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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

WILLIAM PATRICK Q FLEMING, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-8-00510-7

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

RESPONSE TO ASSIGNMENTS OF ERROR.....	1
I. The record contains substantial evidence to support findings of fact numbers 10, 12, and 17. The trial court did not abuse its discretion in making these findings.....	1
II. G.K.J. was competent to testify both at trial and for the purpose of admitting evidence pursuant to RCW 9A.44.120.	1
III. Under <i>State v. Ryan</i> , the trial court correctly determined that G.K.J.'s statements to her mother, Kim Holland, and Dr. Kim Copeland were admissible pursuant to RCW 9A.44.120.	1
STATEMENT OF THE CASE.....	1
ARGUMENT	11
I. The record contains substantial evidence to support findings of fact numbers 10, 12, and 17.	11
II. G.K.J. was competent to testify both at trial and for the purposes of admitting evidence pursuant to RCW 9A.44.120.15	
III. Under <i>State v. Ryan</i> , the trial court correctly determined that G.K.J.'s statements to her mother, Kim Holland, and Dr. Kim Copeland were admissible pursuant to RCW 9A.44.120.	18
CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

<i>Crawford v. Washington</i> , 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).....	12
<i>State v. Allen</i> , 70 Wn.2d 690, 424 P.2d 1021 (1967).....	9, 15, 16, 17
<i>State v. Brousseau</i> , 172 Wn.2d 331, 259 P.3d 209 (2011)	15
<i>State v. C.J.</i> , 148 Wn.2d 672, 63 P.3d 765 (2003).....	11, 20
<i>State v. Carlson</i> , 61 Wn.App. 865, 812 P.2d 536 (1991)	21
<i>State v. Gitchel</i> , 41 Wn.App. 820, 706 P.2d 1091, <i>review denied</i> , 105 Wn.2d 1003 (1985)	16
<i>State v. Grogan</i> , 147 Wn.App. 511, 195 P.3d 1017 (2008).....	20
<i>State v. Halstien</i> , 122 Wn.2d 109, 857 P.2d 270 (1993).....	12
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994).....	17, 21
<i>State v. Hunsaker</i> , 39 Wn.App. 489, 693 P.2d 724 (1985).....	16
<i>State v. McKinney</i> , 50 Wn.App. 56, 747 P.2d 1113 (1987).....	20
<i>State v. Parris</i> , 98 Wn.2d 140, 654 P.2d 77 (1982).....	20
<i>State v. Ridley</i> , 61 Wn.2d 457, 378 P.2d 700 (1963).....	16
<i>State v. Ryan</i> , 103 Wn.2d 165, 691 P.2d 197 (1984)....	1, 10, 19, 20, 21, 22
<i>State v. S.J.W.</i> , 170 Wn.2d 92, 239 P.3d 568 (2010).....	15, 16, 18
<i>State v. Smith</i> , 4 Wn.2d 543, 101 P.2d 298 (1940).....	16
<i>State v. Swan</i> , 114 Wn.2d 613, 790 P.2d 610 (1990)	20
<i>State v. Thomas</i> , 150 Wn.2d 821, 83 P.3d 970 (2004)	12
<i>State v. Woods</i> , 154 Wn.2d 613, 114 P.3d 1174 (2005)	11, 19
<i>State v. Young</i> , 62 Wn.App. 895, 802 P.2d 829 (1991).....	21

Statutes

RCW 5.60.050	15
RCW 9A.44.....	1, 2, 10, 11
RCW 9A.44.120.....	1, 9, 11, 15, 17, 18, 19, 22

Rules

ER 803(a)(4)	11, 22
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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The record contains substantial evidence to support findings of fact numbers 10, 12, and 17. The trial court did not abuse its discretion in making these findings.**
- II. **G.K.J. was competent to testify both at trial and for the purpose of admitting evidence pursuant to RCW 9A.44.120.**
- III. **Under *State v. Ryan*, the trial court correctly determined that G.K.J.'s statements to her mother, Kim Holland, and Dr. Kim Copeland were admissible pursuant to RCW 9A.44.120.**

STATEMENT OF THE CASE

On October 12, 2016 the State charged William Patrick Q. Fleming (hereafter 'Fleming') with first degree child molestation stemming from his contact with G.K.J. on September 14, 2016. CP 1. On October 19, 2016 the State filed a corrected information that dropped the original "most serious offense" designation. CP 6.

The State sought to admit statements G.K.J. made to others at trial pursuant to RCW 9A.44.120. CP 21; RP 47. The Court held a hearing on March 15, 2017 to determine the admissibility of G.K.J.'s statements at trial. RP 47-211. The parties agreed to incorporate the testimony from the RCW 9A.44 hearing into the trial. RP 47. After the Court heard the testimony of witnesses for the RCW 9A.44 hearing, the trial court ruled the statements were admissible. RP 211. The trial court then incorporated

the testimony from the RCW 9A.44 hearing into the trial that proceeded that same day. RP 218.

The State presented testimony from five witnesses. RP 51 – 193. Testimony established that on September 14, 2016, Fleming had sexual contact with G.K.J., who was less than twelve years old, not married to Fleming, and was at least 36 months younger than Fleming.

Kim Holland, a child forensic interviewer for the Children's Justice Center testified first. RP 51. She conducted an audio and video recorded interview of G.K.J. on September 22, 2016. RP 53. The State admitted the video for the purposes of the RCW 9A.44 hearing and, assuming the trial court found it admissible, for the purpose of trial. RP 54, 56. Before playing the video, Ms. Holland testified that during forensic interviews she asks non-leading, non-suggestive, open-ended questions. RP 52, 59 – 62. Ms. Holland indicated that she does not generally ask children if they know the difference between telling the truth and telling a lie because research does not support asking that question and it's against Washington State protocol. RP 62, 64 – 65. However, she does ask children to promise to tell the truth. RP 62, 64.

The State then played the video of G.K.J.'s interview with Ms. Holland. RP 67. In the interview, Ms. Holland instructed G.K.J. to answer

“I don’t know” rather than guessing if she doesn’t know the answer to a question and to correct her if she gets something wrong during the interview. RP 70 - 71. Ms. Holland also explained how to ask for clarification on questions that G.K.J. doesn’t understand. RP 71. G.K.J. promised to tell the truth. RP 71.

During the interview, G.K.J. told Ms. Holland that she understood she was there because Fleming “did something really inappropriate” to her. RP 73. She stated that he pulled her pants down, trying to also pull down her underwear but she wouldn’t let him, and touched her in her “potty part.” RP 73 – 74, 81. G.K.J. stated that this happened in Fleming’s backyard while she was alone with him after he had suggested that she play on his phone. RP 74 – 76. After sitting in chairs to play on the phone, Fleming and G.K.J. played games on the grass and then he had her lay down on his stomach and he touched her “potty part” and pantsed her three times. RP 76 – 79. The victim stated that Fleming touched her with his finger on the inside of her clothes and underwear and that the touch hurt. RP 79 - 80. Afterward, she told her mother about the incident. RP 74, 83. G.K.J. also talked about things that had happened earlier in the day and details of the neighborhood. She explained that she had played basketball with her neighbor, J. from the yellow house with bushes while

Fleming threw rocks but that he had gone home before the incident. RP 82 – 85.

Doctor Kim Copeland, a child abuse medical provider, testified next for the state. RP 91 – 92. Dr. Copeland explained that it is important for her to know why a child is being brought to her clinic and the identity of the child's abuser for safety reasons and to determine what treatment is required. RP 95 – 96. She stated that she does not ask questions to evaluate a patient's truthfulness because that is not her job and she assumes people speak truthfully to their doctor. RP 103 – 04. Dr. Copeland testified that he treated G.K.J. on October 19, 2016 and audio recorded the medical history portion of the examination. RP 96. The State admitted this audio recording and played it for the court. RP 96 – 98.

The audio recording captured G.K.J. telling Dr. Copeland about what Fleming had done. G.K.J. stated that she was at Fleming's house because he has a soccer ball. RP 115 - 16. She said that she then went into his backyard, he pantsed her, touched her skin on her "potty parts" inside her clothes with his hand, and then pantsed her again. RP 115, 117, 119 – 20. G.K.J. explained Fleming also tried to pull down her underwear and that the pantsing happened three times. RP 116, 119. She stated that she didn't get any cuts or owies and doesn't remember what the touching was

like. RP 121. Afterward, G.K.J. told her mother what happened and her mom went to talk to Fleming. RP 118.

G.K.J.'s mother, Danielle Johnson, testified next. RP 122. She stated that G.K.J. is generally a truthful child and is able to accurately convey things that have happened in the past. RP 124. Ms. Johnson explained to the court that G.K.J. can talk about what she did for her sixth birthday and can remember and explain what happened on a trip that they had taken to Arizona the year for the incident date. RP 124 – 25, 145 – 46. Ms. Johnson then identified Fleming as their neighbor and the respondent sitting in court. RP 125 – 26.

Ms. Johnson testified that on September 14, 2016, G.K.J. had been playing with the neighbor, J., next door to Fleming's house. RP 127. She had come to check in with her mom and was told that she had 10 more minutes to play. RP 127 – 28. Her son, B., had also been playing at Fleming's and Ms. Johnson did not realize that he had gone into the house instead of back to playing after checking in with her. RP 127 – 28. A few minutes later as she was passing Fleming's house to pick up G.K.J., the victim came "flying out of [Fleming's] driveway" with a "look on her face like something was bothering her." RP 128 – 29. G.K.J. told her mother that Fleming had "touched her pee-pee spot." RP 129. Because she didn't

want to go into detail with the other children in the car, Ms. Johnson put G.K.J. in the car and closed the door. *Id.* She then addressed Fleming several times asking him if the allegations were true. *Id.* Fleming wouldn't make eye contact or talk to Ms. Johnson. RP 129 – 30. He remained silent even after his mother came out of the house and told him to talk. *Id.* Ms. Johnson then called for law enforcement. RP 130.

Ms. Johnson took her children to the safe exchange to pick up their foster children, took G.K.J. out of the car, and spoke with her about what had happened. RP 130. She described the victim's account as "pretty clear." *Id.* G.K.J. told her that she was walking to J.'s house when Fleming asked her if she wanted to play using his cell phone. RP 131. She said that Fleming played "panties" with her while she was hanging from a tree branch above a stump. RP 132. G.K.J. explained that he pulled her pants down a few times, he got her pants back up, then he pulled them down again and at some point touched her skin on her pee-pee spot. *Id.*

On cross examination, Ms. Johnson stated that she did not remind G.K.J. of the incident before she took her to speak with Ms. Holland and Dr. Copeland. RP 134. She stated that she only told G.K.J. that she was going to talk about something to do with Fleming. *Id.* Ms. Johnson explained that G.K.J. understands the word "inappropriate" from a class

about safe touching at school. RP 143 – 44. She also testified that J. lives in a yellow house next to Fleming and that G.K.J. never mentioned throwing rocks, a soccer ball, or playing tag. RP 144.

Fleming's mother, Deedee Campbell, also testified. RP 148. She stated that she had been at work the day of the incident. RP 150. She said that she had returned home to find G.K.J. with Fleming in the backyard. *Id.* They were standing about 2 ½ to 3 feet away from each other and the victim had Fleming's phone. RP 150 – 51. Ms. Campbell then told Fleming that he wasn't supposed to have people over and sent G.K.J. home. RP 152. On cross examination, the defense admitted several photographs of Fleming's house and property. RP 156 – 58. The photographs did not show chairs or a stump in the backyard. RP 157 – 58.

G.K.J. testified last for the State. RP 171. She explained that she is six years old and in the first grade. RP 172 – 73. G.K.J. correctly told the court that her last birthday party had tiki decorations. RP 175. Before testifying about the incident, G.K.J. stated that she knows the difference between the truth and a lie and demonstrated that knowledge by identifying that the prosecutor's jacket was black and not red. RP 174 – 75. She also correctly identified the different between inside and outside, and over and under. RP 175 – 76.

G.K.J. then identified Fleming and testified that he had touched her inappropriately and had pulled her pants down. RP 177. She explained that on the day of the incident she had seen Fleming in his front yard. RP 178. He invited her to play on his phone, but said that they would have to go to the backyard so G.K.J. followed him. *Id.* After playing on his phone, Fleming touched G.K.J. inappropriately where she goes pee. RP 178 – 79. G.K.J. testified that he used his finger to touch her under her clothes and underwear and that it felt weird. RP 179 – 80. Fleming then pulled down her pants and she told him to stop. RP 181. When his mother arrived home, she told G.K.J. to leave and then the victim told her mother about the incident. *Id.* G.K.J. stated that she remembers also talking with Ms. Holland and Dr. Copeland about the incident. RP 181 – 82.

On cross examination, G.K.J. testified that she was worried she would be in trouble when she left Fleming's yard but that her mother wasn't mad at her. RP 182 – 83. When asked whether she was by herself with Fleming, G.K.J. stated that she had been with her brother but that he had left after they checked in at home. RP 185 – 86. She stated that the touching occurred when they were lying on the grass and that Fleming had pulled down her pants nine times. RP 187 – 88.

The trial court ruled that G.K.J.'s statements to her mother, Ms. Holland, and Dr. Copeland were admissible as child hearsay statements under 9A.44.120. RP 201. The court reasoned that it is unsurprising that interviewers and doctors do not go into the difference between the truth and a lie. *Id.* The court then found G.K.J. to be competent using the *Allen* factors and reasoned that she took the oath to be truthful, understood that the prosecutor was wearing a black and not a red jacket, and promised to tell the truth. RP 202 – 03. The court also found that G.K.J. was able to recall and remember the layout of Fleming's yard, that there was a tree, and that she was playing with his phone. RP 203. She is also capable of remembering events accurately such as her sixth birthday party and a trip that she took to Arizona. *Id.* The court similarly found that G.K.J. has the capacity to understand simple questions such as whether something was inside or outside, or on top or underneath. RP 204. Moving to the second section of the *Allen* factors, the trial court found that G.K.J. was able to remember details about her life surrounding the offensive conduct, the time of day, checking in with her mom, and her mom coming to the house. RP 205. Any inconsistencies went to the court's weighing of the evidence and not its determination of admissibility. RP 204 – 05.

The trial court then turned to the *Ryan* factors to determine that the statements G.K.J. provided were sufficiently reliable. RP 205.¹ The court found that these factors had been substantially met during the hearing. RP 206, 211. In determining finding of fact number 10, that there is no evidence that G.K.J. has any motivation to lie, the trial court reasoned that it had heard no evidence as to a motivation to lie. CP 65, RP 206 – 07. Additionally, the court found that G.K.J. hadn't done anything wrong that would make her lie about Fleming. *Id.* Regarding finding of fact number 12, that G.K.J. made highly consistent statements to three independent people, the court noted that the statements to Ms. Holland and Dr. Copeland were consistent with her original statement to her mother the day of the incident and that it would be difficult to believe that a six-year-old child could maintain the same details over time if the story were fabricated. CP 65, RP 207 – 08. For finding of fact number 17, the trial court found that there is no evidence in the record to suggest that G.K.J. misrepresented Fleming's involvement. RP 211.

Written findings and conclusions regarding the ruling on the RCW 9A.44 hearing were entered on April 11, 2017. CP 63 – 66.

¹ Because Fleming only challenges findings of fact numbers 10, 12, and 17, this brief will only focus on those factors relevant to these findings.

The trial court also admitted the statement to Dr. Copeland as a medical treatment exception to hearsay under 803(a)(4). RP 217.

Fleming testified in his defense and admitted that G.K.J. was in his yard on the date of the crime and that he allowed her to use his phone but denied the allegations. RP 228 – 233.

After finding G.K.J. credible and finding Fleming’s testimony not credible, the trial court found Fleming guilty of first degree child molestation beyond a reasonable doubt. RP 248 – 49. On April 11, 2017, the trial court entered written findings of fact and conclusions of law regarding the RCW 9A.44 hearing and the trial. CP 67 – 70.

ARGUMENT

I. The record contains substantial evidence to support findings of fact numbers 10, 12, and 17.

Appellate courts review a trial court’s admission of child hearsay statements under RCW 9A.44.120 for abuse of discretion. *State v. Woods*, 154 Wn.2d 613, 623, 114 P.3d 1174 (2005). The court abuses its discretion when it bases its decision on unreasonable or untenable grounds. *State v. C.J.*, 148 Wn.2d 672, 686, 63 P.3d 765 (2003). A trial court’s findings of fact from an evidentiary hearing are reviewed for substantial evidence. *State v. Halstien*, 122 Wn.2d 109, 128, 857 P.2d 270

(1993). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the premise asserted. *Id.* at 129. Deference is given to the trial court on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (abrogated in part on other grounds by *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004)).

There is substantial evidence to support the trial court's findings of fact number 10, 12, and 17 and this Court should reject Fleming's claim they are not supported by the evidence..

Fleming first challenges finding of fact number 10, which states "[t]here is no evidence that G.K.J. has any motivation to lie about the sexual contact with [Fleming]." CP 65. As discussed below, this finding is related to the first *Ryan* factor used to determine the reliability of the statements. This finding is supported by substantial evidence. As noted on the record by the trial court, G.K.J. was put under oath before testifying in court. The oath would have pressed upon her the importance of telling the truth during the proceedings. This Court should consider that, while under oath during trial, G.K.J. testified consistent with her earlier statements. This shows the truth of these original statements and G.K.J.'s lack of motivation to lie. Additionally, the trial court is correct that the record

lacks evidence of a motive to lie. In his brief, Fleming claims that G.K.J. could have lied to not get into trouble for arriving home late. The trial court directly addressed this issue, determining that G.K.J. had done nothing wrong, thus having no reason to fear being in trouble. It is likely that her statement to defense counsel about not wanting to get in trouble related to the inappropriate contact that was forced upon her by Fleming. Further, simply because G.K.J. may have lied in the past, does not mean that she had a current motivation to lie regarding the incident with Fleming. For these reasons, finding of fact number 10 is supported by substantial evidence and was not entered in error.

Finding of fact number 12 states “[t]hree independent people heard G.K.J.’s description of what occurred with [Fleming] (Danielle Johnson, Kim Holland and Dr. Copeland). The statements G.K.J. made to these three individuals were highly consistent.” CP 65. As discussed below, this finding is related to the third *Ryan* factor. This finding is supported by substantial evidence. Fleming argues that differences in minute details, such as whether G.K.J. had been playing soccer earlier in the day or whether Fleming had been throwing rocks at her, or whether she was lying down or hanging from a tree when Fleming pulled her pants down, show that these statements are inconsistent with each other. This argument ignores the fact that G.K.J. was highly consistent regarding the details

surrounding the physical touching and the fact that the touching had happened. G.K.J. consistently represented that Fleming touched her under her clothes and underwear with his finger and that Fleming also pulled down her pants multiple times and attempted to pull down her underwear. This Court should give deference to the trial court's reasoning that it would be difficult to believe that a six-year-old could maintain the same specific details over time if the story were fabricated. Because the circumstances regarding the actual touching are highly consistent, this Court should find that the record contains substantial evidence to support finding of fact number 12.

Finding of fact number 17 states "[t]here was no evidence to suggest that G.K.J. misrepresented [Fleming's] involvement." CP 65. As discussed below, this finding is related to the seventh *Ryan* factor. This finding is supported by substantial evidence in the record. As correctly found by the trial court, the record does not contain evidence that Fleming's involvement was misrepresented. Rather, Ms. Johnson's testimony that Fleming would not meet her eyes and refused to answer her questions when confronted by questions about whether the touching occurred is evidence suggesting that he was involved. This Court should thus find that findings of fact number 17 is supported by substantial evidence in the record.

II. G.K.J. was competent to testify both at trial and for the purposes of admitting evidence pursuant to RCW 9A.44.120.

By statute, all witnesses, regardless of age, are presumed competent to testify. RCW 5.60.050. And children are explicitly presumed competent under *State v. Brousseau*. 172 Wn.2d 331, 341, 259 P.3d 209 (2011). The burden is on the challenging party to establish that a witness is not competent. *State v. S.J.W.*, 170 Wn.2d 92, 102, 239 P.3d 568 (2010). If a party makes a proper challenge to a witness's competency, the trial court determines competency based on RCW 5.60.050 and the factors set forth in *State v. Allen*. 70 Wn.2d 690, 424 P.2d 1021 (1967).

RCW 5.60.050 states that only those who are of unsound mind or intoxicated at the time of testimony, or those who are incapable of receiving just impressions of the facts or of relating them truly, are incompetent to testify. *Allen* sets forth five criteria for a court to consider in determining a witness's competency. The witness must show (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 she 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 her memory of the occurrence; and (5) the capacity to understand simple questions about it. *Allen*, 70 Wn.2d at 692. "The

determination of the witness's ability to meet the requirements of this test ... rests primarily with the trial judge who sees the witness, notices his manner, and considers his capacity and intelligence." *Id.* This "determination lies within the sound discretion of the trial judge and will not be disturbed on appeal in the absence of proof of a manifest abuse of discretion." *Id.* (citing *State v. Ridley*, 61 Wn.2d 457, 378 P.2d 700 (1963)).

"Intelligence, not age, is the proper criterion to be used in determining the competency of a witness of tender years." *Allen*, 70 Wn.2d at 692 (citing *State v. Smith*, 4 Wn.2d 543, 101 P.2d 298 (1940)). Only children who are incapable of perceiving or truthfully relating the facts of the case are considered incompetent. *State v. Gitchel*, 41 Wn.App. 820, 823 – 24, 706 P.2d 1091, *review denied*, 105 Wn.2d 1003 (1985). In *State v. Hunsaker*, the Court found a three and a half year old child competent because she was able to state her age, her birthday, her address, say she was in school, and sing a song she learned in school. 39 Wn.App. 489, 693 P.2d 724 (1985). A child's inability to recall details goes to the weight of her testimony, not to competency. *S.J.W.*, 170 Wn.2d at 95.

The trial court did not abuse its discretion in determining G.K.J. was competent. G.K.J. was correctly allowed to testify at trial and she was accurately considered competent for the purpose of admission of her

hearsay statements under RCW 9A.44.120. Further, while Fleming does assign error to the court's determination that G.K.J. was competent, he fails to assign error to any of the findings made under the *Allen* factors. Because error has not been assigned to the court's findings of fact regarding this issue, they are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Thus, this Court need only consider whether the facts found support a conclusion of G.K.J.'s competence.

The trial court found that all *Allen* factors had been met in determining whether G.K.J. was competent and thus did not abuse its discretion. Although Fleming does not assign error to these findings of fact, he argues in his brief that there was insufficient evidence to support a finding that G.K.J. understands the obligation to speak the truth.² Regarding this issue, the trial court made finding of fact number 6, that “[d]uring the 9A.44.120 hearing, G.K.J. testified. She promised to tell the truth, and demonstrated the ability to distinguish between the truth and a lie.” CP 64. This finding is supported by substantial evidence in the record and demonstrates the G.K.J. understands the importance of telling the truth on the witness stand. As mentioned above, she was placed under oath prior to her testimony. G.K.J. also stated that the prosecutor was wearing a black, not a red, jacket, and promised to tell the truth demonstrating her

² Fleming makes no argument as to the sufficiency of any of the other factors.

willingness to be truthful on the stand. This willingness is evidence that she understood her obligation to comply with her oath. There is no evidence in the record to the contrary.

Fleming seems to argue that inconsistencies in G.K.J.'s statements are evidence that she misunderstands her obligation to testify truthfully, thus showing her lack of competence. He argues that G.K.J.'s statements included different versions of the events surrounding the crime. Fleming is incorrect under *State v. S.J.W., supra*. Any inability to recall details goes toward the weight that the trial court should give to G.K.J.'s testimony and not to her competence. Nothing in the record suggests the G.K.J. is incapable of perceiving or of truthfully relating facts, thus the trial court did not abuse its discretion in finding her competent.

For these reasons, this Court should affirm the trial court's determination of G.K.J.'s competency both for the purposes of testifying and trial and for admitting reliable statements pursuant to RCW 9A.44.120.

III. Under *State v. Ryan*, the trial court correctly determined that G.K.J.'s statements to her mother, Kim Holland, and Dr. Kim Copeland were admissible pursuant to RCW 9A.44.120.

As stated above, this Court reviews the trial court's admission of G.K.J.'s statements to her mother, Ms. Holland, and Dr. Copeland for

abuse of discretion. *Woods*, 154 Wn.2d at 623. RCW 9A.44.120 provides that statements made by a child victim who is under the age of 10 that describes any act of sexual contact are admissible in criminal proceedings if the court finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability and the child either testifies, or is unavailable and there is corroboration. In this case, as discussed above, K.G.J. testified and was competent to do so. Thus, this Court need only consider whether the statements she made to her mother, Ms. Holland, and Dr. Copeland are reliable.

The statements made by G.K.J. are reliable. Under *State v. Ryan*, there are several criteria this Court should consider when determining the reliability of the statements. 103 Wn.2d 165, 691 P.2d 197 (1984). Those factors include (1) whether there is an apparent motive to lie; (2) the general character of the victim; (3) whether more than one person heard the statements; (4) whether the statements were made spontaneously; (5) the timing of the declaration and the relationship between the declarant and the witness; (6) whether the possibility of the declarant's faulty recollection is remote; and (7) whether the circumstances surrounding the statements are such that there is no reason to suppose the declarant misrepresented the defendant's involvement. *Id.* at 175 – 76; *see also State*

v. Parris, 98 Wn.2d 140, 654 P.2d 77 (1982); *State v. C.J.*, 148 Wn.2d 672, 63 P.3d 765 (2003).

To be considered reliable, these factors must be substantially met, but not every factor needs to be satisfied. *State v. Swan*, 114 Wn.2d 613, 652, 790 P.2d 610 (1990); *see also State v. McKinney*, 50 Wn.App. 56, 747 P.2d 1113 (1987). For example, in a first degree child molestation case, the trial court did not abuse its discretion by admitting statements the child gave to the defendant's step-daughter regarding the abuse because there was no indication of a motive for the child to lie, the child was a generally truthful child, and the statements were spontaneous. *State v. Grogan*, 147 Wn.App. 511, 521 – 22, 195 P.3d 1017 (2008). Although three of the *Ryan* factors did not indicate reliability, the factors were found to be substantially met. *Id.* Here, all of the *Ryan* factors are have been met.

On appeal, Fleming challenges only finding of fact number 10 (that there was no evidence of motivation to lie), finding of fact number 12 (that G.K.J. made highly consistent statements to three individuals), and finding of fact number 17 (that there was no evidence to suggest G.K.J. misrepresented Fleming's involvement). As discussed in depth above, there is substantial evidence in the record to support these findings. Importantly, Fleming does not challenge findings of fact number 11, 13, 14, 15, and 16. Unchallenged findings of fact are verities on appeal. *State*

v. *Hill*, 123 Wn.2d at 644. These unchallenged findings establish that G.K.J. is generally a truthful child, that the statements she made to her mother, Ms. Holland, and Dr. Copeland were spontaneous, and that the statements she made to her mother and primary caregiver were within minutes of the offense.³ CP 65. Thus, the record below establishes that all *Ryan* factors have been met.

Because the *Ryan* factors have been met, including the findings of fact discussed above in section I and those that go unchallenged on appeal, G.K.J.'s statements to her mother, Ms. Holland, and Dr. Copeland are reliable. The trial court did not abuse its discretion in admitting these statements.

Fleming argues that the trial court committed error by failing to examine each statement separately, but cites to no case law or statute in support of this assertion. Contrary to Fleming's assertion, whether the statement was told to more than one person is one of the *Ryan* factors, necessarily implying that separate but factually similar statements may be analyzed together. Simply because the court analyzed factors such as G.K.J.'s character for truthfulness and motivation to lie at one time, as

³ For the purposes of this analysis, a spontaneous statement is a statement that a child volunteers in response to questions that are not leading and do not in any way suggest an answer. Unlike an excited utterance, the statements need not be contemporaneous with the event in question. See *State v. Carlson*, 61 Wn.App. 865, 812 P.2d 536 (1991); see also *State v. Young*, 62 Wn.App. 895, 802 P.2d 829 (1991).

opposed to going over the exact same analysis at three different times in the proceedings, does not mean that individual findings about each statement's reliability were not made. As evidenced by the court's conclusions of law numbers three, four, and five, the trial court did make a separate determination regarding each statement.

Furthermore, it should also be noted that the trial court admitted G.K.J.'s statement to Dr. Copeland under the medical treatment exception to hearsay as well as RCW 9A.44.120. Fleming has made no challenge to the admission under ER 803(a)(4).⁴ Thus, regardless of this Court's determination of the court's findings of competency and reliability, this statement was admissible as substantive evidence at trial.

The *Ryan* factors have been substantially met. Therefore the trial court properly concluded the statements that G.K.J. made to her mother, Ms. Holland, and Dr. Copeland are sufficiently reliable and admissible under RCW 9A.44.120. This Court should uphold the trial court's ruling regarding the admissibility of these statements.

⁴ "Statements for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment" are exceptions to the hearsay rule. ER 803(a)(4).

CONCLUSION

For the reasons stated above, the State respectfully asks this Court to affirm Fleming's conviction.

DATED this 6 day of Feb, 2018.

Respectfully submitted:

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