

71133-4

71133-4

NO. 71133-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

D. G.-R.,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE PALMER ROBINSON

BRIEF OF RESPONDENT


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A. ISSUES PRESENTED

1. Miranda¹ warnings are not required unless a suspect is subjected to custodial interrogation. The respondent's freedom of movement was not restricted to the degree associated with formal arrest when a plainclothes detective without a visible weapon spoke with him at his school and at his home, and told him that he was not under arrest, did not have to speak to her, and could leave if desired. Did the trial court correctly rule that the respondent was not in custody at the time of questioning?

2. The fact of complaint or "hue and cry" doctrine is an exception to the hearsay rule admitting evidence that a rape victim made a timely complaint. The child victim in this case disclosed to his mother approximately three months following the rape, after deteriorating to the point of suicidal ideation. The trial court explicitly found that the fact of complaint had no bearing on its ultimate finding of rape in the second degree, and the respondent himself elicited details surrounding the fact of complaint to attack the State's case. Did the trial court correctly allow evidence regarding the fact of complaint? If not, was error harmless?

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

3. To obtain reversal pursuant to the “cumulative error” doctrine, a respondent must establish the presence of multiple trial errors *and* show that the accumulated prejudice affected the verdict. Where errors have little or no effect on the trial’s outcome, the doctrine is inapplicable. The respondent has failed to establish either the existence of multiple errors or that any error affected the verdict. Is the cumulative error doctrine inapplicable?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Respondent D. G.-R. was charged by information with rape in the second degree and, in the alternative, rape in the third degree. CP 21-22. The State alleged that D. G.-R. had engaged in sexual intercourse, either by forcible compulsion or without consent, with K.P.A., when both boys were thirteen years old. CP 2-3, 21-22. The factfinding hearing began on September 24, 2012. 1RP 32.²

² The verbatim report of proceedings consists of three non-consecutively numbered volumes which will be referred to as follows: 1RP (12/19/2012 & 9/24/2013); 2RP (9/25/13); 3RP (9/26/13, 10/24/13, and 10/17/13).

2. SUBSTANTIVE FACTS.

K.P.A. met D. G.-R. after their mothers began working together at Ivar's restaurant. 1RP 164-65; 2RP 55. They also attended the same church. 1RP 165-66; 2RP 55. In September 2011, K.P.A. and his mother attended a large event called Expo that was hosted by their church. 1RP 48-49, 167. At that time, K.P.A. and D. G.-R. were both 13 years old. CP 1-3. K.P.A.'s mother was volunteering at the event, selling desserts. 1RP 167. D. G.-R. and his mother were also present. 1RP 167-68.

D. G.-R. asked K.P.A. and K.P.A.'s mother if K.P.A. wanted to sleep over. 1RP 48, 168. D. G.-R.'s mother drove D. G.-R. and K.P.A. to her home. 1RP 49-50, 168-69, 171-72. K.P.A. recalled how he and D. G.-R. talked, rode bikes, watched television and ate a dinner of spaghetti and bread together. 1RP 50-51. After dinner, they started watching cartoons in the living room. 1RP 57-58. Eventually, D. G.-R.'s mother and her daughter went to bed in D. G.-R.'s mother's room. 1RP 58-59, 168.

At around 11:00 or 12:00 p.m., D. G.-R. pulled out a laptop computer and started to watch online pornography, including different men having sex with a woman. 1RP 60. K.P.A., who was on a separate couch, saw the pornography, asked him why he was

watching it and told him it was bad and wrong. 1RP 61, 65-66.

When D. G.-R. ignored him, K.P.A. looked away and kept watching television, then eventually went by himself to D. G.-R.'s bedroom to sleep. 1RP 61, 66. Inside, K.P.A. noticed posters of naked Asian females on his bedroom walls. 1RP 63.

K.P.A. had not brought any nightclothes because the decision to sleep over had been unplanned, so he kept his jeans on. 1RP 67, 171-72. He crawled into the left side of the bed and, approximately 20-30 minutes later, began to drift off to sleep when he heard D. G.-R. enter the room. 1RP 67-68. D. G.-R. closed the door and got into the other side of the bed. 1RP 68-69. Several minutes later, he began touching K.P.A., "grabbing like – like my butt and like stuff like that" and touching K.P.A. on his bottom and back in a circular motion. 1RP 69-71.

K.P.A. was lying on his side and pushed D. G.-R. with both hands three times in an effort to make him stop. 1RP 69-73. He also asked D. G.-R. in a somewhat loud voice, "What's wrong with you?" 1RP 69, 74. In response, D. G.-R. threatened him by telling K.P.A. to "shut up or you will see." 1RP 69. K.P.A. took this as a threat to hurt him or his family. 1RP 69-70. He was scared of D. G.-R., who was approximately the same size as him at the time,

and began thinking about an older man who had befriended D. G.-R. and scared K.P.A. 1RP 72-74. K.P.A. felt that D. G.-R. and the older male, who had once accompanied the two boys to play soccer, had some sort of father-son relationship, as if “they were in agreement.” 1RP 72.

D. G.-R. pulled K.P.A.’s pants all the way down, then pulled down his own underpants. 1RP 74-75. K.P.A. described how D. G.-R. “put his penis – in my tail and he started to rape me,” which caused K.P.A. physical pain. 1RP 75, 78. Specifically, D. G.-R. “put his penis in my anus and he was moving like back and forth motion.” 1RP 77. K.P.A. told him at least twice to stop but D. G.-R. “wouldn’t listen . . . he just kept raping me.” 1RP 77.

K.P.A. became paralyzed: “I just couldn’t do anything. I was – I had fear, I was scared – I didn’t know what to do. I was thinking of what was going to happen to me when he threatened me because he told me to shut up, and I just – I didn’t know what to do.” 1RP 76. He felt that D. G.-R. was stronger than him physically at that time and “gave up,” too frightened to yell out for help. 1RP 76, 95. During the assault, he thought “a lot about that [older] man” and described feeling sad and “hopeless.” 1RP 77-78, 96. After D. G.-R. finally finished, K.P.A. pulled up his pants and went

to the bathroom and sat by himself for a while, feeling sad and afraid: " I didn't want to be like in their house no more." 1RP 78. He came back into the room and lay on the floor. 1RP 78. He hardly slept that night. 1RP 79.

The next day, D. G.-R. told K.P.A. in the bedroom that "if I said anything that I would – that I would see." 1RP 79. K.P.A. took this as a threat. 1RP 79. K.P.A. therefore acted "as if nothing had happened" and ate the food that D. G.-R.'s mother had prepared for them, after which the family took K.P.A. back to the church to meet his mother. 1RP 80. When he reunited with his own mother, K.P.A. continued to act "like nothing happened," citing his fear of D. G.-R. 1RP 81-82. He tried to avoid D. G.-R. when he saw him at church or at soccer league, and refused to go to his birthday party. 1RP 84-85. Not knowing why, K.P.A.'s mother forced K.P.A. to attend. 1RP 86, 177. At some point, K.P.A. attended a church sleepaway camp, not knowing that D. G.-R. would be present as well. 1RP 192-94. He continued to tell no one of what had happened. 1RP 82-83.

K.P.A.'s mother, however, began to notice dramatic changes in her son. 1RP 173-74. In October and November of 2011, he lost his appetite and started losing weight, acting "nervous" and

“depressed.” 1RP 173. K.P.A.’s mother would find him in bed crying sometimes, and observed that his grades, which had been good prior to the incident, “started really going down.” 1RP 174. K.P.A. acknowledged that he “felt skinny,” stopped talking, lost his appetite and felt “agony.” 1RP 83.

K.P.A.’s mother confronted K.P.A. about her concerns but he stayed silent. 1RP 174. It was not until December 2011 that K.P.A. approached his mother in a state of deep depression with what he described to her as “matter of life and death.”³ 1RP 174. After telling her that “he couldn’t stand his life anymore, that he wanted to kill himself and that he couldn’t take it any longer,” K.P.A. disclosed the rape. 1RP 175. K.P.A. acknowledged how his mother had found him crying in his bed multiple times, and after considering suicide, “I just had to tell her.” 1RP 83.

K.P.A.’s mother took him to a doctor at an agency for sexually abused children on December 19, 2011, which provided an interpreter to accompany her to the police station on

³ Although K.P.A. testified at the factfinding hearing that “more than 6 months” may have passed prior to his disclosure, K.P.A.’s mother provided a medical document dated December 19, 2011 confirming the date she took K.P.A. to a doctor for sexually abused children following her son’s disclosure: “On that date I already knew what had happened to my son. I took him to the doctor because he was very depressed because he wanted to kill himself.” Ex. 7; 1RP 178-79; 2RP 36.

December 30. Ex. 7; 1RP 178-79; 2RP 131. At the police station, King County Sheriff's Deputy Michael Glasgow took a report from K.P.A. and his mother. 2RP 131. Glasgow noted that K.P.A. appeared quite emotional and uncomfortable. 2RP 138. During direct examination of Glasgow, trial counsel elicited testimony that K.P.A. had described struggling and yelling during the assault, but not going to the bathroom afterwards or clasping his hands during the rape as he apparently told defense counsel during the defense interview.⁴ 1RP 128-29; 2RP 133-34, 141. Glasgow explained during cross-examination that he summarized the report fairly briefly, knowing it would be assigned to a special assault detective for follow-up. 2RP 135-40.

King County Sheriff's Detective Patricia Maley, a 22-year veteran of the special assault unit, was assigned to perform this follow-up. 1RP 182-83. On March 28, 2012, she went to speak to D. G.-R. at his school. 1RP 183. She identified herself to school personnel as an officer but did not disclose the reason for her visit because of confidentiality issues. 1RP 184. She was not wearing a police uniform, dressed instead in jeans, a blouse, and a plain black unmarked jacket (also known as a "511 jacket").

⁴ Glasgow was called as a witness for the defense to impeach K.P.A.

1RP 184-85. Her gun was hidden: "It is never visible in a school – or in the courtrooms or in the courthouse or anywhere out in the public. It is always covered. That is our policy unless we are in [official] uniform." 1RP 185. Maley demonstrated how the light jacket she was wearing in court concealed her weapon, adding: "[M]y 511 jacket is much bigger than this and it is longer; it is bulkier. [The gun] is not visible. No one can tell I have it. The only way anyone would know is if I told them or showed them." 1RP 185.

School personnel provided Maley with a conference room, which she clarified was not the principal's office. 1RP 184. The staff said they would fetch D. G.-R., and he arrived as she stood waiting in the conference room. 1RP 184-86; 2RP 87. She asked him if he could come in and sit down, to which he agreed, and identified herself as a detective and showed him her badge. 1RP 186. She informed him that he was not under arrest, which is the "rules [sic] of thumb that I use so that people don't panic." 1RP 186-87.

Maley explained that she was there to talk to him about something that one of his friends had said happened earlier. 1RP 187. She told D. G.-R., who was 14 years old at the time, that

he was free to leave and she took care to distinguish the interaction from a call to the principal's office:

All teenagers, all kids – I don't talk to them under [age] 12 without a parent. If they are over 13, when I go to the schools and talk to them, whether they are a victim, witness or a suspect, I always tell them they are not obliged to talk – they don't have the [sic] talk to me. They can have a counselor there. I say, 'You are free to leave. You can do whatever you want. This is not like the principal's office where you have got to kind of come in there and stay.'

1RP 187; 2RP 90-91, 123; CP 21-22.

Maley went to some lengths to ensure D. G.-R.'s ease. She closed the door for privacy given the nature of the topic of discussion. 1RP 187. She characterized her tone as nonconfrontational, explaining, "I am very nice to everybody. We want people to talk to us . . . I don't want to go in there guns blazing and say, 'Hey you know, I know you did this. Shame on you.'" 1RP 193. Instead, she described her role thusly: "I go in there and try to get their side of the story because sometimes people don't do what people say they did, and that is my job to just gather the facts and get the information." 1RP 193.

She asked for D. G.-R.'s permission to record and he declined. 1RP 187. She then told him that K.P.A. had "said something happened sexual at his house when he spent the night."

1RP 187. D. G.-R. blurted out: "That would make me gay."

1RP 188. Maley explained that she was there "to talk . . . about what he is saying happened and get your side of the story."

1RP 188. D. G.-R. denied any sexual contact, saying they had simply played soccer in the living room, went to bed with the door open, and that K.P.A. was gone when he woke up the next day.

1RP 188. Maley asked him why K.P.A. might say something had happened and D. G.-R. said he did not know. 1RP 192. She asked D. G.-R. whether there was anything else that he wished to tell her; after he declined, she told him he could leave. 1RP 192. The interview was "very, very short. Maybe 20 minutes, if that."

1RP 193.

Although Maley asked D. G.-R. to pass along her business card to his mother so they could talk, Maley received no call from D. G.-R.'s mother. 1RP 193-94. After calling D. G.-R.'s mother 5-6 times, stopping by the house at least three times, and dropping at least two more business cards on the family's doorstep, all with no response, Maley returned to the house on July 12, 2012. 1RP 194; 2RP 89; Ex. 5 at 1. She brought along Detective Janez, a Spanish-speaking officer, to interpret for D. G.-R.'s mother. 1RP 194. Both officers wore plainclothes with their guns hidden. 1RP 194-95.

D. G.-R. opened the door, Maley confirmed with him that he remembered her, and she then asked if his mother was home; he replied that she was still at work. 1RP 194-95. While still outside, Maley asked, "Is there anything you want to change about the story you told me before?" 1RP 195; 2RP 90-91. When D. G.-R. said yes, she asked if it was okay if she came in to talk, telling him that he did not have to let them in. 1RP 195-96; 2RP 91. After he opened the door and said yes, the officers entered and Maley asked if they could sit down. 1RP 196.

Before they began discussing the incident. Maley told D. G.-R. that he was not under arrest and reminded him, "You know, you don't have to talk to me. Are you okay with that?" 1RP196. After he said it was fine, she asked if she could record and he said that was okay. 1RP 196. Maley reiterated these advisements at the onset of the recorded interview:

DET: Okay. And I want you to understand that you're . . . not under arrest. Okay? Uh, you, I'm just gonna ask you some questions to try-try to clear up a misunderstanding. Something you told me several months ago.

SUS: Mm-huh.

DET: And . . . you don't have to talk to me. Do you understand that?

SUS: (no verbal response)

DET: Uh, yes? You're shakin' your head yes. I need you to say it 'cause the recording's on.

SUS: Oh, yes.

DET: Okay. You don't have to talk to me. But it's best that we clear this up today and you tell me the real truth.

SUS: Mm-huh.

DET: Your side of the story. 'Cause that's what I want is your side. Is that . . .

SUS: (cross talk word)

DET: . . . okay?

SUS: Yeah.

Ex. 4; Ex. 5 at 1-2.

Maley did not handcuff, threaten, or make promises to D. G.-R., who also displayed no difficulty understanding English, cognitive impairments or confusion during the discussion.

1RP 200-01. At no point did he indicate a desire to leave or terminate the interview. 1RP 201.

During the recorded interview, D. G.-R. stated that K.P.A. started touching him first in the bedroom and initially claimed he could not remember the details. Ex. 5 at 5-7. He then stated that "a little bit of [K.P.A.]'s ass" touched his "dick." Ex. 5 at 8. D. G.-R. stated that he was lying down while K.P.A. was sitting on top of him, with his back to D. G.-R. Ex. 5 at 8-9. He said it lasted for less than a minute, that no words were exchanged, and D. G.-R. "didn't actually like wanting to do that so it kinda stopped." Ex. 5 at 9-10. He told Maley that he did tell K.P.A. that he was making too

much noise and D. G.-R.'s mother might hear and come in. Ex. 5 at 10-11. D. G.-R. denied forcing himself on K.P.A. or that K.P.A. ever told him he did not want to engage in the act. Ex. 5 at 11-12. He claimed that K.P.A.'s mother picked K.P.A. up in the morning before D. G.-R. woke up. Ex. 5 at 5, 13.

At the CrR 3.5 hearing, D. G.-R. testified that he saw a "little thing that goes around – like your waist" on Maley during the interview at school which he assumed was a holster. 2RP 108. He claimed that he saw her gun when she turned away, but that this occurred at the end of the interview "right when I was saying bye to her and leaving." 2RP 108, 115. He acknowledged that Maley did not intend to show him her gun, nor was she wearing "a cop uniform." 2RP 109, 114. Although D. G.-R. testified at one point that he didn't think Maley had advised him of his freedom to leave and end the conversation, he repeatedly qualified that statement by saying that "I don't really remember. It was a long time ago." 2RP 109-10, 113-14. He testified feeling that he had to speak with her only because police in his home country "are always racist and stuff, so like I have always been scared of cops." 2RP 112.

Of the second interview at the house, D. G.-R. testified that he could still see "the little thingy" he assumed to be a holster

around Maley's waist but no gun, and that he could not recall what else she was wearing. 2RP 110, 116. D. G.-R. again initially claimed that Maley never informed him of his right to leave but again repeated that "I don't really remember." 2RP 111-12. He acknowledged that in both interviews, Maley never raised her voice at him, nor did she tell him he was under arrest, or handcuff or restrain him in any way. 2RP 113, 116-17.

At the factfinding hearing, D. G.-R. again painted K.P.A. as the sexual instigator, stating that he had retired to his bedroom to look at Facebook when K.P.A. told him to play pornographic videos on the laptop. 2RP 151-54. D. G.-R. insisted that K.P.A. had to teach him how to do so because he did not know how to do a Google search for porn.⁵ 2RP 154, 195. While playing a video of a naked couple having sex, K.P.A. then began masturbating under the covers and D. G.-R. soon followed suit. 2RP 157-58.

D. G.-R. reportedly told K.P.A. to turn off the pornography, but K.P.A. instead got on top of him, grabbed his penis and tried to insert it into K.P.A.'s anus. 2RP 162. Claiming to be lying flat,

⁵ D. G.-R. offered his assistance to the court and counsel when they were unable to play a video exhibit during the factfinding hearing, explaining that they needed to connect an HDMI cable to connect the television to the laptop in order to project the image on the monitor. 2RP 182.

D. G.-R. told K.P.A. that it “wasn’t working . . . [i]t wasn’t going in” and that they should stop. 2RP 164. He denied penetrating or threatening K.P.A., or that K.P.A. ever asked him to stop. 2RP 168-69, 175.

D. G.-R. disagreed with many additional details in K.P.A.’s account of that night. He claimed that the sleepover occurred in 2010 and was K.P.A.’s idea; he also denied having posters of girls in his room, owning a bike, watching the program that K.P.A. described on the television that evening. 2RP 147-48, 150, 192. As with K.P.A.’s testimony, some details of D. G.-R.’s testimony also contrasted with his initial statements to Detective Maley, such as his testimony that D. G.-R.’s mother dropped off K.P.A. at church the next morning instead of being picked up by K.P.A.’s mother. 2RP 165.

Following the CrR 3.5 hearing, the court concluded that all of D. G.-R.’s statements to Maley were admissible because he was not in custody at the time of the interviews. 2RP 126-29; CP 25-28. In doing so, the court made findings of fact consistent with Maley’s testimony, noting that there were very few factual issues in dispute. 2RP 124. The court also held that the dispositive question was not whether D. G.-R. subjectively believed that he was in custody, but

what a reasonable 14-year-old person would believe. 2RP 126-27; CP 27. In this case, the trial court held that “there isn’t anything here about what [Maley] said or did that would place a reasonable person under the idea that his freedom of action was curtailed associated with formal arrest or that he had to talk to her or couldn’t leave.” 2RP 126.

Following the factfinding hearing, the court concluded that K.P.A.’s testimony was credible and that few factual issues were in dispute. 2RP 34-37; CP 31-34. The court explicitly found that even absent the brief testimony from K.P.A.’s mother about the fact of his complaint, the court’s ultimate conclusion of guilt would have been the same; the central issue was the credibility of the testimony of K.P.A. and D. G.-R. itself. 2RP 61.

C. ARGUMENT

1. THE TRIAL COURT CORRECTLY RULED THAT D. G.-R.’S PRE-ARREST STATEMENTS WERE NOT THE RESULT OF CUSTODIAL INTERROGATION.

D. G.-R. contends that the trial court erred in admitting his statements to Maley and assigns error to the CrR 3.5 findings of fact. The court should reject his claims, which are addressed separately below.

a. Substantial Evidence Supports The Trial Court's Findings Of Fact.

D. G.-R. first assigns error to the CrR 3.5 findings of fact because they are either unsupported by substantial evidence or do not include certain facts that would be favorable to his position on appeal. This Court should reject those claims. The record provides substantial evidence to support the findings, and D. G.-R. cannot cite any authority allowing him to supplement the court's oral and written findings in order to buttress his argument on appeal.

An appellate court reviews a trial court's findings of fact solely to determine whether they are supported by substantial evidence and if so, whether those findings support the relevant conclusions of law. State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding." Id. The party challenging a finding of fact bears the burden of establishing that it is unsupported by substantial evidence in the record. In re Davis, 152 Wn.2d 647, 680, 101 P.3d 1 (2004).

The trial court is afforded deference regarding the factual determinations in a suppression hearing because it possesses the "best opportunity to evaluate contradictory testimony." State v. Hill,

123 Wn.2d 641, 646, 870 P.2d 313 (1994). When a trial court bases its findings of fact on conflicting evidence and substantial evidence exists to support them, a reviewing court will not reweigh the evidence and substitute its judgment even if it might have resolved the dispute differently. Wright v. Dave Johnson Ins. Inc., 167 Wn. App. 758, 778, 275 P.3d 339 (2012).

i. Finding of fact no. 1.

D. G.-R. assigns error to finding of fact no. 1 “to the extent that it finds [D. G.-R.] was not aware that Detective Maley was carrying a firearm” during the school interview. App. Br. 2. The trial court found that the gun was not visible to D. G.-R. until after the interview had finished, and that he only assumed she had a weapon. CP 26-27. There is substantial evidence in the record to support that finding.

D. G.-R. testified that he only saw the gun at the meeting’s conclusion, “right when I was saying bye to her and leaving . . . at the very end.” 2RP 115. This was also when D. G.-R. observed “the little thing that goes around – like your waist” that “I think” was a holster.” 2RP 108, 110. Maley testified that her gun was not visible that day, and that she always adheres to department policy

and conceals the weapon in public when not in uniform. 1RP 185. She further explained that the coat she was wearing at school was “much bigger” than the one she had on in the courtroom during testimony, and demonstrated how even with the smaller coat the gun was completely concealed from sight. 1RP 185.

ii. Finding of fact no. 2.

D. G.-R. next assigns error to finding of fact No. 2, which states that Maley closed the door during the school interview to protect D. G.-R.’s privacy, “to the extent that it finds that the detective’s uncommunicated subjective purpose” is pertinent to the conclusion that his freedom of action was not objectively or subjectively curtailed. App. Br. 2. The trial court made no such oral or written finding or conclusion. CP 26; 2RP 126-29. There is therefore no claim of error available to D. G.-R.

iii. Finding of fact no. 6.

D. G.-R. next assigns error to finding of fact no. 6, arguing that the trial court should have made the specific finding that he did not feel free to refuse to answer Maley’s questions at his home. App. Br. 2. The court did not make this finding, either in writing or

orally. CP 26; 2RP 124-29. D. G.-R. appears to ask this Court to find as a matter of fact that D. G.-R. felt he could not refuse.

In analyzing a trial court's findings of fact, this Court is limited to a determination of whether substantial evidence exists to support *existing* findings of fact. Vickers, 148 Wn.2d at 116. D. G.-R. bears the burden of making this showing. Id. He does not point to any authority allowing an appellate court to entertain his motion to *supplement* the existing findings with favorable ones *not* made by the trial court in order to buttress his legal arguments. Courts have previously underscored the reason why factual findings should not be "remade" at the appellate level.⁶ Here, D. G.-R. essentially asks this Court to adjust the trial court's findings in a way that ultimately allows him to better meet his issues raised on appeal. This Court should reject this offer.

As explained below, the additional finding now requested by D. G.-R. -- that he subjectively felt unable to refuse questions at his house -- is ultimately irrelevant to the custody calculus. Moreover, the trial court made no finding that D. G.-R. was credible as it did

⁶ A defendant who can demonstrate that the State's delayed findings have been "tailored" to meet issues raised on appeal, for example, may be entitled to reversal given the prejudice he subsequently suffers. See, e.g., State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006); State v. Head, 136 Wn.2d 619, 624, 964, P.2d 1187 (1998).

for Maley; this indicates the court simply did not believe D. G.-R.'s testimony regarding his feelings at the house. CP 27. The exclusion of the finding sought by D. G.-R. also makes sense given the court's finding that D. G.-R. only saw Maley's gun at the school, not at home.

iv. Finding of fact no. 7.

D. G.-R. next assigns error to finding of fact no. 7, arguing first that he testified that he saw Maley's holster during her visit to his home at the CrR 3.5 hearing, and thus the trial court erred by saying that her gun was not visible at that time. App. Br. 3. The court's finding was supported by substantial evidence. D. G.-R. unequivocally testified twice that he did not see Maley's gun when she visited his home, nor did he see the other detective's gun.⁷

⁷Q: At what point, or did you ever see her gun -- when she was at school or when she was at your house?

A: Only at school when she like turned . . .

2RP 115.

Q: And did you ever see her gun when she was at your house when she was at your apartment?

A: Well I thought she had a gun, but I didn't see it.

Q: Did you see it?

A: I did not see it but I thought she had a gun.

Q: Did you see the other detective's gun?

A: No.

2RP 116-17.

Maley testified it was not visible. The trial court found Maley's testimony credible but made no finding for D. G.-R. CP 27.

D. G.-R. next argues that the court further erred in finding of fact no. 7 "to the extent that it finds that the detective merely asked the respondent if there was anything he wanted to change about his story, where both Maley and the respondent testified that the detective told him he needed to 'now' tell the truth." App. Br. 3.

D. G.-R. does not provide citations to the quoted testimony in which Maley told him he need "now" tell the truth. App. Br. 3. A review of the record shows only that D. G.-R. recalled Maley stating "that it is best to say the truth, or something like that." 2RP 111. The transcription of the recorded portion of the interview, which took place after D. G.-R. told Maley that he wanted to change parts of his story, indicates that she told him, "You don't have to talk to me. But it's best that we clear this up today and you tell me the real truth." Ex. 5 at 2. The court should reject D. G.-R.'s request to alter this finding of fact.

b. D. G.-R. Was Not In Custody.

D. G.-R. next asserts that the trial court erred in admitting his statements because he was in custody when he spoke to Maley.

This claim is without merit. Because the challenged statements were not the result of custodial interrogation, Miranda warnings were not required and the statements were properly admitted.

In order to preserve a defendant's Fifth Amendment right against compelled self-incrimination, the police must inform a suspect of his rights prior to custodial interrogation. Miranda, 384 U.S. at 444. Statements made in response to custodial interrogation are inadmissible if not preceded by such warnings. State v. Lavaris, 99 Wn.2d 851, 856, 664 P.2d 1234 (1983). To constitute a statement in response to custodial interrogation, (1) the individual making the statement must be in custody, and (2) the statement must be in response to interrogation. Rhode Island v. Innis, 446 U.S. 291, 298, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). If either requirement is not met, the statement is admissible even in the absence of Miranda warnings. See State v. Sargent, 111 Wn.2d 641, 649-51, 762 P.2d 1127 (1988).

A trial court's determination that a defendant was in custody for purposes of Miranda presents a mixed question of law and fact: a reviewing court defers to the trial court's findings of fact but reviews its legal conclusions de novo. In re Cross, 2014 WL 2892418, 327 P.3d 660, 673, n.7 (2014); Thompson v. Keohane,

516 U.S. 99, 112-13, 116 S. Ct. 457 (1995). A suspect is “in custody” if a reasonable person in the suspect’s position would feel that his or her freedom of movement is curtailed to the degree associated with formal arrest. State v. Heritage, 152 Wn.2d 210, 218, 95 P.3d 345 (2004) (citing Berkemer v. McCarty, 468 U.S. 420, 441-42, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984)).

This ultimate determination requires two discrete steps:

(1) ascertaining the circumstances surrounding the interrogation, and (2) determining whether a reasonable person in those circumstances would have felt free to leave. Thompson, 516 U.S. at 112.

The question of custody therefore turns on an objective assessment of the degree of restraint a reasonable person would have felt on his freedom of movement at the time of the statements, not an individual’s personal feelings. Heritage, 152 Wn.2d at 218. The “‘subjective views harbored by either the interrogating officers or the person being questioned’ are irrelevant. The test . . . involves no consideration of the ‘actual mindset’ of the particular suspect subjected to police questioning.” J.D.B. v. North Carolina, ___ U.S. ___, 131 S. Ct. 2394, 2402, 180 L. Ed. 2d 310 (2011).

An objective test “avoids burdening police with the task of anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person’s subjective state of mind.” Id. Reliance on a suspect’s prior history with law enforcement is thus improper as a matter of law when determining custody status, “because such experience could just as easily lead a reasonable person to feel free to walk away as to feel compelled to stay in place.” Id. at 2404.

The objective test for determining custody status applies to juvenile suspects. Heritage, 152 Wn.2d at 217-19. The Washington state supreme court has declined to determine “whether the age of the suspect can ever be taken into account for purposes of the Miranda custody requirement. Heritage, 152 Wn.2d at 219. The Supreme Court in J.D.B. recently held that if a juvenile’s age was known or should have been reasonably apparent to an officer, its inclusion in the custody analysis does not offend the objective nature of the test. 131 S. Ct. at 2406. However, the Court has cautioned that “this is not to say that a

child's age will be a determinative, or even a significant, factor in every case."⁸ Id.

In State v. D.R., upon which the trial court here relied, Division 2 held that a 14-year-old boy was in custody where the questioning officer wore plainclothes, concealed his gun, displayed a badge, spoke to the suspect in the principal's office, and told him he did not have to answer questions. 84 Wn. App. 832, 930 P.2d 350 (1997). The crucial point upon which the opinion turned was the fact that the questioning officer never told the suspect that he was free to leave, which the court characterized as "significant." Id. at 838. In doing so, the court relied on two Oregon cases, noting favorably that one, State ex re. Juvenile Dep't v. Loredo, involved an officer who made an effort to be unimposing in dress and demeanor, interviewed the 14-year-old suspect in a familiar environment at school, and advised him that he was not under arrest, did not have to speak, and could leave if desired. D.R., 84 Wn. App. at 838 (citing Loredo, 125 Or. App. 390, 865 P.2d 1312 (1993)).

⁸ The Court did not determine the custodial status of J.D.B. and remanded to the state court to address the issue and take his age into consideration. Id. at 2408.

As the trial court here correctly observed, the facts in D. G.-R.'s case are very similar to that in Loredo. 2RP 126-27. Detective Maley made a clear effort to present an unimposing manner of dress and demeanor that would not intimidate D. G.-R., using a conversational tone to ask him for his side of the story, speaking to him in a space without coercive undertones such as a principal's office, and wearing regular clothes instead of a police uniform.

D. G.-R. himself agreed that Maley never raised her voice at him during the interview, which she described as a "quiet conversation" lasting no more than 20 minutes. 1RP 98, 193; 2RP 117. Maley also wore a large unmarked coat that she insisted would have concealed her weapon entirely; D. G.-R. admitted that he only glimpsed it at the very end, eliminating any possible coercive effect. The trial court agreed with Maley's undisputedly subdued dress and speech, noting, "I mean I don't know what else she could have done." 2RP 126.

Most importantly, the court found that Maley told D. G.-R. at the school interview that he was not under arrest, that he did not have to speak to her and that he was free to leave. CP 26. D. G.-R. never denied any of these facts and agreed that Maley

never told him he was under arrest nor did she handcuff him.

2RP 113. The most he was able to do was to testify repeatedly that he did not remember whether she had advised him of his freedom to leave. 2RP 109-14.

Maley, whose testimony the court found credible, noted that she “made it clear” he did not have to stay, and that after 22 years as an SAU detective, “I always tell them they are not obliged to talk . . . I say, ‘You are free to leave. You can do whatever you want. This is not like the principal’s office where you have got to kind of come in there and stay.’” 1RP 187; 2RP 90-91; CP 26-27. Maley further testified that she “went as far as [saying] I wanted to record . . . and he went as far to assert his ability to say no, he didn’t want me to record,” a fact noted by the trial court as proof that D. G.-R. was not intimidated and had retained a sufficient level of comfort to exercise his own choices. 1RP 187; 2RP 127.

The court found that when Maley went to D. G.-R.’s home, she and her fellow detective were again in plainclothes with non-visible weapons. CP 26. The court also found that after D. G.-R. responded that there were parts of his story he would like to change, Maley informed him that he did not have to talk to her and that he was not under arrest, asked for permission to enter,

and that it was undisputed that he said, "Sure."⁹ CP 27;1RP 195-96; 2RP 125. D. G.-R. acknowledged that Detective Janez never spoke during the interview. 2RP 117.

Maley further testified that prior to entry, she advised him that "he didn't have to let us come in and talk to him, because I was outside the door when I asked him if he wanted to make any changes." 2RP 91. Moreover, the transcript of the subsequent recorded interview establishes that Maley informed D. G.-R. two more times at the commencement of the discussion that he did not have to speak to her. Ex. 4; Ex.5 at 1-2. D. G.-R. agreed that Maley never raised her voice, handcuffed him, or told him he was under arrest, testifying only that he didn't remember whether she advised him he did not have to speak to her. 2RP 116. It is undisputed that D. G.-R. never indicated a desire to halt the discussion during either interview. CP 26-27; 2RP 115-16, 200-01. The recorded interview at the home is only 10 minutes and 30 seconds. Ex.4.

⁹ The trial court correctly found that this was the proper verbiage needed to advise D. G.-R. of his freedom of movement during the home visit, since a verbatim advisement that one is "free to leave" obviously does not make sense when officers are the ones visiting the suspect's home, and would imply that the suspect is to leave his own house if he desires to end the conversation.

D. G.-R. nevertheless cites to State v. Daniels as support that he was in custody during both interviews. 160 Wn.2d 256, 156 P.3d 905 (2007). This reliance is misplaced. In Daniels, the 17-year-old suspect was interrogated by multiple detectives in an 8 foot by 10 foot room at the police precinct for over 90 minutes the day after her murdered infant son's funeral, during which the officers refused her requests to allow her father to accompany her. Id. at 266-67. These facts are clearly distinguishable from D. G.-R.'s interviews with Maley, which were extremely short, involved only one detective (given Det. Janez's nonspeaking role at the home), took place months after the incidents, and occurred in familiar environs (his school and his home).

D. G.-R. essentially asks this Court to depart from well-established caselaw and find that his subjective belief that he could not leave, based on his experience with "racist" cops from his home country and not on any actions on Detective Maley's part, should control the custody determination. The trial court rejected this contention. CP 27-28; 2RP 126-27. This Court should do the same.

Finally, even if this Court were to find that D. G.-R. was in custody at the time of the interviews, any error is harmless. The

erroneous admission of a defendant's statement in violation of Miranda is harmless if the remaining untainted evidence alone is so overwhelming that it necessarily leads to a finding of guilt." D.R., 84 Wn. App. at 838. In D.R., the incest victim did not testify and the only other evidence of sexual activity was the testimony of a witness who could not verify penetration. Id. The evidence was thus not harmless. Id.

Here, victim K.P.A. did testify, providing all of the necessary evidence for the crime of rape in the second degree. His mother also testified to K.P.A.'s dramatic behavioral shift following the rape, corroborating his report of the severe depression and suicidal ideation that itself supports the existence of a sexual assault. As the trial court noted, D. G.-R. admitted the requisite sexual contact required for the crime; the only truly disputed issue was forcible compulsion, which the court found rested on a credibility determination. 3RP 34.

Moreover, the court specifically found in its findings of fact under CrR 6.1(d) and JuCR 7.11 that K.P.A.'s trial testimony was credible. CP 33. This, coupled with his mother's corroborating testimony and the lack of any motive to fabricate, constitutes overwhelming evidence leading to a finding of guilt. D. G.-R.

nevertheless appears to argue that error is not harmless because the prosecutor repeatedly emphasized the inconsistencies in his statements during closing argument, leading to a “reasonable and strong possibility that [they] caused the court to reach its verdict.” App. Br. 19-21.

Both the written and oral findings belie this conclusion; D. G.-R.’s statements constituted a single finding of fact (no. 11) in the court’s written decision, while K.P.A. and K.P.A.’s mother’s testimony comprise the remaining seven findings necessary to reach the court’s ultimate conclusion.¹⁰ CP 31-33. The court similarly focused on K.P.A.’s testimony in its oral findings, noting that “there is [sic] surprisingly few factual issues” in dispute, and noting only that D. G.-R.’s account “evolved really over time, and that is perhaps understandable in terms of the situation he found himself in.” 3RP 34-35.

The record and the findings of fact support the court’s conclusion that D. G.-R. was not in custody during interviews at school or in his home. Any error is also harmless. The court should accordingly reject his claim.

¹⁰ Two additional findings were limited to K.P.A. and D. G.-R.’s non-marital status and the fact that the incident happened in King County. CP 32.

2. THE COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING LIMITED TESTIMONY UNDER THE HUE AND CRY DOCTRINE.

D. G.-R. next argues that the trial court should not have admitted testimony from K.P.A.'s mother under the "hue and cry" doctrine regarding the fact of his complaint because it was not timely. This argument fails for four reasons. First, the timeliness requirement does not automatically preclude a report less than three months after a sexual assault. Second, the timeliness requirement should be abolished because it is based on the antiquated, sexist and demonstrably false notion that "true" rape victims will report promptly.¹¹ Third, the trial court correctly identified that the limited testimony was also admissible under ER 801(d)(1)(ii) to rebut the inference of recent fabrication, which bears no timeliness requirement. Finally, any error was harmless because the trial court specifically found that the information did not determine its verdict.

¹¹ As explained below, while the parties involved in this case are male, the hue-and-cry doctrine originated in the context of male-on-female violence.

a. The Court Did Not Abuse Its Discretion In Ruling The Evidence Was Timely Reported.

A trial court's admission of evidence under the hue and cry doctrine may be reviewed only upon a showing of manifest abuse of discretion. State v. Ackerman, 90 Wn. App. 477, 481, 953 P.2d 816 (1998). A trial court abuses its discretion only when no reasonable judge would have reached the same conclusion. State v. Bourgeois, 133 Wn.2d 389, 406, 945 P.2d 1120 (1997).

The "fact of complaint" doctrine stems from the feudal "hue and cry" doctrine, and allows the admission of hearsay that a sexual assault victim complained after being assaulted. State v. Murley, 35 Wn.2d 233, 237, 212 P.2d 801 (1949); State v. Hunter, 18 Wn. 670, 672-73, 52 P. 247 (1898). The rule admits only such evidence as will establish that the complaint was timely made. State v. Ferguson, 100 Wn.2d 131, 135-36, 667 P.2d 68 (1983).

The parameters of what constitutes sufficient "timeliness" have not been rigidly defined. See, e.g., State v. Osborn, 59 Wn. App. 1, 7 n.2, 795 P.2d 1174, 1178 (1990) (noting in dicta that the relevant cases "do not discuss in detail the requirement that the statement must be "timely made," [but that] it seems implicit that the statement must be made within a short time period subsequent to

the sexual offense”). The definition of timeliness or a “short time period,” however, remains open to the trial court’s discretion. For example, a trial court did not abuse its discretion in admitting a child molestation victim’s report of sexual abuse to her classmates in October to December of 1995 following a period of abuse from October 1994 to October 1995. Ackerman, 90 Wn. App. 477, 480-82, 953 P.2d 816 (1998) (characterizing the reports as “statements establishing that she made timely complaints [that] were properly admitted under the fact of complaint doctrine”).

Here, the incident occurred in September 2011 and K.P.A. reported to his mother sometime in December, a period of approximately three months. CP 31; Ex. 7; 1RP 174, 178-79; 2RP 36. While the report was not immediate, it was far less than the period of time in Ackerman, which exceeded a year. 90 Wn. App. at 480-82. Thus, the trial court did not abuse its discretion in allowing K.P.A.’s mother’s testimony regarding fact of K.P.A.’s complaint.

b. The Timeliness Requirement Is Based On An Antiquated Premise.

Washington courts have long held that the fact that the victim reported a sexual assault is admissible because it bears upon the victim's credibility. See, e.g., Murley, 35 Wn.2d at 237; Hunter, 18 Wn. at 672-73; State v. Alexander, 64 Wn. App. 147, 151-52, 822 P.2d 1250 (1992); State v. Griffin, 43 Wash. 591, 86 P. 951 (1906). In Griffin, the court held that a report of rape made six months after the assault did not comport with the turn-of-the-century interpretation of a timely, and therefore credible, sexual assault victim. 43 Wash. at 598. Contrary to D. G.-R.'s contention that this mindset is grounded in "common sense" and merely "politically incorrect," the underlying rationale for the timeliness requirement is both antiquated and demonstrably false, i.e., that a woman who really has been raped would certainly raise her "hue and cry" immediately, and the failure to do so suggests that a rape did not occur:

If the witness be of good fame; if she presently discovered the offense, and made search for the offender; if the party accused fled for it; these and the like are concurring circumstances which give greater probability to her evidence. But on the other side, if she be of evil fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had opportunity to complain; if the place

where the fact was alleged to be committed, was where it was possible she might have been heard, and she made no outcry; these and the like circumstances carry a strong, but not conclusive, presumption that her testimony is false or feigned.

Griffin, 43 Wash. at 597-98 (quoting William Blackstone, 4 Commentaries, 213); see also Murley, 35 Wn.2d at 237 (noting that the “hue and cry” doctrine “rests on the ground that a female naturally complains promptly of offensive sex liberties upon her person,” and thus, the failure to complain promptly supports an inference that the allegations are fabricated); App. Br. 22.

As time progressed, Washington courts started to recognize that expert testimony explaining that child sexual abuse victims often delay reporting their abuse may be properly admitted for the jury’s consideration. State v. Graham, 59 Wn. App. 418, 422-25, 798 P.2d 314 (1990). Such evidence is admissible because it is helpful to the jury in assessing the victim’s credibility -- the same reason for admitting “fact of complaint” evidence. Id. at 425.

Accordingly, if expert testimony is admissible to explain that child sexual abuse victims often delay in reporting their abuse because such testimony bears on credibility, it makes little sense to perpetuate an antiquated rule that factual testimony regarding the circumstances of the victim’s disclosure is relevant and admissible

only if the victim's report is made immediately after the alleged sexual assault. Indeed, it is difficult to imagine a child sexual abuse case where evidence regarding the circumstances of the victim's disclosure would not be relevant to the issue of the victim's credibility--for either the prosecution or the defense. In short, the timing of a disclosure, where immediate or at a later date, is always relevant.

Significantly, the language cited by D. G.-R. from Griffin that "evidence of the complaint should be excluded whenever from delay *or otherwise it ceases to have corroborative force*" does not exclude the admission of the fact of complaint in this case. Griffin, 43 Wash. at 598; App. Br. 22-23. Given how vastly society's understanding of the trauma shared by sex abuse victims has changed over the past century since Griffin was decided, a three-month "delay" would not necessarily cease to have the "corroborative force" described by that court. Indeed, it is difficult to imagine any court today characterizing the six-month period of time prior to the 15-year-old child rape victim's report in Griffin as "months of inexcusable delay." 43 Wash. at 599.

In sum, the antiquated and ill-informed aspects of the "fact of complaint" doctrine – the notion that a true rape victim would raise

a “hue and cry” immediately – should not serve to bar the admission of otherwise relevant evidence. The far better approach is to abolish the immediacy requirement and continue to defer to the sound discretion of the trial court.

c. The Trial Court Correctly Identified That K.P.A.’s Mother’s Testimony Was Also Admissible Under ER 801(d)(1)(ii) To Rebut The Inference Of Recent Fabrication.

As noted above, child sex abuse cases make a child witness’s credibility “an inevitable, central issue.” State v. Kirkman, 159 Wn.2d 918, 933, 155 P.3d 125 (2007) (citations omitted). The trial court thus has broad discretion to admit evidence corroborating the child’s testimony when the child’s credibility comes under question. Id. Under ER 801(d)(1), a statement is not hearsay if “[t]he declarant testifies at the trial or hearing and is subject to cross examination concerning the statement, and the statement is (ii) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.”

K.P.A. was the first witness in the State’s case-in-chief. During cross-examination, D. G.-R. immediately questioned him

about the chronology of his disclosure, establishing that he told his mother first, then made his initial complaint to law enforcement in December 2011, met with “a lady detective” about a month later, and then participated in a defense interview a few weeks prior to the factfinding. 1RP 98-101.

D. G.-R.’s attorney then proceeded to draw out putative inconsistencies among those statements in an effort to discredit K.P.A., questioning his memory, the timeline, the fact that he did not report immediately to anyone that night or the next day, the physical details of the actual assault and his fear of D. G.-R.’s older male friend. 1RP 106-39. She specifically told K.P.A., “In fact you waited about a year to tell her; is that correct?” 1RP 129. She also inferred a motive for K.P.A. to fabricate, asking K.P.A. about his fear that he would be blamed for the sexual activity, and implying heavily that K.P.A.’s religious guilt over his own homosexual desires drove him to concoct a story of rape: “[Y]our church teaches that homosexuality is a sin . . . [a]nd in fact it is your opinion that is why God burned down two cities . . . [as] punishment for the sin and disorder?” 1RP 124, 139.

Given D. G.-R.’s express and implied attacks on K.P.A.’s credibility and insinuation of a motive to fabricate, limited testimony

regarding K.P.A.'s fact of complaint to his mother comprised proper rebuttal evidence under ER 801(d)(1), which does not require "timely" report. The trial court correctly noted this in its ruling. 1RP 175-76. This Court should therefore reject D. G.-R.'s claim.

d. Any Error Is Harmless.

Even if this Court finds that the trial court abused its discretion in admitting the fact of K.P.A.'s complaint, there is no basis for reversal. The test for determining whether erroneously admitted evidence requires reversal is whether, within reasonable probabilities, the trial's outcome would have been materially affected if the error had not occurred. State v. Braham, 67 Wn. App. 930, 939, 841 P.2d 785 (1992). In other words, the improper admission of evidence is harmless if the evidence is of minor significance in reference to the evidence as a whole. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997).

Here, the defendant cannot prove that the evidence of fact of complaint presented any probability *at all* of affecting the outcome, much less the level of prejudice that requires reversal. The trial court explicitly found that the evidence had no bearing on its ultimate finding of guilt. 3RP 61. The court further found that the

core issue was the credibility of K.P.A. and, to some extent, D. G.-R. 3RP 61; CP 31-34. Given that the test for reversal requires a reasonable probability that the outcome would have been materially affected and the trial court definitively stated that no such probability existed, the inquiry is at an end.

Nevertheless, it should also be noted that D. G.-R. himself drew out the fact of initial complaint from various witnesses. His first questions during the cross-examination of K.P.A. involved the date K.P.A. "first reported December 30, 2011" to police, which was shortly after he made the fact of complaint to his mother. 1RP 98. This was apparently to highlight K.P.A.'s incongruous testimony during direct examination that he did not report the abuse to his mother until "more than 6 months" after the incident, which would have conflicted with K.P.A.'s mother's testimony and K.P.A.'s own account that the abuse happened in September 2011 during Expo. Ex. 7; 1RP 48, 178-79; 2RP 36.

During his case-in-chief, D. G.-R. also called Deputy Michael Glasgow, the officer to whom K.P.A. made his first law enforcement report. During direct examination, he again drew out the fact of the complaint himself from Glasgow in an effort to elicit substantive inconsistencies in K.P.A.'s statements to Glasgow, K.P.A.'s mother,

and Detective Maley. 2RP 131-35. This was evidenced by his closing argument, which was almost entirely focused on discrepancies in K.P.A.'s accounts and thus his credibility. 3RP 12-22.

D. G.-R. cannot support a contention that K.P.A.'s mother's brief mention of the fact of complaint prejudiced him in any way. The court should reject his claim.

3. CUMULATIVE ERROR DID NOT DENY D. G.-R. A FAIR TRIAL.

D. G.-R. argues that, if none of the alleged errors he has claimed warrants reversal of his conviction on its own, the conviction should nevertheless be reversed based on the combined effect of these errors. This argument fails.

The cumulative error doctrine applies only where several trial errors occurred that, standing alone, may not be sufficient to justify reversal, but when combined, may deny the defendant a fair trial. State v. Hodges, 118 Wn. App. 668, 673, 77 P.3d 375 (2003) (citing State v. Greiff, 141 Wn.2d 910, 929, 10 P.3d 390 (2000), review denied, 151 Wn.2d 1031 (2004)). It is axiomatic, however, that to seek reversal pursuant to the "accumulated error" doctrine, the

defendant must establish the presence of multiple trial errors and show that the accumulated prejudice affected the verdict. Where errors have little or no effect on the outcome of trial, the doctrine does not apply. Greiff, 141 Wn.2d at 929. Here, as explained above, D. G.-R. has failed to satisfy this burden.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm D.G.-R.'s conviction for rape in the second degree.

DATED this 18 day of August, 2014.

Respectfully submitted,

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By: 

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to OLIVER DAVIS, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. DAVID GUERRERO-RAMIREZ, Cause No. 71133-4 -I, 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 18th day of August, 2014

U. Brame

Name
Done in Seattle, Washington

6:12 PM AUG 18 2014
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE