SUPREME COURT NO. 90591-6

NO. 69950-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MAURICE VAN THROWER,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Barbara Linde, Judge

PETITION FOR REVIEW

DAVID KOCH
Attorney for Petitioner

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

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A. IDENTITY OF PETITIONER

Petitioner Maurice Thrower, the appellant below, asks this Court to review the Court of Appeals decision referred to in Section B.

B. COURT OF APPEALS DECISION

Thrower requests review of the Court of Appeals decision in State v. Thrower, COA No. 69950-4-I, filed June 30, 2014 (attached).

C. ISSUES PRESENTED FOR REVIEW

1. Did the trial court violate Thrower's right to public trial when, during jury selection, it had counsel exercise peremptory challenges in a manner preventing the public from scrutinizing events?

2. Was defense counsel ineffective for accidentally opening the door to otherwise inadmissible and highly prejudicial evidence?

3. Was the limiting instruction addressing the evidence to which counsel opened the door incomplete and insufficient?

4. Is review appropriate where the Court of Appeals' resolution of the above issues conflicts with Supreme Court and Court of Appeals precedent and the case presents significant constitutional issues?

5. Should this Court also review issues petitioner raised in his Statement of Additional Grounds for Review?

D. STATEMENT OF THE CASE

The King County Prosecutor's Office charged Maurice Thrower with two counts of child molestation in the first degree, alleging that he had improper contact with his girlfriend's daughter, T.W., sometime during the period from October 18, 2004 to October 17, 2007. CP 1-6.

1. Jury Voir Dire

During the selection of Thrower's jury, after the court and counsel finished questioning prospective jurors, counsel were offered the opportunity to exercise their peremptory challenges. SRP[1] 250. The process was conducted in such a manner that members of the public could not see or hear the attorneys exercising their challenges. The court explained:

> So, the process now is as follows: The parties, the attorneys, are going to make their selections known to the Court here in a few minutes. I'm going to take advantage of the time while they are doing their work to instruct you what comes next. And this is a way of using time efficiently, but it really, especially, applies to the 13 jurors who will hear this case.

SRP 250.

The court proceeded to give potential jurors preliminary instructions regarding the duties of a juror and a general description of

[1] "SRP" refers to the supplemental verbatim report of proceedings of jury selection, which occurred on January 3, 7, and 8, 2013.

what would occur at trial. SRP 250-256. Meanwhile, the attorneys exercised their peremptory challenges by writing them down on a sheet of paper that was passed back and forth. SRP 257; CP 95.

When both sides had completed their challenges, the court excused those individuals already sitting in the jury box that had been challenged by one side or the other and filled their spots with the next several unchallenged jurors. Challenged jurors not yet in the box were not identified publicly in the courtroom. They were simply excused with the rest of the individuals not chosen. SRP 257-259. At no time did the court announce which party had removed which potential jurors. Instead, the court filed a document containing this information. See CP 95.

2. Trial Evidence

Maurice Thrower and Jennifer Wells began dating in 2005. RP 76, 456-457. Wells lived in Northgate with her daughter, T.W. (who was eight years old at the time), and T.W.'s younger brother. RP 78-79, 88. Thrower kept some of his personal belongings at the home and sometimes stayed the night. RP 80-81. Everyone got along well and T.W. did not seem to have any issues with Thrower, whom she called "Moe." RP 82-83.

Within about 6 months of meeting Thrower, Wells and her children moved to the Burke-Gilman Place Apartments off Sand Point Way. RP 78,

84-85, 354. As before, Thrower kept personal belongings at the home. He also began staying the night more frequently and helped around the apartment and with the children. RP 84-85. Wells worked during the day and hired a babysitter – C.A. – to watch the children. RP 85-86. Wells had Thrower come by the apartment to check in on C.A. and the children. RP 121-122.

Wells and Thrower parted ways in 2007. RP 463. During the last six months of their relationship, it was apparent T.W. no longer liked Thrower. She would snap at him and was generally disrespectful towards him. RP 86-87. T.W. was 10 years old when the relationship ended. RP 88. She was glad to have Wells "all to herself." RP 90, 126. But Wells and Thrower remained in touch and, in fact, planned to reunite some day, a plan T.W. knew about. RP 89-90, 139.

When T.W. was 12 years old, Wells caught her "sexting" nude photographs of herself to a boy. Wells was very upset with T.W. and began screaming at her. RP 96-97. T.W. had never seen her mother so angry. RP 133. Wells took away T.W.'s phone and grounded her. RP 266. Wells asked T.W. why she was acting out and if anyone was touching her. RP 266-267. For the first time, T.W. claimed that Thrower had molested her. RP 97-98, 147-148, 266-267. Wells was shocked. RP 98. Ultimately,

however, because T.W. did not want her mother to contact police, she did not. RP 101-102. In fact, no report was made until January 2012. RP 106, 180-181. By that time, it had been years since T.W. had seen Thrower, but T.W. learned that Thrower had returned to the area. RP 270-273.

At trial, T.W. testified that, while the family still lived in the Northshore home, Thrower began coming into her bed at night. RP 214. Wearing boxer shorts, he would get under the covers and lie down behind her. RP 214-217. He would place his hands on her sides, hip, or stomach, and she could feel that he had an erection. RP 218-219, 236. She testified she did not tell anyone at the time because she believed she might get in trouble. RP 221-222.

According to T.W., similar behavior continued at Burke-Gilman Place, although it did not occur in her bedroom. Instead, it occurred in a downstairs room with couches and a television. On weekends, T.W. sometimes slept there. RP 223, 225-229, 237-240. On one occasion, she fell asleep on the floor next to her two younger cousins. RP 226-227, 234-235. According to T.W., she woke up to find Thrower's hand on her breast. She pulled away, and Thrower left. RP 223, 235-237. On a subsequent occasion, T.W. awoke on the couch to find Thrower's hand

down her pants and touching her thigh. She told him to get off of her, and he never again attempted to touch her. RP 251-253.

The defense impeached T.W. by focusing on many inconsistencies in her versions of events depending on when and to whom she was speaking. RP 289-308, 313-317, 331-340. Although T.W. claimed the touching would happen at night when she was going to bed or already asleep, Wells testified she never found Thrower engaged in suspicious activities at night. RP 81-82, 90-93, 215, 220-221.

T.W. testified she did not tell anyone she had been abused even after Thrower moved away because she was afraid he might come back. RP 240-241. T.W. denied making up the story about abuse to avoid being punished for sexting. RP 268. T.W. also testified that once she disclosed, she did not feel the need to report the abuse to police so long as Thrower was out of their lives. RP 268-269. She changed her mind, however, after she learned Thrower was back in the area. RP 136-141, 151, 271-272.

The parties stipulated that Thrower was out of the community – and therefore could not have engaged in the charged acts – prior to February 16, 2005, and also between June 16 and June 30, 2005. RP 455. Moreover, there was an approximately 5-month period in 2006, during which the father

of Wells' son was staying with Wells in the Burke-Gilman Place apartments, when Thrower was not staying in the apartment at all. RP 116-121.

Thrower took the stand in his own defense, denying all of T.W.'s allegations of inappropriate sexual contact. RP 463.

3. Defense Counsel Opens The Door

One of the State's expected witnesses at trial was T.W.'s former babysitter, C.A., who was three years older than T.W. RP 241-249, 355-359. A subject the State had no intention of exploring was C.A.'s own claim that Thrower also had inappropriate sexual contact with her. The State recognized this incident – which did not involve T.W. – "was too far afield." RP 382-383. Defense counsel had full notice of the allegation, and C.A. had been specifically instructed by the prosecutor not to mention it. RP 388-389. Unfortunately, defense counsel made a serious mistake while questioning C.A., opening the door to this damaging evidence. RP 386-399.

C.A.'s purpose on the stand was merely to describe an occasion where she saw Thrower's penis. According to C.A., when she was twelve and T.W. was nine, the two were playing in T.W.'s bedroom at the Burke-Gilman Place apartments when the door opened and Thrower walked in with his semi-erect penis poking out the fly of his jeans. RP 359-363. He asked the girls the sit on the bed, spoke to them (she could not recall the topic),

indicated they could continue playing, and left the room. RP 361, 364. C.A. believes Thrower's penis is uncircumcised,[2] although she cannot be certain. RP 375. Nor can she be certain that Thrower even knew they could see his penis. RP 377. When he entered the room, he was walking in a hunched position. RP 362. Moreover, his penis was no longer visible by the time the girls sat on the bed. RP 375.

On direct examination, the prosecutor inquired why C.A. had not told anyone about this incident, and C.A. responded that she had been scared. RP 364-366. On cross-examination, defense counsel followed up on this line of questioning:

Q: You were the babysitter?

A: Yes.

Q: And didn't do anything about this alleged incident at the time?

A: No.

Q: You say you were scared, has Mr. Thrower ever threatened you?

A: No.

Q: Has he ever done anything to make you fear him, physical, other than your allegations around this?

RP 378.

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[2] In fact, Thrower is circumcised. RP 463.

At this point, C.A. did not provide an audible response. She shook her head up and down (indicating Thrower had done something physical to cause her fear), began to shake, and began to cry. RP 378-379, 385, 387. Defense counsel returned to a prior question, asking C.A. whether Thrower had ever threatened her, to which she again answered "no." RP 379. Defense counsel then moved on. RP 379.

At the next break, the prosecutor pointed out that defense counsel had just opened the door to the other, unrelated incident involving C.A. that the State had not previously intended to use. RP 382-386, 388. Judge Linde agreed. RP 387-388, 391.

On redirect, the prosecutor asked C.A. whether Thrower had done something to make her fearful of him. She answered "yes" and then provided details. RP 393. According to C.A., a couple of days after seeing Thrower's penis, she was at Wells' apartment doing laundry in the kitchen. RP 393. T.W. was outside playing. RP 394. Thrower picked her up and carried her to the living room, where he kissed her on the forehead. RP 394-395. Thrower told C.A. they were going upstairs and that it was okay. RP 395. He then carried her upstairs to the master bedroom and placed her on the bed, where he kissed her on the neck and chest. C.A. was crying, and

Thrower stopped. Before leaving the room, he told her they would keep the incident just to themselves. RP 395-397.

In an attempt to mitigate the damage from this evidence, defense counsel drafted a limiting instruction. CP 54; RP 440.

A jury convicted Thrower on both charges. CP 64-65. Judge Linde imposed concurrent indeterminate sentences of 180 months to life, and Thrower timely filed his Notice of Appeal. CP 70, 81-94.

On appeal, Thrower argued – among other issues – that the manner in which peremptory challenges were made violated his right to public trial, and defense counsel's act of opening the door to C.A.'s molestation claim denied him his right to effective representation and a fair trial. The Court of Appeals rejected these claims. See Slip op., at 6-13.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. DIVISION ONE'S RESOLUTION OF THE PUBLIC TRIAL CLAIM CONFLICTS WITH DECISIONS IN DIVISIONS TWO AND THREE AND PRESENTS SIGNIFICANT CONSTITUTIONAL QUESTIONS.

Under both the Washington and United States Constitutions, a defendant has a constitutional right to a speedy and public trial. Const. art. 1, § 22; U.S. Const. amend. VI. Additionally, article I, section 10 expressly guarantees to the public and press the right to open court proceedings. State v. Easterling, 157 Wn.2d 167, 174, 137 P.3d 825

(2006). The First Amendment implicitly protects the same right. Waller v. Georgia, 467 U.S. 39, 46, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984).

The right to a public trial is the right to have a trial open to the public. In re Pers. Restraint of Orange, 152 Wn.2d 795, 804-05, 100 P.3d 291 (2004). This is a core safeguard in our system of justice. State v. Wise, 176 Wn.2d 1, 5, 288 P.3d 1113 (2012). The open and public judicial process helps assure fair trials, deters perjury and other misconduct by participants, and tempers biases and undue partiality. Wise, 176 Wn.2d at 6. It is a check on the judicial system, provides for accountability and transparency, and assures that whatever transpires in court will not be secret or unscrutinized. Id. The public trial requirement also is for the benefit of the accused: "that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions." State v. Bone-Club, 128 Wn.2d 254, 259, 906 P.2d 325 (1995) (quoting In re Oliver, 333 U.S. 257, 270 n. 25, 68 S. Ct. 499, 92 L. Ed. 682 (1948)).

As an initial matter, Division One's decision in Thrower's case *properly* recognizes that the right to public trial encompasses peremptory challenges. This should not be surprising. As Division One

acknowledged, the right to public trial extends to the process of jury selection and violations have been found where "the trial court conducted discussions with and/or dismissed potential jurors in a closed courtroom, chambers, or other private setting, outside the public eye." Slip op., at 11 (citing multiple cases).

More surprising is that Division One's decision in this regard conflicts with decisions in Division Two and Three, both of which have held the right to public trial does not extend to juror challenges. See State v. Love, 176 Wn. App. 911, 920, 309 P.3d 1209 (2013) (Division Three holds that, under "experience and logic" test, private exercise of peremptory or cause challenges does not violate right to public trial), petition for review pending, No. 89619-4 (12/9/13); State v. Dunn, ___ Wn. App. ___, 321 P.3d 1283, 1285 (2014) (Division Two adopts reasoning in Love and holds that the public trial right does not attach to jury challenges), petition for review pending, No. 90238-1 (5/16/14). This conflict among the divisions warrants review. See RAP 13.4(b)(2) (conflict among Court of Appeals decisions).

Although Division One parted ways with Divisions Two and Three on whether the right to public trial includes juror challenges, it nonetheless

concluded that Thrower's public trial rights had not been violated based on its finding that the exercise of peremptory challenges had been public:

> The record here does not support Thrower's claim that a closure occurred during jury selection in his trial. . . . Counsel considered and recorded their uncontested peremptory challenges in open court. The form used identified the prospective jurors by number, the order in which counsel made the challenges, and the party who made them. Members of the public saw the dismissed jurors leave and observed which jurors remained. The court did not announce which attorney had challenged each juror. But that same day the court filed the list as part of the record. Thrower does not dispute that this information was accessible as a public record.
>
> We note that the court clerk electronically filed the form the same day counsel completed it. Thus, no significant delay occurred in public access to it. We do not address here two different factual scenarios – first, a significant delay in public access to the form or, second, the complete lack of public access to it. Either may undermine the right to open administration of justice. Here, the trial court's procedure, together with timely public access to the record, protected both "the core values of the public trial right" and the open administration of justice. While we do not endorse the trial court's practice, we hold that it did not violate Thrower's right to a public trial.

Slip op., at 12-13 (footnotes omitted).

This Court should reject Division One's conclusion that filing a form, after the fact, which lists (by juror number only) which party removed which juror satisfies public trial guarantees. Regardless whether a courtroom is otherwise open to the public, procedures that shield a

portion of jury selection from public scrutiny violate constitutional rights. See State v. Lormor, 172 Wn.2d 85, 93, 257 P.3d 624 (2011) (closure occurs when portion of proceedings occurs in an inaccessible location).

The openness of peremptory challenges is particularly integral to ensuring the fairness of trial proceedings and to protect against inappropriate discrimination. While members of the public could discern at Thrower's trial, *after the fact*, which prospective jurors had been removed and by whom (generously assuming they knew to look in the court file), the public could not tell at the time of the challenges which party had removed any particular juror, making it impossible to determine, for example, whether a particular side had targeted any particular group based on gender or race.[3] See State v. Burch, 65 Wn. App. 828, 833-834, 830 P.2d 357 (1992) (identifying both as protected classes); see also State v. Saintcalle, 178 Wn.2d 34, 309 P.3d 326 (lead opinion, concurrence, and dissent underscore harm resulting from improper race-based exercises of peremptory challenges and difficulty of prevention), cert. denied, 134 S. Ct. 831, 187 L. Ed. 2d 691 (2013).

Such targeting can only be detected if peremptory challenges are made in open court in a manner allowing the public to determine, in real

time, whether one side or the other is removing jurors for impermissible reasons. In Thrower's case, even if – after jury selection – members of the public knew to look in the court file for the sheet of paper documenting peremptory challenges, they would have to recall the identify, gender, and race of those individuals to determine whether a protected group had been targeted. This would have required members of the public to recall the specific features of 14 individuals identified only by their juror numbers. See CP 95. This is not realistic. Division One found that delay in filing the sheet or lack of public access to it could violate the public trial right. There is no practical difference.

This Court should accept review to reconcile the conflict among the divisions on whether the public trial right includes juror challenges and, if so, to establish mandatory constitutional practices for such challenges. Review is appropriate under RAP 13.4(b)(2) and (b)(3).

2. THE COURT OF APPEALS' DECISION REGARDING DEFENSE COUNSEL OPENING THE DOOR TO HIGHLY DAMAGING EVIDENCE CONFLICTS WITH PRECEDENT FROM THIS COURT.

Both the federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. VI; Wash. Const. art. 1, §

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[3] The trial judge in Thrower's case recognized that if any party were going to dismiss a prospective juror for improper reasons, the issue would arise during peremptory challenges. See RP 42-44.

22. A defendant is denied this right when his or her attorney's conduct "(1) falls below a minimum objective standard of reasonable attorney conduct, and (2) there is a probability that the outcome would be different but for the attorney's conduct." State v. Benn, 120 Wn.2d 631, 663, 845 P.2d 289 (citing Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)), cert. denied, 510 U.S. 944 (1993).

The Court of Appeals recognized that defense counsel's act of opening the door to C.A.'s claim that she also had been molested by Thrower was not the result of strategy or tactics. Slip op., at 7. Yet, the Court of Appeals found no deficient performance. Slip op., at 7-8. It is not clear how. Counsel was well aware of C.A.'s claim, which even the State did not intend to use at trial. RP 382-383. As the Court of Appeals acknowledged, defense counsel fought unsuccessfully to keep the evidence out after accidentally opening the door. Slip op., at 5, 7. Thrower established deficient performance.

The Court of Appeals' prejudice analysis conflicts with precedent from this Court. The Court refers to "substantial circumstantial evidence apart from C.A.'s testimony" establishing Thrower's guilt, but provides only one weak example: that Thrower was familiar with T.W.'s bed because he said it was squeaky. Slip op., at 8.

In the absence of C.A.'s testimony that Thrower had also abused her, there was a reasonable likelihood of acquittal: no one had witnessed the alleged touchings of T.W., there was no physical evidence of abuse, T.W. waited a long time to allege abuse and even longer to report it to law enforcement, and Thrower never admitted the conduct. The parties agreed that the jury's verdicts would turn on credibility – whether jurors believed T.W.'s claims of sexual contact. RP 525-527, 545-546, 556, 569-570. And jurors were far more likely to believe T.W. once they heard C.A. claim that she, too, had been a victim.

The Court of Appeals' refusal to find reversible prejudice conflicts with this Court's recent decisions in State v. Gower, 179 Wn.2d 851, 857-858, 321 P.3d 1178 (2014) (emphasizing potential prejudice from admission of other bad acts – a sex offense against someone else – at its highest in sex cases and finding admission of evidence not harmless where defendant's conviction otherwise turned on victim's credibility due to absence of eyewitnesses) and State v. Gresham, 173 Wn.2d 405, 433, 269 P.3d 207 (2012) (same).

Similarly, the Court of Appeals' rejection of Thrower's challenge to the limiting instruction directed at C.A.'s testimony conflicts with precedent. The instruction, submitted by defense counsel, indicates:

> Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of the testimony of [C.A.] with regards to the allegation concerning the Defendant picking her up, carrying her, and kissing her and my be considered by you only for the purpose of determining whether she had reason to fear the Defendant. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

CP 54; RP 440.

Some evidence (and C.A.'s testimony qualifies) simply is not susceptible to limiting instructions. See State v. Escalona, 49 Wn. App. 251, 255, 742 P.2d 190 (1987). But even if an instruction could have sufficed in Thrower's case, the instruction used fell short. Where a limiting instruction is requested, it must be correct. Gresham, 173 Wn.2d at 424. "An adequate ER 404(b) limiting instruction must, at a minimum, inform the jury of the purpose for which the evidence is admitted and that the evidence may not be used for the purpose of concluding that the defendant has a particular character and has acted in conformity with that character." Id. at 423-424 (emphasis added).

The instruction used at Thrower's trial never explicitly informed jurors that C.A.'s testimony could not be used to establish his character and actions in conformity with that character. It is inconsistent with the requirements of Gresham.

Because the Court of Appeals' decision conflicts with this Court's precedent, review is appropriate under RAP 13.4(b)(1).

3. THIS COURT SHOULD ALSO ACCEPT REVIEW OF THROWER'S CHALLENGES IN HIS STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW.

In his Statement of Additional Grounds for Review, Thrower made several challenges: the prosecutor suborned perjury, ineffective assistance of trial counsel for failure to call witnesses, the admission of improper opinion testimony or bolstering evidence, discovery violations, prosecutorial misconduct during closing, and insufficiency of the evidence. See Statement of Additional Grounds for Review (filed 8/19/13); Slip op., at 13-18. Thrower respectfully also requests review of these issues.

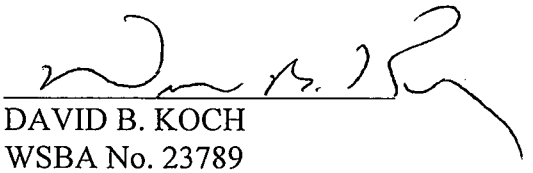
F. CONCLUSION

For the reasons discussed above, Thrower respectfully asks this Court to grant his Petition and reverse the Court of Appeals.

DATED this 29th day of July, 2014.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



DAVID B. KOCH
WSBA No. 23789
Office ID No. 91051

Attorneys for Petitioner

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MAURICE VAN THROWER, Appellant.	)	NO. 69950-4-I DIVISION ONE UNPUBLISHED OPINION FILED: June 30, 2014

LEACH, J. — Maurice Thrower appeals his convictions for two counts of child molestation in the first degree. Thrower claims that he received ineffective representation when defense counsel "opened the door" to evidence of Thrower's uncharged misconduct and that a subsequent limiting instruction did not cure the resulting prejudice. Thrower also contends the trial court violated his public trial right by directing counsel to exercise peremptory challenges using a written list. In a statement of additional grounds, Thrower also alleges subornation of perjury, ineffective assistance of counsel, impermissible opinion testimony, a Brady[1] violation, prosecutorial misconduct, and insufficient evidence to support his convictions. Because Thrower fails to show ineffective assistance or a public trial violation and the further allegations in his statement of additional grounds have no merit, we affirm his convictions.

[1] Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

FACTS

In 2005, Maurice Thrower and Jennifer Wells began dating. Wells lived in Northgate with her eight-year-old daughter, T.W., and T.W.'s younger sibling. Thrower kept his personal belongings at the home and sometimes stayed the night.

In spring 2006, Wells moved the family to the Burke Gilman Place Apartments in north Seattle. Thrower moved his personal belongings to the apartment and sometimes stayed the night. Wells worked during the day and hired a babysitter, C.A., to watch the children. Wells had Thrower come by the apartment to check in on C.A. and the children. By this time, T.W.'s relationship with Thrower had changed; T.W. became openly rude and was generally disrespectful toward him. Thrower and Wells's relationship also deteriorated during this time, and they ended the relationship in 2007, when T.W. was 10 years old.

When T.W. was 12 years old, Wells discovered that T.W. was using her phone to send nude photographs of herself to a boy. Wells asked T.W. why she was acting out and if anyone was touching her. T.W. told her mother that Thrower had sexually molested her. T.W. did not want her mother to contact the police, so Wells did not. When she was 16, T.W. learned that Thrower was back in the community and decided to report the incidents to the police. The State charged Thrower with two counts of child molestation in the first degree.

Before trial, it came to light that C.A., who was one of the State's witnesses, had alleged that Thrower had also had inappropriate sexual contact with her. The prosecutor initially did not seek to introduce evidence of this incident because it was "too far afield."

After voir dire of prospective jurors and still in open court, counsel each exercised seven peremptory challenges by alternately listing juror numbers on a form pleading titled "Peremptory Challenges." The form contained two columns of numbered blank lines, one labeled "Plaintiff/Petitioner" and the other "Defendant/Respondent." While counsel passed the form back and forth, the trial court gave jurors preliminary oral instructions.[2] Once counsel completed the form and signed it, the court read aloud the numbers of the five excused jurors seated in the jury box, filled their seats and one alternate with jurors from the venire, and excused the rest of the panel. That same day, the court filed the form with the county clerk.

At trial, Wells testified that there were "a lot of times" when she would wake up and notice Thrower was no longer in her bed. T.W. testified that while she lived with her mother in the Northgate home, Thrower would enter her room at night and crawl into her bed. She testified that she would often wake up to find Thrower lying beside her, pressing his erection against her buttocks and running

[2] The court explained to the jury, "I'm going to take advantage of the time while [counsel] are doing their work [of exercising peremptory challenges] to instruct you on what comes next. And this is a way of using time efficiently, but it really, especially, applies to the 13 jurors who will hear this case."

his hands over her hips and legs. T.W. also testified about an occasion when she was sleeping on the floor of the living room with her two younger cousins and awoke to find Thrower next to her, touching her breast beneath her tank top. When she moved away from him, Thrower stopped and "went back upstairs." T.W. testified that Thrower continued entering her bedroom at night, lying beside her and placing his hands on her hips. C.A. and T.W. both testified that one day they were playing at T.W.'s apartment when Thrower entered the room with his erect penis "hanging out of his zipper."

At trial, C.A. testified that when she was 11 or 12, she would babysit T.W. at Wells's apartment. C.A. said that Thrower "was never [at T.W.'s house], except for the one time" when Thrower exposed himself to the girls. During cross-examination, defense counsel pointed out several inconsistencies between C.A.'s trial testimony and her earlier investigation interviews. Counsel noted that even though C.A. was T.W.'s babysitter, C.A. "didn't do anything about this alleged incident at the time." C.A. confirmed that she did not report the incident to either her mother or Wells. Next, the following exchange occurred:

> [Defense]: You say you were scared, has Mr. Thrower ever threatened you?
>
> [C.A.]: No.
>
> [Defense]: Has he ever done anything to make you fear him, physical, other than your allegation around this?
>
> [State]: I can't hear the witness's response.
>
> [Defense]: She hasn't given one.

[State]: Well, I thought she was shaking her head.

[Defense]: Has he ever threatened you?

[C.A.]: No.

[Defense]: No?

C.A. was crying and "shaking." Defense counsel continued cross-examination.

Outside the presence of the jury, the State argued that by asking C.A. about anything "physical" Thrower did to make her afraid, defense counsel opened the door to the earlier incident involving C.A. and Thrower. The prosecutor had instructed C.A. that "she was absolutely not permitted to talk about the second incident" and argued that is likely why "[C.A.] said [Thrower] only came by the one time." Defense counsel argued that he was questioning C.A. about the specific incident involving Thrower's exposure, not any other incident. The trial court ruled that defense counsel's question of anything "physical, other than your allegations around this" had opened the door and that the evidence was "highly relevant and not unfairly prejudicial" because it went to C.A.'s credibility. Defense counsel requested and received a limiting instruction under ER 404(b).

On redirect, C.A. testified about another incident that she had not mentioned earlier because "[she] was told that the story wasn't going to be brought in." The State asked C.A. whether Thrower had done something to make her fearful of him. C.A. answered, "[Y]es," and then provided details. According to C.A., a couple of days after Thrower exposed himself, C.A. was doing laundry in the kitchen. T.W. was outside playing at the time, and no one

else was in the house. Thrower picked C.A. up and carried her into the living room, where he kissed her on her forehead. Thrower then said they were going upstairs and that it was okay. Once upstairs in Wells's bedroom, Thrower was on top of C.A., and he started to kiss her on her neck and chest. C.A. did not say anything and started crying. Thrower told C.A. they were going to keep this to themselves and went downstairs. After the incident, C.A. stopped going to Wells's house to babysit, and she testified that she was still scared of Thrower.

Thrower testified in his own defense and denied all allegations of inappropriate sexual conduct. The parties stipulated to Thrower's absence from the community before February 16, 2005, and from June 16-30, 2005.

The jury found Thrower guilty as charged. The court imposed an indeterminate standard range sentence of 180 months to life.

Thrower appeals.

ANALYSIS

Ineffective Assistance of Counsel

Thrower first alleges that his trial counsel provided ineffective assistance to Thrower's significant prejudice by opening the door to testimony about Thrower's uncharged misconduct. This court reviews an ineffective assistance of counsel claim de novo as a mixed question of law and fact.[3] To establish ineffective assistance of counsel, Thrower must show (1) that his counsel's

[3] State v. Davis, 174 Wn. App. 623, 639, 300 P.3d 465 (citing State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009)), review denied, 178 Wn.2d 1012 (2013).

conduct fell below an objective standard of reasonableness and (2) a reasonable possibility that but for counsel's deficient performance, the outcome of his trial would have been different.[4] We strongly presume the adequacy of trial counsel's assistance.[5] A defendant must establish both prongs of the test to succeed with an ineffective assistance of counsel claim.[6]

By asking if Thrower had "ever done anything to make you fear him, physical, other than your allegations around this," the defense intended to show only that Thrower never "threatened" C.A. Defense counsel did not make a strategic or tactical decision to open the door to Thrower's alleged earlier uncharged conduct, given counsel's strenuous objections to admission of C.A.'s testimony about the incident.

Our Supreme Court has stated that "questions on cross-examination may elicit surprisingly damaging answers," but "the competence of counsel must be judged from the whole record and not from isolated segments of it."[7] The law affords trial counsel wide latitude in the choice of tactics.[8] Defense counsel's continued cross-examination of C.A. was aimed at highlighting inconsistencies in her testimony. In closing argument, defense counsel again used the incident to attack C.A.'s credibility, arguing that C.A. "was crying because she got caught

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[4] State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004) (citing State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)).

[5] Reichenbach, 153 Wn.2d at 130 (citing State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995)).

[6] Strickland v. Washington, 466 U.S. 668, 697, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

[7] State v. Piche, 71 Wn.2d 583, 590-91, 430 P.2d 522 (1967).

[8] Piche, 71 Wn.2d at 590.

lying" and "[s]he got caught with inconsistencies." Counsel requested and received a limiting instruction. Thrower has not shown that defense counsel's tactics constitute deficient performance.

Our Supreme Court has also recognized that when evaluating similar fact evidence, "[a] careful and methodical consideration of relevance, and an intelligent weighing of potential prejudice against probative value is particularly important in sex cases, where the prejudice potential of prior acts is at its highest."[9] Here, we conclude that Thrower has not shown prejudice. The State presented substantial circumstantial evidence apart from C.A.'s testimony, including Thrower's own testimony, which had a detailed description of T.W.'s bed. Thrower described T.W.'s "metal futon bed" and testified "it made a lot of noise" and would squeak, though he had earlier said that he only "cleaned her room" one time. Viewing the admission of C.A.'s testimony about the uncharged misconduct in the context of the whole record, Thrower fails to show a reasonable possibility that but for this claimed error, the outcome of his trial would have been different.

Limiting Instruction

Defense counsel submitted the following limiting instruction, which the trial court gave to the jury:

> Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of the testimony of [C.A.] with regards to the allegation concerning the Defendant picking her up, carrying her, and kissing her and may be considered by you

[9] State v. Saltarelli, 98 Wn.2d 358, 363, 655 P.2d 697 (1982).

> only for the purpose of determining whether she had reason to fear the Defendant. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

Thrower contends that this limiting instruction was "incomplete and insufficient" because it failed to state explicitly "that jurors could not use the evidence to show appellant had a particular character (child molester) and acted in conformity with that character."

We review de novo alleged errors of law in jury instructions.[10] We apply an abuse of discretion standard to questions concerning the number and specific wording of instructions.[11]

> An adequate ER 404(b) limiting instruction must, at a minimum, inform the jury of the purpose for which the evidence is admitted and that the evidence may not be used for the purpose of concluding that the defendant has a particular character and has acted in conformity with that character.[12]

An error in a limiting instruction is harmless "'unless, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.'"[13]

Here, the court instructed the jury that it admitted the evidence "only for the purpose of determining whether [C.A.] had reason to fear the defendant" and jurors "may not consider it for any other purpose," which would include character.

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[10] Hue v. Farmboy Spray Co., 127 Wn.2d 67, 92, 896 P.2d 682 (1995); Singh v. Edwards Lifesciences Corp., 151 Wn. App. 137, 150, 210 P.3d 337 (2009).

[11] Hue, 127 Wn.2d at 92 n.23 (citing Douglas v. Freeman, 117 Wn.2d 242, 256, 814 P.2d 1160 (1991)).

[12] State v. Gresham, 173 Wn.2d 405, 423-24, 269 P.3d 207 (2012).

[13] Gresham, 173 Wn.2d at 425 (internal quotation marks omitted) (quoting State v. Smith, 106 Wn.2d 772, 780, 725 P.2d 951 (1986)).

This court presumes that the jury followed the trial court's instruction.[14] Thrower does not show a reasonable probability that a different instruction would materially change the outcome of his trial. The limiting instruction was adequate.

Right to a Public Trial

Thrower contends that by having counsel exercise their peremptory challenges on paper during the court's preliminary oral instruction of the jury, the trial court "conducted a portion of jury selection in private." Though all parts of voir dire took place in open court, Thrower asserts this process violated his public trial right because "the public was unable to see or hear what was happening when the attorneys made peremptory challenges."

An alleged violation of the right to a public trial presents a question of law we review de novo.[15] The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee the right of a criminal defendant to a public trial.[16] Article I, section 10 of the Washington Constitution contains an additional guarantee of open court proceedings: "[j]ustice in all cases shall be administered openly, and without unnecessary delay." There is a strong presumption that courts are to be open at all stages of

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[14] State v. Warren, 165 Wn.2d 17, 28, 195 P.3d 940 (2008); State v. Johnson, 124 Wn.2d 57, 77, 873 P.2d 514 (1994).

[15] State v. Sublett, 176 Wn.2d 58, 70, 292 P.3d 715 (2012).

[16] U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."); WASH. CONST. art. I, § 22 ("In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, . . . [and] to have a speedy public trial by an impartial jury.").

trial.[17] The right to a public trial extends to the voir dire of prospective jurors.[18] In those cases where a Washington appellate court has found an improper closure during jury selection, the trial court conducted discussions with and/or dismissed potential jurors in a closed courtroom, chambers, or other private setting, outside the public eye.[19]

A party who proposes closure of a proceeding must show "an overriding interest based on findings that closure is essential to preserve higher values and narrowly tailored to serve that interest."[20] In State v. Bone-Club, the Washington Supreme Court set forth a five-factor test courts must use to evaluate the constitutionality of a proposed closure.[21] In State v. Sublett,[22] the court adopted

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[17] Sublett, 176 Wn.2d at 70.

[18] Presley v. Georgia, 558 U.S. 209, 213, 130 S. Ct. 721, 175 L. Ed. 2d 675 (2010); State v. Wise, 176 Wn.2d 1, 11, 288 P.3d 1113 (2012).

[19] See, e.g., Wise, 176 Wn.2d at 6-7 (partial voir dire in chambers); State v. Paumier, 176 Wn.2d 29, 32, 288 P.3d 1126 (2012) (same); In re Pers. Restraint of Morris, 176 Wn.2d 157, 160-61, 288 P.3d 1140 (2012) (same); State v. Strode, 167 Wn.2d 222, 223, 217 P.3d 310 (2009) (same); State v. Brightman, 155 Wn.2d 506, 509, 122 P.3d 150 (2005) (courtroom closed to public during voir dire); In re Pers. Restraint of Orange, 152 Wn.2d 795, 799-800, 100 P.3d 291 (2004) (same); State v. Njonge, 161 Wn. App. 568, 570, 255 P.3d 753 (2011) (same); State v. Tinh Trinh Lam, 161 Wn. App. 299, 301, 254 P.3d 891 (2011) (interview of juror in chambers).

[20] State v. Momah, 167 Wn.2d 140, 148, 217 P.3d 321 (2009); see also Waller v. Georgia, 467 U.S. 39, 45, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984).

[21] In Bone-Club, the court held that a court must consider the following factors on the record:

> "1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a 'serious and imminent threat' to that right.
>
> "2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
>
> "3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened

the "experience and logic" test articulated by the United States Supreme Court in Press-Enterprise Co. v. Superior Court[23] to determine if a particular process must remain open to the public absent a Bone-Club analysis.

The record here does not support Thrower's claim that a closure occurred during jury selection in his trial. Voir dire, including for-cause challenges and some individual questioning of prospective jurors on sensitive topics, took place in open court. Counsel considered and recorded their uncontested peremptory challenges in open court. The form counsel used identified the prospective jurors by number, the order in which counsel made the challenges, and the party who made them. Members of the public saw the dismissed jurors leave and observed which jurors remained. The court did not announce which attorney had challenged each juror. But that same day the court filed the list as part of the record. Thrower does not dispute that this information was accessible as a public record.

We note that the court clerk electronically filed the form the same day counsel completed it. Thus, no significant delay occurred in public access to it. We do not address here two different factual scenarios—first, a significant delay

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interests.

"4. The court must weigh the competing interests of the proponent of closure and the public.

"5. The order must be no broader in its application or duration than necessary to serve its purpose."

128 Wn.2d 254, 258-59, 906 P.2d 325 (1995) (alteration in original) (quoting Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 210-11, 848 P.2d 1258 (1993)).

[22] 176 Wn.2d 58, 72-73, 292 P.3d 715 (2012).

[23] 478 U.S. 1, 8-10, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986).

in public access to the form or, second, the complete lack of public access to it. Either may undermine the right to open administration of justice. Here, the trial court's procedure, together with timely public access to the record, protected both "the core values of the public trial right" and the open administration of justice.[24] While we do not endorse the trial court's practice, we hold that it did not violate Thrower's right to a public trial.[25]

Statement of Additional Grounds

Thrower raises several pro se arguments. None have merit.

Thrower first contends that the prosecutor suborned perjury by "going along with the State's witnesses [C.A. and T.W.], knowing very well that this testimony was false." The record does not support Thrower's claim. C.A.'s testimony about one incident, when it came to light later that there were two, was not perjury. Nor does defense impeachment highlighting inconsistencies in testimony establish perjury. Thrower does not show that the State suborned perjury.

Second, Thrower alleges that defense's failure to call certain witnesses constituted ineffective assistance of counsel. At trial, Thrower testified in his own defense. Defense counsel did not call any other witnesses. Thrower contends

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[24] Sublett, 176 Wn.2d at 73.

[25] Divisions Two and Three have held that the trial court does not violate a defendant's public trial right by allowing the attorneys to exercise peremptory challenges during a side bar. State v. Dunn, ___ Wn. App. ___, 321 P.3d 1283, 1285 (2014), petition for review filed, No. 90238-1 (Wash. May 16, 2014); State v. Love, 176 Wn. App. 911, 920, 309 P.3d 1209 (2013), petition for review filed, No. 89619-4 (Wash. Dec. 9, 2013).

that testimony from T.W.'s grandmother, uncle, and the uncle's girlfriend that "they lived in the apartment [at various intervals] and were useing [sic] the downstairs as a living quarters would have no doubt created reasonable doubt in the jury producing an acquittal for Thrower." Generally, the decision to call a witness is a matter of legitimate trial tactics and will not support an ineffective assistance of counsel claim.[26] Defense counsel likely considered and decided against pursuing testimony that may not have been favorable to Thrower's case, especially given that these witnesses are members of T.W.'s family. Thrower does not show that this testimony had a reasonable probability of changing the outcome of his trial. We hold that Thrower does not show deficiency and therefore that he does not show ineffective assistance of counsel.

Thrower argues next that certain testimony was improper bolstering and impermissible opinion. At trial, Jennifer Wells testified about what faced T.W. after she reported her allegations against Thrower: "Come to court and tell a bunch of strange people about personal business and things that happened to her." Shannon Williams, a family friend, testified that she had urged Wells to report the allegations: "My feeling was that she needed to tell somebody, that it needed to stop. [T.W.] needed some closure. He—she didn't ever be allowed to do this to anybody again." Detective Kizzier described his interview protocol for child witnesses and testified that in his interview with T.W., "[H]er demeanor became more serious as we spoke about the incidents in question or the

[26] State v. Byrd, 30 Wn. App. 794, 799, 638 P.2d 601 (1981).

allegations in question. And at one point she—when she got to a particular point of her narrative, she had a very—a much more pronounced emotional response." Kizzier's testimony provided context for the interview of a child victim and was rationally based on his perceptions of T.W. during his interview with her.[27] He did not testify that he believed T.W. or that she was telling the truth. Likewise, Wells's and Williams's testimony about "what happened to" T.W. does not constitute improper bolstering of T.W. or impermissible opinion on Thrower's guilt. Defense counsel was able to cross-examine each witness. "A jury must still determine credibility and truthfulness of each witness."[28]

Next, Thrower argues that the prosecutor "failed to disclose impeaching and exculpatory evidence that Thrower was incarcerated at the time T.W. says these allegations first took place," and that this failure constitutes a Brady violation. At trial, Thrower proposed that a defense investigator who had requested records from the State Department of Corrections (DOC) testify to the dates Thrower was incarcerated or on work release. The trial court excluded the investigator's testimony on the grounds that the investigator was not a custodian of the DOC records or competent to testify about them. The parties agreed to a stipulation that Thrower "was out of the community prior to February 16, 2005, and also between June 16, 2005, and June 30, 2005."

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[27] See State v. Montgomery, 163 Wn.2d 577, 591, 183 P.3d 267 (2008) (permissible lay opinion testimony is based on rational perceptions that help the jury understand the witness's testimony and are not based on scientific or specialized knowledge).

[28] State v. Karman, 159 Wn.2d 918, 931, 155 P.3d 125 (2007).

"Due process requires the State to disclose 'evidence that is both favorable to the accused and "material either to guilt or to punishment."'"[29] Evidence is material "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."[30] If the defendant could have obtained the information using reasonable diligence, however, there is no Brady violation.[31] Here, defense requested and received Thrower's DOC records, as well as information the State had received from DOC. The parties stipulated to dates during the charging period during which Thrower had been "out of the community," and Thrower himself testified to those periods. Thrower does not demonstrate that any information the State possessed about his DOC records was unobtainable by reasonable diligence on the part of defense counsel or how it was material under Brady. No Brady violation occurred.

Thrower further contends that the prosecutor made statements in closing argument "not based on any evidence in the record," made improper comments on T.W.'s credibility, misstated arguments, and shifted the burden. Defense counsel made several objections during closing argument and rebuttal, all of which the trial court overruled. The prosecutor argued that the reason T.W. gave

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[29] In re Pers. Restraint of Gentry, 137 Wn.2d 378, 396, 972 P.2d 1250 (1999) (quoting United States v. Bagley, 473 U.S. 667, 674, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985) (quoting Brady, 373 U.S. at 87)).

[30] Gentry, 137 Wn.2d at 396 (internal quotation marks omitted) (quoting Bagley, 473 U.S. at 682).

[31] In re Pers. Restraint of Benn, 134 Wn.2d 868, 916, 952 P.2d 116 (1998).

for not telling her mother about the abuse "has that ring of truth to it now that you . . . . know a little bit more about Jennifer Wells." The prosecutor made references to inconsistencies in Thrower's testimony and invited the jury to assess Thrower's credibility. Rebutting defense counsel's assertions, the prosecutor argued that a review of investigation interviews shows that some putative inconsistencies "weren't inconsistencies at all."

Prosecutorial misconduct is grounds for reversal where the conduct is both improper and prejudicial.[32] Generally, a prosecutor's comments are prejudicial only where there is a substantial likelihood that they affected the jury's verdict.[33] This court considers the effect of a prosecutor's improper conduct in the context of the full trial, including evidence presented and addressed in argument, the issues in the case, and the court's instructions to the jury.[34] Prosecutors have wide latitude in closing argument to draw reasonable inferences from the evidence and express those inferences to the jury.[35] However, counsel must refrain from expressing a personal opinion about the credibility of witnesses or the guilt or innocence of the accused.[36] Here, the prosecutor's comments were argument and "an explanation of the evidence, not a clear and unmistakable expression of personal opinion."[37] In overruling

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[32] State v. Monday, 171 Wn.2d 667, 675, 257 P.3d 551 (2011).
[33] Monday, 171 Wn.2d at 675.
[34] State v. McKenzie, 157 Wn.2d 44, 52, 134 P.3d 221 (2006).
[35] State v. Stenson, 132 Wn.2d 668, 727, 940 P.2d 1239 (1997).
[36] State v. Calvin, __ Wn. App. __, 316 P.3d 496, 505 (2013), petition for review filed, No. 89518-0 (Wash. Nov. 12, 2013); State v. Rivers, 96 Wn. App. 672, 674-75, 981 P.2d 16 (1999).
[37] Calvin, 316 P.3d at 505.

defense objections, the trial court reiterated several times that "[t]he jury's instructed that this is argument and they're to confine themselves to the evidence and the law." The prosecutor clearly stated that the State bore the burden of proof, and the trial court correctly instructed the jury. Because Thrower does not show that any of the prosecutor's comments were either improper or prejudicial, we hold that Thrower does not show prosecutorial misconduct.

Finally, Thrower argues that the evidence was insufficient to support his convictions. Thrower points to testimony by T.W. and Kizzier that he contends shows that his conviction is "based on contradictory statements," especially regarding dates the alleged incidents could have happened.

A challenge to the sufficiency of the evidence admits the truth of the State's evidence.[38] We view all facts and reasonable inferences in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt.[39] We defer to the trial court on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence.[40] Viewed in the light most favorable to the State, the evidence here was such that a rational trier of fact could find the elements of child molestation in the first degree beyond a reasonable doubt. We hold that the evidence was sufficient to support Thrower's convictions.

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[38] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

[39] State v. Embry, 171 Wn. App. 714, 742, 287 P.3d 648 (2012) (citing State v. Yarbrough, 151 Wn. App. 66, 96, 210 P.3d 1029 (2009)), review denied, 177 Wn.2d 1005 (2013).

[40] State v. Raleigh, 157 Wn. App. 728, 736-37, 238 P.3d 1211 (2010) (citing State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004)).

CONCLUSION

Because Thrower fails to show ineffective assistance or a public trial violation and the further allegations in his statement of additional grounds have no merit, we affirm.

Leach, J.

WE CONCUR:

Spearman, C.J.

Grosse, J.P.T.

IN THE SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MAURICE THROWER, Petitioner.	)))))))))	SUPREME COURT NO. _____ COA NO. 69950-4-I

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 29TH DAY OF JULY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MAURICE THROWER
DOC NO. 709523
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520

SIGNED IN SEATTLE WASHINGTON, THIS 29TH DAY OF JULY, 2014.

X Patrick Mayovsky