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Court of Appeals
Division I
State of Washington

NO. 72523-8-1

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

TANNER J.
(DOB: 10/17/1999)

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable Susan K. Cook, Judge

RESPONDENT'S BRIEF

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I. SUMMARY OF ARGUMENT

On November 18, 2013, Ms. Randi Cate was home watching her own two sons and the son of her housemate, Ms. Elizabeth Dellinger-Frye, when her son Logan told her that her other son Andrew, and his friend M.A., were pulling down their pants and kissing each other's butts. Ms. Cate called M.A.'s mother, who was at a doctor appointment, and alerted her to come home to address the situation with her. Once at the home, M.A. revealed to Ms. Cate and his mother that he had learned it from Tanner. Six months prior, M.A. and his mother lived with Tanner J. and his father Van. M.A. said that when he had lived with Tanner he would go into Tanner's room to watch him play X-Box and Tanner would have him pull his pants down and sit on top of his penis. Once Ms. Cate and Ms. Dellinger-Frye heard this explanation, they ceased their questions and went to the Sheriff's Office to report what M.A. had revealed to them.

In an interview with Child Interview Specialist, Deborah Ridgeway, M.A. reiterated that he learned a sexing game from Tanner and that Tanner would remove his own clothes and

have M.A. remove his clothes and sit on top of Tanner's penis. M.A. specifically said that Tanner would, "put his pee pee in my butt" and that "it felt weird." He also recalled that Tanner had a soft penis and that there was hair on it. In trial, M.A. acknowledged that he learned a sexing game from Tanner, and that seeing Tanner made him sad because of what had happened. However, M.A. provided few other details about the sex acts on the witness stand and would answer questions before the prosecutor had an opportunity to finish her sentence. It appeared to Judge Susan K. Cook that he was shutting down on the stand. Judge Cook found Tanner J. guilty of one count of Child Molestation in the First Degree.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the State proved beyond a reasonable doubt that Tanner committed an act of child molestation against M.A.
2. Whether Judge Cook abused her discretion when she allowed child hearsay statements to be admitted as evidence at trial.

III. STATEMENT OF THE CASE

1. Statement of Procedural History

¹On September 9, 2014, Tanner J. was found guilty of one count of Child Molestation in the First Degree after a bench trial in juvenile court before Judge Susan K. Cook. 9/9/14 RP 114-115. Tanner J. filed a timely notice of appeal on September 23, 2014. CP 234.

2. Statement of Facts

On November 18, 2013, M.A. was under the care of Ms. Randi Cate while his mother, Elizabeth Dellinger-Frye was away at a doctor's appointment. At the time, Ms. Dellinger-Frye (and her two children) lived with Ms. Cate, her husband, and their children. Ms. Cate was the sole supervisor of a group of kids in the household that day, specifically, Logan, Andrew, Brianna and M.A. 8/1/14 RP 10-11; 9/8/14 RP 59. Logan and Andrew are Ms. Cate's children. M.A. is Ms. Dellinger-Frye's son. Logan came into the living room and told his mother that M.A. and Andrew were pulling their pants down and kissing each other's privates while in another room. 8/1/14 RP 11-12; 9/8/14 RP 59. Ms. Cate told them to stop doing that and to sit on a

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number.

couch in the living room where she could see both of them and wait for M.A.'s mother to return. 8/1/14 RP 12; 9/8/14 RP 59. Ms. Cate called M.A.'s mother and told her that she needed to come back to the home. 8/1/14 RP 12; 9/8/14 RP 59. M.A.'s mother arrived back at the home approximately fifteen to twenty minutes later. 8/1/14 RP 12; 9/8/14 RP 59, 94. Andrew and M.A. were not in trouble while they waited on the couch; Ms. Cate and Ms. Dellinger-Frye both testified that they were not angry at the boys and did not discipline or scold either child. 8/1/14 RP 14-15, 18; 9/8/14 RP 63.

Once M.A.'s mother had arrived both adults confronted the children in a calm manner and asked where he had learned this type of behavior. 8/1/14 RP 13; 9/8/14 RP 61. M.A. first said that Andrew showed him, however, Andrew immediately said, no, and that M.A. had showed him. 8/1/14 RP 14; 9/8/14 RP 63. The adults questioned whether the boys had seen this on television, thinking that the actions stemmed from an inappropriate show or movie. 8/1/14 RP 14; 9/8/14 RP 62. M.A. said that it had happened to him and that he had learned it from Tanner. 8/1/14 RP 14, 25, 39; 9/8/14 RP 63, 95.

Tanner is the son of Ms. Dellinger-Frye's ex-boyfriend and Ms. Dellinger-Frye and her son briefly lived with Tanner and his father

before she ended their relationship. 8/1/14 RP 22-23. M.A. had not been living in the same house as Tanner for approximately six months. 8/1/14 RP 23. Tanner was not in the same class as M.A. and had not been in M.A.'s life for six months. 8/1/14 RP 23-24. Importantly, neither Ms. Dellinger-Frye, nor Ms. Cate brought up Tanner when questioning Andrew and M.A. about their behavior. 8/1/14 RP 14, 25. Both women appeared surprised that M.A. brought Tanner up since he hadn't been mentioned or seen for months. 8/1/14 RP 15.

M.A. revealed to Ms. Cate and his mother that when he lived in the house on Russell Road that he would go into Tanner's room to watch him play X-Box and Tanner would say let's play house sex. 8/1/14 RP 14. Tanner would tell M.A. to pull down his pants and sit on top of him with his pants down. 8/1/14 RP 14-15, 25-26. M.A. said that Tanner's penis went inside of his butt. 8/1/14 RP 15, 25-26; 9/8/14 RP 63. Ms. Cate and Ms. Dellinger-Frye stopped the conversation at that time to alert the police. 8/1/14 RP 15; 9/8/14 RP 63; 96.

M.A. was examined by a medical professional who found no physical evidence of trauma associated with rape or molestation. However, this examination was completed months after the appellant

molested M.A. because M.A. did not reveal what had occurred for approximately six months.

M.A. was interviewed by Deborah Ridgeway. Ms. Ridgeway is a child interview specialist whom is employed by the Skagit County Prosecutor's Office. 8/1/14 RP 40. She has conducted over 250 interviews with children of alleged sex abuse; at the time she interviewed M.A. she had completed approximately 190. 8/1/14 RP 43; 9/8/14 RP 156. During the interview, M.A. revealed to Ms. Ridgeway that Tanner had asked him on more than one occasion to pull his pants down and to sit on Tanner's lap. 8/1/14 RP 61-65; 9/8/14 RP 163-164. M.A. recounted that this had happened when he went into Tanner's room to watch Tanner play X-Box. 8/1/14 RP 59; 9/8/14 RP 165. M.A. said that Tanner had asked him to take his pants off and Tanner would remove his own underwear and pants. 8/1/14 RP 61; 9/8/14 RP 165. Tanner would have M.A. sit on his lap and Tanner's pee pee would go inside of M.A.'s butt. 8/1/14 RP 61, 63; 9/8/14 RP 64, 99, 168. M.A. said that this felt weird. 8/1/14 RP 63; 9/8/14 RP 167. Ms. Ridgeway asked where were Tanner's hands when this happened and M.A. replied that his hands would be on M.A.'s pee pee. 8/1/14 RP 64; 9/8/14 RP 168. M.A. said that he remembered hair being on Tanner's pee pee and Tanner's pee pee

was soft. 8/1/14 RP 66; 9/8/14 RP 166. M.A. also said that Tanner told M.A. to suck on his pee pee and that M.A. did suck on Tanner's pee pee. 8/1/14 RP 65; 9/8/14 RP 168.

M.A. could recall specific identifying items in Tanner's room, such as a chair with a light blue foot stool, and the fact that Tanner's room had a closet in it and inside the closet was a heater. 8/1/14 69-70; 9/8/14 RP 166.

M.A. was six years old when he lived with Tanner. 9/8/14 RP 168. When M.A. was much younger, he had some developmental issues that are relatively common in young children. M.A. had bed wetting issues when he was younger, but he had ceased to have those bed-wetting issues until this case was pending in court and M.A. started having night terrors about Tanner. 8/1/14 RP 26, 33; 9/8/14 RP 98, 149. M.A. is not developmentally disabled as suggested by the appellant. 8/1/14 RP 24, 34-35. In fact, M.A. has not been officially diagnosed with any specific disorder or disability and receives no special schooling. 8/1/14 RP 34-35.

IV. ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE BEYOND A REASONABLE DOUBT TO PROVE THAT TANNER COMMITTED AN ACT OF CHILD MOLESTATION IN THE FIRST DEGREE AGAINST M.A.

Upon review for sufficiency of the evidence, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We defer to the trier of fact on issues of credibility, conflicting testimony and persuasiveness of the evidence. *State v. Fiser*, 99 Wn. App. 714, 719, 995 P.2d 107 (2000). As the reviewing court, we need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the conviction. *Id.* at 718. “[S]exual gratification’ is not an essential element to the crime of first degree child molestation but a definitional term that clarifies the meaning of the essential element.” *State v. Lorenz*, 152 Wn.2d 22, 36, 93 P.3d 133 (2004); *State v. Bell*, 2008 Wn. App. 54, 8-9 (2008).

In reviewing a juvenile court adjudication, we must decide whether substantial evidence supports the trial court's findings of fact

and, in turn, whether the findings support the conclusions of law. *State v. Alvarez*, 105 Wn. App. 215, 220, 19 P.3d 485 (2001); *State v. B.J.S.*, 140 Wn. App. 91, (2007). We treat unchallenged findings of fact as verities on appeal. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). We review conclusions of law de novo. *Levy*, 156 Wn.2d at 733. A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004); *State v. Camarillo*, 115 Wn. 60, 71 794 P.2d 850 (1990). Circumstantial evidence is equally reliable as direct evidence. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).

a. M.A. testified that Tanner taught him the sex game

Tanner's juvenile court trial was held in the Skagit County Superior Court, specifically, courtroom number four, which is about 500 square feet in total size. Courtroom four is never used for jury trial (there is no juror box) and is typically only used for stipulated bench trials. Here, there was likely a criminal jury trial or two taking

up the regular sized court rooms. Therefore, when M.A. was on the witness stand he could not see the judge because of the placement of the witness stand and he was sitting less than ten feet away from his perpetrator, Tanner J. While the transcription of the trial does not include a description of the courtroom, Judge Cook acknowledged the abnormal placement and space issue when M.A. first took the stand, "I can't see you, but we can peek over the counter at each other, I guess." 9/8/14 RP 18.

The courtroom used was not conducive of a comfortable atmosphere for a seven year old sex victim to testify against his teenage perpetrator, but even with the awkward setting M.A. still testified that Tanner had introduced him to a sex game. 9/8/14 RP 32. M.A. also remembered having a conversation with his mother about how it wasn't okay to pull his pants down with Andrew and that he had learned that game from the time he lived with Tanner. 9/8/14 RP 34-35. Numerous other questions about the inappropriate touching were met with "I don't know," which is wholly different than, "no" or "that didn't happen." At the time the bench trial took place, almost a year of time had elapsed from the time that M.A. revealed to both his mother and Ms. Cate that he had been molested by Tanner. Therefore, the fact that seven year old M.A. was vague or didn't

remember details of the sexual assault against him is believable and the reality of what happens when time goes by and children learn to cope with what has happened to them.

Furthermore, Judge Cook was in the best position to determine credibility since she was in the same room hearing his answers and perhaps peeking over the counter to read M.A.'s body language. Tenor, inflection, wavering of speech and voice tremor are all impossible to determine reading a transcript and yet a trial judge can take into consideration all of those things while simultaneously hearing the answer to a question. Reviewing courts rely on the fact-finder, before whom the witness appeared, to consider "the manner in which the child recounts the events, the child's memory regarding other events (including current events), and the child's demeanor," as well as the child's capacity and intelligence. *Woods*, 154 Wn.2d 613 at 624, 617, respectively.

b. Findings of Fact 4 and 5 are supported by evidence

Judge Cook found in Finding of Fact 4 that M.A. and one of Ms. Cate's sons had been acting out over the course of about three weeks sexually by pulling down their pants and doing the sexing or having sex game. This is supported by testimony provided by Ms. Cate: "I told her (Ms. Dellinger-Frye) that they were still doing the let's

play have sex game things and we needed to get to the bottom of it because it was getting kind of ridiculous.” 9/8/14 RP 60; See also, 9/8/14 RP 67.

In Finding of Fact 5, the trial court found that the game was described by M.A.'s mother as taking down their pants and playing leapfrog. The following occurred during cross examination of Ms. Dellinger-Frye:

Ms. Prunty: And during the child hearsay hearing, you testified that the boys were playing leapfrog with their pants down?

Ms. Dellinger-Frye: Yes

Ms. Prunty: So what was—can you describe that a little bit more?

Ms. Dellinger-Frye: Just one was bent over and the other was jumping on his back with his pants down. 9/8/14 RP 139.

Both Findings of Fact 4 and 5 are supported by evidence.

c. Finding of Fact 12 is supported by evidence

In Finding of Fact 12, the trial court found that M.A. testified he did not like to see Tanner because of what happened when they lived together and that it made him sad and it was something he didn't like. The appellant argues that because M.A. tried to change the subject and deflect what happened to him while he testified, the court abused

its discretion and erred in making such a finding. M.A.'s testimony does support Finding of Fact 12 and reading M.A.'s testimony as a whole rather than piecemeal supports Judge Cook's finding here. Judge Cook did not abuse her discretion in regard to this finding.

d. Finding of Fact 19 is supported by evidence

In Finding of Fact 19, the trial court found that the contact that occurred was done for the purposes of Tanner's sexual gratification and the sexual contact involved tanner instructing M.A. to pull down his pants and underwear and climb on top of Tanner while he had the front of his pants down and had M.A. sit with his penis in his butt. The appellant argues that the phrase "in my butt" was never fleshed out and that the finding is not supported by any evidence and should be stricken.

When talking to the Ms. Ridgeway, the child interview specialist, M.A. said that Tanner had asked him to take his pants off and Tanner would remove his own underwear and pants. 8/1/14 RP 61; 9/8/14 RP 165. Tanner would have M.A. sit on his lap and Tanner's pee pee would go inside of M.A.'s butt. 8/1/14 RP 61, 63; 9/8/14 RP 64, 99, 168. M.A. said that this felt weird. 8/1/14 RP 63; 9/8/14 RP 167. Ms. Ridgeway asked where were Tanner's hands when this happened and M.A. replied that his hands would be on

M.A.'s pee pee. 8/1/14 RP 64; 9/8/14 RP 168. The trial court's finding is based on substantial evidence and should not be stricken as requested by the appellant.

Furthermore, substantial evidence supports all of the trial court's findings of facts both disputed and undisputed by the appellant and the findings made in the instant case support the conclusions of law. This court should leave the findings of fact and conclusions of law undisturbed.

B. JUDGE COOK DID NOT ABUSE HER DISCRETION BY ALLOWING CHILD HEARSAY EVIDENCE IN AT TRIAL.

Courts of appeal review a trial court's admission of child hearsay statements for abuse of discretion. *State v. Borboa*, 157 Wn.2d 108, 121, 135 P.3d 469 (2006). "A trial court abuses its discretion 'only when its decision is manifestly unreasonable or is based on untenable reasons or grounds.'" *Id.* (quoting *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003)). *State v. Beadle*, 173 Wn.2d 97 (2011). We reverse a trial court's admission of child hearsay statements under RCW 9A.44.120 only when there is a manifest abuse of discretion. *State v. Woods*, 154 Wn.2d 613, 623, 114 P.3d 1174 (2005). An abuse of discretion occurs when the decision is manifestly unreasonable, or is based on untenable

grounds or reasons. *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003). We review the factual findings supporting the admission for substantial evidence, which is a quantity of evidence in the record sufficient to persuade a fair-minded, rational person that the finding is true. *State v. Halstien*, 122 Wn.2d 109, 128-29, 857 P.2d 270 (1993). Nonetheless, an erroneous finding is harmless if it does not materially affect the trial court's legal conclusions. *State v. Caldera*, 66 Wn. App. 548, 551, 832 P.2d 139 (1992). By statute, hearsay statements of children under age ten, describing actual or attempted sexual contact, are admissible in juvenile adjudications if the trial court finds that "the time, content, and circumstances of the statement[s] provide sufficient indicia of reliability." RCW 9A.44.120. In determining whether the statement is reliable, courts look to the circumstances surrounding its making rather than to subsequent corroboration of the criminal act. *State v. Ryan*, 103 Wn.2d 165, 174, 691 P.2d 197 (1984). The U.S. Supreme Court's recent decision in *Ohio v. Clark* does not make obsolete the *Ryan* factors for purposes of this case. *Ohio v. Clark*, 135 S.Ct. 2173 (2015)(finding non-testimonial child hearsay can be admissible at trial and does not violate the Sixth Amendment right to confront witnesses if certain factors are met)

The child hearsay statement's reliability depends on the nine factors set forth in *Ryan*: (1) whether there is an apparent motive to lie, (2) the declarant's general character, (3) whether more than one person heard the statements, (4) whether the statements were spontaneous, (5) the timing of the declaration and the relationship between the declarant and the witness, (6) whether the statement contains express assertions about past facts, (7) whether cross-examination could show the declarant's lack of knowledge, (8) whether the possibility that the declarant's recollection is faulty is remote, and (9) whether the circumstances surrounding the statement are such that there is no reason to suppose the declarant misrepresented the defendant's involvement. *State v. Swan*, 114 Wn.2d 613, 647-48, 790 P.2d 610 (1990) *cert. denied*, 498 U.S. 1046 (1991); *Ryan*, 103 Wn.2d at 175-76. It is only necessary that the statements substantially satisfy these factors. *Woods*, 154 Wn.2d at 623-24.

In the instant case, Tanner J., challenges the trial court's *Ryan* factor findings.

1) No motive for M.A. to lie

The trial court found that M.A. had no motive to lie about Tanner's involvement. The trial court noted that M.A. and Tanner

hadn't lived in the same house for at least six months, they no longer rode the same bus and there were no conflicts between the boys at the point in time, so there is really no reason why M.A. would select Tanner or choose to get Tanner in trouble. 8/1/14 RP 93. The trial court also found that even if M.A. got into trouble for sexually acting out while in Ms. Cate's home, it is unclear how naming Tanner would get M.A. out of trouble if indeed he was in trouble in the first place. The appellant argues that M.A.'s mother and Tanner's father had a hostile break-up to their relationship and that M.A. adopted his mother's dislike of Tanner and his father Van and therefore lied about molestation to get back at Tanner and Van. The appellant also seems to argue that M.A. was mad that Tanner had a chair in his room and he did not, and that this contributed to M.A. having a motive to lie.

The record supports trial court's finding because it is clear from the testimony taken at the pre-trial hearings and at the trial that there were hostilities between Tanner's father and M.A.'s mother, but there is no evidence of hostilities between M.A.'s mother and Tanner. Plus, over six months of time had passed before M.A. revealed that he had been molested by Tanner—so much time had passed that any alleged motive would have been defeated by the passage of

time. Both M.A. and his mother had moved on to a new home and Ms. Dellinger-Frye was in a new relationship with a completely separate person.

2) M.A.'s good general character

The trial court found that M.A. appeared to have good character, that he did not spin wild tales, or have too vicid of an imagination and he did not make up things about other people. The appellant argues that because M.A. shut down at trial and only briefly mentioned the "sexing game" that Tanner taught him he should be deemed a liar and thus not in good general character. The appellant argues that M.A.'s trial performance undercuts his reliability in other forums. The trial court was in the best position to observe M.A. and to properly assess his character. Judge Cook did not abuse her discretion in finding that M.A. was of good character.

3) More than one person heard M.A.'s statements

The trial court found that three different people heard M.A.'s statements: his mother (Ms. Dellinger-Frye), Ms. Cate and Ms. Ridgeway. The trial court noted that both Ms. Dellinger-Frye and Ms. Cate heard the statements at the same time and "related them in a way that sound consistent." 8/1/14 RP 94. The trial court also noted that the statements M.A. made to Ms. Ridgeway were also essentially

equivalent and were consistent with one another. The appellant argues that the statements M.A. made were not consistent with one another, yet fails to point out how the statements were inconsistent. Therefore, this argument is meritless and the trial court's finding as to factor number three is appropriate and without abuse of discretion.

4) M.A.'s statements were spontaneous

The trial court found that M.A.'s statements were spontaneous and that none of the witnesses suggested Tanner when talking to M.A. In fact, the court noted that Tanner didn't appear to be the topic of conversation in the household for quite some time. Plus, both Ms. Dellinger-Frye and Ms. Cate testified that they thought M.A. had learned what he was doing from something he saw on television; not that he had learned as a victim. The appellant argues that M.A. knew that his mother harbored animosity for Tanner's father and selected Tanner as his perpetrator to find favor with his mother. There is simply no evidence to support this assertion and frankly, this assertion romanticizes the inner-workings and calculations of a six year old boy. Interestingly, appellant argues within this same brief that M.A. is significantly mentally deficient, which is contrary to the assertion that M.A. created his victimization at the hands of Tanner in order to please his mother.

5) Timing of M.A.'s statements and his relationship to witnesses support a reliability finding

The trial court found the timing of M.A.'s statements enhanced the reliability of his statements because he made the disclosure to his mother and his caregiver and "case law indicates that those are types of people that children generally disclose to when something this has happened." 8/1/14 RP 95. The appellant argues that because M.A. was in trouble for his sex play with Andrew, his disclosure to two people that he had a close relationship with is not reliable. M.A. was not in trouble. Ms. Cate testified that she sat both boys down to talk to them, but specifically said they were not in trouble. The trial court did not abuse its discretion when it found that the timing of M.A.'s statements and his relationship to those two witnesses support reliability.

6) M.A.'s statements detailed past facts; sixth factor not significant

The appellant does not appear to take issue with the sixth factor; furthermore, the sixth Ryan factor is cautionary, it does not weigh in favor of reliability or unreliability.

7) M.A. testified at trial; seventh factor inapplicable

The trial court did not make any finding as to the seventh Ryan factor, but M.A. testified at trial, this factor did not apply and the trial court correctly did not consider it.

8) Possibility of faulty recollection—remote

The trial court found that because about six months of time had elapsed since the molestation, not enough time had passed in order for the recollection to have faded or become distorted. The appellant does not appear to take issue with the eighth *Ryan* factor. The trial court did not abuse its discretion in finding that this factor had been met.

9) No reason to suppose that M.A. misrepresented Tanner's actions

The trial court found that at the time of the disclosure there is nothing to indicate that M.A. would misrepresent Tanner's involvement. M.A. hadn't seen or talked to Tanner in months, he wasn't angry with Tanner at that time and he really had nothing going on with Tanner at that time in his life. The appellant does not appear to take issue with the ninth *Ryan* factor; further, the trial court did not abuse its discretion when it found that the ninth factor had been met.

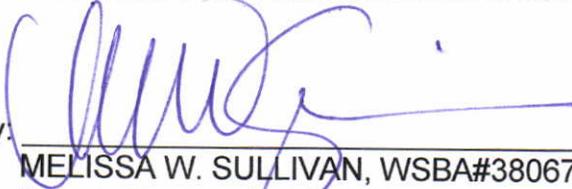
The trial court did not abuse its discretion in finding that all of the *Ryan* factors had been met and thus, the trial court did not abuse its discretion in allowing child hearsay in at trial.

V. CONCLUSION

There was sufficient evidence beyond a reasonable doubt in this case that Tanner committed the act of child molestation against M.A.; and Judge Cook did not abuse her discretion in admitting child hearsay found to be reliable. Furthermore, there was substantial evidence to support the findings of fact that Judge Cook made, thus, in this instance, reversal should be denied.

DATED this 27th day of July, 2015.

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By: 
MELISSA W. SULLIVAN, WSBA#38067
Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by; United States Postal Service; ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: ELAINE L. WINTERS, addressed as, 1511 3rd Avenue, Suite 701, Seattle, Washington 98101. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 27th day of July, 2015.



KAREN R. WALLACE, DECLARANT