32550-4-III

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Court of Appeals
Division III
State of Washington

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

J.D.C.,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the trial and conviction of the Appellant.

III. ISSUE

Was there sufficient evidence for conviction where the unchallenged findings establish every element of the offense, where the standard accepts the truth of the State's evidence, and where the finder of fact found the defense witnesses to not be credible?

IV. STATEMENT OF THE CASE

The Defendant J.D.C. has been convicted of rape of a child in the first degree. CP 1-2, 67-75.

In the summer of 2013, John Doe stayed at a friend's house where he slept on a couch. RP 20, 32-33, 36-37. J.D.C. was also staying at the house. RP 21. J.D.C. was thirteen years old, and John Doe was eight years old and

unmarried. CP 63, FF 4-5; RP 30-31, 45, 51, 85. On July 16, 2013, John Doe woke to find that J.D.C. had pulled down his pajamas and was performing oral sex on him. CP 63, FF 7; RP 21-22, 24-25. John Doe told J.D.C. to stop and then he texted his family. RP 22, 77. His mother picked him up, and he told her what had happened. RP 23.

The mother contacted police, who arranged for John Doe to be interviewed by CPS child interview specialist Brooke Martin. RP 24, 45, 50, 64. The videotape of the interview and transcript was entered into evidence. RP 72-74. John Doe disclosed the sexual assault in detail. RP 72-79.

J.D.C.'s family did not cooperate with the investigation. RP 51-52, 56-57. They moved out of state during the investigation. RP 53, 56-57.

The juvenile court found J.D.C. guilty and entered findings and conclusions. CP 62-75. The court found the victim to be forthright, trustworthy, reliable in his memory, and without motive to lie – i.e. "highly credible." CP 64-65, FF 9-10, 13. The court found J.D.C.'s mother to be inconsistent in her narrative and motivated to lie. CP 65, FF 14-15. The court found J.D.C. to be unconvincing. CP 65, FF 16.

V. ARGUMENT

THERE IS SUFFICIENT EVIDENCE FOR THE CONVICTION.

The Defendant challenges the sufficiency of the evidence for conviction. The standard for such a challenge is whether, after viewing evidence in the light most favorable to the state, any rational trier of fact could have found the facts beyond a reasonable doubt. *State v. Thomas*, 150 Wn. 2d 821, 874, 83 P.3d 970 (2004); *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). The standard admits the truth of the state's evidence *and* all inferences that can reasonably be drawn from this evidence in the state's favor and interpreted most strongly against the defendant. *State v. Schelin*, 147 Wn.2d 562, 573, 55 P.2d 632 (2002); *Jackson v. Virginia*, 443 U.S. at 319, 99 S.Ct. at 2789.

> Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter,* 94 Wash.2d 634, 638, 618 P.2d 99 (1980). Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo,* 115 Wash.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Cord,* 103 Wash.2d 361, 367, 693 P.2d 81 (1985).

State v. Thomas, 150 Wn. 2d at 874-75.

A person is guilty of rape of a child in the first degree if the person

has sexual intercourse with another is less than twelve years old and not married to the perpetrator and if the perpetrator is at least twenty four months older than the victim. RCW 9A.44.073. Sexual intercourse is defined to include oral sex, i.e. any act of sexual contact between the sex organs of one person and the mouth of another. RCW 9A.44.010(1)(c).

The Defendant acknowledges that because he is not challenging the findings of fact, they are verities on appeal. Brief of Appellant (BOA) at 6, *citing State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994).

Those verities include that the perpetrator was thirteen, the victim was eight and unmarried. CP 63, FF 4-5. It is also a verity that John Doe awoke on July 16, 2013 to find J.D.C. "sucking on his penis." CP 63, FF 7. Accordingly, the elements are satisfied and there is sufficient evidence for the conviction.

The Defendant argues that the testimony of defense witnesses J.D.C. and his mother, if believed, undercuts the victim's credibility. BOA at 7. This argument disregards the legal standards.

First, it is the *State's* evidence that is admitted as true. The State's evidence is John Doe's testimony.

Second, a finder of fact has the last word on the credibility of

witnesses. By convicting J.D.C., the finder of fact found credible those witnesses who provided evidence supporting conviction. The finder of fact explicitly found the defense witnesses to be not credible. CP 65, FF 14-16 (finding J.D.C.'s testimony unconvincing and his mother's testimony biased and dishonest).

Considering the legal standards, this appeal presents no genuine challenge to the conviction. The conviction must be affirmed.

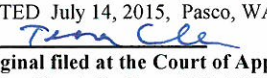
VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: July 14, 2015.

Respectfully submitted:

Teresa Chen, WSBA#31762
Deputy Prosecuting Attorney

Kenneth Kato <khkato@comcast.net> Johnny D'Angelo Corn 513 Garfield Street Creighton, NE 68729	A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED July 14, 2015, Pasco, WA  **Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201**