DIVISION ONE
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PHILIP G. URRY, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 09-0276
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	
JOSHUA JAMES MCCLOUD,	)	(Not for Publication –
	)	Rule 111, Rules of the
Appellant.	)	Arizona Supreme Court)
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2006-146387-001 DT

The Honorable Paul J. McMurdie, Judge

AFFIRMED

Terry Goddard, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Joseph T. Maziarz, Assistant Attorney General
Attorneys for Appellee

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Attorney for Appellant

B A R K E R, Judge

¶1 Joshua James McCloud was convicted of one count of molestation of a child, a dangerous crime against children, and sentenced to the presumptive term of seventeen years'

imprisonment. McCloud presents five issues on appeal. McCloud argues the trial court erred when it: (1) failed to hold a hearing *sua sponte* to determine whether the victim was competent to testify; (2) admitted expert testimony regarding the general characteristics of victims of sexual offenses; (3) denied McCloud's motion for mistrial after a witness was permitted to reference McCloud's polygraph examination; and (4) denied his motion for judgment of acquittal. McCloud further argues (5) that there was insufficient evidence to support his conviction. For the reasons that follow, we affirm McCloud's conviction and sentence. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010) and 13-4033(A) (2010).[1] We address the last two arguments first to provide context for the other claims.

[1] Prior to trial, McCloud pled guilty to failure to register as a sex offender and was given lifetime probation. While the conclusion to McCloud's opening brief asks us to vacate his "convictions and sentences," McCloud presents no issue regarding his conviction for failure to register or the imposition of lifetime probation. Further, because he pled guilty, any issue regarding that conviction should have been raised in a petition for post-conviction relief pursuant to Arizona Rule of Criminal Procedure 32. *See* A.R.S. § 13-4033(A)(1); Ariz. R. Crim. P. 32.1. Therefore, we do not address McCloud's conviction for failure to register as a sex offender or the imposition of lifetime probation.

Discussion

1. Sufficiency of the Evidence and the Motion for Judgment of Acquittal

¶2 "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996) (citation omitted). "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

¶3 Regarding the motion for judgment of acquittal,

> A directed verdict "of acquittal is appropriate where there is 'no substantial evidence to warrant a conviction.' Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" The question is whether, on the evidence presented, rational factfinders [sic] could find guilt beyond a reasonable doubt."

State v. Fulminante, 193 Ariz. 485, 493, ¶ 24, 975 P.2d 75, 83 (1999) (citations omitted). The case must be submitted to the jury if reasonable minds can differ on inferences to be drawn from the evidence introduced at trial. *State v. Hickle*, 129 Ariz. 330, 331, 631 P.2d 112, 113 (1981).

¶4 "We construe the evidence in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998). In our review of the record, we resolve any conflict in the evidence in favor of sustaining the verdict. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). We do not weigh the evidence, however; that is the function of the jury. *See id*.

¶5 At the time of the incident, McCloud lived in an apartment with the victim and her family. The victim was almost seven years old at the time of trial and four years old at the time of the offense. The victim testified McCloud called her into a bedroom of the apartment and told her to take off her pants and her underpants. The victim testified that after she had done so, McCloud licked her vagina, which she referred to by a family term, as she lay on the bed. McCloud then told the victim not to tell her mother what he had done. When the victim disclosed the incident to her mother, she demonstrated to her mother what McCloud had done.

¶6 McCloud was eventually interviewed by police. During his first interview, McCloud claimed he had no idea how the victim could have come up with this story. He did not indicate he had ever accidentally touched the victim's vagina. At the request of police, McCloud wrote a letter of apology to the

victim. In that letter, McCloud told the victim he did not know why she claimed he had done "bad things" to her and told her she must have overheard a discussion between McCloud and her mother.

¶7 When McCloud was interviewed by police a second time, he initially denied he ever touched the victim's vagina. As the interview progressed, however, McCloud eventually told police he and the victim had been playing and that he was "chewing" on the victim's inner thigh like a dog plays with a rag or toy, that he had moved the victim's shorts in order to bite the victim's thigh and that he accidentally touched her vagina with his nose. At the request of police, McCloud then wrote a second letter of apology to the victim in which he reiterated the story about chewing on her thigh and told the victim he did not touch her vagina on purpose.

¶8 We find no error. The evidence admitted at trial was sufficient to permit a reasonable jury to find McCloud guilty of molestation of a child beyond a reasonable doubt and the motion for judgment of acquittal was properly denied. The uncorroborated testimony of a victim can be sufficient to support a conviction. *State v. Jones*, 188 Ariz. 534, 544, 937 P.2d 1182, 1192 (1996). Further, "[t]he credibility of witnesses is an issue to be resolved by the jury." *Soto-Fong*, 187 Ariz. at 200, 928 P.2d at 624. "Because a jury is free to credit or discredit testimony, we cannot guess what they

believed, nor can we determine what a reasonable jury should have believed." *State v. Bronson*, 204 Ariz. 321, 328, ¶ 34, 63 P.3d 1058, 1065 (App. 2003) (citation omitted). The jury was free to believe the testimony of the victim. The jury was also free to take into consideration McCloud's denials to police followed by his statements regarding how he pushed aside the shorts of a four-year-old girl to be able to chew on her inner thigh. *See State v. Murray*, 184 Ariz. 9, 31, 906 P.2d 542, 564 (1995) (probative value not reduced merely because evidence is circumstantial).

2. The Failure to Hold a Competency Hearing

¶9 McCloud further asserts the trial court erred when it failed to hold a hearing to determine whether the victim was competent to testify.[2] McCloud does not actually argue the victim was not competent to testify and did not do so below. McCloud argues, however, that because the victim was under the age of ten, the trial court was required to hold a hearing to determine her competency *sua sponte* and do so before she testified.

¶10 We find no error. First, "[i]n any criminal trial every person is competent to be a witness." A.R.S. § 13-4061 (2006). If McCloud wanted the trial court to determine the

[2] McCloud did not challenge the competency of the victim until four days after she testified.

victim's competency and do so before she testified, McCloud should have raised the issue prior to the victim's testimony. Second, at the hearing on McCloud's motion to strike the victim's testimony, the trial court noted it had, in fact, evaluated the victim's competency during her testimony and found her competent to testify. The court stated, "I listened to her testimony, and I will be frank, there was nothing in her entire testimony that gives me any pause to think that she wasn't competent." When the court asked defense counsel to identify anything about the victim's testimony that indicated she might not be competent to testify, counsel never did so. Therefore, regardless of whether it was done before, during, or after the victim testified, the trial court determined the victim was competent to testify. A "trial court's discretion in determining a child's competency is practically unlimited." *See State v. Melendez*, 135 Ariz. 390, 394, 661 P.2d 654, 658 (App. 1982). Finally, we note McCloud does not identify how he was prejudiced by the failure to determine the victim was competent before her testimony. Absent any prejudice, any theoretical error would be harmless.

¶11 McCloud's reliance on A.R.S. § 12-2202 and *State v. Schossow*, 145 Ariz. 504, 703 P.2d 448 (1985), is misplaced because neither reflects the current, applicable law regarding the competency of a child under the age of ten to testify in a

criminal matter. Section 12-2202 provides in relevant part that "[c]hildren under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are to testify, or of relating them truly[]" shall not be witnesses in civil actions. A.R.S. § 12-2202(2) (2003). The version of A.R.S. § 13-4061 (competency of a witness in a criminal matter) addressed in *Schossow* in 1985 made § 12-2202 applicable to criminal matters. 145 Ariz. at 505 n.1, 703 P.2d at 449 n.1. *Schossow* held that § 12-2202 required a trial court to determine the competency of a child under the age of ten to testify in a criminal matter even in the absence of a request or objection. *Id*. at 507, 703 P.2d at 451. However, the version of § 13-4061 that applied when *Schossow* was decided was repealed in 1985. A.R.S. § 13-4061 (Historical Note). The current, applicable version of § 13-4061 makes no reference to § 12-2202 and, as noted above, provides that all persons are competent to be witnesses in criminal matters. A.R.S. § 13-4061. Therefore, § 12-2202 no longer has any application to criminal matters.

¶12 We find no error in the failure to determine *sua sponte* the victim's competency to testify prior to her testimony.

3. Admission of Expert Testimony

¶13 McCloud next argues the trial court erred when it admitted the testimony of W.D., a forensic interviewer for the

Child Abuse Assessment Center of St. Joseph's Hospital. W.D. testified regarding what a forensic interviewer does; how forensic interviews of children are conducted; the types of questions that are asked and not asked during a forensic interview of a child and why such questions are or are not used with children. W.D. also testified regarding the general characteristics of children who are victims of sexual abuse and, to a lesser extent, some of the general characteristics of sex offenders. W.D. testified, however, only in generalities. W.D. did not apply any of her testimony to any of the facts of this case. W.D. testified she knew nothing about this case, the nature of the allegations, the victim, the defendant, or any of the witnesses.

¶14 McCloud objected to the admission of W.D.'s testimony because she knew nothing about the case, had not conducted any interviews of anyone involved in the case, and could only testify in generalities. McCloud did not specifically argue, however, any particular prejudice that would result from the admission of W.D.'s testimony. The trial court overruled the objection without explanation. On appeal, McCloud argues W.D.'s testimony was irrelevant because she had not conducted any interviews of any witnesses or otherwise participated in the investigation of the case; had not reviewed any evidence related to the case; could not "relate her generalized testimonial

'evidence' to specific facts of this case," and "added nothing productive to this case." Regarding prejudice, McCloud makes a nebulous claim that W.D.'s testimony allowed "the jury to generalize about how sexual molestation victims 'typically' recall and disclose their abuse," and that her testimony "gave the jury free rein on [their] emotions and feelings, allowing them to generalize from 'typical' victim experience to [the victim's] experiences without the appropriate context." We review a ruling on the admission of expert testimony for a clear abuse of discretion. *State v. Hyde*, 186 Ariz. 252, 276, 921 P.2d 655, 679 (1996).

¶15 We find no error. Generalized testimony, such as W.D.'s, is exactly what the law permits. "[A]n expert witness may testify about the general characteristics and behavior of sex offenders and victims if the information imparted is not likely to be within the knowledge of most lay persons". *State v. Tucker*, 165 Ariz. 340, 346, 798 P.2d 1349, 1355 (App. 1990). We will not assume the average juror is familiar with the behavioral characteristics of victims of child molestation. *State v. Lindsey*, 149 Ariz. 472, 473-74, 720 P.2d 73, 74-75 (1986). Further, providing jurors knowledge regarding the general characteristics of victims of sex offenses "may well aid the jury in weighing the testimony of the alleged child victim." *Id*. at 474, 720 P.2d at 75. "When the facts of the case raise

questions of credibility or accuracy that might not be explained by experiences common to jurors - like the reactions of child victims of sexual abuse - expert testimony on the general behavioral characteristics of such victims *should be admitted*." *State v. Lujan*, 192 Ariz. 448, 452, ¶ 12, 967 P.2d 123, 127 (1998) (emphasis added).

¶16 The trial court did not abuse its discretion when it admitted the testimony of W.D..

4. Denial of the Motion for Mistrial

¶17 McCloud next contends the trial court erred when it denied his motion for mistrial after a witness was allowed to testify that McCloud participated in a polygraph examination. McCloud does not present a separate issue regarding the admission of the evidence, but only contests the denial of the motion for mistrial based on the admission of that evidence. To give proper context to the trial court's ruling, however, it is necessary to detail the events which led to the admission of evidence regarding the polygraph examination and the trial court's ultimate ruling on the motion for mistrial.

¶18 The State did not initially seek to admit evidence that McCloud underwent a polygraph examination. *See State v. Hoskins,* 199 Ariz. 127, 144, ¶ 69, 14 P.3d 997, 1014 (2000) (references to polygraph examinations are generally inadmissible for any purpose in Arizona). The State did, however, seek to

admit statements McCloud made during the examination, but in a manner that did not inform the jury the statements were made during a polygraph examination.

¶19 At a hearing regarding the voluntariness of McCloud's statements, it was established that McCloud agreed to take the polygraph examination; that he signed a consent form; that McCloud and the examiner not only reviewed the questions that would be asked but agreed on what questions would be asked; that McCloud knew each question would be asked several times to help reduce the risk of random physiological responses, and that it usually takes two and a half to three hours to administer the examination. On direct examination at trial, the examiner testified regarding McCloud's statements without informing the jury the statements were made during a polygraph examination, generally indicating the statements were made during an "interview."

¶20 On cross-examination, McCloud attempted to portray the "interview" as a protracted, hours-long interrogation in which the examiner asked McCloud the same questions repeatedly until he got the answer he wanted. The witness testified on cross-examination that he asked McCloud several times whether he licked the victim's vagina and that McCloud denied he did each time he was asked. Defense counsel continued:

> [Defense counsel]: So you knew that he was denying that he ever did this.
>
> [Witness]: Yes.
>
> [Defense counsel]: Yet you continued.
>
> [Witness]: I did.
>
> [Defense counsel]: Is that part of the technique of being an experienced interrogator, to continue to ask someone the same question over and over and over again?
>
> [Witness]: Yes.
>
> [Defense counsel]: And the reason why you do that?
>
> [Witness]: The reason?
>
> [Defense counsel]: Yes.

The witness attempted to explain why the same questions were asked several times, but attempted to do so without explaining that it was done as part of a polygraph examination. Defense counsel continued:

> [Defense counsel]: So would it be fair to say though, [Witness], that when you ask a person a question and they repeatedly give you the same answer, and yet you keep asking them, in your mind, you have to believe they're not telling you the truth; correct?
>
> [Witness]: If I keep asking the same question?
>
> [Defense counsel]: Well, yeah. If you ask a person, "Did you do this," a person says, "No," and then you ask him, say, two minutes later, "Did you do this," a person says, "No," and then two minutes later, you ask the same question, "Did you do this," the person

> says, "No." So clearly in your mind, the reason why you keep asking the same question and you keep getting the same answer, but you keep asking it anyways, is because you think the person is not telling the truth.

The witness then conceded he did not think McCloud was being truthful, but did not explain why. Defense counsel then asked more questions regarding how the interview lasted several hours. When the witness agreed it was his job to get information as best as he can, defense counsel asked, "And that's the reason why you kept asking him the question about whether or not he had licked the child's vagina over and over again," to which the witness agreed.

¶21 At the conclusion of the cross-examination, the State argued McCloud's cross-examination of the witness had opened the door to evidence that McCloud's statements were made as part of a polygraph examination. The State argued McCloud repeatedly asked questions about the length of the interview and how McCloud was asked the same questions repeatedly even after he gave the same answers. The State argued this misled the jury and implied that McCloud was badgered into making incriminating statements through a protracted interrogation in which the witness asked McCloud the same questions over and over until he got the answer he wanted.

¶22 The trial court's comments regarding the cross-examination made before, during, and after its ruling on the

admissibility of the evidence are worth noting. The court found defense counsel "definitely inferred" through his cross-examination that the witness had no reason to keep asking the same questions other than sheer disbelief of what McCloud was saying, and noted "but it was more than that." The court told counsel, "this is not a game, and you definitely asked the questions to put this into context of trying to make it look like he was badgering the witness." When counsel denied he was "playing a game," the court responded:

> That's exactly what you're -– that's exactly what you -– and you want to infer to this jury exactly that point, that he had no personal knowledge, he kept badgering your client into making a statement until he made some type of statement, when in fact that wasn't the case. The case was that the reason he kept asking the question is because the box kept showing deception.
>
> . . . .
>
> So you have left this jury in a position where they're getting an inference that is not the case to this witness and his testimony.

When counsel argued he did not open the door to evidence of the polygraph examination, the court asked:

> [D]o you disagree with me that given not only the actual questions, but the tone of your questioning was an implication that, in fact, [Witness] had badgered your client into making a statement?

When counsel did not respond directly, the court continued, "[t]hat was not only the questioning, but that was definitely the inference you were trying to portray to this jury."

¶23 The court then questioned the witness out of the presence of the jury. The witness again explained the procedures used for administering the polygraph examination. This included how McCloud and the examiner discussed what questions would be asked before the examination began; how they agreed upon what questions would be asked; how only the agreed-upon questions are asked; how the agreed-upon questions are not altered in any way during the examination; how McCloud was informed each question would be asked at least three separate times even if it appeared there was no deception and why it was necessary to do so; how any question would be asked more times if there was evidence of deception; and how they did a practice examination so McCloud would be familiar with the process. After the witness provided this information, the court told defense counsel:

> You basically have them believe -– the impression that you admitted to me just a few moments ago was that the implication you wanted to draw from this witness for this jury was that he had repeatedly asked several questions until he got the answer he wanted.
>
> . . . .
>
> And yet we know that this was a polygraph test, and that he set up a -– he

> went through, and he set it up. He asked the questions, and when he got deception, then he asked the questions again.

¶24 After the court noted it did not give any credence to polygraph examinations, the court held McCloud had opened the door to evidence that the interview was part of a polygraph examination and, therefore, the State could admit evidence of the polygraph examination on redirect examination. The court told the State:

> You may get into the fact that this is actually what it was. What you cannot elicit is [the Witness]'s determination that it was deception. He may say, based on the reactions that he saw, he felt like he needed to ask additional questions, which I think is correct, and it doesn't convey to the jury that he believed there was actually deception.

The court again explained that defense counsel had portrayed the witness as someone who would "simply keep asking the question and badgering your witness to making [sic] a statement," when, in fact, this was not the case. The court held the jury needed evidence regarding the context of the examination to be able to assess the credibility of the witness as well as the credibility of the statements McCloud made during the examination.

¶25 On redirect examination, the witness explained the polygraph procedures addressed above, but never indicated whether McCloud was being deceptive during the examination. The witness testified that at the end of the examination he noted

responses which concerned him and which he believed merited additional questions to give McCloud a chance to explain his responses. Those additional questions were not asked while McCloud was connected to the device and were not otherwise part of the polygraph examination. After the witness completed his testimony, the trial court felt compelled to again note McCloud made it appear the witness "kept repeating and repeating and repeating" the same questions, and that this "puts it in a whole different light to know that he told [McCloud] it was going to be repeated." At the conclusion of the witness's testimony, a single juror question was submitted which the court did not ask. That question did not, as argued by McCloud in his opening brief, ask about the polygraph results. The question read, "What made you think he was not telling you the truth? What kind of mannerisms or what?"

¶26 The next day, McCloud moved for a mistrial based on the admission of evidence of the polygraph examination. McCloud argued only that it was reversible error to admit evidence of a polygraph examination and that he could no longer get a fair trial. He did not, as is argued on appeal, argue that the witness somehow communicated the results of the polygraph examination to the jury. McCloud did argue, however, that the mere mention of the word "polygraph" inferred he did not pass a polygraph examination and that was why he was being prosecuted.

In its explanation of why it would deny the motion, the trial court addressed the issue more in terms of the admissibility of the evidence than in terms of a mistrial. The court again explained that McCloud's cross-examination of the witness focused on the length of the interview, the fact that the same questions were asked repeatedly despite McCloud's denials and that any incriminating statements were made only after repeated questioning. The court stated:

> That seriously -– that inference seriously calls into question the reliability of the statements made. But that isn't the full picture. The full picture is that, in fact, your client voluntarily went down in an attempt to take a polygraph examination, was aware of the fact that the same questions were going to be asked repeatedly, went over the questions as asked, gave responses at the conclusion of an examination that he was aware of was going to take place and, in fact, took place the way it happened or was explained to him, made the statements that he made.
>
> Now, it's still a question up to the jury on whether or not those statements should be believed, but it was the belief of the Court, and it still is the belief of the Court, that in order for the jury to make that determination, they have to be made aware of the entire circumstances and that the entire circumstances were put into play based on the cross-examination of [Witness] in this case.

The court denied the motion for mistrial and gave a limiting instruction on the jury's consideration of the evidence of the polygraph examination.[3]

¶27 The trial court has broad discretion on motions for mistrial. The failure to grant a motion for mistrial is error only if it was a clear abuse of discretion, "palpably improper and clearly injurious." *Murray*, 184 Ariz. at 35, 906 P.2d at 568, citing *State v. Walton*, 159 Ariz. 571, 581, 769 P.2d 1017, 1027 (1989), *aff'd*, 497 U.S. 639 (1990). The trial judge is in the best position to determine whether a particular incident calls for a mistrial because the trial judge is aware of the atmosphere of the trial, the circumstances surrounding the incident, the manner in which any objectionable statement was made, and its possible effect on the jury and the trial. *State v. Koch*, 138 Ariz. 99, 101, 673 P.2d 297, 299 (1983); *see also State v. Brown*, 195 Ariz. 206, 209, ¶¶ 12-13, 986 P.2d 239, 242 (App. 1999).

¶28 The trial court did not abuse its discretion when it denied the motion for mistrial. While references to a polygraph examination may be generally inadmissible, evidence regarding a polygraph examination may be admitted where a defendant opens the door to such evidence. *State v. Ikirt*, 160 Ariz. 113, 115,

[3] Despite the court's comments, the court also found McCloud's cross-examination of the witness was effective, was not improper and recognized it was a matter of trial strategy.

770 P.2d 1159, 1161 (1987); *see also State v. Martinez*, 127 Ariz. 444, 447, 622 P.2d 3, 6 (1980) (where a defendant opens the door to evidence that would ordinarily be inadmissible, that evidence may become admissible). While we will not categorize McCloud's opening the door to such evidence as invited error or even improper, McCloud does not contest on appeal that evidence of the polygraph examination would not have been admitted but for his opening the door. Therefore, McCloud cannot complain the trial court should have granted a mistrial based on the admission of evidence admitted solely because of McCloud's own trial strategy. Generally, "[o]ne cannot 'complain about a result he caused.'" *State v. Doerr*, 193 Ariz. 56, 63, ¶ 27, 969 P.2d 1168, 1175 (1998) (quoting Morris K. Udall et al., *Law of Evidence* § 11, at 11 (3d ed. 1991)).[4]

¶29 Further, the denial of the mistrial was not "palpably improper and clearly injurious." The evidence at issue was limited to the fact that McCloud participated in a polygraph examination as well as the procedures used in that examination. No evidence regarding the results of the examination or whether McCloud was deceptive was introduced, nor were the results of the examination otherwise communicated to the jury. The trial

[4] We do not foreclose the possibility that a party could be entitled to a mistrial even if the mistrial were necessitated by that party's own trial strategy or otherwise required by the party's own actions.

court could reasonably determine the admission of the evidence did not warrant a mistrial.

¶30 Finally, any prejudicial impact of the evidence was diminished by the limiting instruction given to the jury, as well as the State's closing argument. The limiting instruction read:

> Evidence of a polygraph test is deemed inadmissible because it is inherently unreliable. You have heard evidence that [McCloud] participated in a polygraph examination. You may not consider or speculate regarding whether [McCloud] failed or passed such an examination.

"Juries are presumed to follow their instructions." *State v. Dunlap*, 187 Ariz. 441, 461, 930 P.2d 518, 538 (App. 1996). In its closing argument, the State explained that evidence of the polygraph procedures was admitted only to explain why questions were asked more than once. The State further argued that the jury may not speculate as to the results of the polygraph examination; that to speculate about the results was "[a]bsolutely impermissible" and that "[p]olygraphs are not important in this case."

¶31 The trial court did not abuse its discretion when it denied the motion for mistrial under these circumstances.

Conclusion

¶32 Because we find no error, we affirm McCloud's conviction.

/s/
_____
DANIEL A. BARKER, Judge

CONCURRING:

/s/
_____
MICHAEL J. BROWN, Presiding Judge

/s/
_____
PHILIP HALL, Judge