

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	DIVISION ONE
Respondent,)	
)	No. 64814-4-I
v.)	
)	
JASON THOMAS BRIDGES,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: September 12, 2011
_____)	

Dwyer, C.J. — Witnesses are presumed competent to testify unless a party proves otherwise by a preponderance of the evidence. Because Jason Bridges failed to prove that the seven-year-old victim in this case was incompetent, and because the court did not abuse its discretion in admitting the victim’s hearsay statements, we affirm his conviction for first degree rape of a child.

Based on allegations that Bridges raped his daughter, C.H.B., the State charged him with one count of first degree rape of a child. Prior to trial, the court held a hearing to determine C.H.B.’s competency and the admissibility of

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statements she made to several adults.

Jessica Bridges testified that on December 24, 2008, she picked up her then six-year-old daughter, C.H.B., from a scheduled visit with the child's father, Jason Bridges. C.H.B. told Jessica that Bridges had her touch him "in the private spot" and told C.H.B. not to tell her mother. Report of Proceedings (RP) at 16. Jessica called her grandmother, Eva Wood, and the Oak Harbor Police Department.

Jessica testified that C.H.B. had memories back to her fifth birthday, was doing well in school, and was reading well above her grade level. She testified that C.H.B. knew the difference between the truth and a lie and provided an example of an incident where C.H.B. admitted telling a lie. She said that she sent C.H.B. to her room when she lied.

Eva Wood testified that she spoke with C.H.B. by telephone shortly after her initial disclosure to Jessica. C.H.B. said "her daddy had made her touch his privates." RP at 58. Wood described C.H.B. as "very truthful," and said her memory extends back to walks with her great-grandfather in Hawaii when she was two or three years old. RP at 58.

Oak Harbor Police Detective Teri Gardner testified that C.H.B. said in an interview that her dad "unzipped his pants and . . . had her touch his – she used the words 'nuts' and put her mouth and sucked on it." RP at 84. He told C.H.B. to keep it a secret. Detective Gardner testified that, based on her training and

experience and her interview with C.H.B., she believed C.H.B. knew the difference between the truth and a lie.

Dr. Patricia Lenehan, a child therapist, testified that C.H.B. told her that “[d]addy laid down and took off his pants – zipped down his pants and asked me to touch his pee-pee.” RP at 41. C.H.B. also drew a picture of the incident depicting her and Bridges on a bunk bed.

C.H.B. testified that she and Bridges were on a bunk bed when he “pulled down his pants and then his underwear and his private spot.” RP at 67. He then put his hands above hers, “pulled it down,” and “held it on [her] mouth.” He “then pulled it down once more and it went into . . . [her] mouth.” RP at 67. When asked what went into her mouth, C.H.B. said “my brother calls it ‘nuts.’” RP at 67.

C.H.B. remembered the color and style of Bridges’ pants and which of the bunk beds they were on. She described her understanding of the difference between the truth and a lie and provided examples of each. She admitted telling her mother a lie and being punished for that lie. She was also able to recall the names of her teachers and the schools she attended over the previous three years.

The court concluded C.H.B. was competent to testify. It found that she could distinguish between fantasy and reality, knew the difference between the truth and a lie, had the mental capacity to perceive the events at the time of the

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occurrence, had sufficient memory to retain the events in question, and could understand and answer simple questions about the event.

The court also concluded that C.H.B.'s hearsay statements were reliable. The court noted that the statements to her mother and great grandmother were spontaneous and nearly identical, that the statements to the detective and therapist were similar, and that the statements were "somewhat different" but not so different as to undermine their reliability. The court further noted that neither C.H.B. nor the witnesses had an apparent motive to lie, and that C.H.B. had good character and "a good sense of right and wrong." RP at 93.

At trial, C.H.B. and the State's other witnesses testified along the lines of their pretrial testimony. The jury convicted Bridges as charged. He appeals.

II

Witnesses, including young children, are presumed competent unless a party proves otherwise by a preponderance of evidence. RCW 5.60.050; State v. Brousseau, No. 83415-6, 2011 WL 3612277, at *4 (Aug. 18, 2011). The party challenging competency must prove that the witness is either of unsound mind, intoxicated at the time of examination, incapable of receiving just impressions of the facts, or incapable of relating facts truly. RCW 5.60.050; State v. S.J.W., 170 Wn.2d 92, 102, 239 P.3d 568 (2010). A trial court's competency determination is guided by the factors set forth in State v. Allen, 70 Wn.2d 690, 692, 424 P.2d 1021 (1967).¹ On review, we afford "significant deference" to the

trial court's determination and will disturb it only for a manifest abuse of discretion. Brousseau, 2011 WL 3612277, at *4.

Bridges contends the trial court abused its discretion in finding C.H.B. competent. He contends, as he did below, that C.H.B.'s belief in Santa Claus showed that she "could not perceive the difference between reality and fantasy" and therefore lacked the mental capacity at the time of the charged event to receive an accurate impression of it. We disagree.

Children commonly believe in Santa Claus, the tooth fairy, and other traditional characters who, though fictional, are presented to them by their families and society as real. Such beliefs are normal and do not call a child's competency into question.² And contrary to Bridges' assertions, C.H.B.'s belief in Santa Claus is not analogous to the evidence of incompetency in State v. Karpenski, 94 Wn. App. 80, 971 P.2d 553 (1999).

The incompetent child witness in Karpenski had a "long-standing, often-observed inability to distinguish what was true from what was not." 94 Wn. App.

¹ The factors described in Allen are:

(1) an understanding of the obligation to speak the truth on the witness stand; (2) the mental capacity at the time of the occurrence . . . to receive an accurate impression of [his testimony]; (3) a memory sufficient to retain an independent recollection of the occurrence; (4) the capacity to express in words [his] memory of the occurrence; and (5) the capacity to understand simple questions about [the occurrence].

70 Wn.2d at 692.

² See State v. Anderson, 154 Ohio App.3d 789, 803, 798 N.E.2d 1155 (2003) (child's belief in Santa and the bogey man "did not indicate that she was unable to perceive or relate facts or that she did not understand her responsibility to be truthful"); Commonwealth v. King, 786 A.2d 993, 997 (Pa. Super. 2001) (child's belief in Santa and the Easter Bunny were beliefs "traditionally expressed by a seven-year-old" and "did not negate her ability to understand or comprehend what had happened to her or the need for truthfulness during the proceedings").

at 106. The child falsely claimed, for example, that he had spoken with his deceased uncle, that his mother had won \$10,000, and that he had gone skydiving. According to his mother, he sometimes went “for months believing his stories” and it was difficult to convince him that the stories were not true.

Karpenski, 94 Wn. App. at 83. The trial court expressly found that the child was “testify[ing] as to an event that he could not possibly have recalled” and that he was “confused” regarding “dream versus reality.” Karpenski, 94 Wn. App. at 97. Nothing remotely similar occurred in this case. In fact, the evidence from C.H.B. and the adults who knew her established that she understood the difference between fantasy and reality,³ and distinguished between the truth and a lie. She also demonstrated the ability to accurately perceive and recall relevant facts.

In short, Bridges failed to rebut the presumption of competency, and the trial court did not abuse its discretion in finding C.H.B. competent to testify.

Bridges next contends the trial court abused its discretion by admitting C.H.B.’s hearsay statements, contending that they were unreliable. Pursuant to RCW 9A.44.120(1) and (2)(a), a child’s hearsay statement is admissible if the “time, content, and circumstances of the statement provide sufficient indicia of reliability” and the child testifies. In assessing reliability, courts consider (1) whether the declarant had an apparent motive to lie, (2) the declarant’s general character, (3) whether more than one person heard the statement, (4) whether

³ For example, C.B. knew that Alvin and the Chipmunks cannot talk in “real life.”

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the statement was spontaneous, (5) the timing and relationship between the declarant and the witness, (6) whether the declaration contained express assertions of past fact, (7) whether cross-examination could show the declarant's lack of knowledge, (8) the remoteness of the possibility that the declarant's recollection is faulty, and (9) whether the circumstances surrounding the statement suggest that the declarant misrepresented the defendant's involvement. State v. Ryan, 103 Wn.2d 165, 175-76, 691 P.2d 197 (1984). The factors are considered as a whole and no single factor is decisive. State v. Young, 62 Wn. App. 895, 902, 802 P.2d 829, 817 P.2d 412 (1991). We review a decision admitting child hearsay for abuse of discretion. State v. Woods, 154 Wn.2d 613, 623, 114 P.3d 1174 (2005).

Without addressing any of the nine reliability factors, Bridges argues in his opening brief that C.H.B.'s statements were unreliable because she was not competent to testify and because her statements were inconsistent regarding the nature of the sexual contact.⁴ The first argument fails for the reasons set forth in our previous discussion of C.H.B.'s competency. The second argument is contrary to the record and the law.

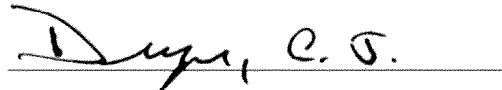
Bridges correctly points out that C.B.'s statements to her mother and

⁴ Additional arguments that were not raised below or in Bridges' opening brief will not be considered. RAP 2.5(a); State v. Stevens, 58 Wn. App. 478, 485-86, 794 P.2d 38 (1990) (argument regarding child hearsay cannot be raised for first time on appeal if declarant and recipient witnesses testified and were available for cross-examination); State v. Wilson, 162 Wn. App. 409, 253 P.3d 1143, 1147 n.5 (2011) (arguments raised for the first time in a reply brief will not be considered).

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grandmother only described “touching” Bridges’ penis, while her later statement to Detective Gardner included additional details about Bridges putting his penis in her mouth. But these statements were not inconsistent; rather, they simply differed in the breadth of their disclosure. Furthermore, inaccuracies and inconsistencies go to the weight of hearsay statements, not to their admissibility. State v. Przybylski, 48 Wn. App. 661, 665-66, 739 P.2d 1203 (1987); State v. Stange, 53 Wn. App. 638, 642, 769 P.2d 873 (1989). Bridges fails to demonstrate any error in the admission of C.H.B.’s statements.

Affirmed.



We concur:

