IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	NO. 68363-2-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
WILLIAM N. VALDIVIEZ,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 11, 2012

Lau, J. — William Valdiviez appeals his third degree child rape and furnishing liquor to minors convictions. He argues that (1) the trial court denied his constitutional right to cross-examine the victim about an alleged age-related representation she posted on the internet and (2) insufficient evidence to support the alternative means that he permitted the victim to consume liquor on premises under his control. Because the trial court properly precluded the age-related internet evidence and sufficient evidence supports the control over the premises alternative means of furnishing liquor to a minor, we affirm the convictions.

FACTS

The State charged William Valdiviez by amended information with third degree child rape with a firearm enhancement and furnishing liquor to a minor. During a three-

day jury trial, witnesses testified to the following facts.

William Valdiviez and RM are cousins. RM's birthday is December 25, 1993. RM lives in Texas with her father, Jimmy, and her two sisters. RM's mother is deceased. RM turned 15 years old on December 25, 2008. At trial in March 2010, RM was 16 years old.

RM's aunt, Vivian Smith, also lives in Texas with her husband, Bobby Smith. RM's maternal grandparents, William and Bobbie Hill, live in Texas. Valdiviez, Vivian Smith's son, was 25 years old in December 2008. He was a member of the United States Army and stationed for a time at Fort Lewis, Washington.

In December 2008, the Smith, Morgan, and Hill families spent the Christmas holiday together on the Long Beach Peninsula in Washington state. William Hill paid for the three hotel rooms. RM's sisters stayed in one room with their grandparents. RM stayed in a room with Valdiviez and his girl friend Donna. RM did not know she would be staying in Valdiviez's room until she arrived at the hotel. At that time, "William [Valdiviez] told me that I was staying in the room with him and Donna." RP (Mar. 30, 2010) at 51. The Smiths—Vivian, Bobby, and their daughter—stayed in the third room.

After all the family members went out to dinner at a restaurant on Christmas Eve, RM returned to the room where she was staying. She referred to it as "William [Valdiviez]'s hotel room." RP (Mar. 30, 2010) at 53-56. While there, she started drinking alcohol at midnight and continued until about 1:30 a.m. Valdiviez was present and also drinking. RM drank about six cups half full of Crown Royal alcohol. Valdiviez testified that RM drank alcohol in the hotel room but denied providing it to her.

At around 1:30 a.m., Valdiviez and Donna argued. RM and Valdiviez drove down to the beach. When they got to the beach Valdiviez and RM engaged in vaginal and oral intercourse. RM testified that Valdiviez carried a gun with him in his jacket and he brought the gun with him to the beach. She said when they arrived at the beach, he took his gun out of his jacket pocket and set it on the center console. She testified she asked him to stop during vaginal intercourse because he was hurting her, and after saying "stop" louder and pushing him, he stopped. He then asked her to perform oral sex. RM testified that she agreed to engage in oral sex because his hand was resting on the center console of the truck near his gun and that she was scared and thought Valdiviez was going to use it. After they engaged in oral sex, they returned to the hotel room.

Valdiviez testified at trial that he had consensual sex with RM. He admitted that he owned a gun and brought it with him to the Long Beach Peninsula, but he denied taking the gun to the beach. He said he left his jacket with the gun in the pocket on a chair in the hotel room when he went to the beach with RM.

At trial, Valdiviez relied on RCW 9A.44.030's affirmative defense to claim he reasonably believed RM's statements to him that she had just turned 16. Valdiviez testified that RM said at the Christmas Eve dinner, "'Hey, you know tonight's going to be my birthday and I'd like to drive.'" RP (Mar. 31, 2010) at 75. He said she told him that she had a driver's permit and that she had some experience driving. At midnight, RM took a drink and said, "'Hey, it's my 16th birthday.'" RP (Mar. 31, 2010) at 73. Valdiviez testified that before the trip to the Long Beach Peninsula, his mother, Vivian

Smith, told him that RM was turning 16 that Christmas and that he should get her a birthday present and spend a little more on it than he might otherwise because 16 was a special birthday. Valdiviez said that when he had sex with RM on Christmas morning, "I believed it was her birthday and that she had just turned 16." RP (Mar. 31, 2010) at 77. RM denied telling Valdiviez or anyone else that she was turning 16. RM also testified that in Valdiviez's presence, her grandparents told her that they went to the store but found no candles, and they "apologized for not having 15 candles on [her] cake." RP (Mar. 31, 2010) at 105.

Valdiviez's mother, Vivian Smith, testified that RM told her that she was turning 16 and that approximately three weeks before the trip to Washington state, she told her son Valdiviez, "'We need to get [RM] something really nice for her birthday. She's turning 16.'" RP (Mar. 31, 2010) at 44-45. She also testified that at dinner on Christmas Eve, RM said, "'I'm turning 16 at midnight.'" RP (Mar. 31, 2010) at 46. Smith testified that she believed RM when she said this.

RM's father, Jimmy, testified for the State on rebuttal. He testified that Vivian Smith attended RM's birthday celebrations on "many, many occasions." RP (Mar. 31, 2010) at 96. Morgan was present at many birthday celebrations for RM when Valdiviez was also present. Valdiviez attended either RM's 11th or 12th birthday celebration. Valdiviez also attended a family trip to Ireland when RM was just six months old. Valdiviez and Jimmy's older daughter (RM's sister) were very close.

After Miranda[1] warnings, Deputy Paul Jacobson interviewed Valdiviez. Valdiviez

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

told Jacobson he had brought Bud Light beer and Crown Royal liquor to the hotel room. Valdiviez also said that he and RM "consumed a considerable amount." RP (Mar. 30, 2010) at 165. Valdiviez told Jacobson, "[T]hey were celebrating [RM's] 15th birthday." RP (Mar. 30, 2010) at 165. Valdiviez said that after driving around on the beach with RM, "they parked and that that was it." RP (Mar. 30, 2010) at 168. Jacobson asked if Valdiviez was sure no kissing or hugging with RM occurred, after which Valdiviez admitted to hugging and kissing. Valdiviez "said that during the kissing and hugging he stopped because it just didn't feel right to him." RP (Mar. 30, 2010) at 168. After confronting Valdiviez with RM's version of events, Valdiviez initially admitted only kissing and hugging. Valdiviez later admitted to oral intercourse in the front seat. Valdiviez also "change[d] his story" and admitted to vaginal intercourse. RP (Mar. 30, 2010) at 172. Valdiviez said, "'[I] knew it was wrong because she was only 15-years old'" but never mentioned that RM represented herself as 16. RP (Mar. 30, 2010) at 173-74.

The jury convicted Valdiviez of third degree child rape and furnishing liquor to minors but found no firearm enhancement. Valdiviez appeals and the State cross appeals.

ANALYSIS

William Valdiviez argues the court violated his Sixth Amendment right to cross-examination when it prevented him from questioning RM about information appearing in a two-page printout from the website "YouTube" that depicts a web page.[2] In addition

[2] A copy of the posting was marked for pretrial purposes as exhibit K. Pursuant

to other information, the web page shows the names, "Becca" and "Caley," "Bella2234's channel" and "age: 19." Valdiviez argues he was entitled to challenge RM's credibility with this evidence because it demonstrates she previously lied publicly about her true age. On appeal, Valdiviez also argues the evidence's admissibility under ER 613 as a prior inconsistent statement and ER 608 as credibility evidence based on character or conduct. The State responds that the trial court properly excluded the evidence on multiple grounds, including lack of relevance.

RCW 9A.44.030

Under ER 611(b), the trial court has discretion to determine the scope of cross-examination.[3] An appellate court will not reverse a trial court's rulings on the scope of cross-examination absent a manifest abuse of discretion. State v. Campbell, 103 Wn.2d 1, 20, 691 P.2d 929 (1984); State v. Dickenson, 48 Wn. App. 457, 466, 740 P.2d 312 (1987). A trial court abuses its discretion when its decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. State v. Bible, 77 Wn. App. 470, 471, 892 P.2d 116 (1995).

The proponent of the evidence bears the burden of establishing relevance and materiality. State v. Hilton, 164 Wn. App. 81, 99, 261 P.3d 683 (2011). Evidence is

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to a motion in limine by the State, the parties initially discussed whether a video posted on this webpage was admissible. During the trial, the discussion shifted away from the video and to exhibit K, which depicts the page where the video was posted. Valdiviez did not seek the video's admission at trial, nor does he argue the video's admissibility on appeal.

[3] ER 611(b) provides: "Cross examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination."

relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. ER 401. "Evidence which is not relevant is not admissible." ER 402.

Based on our review of the record below, we question whether Valdiviez preserved this issue premised on ER 613's impeachment by prior inconsistent statement. Several extended discussions took place pretrial and during trial between the State, defense counsel, and the court over the relevance of this evidence. The record undisputedly shows that defense counsel responded to the court's relevancy questions by explaining that the evidence was linked to his RCW 9A.44.030(2) affirmative defense. That statute provides a defense to a third degree child rape charge where the defendant proves "by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be [16 years old] based upon declarations as to age by the alleged victim." The State argued the lack of relevancy because "Becca and Caley, and we don't know who -- . . . which one of them represented themselves as being 19 here. . . . [I]f indeed this other girl, Caley, has control over the page, this might be all her doing. . . . [I]t should be suppressed." RP (Mar. 30, 2010) at 28. Defense counsel attempted to overcome the relevancy objection by tying the evidence to Valdiviez's statutory defense:

> [T]his is only potentially useful if she -- as a prior inconsistent statement as to age representation and that's -- the statute RCW 9A.44.030 is pretty clear that this is -- this age representation issue is a defense in a case like this and it's something I'm entitled to go into. If she admits having projected herself as being older than she really is in this type of medium, then I won't have grounds to use it; if she denies it, then I will. This is a significant issue as to -- as to how it relates to all the perceptions and the evidence that, again, is part of the statutory defense in this case . . . this statute talks about declarations as to age by the

> alleged victim and there's wide open ground as to where those declarations are made and how they're per[ceived] and at what point they're perceived by the Defendant and so forth. So that's -- that's the extent of my argument on that.

RP (Mar. 30, 2010) at 29-30 (emphasis added). The State also argued:

> [W]e don't know when it was posted, this age of 19, if it happened after the alleged offense or before.
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> . . . .
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> . . . "[T]he defense is that she represented to him that her age was older, not that she's out there representing to other people, so it's really irrelevant as to what she represented to him . . . .

RP (Mar. 30, 2010) at 35.

The court noted, "[H]ow would [RM] even know that your client saw [exhibit K] or relied upon it?" RP (Mar. 30, 2010) at 36.

Defense counsel responded, "Well, under the statute . . . whether she knows that or not is not relevant. It says, 'based upon declarations as to age made by the alleged victim.' His perceptions are -- you know, that's my burden to prove, not his." RP (Mar. 30, 2010) at 36-37. The court deferred ruling on Valdiviez's reliance on exhibit K to cross-examine RM.

The court and parties addressed the issue again during RM's direct examination testimony. The court invited the parties to argue exhibit K's relevance. Defense counsel responded:

> [T]he statute requires me to assert by a preponderance of the evidence that . . . age representations were made. It's, as I indicated, a statutory defense . . . "based upon declarations as to age by the alleged victim." That's one issue. The other issue is my client's reasonable belief.
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> . . . [Exhibit K] is a declaration as to age so it hits on one of those -- hits on one of those elements that's part of the defense that is relevant to this case.

RP (Mar. 30, 2010) at 107-08.

After reading aloud the key statutory language, the State argued:

> So they've got a couple hurdles. I would say they have a foundational requirement before they can even ask -- raise this on cross examination. They have to show he believed it, [and] the declarations were by the alleged victim -- and that these -- and that this was reasonable.
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> . . . [I]t's premature to -- for him to be able to cross examine her on it without some prior testimony by him that he reasonably relied on it in thinking she was actually 19 instead of what her age was. . . .
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> . . . [T]here's been no showing that Mr. Valdiviez was ever made aware of that page. And I asked the complaining witness about it. She says she never told him that she even had that page so she's mystified as to how he even would have known that that information was out there.

RP (Mar. 30, 2010) at 108-09.

The court disagreed with defense counsel's argument that he satisfied the statute's requirement by showing exhibit K was either RM's statement about her age or a reasonable belief statement by Valdiviez. The court explained:

> I see this as connected. The defendant's reasonable belief has to be ". . . based upon declarations as to the age by the alleged victim." . . . I think there has to be some showing that the Defendant somehow relied on this particular document [exhibit K].

RP (Mar. 30, 2010) at 110.

The court also expressed concern over exhibit K's lack of temporal relevance because "Exhibit 'K' was after the . . . [incident] date of December 25, 2008 time frame. So if it's after the fact, how can your client rely on that prior?" RP (Mar. 30, 2010) at 111. After further discussion, defense counsel agreed to inform the court at sidebar, "if I believe that through [RM's] cross-examination I've laid sufficient foundation her testimony has made [exhibit K] relevant." RP (Mar. 30, 2010) at 112.

During RM's cross-examination, defense counsel sought a final ruling on exhibit

K. He argued, "[T]his is in my examination where I would plan on asking her if she in fact represented beyond William and beyond the family, in fact including the [I]nternet world, that she is older than 16 . . ." RP (Mar. 30, 2010) at 129. He again linked exhibit K to Valdiviez's statutory defense,

> [W]hat I believe [it] would be characterized accurately as prior inconsistent statements on the issue of age representation, the statutory defense that we've discussed at [RCW] 9A.44.030.
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> . . . .
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> . . . . I think that it's appropriate because [the statute] says, "based upon declarations as to age to the alleged victim," and it doesn't . . . go on to say to the defendant particularly. It doesn't use that sort of language. It says, "based upon the declarations as to age by the alleged victim." So that's why I think that it's -- at this point the foundation's been laid and it's ripe to ask the question.

RP (Mar. 30, 2010) at 149-50 (emphasis added).

The court excluded RM's alleged exhibit K—web page age representation—based on relevancy grounds. The court reasoned that Valdiviez failed to satisfy the statute's unambiguous requirements—a defendant must establish by a preponderance of the evidence that he reasonably believed the alleged victim to be 16 years old based on her declarations of age.[4] We conclude there was no abuse of discretion by the trial court in excluding this evidence.[5]

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[4] Valdiviez assigns no error to the trial court's ruling premised on RCW 9A.44.030.

[5] ER 103—To the extent Valdiviez claims the trial court erred when it declined to allow his attorney to cross examine about exhibit K absent a showing of relevance outside the jury's presence, the trial court acted well within its gate keeping function by requiring Valdiviez to establish the evidence's relevance outside the jury's presence to avoid potential prejudice to the State. This rule governs rulings on evidence and permits the trial court to "direct the making of an offer in question and answer form." ER 103(b). The rule also requires, "In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to

Confrontation Clause

We next turn to Valdiviez's confrontation clause challenge. He claims the trial court violated his right to confront RM by limiting the scope of cross-examination. Even if we assume he preserved the issue, exhibit K was irrelevant as discussed above. "We review alleged violations of the state and federal confrontation clauses de novo." State v. Medina, 112 Wn. App. 40, 48, 48 P.3d 1005 (2002).[6] The right to confront and cross-examine adverse witnesses is guaranteed by both the federal and state constitutions.[7] U.S. Const. amend. VI; Wash. Const. art I, § 22; Washington v. Texas,

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the jury by any means, such as making statements, or offers of proof or asking questions in the hearing of the jury." ER 103(c).

ER 613—As discussed above, the record clearly shows that Valdiviez relied exclusively on RCW 9A.44.030's statutory defense to argue exhibit K's relevance. He also raised ER 613's impeachment rule for the first time in his reply brief. We need not consider claims raised for the first time in a reply brief. State v. Wilson, 162 Wn. App. 409, 417 n.5, 253 P.3d 1143 (2011). Even assuming he properly objected on ER 613 impeachment by prior inconsistent statement grounds, Valdiviez never attempted to show what the State argued below—who posted "age: 19" and when it was posted. ER 613 governs impeachment by the witness's own inconsistent statements. 5A Karl B. Tegland, Washington Practice: Evidence Law and Practice § 613.3, at 583 (5th ed. 2007) ("A witness may be impeached only with his or her own prior statements."). The record also shows defense counsel interviewed RM pretrial and the court offered him a chance to voir dire the witness outside the jury's presence which he declined to do. "The general rule is also in order to obtain appellate review of a trial court action excluding evidence, there must be an offer of proof made." State v. Vargas, 25 Wn. App. 809, 816-17, 610 P.2d 1 (1980).

ER 608—This rule governs the impeachment of a witness by evidence of poor reputation or specific incidents in the witness's past bearing on credibility. Because Valdiviez raises this issue for the first time in his appeal, we decline to address it. State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988); RAP 2.5(a) ("The appellate court may refuse to review any claim of error which was not raised in the trial court. . . .").

[6] Valdiviez cites no standard of review.

[7] "To date no Washington case has established the contours of any difference

388 U.S. 14, 23, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967); Davis v. Alaska, 415 U.S. 308, 315, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974); State v. Hudlow, 99 Wn.2d 1, 15, 659 P.2d 514 (1983). "It is fundamental that a defendant charged with commission of a crime should be given great latitude in the cross-examination of prosecution witnesses to show motive or credibility." State v. Peterson, 2 Wn. App. 464, 466, 469 P.2d 980 (1970). However, the right to cross-examine adverse witnesses is not absolute. Chambers v. Mississippi, 410 U.S. 284, 295, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973); State v. Darden, 145 Wn.2d 612, 620, 41 P.3d 1189 (2002). Courts may, within their sound discretion, deny cross-examination if the evidence sought is vague, argumentative, or speculative. State v. Jones, 67 Wn.2d 506, 512, 408 P.2d 247 (1965). The confrontation right and associated cross-examination are limited by general considerations of relevance. Darden, 145 Wn.2d at 620; Hudlow, 99 Wn.2d at 15. "[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant." Delaware v. Van Arsdall, 475 U.S. 673, 679, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986).

Valdiviez relies on State v. McDaniel, 83 Wn. App. 179, 920 P.2d 1218 (1996). In McDaniel, the defendant sought to introduce evidence having a sufficient nexus with his prosecution for assault to show the victim lied and had a motive to fabricate. We

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between the right of confrontation as secured by this provision [in the state constitution] and the right of confrontation as secured by the Sixth Amendment." State v. Saunders, 132 Wn. App. 592, 605, 132 P.3d 743 (2006).

held that the trial court erred by excluding evidence that the assault victim had recently admitted to lying under oath in related civil proceedings about how recently she had last used illegal drugs and by excluding evidence that the victim had a motive to lie about her drug use on the day of the assault (because she was on probation from a controlled substance possession conviction, a condition prohibiting illegal drug use). McDaniel is inapposite. There we concluded, "The fact of the lie and the motivation for the lie are highly relevant." McDaniel, 83 Wn. App. at 186. In contrast, the evidence here is not relevant as discussed above. RCW 9A.44.030's affirmative defense depends upon proof by the defendant that he reasonably believed the victim was of legal age based on statements made by the victim. State v. Bennett, 36 Wn. App. 176, 182, 672 P.2d 772 (1983). He proffered no evidence to establish that he reasonably believed RM was of legal age based on exhibit K. Nor did he establish that RM made the alleged representation about "age: 19."

Relying on Alford v. United States, 282 U.S. 687, 51 S. Ct. 218, 75 L. Ed. 624 (1931), Valdiviez also argues that there are no foundational requirements to cross-examination.[8] Alford noted that because the examiner does not always know in advance what might be elicited on cross-examination, "the rule that the examiner must indicate the purpose of his inquiry does not, in general, apply." Alford, 282 U.S. at 693. Nothing in Alford limits the trial court's broad discretion to determine the relevancy of

[8] Valdiviez raises Alford for the first time on appeal. Valdiviez never argued below that he need not demonstrate the evidence's relevance prior to questioning RM. As discussed above, defense counsel implicitly acknowledged the relevance requirement by attempting to connect the evidence to his affirmative defense.

cross-examination. Indeed, the Alford court acknowledged, "The extent of cross-examination with respect to an appropriate subject of inquiry is within the sound discretion of the trial court." Alford, 282 U.S. at 694. In addition, under ER 613, the cross-examiner must have a good faith basis for asking about an inconsistent statement, and upon objection, the cross-examiner may be required to disclose the basis to the court. 5D Karl B. Tegland, Washington Practice: Courtroom Handbook on Evidence, at 356 (2011-12 ed.). Cross-examination about nonexistent statements and similar unfounded inquiries are improper. United States v. Bohle, 445 F.2d 54, 74 (7th Cir. 1971), rev'd on other grounds by United States v. Lawson, 653 F.2d 299 (7th Cir. 1981).

Here, RCW 9A.44.030 expressly requires the defendant to establish the affirmative defense by a preponderance of the evidence. As discussed above, Valdiviez failed to make any showing that exhibit K was relevant to his affirmative defense or to impeach RM's credibility under ER 613. Under the circumstances here, we conclude there was no abuse of discretion by the trial court and no violation of Valdiviez's right to cross-examine RM.

> Even if we assume the court erred, any error was harmless.
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> It is well established that constitutional errors, including violations of a defendant's rights under the confrontation clause, may be so insignificant as to be harmless. A constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error."

State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985) (citations omitted). Constitutional error is presumed to be prejudicial, and the State bears the burden of

providing that the error was harmless. State v. Stephens, 93 Wn.2d 186, 190-91, 607 P.2d 304 (1980); Guloy, 104 Wn.2d at 425. "In Washington the 'overwhelming untainted evidence' test is used to determine whether constitutional error is harmless. Under this test the appellate court looks only at the untainted evidence to determine if it is so overwhelming that it necessarily leads to a finding of guilt." State v. Dickenson, 48 Wn. App. 457, 470, 740 P.2d 312 (1987).

We conclude that the State has met its burden to show that the alleged error was harmless. The untainted evidence shows (1) Valdiviez testified at trial and admitted he had consensual sexual contact with RM; (2) after Miranda warnings, Valdiviez told Deputy Jacobson twice that he knew RM was 15 years old at the time of the sexual contact; (3) before the interview with Deputy Jacobson, Valdiviez learned through his sergeant about the criminal allegations and that RM was in fact 15 years old at the time of the sexual contact; (4) despite this knowledge, Valdiviez never told Deputy Jacobson that RM told him that she was 16 years old; (5) Deputy Jacobson testified that Valdiviez repeatedly changed his story during the interview; (6) Valdiviez stayed in regular contact with his cousin, RM, before this incident; and (7) Valdiviez and his mother, Vivian Smith, attended many of RM's birthday celebrations.

Furnishing Liquor to Minors Conviction

Valdiviez contends:

> [T]o support a conviction under the alternative means of permitting a minor to consume alcohol on premises under the defendant's control, the defendant must have the legal right to exclude people from the premises. Since Valdiviez had no such right, he did not have control over the premises, and as a matter of law there is insufficient evidence to support this alternative means of committing the crime.

Appellant's Br. at 39 (capitalization and boldface omitted). The State responds that sufficient evidence supports the control over the premises means.

RCW 66.44.270(1) provides alternative means of committing the crime of furnishing liquor to minors. This statute provides:

> It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years [OR] permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft.[9]

(Emphasis and capitalization added.) This statute further provides that a violation of this subsection is a gross misdemeanor.

A general verdict of guilty on a single count charging the commission of a crime by alternative means will be upheld only if sufficient evidence supports each alternative means. State v. Ortega-Martinez, 124 Wn.2d 702, 708, 881 P.2d 231 (1994). Here, the jury was instructed that to convict Valdiviez of furnishing liquor to a minor, it must find that he sold, gave, or supplied liquor to RM or permitted RM to consume liquor on premises under his control. Because the jury did not express unanimity as to the means by which Valdiviez furnished liquor to RM, we must review the record to determine if sufficient evidence supports each alternative means. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, any rational trier of fact could find the essential elements beyond a reasonable doubt. State

[9] Valdiviez does not dispute that a hotel room satisfies the statute's "premises" definition.

v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). A claim of insufficiency admits the truth of the State's evidence and all inferences reasonably drawn from it. State v. Sanchez, 60 Wn. App. 687, 693, 806 P.2d 782 (1991). Valdiviez does not dispute the sold, gave, or supplied means. RCW 66.44.270(1).

Valdiviez specifically claims:

> [I]n order to violate [control over the premises] portion of the statute the defendant must have had a legal right to control who comes onto the premises. Absent a legal right to exclude people from the premises, the 'premises' cannot be under the defendant's control, and thus he cannot be convicted under this subsection of the statute.

Appellant's Br. at 39. He then argues that no evidence shows that the hotel room where he stayed was under his control because (1) he "had no legal authority to exclude [RM] from the hotel room, and no one ever testified that he did" and (2) RM's grandfather, William Hill, "rented" all three rooms and "checked out of the rooms when they left the hotel." From this he concludes "Valdiviez had no control over the premises." Appellant's Br. at 40-41. In essence, Valdiviez claims that the definition of "control" for purposes of the statute means a legal right to exclude people from the premises.[10] We disagree.

We review questions of statutory interpretation de novo. State v. Landsiedel,

[10] We are unpersuaded by Valdiviez's reliance on S & S Market v. Washington State Liquor Control Board, 65 Wn. App. 517, 828 P.2d 1154 (1992) (holding convenience store lacked control over nearby streets and sidewalks); Houck v. Univ. of Wash., 60 Wn. App. 189, 803 P.2d 47 (1991) (holding students' dormitory rooms not premises under university control); and Baynes v. Rustler's Gulch Syndicate, LLC, 142 Wn. App. 335, 173 P.3d 1000 (2007) (holding landowner not liable for underage trespasser's drinking), for the purpose of defining "control." Those cases are factually and legally distinguishable and provide no support for the definition.

165 Wn. App. 886, 891, 269 P.3d 347 (2012). Statutory interpretation requires courts to give effect to the legislature's intent and purpose in passing the law. State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003). Statutory interpretation begins with the statute's plain meaning. Lansiedel, 165 Wn. App. at 891. When the plain language is unambiguous,[11] the legislative intent is apparent and we will not construe the statute otherwise. J.P., 149 Wn.2d at 450. The meaning of words in a statute is not gleaned from those words alone but from all the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, the general object to be accomplished and consequences that would result from construing the particular statute in one way or another. State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994).

Neither the statute nor chapter 66.44 RCW defines the term "control." The parties did not request and the court gave no control definition instruction. Nontechnical terms are given their ordinary dictionary meaning if they are not otherwise defined by a statute or jury instruction. State v. Edwards, 84 Wn. App. 5, 10, 924 P.2d 397 (1996); State v. Holt, 119 Wn. App. 712, 720, 82 P.3d 668 (2004), rev'd on other grounds by State v. Easterlin, 126 Wn. App. 170, 173, 107 P.3d 773 (2005).

Valdiviez ignores these well-established rules of statutory interpretation relying instead on inapposite case authority. See supra note 10. The ordinary definition of "control" means "to have power over." Webster's Third New International Dictionary 496 (2002). Webster's online dictionary also defines "control" as "[e]xercise

[11] Valdiviez claims the statute is ambiguous; thus, the rule of lenity applies in his favor. But he acknowledges the rule's application only where legislative intent is absent. Valdiviez offers no plausible interpretations of the statute.

authoritative control or power over." Webster's Online Dictionary, http://www.websters-online-dictionary.org (last visited May 21, 2012). Nothing in the plain language of the furnishing liquor to minors statute, or chapter 66.44 RCW, or the dictionary definitions of "control" requires a defendant to "have the legal right to exclude people from the premises." Appellant's Br. at 39. The record undisputedly shows that Valdiviez was a registered overnight hotel guest occupying a room with his adult girl friend and minor age cousin.[12] He had a room key and kept personal belongings, liquor and a gun in the room. His grandfather, William Hill, paid for Valdiviez's room and two other rooms where other family members stayed. Given these facts and the ordinary meaning of control, the jury could reasonably conclude that Valdiviez, a registered hotel guest, had authority over the room he occupied.[13]

The purpose of the furnishing liquor to minors statute also supports a broad definition of control intended by the legislature in adopting this statute. "Obviously, RCW 66.44.270 was intended to prohibit all illicit contact an underage person might have with alcohol." State v. Hornaday, 38 Wn. App. 431, 433, 685 P.2d 653 (1984), rev'd on other grounds, State v. Hornaday, 105 Wn.2d 120, 713 P.2d 71 (1986). RCW 66.44.270 "'protects a minor's health and safety interest from the minor's own inability

[12] RCW 19.48.020 requires hotels and motels to keep records of a guest's arrival and departure for one year.

[13] The court instructed the jury in instruction 14 that "[c]ircumstantial evidence is evidence of facts or circumstances from which the existence or non existence of other facts may be reasonably inferred from common experience. . . ." Accordingly, the jury was permitted to infer based on common experience that a registered hotel guest has authority over the hotel room he or she occupies.

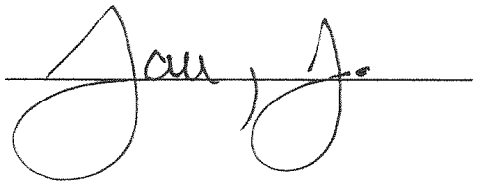
to drink responsibly.'" State v. Hinds, 85 Wn. App. 474, 482-483, 936 P.2d 1135 (1997) (quoting Hansen v. Friend, 118 Wn.2d 476, 481, 824 P.2d 483 (1992)). "[O]ur Legislature has recognized the explosive combination of liquor and youth." Hinds, 85 Wn. App. at 482 (citing RCW 66.44.270(1)).

Finally, in undertaking a plain language analysis, we avoid interpreting a statute in a manner that leads to unlikely, strained, or absurd results. J.P., 149 Wn.2d at 450. Here, it would be unreasonable to assume that the legislature intended to limit the statute's reach to only a narrow class of individuals with a legal right to exclude others from the premises. Accordingly, we conclude the statute is unambiguous. A statute is ambiguous when two or more reasonable interpretations exist. State v. Kintz, 169 Wn.2d 537, 549, 238 P.3d 470 (2010). Because the statute here is unambiguous, the rule of lenity does not apply. State v. Jacobs, 154 Wn.2d 596, 601, 115 P.3d 281 (2005) (If a criminal statute is ambiguous, the rule of lenity requires us to construe the statute in favor of the defendant absent legislative intent to the contrary.).

Even if we assume the legislature intended this result, the jury could reasonably infer, based on common experience, that a registered hotel guest is empowered to exclude strangers from his hotel room. See supra note 13; see also State v. Ramirez, 49 Wn. App. 814, 817, 746 P.2d 344 (1987); accord State v. Davis, 86 Wn. App. 414, 419, 937 P.2d 1110 (1997) (overnight hotel guest has a privacy interest in the hotel room). We conclude substantial evidence supports the alternative means—permitting any person under 21 to consume liquor on any premises under his or her control.

Conclusion[14]

Because the trial court properly excluded the evidence of RM's alleged "age: 19" representation, Valdiviez establishes no confrontation clause violation, and sufficient evidence supports the alternative means of control over the premises, we affirm the convictions.



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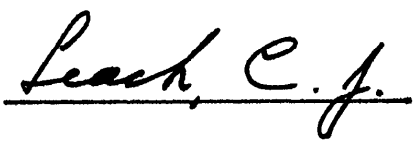

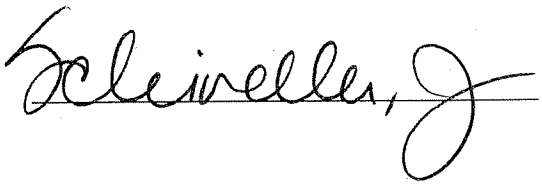

[14] Given our disposition, we need not reach the State's cross appeal.