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Washington State
Court of Appeals
Division Two

June 19, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. LEROY F. SALSBERY, Appellant.	No. 48843-4-II UNPUBLISHED OPINION

MELNICK, J. — Leroy "Roy" Salsbery appeals from convictions for two counts of rape of a child in the first degree and two counts of child molestation in the first degree. Salsbery argues the trial court abused its discretion by allowing the State to replay a video recording, which had been admitted into evidence, during closing argument. He also claims the court violated his rights to present a defense and to confrontation. Salsbery further contends insufficient evidence supports his convictions and that cumulative errors denied him a fair trial.[1] We affirm.

FACTS

In July 2013, GM, then nine years old, accused Salsbery, a 65 year old friend of her parents, of molesting and raping her. GM often stayed the night at the home Salsbery and his girlfriend, Sharon Babcock, shared.

On July 23, 2013, after visiting Salsbery and Babcock, GM went to stay with her grandmother, Arlene Howard, and her aunt, Darcy McFarland. GM asked Howard to call Salsbery

[1] Salsbery asks us to deny appellate costs. Pursuant to RAP 14.2, we defer to the commissioner if the State files a cost bill and Salsbery objects.

and tell him to stop touching her on and in her vagina. GM then described the touching and added that Salsbery made her touch his penis.

Howard then spoke with GM's father and told him what GM said. GM's father picked up GM and took her to Elizabeth Sledge's home. Sledge is GM's godmother and a former child therapist. GM told Sledge that Salsbery touched her vagina about ten times and that it hurt her because Salsbery stuck his "whole finger in." 7 Report of Proceedings (RP) at 785. She showed Sledge her index finger up to the first knuckle to describe how Salsbery touched her. GM also told Sledge that Salsbery made her shower with him, and would "put soap on his hand, and put his hand in [her vagina] and rub hard." 7 RP at 787. Sledge contemporaneously typed everything GM said on her computer.

The next day, Sledge and GM's father took GM to the Washougal Police Department. Detective Thad Eakins interviewed GM and videotaped it. GM told Eakins she came to the police station "[b]ecause of what Roy did to [her]." 12 RP at 1446. She said Salsbery babysat her and added that, the last time he babysat, he "grabbed [her] hand and put it inside his pants" and made her grab his penis. 12 RP at 1449. GM also told Eakins that Salsbery put his finger in her vagina three times, and he made her shower with him. Eakins asked GM how she knew Salsbery put his finger in her, and GM responded "[b]ecause I could see it." 12 RP at 1482.

The State charged Salsbery with two counts of rape of a child in the first degree or, in the alternative, child molestation in the first degree, and two counts of child molestation in the first degree.

A month later, Kathy Butler, a physician's assistant at a child abuse assessment center, examined GM and asked her about Salsbery's conduct. GM iterated that Salsbery took showers with her and made her touch his penis. GM also said Salsbery touched her vagina with his finger

up to his first knuckle, which Butler understood to mean Salsbery inserted his finger into GM. Butler's examination did not reveal physical evidence of abuse, but she did not expect to find such evidence given GM's description of the acts.

In October 2013, Amy Morris, a licensed mental health counselor provided counseling for GM. GM disclosed Salsbery's sexual abuse to Morris. GM said Salsbery touched her vagina while she sat in a recliner in his living room. GM also told Morris about Salsbery touching her vagina and putting his fingers inside of her vagina a tiny bit when Babcock was not home.

I. GM'S HEARSAY STATEMENTS AND TESTIMONY

The court held a pretrial hearing, pursuant to RCW 9A.44.120, on the admissibility of the aforementioned out-of-court statements GM made to Howard, McFarland, Sledge, Eakins, and Butler The court entered written findings of fact and conclusions of law and ruled that the State could admit the hearsay statements if GM testified at trial. The court found GM was credible and told many of the State's witnesses substantially the same account spontaneously in response to non-leading questions. Salsbery does not challenge any of those findings or conclusions.

The matter proceeded to jury trial. The jury heard Howard, McFarland, Sledge, Butler, and Morris testify that GM said Salsbery touched her vagina, inserted his finger in her vagina, and made her touch his penis. The court admitted the video of Eakins interview with GM during the State's case-in-chief. The jury heard and saw the entire video, except one irrelevant portion. It showed GM making substantially the same hearsay statements to Eakins as GM made to Howard, McFarland, Sledge, Butler, and Morris.

GM testified. She told the jury she was in court "[b]ecause Roy did something bad to [her]." 7 RP at 713. GM provided details of Salsbery kissing her, touching her on her private spot where she went "pee," and pulling her inside the shower and making her wash him. 7 RP at 714.

GM described going into Salsbery's bedroom with him and him pulling down her pants and underwear and rubbing the outside of her vagina. In one incident, Salsbery put GM's hand inside his shorts and made her rub his penis. GM then testified Salsbery "told me to never tell [about the touching] or he would kill me." 7 RP at 726.

GM testified she talked about the touching with Howard, McFarland, Sledge, and Eakins. GM told Howard "a lot of stuff about it." 7 RP at 728. GM said she "told [Sledge] . . . everything and then we went to the computer and I told her everything again[, and] then she typed it up." 7 RP at 729. GM said she told Eakins everything.

On cross-examination, GM said she told Howard, McFarland, Sledge, and Eakins everything she testified to on direct examination. She also told Howard, McFarland, and Sledge about Salsbery saying "I'm going to kill you if you tell." 7 RP at 743. GM said Salsbery touched her vagina five or ten times, kissed her one time, and showered with her one time. GM told the jury about taking a nap with Salsbery and that he touched her vagina.

GM never referred to Salsbery by his last name at trial. She called him "Roy." GM told the jury that Babcock was not home when Salsbery sexually abused her, and that she had not "gone back to . . . Babcock and Roy's house" since she told Howard about the abuse. 7 RP at 730.

Babcock later testified she lived with Salsbery during the relevant period, and that Salsbery and GM were alone at their shared home on June 24, 2013, and on three days between July 12 and July 20. Babcock also referred to Salsbery as "Roy" when testifying, and she identified him in the courtroom at trial.

II. EXCLUSION OF SPECIFIC INSTANCES OF GM'S BEHAVIOR

Salsbery attacked GM's credibility. He argued that GM suffered from reactive attachment disorder (RAD) from not having her needs met by her mother, rather than from post-traumatic stress disorder (PTSD) because of sexual abuse by Salsbery.

As pertinent to this appeal, Salsbery sought to elicit testimony about GM's prior bad behavior from Morris and from Dr. Christopher Kirk Johnson. Salsbery made an offer of proof that GM exhibited behavior more consistent with RAD than with PTSD. This behavior included GM's "physical aggression . . . towards her brother, her mother, and animals[,]" and a statement that GM allegedly made to "Babcock, to the effect that she wanted to stab her parents and watch the blood run out." 13 RP at 1604-05.

Morris, testified that GM's mother sought counseling for GM because she had shown "[a]ggression towards [her] b[r]other and mother." 10 RP at 1139. Morris also testified that she noted GM was "aggressive" on an intake form. 10 RP at 1161. The State objected when Salsbery asked Morris if GM's mother expressed a concern about GM's "aggression toward animals and her brother;" the trial court sustained the objection. 10 RP at 1163.

Outside the jury's presence, the court clarified that Salsbery could not ask Morris questions about specific instances of GM's aggression toward animals, her mother, or her brother. The court did say that Salsbery could ask Morris questions about PTSD and whether aggression is part of the diagnosis.

Morris told the jury about her counseling sessions with GM, and opined that GM showed symptoms of PTSD. Morris acknowledged that aggression could also be involved with RAD, and that she saw elements of RAD in GM.

Salsbery wanted Johnson, a clinical psychologist with expertise in evaluating and treating sex offenders, to discuss GM's behaviors because they were relevant to his testimony about RAD. He also argued Johnson's testimony on these subjects would rebut the State's evidence that GM may have suffered from PTSD.

The trial court disallowed this evidence. It ruled the proffered testimony was irrelevant, not indicative of truthfulness or untruthfulness, and overly prejudicial. The court ruled Johnson could testify about RAD generally.

Johnson, who had not evaluated or treated GM, testified that he did not agree with Morris's opinion that GM suffered from PTSD. Instead, Johnson believed GM's behaviors were more consistent with RAD than with PTSD. He also stated that GM demonstrated "aggression towards [her] brother and mother." 13 RP at 1648. However, the court sustained the State's objection to this testimony and struck it from the record. Johnson then testified that GM's aggressive behavior and lack of empathy were symptomatic of RAD.

III. CLOSING ARGUMENT

Prior to closing argument, Salsbery moved to preclude the State from replaying the video interview of GM during the State's closing argument. Salsbery argued that use of the video in closing would be unduly repetitious, unfair, and prejudicial because it would overemphasize GM's statement. The court denied Salsbery's motion, stating that the video had been admitted into evidence and nothing prohibited either side from using the tape in closing. The State played the video interview of GM during closing argument.

IV. GUILTY VERDICT

The jury convicted Salsbery of two counts of rape of a child in the first degree and two counts of child molestation in the first degree.

ANALYSIS

I. RIGHT TO FAIR TRIAL

Salsbery argues the trial court violated his right to a fair trial and an impartial jury by allowing the State to play Eakin's video interview of GM during closing argument.

We review a trial court's evidentiary ruling for an abuse of discretion. *State v. Dye*, 178 Wn.2d 541, 547-48, 309 P.3d 1192 (2013); *State v. Blair*, ___ Wn. App. ___, 415 P.3d 1232, 1235 (2018). "A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons." *State v. Lord*, 161 Wn.2d 276, 283–84, 165 P.3d 1251 (2007).

A trial court has broad discretion to control courtroom proceedings, including closing argument. ER 611; *Dye*, 178 Wn.2d at 547-48. During closing argument, parties may utilize evidence admitted at trial and discuss reasonable inferences that arise from the evidence. 13 WASHINGTON PRACTICE: CRIMINAL PRACTICE AND PROCEDURE § 4501, at 284 (3rd ed. 2004).

The trial court properly exercised its discretion in allowing the State to replay the admitted evidence for the jury. This situation is different from a situation where a trial court allows audio or video recordings to be played for jurors when they are already in deliberations.

Cases cited by Salsbery all involve procedural protections used to avoid a jury placing undue emphasis on testimonial audio or video evidence that was replayed for jurors during deliberations.

In *State v. Koontz*, 145 Wn.2d 650, 653, 41 P.3d 475 (2002), the defendant challenged the trial court's decision to permit a jury to review video of witnesses' trial testimony during jury deliberations. The jury asked the court to review the video of trial testimony to break a deadlock. *Koontz*, 145 Wn.2d at 651. The presiding juror told the judge the video would help the jurors

consider "facial expressions." *Koontz*, 145 Wn.2d at 652. The judge played the video in open court, after instructing the jury not to place undue emphasis on the testimony. *Koontz*, 145 Wn.2d at 652.

Koontz reviewed the court's actions for abuse of discretion, but did discuss the defendant's right to a fair and impartial jury. 145 Wn.2d at 653, 658. However, in remanding the case for a new trial, the Supreme Court concluded insufficient procedural protections existed because the video showed more than the testifying witnesses. *Koontz*, 145 Wn.2d at 660-61. It included multiple perspectives, shot by different cameras, showing the prosecutor, defense counsel, defendant, and the trial court judge as the witnesses testified. *Koontz*, 145 Wn.2d at 652-53.

Koontz relied on *United States v. Binder*, 769 F.2d 595 (9th Cir. 1985), *overruled on other grounds by United States v. Morales*, 108 F.3d 1031 (9th Cir. 1997). 145 Wn.2d at 655-56. In *Binder*, the court concluded that a trial court judge abused his discretion by letting the jurors replay a video of child victims' testimony in the jury room, rather than in open court. 769 F.2d at 598. The parties had consented to substituting the children's prerecorded video testimony for live testimony at trial. *Binder*, 769 F.2d at 598. The jurors asked to replay the video during deliberations, and the defendant was not present when the jurors replayed the video in the jury room. *Binder*, 769 F.2d at 598. The trial court allowed the jury to "skip preliminary portions" of the video when it replayed the video. *Binder*, 769 F.2d at 598.

Binder concluded that replaying the video "in the jury room during deliberations placed prejudicial emphasis on the complaining witnesses' testimony." 769 F.2d at 600. The court noted that "the only evidence of molestation was presented through the children's videotaped testimony," and the replay "was equivalent to allowing a live witness to testify a second time in the jury room." *Binder*, 769 F.2d at 600, 601 n.1. Notably, the only authority cited in *Binder* on the video replay

issued was *United States v. Nolan*, 700 F.2d 479 (9th Cir. 1983), a case finding no abuse of discretion in refusing to reread testimony and stating that trial courts are "given great latitude" in the area. 769 F.2d at 600-03.

In *State v. Frazier*, 99 Wn.2d 180, 187, 661 P.2d 126 (1983), the defendant consented to the State playing his tape recorded statement to the police in open court, and to the State giving jurors copies of a transcript of the tape while it played. However, the defendant objected when the State offered the tape as an exhibit. The defendant argued that, if admitted, the jury could replay the tape during deliberations. *Frazier*, 99 Wn.2d at 187-88. The court held that "admission of a tape recording as an exhibit" does not "overly emphasize the importance of that evidence" and is not "an impermissible comment on the evidence by the judge." *Frazier*, 99 Wn.2d at 190.

Frazier stated that, because a jury can review admitted tapes "in open court with the trial judge's permission," there is "no reason to automatically prevent the jury from taking such exhibits into the jury room." 99 Wn.2d at 190. However, the court cautioned that the trial court should "continue to be aware of the potential for overemphasizing the importance of such evidence and should prevent such exhibits from going to the jury [during deliberations] if unduly prejudicial." *Frazier*, 99 Wn.2d at 190.

Salsbery also attempts to distinguish this case from *State v. Morgensen*, 148 Wn. App. 81, 83, 197 P.3d 715 (2008), where the court found no abuse of discretion when a trial court judge granted the jurors' request to replay a thirty-five minute audio recording of the entire trial testimony in open court. There, we stated that the right to a fair and impartial jury "requires that the trial court balance the need to provide the jury with relevant portions of testimony to answer a specific inquiry against the danger of allowing a witness to testify a second time." *Morgensen*, 148 Wn. App. at 88. Salsbery argues that, unlike in *Morgensen*, the trial court abused its discretion

because it did not take "proper precautions prior to playing audio testimony to the jury," and that it overly emphasized only part of the evidence. Br. of Appellant at 22.

We conclude that replaying recordings during jury deliberations is different from replaying them during closing argument. When responding to a jury request to review evidence during deliberations, a trial court's discretion is constrained by CrR 6.15(f)(1), which provides that courts may grant a jury's request to "replay evidence, but *should* do so in a way that . . . is not unfairly prejudicial and . . . minimizes the possibility that jurors will give *undue weight* to such evidence." (Emphasis added). We do note that even in the context of jury deliberations, no abuse of discretion arises from a trial court's decision to permit the replay of testimonial evidence one time outside the jury room. *Morgensen*, 148 Wn. App. at 89.

Here, the trial court allowed the State to replay the video, an admitted trial exhibit, one time during closing argument. The trial court did not abuse its discretion in so ruling.

II. RIGHTS TO CONFRONTATION AND TO PRESENT A DEFENSE

Salsbery argues the trial court violated his constitutional rights to confront adverse witnesses and to present a defense. First, he argues the trial court violated his confrontation rights by admitting GM's hearsay statements because she did not testify about them. Second, he argues the trial court violated his confrontation rights and right to present a defense when it excluded evidence of GM's behaviors toward her parents, sibling, and animals. We disagree with Salsbery.

A. Legal Principles

Criminal defendants have a constitutional right to present a defense. U.S. CONST, amends. V, VI, XIV; WASH. CONST. art. 1, § 3, 22; *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973); *State v. Jones*, 168 Wn.2d 713, 719, 230 P.3d 576 (2010). A criminal defendant's right to present a defense is satisfied if the defendant had "'a fair opportunity

to defend against the State's accusations.'" *Jones*, 168 Wn.2d at 720 (quoting *Chambers*, 410 U.S. at 294. It includes a "right to introduce relevant evidence" and to confront adverse witnesses through "meaningful cross-examination." *State v. Darden*, 145 Wn.2d 612, 620-21, 41 P.3d 1189 (2002).

Alleged violations of the right to present a defense, including confrontation rights, are generally reviewed de novo. *State v. Tyler*, 138 Wn. App. 120, 126, 155 P.3d 1002 (2007). We review de novo whether admission of hearsay statements violates a criminal defendant's confrontation right. *State v. Kinzle*, 181 Wn. App. 774, 780, 326 P.3d 870 (2014). Similarly, an absolute bar on cross-examination by a criminal defendant is reviewed de novo. *Jones*, 168 Wn.2d at 719.

However, where a defendant premises an alleged constitutional violation on a trial court's evidentiary ruling, we review for abuse of discretion. *State v. Lee*, 188 Wn.2d 473, 486, 396 P.3d 316 (2017). We review a limitation on the scope of cross-examination by a criminal defendant for abuse of discretion. *State v. Arredondo*, 188 Wn.2d 244, 266, 394 P.3d 348 (2017). "A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons." *Lord*, 161 Wn.2d at 283–84.

B. Admission of Child Hearsay Statements

Salsbery argues the court violated his right of confrontation by admitting GM's hearsay statements to Howard, McFarland, Sledge, and Eakins. He claims that because the State failed to elicit testimony from GM at trial about what she told those witnesses regarding the abuse, he could not confront GM with inconsistencies between the hearsay statements and her trial testimony.

The legislature created RCW 9A.44.120 as an exception to the hearsay rule, and drafted it to avoid right to confrontation problems. *State v. Rohrich*, 132 Wn.2d 472, 476, 939 P.2d 697

(1997). RCW 9A.44.120 provides that the statement of a child under the age of ten describing acts of, or attempts at, "sexual conduct performed with or on the child" are admissible in criminal proceedings, if the trial court concludes, after a hearing, "that the time, content, and circumstances of the statement provide sufficient indicia of reliability[,]" and the child "[t]estifies at the proceedings." Whether a child victim "testifies" as required by RCW 9A.44.120 depends on whether the child's testimony at trial was sufficient to satisfy the defendant's right of confrontation. *State v. Price*, 158 Wn.2d 630, 640, 146 P.3d 1183 (2006).

A defendant's confrontation rights are not violated by admission of a child victim's hearsay statements if the child testifies and "is subject to 'full and effective cross-examination.'" *Kinzle*, 181 Wn. App. at 780 (quoting *Price*, 158 Wn.2d at 640). "Full and effective cross-examination is possible only if the State asks the [child] during direct examination about the incident and his or her prior statements about the incident." *Kinzle*, 181 Wn. App. at 780.

The State must elicit such testimony from the child before the hearsay statements are admitted. This procedure avoids putting a criminal defendant "in a 'constitutionally impermissible Catch-22' of calling the child for direct or waiving his confrontation rights." *Kinzle*, 181 Wn. App. at 781 (quoting *State v. Rohrich*, 132 Wn.2d at 478).

In *Rohrich*, 132 Wn.2d at 478, the court reversed the defendant's conviction because the State did not sufficiently elicit testimony from the child victim to provide the defendant an opportunity to fully and effectively cross-examine her about the alleged abuse. The State did not ask the child victim of rape and molestation any questions about the abuse or the hearsay statements when she testified at trial. *Rohrich*, 132 Wn.2d at 474. Instead, the State only asked her questions on topics such as her birthday and her cat's name. *Rohrich*, 132 Wn.2d at 474.

In *Kinzle*, 181 Wn. App. at 783-84, a defendant's right to confrontation was violated because the State did not ask one of two child victims about hearsay statements she made accusing the defendant of molesting her. There, two sisters under the age of ten testified, but the State only asked the older sister to identify the defendant and describe the alleged abuse. *Kinzle*, 181 Wn. App. at 778-79. When the younger sister testified, the State did not ask any direct questions about the defendant or the alleged abuse. *Kinzle*, 181 Wn. App. at 779. The younger sister volunteered that her older "sister told them," but the State did not ask her to explain what that meant. *Kinzle*, 181 Wn. App. at 779. The court noted that it was "impossible to infer that [the younger victim] did not recall" the abuse or making the hearsay statement "because she was not asked." *Kinzle*, 181 Wn. App. at 783. The court only reversed the defendant's conviction for molesting the younger sister because of a violation of the defendant's right to confrontation. *Kinzle*, 181 Wn. App. at 784.

However, there is no confrontation violation if the state directly asks the child victim about making the hearsay statements and the acts alleged in those statements. *Kinzle*, 181 Wn. App. at 782. Even if the child is unable to remember the charged events or the prior statements, the defendant can cross-examine the child "about the truth of [the] statements or her lack of memory of the details." *Kinzle*, 181 Wn. App. at 782-83 (quoting *In re Personal Restraint of Grasso*, 151 Wn.2d 1, 18, 84 P.3d 859 (2004)). "[J]urors then have the opportunity to evaluate whether they believe the child forgot or whether she was evading for some other reason," and the defendant's right of confrontation is satisfied. *Kinzle*, 181 Wn. App. at 784.

In *Price*, 158 Wn.2d at 633, 650, the court concluded no confrontation violation occurred, despite the testifying child victim's lack of memory. The child victim of molestation testified at trial, identified the defendant by his first name only, and then testified that she forgot what the

defendant did to her and forgot what she told others about the alleged abuse. *Price*, 158 Wn.2d at 635-36. The court concluded that, because the State asked the victim about the events and the hearsay statements, the defendant had a sufficient opportunity to cross-examine the victim. *Price*, 158 Wn.2d at 650.

Similarly, in *Grasso*, 151 Wn.2d at 9, 17-18, the court concluded that a child victim's response of "I can't remember" to questions about alleged sex abuse and hearsay statements was "a constitutionally acceptable response." There, the defendant could cross-examine the victim about her lack of memory. *Grasso*, 151 Wn.2d at 17-18.

Salsbery concedes he had a sufficient opportunity to cross-examine GM on the charged acts, but claims he was unable to fully cross-examine GM about the content of the hearsay statements.

Here, unlike in *Rohrich*, GM testified in the State's case-in-chief that she told Howard "a lot of stuff about [the touching]," and that she told Sledge and Eakins "[e]verything that happened." 7 RP at 728, 730. She testified on cross-examination that she told Howard, McFarland, Sledge, and Eakins "everything" she testified to earlier. 7 RP at 741.

The State asked GM about her statements to Howard, McFarland, Sledge, and Eakins. The State asked GM if she talked "about touching" with Howard, McFarland, Sledge, and Eakins respectively, and GM responded in the affirmative each time. GM also testified she told Howard that Howard needed to call Roy. She then told Howard and McFarland details about the touching. GM said she could not remember why she wanted Howard to call Roy. GM further testified that she "told [Sledge] . . . everything and then we went to the computer and I told her everything again[, and] then she typed it up." 7 RP at 729. GM also said she told Eakins about the abuse and that she told him "[e]verything that happened." 7 RP at 73.

GM's statements are more detailed than those of the child victims in *Price* and *Grasso*.

We conclude that the trial court did not violate Salsbery's right to confrontation. The State elicited testimony from GM on direct examination about the hearsay statements in a manner sufficient to provide Salsbery with an opportunity to fully and effectively cross-examine GM.

C. Limitation on Evidence of GMs Prior Bad Acts

Salsbery also argues the trial court prevented him from presenting his defense that GM suffered from RAD and not from PTSD. He bases this claim on the court's decision to exclude evidence of GM's alleged "physical aggression toward her mother and brother, her aggression toward animals, her lack of empathy, and her statements that she wanted to 'stab her parents and watch the blood run out.'" Br. of Appellant at 27. We disagree with Salsbery.

We review the trial court's limitations on the scope of direct and cross-examination on GM's prior bad acts for abuse of discretion. *Arredondo*, 188 Wn.2d at 267.

A criminal defendant's right to present a defense includes "'the right to a fair opportunity to defend against the State's accusations.'" *Jones*, 168 Wn.2d at 720 (quoting *Chambers*, 410 U.S. at 294). However, the right to present a defense, including the right to confront adverse witnesses, is not absolute. *Jones*, 168 Wn.2d at 720. The right does not extend to presenting irrelevant or otherwise inadmissible evidence. *Darden*, 145 Wn.2d at 620-21; *Lozano*, 189 Wn. App. at 126. Instead, the right "is subject to 'established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.'" *State v. Lizarraga*, 191 Wn. App. 530, 553, 364 P.3d 810 (2015) (quoting *Chambers*, 410 U.S. at 294).

The scope of direct and "'cross-examination is within the discretion of the trial court.'" *Arredondo*, 188 Wn.2d at 266 (quoting *State v. Russell*, 125 Wn.2d 24, 92, 882 P.2d 747 (1994)). A trial court may limit the scope of direct or cross-examination by a criminal defendant if the

excluded testimony is irrelevant, or relevant but "so prejudicial" it "disrupt[s] the fairness of the fact-finding process," or is relevant and not unduly prejudicial, but the "State's interest in withholding that information" outweighs the defendant's need for the information. *Arredondo*, 188 Wn.2d at 266.

We conclude the trial court did not abuse its discretion in limiting the testimony of Morris or Johnson about GM's behaviors based on established rules of evidence. The trial court ruled that specific acts of GM's aggression and lack of empathy were inadmissible prior bad acts that were both irrelevant and unduly prejudicial. The court permitted general questioning of Morris and Johnson on GM's aggression toward others, lack of empathy, and on the consistency of those behaviors with RAD and PTSD respectively. There was nothing manifestly unreasonable about this exercise of discretion, given the issues in the case, the established rules of evidence, and the holding in *Arredondo*.

We also note that the trial court allowed Salsbery to present evidence and an opinion that GM more likely than not suffered from RAD and not PTSD. Salsbery's right to present a defense was not violated.

III. SUFFICIENT EVIDENCE OF IDENTITY AND PENETRATION

Salsbery argues insufficient evidence supports his two convictions for rape and his two convictions for molestation. We disagree.

When a defendant challenges the sufficiency of the evidence supporting his conviction, we examine the record to decide whether any rational fact finder could have found that the State proved each element of the offense beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Additionally, we deem the State's evidence admitted, and draw all reasonable inferences from that evidence in the State's favor. *State v. Caton*, 174 Wn.2d 239, 241,

273 P.3d 980 (2012). Direct and circumstantial evidence carry the same weight. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). "Credibility determinations are for the trier of fact" and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Appellate courts do not reweigh the evidence. *State v. Ramos*, 187 Wn.2d 420, 453, 387 P.3d 650 (2017).

A. Sufficient Evidence Exists of Salsbery's Identity as the Abuser

Salsbery argues insufficient evidence supports all his convictions for rape and molestation because GM did not identify him as her abuser while testifying at trial. We disagree.

The identity of the abuser is an essential element of both rape of a child in the first degree and molestation of a child in the first degree. RCW 9A.44.073(1); RCW 9A.44.083(1).

Drawing all reasonable inferences in the State's favor, we conclude that GM did identify Salsbery as her abuser while testifying at trial.

When the State asked GM why she was in court, she responded that she was there "[b]ecause Roy did something bad to [her]." 7 RP at 713. While GM testified, she referred to her abuser as "Roy." GM also testified that Babcock was not at home when Salsbery sexually abused her. GM said she had not returned to Babcock and Salsbery's house since she told Howard about the abuse. Babcock subsequently testified to living with Salsbery during the relevant period. She added that Salsbery and GM were alone at their shared home on June 24, 2013 and on three days between July 12 and July 20, 2013. Babcock also referred to Salsbery as "Roy," and she identified him in the courtroom at trial. Moreover, multiple witnesses testified that GM told them Salsbery sexually abused her.

From this evidence, a reasonable factfinder could conclude that sufficient circumstantial evidence existed to prove Salsbery's identity as GM's abuser.

B. Sufficient Evidence of Penetration Exists

Salsbery argues insufficient evidence supports his rape conviction because of an alleged lack of evidence that Salsbery penetrated GM's vagina with his finger. We disagree.

"A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old . . . and the perpetrator is at least twenty-four months older than the victim." RCW 9A.44.073(1). Sexual intercourse includes even "slight" penetration of the victim's vagina. RCW 9A.44.010(1)(b); *State v. Snyder*, 199 Wash. 298, 301, 91 P.2d 570 (1939).

Viewed in the light most favorable to the State, sufficient evidence of penetration exists. Multiple witnesses testified that GM told them Salsbery penetrated GM's vagina with his finger.

IV. CUMULATIVE ERROR

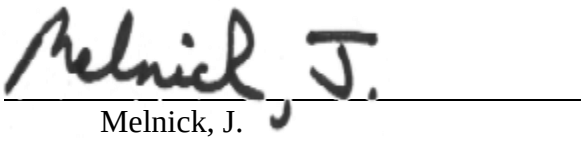
Salsbery argues that, cumulatively, effects of the errors at trial were so prejudicial that they denied him his right to a fair trial.

"Under the cumulative error doctrine, we may reverse a defendant's conviction when the combined effect of errors during trial effectively denied the defendant [his] right to a fair trial, even if each error standing alone would be harmless." *State v. Venegas*, 155 Wn. App. 507, 520, 228 P.3d 813 (2010). Cumulative error "does not apply where the errors are few and have little or no effect on the trial's outcome." *Venegas*, 155 Wn. App. at 520.

Because we conclude there was no error, Salsbery is not entitled to relief under the cumulative error doctrine.

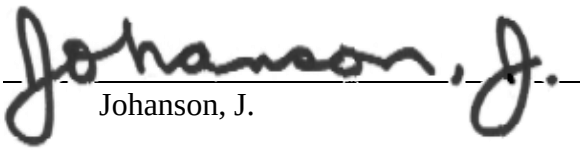
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

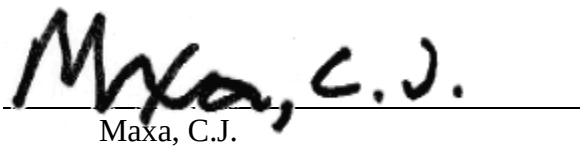


Melnick, J.

We concur:



Johanson, J.



Maxa, C.J.