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DEC 22, 2011

Court of Appeals
Division III
State of Washington

No. 29888-4-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

WILLIAM T. MILLER,
Defendant/Appellant.

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

By an Information filed in the Chelan County Superior Court on July 22, 2010, William Miller was charged with Child Molestation in the Second Degree – two counts. *CP 15-16.* The Information was ultimately amended to charge Child Molestation in the Second Degree – four counts and Child Molestation in the Third Degree – two counts. *CP 171-74.* Trial commenced on March 8, 2011. *See, CP 234-38.*

The jury found the defendant guilty of all four counts of Child Molestation in the Second Degree, but not guilty of Child Molestation in the Third Degree. *CP 228-33.* Upon sentencing, the defendant was ordered to to serve a standard range term of 108 months. *CP 280-89.* This timely appeal followed.

B. RELEVANT FACTS

On Father's Day, 2010, Scott C. found writings in his daughter's (K. C.) bedroom. *RP 230-32.* Concerned over their content, Scott C. contacted law enforcement. *RP 233-34.* A patrol deputy responded. *RP*

246-47. Based on the offense and departmental policy, the deputy asked only a few questions. *RP 247-48.* K. C. reluctantly told the deputy the events occurred three years ago and lasted about a year. *RP 71, 235, and 248-50.*

On June 29, 2010, Detective Randy Grant interviewed K. C. *RP 125.* The interview was recorded. *RP 126.* Detective Grant interviewed additional possible witnesses, intercepted and recorded a telephone conversation between K. C. and the defendant, pursuant to court approval, and interviewed the defendant. *RP 128-31 and 137-44.*

At trial K. C. testified at length regarding sexual contact by the defendant. *See, e.g., RP 49-61.* K. C. described acts of sexual contact that occurred in the home she shared with her mother and the defendant. *See, e.g., RP 49-61 and 78-110.* Some of the acts occurred on the defendant's bed; some occurred in the living room. *Id.*

K. C. described having to sit with the defendant on his recliner chair in the living room while the defendant touched her breasts and vaginal area. *RP 51-53.* The defendant sometimes placed K. C.'s hand over his crotch. *Id.* There were times when K. C. was positioned on the defendant such that she could feel his erect penis pressing against her. *RP 54-55.*

Other acts occurred on the bed the defendant shared with K. C.'s mother. *RP 56-57.* The defendant would have K. C. come into the bedroom and lie beside him. *RP 56.* Then he would have her move onto him so that she was straddling him such that he was between her legs. *Id.* At first the defendant would guide her movements, leading K. C. to grind her crotch against the defendant's crotch. *Id.* Eventually, the defendant no longer had to guide her movements; K. C. knew what he wanted. *RP 57.* On occasion, K. C. felt the defendant's erect penis. *RP 56-57.*

Sexual contact such as this occurred throughout K. C.'s middle school years. As K. C. testified, such the acts began when she was in the sixth grade. *RP 55.* That was the year of her twelfth birthday. *RP 50-51.* The acts were frequent, seemingly every day. *See, e.g., RP 59-60.* The acts continued through K. C.'s seventh and eighth grade school years, ending prior to her freshman year of high school. *RP 50, 61, 78.* K. C.'s date of birth was November 16, 1992. *RP 46.*

Following substantial cross-examination of K. C. (*RP 78-110)*, the jury heard a recorded conversation between K. C. and the defendant wherein the defendant apologized for his conduct. *See, RP 132-34 and Exhibit 2.* Moreover, the jury heard about admissions the defendant made

in the course of a recorded interview with Detective Grant. *See, RP 140-46 and Exhibit 4.*

The defendant testified. *RP 268-319.* Generally, the defendant denied the allegations, testifying that to the extent acts similar to K. C.'s descriptions occurred, there was no sexual purpose. *See, e.g., RP 291-97.* In particular, the defendant admitted an act that occurred on the bed; an act consistent with what K. C. described. *RP 302-3 and 313.* Furthermore, the defendant conceded that K. C. would get on his lap when he was in his chair and that one time he got an erection. *RP 296 and 303-5.* The defendant further admitted there were incidences he described as "dirty dancing." *RP 291-93.* The defendant was 56 years old at the time of trial. *RP 269-70.* The defendant did not dispute the victim's age at the time of the described acts.

II. ISSUE PRESENTED

WHETHER SUFFICIENT EVIDENCE WAS PRESENTED TO PROVE K. C. WAS TWELVE AND THIRTEEN YEARS OLD AT THE TIME OF THE SEXUAL CONTACT.

III. ANALYSIS

EVIDENCE TENDING TO PROVE FREQUENT ACTS OF SEXUAL CONTACT BEGINNING ABOUT THE TIME OF THE VICTIM'S TWELFTH BIRTHDAY AND CONTINUING BEYOND HER FOURTEENTH BIRTHDAY IS SUFFICIENT TO SUPPORT GUILTY VERDICTS.

The defendant claims there was insufficient evidence to support the guilty verdicts. Specifically, he argues that a reasonable trier of fact could not have found that acts of sexual contact committed by the defendant against K. C. occurred between K. C.'s twelfth and fourteenth birthdays. The entire appeal rests on an apparent conflict between K. C.'s testimony and what a deputy recorded in his report. The State submits that the evidence, taken in the light most favorable to the State, supports the verdict. The State further submits that this case is controlled by well settled law and that this appeal is clearly without merit.

Evidence is sufficient to sustain a conviction when any rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt. *State v. Drum*, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010). The standard of review is well-settled:

> When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences must be drawn in favor of the State and interpreted most strongly against the defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.

See, State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "The reviewing court will defer to the trier of fact to resolve conflicts in testimony, weigh evidence, and draw reasonable inferences therefrom." *State v. Hayes*, 81 Wn. App. 425, 430, 914 P.2d 788 (1996), *review denied*, 130 Wn.2d 1013 (1996). Credibility determinations are for the trier of fact and are not subject to review. *State v. Thomas,* 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

It was the jury's role to evaluate the credibility of the witnesses, to resolve evidentiary conflicts, and to determine what facts had been proven. A reviewing court does not substitute its view of the evidence. Accepting the State's evidence as true, and drawing all inferences in favor of the State, the verdict is amply supported by evidence.

K. C. testified that the abuse began when she was in the sixth grade and either eleven or twelve years old. According to K. C., the abuse occurred frequently throughout her sixth and seventh grade years; when

K. C. would have been twelve and thirteen years of age. The defendant's identification of an inconsistent statement was a proper matter for the jury's consideration. It is not, however, a basis on which to set aside the verdict.

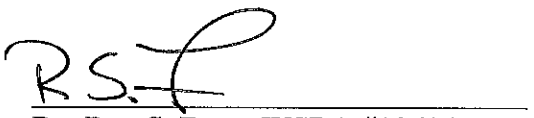
IV. CONCLUSION

For the foregoing reasons, the judgment of the Chelan County Superior Court should be affirmed.

Dated this 21st day of December, 2011.

Respectfully submitted,

Gary A. Riesen
Chelan County Prosecuting Attorney



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

STATE OF WASHINGTON, Plaintiff/Respondent, vs. WILLIAM T. MILLER, Defendant/Appellant.	No. 29888-4-III DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 22nd day of December, 2011, I electronically transmitted to:

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AND deposited in the United States Mail properly stamped and addressed envelopes directed to:

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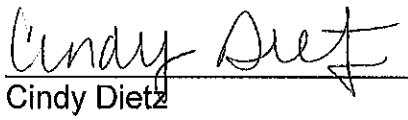
Signed at Wenatchee, Washington, this 22nd day of December, 2011.



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