to cook?
8 L. CUADROS: Yeah my mom was cooking she, she was tired to cook so she said we have
9 to eat chips.
10 C. WEBSTER: Okay alright. Luna when we talk today it's important that we only tell the
11 truth. Do you promise that you will tell me the truth?
12 L. CUADROS: I did.
13 C. WEBSTER: You did, okay alright okay well tell me why you came to see me today?
14 L. CUADROS: Because it was a private with my mom's friend.
15 C. WEBSTER: It was a private with your mom's friend?
16 L. CUADROS: Yeah named Fidel. He was my mom's boyfriend but now they're friends.
17 They were fighting.
18 C. WEBSTER: Okay.
19 ~~L. CUADROS: Like my mom's friend did privates to my sister and me. He, he's been~~
20 ~~doing it all to my sister and my, and me.~~
21 ~~C. WEBSTER: Uhmm.~~
22 L. CUADROS: And my mama said she's gonna call the cops and the cops are gonna call
23 my mom's friend.
24

1 ~~C. WEBSTER: Ummm.~~

2 ~~L. CUADROS: And he was also doing our butt and our flower but it hurted when he did~~
3 ~~our butt but it didn't hurt when he, he did our flower.~~

4 C. WEBSTER: Okay. Well I wanna hear some more about that okay? You said mom's
5 friend Fidel did privates to you and your sister?

6 L. CUADROS: (Shakes head yes.)

7 C. WEBSTER: How do you know he did it to your sister?

8 L. CUADROS: ~~Because, because, because I just, she just told me everything about the~~
9 ~~true about her.~~

10 ~~C. WEBSTER: Okay.~~

11 L. CUADROS: We did, my mom's friend said if I tell my mom then she might kick me
12 but she never kicks me.

13 C. WEBSTER: Who said that?

14 L. CUADROS: My mom's friend named Fidel.

15 C. WEBSTER: Oh Fidel said that that mom might kick you if you told her?

16 L. CUADROS: (Shakes head yes.).

17 C. WEBSTER: Okay well let's talk about what Fidel did to you, okay. Did Fidel do
18 privates to you one time or more than one time?

19 L. CUADROS: More than one.

20 C. WEBSTER: Okay.

21 L. CUADROS: ~~And he also showing my sister private movies.~~

22 C. WEBSTER: Okay, okay well tell me about the last time that Fidel did privates to you?
23 Tell me what he did from the beginning to the end.

24

1 L. CUADROS: He said if I wanna help him then, then I could but, but, but I came and I, I
2 said I wanna help him but he, he did the private stuff.
3 C. WEBSTER: Okay you said you want to help him?
4 L. CUADROS: Yeah but...
5 C. WEBSTER: Okay.
6 L. CUADROS: ...I never done it.
7 C. WEBSTER: Okay.
8 L. CUADROS: And then he did the private stuff.
9 C. WEBSTER: Okay and the last time he did the private stuffs where were you the last
10 time?
11 L. CUADROS: In my mom's house.
12 C. WEBSTER: Okay and where in mom's house?
13 L. CUADROS: In my mom's room.
14 C. WEBSTER: Okay and who was in mom's room when Fidel did the private stuff?
15 L. CUADROS: Only me and him.
16 C. WEBSTER: Okay where was your mom at?
17 L. CUADROS: She was at her meeting.
18 C. WEBSTER: Oh and what about Wara?
19 L. CUADROS: Wara was watching TV in the living room.
20 C. WEBSTER: Okay so you and Fidel are in mom's room what's the first thing that
21 happened in there?
22 L. CUADROS: Just that he did the privates stuff that's all.
23 C. WEBSTER: Tell me what he did when he did the private stuff?
24

1 L. CUADROS: He did it to my butt and my flower.
2 C. WEBSTER: And tell me how he did that?
3 L. CUADROS: He did it like, like ten times.
4 C. WEBSTER: Like ten times?
5 L. CUADROS: (Shakes head yes.)
6 C. WEBSTER: Okay alright when he did the private stuff in mom's room what did he do
7 first?
8 L. CUADROS: He did the private stuff first.
9 C. WEBSTER: He did the private stuff first?
10 L. CUADROS: (Shakes head yes.)
11 C. WEBSTER: Okay, okay and tell me all about when he did the privates stuff, tell me
12 everything that he did.
13 L. CUADROS: I did.
14 C. WEBSTER: Okay, okay well when he did the private stuff where were your clothes?
15 L. CUADROS: They were on me.
16 C. WEBSTER: On you, okay well what about his clothes?
17 L. CUADROS: They were on him.
18 C. WEBSTER: Okay, and you said that he did something to your butt?
19 L. CUADROS: And my flower.
20 C. WEBSTER: Okay and did he do your butt first, or your flower first, or you're not sure
21 or?
22 L. CUADROS: ~~He does my sister's flower first and he does my butt first.~~
23 C. WEBSTER: Okay, okay tell me what he did to your butt, tell me about that part?
24

1 L. CUADROS: He was saying ah.
2 C. WEBSTER: He said ah, okay and what did he do to your butt?
3 L. CUADROS: Uh, I told you.
4 C. WEBSTER: Okay well I'm a little confused about that part okay Luna tell me again
5 what did he do to your butt?
6 L. CUADROS: He, he was, he was saying ah.
7 C. WEBSTER: He said ah, okay and what was he doing when he said ah?
8 L. CUADROS: It was hurting me.
9 C. WEBSTER: And what was hurting you?
10 L. CUADROS: His banana.
11 C. WEBSTER: His banana?
12 L. CUADROS: Yeah on, on his flower.
13 C. WEBSTER: His, say that again his banana what?
14 L. CUADROS: His banana was hurting me.
15 C. WEBSTER: Okay what was his banana doing?
16 L. CUADROS: Doing private stuff to my butt and my flower.
17 C. WEBSTER: Okay, okay how did his banana get to your butt?
18 L. CUADROS: He just pushed.
19 C. WEBSTER: He...
20 L. CUADROS: He just took off his pants and then he just did it.
21 C. WEBSTER: He took off his pants and did it? What about your clothes?
22 L. CUADROS: He just, he just, he just, did I don't know.

23

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 13
1310-016

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401 Fourth Avenue North
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Phone 206-205-7401 Fax 206-205-7475

1 C. WEBSTER: Okay when his banana was to your butt were your clothes on, or off, or
2 something else?
3 L. CUADROS: On but they were off but he pushed them down.
4 C. WEBSTER: Oh okay what about your underwear?
5 L. CUADROS: Also my underwear went down.
6 C. WEBSTER: Your underwear was down, too?
7 L. CUADROS: (Shakes head yes.)
8 C. WEBSTER: Okay alright and then tell me how your bodies were when his banana was
9 to your butt?
10 L. CUADROS: It was hurting.
11 C. WEBSTER: Hurting, okay when his banana was to your butt were you standing up...
12 L. CUADROS: No...
13 C. WEBSTER: ...or were you sitting down, or?
14 L. CUADROS: ...laying down.
15 C. WEBSTER: How, and how were you laying?
16 L. CUADROS: On my mom's bed.
17 C. WEBSTER: Okay were you laying on your side...
18 L. CUADROS: No straight.
19 C. WEBSTER:or, you were straight okay and were you laying on your back, or were
20 you laying on your tummy?
21 L. CUADROS: No like this but he does this.
22 C. WEBSTER: Oh I'm confused. Let, let me see this okay if this is you can you show me
23 how your body was?
24

1 L. CUADROS: Okay.

2 C. WEBSTER: How were you laying? You were like that?

3 L. CUADROS: Uhmm.

4 C. WEBSTER: Okay and then how was his body?

5 L. CUADROS: Right here, his banana was right there.

6 C. WEBSTER: And when his banana was right here what was his banana touching?

7 L. CUADROS: My flower.

8 C. WEBSTER: Your flower, okay.

9 L. CUADROS: And then he made me turn around and he did my butt.

10 C. WEBSTER: Oh okay, okay I was confused thank you for helping me understand that.

11 Okay, okay so tell me everything that his banana did when it was on your

12 flower.

13 L. CUADROS: It was, it was not hurting my flower it was hurting my butt.

14 C. WEBSTER: Okay and where did his banana go on your flower.

15 L. CUADROS: I'll show you.

16 C. WEBSTER: Okay.

17 L. CUADROS: I was like that and then he was like this.

18 C. WEBSTER: Uhmm.

19 L. CUADROS: He was doing that.

20 C. WEBSTER: And what did his body do when his banana was on your flower?

21 L. CUADROS: Then he turned me around and he was doing my butt.

22 C. WEBSTER: And when his banana was on your flower did his body move, or did it stay

23 still, or did it do...

24

1 L. CUADROS: It, it was straight, he pushed it up, down, up, down.
2 C. WEBSTER: He pushed it up, down, up, down?
3 L. CUADROS: Yeah like mommy, like daddy's do to mommy's.
4 C. WEBSTER: And how do you know that daddy's do that to mommy's?
5 L. CUADROS: Because, because I saw my sister watching a grown up movie about
6 private stuff.
7 C. WEBSTER: Got it okay, okay alrighty and tell me everything you could feel when his
8 banana was on your flower?
9 L. CUADROS: Wet.
10 C. WEBSTER: It felt wet. Tell me about that?
11 L. CUADROS: He, he was showering.
12 C. WEBSTER: He was showering? He was showering when?
13 L. CUADROS: He was showering when he came, when he, he already showered in his
14 house then he came. He was gonna put the plastics on my mom's window
15 but, but, but he...
16 C. WEBSTER: Okay.
17 L. CUADROS: ...he, he, he, he I don't know.
18 C. WEBSTER: Okay alright you said it felt wet? Okay could you feel some other things
19 when his banana was on your...
20 L. CUADROS: That's all I could feel.
21 C. WEBSTER: Okay tell me everything you could hear when his banana was on your
22 flower?
23 L. CUADROS: He, I don't know.

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 16
1310-016

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1 C. WEBSTER: Okay, was he saying something to you or making any sounds when his
2 banana was on your flower?
3 L. CUADROS: No he was talking to me.
4 C. WEBSTER: Oh what did he say?
5 L. CUADROS: He was saying that don't tell my mom because she might kick me.
6 C. WEBSTER: Okay alright and did you say something to him when his banana was on
7 your flower?
8 L. CUADROS: I said nothing, I, I only said okay that's all.
9 C. WEBSTER: Okay alright tell me everything you could see when his banana was on
10 your flower.
11 L. CUADROS: I could see his head.
12 C. WEBSTER: Okay.
13 L. CUADROS: His shirts.
14 C. WEBSTER: Uh-huh.
15 L. CUADROS: That's all I could see.
16 C. WEBSTER: And what were you thinking when his banana was on your flower?
17 L. CUADROS: I was thinking he was in love.
18 C. WEBSTER: You were thinking that he was in love? Okay alright come over here
19 again so that I can see you better. And then you said that he flipped you
20 over?
21 L. CUADROS: (Shakes head yes.)
22 C. WEBSTER: Okay tell me what he did when he turned you over?
23 L. CUADROS: He just hold my back and turned me around.
24

1 C. WEBSTER: And then what did he do when you were turned around?
2 L. CUADROS: He did the same thing.
3 C. WEBSTER: Okay so his banana to your butt?
4 L. CUADROS: (Shakes head yes.)
5 C. WEBSTER: Okay what did his banana do when it was to your butt?
6 L. CUADROS: It was the same thing as my flower.
7 C. WEBSTER: Okay, okay tell me everything you could feel when his banana was to your
8 butt?
9 L. CUADROS: Wet, too.
10 C. WEBSTER: It felt wet, okay alrighty.
11 L. CUADROS: And my butt was hurting.
12 C. WEBSTER: Tell me about that?
13 L. CUADROS: It was hurting me 'cause he was doing, he was pushing it too hard.
14 C. WEBSTER: Oh okay and what did you do when you were pushing it too hard?
15 L. CUADROS: I said ow and he said sorry but he still was hurting me.
16 C. WEBSTER: Okay, okay and did he say something else to you?
17 L. CUADROS: That's all he said.
18 C. WEBSTER: Okay and now he said sorry but he was still doing it what's the very next
19 thing that happened?
20 L. CUADROS: He just pushed my pants back up.
21 C. WEBSTER: And, and then what happened?
22 L. CUADROS: And then I helped him with the plastic that's all.
23 C. WEBSTER: You helped him, him put the plastics?

24

1 L. CUADROS: Yeah that's all.
2 C. WEBSTER: And is that the, you said the plastics on the window?
3 L. CUADROS: Yeah.
4 C. WEBSTER: Oh okay.
5 L. CUADROS: That's all of that.
6 C. WEBSTER: Okay alright well tell me when it was all done how did your flower and
7 your butt feel when it was all done?
8 L. CUADROS: Uh, wet, too.
9 C. WEBSTER: It, it felt wet, too?
10 L. CUADROS: Uh-huh, and he cleaned it up.
11 C. WEBSTER: Oh tell me about that part?
12 L. CUADROS: He cleaned it with toilet paper.
13 C. WEBSTER: Uhmm.
14 L. CUADROS: And then he put my pants back up and he threw the toilet paper in the
15 garbage.
16 C. WEBSTER: Mmm.
17 L. CUADROS: That's what he always does.
18 C. WEBSTER: He cleans it with the toilet paper?
19 L. CUADROS: (Shakes head yes.)
20 C. WEBSTER: Okay and when he cleaned it with the toilet paper was there anything on
21 the toilet paper after he cleaned it?
22 L. CUADROS: No.

1 C. WEBSTER: No, okay alright. Um, okay and the last time that it happened Luna when
2 did that happen?
3 L. CUADROS: When I wanted to help him.
4 C. WEBSTER: Okay when you wanted to help him. Okay how old were you then Luna?
5 L. CUADROS: Five.
6 C. WEBSTER: Five, okay.
7 L. CUADROS: Sometimes that happens when I was four.
8 C. WEBSTER: Oh okay, okay and did it happen in the house that you live in now? This
9 last time was that in the house that you live in now or was that a different
10 house?
11 L. CUADROS: The house that I live in now.
12 C. WEBSTER: Oh okay, okay.
13 L. CUADROS: That was the new house.
14 C. WEBSTER: Mmm okay.
15 L. CUADROS: It's not that new anymore.
16 C. WEBSTER: Tell me about another time that Fidel did something to you?
17 L. CUADROS: He just, he just, he just went back home when my mom came back.
18 C. WEBSTER: When your mom came back he went home?
19 L. CUADROS: Yeah.
20 C. WEBSTER: Okay, okay you talked about the, you live in the new house right now?
21 L. CUADROS: (Shakes head yes.)
22 C. WEBSTER: Did Fidel do something to your body in a different house, in a different
23 place?
24

1 L. CUADROS: I don't know that's all I hadded to say.
2 C. WEBSTER: That's all you had to say, okay well tell me about the first time that Fidel
3 did something to your body?
4 L. CUADROS: I already told you.
5 C. WEBSTER: You already told me, okay. Um, let me ask you this we talked about
6 Fidel's banana going on your flower and your butt, has Fidel's banana
7 gone somewhere else on your body?
8 L. CUADROS: On my flower and my butt.
9 C. WEBSTER: Flower and your butt, okay alright did Fidel want you to do something else
10 to his banana?
11 L. CUADROS: He put something on to my mouth.
12 C. WEBSTER: Oh say that again?
13 L. CUADROS: To my mouth.
14 C. WEBSTER: He put, what, what about your mouth?
15 L. CUADROS: He put his banana in my mouth, too.
16 C. WEBSTER: Oh tell me about that part.
17 L. CUADROS: When I was in his house then he was putting his banana in my mouth.
18 C. WEBSTER: Okay and you were at his house?
19 L. CUADROS: (Shakes head yes.)
20 C. WEBSTER: How come you were over at his house?
21 L. CUADROS: Because I used to live there.
22 C. WEBSTER: That's loud. I'm gonna tell you what that is okay?
23 L. CUADROS: What is it?
24

1 C. WEBSTER: I'm sorry they're so loud below us they're building something and so
2 sometimes when they build down there we hear like hammers, and drills,
3 and so that's what that is I'm sorry about that.
4 L. CUADROS: Yeah.
5 C. WEBSTER: Yeah that's just people building stuff below us. Does that sound weird?
6 L. CUADROS: (Shakes head yes.)
7 C. WEBSTER: Yeah okay so you were at his house, where were you at his house?
8 L. CUADROS: His house is far away from my mom's house.
9 C. WEBSTER: And where were you at his house when he put his banana to your mouth?
10 L. CUADROS: His house?
11 C. WEBSTER: Yeah when, when he put his banana to your mouth were you in the
12 kitchen?
13 L. CUADROS: No in his room.
14 ~~C. WEBSTER: Oh okay and who was in his room when he did that?~~
15 ~~L. CUADROS: My sister was with me.~~
16 C. WEBSTER: Uh-huh, okay.
17 L. CUADROS: That's all.
18 C. WEBSTER: And what happened first when he put his banana to your mouth?
19 L. CUADROS: He just took off his pants to itch something then he (unintelligible)...in my
20 flower.
21 C. WEBSTER: He took off his pants and what about his underwear?
22 L. CUADROS: Uhmm, he took off his underwear, too.
23 C. WEBSTER: Okay so his pants and his underwear what happened next?

24
TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 22
1310-016

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1 L. CUADROS: And then he made me open my mouth then he put his banana in my
2 mouth.
3 C. WEBSTER: Okay how did he make you open your mouth?
4 L. CUADROS: I was tired and he said open your mouth, then I did, then he did it.
5 C. WEBSTER: Okay and then what did he do with his banana?
6 L. CUADROS: He put it in my mouth.
7 C. WEBSTER: And tell me about when his banana was in your mouth, tell me about that?
8 L. CUADROS: He did the same thing.
9 C. WEBSTER: What did his banana do when it was in your mouth?
10 L. CUADROS: It was hurting the same thing as my butt.
11 C. WEBSTER: It was hurting, what part of your mouth was hurting?
12 L. CUADROS: He was doing it straight.
13 C. WEBSTER: Doing it straight, he was doing what straight?
14 L. CUADROS: His banana straight.
15 C. WEBSTER: Oh his banana was straight, okay alright and when his banana was in your
16 mouth was it moving, or was it staying still, or was it doing something?
17 L. CUADROS: It was moving.
18 C. WEBSTER: How was it moving?
19 L. CUADROS: Mmm.
20 C. WEBSTER: Oh bring 'em over here so I can see better? Thank you I know that bear's
21 kind a big sorry about that.
22 L. CUADROS: He, his banana was like this in my mouth.
23 C. WEBSTER: Was like that to your mouth?

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 23
1310-016

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1 L. CUADROS: Yeah he was like that to my mouth.
2 C. WEBSTER: Okay and how was he moving?
3 L. CUADROS: He, his banana was up, down, up, down.
4 C. WEBSTER: Oh up, down, up, down okay and tell me everything you could feel when
5 his banana was in your mouth?
6 L. CUADROS: I can feel that his banana was, was wet, too.
7 C. WEBSTER: It was wet, too?
8 L. CUADROS: Yeah.
9 C. WEBSTER: Okay alright and tell me everything you could see when his banana was in
10 your mouth?
11 L. CUADROS: I could not see his, his head and his shirts, not his, his shoes.
12 C. WEBSTER: Okay alright how about tell me everything you could hear when his
13 banana was in your mouth?
14 L. CUADROS: I, I don't know.
15 C. WEBSTER: Okay. Was he saying something to you when his banana was in your
16 mouth, or making any sounds?
17 L. CUADROS: He was not saying anything.
18 C. WEBSTER: What about you did you say something to him when his banana was in
19 your mouth?
20 L. CUADROS: Yes I said don't do it.
21 C. WEBSTER: Uhmm, and when you said don't do it what did he do?
22 L. CUADROS: He, he just did not listen then he just did it.

23

24

1 C. WEBSTER: Okay tell me everything you could taste when his banana was in your
2 mouth?
3 L. CUADROS: I could taste nothing.
4 C. WEBSTER: Nothing, okay and...
5 L. CUADROS: He was making me swallow it something but I, I can't.
6 C. WEBSTER: What do you mean he was making you swallow it?
7 L. CUADROS: It, it, it was going all the way down here.
8 C. WEBSTER: Oh okay, okay and you said it felt wet?
9 L. CUADROS: (Shakes head yes.)
10 C. WEBSTER: Tell me about that part?
11 L. CUADROS: It was wet because he, he, he was just showering and it's backed up.
12 C. WEBSTER: Oh he had showered?
13 L. CUADROS: Yeah.
14 C. WEBSTER: Okay now did you see his banana?
15 L. CUADROS: No not really.
16 C. WEBSTER: How come?
17 L. CUADROS: Because I can't even see anything in my mouth.
18 C. WEBSTER: Oh okay alright and did anything come out of his banana?
19 L. CUADROS: No.
20 C. WEBSTER: No, okay.
21 L. CUADROS: He, when he was finished he just put his banana out.
22 C. WEBSTER: Oh he did and then what did he do?
23
24

1 L. CUADROS: And then he just like cleaned his banana up and, and then I just closed my
2 mouth.
3 C. WEBSTER: How did he clean his banana?
4 L. CUADROS: With toilet paper.
5 C. WEBSTER: Okay and how come he had to clean his banana?
6 L. CUADROS: Because it was wet.
7 C. WEBSTER: Okay what was it wet with?
8 L. CUADROS: His bathtub I just told you.
9 ~~C. WEBSTER: Oh his bathtub okay, okay alrighty and what was Wara doing?~~
10 ~~L. CUADROS: Wara was looking at Fidel doing that to me. Wara, my sister was looking~~
11 ~~at him doing that to me.~~
12 ~~C. WEBSTER: Oh okay and when she was looking at you did she say something or?~~
13 ~~L. CUADROS: She said nothing.~~
14 C. WEBSTER: Nothing, okay how old were you when that happened, Luna?
15 L. CUADROS: Four.
16 C. WEBSTER: You were four, okay and so we talked about his flower going to your
17 mouth did his mouth go somewhere on your body?
18 L. CUADROS: No only my mouth.
19 C. WEBSTER: Oh his mouth went to your mouth?
20 L. CUADROS: (Shakes head yes.)
21 C. WEBSTER: What did his mouth do to your mouth?
22 L. CUADROS: No, no his banana went to my mouth.
23 C. WEBSTER: Oh okay, okay alright okay and did Fidel do something else to your body?

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 26
1310-016

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1 L. CUADROS: That's all he did.
2 C. WEBSTER: Okay.
3 L. CUADROS: He just, he just did my butt, and my flower, and my mouth.
4 C. WEBSTER: Okay, okay did Fidel want you to tell people about this?
5 L. CUADROS: No he just want to keep a secret from my mom so she does not kick me.
6 C. WEBSTER: Okay how do you know he wanted you to keep it a secret?
7 L. CUADROS: Because he, he said don't tell my mom or she might kick me but she never
8 does.
9 C. WEBSTER: Oh, oh okay alrighty okay now how did people find out about this Luna?
10 L. CUADROS: I don't know.
11 C. WEBSTER: You don't know?
12 L. CUADROS: My mom just called the cops.
13 C. WEBSTER: Okay, okay and did you tell your mom about this?
14 L. CUADROS: I did.
15 C. WEBSTER: Okay, tell oh tell me what happened when you told your mom?
16 L. CUADROS: When we were gonna, my, when, when we, when my mom was done
17 singing then she just went to sleep and I woke her up and I told her what
18 was, I told he what was wrong with my mom's friend.
19 C. WEBSTER: Uhmm, you told her what was wrong with mom's friend?
20 L. CUADROS: (Shakes head yes.)
21 C. WEBSTER: And then what did mom do when you told her?
22 L. CUADROS: She said she, she loved me because I told her the truth.
23 C. WEBSTER: Uh-huh.

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 27
1310-016

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1 L. CUADROS: And then when we woke up then we went to school and we went to sleep
2 and then when we woke up again then we had to come here.
3 C. WEBSTER: Okay what made you decide to tell mom about what Fidel did?
4 L. CUADROS: I did not wanna keep a secret from my mom I just wanted to, to think that
5 she does not kick me.
6 C. WEBSTER: Oh okay, okay now...
7 L. CUADROS: I just don't want my, my mom's friend keeping a secret from my mom.
8 C. WEBSTER: You don't want him to keep a secret from your mom? Now have you seen
9 Fidel do something to Wara?
10 L. CUADROS: He's just a boy.
11 C. WEBSTER: He's a boy, okay. Have you seen Fidel do something to Wara?
12 L. CUADROS: Um, yes.
13 C. WEBSTER: Okay what have you seen him do Wara?
14 L. CUADROS: It was the same thing.
15 C. WEBSTER: Even if it's the same go ahead and tell me, he did what to Wara? What did
16 you see him do?
17 L. CUADROS: I saw him do my sister's mouth. It's the same thing that he just did.
18 C. WEBSTER: Okay banana to mouth?
19 L. CUADROS: (Shakes head yes.)
20 C. WEBSTER: Okay did you see him do something else to Wara?
21 L. CUADROS: I did that's all.
22 C. WEBSTER: Just the banana to the mouth?
23 L. CUADROS: (Shakes head yes.)

24

TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 28
1310-016

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1 C. WEBSTER: Okay and then you said something about Wara watching private movies?
2 L. CUADROS: Yeah.
3 C. WEBSTER: Tell me about that?
4 L. CUADROS: I don't know which one she watched I didn't, I haven't watch it. My sister
5 only remembers it.
6 C. WEBSTER: Oh.
7 L. CUADROS: It was a long time ago.
8 C. WEBSTER: Okay and how do you know she watched private movies?
9 L. CUADROS: Because when I came in I saw the private movie and my sister was
10 watching it. And then my mom's friend just, just changed the movie and
11 he said get out of his room and that's not nice so I got out of it.
12 C. WEBSTER: Okay and when you came in and you saw the private movie was on what
13 were the people doing in the private movie?
14 L. CUADROS: A girl was wearing a skirt and, and they were naked.
15 C. WEBSTER: Ummm, they were naked and what were they doing?
16 L. CUADROS: They were doing the private stuff.
17 C. WEBSTER: Okay the people in the movie were doing the private stuff?
18 L. CUADROS: (Shakes head yes.)
19 C. WEBSTER: Okay what were Wara and Fidel doing?
20 L. CUADROS: The, the same thing as the private stuff but she, she, she was not even
21 wearing a skirt.
22 C. WEBSTER: Wara wasn't wearing a skirt, what was Wara wearing?
23 L. CUADROS: Just pants.

24

1 C. WEBSTER: ~~Pants, okay. Okay. Now Luna has anybody else ever done something like~~
2 ~~this to you?~~

3 L. CUADROS: ~~No.~~

4 C. WEBSTER: ~~Okay to your flower, your butt?~~

5 L. CUADROS: ~~And my mouth.~~

6 C. WEBSTER: ~~And your mouth, has anybody else ever done that?~~

7 L. CUADROS: ~~Nobody else.~~

8 C. WEBSTER: Nobody else, okay let's do this Luna let's look at a picture of a body
9 okay? Okay so this is the front of a body and this is the back of a body
10 okay? So I'm gonna give you a green marker okay and I want you to
11 circle on the body where the flower is. Okay and circle on the body where
12 the butt is. Okay and then do you wanna write your name on there? Do
13 you know how to write your name? Alright go ahead.

14 L. CUADROS: L-U-N-A.

15 C. WEBSTER: Okay can you do it on the other one, too.

16 L. CUADROS: L-U-N-A.

17 C. WEBSTER: Okay and I'm gonna give you a different body okay and a different
18 marker. Go ahead pick a different marker. Okay this is the front of a
19 body again and the back of the body, okay. I want you to mark on the
20 body where the banana is.

21 L. CUADROS: His banana was down here.

22 C. WEBSTER: Down there, okay.

23 L. CUADROS: And his butt is just the same thing as girls are.

24
TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 30
1310-016

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1 C. WEBSTER: The same thing as girls, okay. Alright go ahead and write your name on
2 there again, okay?
3 L. CUADROS: I can write my sister's name can I?
4 C. WEBSTER: Oh well I want you to write your name because you drew on there.
5 L. CUADROS: Oh I don't have any space.
6 C. WEBSTER: That's okay.
7 L. CUADROS: So just go down here.
8 C. WEBSTER: Perfect, and Luna what did your sister say that Fidel did to her?
9 L. CUADROS: She just said nothing.
10 C. WEBSTER: She said nothing?
11 L. CUADROS: Yeah.
12 C. WEBSTER: Oh I'm just a little confused. Did your sister tell you about some things
13 that Fidel did to her?
14 L. CUADROS: When she was finished she told me he was doing ah to her.
15 C. WEBSTER: He was doing what?
16 L. CUADROS: Oh.
17 C. WEBSTER: When she was finished she, she just said what?
18 L. CUADROS: She said that Fidel was doing ah.
19 C. WEBSTER: Oh that Fidel was saying ah?
20 L. CUADROS: Yeah he was doing the private stuff to my sister, too.
21 C. WEBSTER: Okay.
22 L. CUADROS: He does it to my sister and me.

24

1 C. WEBSTER: Okay, Luna let's take a break, okay? What I do during the break is I look
2 over my notes and I'm gonna go talk to the detective and see if I have
3 some more questions for you. Okay, do you wanna draw during the
4 break?

5 L. CUADROS: Yeah.

6 C. WEBSTER: Yeah, okay I'm gonna leave those markers and I'm gonna give you a piece
7 of paper okay. I'll be back in just a minute and you can draw until I get
8 back okay?

9 L. CUADROS: Okay.

10 C. WEBSTER: Alright.

11 BREAK

12 C. WEBSTER: Okay Luna I'm back.

13 L. CUADROS: And this is the kitty.

14 C. WEBSTER: Uh-huh.

15 L. CUADROS: And that's the sky.

16 C. WEBSTER: Oh cool that's neat.

17 L. CUADROS: And I was gonna draw the, the grass.

18 C. WEBSTER: Hey Luna I had a question.

19 L. CUADROS: What?

20 C. WEBSTER: We talked about how you told your mom because you didn't wanna keep a
21 secret from your mom?

22 L. CUADROS: No.

23 C. WEBSTER: Okay how come you chose not to tell your mom before?
24

1 L. CUADROS: Because I did not remember.
2 C. WEBSTER: Because what?
3 L. CUADROS: I did not remember.
4 C. WEBSTER: Because you did not remember?
5 L. CUADROS: Yeah.
6 C. WEBSTER: Okay how come you didn't remember?
7 L. CUADROS: Because it was a long time and she couldn't, it was a long time.
8 C. WEBSTER: It was a long time, what do you mean by that?
9 L. CUADROS: I don't know.
10 C. WEBSTER: You don't know, okay alright hey Luna is there something else that Fidel
11 did, or that he said that we haven't talked about yet?
12 L. CUADROS: That's all.
13 C. WEBSTER: That's all, okay alright well I don't think I have any more questions for
14 you I think we're gonna be all done, okay? Thank you for coming to see
15 me today. Do you want to finish your picture or do you wanna go see
16 your mom?
17 L. CUADROS: I'm just finished.
18 C. WEBSTER: You're finished perfect okay sounds good. And I'm gonna go show you
19 where your mom is okay she's just out here. Thank you for coming to see
20 me.

21 End of Interview

22
23 REVIEWED BY: Carolyn Webster, MSW 12-11-13

24
TRANSCRIPT OF INTERVIEW
WITH LUNA CUADROS - 33
1310-016

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Thomas Kummerow, the attorney for the appellant, at Tom@washapp.org, containing a copy of the BRIEF OF RESPONDENT, in State v. Fidel Bautista-Gonzalez, Cause No. 71928-9, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 16th day of April, 2015.

U Brame

Name:

Done in Seattle, Washington