IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

IN RE THE DETENTION OF:	)	
	)	No. 63268-0-I
	)	
	)	UNPUBLISHED OPINION
	)	
JAMES R. TAYLOR,	)	
	)	
Petitioner.	)	
_____	)	FILED: December 27, 2010

spearman, j. — In this sexually violent predator proceeding, James R. Taylor challenges the trial court's finding that his conviction for third degree child molestation was a recent overt act. He also argues that the evidence was insufficient to prove he is a pedophile; the trial court improperly admitted expert testimony regarding his relative risk to reoffend; he suffered prejudice from admission of hearsay during cross-examination; the trial court gave a faulty reasonable doubt instruction; and cumulative error warrants reversal. We reject his arguments and affirm.

FACTS

James Taylor was raised in a home with almost no supervision by his parents. He was the oldest of seven children, and because his father was often absent, and his mother frequently locked herself in her room, Taylor was responsible for his siblings'

care. Taylor and his siblings were to be home schooled, but his mother did not follow through. Taylor reported that his mother would beat him if he didn't care for his siblings. He also reported that at the age of six, he was molested by his 14-year-old female cousin, as well as his aunt. Taylor subsequently molested all but one of his siblings.

Specifically, Taylor touched his sister D.T. with his hands, mouth, and penis beginning when she was 7 years old and he was 11, and eventually began having frequent intercourse with her. Taylor also molested and tried to have intercourse with his sister K.T., when she was seven and he was 13. D.T. witnessed Taylor sexually molest their 3 year-old brother, C.T. Taylor took nude pictures of D.T. and made her take nude pictures of him. Taylor also molested his brother D.T. Taylor touched his sister J.T.'s vagina with his hands when she was 5 or 6 years old, and tried to have sexual intercourse with her. Taylor molested his sister C.T. when she was 4 or 5 years old. Taylor admitted sexually molesting other male child relatives.

Taylor reported that his father interrupted the molestation of his sister, D.T. several times, but did nothing other than beat him. Finally his parents contacted a therapist, Dr. Gary Smith, who advised them to report the behavior to the authorities, which they did. As a result, at age 14, Taylor was removed from the home and sent to live with his grandmother. Taylor admitted he continued to have sexual contact with his sister, D.T., even after he was removed.

Approximately a year later, Taylor was charged with crimes involving the rape

and molestation of his siblings. He was convicted of one count of first degree rape of a child and one count of first degree child molestation. He received an alternative disposition under RCW 13.40.160(3), the Special Sex Offender Dispositional Alternative (SSODA), which permitted him to remain in the community on probation rather than be incarcerated. While on probation, he worked as a janitor at an internet service provider. Around this time, he went to a library and used checks stolen from his employer to access pornography, in violation of his SSODA, which was revoked. Taylor, then age 17, was sent to Naselle Youth Camp.

While at Naselle Youth Camp, Taylor repeatedly exposed his erect penis to staff. Although Taylor claimed that it happened inadvertently while he was sleeping, he was nonetheless, convicted of two counts of indecent exposure in juvenile court. When Taylor was released at age 18, he received counseling from Scott Zankman, a sex offender treatment provider. According to Zankman, Taylor often lied, and spent time with a group of kids, some of whom where 12 or 13.

Taylor was unable to finish his treatment because he was charged with child molestation in the third degree. It was alleged that when Taylor was 19 years old, he was involved in a sexual relationship with a young girl named Brittany, when she was between 14 and 16 years old. Taylor pled guilty to the charge and served a sentence at the Monroe Correctional Center. Taylor later admitted to the State's expert, Dr. Kathleen Langwell, that during the course of this molestation, he instructed Brittany to falsely claim that she had told Taylor she was sixteen, in the event their sexual

relationship was discovered. Taylor also admitted that he lied to Brittany's mother about his age.

While incarcerated at Monroe, Taylor participated in the Sex Offender Treatment Program (SOTP). Taylor's treatment providers characterized him as deceitful and apathetic. During the course of his treatment, Taylor admitted to having sexual contact with two girls as young as 13, to continuing his sexual relationship with his sister, D.T., after he was 16, and to having fantasies about 12 year olds. He also admitted to having an "arousal toward minors" and that there was "a very high chance of me reoffending[.]" He also had fantasies about raping women. Taylor failed to complete this program as well. Toward the end of his sentence, the State filed a sexually violent predator civil commitment petition. The State hired Dr. Longwell to conduct a psychological evaluation. Dr. Longwell diagnosed Taylor with non-exclusive Pedophila, and Personality Disorder Not Otherwise Specified, with antisocial and borderline features.

At trial, the State and Taylor moved for a ruling as a matter of law regarding whether Taylor's conviction for third degree child molestation constituted a recent overt act. The court concluded it did. The jury found in favor of the State, and Taylor was committed. He appeals.

DISCUSSION

Recent Overt Act

At a sexually violent predator civil commitment trial, the State must prove beyond a reasonable doubt that the individual to

be committed is a sexually violent predator. RCW 71.09.060(1); In re Personal Young, 122 Wn.2d 1, 13, 857 P.2d 989 (1993). A sexually violent predator is "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." Former RCW 71.09.020(16) (2009). To civilly commit an individual as a sexually violent predator, due process requires that the individual be both mentally ill and dangerous. In re Detention of Marshall, 156 Wn.2d 150, 157, 125 P.3d 111 (2005).

If, on the day the State files a sexually violent predator petition, the person is out of custody, due process requires that the State prove dangerousness through evidence of a "'recent overt act.'" Marshall, 156 Wn.2d at 157; see also Young 122 Wn.2d at 31. A "recent overt act" is "any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows the history and mental condition of the person engaging in the act." Former RCW 71.09.020(10) (2009).

The State, however, need not prove a recent overt act to a jury if the person is incarcerated for a crime classified by statute as a sexually violent crime, or if the person is incarcerated for a crime that itself amounts to a recent overt act. Marshall, 156 Wn.2d at 157-58. The question of whether an individual is incarcerated for a crime that qualifies as a recent overt act is for the court, not a jury. Id. In making this determination, courts engage in a two step process:

[F]irst, an inquiry must be made into the factual circumstances of

> the individual's history and mental condition; second, a legal inquiry must be made as to whether an objective person knowing the factual circumstances of the individual's history and mental condition would have a reasonable apprehension that the individual's act would cause harm of a sexually violent nature.

Id., citing State v. McNutt, 124 Wn. App. 344, 350, 101 P.3d 422 (2004). Thus, "whether the act resulting in confinement constitutes a recent overt act is a mixed question of fact and law decided by first looking into the factual circumstances of the offender's history and mental condition." In re Detention of Brown, 154 Wn. App. 116, 124-25, 225 P.3d 1028 (2010). "Next, the trial court assesses whether an objective person with knowledge of those factual circumstances could reasonably apprehend harm of a sexually violent nature from the act resulting in confinement." Id. at 125.

Here, Taylor argues the act that led to his conviction for third degree child molestation, sex with a 14 year old when he was 19, was not a recent overt act. Taylor, however, failed to appeal from or assign error to the trial court's order finding the crime was a recent overt act.[1] Generally, we decline to review issues raised for the first time on appeal, RAP 2.5(a), but even if we were to consider the issue, Taylor's arguments are without merit. Taylor contends the trial court erroneously failed to focus on "whether this act could have caused sexually violent harm[.]" The proper standard, however, is not simply whether that particular act could have caused sexually violent harm. Indeed, "[t]he act or threat itself need not be dangerous." In re Detention of Froats, 134 Wn. App. 420, 436, 140 P.3d 622 (2006). Rather, the standard is whether, in light of the factual circumstances of Taylor's history and mental condition, an

[1] The only order from which Taylor appeals is the order of commitment. On his notice of appeal, Taylor purports to appeal from "each and every portion of the civil commitment trial" without designating any specific orders or rulings.

objective person could reasonably apprehend harm of a sexually violent nature from his molestation of a 14 year old. Marshall, 156 Wn.2d at 158; Brown, 154 Wn. App. at 123-24.

This issue arose in the context of competing pretrial motions. Both the State and counsel for Taylor filed pretrial motions seeking a determination as a matter of law whether Taylor's incarceration for third degree child molestation constituted a recent over act. The State's briefing included three exhibits: (1) Taylor's statement on plea of guilty to third degree child molestation; (2) the judgment and sentence for that offense; and (3) an August 28, 2005 report by Dr. Kathleen Longwell, sworn under penalty of perjury.[2] In formulating her report, Dr. Longwell examined Taylor. She also reviewed and relied on numerous documents, including those relating to Taylor's past adjudications for first degree rape of a child and first degree molestation, his SSODA treatment review notes, psychological reports, police reports, witness statements, letters from Taylor to one of his victims, sex offender treatment reports, a sexual deviancy evaluation, Taylor's SOTP treatment notes and autobiography, and the results of penile plethysmograph (PPG) and polygraph examinations.

We hold the evidence before the trial court was sufficient to support a conclusion that an objective person, knowing the factual circumstances of Taylor's history and mental condition, could reasonably apprehend harm of a sexually violent

[2] Taylor did not object to the trial court considering Dr. Longwell's report to determine Taylor's history and mental condition. Taylor objected only to one statement in the report, which incorrectly alleged that Taylor's roommate claimed Taylor talked about initiating a sexual relationship with Brittany's 12 year-old sister. The trial court agreed with Taylor, and declined to consider this allegation in its recent overt act ruling.

nature from his molestation of a 14-year-old girl. According to Longwell's report, Taylor's history and mental condition included the following: oral sex and sexual intercourse with his seven year old sister D.T.; molestation of his three year old brother C.T.; molestation of his nine year old brother D.T.; molestation and attempted sexual intercourse with his seven year old sister K.T.; molestation of his sister J.T. when she was five or six years old; molestation of his sister, C.T. when she was four years old; molesting other male child relatives; and exposing his erect penis to staff while incarcerated.

Additionally, the report indicates the following: while he was on community supervision, Taylor, who was then 19, had sex with a 14 year old in violation of the conditions of community supervision; Taylor knew his victim was 14, but had sex with her anyway, and asked her to lie about his knowledge of her age; Taylor spent much of his time around friends as young as 13, in direct violation of his parole conditions; Taylor admitted he could possibly molest children if under a lot of stress; when he underwent a PPG, Taylor's highest level of sexual arousal was to females aged zero to three years; while in the SOTP at Monroe, Taylor indicated he did not intend to stay away from minors when he was released; Taylor stated he was going to rape a female after he got out of treatment; Taylor fantasized about finding somebody to rape while in treatment; and Taylor saw himself as an innocent victim of injustice, showed no sense of responsibility, and lacked self-control and insight.

Further, Dr. Longwell's report indicates she diagnosed Taylor with non-exclusive

pedophilia and personality disorder not otherwise specified, with antisocial and borderline features. With this evidence before it, the trial court properly ruled that an objective person, knowing the above-described factual circumstances of Taylor's history and mental condition, could reasonably apprehend harm of a sexually violent nature from Taylor's molestation of the 14 year old.

Sufficiency of the Evidence of Pedophila

Taylor argues the evidence at trial was insufficient to support a finding of pedophila. Evidence to support such a finding is sufficient if, when viewed in the light most favorable to the State, it could permit a rational trier of fact to find Taylor was a pedophile beyond a reasonable doubt. In re Detention of Broten, 130 Wn. App. 326, 334, 122 P.3d 942 (2005). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. Id. at 334-35. In reviewing the sufficiency of the evidence, we need not be convinced beyond a reasonable doubt; rather, we need find only that substantial evidence supports the trier of fact's determination. State v. O'Neal, 126 Wn. App. 395, 412, 109 P.3d 429 (2005). Substantial evidence is that quantum of evidence sufficient to persuade a reasonable person that a finding is true. State v. Halstien, 122 Wn.2d 109, 129, 857 P.2d 270 (1993). This court defers to the trier of fact regarding witness credibility, resolving conflicting testimony, and weighing the persuasiveness of the evidence. In re Broten, 130 Wn. App. at 334-35.

Here, the jury had before it Dr. Longwell's testimony that she diagnosed Taylor

with non-exclusive pedophila. The jury also heard evidence of Taylor's molestation of his six siblings before he was removed from the home at age 14; that when he was over the age of 16, he continued to have sexual contact with his 13 year old sister, D.T., and had sexual contact with two other 13 year old girls; that he molested a 14 year old girl when he was 19 years old which resulted in his conviction of third degree child molestation; and that his PPG showed his highest level of sexual arousal was to prepubescent children. When viewed in a light most favorable to the State, this evidence is sufficient to persuade a reasonable person that Taylor is a pedophile.

Taylor nevertheless argues that there is insufficient evidence that his behavior meets the criteria for a diagnosis of pedophilia under the DSM IV-TR (DSM).[3] We disagree. Taylor suggests that there was no evidence of sexual contact with or interest toward prepubescent children after he reached the age of 16, but he is simply incorrect. Dr. Longwell testified that Taylor admitted that after the age of 16, he had sexual contact with his sister, D.T., and two other 13 year old girls, and that Taylor admitted sexual interest in girls under the age of 13. Moreover, Taylor's PPG showed his highest level of sexual arousal was toward children aged zero to three. Taylor disputes much of this evidence, but on appellate review, we must accept it as true. In re Broten, 130 Wn. App. at 334-35.

[3] It is undisputed that according to the DSM IV-TR the three criteria necessary to establish a diagnosis of pedophilia are: 1) Over a period of at least 6 months, the person has recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger; 2) The person has acted on these urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty; and 3) the person is at least 16 years old, and at least 5 years older than the child or children referenced in the first criterion.

Additionally, Taylor argues that because his sexual behaviors do not precisely fit within the DSM's diagnostic criteria for pedophilia, the jury's determination in this regard is unsupported by substantial evidence. He points to the testimony of his expert witness, Dr. James Donaldson, who opined that because the evidence of Taylor's sexual behaviors all occurred when either he was under the age of 16 or less than 5 years older than his victims, or both, he does not meet the exact criteria under the DSM for a diagnosis of pedophilia. But Dr. Longwell testified that an exact match between Taylor's sexual behaviors and the diagnostic criteria in the DSM is not necessary to make a diagnosis of pedophilia. She opined that DSM criteria are not to be applied in a cookbook fashion, but are instead supposed to be used as a diagnostic tool viewing the evidence as a whole. She testified "that the authors of this section of the Diagnostic and Statistical Manual of Mental Diseases state that these are guidelines. These are not hard and fast rules."

Thus, the jury had before it conflicting opinions about how the DSM should be applied. In resolving this conflict, and in determining the credibility and weight to be given to the experts' respective opinions, we defer to the trier of fact. In re Broten, 130 Wn. App. at 334-35. The jury was entitled to credit the testimony of Dr. Longwell on this issue and accept her diagnosis. This, in addition to the other evidence introduced on the issue of whether Taylor was a pedophile, when viewed in the light most favorable to the state, was sufficient to support the jury's finding that Taylor suffered from non-exclusive pedophilia.

Expert Testimony Regarding Relative Risk of Reoffense

Taylor argues the trial court erred in denying his motion in limine to exclude expert testimony regarding actuarial rankings of Taylor's relative risk of reoffense as compared to other sex offenders. A trial court's admission of evidence is reviewed for an abuse of discretion. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

Although much of the briefing to the trial court and this court focuses on actuarial tests called the Static-99 and Static-2002, Taylor's main grievance is not that specific tests were invalid, but instead that the jury should not have been permitted to hear testimony about Taylor's relative risk of reoffense compared to other sex offenders.

According to Taylor, relative risk is not relevant because it does not actually measure a fact of consequence, i.e. the risk of incurring a new arrest or conviction, instead it ranks that risk in comparison with other sex offenders. Moreover, Taylor argues, even if relevant, the evidence should have been excluded because it was likely to mislead the jury since the numbers reflecting relative risk were very high while those reflecting actual risk were low in comparison. Taylor contends that it is likely that the jury confused the different measures and concluded that his risk of reoffense is significantly higher than warranted by the evidence. In addition, Taylor argues that the State compounded this problem by blurring the distinction between the two measures in its closing argument to the jury.

We disagree. First, contrary to Taylor's characterization of Dr. Longwell's testimony, she did not simply use two tests, and then testify about Taylor's relative risk

of reoffense compared to other sex offenders. Instead, she described in detail, each of the various tests and methods she used to generate her opinion about Taylor's risk of reoffense, and she testified to both relative risk and what Taylor calls "actual risk." According to Dr. Longwell, Taylor's raw score on the Static-99 put him in the highest risk group compared to other sex offenders, with 96.3–98.3 percent of offenders being less likely to reoffend than Taylor. However, Dr. Longwell also testified to what Taylor is describing as "actual risk," namely that Taylor's score indicated his risk of being convicted of another sex offense was between 11.3 and 24.2 percent. Similarly, regarding the Static 2002 test, Dr. Longwell testified that Taylor's actual risk of reoffense was 50.1 percent after ten years, but when compared to other sex offenders Taylor was more likely than 99.98–99.9 percent of them to reoffend. In addition, counsel for Taylor thoroughly cross-examined Dr. Longwell on this issue, and Taylor presented his own experts who testified that relative risk of reoffense is not an appropriate way to determine whether Taylor would likely reoffend.

Second, contrary to Taylor's argument, Dr. Longwell's testimony about Taylor's relative risk of reoffense compared to other offenders was not irrelevant. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence . . . more probable or less probable than it would be without the evidence." ER 401. Here, Dr. Longwell testified that the relative risk assessment was more probative than the actual risk assessment because the latter does not factor in whether the person has actually committed a new offense but has not been caught, nor does it include

additional possible charges and convictions more than 10 years out. The relative risk assessment, on the other hand, takes this additional information into account.

Taylor disputes this interpretation, and points to the testimony of his own expert witnesses to the contrary. But the relevance of expert opinion testimony is not diminished merely because there are differing and contradictory opinions about the significance of certain data. The issue is whether the testimony is probative of a material issue in the case. Dr. Longwell's opinion regarding Taylor's risk of committing a sexually violent offense if he was not confined to a secure facility relative risk was one of the central questions before the jury. So long as the actuarial assessments satisfied the requirements of ER 403, ER 702 and ER 703 the evidence she relied upon in forming that opinion is relevant and admissible. In re Detention of Thorell, 149 Wn.2d 724, 758, 72 P.3d 708 (2003). Although there was a substantial dispute among the State's experts and Taylor's experts as to the significance of this evidence, that goes to its weight, not its admissibility. In re Thorell at 756.

Nor do we find the testimony to be misleading or confusing to the jury. As noted, Dr. Longwell testified extensively regarding the tests and how they were utilized to determine a range of risk of reoffense. Taylor had a full opportunity to cross examine her on these issues and to present the opposing views of his own experts. Under these circumstances there is little likelihood that the jury was either misled or confused by Dr. Longwell's testimony. Moreover, Taylor offers no evidence in support of this claim except to argue that the State's closing argument gave the jury the impression that his

risk of reoffense was "monolithically high." But there was no objection to these remarks at trial. And to the degree the argument may have been inaccurate or misleading, the jury was instructed to disregard counsels' remarks where they are not supported by the evidence or the law. Absent evidence to the contrary, we presume the jury abided by this instruction. State v. Lough, 125 Wn.2d 847, 864, 889 P.2d 487 (1995).

In short, the trial court did not abuse its discretion in denying Taylor's motion in limine to exclude expert testimony regarding actuarial rankings of relative risk of reoffense.

Admission of Hearsay During Cross-Examination of Taylor's Experts

Taylor further contends the State improperly read hearsay statements in front of the jury during the cross-examination of Taylor's expert witnesses, and the trial court erred by overruling his objections to the testimony. We agree with Taylor on this issue.

> 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

ER 801(c). Here, the assistant attorney general cross-examined Taylor's experts by reading into the record relatively lengthy excerpts of documents that included out-of-court statements by Taylor's SSODA provider Gary Smith, the author of a presentence investigation report, and Scott Zankman, who wrote sex offender treatment notes about Taylor. After reading these excerpts, the assistant attorney general asked questions such as "Does it say that Dr. Donaldson?"

The State does not dispute the statements were hearsay, but instead claims the cross-examination was proper because Taylor's experts, Dr. James Donaldson and Dr. Diane Lytton, "relied" upon the documents

from which the assistant attorney general read when they formed their opinions. The State is mistaken. Neither Dr. Donaldson nor Dr. Lytton testified they relied upon these documents in formulating their opinions. Indeed, the assistant attorney general never asked them whether they relied on the documents.

The State notes that the two experts acknowledged they read the documents. But it is not enough that the experts simply read the documents. Indeed, our courts have held that it is not permissible to use direct or cross-examination of expert witnesses as a vehicle to admit hearsay opinions of an expert, where the expert has not *relied* on the information. For example, in Washington Irrigation and Devel. Co. v. Sherman, 106 Wn.2d 685, 724 P.2d 997 (1986), counsel for the Department of Labor and Industries cross-examined the plaintiff's medical expert by reading into the record the opinions of another medical expert, who did not testify. Sherman, 106 Wn.2d at 687. Our Supreme Court held that the witness was required to testify he relied on the report before the hearsay could be admitted:

> 'Plaintiff's witness did not state that he had relied on the report, even though he had admitted that he had seen it. Until defendant established that plaintiff had relied on the report of the other doctor, it was improper for the defendant to read from that report in cross-examining plaintiff's witness.'

Sherman, 106 Wn.2d at 688-89.

The remaining question is thus whether admission of the hearsay statements was so prejudicial it requires reversal. Taylor argues reversal is required. He relies again on the Sherman case, where the Supreme Court held the admission of hearsay required reversal. But in Sherman, the non-testifying doctor's hearsay opinion, that the plaintiff's injuries had occurred *before* the

accident at issue in the case, directly undercut the plaintiff's case. See, Sherman, 106 Wn.2d at 687, 690.

Here, by contrast, the hearsay to which Taylor objects was largely about whether Taylor's alleged propensity for deception and lying could support Dr. Longwell's diagnosis of Personality Disorder Not Otherwise Specified. Even if the hearsay testimony had not been admitted, the jury had already heard significant testimony about Taylor's alleged deceptiveness from Dr. Longwell. For example, she testified that Taylor's treatment records indicate he was "manipulative, deceitful." She also testified Taylor defined himself as "pathological":

> In treatment at one point he actually sort of defined himself as a pathological liar by saying that he actually enjoyed lying and seeing if he could get away with it. Sometimes he lied – there wasn't even a good reason to lie; he just did it for sort of the thrill of lying and seeing if he could pull this off on someone.

Moreover, the question of Taylor's deceitfulness, unlike the medical expert testimony in Sherman, was not one of "the central issues" in this case. Sherman, 106 Wn.2d at 690. Rather, the central issue in the case was whether Taylor was a pedophile likely to reoffend. In short, Sherman is of no help to Taylor, and we hold admission of the hearsay statements was harmless.

Reasonable Doubt Instruction

Taylor next assigns error to the reasonable doubt instruction given by the trial court. Specifically, he claims the instruction was faulty because it used the phrase "the truth of the charge" when there is no "charge" in a sexually violent predator case. We disagree.

Jury instructions are proper when,

as a whole, they accurately state the law, do not mislead the jury, and permit both parties to argue their respective theories of the case. State v. Reed, 150 Wn. App. 761, 770, 208 P.3d 1274 (2009) rev. denied, 167 Wn.2d 1006, 220 P.3d 210 (2009). Here, the instruction given by the trial court was taken verbatim from one of the alternatives proposed in 6A Washington manual: Washington pattern jury instructions, civil (WPI) 365.11, and is very clear that "charge" refers to the allegation that Taylor is a sexually violent predator:

> The State has the burden of proving beyond a reasonable doubt that James Taylor is a sexually violent predator. James Taylor has no burden of establishing that a reasonable doubt exists.
>
> A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

(Emphasis added). The instruction accurately states the law, did not mislead the jury, and permitted the parties to argue their respective cases. The trial court did not error in giving this instruction.

Cumulative Error

Taylor also argues cumulative error warrants reversal. Under the "cumulative error doctrine," while some errors standing alone might not constitute grounds for a new trial, the accumulation of errors may. State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984). Given our disposition of the other issues, we reject this argument.

Affirmed.

Spearman, J.

WE CONCUR:

Leach, a.c.j. Cox, J.