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Supreme Court No. 101160-1
(COA No. 37892-6-III)

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JULIA NAPIER,

Petitioner.

ON APPEAL FROM DIVISION THREE COURT OF
APPEALS

PETITION FOR REVIEW

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Rules

ER 611 10

A. IDENTITY OF PETITIONER

Julia Napier, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition pursuant to RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Ms. Napier seeks review of the Court of Appeals decision dated July 21, 2022, a copy of which is attached in the Appendix.

C. ISSUES PRESENTED FOR REVIEW

1. The State can only present rebuttal testimony to address new issues raised in the defendant's case-in-chief. The State presented improper rebuttal testimony to reaffirm its version of events. Does the Court of Appeals correctly hold this error was harmless when the testimony overemphasized the alleged victim's testimony; was relatively the exact same testimony as in the State's case-

in-chief; and was the largest amount of the State's testimony alleging Ms. Napier's conduct?

D. STATEMENT OF THE CASE

Ms. Julia Napier and her sister Ms. Patricia Murray went out to a local bar for food, drinks, and karaoke. Over the course of the evening, Ms. Napier drank several beers. At some point during the evening, Ms. Napier and her sister were playing pool with Mr. Darnai Vaile. During the game, Mr. Vaile physically touched Ms. Murray. Ms. Murray responded by swinging a pool stick at Mr. Vaile. The DJ asked Ms. Napier and Ms. Murray to leave. Ms. Murray called the police to report the incident.

Ms. Napier, Ms. Murray, Mr. Vaile, Mr. Thuleen, Mr. Kody Mechum, Mr. Justin Nelson, and Mr. John Ryken were outside. Law enforcement responded and were looking for Ms. Murray when they were, for some reason, scared of Mr. Vaile.

The officers engaged Mr. Vaile in a physical struggle including repeatedly beating Mr. Vaile with their fists and batons. Ms. Murray and Ms. Napier were shocked by aggression and concerned for Mr. Vaile's safety, started yelling at the officers to stop. RP 254, 501, 551. Ms. Napier testified that she "didn't understand why they were being so vicious and brutal to him." RP 551. Mr. Mechum observed Ms. Napier yelling at the police and believed she was trying to defend Mr. Vaile. RP 485.

Deputy Michael Vicini, Deputy Clay Hilton, and Deputy Criswell were the deputies attempting to arrest Mr. Vaile. RP 253, 302, 402. All three deputies repeatedly told the crowd to stay back during the altercation. Deputy Hilton repeatedly told Ms. Napier and Ms. Murray to step back. RP 255.

The alleged victim, Deputy Hilton, a member of the SWAT team, stands six feet tall, weighs approximately 200 pounds, and is left-handed. RP 274, 89. Deputy Hilton

alleged that Ms. Napier refused to heed his commands to stay back and believed she posed a security threat. Ms. Napier, was 54 years old, stands five-foot two-inches tall, 115 pounds, and requires hearing aids.

Deputy Hilton alleged he, with his extensive training and experience, attempted to place Ms. Napier under arrest when she suddenly broke free from his grasp and hit him in the face. The State presented photographic evidence of Deputy Hilton's face displaying a red mark. Deputy Hilton alleged the mark was caused by Ms. Napier's strike.

11 witnesses testified during Ms. Napier's and Mr. Vaile's joint trial. Nine of these witnesses testified that they either did not see Ms. Napier's alleged assault or they saw the entire interaction and there was no assault. Only deputy Criswell confirmed deputy Hilton's allegations.

Deputy Hilton was the State's first witness. RP 236. Deputy Hilton testified to his version of events. *Id.* The jury

heard testimony of 10 other witness before the State requested permission to present rebuttal testimony. The State argued to the trial court it wanted to present rebuttal testimony because “Ms. Napier’s rendition of what occurred about the way she spun was opposite of what actually happened, and I was going to reaffirm the procedure of what happened and have the deputy go over that and as far as his recalling of that, how many times in his 18-year career he’s been hit in the face is why he specifically remembers the details of this particular event.” RP 606.

The trial court, over Ms. Napier’s objection, permitted the rebuttal testimony finding that “[a]gain, there’s been additional testimony. Ms. Napier had the advantage of hearing the deputy’s testimony and then testifying, and there was specific testimony Ms. Napier gave. I think it’s fair to allow the State to address her specific testimony, so

I will allow that rebuttal testimony...” RP 607. The court did not identify which specific testimony it was referencing.

The State asked Deputy Hilton several questions during its rebuttal presentation. RP 608-09.

Q) Deputy, I want to go back again to that night and your encounter with Ms. Napier. Do you recall how many times you told Ms. Napier to back up?

A) Several times.

Q) When you decided that you were going to place Ms. Napier under arrest, can you describe how you initially made contact with her and apprehended her?

A) I verbally told her she was under arrest, and I had her turn around and put her hands behind her back.

Q) You had her initially with both hands behind her back; is that correct?

A) That's correct.

Q) What happened next?

A) I originally used both my hands to control her hands, and I took ahold of her would be the top two fingers on each hand that were together and held on to them while I used -- let go with my right hand to grab my handcuffs.

Q) In what direction then did Ms. Napier spin?

A) When she pulled away, she pulled her right hand out, spun to her left, and that's when I got hit in the left side of my face.

Q) What hand did she hit you with?

A) Her right hand.

Q) 18 years on the service, how many times have you been hit in the face?

A) Probably less than three times.

Q) Does that add to your ability to recall what happened that particular evening?

A) Yes.

RP 608-09.

During the State's case, it presented nearly identical testimony from Deputy Hilton:

Q) Do you remember how many, approximately how many times you told the ladies to get back?

A) Several times. I couldn't say for certain.

RP 254.

Q) What did you do after you told her she was under arrest?

A) Had her hands behind her back, had control of both hands with my left hand, and went to put her in handcuffs as I was pulling my handcuffs with my right hand.

RP 255.

Q) What, if anything, occurred as you were reaching for your handcuffs?

A) As I let go of her hands with my right hand to grab my handcuffs, she broke free and spun toward me, and hit me in the left side of the face.

RP 255-56.

The jury found Ms. Napier guilty of third-degree assault. RP 114. The trial court subsequently denied Ms Napier's motion to set aside the verdict. RP 127.

On appeal, Ms. Napier argued the State's rebuttal testimony was cumulative and prejudicial and her conviction should be vacated. In an alternative argument, the Ms. Napier argued the State failed to produce sufficient evidence to prove beyond a reasonable Ms. Napier committed third-degree assault. The Court of Appeals affirmed Ms. Napier's conviction.

The Court of Appeals agreed the State's rebuttal was cumulative and improper and held that, even if the trial court abused its discretion, the effect did not materially affect the outcome of the trial. The Court asserted the

amount of rebuttal testimony was slight compared to the entire report of proceedings.

The Court also held the State presented sufficient Ms. Napier committed third degree assault. The Court highlighted there was corroborative testimony and the other witness testimony either did not hurt the State's case or that the witnesses could have had credibility issues because of their relationship with Ms. Napier.

E. ARGUMENT

1. THE COURT OF APPEALS ERRED HOLDING THE STATE'S REBUTTAL TESTIMONY WAS NOT PREJUDICIAL.

Division Three acknowledged the State's rebuttal testimony was cumulative, improper, and that the trial court abused its discretion admitting the evidence. The Court, however, asserts it was "confident" the testimony did not materially affect the outcome of the case, due to the size of the testimony compared to the overall report of proceedings. This was error because the way in which

information is conveyed to jurors has an immense impact on the outcome of the trial. Indeed, the trial court recognized this when it allowed the State to present the rebuttal testimony.

Rebuttal evidence is only permissible “where new matter has been developed by the evidence”. *State v. Kroll*, 87 Wn.2d 829, 841, 558 P.2d 173 (1976). Rebuttal evidence is designed to permit the plaintiff to answer new matter presented by the defense, it is not simply a reiteration of evidence in chief. ER 611;16 5A Wash. Prac., Evidence Law and Practice § 611.16, Karl Tegland (6th ed.) Washington Practice Series (2021). “Rebuttal evidence, generally speaking, is receivable only where new matter has been developed by the evidence of one of the parties and is ordinarily limited to a reply to new points.” *State v. Lampshire*, 74 Wn.2d 888, 894, 447 P.2d 727 (1968) (quoting *W.E. Roche Fruit Co. v. Northern Pac. Ry.*

Co., 184 Wash. 695, 698, 699, 52 P.2d 325 (1935)); ER 611(a).

Rebuttal evidence is admitted to enable the plaintiff to answer new matter presented by the defense. Genuine rebuttal evidence is not simply a reiteration of evidence in chief but consists of evidence offered in reply to new matters. The plaintiff, therefore, is not allowed to withhold substantial evidence supporting any of the issues which it has the burden of proving in its case in chief merely in order to present this evidence cumulatively at the end of the defendant's case.

State v. White, 74 Wn.2d 386, 394-95, 444 P.2d 661 (1968).

This Court in *Lampshire* indicated that where credibility of testimony is a vital issue, admitting impermissible rebuttal testimony may violate a defendant's right to a fair trial. *Lampshire*, 74 Wn.2d at 894. This Court reasoned that where the State's case hinged solely on credibility admitting rebuttal testimony can overemphasize testimony of the rebuttal witness. *Lampshire*, 74 Wn.2d at 894.

This same principle can be found in the hearsay context. Washington Courts consider whether improper hearsay testimony within a reasonable probability, materially affected the outcome of the trial. *State v. Gonzalez-Gonzalez*, 193 Wn. App. 683, 370 P.3d 989 (2016) (citing *State v. Thomas*, 150 Wn.2d 821, 871, 83 P.3d 970 (2004)). This includes consideration of whether the hearsay evidence was more than a minor significance “in reference to the overall, overwhelming evidence as a whole.” *Id.* More specifically, if there was untainted physical evidence tending to prove the defendant’s guilt. *Burke*, 196 Wn.2d at 739 (hearsay evidence was harmless when there was untainted DNA evidence linking the defendant to the crime).

In a third context, prosecutorial misconduct during closing arguments, Washington Courts also consider how information is conveyed to the jury and what impact that had on the jury’s thought processes. For example, in

Glassman and *Hecht*, both Courts recognized placing suggestive words during closing can violate a defendant's right to a fair trial. Both Courts recognized this suggestive material was one of the last things the jurors experienced at the end of a trial before going into deliberations.

In Ms. Napier's case, the Court of Appeals did not cite to any untainted physical evidence when it concluded the improper rebuttal testimony was harmless. Instead, the Court only considered the ratio of the rebuttal testimony to the entire report of proceedings and passingly noted one witness corroborated deputy Hilton. Just as placing suggestive PowerPoint slides at the end of trial, having the critical witness essentially completely re-testify, overemphasizes that witness's testimony. *Cf. State v. Acosta*, 9 Wn. App. 2d 1017, *3-4, 2019 WL 2423304 (June 10, 2019¹).

¹ This case is cited in accordance with GR 14.1.

- a. Rebuttal testimony can serve as an independent ground warranting reversal.

Division Three did not cite to any similar case law to support its conclusion the improper testimony in Ms. Napier's case was harmless. Indeed, case law from the Court of Appeals, and this Court, leaves open the question of whether improper rebuttal testimony can independently serve as a basis for remand.

In a recent Division One opinion, *Acosta*, the appellant argued improper rebuttal testimony was prejudicial and cited *Lampshire* for the proposition improper rebuttal testimony is an independent ground for reversal. Division One disagreed, stating that *Lampshire* involved cumulative error and in *Acosta's* case, he *only* alleged one prejudicial error. Division One is correct *Lampshire* involved cumulative error doctrine in which there were two prejudicial errors, not just improper rebuttal testimony. *Lampshire*, 74 Wn.2d at 892.

But improper rebuttal testimony, where there is a lack of other untainted evidence, can serve as an independent ground for reversal. This is because trials are essentially stories. And telling a compelling story at trial is an integral part. Like reading a book, each side develops a beginning, middle, and end. Interestingly, though, people only tend to remember the beginning and end of stories. Donald E. Vinson , How to Persuade Jurors, A.B.A.J. 72 (1985). And, where the story is more coherent and less ambiguous “the more likely the story was to be judged true, regardless of its actual truth.” Richard Lempert, Telling Tales in Court: Trial Procedure and the Story Model, 13 Cardozo L. Rev. 559 (1991). Thus, if the State can tell the same short story, with little moving parts, at the beginning and end of its case, the more likely the jury is to believe its story true. *Id.*

Here, the State did exactly that. The State began with Deputy Hilton in which he provided a short story detailing Ms. Napier’s alleged assault. This story included showing

a picture of deputy Hilton's face portraying the red mark, the alleged injury deputy Hilton received from Ms. Napier.

Then came the middle part of the story. Multiple trial days, 10 witnesses, and a whole other story: the incident between Mr. Vaile and the arresting officers.

As quickly as Ms. Napier's story begun, it ended. And her story ended the same way it began, with Deputy Hilton's testimony. In fact, the rebuttal testimony was nearly identical to the testimony presented during the State's case-in-chief.

This is where the problem lies in Division Three's harmless error analysis. The Court does not consider the overemphasis on the deputy's testimony. The Court simply considered the proportion of Deputy Hilton's rebuttal testimony to the entire record, not just the record involving Ms. Napier. This is not the standard. Especially here where there was a joint trial, 11 witnesses, covering multiple days, and involving highly charged topic of the use of force by

police. Under the facts of this case, Division Three's analysis should have been limited to the record concerning Ms. Napier. And Division Three's analysis should consider there will be some prejudice inherent in the rebuttal testimony, since that is one of the last stages in a trial.

Lampshire signals rebuttal testimony can be prejudicial and a conviction can be reversed, but the opinion leaves open if improper rebuttal testimony is an independent ground for reversal. Thus, this Court should accept review to determine under what circumstances improper rebuttal testimony warrants reversal.

F. CONCLUSION

Based on the foregoing, Ms. Napier respectfully requests that review be granted pursuant to RAP 13.4(b).

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DATED this 11th day of August 2022.

I, Kyle Berti, in accordance with RAP 18.7, certify that this document is properly formatted and contains 2597 words.

Respectfully submitted,



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I, Kyle Berti, a person over the age of 18 years of age, served the Spokane County Prosecutor (scpaappeals@spokanecounty.org) and Julia Napier (5820 E 4th Ave TRLR#4, Spokane Valley, WA 99212) a true copy of the document to which this certificate is affixed on 8/11/2022. Service was made by electronically to the prosecutor, and Ms. Napier by depositing in the mails of the United States of America, properly stamped and addressed.



KYLE BERTI
WSBA No. 57155
Attorney for Petitioner

APPENDIX

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

STATE OF WASHINGTON,)	
)	No. 37892-6-III
Respondent,)	
)	
v.)	
)	
JULIA ELIEEN NAPIER,)	UNPUBLISHED OPINION
)	
Appellant.)	

SIDDOWAY, C.J. — Julia Napier was convicted of intentionally assaulting Spokane County Sheriff’s Deputy Clay Hilton, who was performing his official duties at the time. She assigns error to the trial court’s ruling admitting evidence for a rebuttal purpose that she contends was not true rebuttal evidence, and challenges the sufficiency of the evidence to support her conviction.

The State’s witnesses’ evidence was sufficient and to the extent its evidence offered in rebuttal was cumulative, it was harmless. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Julia Napier and her sister, Patricia Murray, had traveled to a Spokane Valley restaurant and bar for food, drinks, karaoke, and pool one August evening when Darnai Vaile, a patron of the bar unknown to Ms. Murray, allegedly approached her as she played pool and kissed her without warning. When the karaoke disc jockey saw Ms. Murray swing a pool cue at Mr. Vaile in response, he asked her and Ms. Napier to leave. As Ms. Murray was leaving, she told patrons at the pool tables that she was going to call 911 to report an assault, and they scoffed at her.

Ms. Murray's 911 call was received at around 11:30 p.m. She told the dispatcher she had been assaulted and would await the responding officers' arrival outside.

The first deputies to respond were Michael Vicini and Clay Hilton. Approximately 10 people were standing in the bar side of the parking lot on their arrival. Although Deputy Vicini began by locating Ms. Murray and starting to question her, his and Deputy Hilton's attention was quickly deflected to Mr. Vaile, a very large man (6'10" and over 350 pounds) who appeared at the edge of the parking lot and looked to be approaching Deputy Vicini and Ms. Murray aggressively. Mr. Vaile's fists were clenched, he pushed past a friend who tried to stop him, and he angrily told Deputy Vicini he "want[ed] to tell [his] side." Report of Proceedings (RP) at 308. Mr. Vaile ignored the officers' orders that he calm down and Deputy Vicini's command that he stop

and sit on the curb. When Deputy Hilton told Mr. Vaile he was going to pat search him for weapons, Mr. Vaile backed away, yelled that he had a knife, and began reaching in his pockets for it. Rather than obey the deputies' commands that he remove his hands from his pockets, he overcame their efforts to control his hands, retrieved the knife, and tossed it on the ground. He later testified at trial that the knife had a pressurized blade and he was concerned that if one of the deputies grabbed it, it could open.

Deputy Griffin Criswell arrived. He could see that Deputies Hilton and Vicini each had one of the arms of Mr. Vaile, "a very large male," and they were in an obvious struggle to get him detained. RP at 399. By striking Mr. Vaile with his baton while the other deputies performed leg sweeps, he, Deputy Vicini, and Deputy Hilton, got Mr. Vaile to the ground. By this point, some of the onlookers had gathered closer to the officers and, unhappy with what was happening to Mr. Vaile, were yelling and screaming. According to Deputy Hilton, Ms. Napier and Ms. Murray had become the most obstructive onlookers; they had approached "within arm's reach" and were ordered to get back several times but refused to obey. RP at 254. As Deputies Criswell and Vicini continued to try to handcuff Mr. Vaile, Deputy Hilton stood up and told Ms. Napier that she was under arrest for obstruction. When he took control of her hands to handcuff her, he claims that she swung around and hit him in the face.

At trial, only Deputy Hilton and Deputy Criswell testified to witnessing Ms. Napier's third degree assault of Deputy Hilton. Following presentation of the defense case, the State proposed to offer rebuttal testimony from Deputy Hilton, to which Ms. Napier objected on the basis that the deputy would be "rehashing" his prior testimony rather than responding to any new matter presented by the defense. RP at 606. After hearing an offer of proof, the trial court ruled it would allow the testimony.

The jury found Ms. Napier guilty.¹ She moved for arrest of judgment and a new trial, arguing that most of the trial witnesses had seen no evidence of her alleged assault of Deputy Hilton. The motion was denied. She appeals.

ANALYSIS

Ms. Napier assigns two errors on appeal: that the trial court abused its discretion in permitting the State to present rebuttal testimony and that insufficient evidence supports her conviction.

I. DEPUTY HILTON'S TESTIMONY, EVEN IF NOT TRUE REBUTTAL TESTIMONY, WAS HARMLESS

"Rebuttal evidence is admitted to enable the plaintiff to answer new matter presented by the defense." *State v. White*, 74 Wn.2d 386, 394, 444 P.2d 661 (1968).

"[It] is not simply a reiteration of evidence," and the plaintiff "is not allowed to withhold

¹ By contrast, Mr. Vaile was found not guilty of the two counts of third degree assault with which he was charged in his and Ms. Napier's joint trial. He was found guilty of two counts of resisting arrest, a misdemeanor.

substantial evidence supporting any of the issues which it has the burden of proving in its case in chief merely in order to present this evidence cumulatively at the end of defendant's case." *Id.* at 394-95.

"Ascertaining whether the rebuttal evidence is in reply to new matters established by the defense, however, is a difficult matter at times," and "[f]requently true rebuttal evidence will, in some degree, overlap or coalesce with the evidence in chief. Therefore, the question of admissibility of evidence on rebuttal rests largely on the trial court's discretion, and error in denying or allowing it can be predicated only upon a manifest abuse of that discretion." *Id.* at 395. As with other evidentiary error, the admission of what is not true rebuttal evidence is harmless if we conclude it did not affect the outcome of trial. *State v. Burns*, 53 Wn. App. 849, 851, 770 P.2d 1054 (1989) (finding error in admitting rebuttal testimony, but holding error was harmless), *aff'd*, 114 Wn.2d 314, 788 P.2d 531 (1990); *City of Seattle v. Pearson*, 192 Wn. App. 802, 819, 369 P.3d 194 (2016) (reversal for evidentiary error is required only when the ruling materially affects the outcome of trial).

In the State's case-in-chief, Deputy Hilton provided the following testimony about the basis for Ms. Napier's third degree assault charge:

Q [DEFENSE COUNSEL]: I want to talk about Ms. Napier. Did you tell Ms. Napier to get back?

A Several times, yes.

Q Did she respond?

A She continued to yell and scream, and she did not follow my commands to get back; no.

Q Did you give her any visual signals to get back?

A I believe at some point, I put my hand up and was motioning for her to step back.

Q Did she go back when you did that?

A No.

Q Based on her behavior, what, if any, actions did you take?

A I told her she was under arrest for obstructing.

Q What did you do after you told her she was under arrest?

A Had her hands behind her back, had control of both hands with my left hand, and went to put her in handcuffs as I was pulling my handcuffs with my right hand.

Q What, if anything, occurred as you were reaching for your handcuffs?

A As I let go of her hands with my right hand to grab my handcuffs, she broke free and spun toward me, and hit me in the left side of the face.

Q Can you show us where she hit you in the face?

A Right under my left eye.

Q Sir, based on your observations, was that blow to the face deliberate?

A Yes. It took force to get her hands out of my hand, and she intentionally spun and swung her arm toward my face.

Q Sir, again, was that blow purposeful?

A Yes.

Ms. Napier testified in her own behalf. She testified that the only action she took as she watched the officers get Mr. Vaile to the ground and handcuff him was to “lean[] over a little bit, moved my arms like this, and said, please, officers, he’s a nice man. That was it.” RP at 551. She testified that after the officers had Mr. Vaile on the ground, Deputy Hilton told her to step back so she did, three to four feet. She testified that the following happened next:

A After I stepped back, I turned to my right to make sure my sister was okay, Patty Murray, and then all of a sudden, before I knew it, I was up in the air and slammed to the ground, and all I remember saying is “ow, ow, ow.”

Q Okay. Is it something that happened very quickly, or is it something where you were grabbed ahold of and then struggled, and then you were thrown?

A It was very quickly, within seconds.

Q Okay. And do you know who it was that threw you on the ground?

A No, I don’t.

Q Okay. Would it—do you know if it was a law enforcement officer or a citizen?

A Well, there were three law enforcement on me.

Q Okay.

A So I would assume it was one of them.

Q Okay. At any point, did you spin around and strike one of the officers?

A Absolutely not.

RP at 552-53. Defense counsel then questioned Ms. Napier about Deputy Hilton’s testimony that she swung around to hit him after he grasped her wrists:

Q Do you recall, did the officer grab you by your left arm or rig [sic] your right arm? Do you recall any of those details?

A Yes, I do, but no, that was not how it happened.

Q How did it happen?

A I was grabbed from behind.

Q Okay.

A Both my arms.

Q Okay. So you were grabbed from behind, both your arms and then describe for me what happened at that point.

A It was very vicious, just grabbed and boom, bam, down on the ground.

Q Okay. When you were grabbed with your hands—I'll give you a second. Ms. Napier, when you were grabbed behind your back, did you pull your hands away and spin around and strike the officer?

A No, I did not.

RP at 556.

When the prosecutor told the trial court he wished to call Deputy Hilton for rebuttal testimony, it was not because the jury had heard new evidence from Ms. Napier that new rebuttal evidence would show to be wrong or improbable. The State made the following offer of proof:

Ms. Napier's rendition of what occurred about the way she spun was opposite of what actually happened, and I was going to reaffirm the procedure of what happened and have the deputy go over that and as far as his recalling of that, how many times in his 18-year career he's been hit in the face is why he specifically remembers the details of this particular event.

RP at 606. This was evidence that was presented in the State’s case-in-chief or could have been; it had not become relevant for the first time based on Ms. Napier’s testimony. Nevertheless, the rebuttal testimony offered by the State was only a brief recount of Detective Hilton’s prior testimony with an explanation of why he recalled it clearly. It takes up less than two pages of the report of proceedings. Even if the trial court can be said to have abused its discretion in allowing the rebuttal testimony, we are satisfied that it did not materially affect the outcome of the trial.

II. SUFFICIENCY OF THE EVIDENCE

Ms. Napier also challenges the sufficiency of the evidence, arguing that only two of the trial witnesses—Deputy Hilton and Deputy Criswell—testified to having seen her commit the third degree assault.

In reviewing a challenge to the sufficiency of evidence, the test is “whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In a criminal case, an insufficiency claim “admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Id.*

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), *aff’d*, 166 Wn.2d 380, 208 P.3d 1107 (2009). Accordingly, this court defers to the trier of fact on issues of

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conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *Id.* at 874-75. We will assess only whether “there was substantial evidence from which the trier of fact could infer that the burden of proof had been met and that the defendant was the one who perpetrated the crime.” *State v. Johnson*, 12 Wn. App. 40, 45, 527 P.2d 1324 (1974). Substantial evidence means evidence in the record of a sufficient quantity to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994); *see State v. Williams*, 96 Wn.2d 215, 222, 634 P.2d 868 (1981).

Viewing the evidence in the light most favorable to the State, Deputy Hilton’s testimony that he was assaulted by Ms. Napier was sufficient, and was corroborated by the testimony of Deputy Criswell. Although two other deputies, Deputy Vicini and later-arriving Deputy James Wang, did not see Ms. Napier assault Deputy Hilton, their testimony did not hurt the State’s case. Deputy Vicini testified that he witnessed Ms. Napier ignore Deputy Hilton’s commands that she get back from where the two deputies were trying to handcuff Mr. Vaile, that he witnessed Deputy Hilton stand up and tell Ms. Napier that she was under arrest for obstruction, and that he saw her “sp[i]n on him and pull[] away” from Deputy Hilton when he attempted to put her hands behind her back. RP at 314. The only thing Deputy Vicini said he did not see “from [his] angle” was Ms.

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Napier make contact with the deputy. *Id.*; RP at 334. Deputy Wang arrived after Ms. Napier had been arrested.


As the State points out, the trier of fact could have questioned the credibility of the witnesses who claimed Ms. Napier had not committed assault. Most of those witnesses had relationships with Mr. Vaile, Ms. Murray or Ms. Napier, or had been drinking. We have no basis for rejecting the jury's credibility determinations.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Siddoway, C.J.

WE CONCUR:


Pennell, J.


Staab, J.

LAW OFFICES OF LISE ELLNER

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