Supreme Court No. 91936-4
Court of Appeals No 31896-6-3

In The Supreme Court
Of The State Of Washington

State Of Washington
Respondant,
Vs.
Ryan Allen Reid
Appellant/Petitioner

Spokane County Superior Court No. 12-1-00039-6
The Honorable Judge Gregory Sypolt

PETITION FOR REVIEW

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A. Identity Of Petition and Decision Below

Petitioner Ryan Reid asks this Court to accept review of the Court of Appeals opinion and Motion for Reconsideration review terminated June 9th, 2015 attached as Appendix B. RAP 13.3(a)(1) and RAP 13.4(b).

B. Issues Presented For Review

1. State's witnesses Detective Estes and the Defendant's ex-wife, Tina Woodraska provided testimony of no factual basis expunging Mr. Reid's constitutional rights to fair trial and an impartial jury, in their own province to make an independant decision.

Was the testimonial material in question harmless error or opinionated evidence resulting manifest constitutional proportion against Mr. Reid?

2. Defense counsel expunged the Defendant's right to effective assistance in repeated failures to timely object in may areas of inflammatory and

improper evidence violating Mr. Reid's constitutional rights to effective assistance and due process.

a.) Defense counsel's dereliction to object to Karen Winston's testimony on post interview follow-up with the child's mother expunged effective assistance to highly inflammatory, improper and non-relevant information.

b.) Defense counsel's oversight to object on the opinion of guilt and veracity of the Defendant provided by Det. Estes and Ms Woodraska in addition to child hearsay.

c.) Defense counsel replication dereliction not objecting and allowing 404 (b) category evidence.

3.) Were the errors in aggregate applicable to the Cumulative Error Doctrine?

C. Statement Of The Case

This abbreviated statement surrounds issues of argument, a full statement is attached labeled Appendix A.

January 2012 the Defendant was indicted 3

cts. of First Degree Child Molestation, RCW 9A.44.083. CP 1-2.

At trial, the State called A.R., age 7 and was questioned on differentiation of truth and lie. A.R. denied sexual abuse affliction, indentifing the Defendant, Ryan Reid, speaking with child abuse forensic examiner Karen Winston in Nov. 2010 and couldn't remember her 5th birthday, but affirmed going to Chuck E. Cheese on her 6th. RP 135-141

Winston testified operating a CAC, "Partners with Families and Children, obtained a Master's in social work emphasizing child sexual abuse and participates in peer reviews. RP 141-146. Prosecution played Exhibit 1, a child hearsay video interview Winston recorded of A.R. for the jury, previously entered by Order of the Court CP 63-65 (Child Hearsay Hearing FFCL designated "Tr.")

During interview, AR claimed Ryan touched her pee pee

with his finger. Tr 13-14. She said she was age 2 and could not talk when it took place. She said he touched her pee pee at age 2 and 3 but not at age 4 and 5. AR did not answer the question when asked: "if you were 2 years old, how do you remember that Ryan touched your pee pee?" Tr 15-16.

Exhibits 2, 3, 4, 5 were introduced as drawings Winston furnished corroborating AR's knowledge of truth and lie at age 5 in Nov 2010. In the video, we see AR's difficulty with Exhibit 4 and Winston suggesting the right choice as a non-verbal cue of her finger on the correct answer. Winston affirmed, in the child hearsay hearing on cross, pointing to the correct truth and lie answer would be suggestive on her part. CP 43. During trial Winston states AR was 100% accurate on Exhibits 3, 4, 5 RP 152 on direct, but on cross, defense fails to establish the suggestive nature of Exhibit 3 with AR.

Exhibit 2, an anatomical human figure, AR indicated Reid touched her on the "ppe-pee" and "butt." Winston testified that unless she "did some kind of study, it would be hard to say, yes, [AR's] definately suggestible, or no, she's not at all" RP 149-150. Prosecution asked followup questions of AR's memory despite Winston stated she isn't "an expert on children's memory" but proceeded to expound on the topic with no objection from defense. Winston didn't determine if touching was sexual in nature, never discussing diaper changing and denied exploring diaper changing was what AR had experienced RP 162.

AE, age 14, testified he did not get along well with Reid and claimed he was "choked and stuff" against the wall and be violent. RP 185 A.E. claimed the Defendant showered with him and put A.E.'s hand on his penis, masterbating him for 10 minutes but didn't remember if there was an erection and

denied knowing if he was clothed or if the defendant was in bed with him all night. A.E. also denied remembering if he was 8 or 9. AE didn't remember if the Defendant said anything to him but claimed the Defendant told him not to tell anyone. RP 186-191. AE claimed his mother drove him to the Detective interview.

Tina Woodraska claimed her then current husband, Michael drove A.E. to the Detective interview. RP 239 She claimed she got the Defendant out of the house because he hurt her son, A.E. in Feb. 2008 RP 201. During June 2007 to Feb 2008 A.R. was 2 and 3 years old. She described an incident coming home from work hearing noises from A.R.s room, tip-toed to pushing open the door claiming the Defendant bounced up and she saw AR. naked waste down and explicitly screaming. "What are you doing?", claimig his face was 10"-12" inches from A.R.'s crotch stating."... I couldn't tell exactly

he was touching..." RP202 - 203. She claimed Reid stated he was checking an owie, bit his tongue and left the room. She claimed AR did not wear diapers, dressed AR and indicated no sign of accident. RP 204 - 205. She claimed she turning the matter in to CPS. RP 206 No evidence of the time this was reported is stated ~~except~~ and the time frame was never identified in court. She stated never seeing Reid react with AR before like this, AR was capable of talking but made no complaints and Woodraska didn't ask. Later, she claimed AR made a vague motion with her finger pointing down saying, "Daddy" without a time reference. RP 207 - 208. The testimony involved, hearsay RCW 9A.44. 120, was not objected to and no prior admissability was decided.

She stated visitation restrictions with the Defendant:
"Well, I don't want him to hurt them. I don't want them — I mean he's physically abusive. And as far as I know, he sexually abused them. I know for sure. I don't want them to get hurt."
RP 209

She denied knowing of sexual contact with A.E., nor did her son disclose any abuse to her claiming to have learned the allegations from Estes RP 210-211. She denied telling AR Reid was a bad man because he touched her pee pee or discussing with AR the content prior Winston's interview. Later she asked AE if improprieties between Reid and her son occured, he replied, "No, not at all." RP 238-240

Detective Estes interviewed Reid in January 2011 and was asked how Reid addressed the concern of Reid looking closely at AR. Estes commented on the credibility of Reid's version raising a "red flag". RP 297-299. Estes compared and contrasted evidence between Reid and State's witnesses. indicating the Defendant's version was a "red flag" RP299

Estes admitted being present for the Ferguson interview and being surprised by Reid recalling an incident when AE.'s mother called AE "gay" in anger because of his prepubescent voice and Reid sleeping next to the

boy because of the emotional stressor A.E's mother caused from a mood swing. Reid woke in the morning to A.E. flicking his penis in hilarity. Reid withdrew his body from the boy while repremanding him of the ill behavior. RP 308

Ms Woodraska did state in cross that [AR] didn't disclose anything to her. RP 231

D. Argument

1a.) Detective Estes' opinion based testimony resulted in manifest error as he answered Prosecutions question, "Did Ryan Reid, was he able to address that concern?"

"A. He volunteered alot of things ... many inconsistacies about issues that were kind of nebulous issues that don't really matter is kind of a red flag to a detective that somebody is not telling the truth, and if somebody is either fabricating, exaggerating, minimizing or lying." RP 298-299.

Estes defines a red flag is fabricating, exaggerating, minimizing or lying. Estes rated Reid's "nebulous issues" as a "red flag" [alie].

Estes explains Reid "knew she was going to be home

for lunch at around 2:30. He implied that was her lunch time. Tina told me that her lunchtime was between 1:00 and 1:30, inconsistant. So, the version of her lunch, having been married for sometime, was inconsistant So [Reid] told — so that was kind of a red flag." RP 299-301.

Estes opines," So [Reid] told - so [the lunch time] was kind of a [fabrication, exaggeration, lie]. Is it possible 39 years of policing experience and his opinion of Reid's veracity tenor the jury's decision? The Court of Appeals stated Estes was simply comparing and contrasting the witnesses evidence, which is obvious, but for the interest to share his opinion of the witnesses veracity? Comments on the credibility of a key witness may also be proper because issues are reserved for the trier of the fact. City of Seattle v Heatley 70 Wn. App 573, 577, 854 P.2d 658 (1993).

1b.) Tina Woodraska testifies to a question of inference in relation to Reid and his parental right.

"Well, I don't want him to hurt them, I don't want them — I mean, he's physically abusive. And as far as I know, he sexually abused them, I know for sure.

I don't want them to get hurt. And that's the only reason I would ask that he just not hurt them anymore." RP 209.

Defense counsel failed to object while she's offering her opinion of Reid's guilt. She already testified adening having seen Reid sexually abuse the children in question. She claims she "wasn't sure exactly what happened, made a CPS report of it, RP 206, and never remembered exactly when any of this ambiguous event occured in it's entirety. The was never a timely doctors evaluation to certify even a hint of impropriety. Her opinion seems perjurious (or is). Much later, she admitted in regard to AR, "She didn't disclose to me." RP 231 Her claim to know he sexually abused them" RP 209 in regards to the question about trying to limit Reids visitation with her proposed parenting plan in 2006 is far out of timliness Referring RP 214.

The Court of Appeals decision in regard to Woodraska aimed at using her statements out of order and then

deeming the ambiguous creates an untrusting dilemma; you can't fake it to make it.

Of these two witnesses and the opinions they provide as to the guilt of the Defendant "violates [MY] constitutional right to a jury trial, including the independant determination of the facts by the jury." State v. Carlin, 40 Wn.App 698, 701, 700 P.2d 323 (1985). overruled on other grounds. This infringement of the fact finder suggests an error of constitutional magnitude State v. Demery, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001). RAP 2.5 (a)(3) provides manifest error affecting constitutional right may be raised in appellate court. In State vs. Montgomery, 163 Wn.2d 577, 591, 183 P.3d 267 (2008) the court considers the witness(es) involved. a.) A police detective of over 39 years and b.) Woodraska, a contentious divorcee with 2 children in common with Defendant. Then, nature of testimonies, a detective comparing and contrasting evidence to

demonstrate his belief of who is fabricating using his definition particular to a detective of "red flag". T
The nature of the charges are the next consideration involving allegations 4 -5 years old (and older - 2006) with no physical evidence – leaving witnesses credibility key to preserve. Finally, other evidence for the trier of fact consisting of adult witness testimony never seeing impropriettes of abuse, AR's video testimony who states Reid and her mother don't get along taken 3 years after an allegation was purported made to CPS. The testimony of extreme opposites between AE. and Reid is a credibility contest. Addressing the four part test of Barr, 123 Wn.App 373, 380, 98 P.3d 518 (2004) 1.) Constitutional error issues witnesses comment on anothers of credibility and guilt. 2.) error is "manifest" if it had "practical and identifiable consequences in the trial of the case." Lynn, 67 Wn.App at 345. 3.) Impermissable Opinion

on Guilt, Estes definition of "red flag" to describe Reid's inconsistancies or "nebulous issues" conveyed his opinion on the credibility and guilt of Reid, as did Woodraska when she stated Reid sexually abused them on no basis.

4.) Harmless error: Woodraska's factless claim is beyond harmless and Estes opion on the veracity of the defendant is expressed ... such as a sheriff or police officer, ... may influence the factfinder and deny [Reid] a fair trial and impartial trial. State v. Dolan, 118 Wn.App. 323, 329, 73 P.3d 1011 (2005). In State v Johnson, 152 Wn.App 924, 219 P.3d 1958 (2009), the court overturned the defendant's conviction hold testimony about a confrontation between the defendant's wife and the child amounted to improper opinion testimony on the defendant's guilt.

Argument 2.

The Defendant must show that trial counsel's inadequate performance probably resulted in a different

outcome. McFarland, 127 Wash.2d at 335, 899 P.2d 1251. Failure to object to the State's case may constitute ineffective assistance of counsel. See Hendrickson, 138 Wash.App 827, 831-33, 158 P.3d 1257 (2007) (failure to object to testimony that was inadmissible hearsay and violated the confrontational clause was ineffective assistance), aff'd 165 Wash.2d 474, 198 P.3d 1029, cert. denied, 557 US 940, 129 S. Ct. 2873, 174 L.Ed.2d 585 (2009). "Failure to object to highly inflammatory inadmissable evidence has no strategic value and failures to request limiting instruction constitutes ineffective assistance." Lyons v McCotter, 770 F.2d 529 (5th Circuit 1985)

① Failure to object to Winston's post follow up of AR's interviews ~~was~~ improper.

The testimony of RP 154-155 of Winston explaining to Woodraska regarding safety measures in place was not describing whether a crime was committed and had no value to corroborate the State's case and was prejudical

for the defendant there was no strategic value to allow this testimony to go unchallenged.

(2) Defense counsel's oversight to object on the opinion of guilt and veracity of the Defendant provided by Det Estes and Tina Woodraska in addition to child heresay.

There is clearly no strategic decision being made to not object to Este's testimony. He took hearsay statements from the State's witness, Woodraska, O'Leary, and A.E and vouched for their versions over the defendant's "red flag" version. The child hearsay testimony given by Woodraska was failed to be objected to allowing her to testify to a statement she claimed was given by her daughter.

"A. I saw her sitting up in bed late at night. I don't remember what time. She was just sitting up, rocking back and forth, and that was strange to me. She wouldn't have done that. And so I asked her, What's wrong? Are you okay? I was thinking she had a bad dream. And she just stood there completely out of it and just said, Ryan hurt me, or I don't remember exactly how she said it. But she said Ryan hurt me, and then I said, How? And she just said,

A finger, and pointed down to her private parts." RP 207 - 208.

This hearsay was objectionalbe as the State had not complied with the Child Heersay statutes RCW 9A. 44.120 further violating the Defendant's constitutional right to confront witnesses, under both the State and Federal Constitutions. In addition, he allowed her to testify as to allegations that the Defendant had physically doused their children with no compliace of rule of Evidence 404 (b).

(3) Defense counsel's replication to derilictron not objecting and allowing 404(b) category evidence.

Evidence of other crimes, wrongs, acts is not admissible to prove character of a person in order to show that he acted in conformity with that character. ER 404(b) But such evidence may be admitted where it is logically relevant to a material issue before the jury, and the

probative value of the evidence outweighs its prejudicial effect. State v. Ragin, 94 Wn. App. 407, 411, 972 P.2d 519 (1999). "The danger of unfair predjudice ~~substantially outweighs~~ exists even when evidence is likely to stimulate an emotional rather than an rational response State v. McCreven, 170 Wn. App. 444, 457, 284 P.3d 739 (2012)

AE's testimony: A: Sometimes he would choke me and stuff against the wall and be violent." RP 185

The was no objection to this, nor a motion to strike.

Woodraskas previous statement, "Ryan had physically hurt AE, and that was a way to get him out of the house..." RP 201

As well as, "I mean, he's physically abusive... I would ask that he not hurt them anymore". RP 209

Was not needed evidence and simply severely prejudiced the Defendant, the information was not relevant to the charges.

~~E. Conclusion~~. Argument 3.

Prejudice may result from the cumulative effect of two or more individual errors has potential to prejudice the Defendant to the same as a single

reversible error. All errors harmless or not, but they all constitute significance under the laws can create substantial harm dening a fair trial.

E. Conclusion

Based on the foregoing, Petition Ryan Reid respectfully requests that review be granted pursuant to RAP 13.4(b)

Dated this day, the 5th of July, 2015

Respectfully Submitted,

Ryan Reid

Appendix A

9A.44.120, and the Constitutional right to confront witnesses; failure to object to improper 404(b) prior bad acts evidence by Woodraska, and her son, A. E; and failure to object to irrelevant and prejudicial evidence given by Karen Winston, among other items of evidence?

4- Did the failure of defense counsel to provide effective assistance of counsel prejudice the Defendant such that the outcome would have been different had he properly represented Defendant, and was his failure to do so a violation of the Sixth Amendment right to effective assistance and/or Due Process under the Fifth and Fourteenth Amendments, and WASH. CONST. Art. 1, Sect 3?

5- Was there cumulative error which resulted in a denial of a fair trial, and should a new trial be ordered?

IV. STATEMENT OF THE CASE

On January 4th, 2012, an Information was filed charging Defendant with three counts of Child Molestation in the First Degree, RCW 9A.44.083. CP 1-2. The Information was amended prior to trial. CP 61-62.

At trial, the State called A. R., age 7, to the stand. She attended Willard Elementary and just finished second grade and was questioned regarding whether she could differentiate truth from a lie. RP 135-138.

She denied knowing Ryan Reid, and why she was there that day. RP 138-139. She denied anybody touching her in a place that is private when she was a little girl, or whether she could find him in the courtroom. RP 139.

She also denied remembering talking to Karen Winston and could not remember her 5th birthday, but remembered her 6th as when she went to Chuck E. Cheese. RP 140. The Prosecutor had no further questions and defense counsel had no questions. RP 141.

Karen Winston, testified that she was employed by Partners with Families and Children, as the program director and a forensic child interviewer. RP 141-143.

She claimed to have interviewed approximately five thousand children. RP 144. She indicated that she has a Master's Degree in social work, with an emphasis on child sexual abuse, incest, and drug-endangered children, and also participates in continuing education and research and was a member of several organizations. RP 144-145.

On November 30th, 2010, she did a forensic interview of A. R.. RP 145-146. The Prosecutor played exhibit 1, the video of the forensic

interview of A. R. for the jury. The Court had previously entered an Order allowing this child hearsay to be admitted. CP 63-65. (Child Hearsay Hearing FFCL).

In summary form, during the videotaped interview, the child claimed that Ryan had touched her pee pee, with his finger. Tr. 13-14 (Exhibit P-1-Transcript of Video interview dated November 30th, 2010, designated "Tr"). She did not remember whose house it took place at. Tr 15. She indicated she was two and didn't talk when it took place. Tr 15. She said he touched her pee pee when she was three, but not four or five. Tr 15. She did not answer the question when asked: "Now, if, now if you were two years old how do you remember that Ryan touched your pee pee?" Tr 15-16. When shown a diagram she claimed Ryan touched her pee pee and butt, on the outside and inside. Tr 17-18. She claimed it felt like an owie. Tr 18. When asked: "Did Ryan say anything to you when he did this?" her response was; "Um he said yeah and I said no. Actually I was a baby so I didn't say no". Tr 18. She denied anybody else touched her like Ryan, or showed their body parts to her. Tr 18-19. She claimed that Ryan touched her pee pee hundreds of times. Tr 19. The following conversation took place:

" Q Does your mom like Ryan?
A No, not at all.
Q Why doesn't she like Ryan?

A Because he's a bad man.
Q What does he do bad?
A He touched my peepee.
Q Okay.
A Yuck....." Tr 19.

After the video was played, the Prosecutor asked follow up questions, discussing the use of background questions to build rapport with child witnesses. RP 148-149. She indicated that pre-schoolers have less ability to resist suggestibility, but upon questioning regarding A. R., claimed that: "I wouldn't say she was pretty suggestible. I think she was a pretty strong individual, this little girl, and pretty self-assured and had a real sense of what she wanted to say and didn't want to say. You know, unless I actually did some kind of a study it would be hard to say, yes, she's definitely suggestible, or no, she's not at all. But by five kids can resist things being suggested to them if they're not right." RP 149-150.

When asked about the point where A. R. disclosed that Ryan had touched her pee pee with her [sic] finger and touched her butt, and Ms. Winston asked A. R. who told her that, she indicated: "Well, that's sort of hypothesis testing, sort of, where did you find that out, where did that information come from, to encourage a child to tell me, mom told me, my uncle told me, I just knew it or, you know, that kind of thing. RP 150-151.

Exhibits 2, 3, 4, and 5 were introduced as the drawings prepared by the child. RP 151-154.

Ms. Winston did no further follow up with the child. RP 154-155. However, she did testify that she followed up with the child's mother and wanted to make sure she would keep the child away from the Defendant. RP 155. Despite the lack of relevance and the prejudicial nature of this line of questioning, there was no objection by the defense.

The Prosecutor asked follow up questions regarding A. R. and memory when she was ages two and three. Despite the fact that she stated "...I'm not an expert on children's memory, so I really wouldn't be able to expound on that..." she went ahead and did anyway, without objection. RP 156. She was also asked to expound on why the child was unable to testify at trial and was allowed to do so without objection. RP 157.

She also discussed her suggestion to get a medical exam, but indicated that in many cases it doesn't show anything. RP 158.

On cross, Ms. Winston indicated that a medical exam was conducted by Dr. Grubb, and admitted that if the exam had positive findings, that she would have heard about it. RP 161. She could not determine whether the alleged touching was sexual in nature, and admitted that she never discussed diaper changing with A. R., and denied that it occurred to her that A. R. could have been discussing diaper changing. RP 162.

Melly Woodruff stated that she was a CPS supervisor and was present when the forensic interview took place. RP 171-175. On cross, she verified that there was a note dated November 5th, 2010, which confirmed that Ms. Woodraska had called her and told her that she stopped visits between Mr. Ryan Reid and her children, going against a court order. RP 176-177. She was allowed to state that Ms. Woodraska noted that she was suspicious of an incident that happened a couple years ago and that a request was made to involve CPS.

A. E., age fourteen, had just finished 8th grade. He was a lifelong resident of Spokane, and had two sisters, including A. R. RP 184. His Mother is Tina Woodraska, and his former step father was Ryan Reid, the Defendant. RP 185. He indicated that he did not get along very well with the Defendant and claimed that he was choked and "stuff" against the wall and be violent. RP 185.

He claimed that the Defendant got in the shower with him. RP 186. He then went on to claim that the Defendant took his hand and put it on his penis and masturbated him. He described the process. RP 186-187. He claimed that the penis was hard and that it took about ten minutes, but he didn't remember exactly, and that there was skin to skin contact. RP 187. He was in his pajamas, but does not remember if they remained on him at the time. RP 188. He indicated that the touching took place at

night, but did not remember if the Defendant was in the bed all night. RP 188.

He thought it took place when he was eight or nine, but claimed he could not remember if it happened more than just the one time. RP 189. He did not remember if the Defendant said anything to him at the time of the alleged incident. RP 190. A.E. claimed that the Defendant told him not to tell anyone. RP 190-191. He indicated that it would have been embarrassing to tell anyone. Years later the police came to talk to him. RP 191.

He claimed that it did not surprise him that the police came to him and that Ryan might tell someone. RP 191. On cross he denied talking to his step father Michael Woodraska or his Mother, prior to talking to the detective. RP 194.

Tina Woodraska testified that she stayed at home with her kids, ages fourteen, seven, and six. RP 198-199. In February, 2008, she claimed that she got the Defendant out of her house by claiming that he had hurt her son, A. E. RP 201. During the June, 2007 to February, 2008, time frame, A. R. was two to three years of age. RP 202.

She described an incident where she came home from work and heard noises coming from A. R.'s bedroom. She tip toed to the door, pushed it open and claimed that the Defendant bounced up and she saw A.

R. with the bottom half of her completely naked. She screamed "What are you doing?" RP 202. She indicated that his face was "down in her area", her private parts, and that his face was approximately 10 inches to a foot away and saw his hand was in that area but she also stated: "...I couldn't really tell exactly where he was touching..." RP 203.

She claimed that the Defendant appeared to be startled. RP 203. After she screamed, What are you doing, he got red in the face and said, I was checking an owie. He yelled, I was checking an owie, bit his tongue, shook his head and walked, stormed out the door. RP 204.

At that time, A. R. was still on the bed and she dressed her. She claimed that A. R. did not wear diapers when she was two during the daytime. She claimed that A. R. did not need changing, nor was there anything to indicate an accident. RP 204-205. A. R. seemed upset according to her, but was not crying. She did not remember what she did after getting A. R. dressed. RP 205. She claimed to have turned the matter in to CPS, but had never previously seen the Defendant reacting with A. R. that way. RP 206.

At that age, A. R. was capable of talking but made no comment, or complaint of concerns, and Ms. Woodraska did not ask her. She then claimed that later on A. R. vaguely made comments to her about the Defendant having hurt her in her private parts. RP 207-208. Despite the

fact that the testimony involved hearsay, there was no objection by the defense. There had been no prior determination as to the admissibility of this hearsay statement, and the defense attorney failed to object.

Karen Winston told her there wasn't much to the interview, and that Detective Estes would look into it. RP 208-209. She then responded to a question as to an inference that she wanted to restrict visitation with the Defendant and stated: "Well, I don't want him to hurt them. I don't want them—I mean, he's physically abusive. And as far as I know, he sexually abused them. I know for sure. I don't want them to get hurt. And that's the only reason I would ask that he just not hurt them anymore." Despite the fact that she was offering an opinion on the Defendant's guilt, there was no objection by defense counsel. RP 209.

She never observed any kind of sexual contact between A. E. and the Defendant, nor did her son ever disclose any abuse to her. She did not learn about the allegation until later on when Detective Estes told her. RP 210-211. She claimed that it was not common for A. E. to sleep in the same bed as the Defendant, nor would he lay in bed with him. RP 212.

She admitted that in the final Parenting Plan, she would not get what she initially wanted and agreed that the Defendant's proposed Parenting Plan called for a joint custody arrangement with visits on alternate holidays. RP 221. She also previously sought an anti-

harrasment order in 2005, against the Defendant. RP 225-226. She could not recall telling Detective Estes that she found it hard to believe her daughter at five years of age could recall a touching incident when she was two, but admitted she could have. RP 231-232.

She told Detective Estes that the Defendant was fully clothed when she walked in as described previously, and that she did not know what to believe. RP 231. Ms. Woodraska admitted that in November, 2012, she may have told Melly Woodruff (CPS) that she was in contempt for not following the final Parenting Plan. RP 233-234.

She claimed that her child stopped wearing diapers at about age two, but later was uncertain. RP 236-237. She stated that she has discussed the fact with A. R. that the Defendant was her father, but denied ever telling A. R. that Defendant was a bad man, or that Defendant was a bad man because he touched her pee pee, and denied talking with A. R. about what she was going to talk about with Karen Winston, during the forensic interview. RP 238-239.

When asked about talking with her son, A. E., she indicated that she did not hear anything from his mouth, but later she asked if there was anything at all that was inappropriate between you and Ryan, and her son said: "no, not at all." RP 239-240.

Eric O'Leary, was a Spokane Transit bus driver and Tina Woodraska is his biological sister. RP 245. He claimed that in the years 2007 and 2008 that he would frequently go to his sister's home on North Stevens, sometimes without calling and claimed he had a key, or would usually just walk in the door. RP 245. He testified that there was an occasion during that time period where he walked in unannounced and felt like he caught the Defendant off guard. He stated that he knocked on the door, there was no answer and he went in through the front door. There was no one in the kitchen area, then heard something down the hallway in a bedroom. He opened the door and claims that he saw Ryan kneeling or standing over the baby (A. R.). Ryan claimed that he was changing the diaper, but the witness did not see any diapers or other similar items. RP 246-247. He testified that A. R. was on the floor, with the Defendant's back to the door. He did not see exactly what the Defendant was doing with his hands and indicated that the Defendant did not say "hi" but just went into explanations. RP 247-248.

The first thing out of the Defendant's mouth was that he was just changing the diaper, and the witness thought that he wasn't making eye contact with him. He thought that it was odd that A. R. was unclothed but she had a diaper on. He could not say whether the diaper was partially off or on or whatever, due to the blockage to his vision. RP 249. He indicated

that he did not see any powder or wipes. After he walked in to the room, he saw the Defendant fasten the diaper and just walked out of the room. He thought that A. R. was about two years old. He never saw any other similar activity that caused him concern. RP 249.

On cross he recalled telling Detective Estes that he thought the incident had occurred in the summer of 2008, but did not recall the exact time. He admitted that A. R. would have been three years old and that she was still wearing diapers. RP 251. He thought that A. R. acted normally at the time of the incident. RP 251.

He admitted that when the alleged incident took place that A. R. did not run to him, or hide or do anything that was out of the ordinary, but still thought it was weird. RP 253-254. On re-direct, he thought that the alleged incident took place in the summer of 2007. RP 254.

Mark Ferguson, of the Spokane Police Department, stated that on January 21st, 2011, he conducted a voluntary "specialized" interview with the Defendant. RP 256-257. Detectives Estes and Lebsock were listening in. RP 258. He indicated that he gave *Miranda* warnings and the Defendant expressed no confusion or concern about his rights and voluntarily participated in the interview. RP 258. The purpose of the interview was to clarify some issues where Mr. Reid was accused of sexual activity with A. R. RP 259. He informed the Defendant of the

reason for the interview, but the Defendant then talked about an event with A. E. that he had not ever told anybody else about. A. E. was the Defendant's step son. RP 260.

The Defendant described an evening where A. E's mother had been angry and called her son, a "homo" and a "fag". A. E. was upset and Defendant went to console him and discuss what a "homo" was. The Defendant stated that he tried to explain it as best he could, and that A. E. requested that the Defendant spend the night with him, which he agreed to do. RP 261. The Defendant told the witness that he woke up with an erection, with A. E. playing with his erect penis, demonstrating with his hand, with his index finger out, as if A. E. was bouncing his finger across the Defendant's penis and said A. E. was giggling at the time. RP 262. His reaction was to immediately pull his body away as soon as he realized what was going on and stated that A. E. was nine years old at the time. RP 262. Mr. Ferguson said that the disclosure surprised him since it was not information that he was looking for at that interview. RP 262.

The Defendant denied that he had any sexual contact with his daughter and that he believed that Tina was making the story up and that he had been honest when talking with the detectives. The Defendant reiterated that he was changing a diaper on her bed. RP 263.

On cross, Mr. Ferguson indicated that the Defendant was "nervous, but cooperative?" He stated that he had explained the purpose of the interview to the Defendant, and that after that discussion, the Defendant divulged or volunteered information about A. E. RP 267. He admitted that it was a reasonable assumption that the Defendant was forthcoming to avoid later concerns. RP 268. On re-direct, he stated that suspects sometimes disclose matters because they think the police know more than they really do. RP 268-269.

Paul Lebsock, a City of Spokane Detective, with 20 years on the force, stated that he was on the Special Victim's Unit in 2011, and assisted Detective Estes and witnessed two in-person interviews of the Defendant by Detective Estes, January 19th, 2011, and February 11th, 2011. RP 271-273. He also overheard the interview by Corporal Ferguson. RP 273. He provided general information regarding the interviews. RP 274-281.

Detective Benjamin Estes, testified that he worked for the City of Spokane since 1984, and was then assigned to the Major Crimes Unit. RP 284. He had been in law enforcement for 39 years, with related experience in Idaho from 1974 until 1981 when he came to Spokane. RP 285. He also testified regarding the numerous law enforcement courses he had taken over the years, including being a training officer, and a SWAT team member and trainer. In 1990, he was promoted to Detective and

indicated that he was on the board of directors for the Spokane County Domestic Violence Consortium and tought DV investigation for a number of years. RP 286. He has given numerous lectures over the years at schools, as well. RP 287.

He started out as a detective in the property crimes unit, then went into sexual crimes for a few years, culminating in the Major Crimes Unit, which includes homicides, suicides, SIDS deaths, unattended deaths, violent assaults and robberies, and also worked on a homicide task force for 4 years regarding Robert Yates, then worked with the Spokane Regional Drug Task Force. RP 277-288. He claimed that "...there's really not any kind of crime I can think of that I haven't been involved in some investigations in. " RP 288.

In 2010 to early 2011 he was assigned to the SVU, special victim's unit/sexual assault unit and was assigned to this case, due to alleged disclosures by A. R. to a counselor at Lutheran Services. RP 289-290. He decided to have Karen Winston conduct the interview of the child, since he thought that it would make the child feel more comfortable. RP 290.

Detective Estes indicated that he and other people listened in to the interview from an adjoining room. RP 291-292. The Detective claimed that he remains totally objective and suggested that he was always careful when there is a serious allegation, especially when there is a real

contentious divorce, or what not, going on, so he was aware of possible motives being involved. RP 293.

He indicated that the Defendant was "very aggressive and demanding to come in" before the Detective was ready for him, incessantly calling, yelling, and screaming on the phone. RP 293.

The interview took place on January 19th, 2011 at the detective's office. RP 296. He identified Ryan Reid as A. R.'s biological father. RP 297. Detective Lebsock assisted with the interview, but Detective Estes was the lead. RP 297. He testified that he advised Mr. Reid that it was alleged that he'd had two inappropriate contacts, one witnessed by Tina and one witnessed by Mr. O'Leary. RP 298. Detective Estes was then asked about testimony of Tina Woodraska and Eric O'Leary and how the Defendant was looking closely at A. R. He was asked how the Defendant addressed that concern and the Detective proceeded to comment on the credibility of the Defendant's version, that it raised a "red flag". RP 298-299. When asked about the Defendant's explanation of touching A. R., Detective Estes once again compared and contrasted the evidence between the State's witnesses and the Defendant and again indicated that the Defendant's version raised a red flag. RP 299.

When asked about the alleged incident involving Eric O'Leary's observations, Detective Estes recounted the Defendant's version, but again

compared and contrasted the versions and commented on credibility. RP 303-304.

The Defendant's description of the child's position on the bed, were the same. RP 301. When asked to describe what his wife had seen, the Defendant indicated trouble with their daughter wiping fecal matter on other items, and he explained that he carefully cleaned her. RP 303.

He listened in on the interview with Corporal Ferguson and overheard the Defendant volunteering a sexual contact incident with a nine year old boy, A. E. He was surprised by this and claimed that there was no follow up at that time. RP 307-308. He indicated that he heard the Defendant state that A. E. had an issue with his Mother accusing him of being gay because of his high pitched voice and because of the way he acted. The Defendant indicated that he slept in the same bed with A. E. and the next morning he woke up because he felt someone playing with his penis, and heard some giggling. The Defendant told A. E. to stop that kind of activity and blamed that contact on A. E. RP 308.

Prior to the next interview with the Defendant on February 11th, Detective Estes interviewed A. E., and others. RP 309-310. He described A. E.'s demeanor at the interview as being shocked and embarrassed, and claimed that he attempted to calm him. RP 310-311. Also, Detective Estes was allowed to indicate that the version he was told by A. E. was

consistent with his trial testimony, but that it was minimized at trial by A. E. RP 311-312.

When asked why he wanted additional details, Detective Estes stated:

> "A. I wanted to know—I wanted to know all the details. I wanted to know if there was a crime, who the victim was, who the suspect was. I wanted—I didn't want to be accusatory of Mr. Reid without more facts. Abdul didn't –or Mr. Reid didn't go into all the facts when he talked to Mr. Ferguson. I wanted to know, you know, from Mr. Reid what happened and how it happened with Abdul. I wanted to know if—I'd already interviewed A. E., and Mr. Reid I don't believe he knew that. I don't know if he did or not but I – when I interviewed A. E., A. E's version was very contrary to what Mr. Reid disclosed to Corporal Ferguson. And it was one or the other, and I wanted to get down to what the truth was of that sexual contact, see it there was a crime or not."
>
> RP 312-313. (A. E. used for child's name).

He described additional facts provided by the Defendant to the effect that there was a confrontation about Ms. Woodraska's allegation and that the Defendant continued to indicate that he was changing a diaper. RP 314-316. He indicated the nature of this third interview as, "I started talking to him more about a couple of inconsistencies..." RP 314, lines 23-25.

The Defendant indicated that he had showered with A. E. when A. E. was five, but that there was no sexual contact and also denied ever watching A. E. change his clothes. RP 319-320.

On cross, Detective Estes indicated that while listening to the Winston interview he quoted A. R. as saying: "Mom doesn't like him because he's a bad man and he touched my pee pee." RP 323-324. Also, when he interviewed Tina Woodraska in December of 2010, she stated that she found it hard to believe that A. R. could recall a touching incident by her father when she was two, and the reason was because A. R. was five, and also said that A. R. doesn't remember anything else from when she was that age range. RP 325-326.

Detective Estes also stated that with respect to Tina Woodraska's observations in 2007, she could not clearly see what was happening and she could not state that Ryan was doing anything of a sexual nature. RP 327.

Ms. Woodraska referred her brother to Detective Estes regarding his claim to have witnessed something. RP 327. During his interview with O'Leary, it was admitted that A. R. was wearing a diaper during the incident when he claimed he walked in and it was in either 2007, or 2008. RP 328.

Detective Estes admitted that since the incidents allegedly took place 2 to 2 ½ years prior, that the incidents may not have been the same, stating: "Anything is possible.". RP 331-332. Tina did not find out about

A. E. until Detective Estes told her. RP 334. The State rested. RP 348. The defense made no motions at that time.

The Defendant testified that he and Tina Woodraska were married on September 14th, of 2004, and divorced in August, 2006. They had two children in common, A. R., and another daughter. RP 355. The Defendant lived at 6111 North Stevens with his then ex-wife from February, 2007, until the last Sunday of February, 2008. RP 356.

In December, 2010, when he became aware of allegations against him, he was upset and hurt and indicated that the parenting/custody arrangements were contentious. RP 357-358.

At the first interview in January, 2011, with Detective Estes, he denied ever inappropriately touching A. R. and felt scared and belittled. RP 359-360. He agreed that when interviewed by Corporal Ferguson he stated that A. E. was touching his penis and that he had told A. E. to stop. He pulled his body completely away from A. E. and covered himself up. RP 361. He said he volunteered the A. E. information to be honest and denied ever taking A. E.'s hand and putting it on his penis, nor did he make him do an "up-and-down motion." RP 362-363.

He always answered law enforcement questions and agreed that he was aggressive and angry due to the false allegations being made. RP 363-364.

On cross, he indicated that his conversation with A. E. regarding the term "gay" took place in the afternoon. As a result of being scared, A. E. asked the Defendant to sleep with him and the Defendant agreed. A. E. was nine years old. The Defendant agreed that it was not common to sleep with his step son. RP 366-367.

The Defendant reiterated that he woke up to a giggling A. E. and looked him in the eye and said: "Don't ever do that. That's not acceptable." RP 368. He did not know if he had the erection before, or if the touching by A. E. caused it. RP 369.

He never told his ex- wife about the contact with A. E. RP 373. With respect to allegations of inappropriate touching of A. R., the Defendant denied anything was sexually inappropriate and only was changing diapers and was meticulous about it. RP 375-377. The Defendant rested and there was no rebuttal by the State. RP 381.

The jury found the Defendant guilty of Counts 1 (CP 91) and 3 (CP 93), and not guilty on Count 2. (CP 92). On August 15th, 2013, the Court sentenced the Defendant to a minimum term of 89 months among other conditions. CP 113-126- Felony Judgment and Sentence. The Defendant filed his Notice of Appeal on August 21st, 2013. CP 139-140.

Appendix B

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FILED
JUNE 9, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. RYAN ALLEN REID, Appellant.	)	No. 31896-6-III ORDER DENYING MOTION FOR RECONSIDERATION

THE COURT has considered respondent's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of February 12, 2015 is hereby denied.

DATED: June 9, 2015

PANEL: Judges Korsmo, Brown, Fearing

FOR THE COURT:

Laurel H Siddoway, CJ

LAUREL SIDDOWAY
Chief Judge

FILED
FEB 12, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. RYAN ALLEN REID, Appellant.	)	No. 31896-6-III UNPUBLISHED OPINION

KORSMO, J. — Ryan Reid appeals his two convictions for first degree child molestation, alleging that the trial court permitted improper opinion testimony and that his counsel did not perform effectively. We affirm.

FACTS

Mr. Reid was formerly married to Tina Woodraska and fathered two daughters by her, including A.L.R. who was born in 2005. He was also stepfather to Tina's son, A.R.E., who was born in 1998. The charges involved those two children during a time period in 2007-2008 when A.L.R. was two and A.R.E. was nine or ten. Two counts of first degree child molestation involving A.L.R. and one count involving A.R.E. were filed.

At trial, A.L.R. did not remember the events in question. As a result, her primary evidence consisted of a taped interview made two years earlier. Part of that testimony was corroborated by her mother and by the testimony of Eric O'Leary, Ms. Woodraska's brother. A.R.E. described one incident of molestation.

The investigating detective, Ben Estes, testified concerning the course of his investigation and the steps he undertook to obtain statements from the witnesses, including Mr. Reid. In the course of his testimony, the detective described how witness statements conflicted, which raised "red flags" to him that someone was lying. He did not state who he believed might be lying. Defense counsel objected to various aspects of the detective's testimony, but not to these statements.

In the course of her testimony, Ms. Woodraska stated that as far as she knew, "he sexually abused them. I know for sure. I don't want them to get hurt." Counsel also did not object to this testimony. She admitted that the disclosures of sexual abuse came out during the couple's contested marriage dissolution and that she attempted to limit Mr. Reid's contact with the children.

Mr. Reid testified in his own defense and explained the incidents relating to the two children as innocent behavior. Defense counsel spent nearly the entirety of his closing argument attacking the credibility of Ms. Woodraska and Mr. O'Leary, contending that Ms. Woodraska was attempting to obtain through the criminal law what the family law judges had denied her—exclusion of Mr. Reid from the children's lives.

The jury found Mr. Reid guilty of one count involving A.L.R. and one count involving A.R.E. The jury acquitted Mr. Reid on the second count involving A.L.R. After imposition of a standard range sentence, Mr. Reid timely appealed to this court.

ANALYSIS

Mr. Reid's appeal argues that the noted testimony of Ms. Woodraska and Detective Estes constituted improper opinion testimony that deprived him of a fair trial. He also argues that his counsel failed to provide effective assistance by not challenging various testimony.[1] We address these matters as two separate contentions.

Improper Opinion Testimony

Mr. Reid contends that the noted evidence from Detective Estes constituted an opinion that Mr. Reid lied during the investigation and that the quoted testimony from Ms. Woodraska was an expression that she believed him guilty. In neither instance did the defense object to the testimony. We conclude that Mr. Reid has not established that either episode constituted manifest constitutional error.

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[1] Counsel also argues that cumulative error prevented a fair trial, while Mr. Reid filed a Statement of Additional Grounds (SAG) arguing, apparently, that counsel was ineffective and that there were factual inconsistencies in the testimony of the State's witnesses. In light of our conclusion that there were not multiple errors, we do not further address the cumulative error argument. The first SAG issue repeats an argument adequately raised by counsel, so we will not further address it. RAP 10.10(a). The other issue does not adequately explain what was erroneous, let alone how the error prejudiced the defense. It is inadequate for our review. RAP 10.10(c).

It is improper for one witness to state that another witness is lying; it is equally improper for a witness to opine that the defendant is guilty. *State v. Black*, 109 Wn.2d 336, 348, 745 P.2d 12 (1987); *State v. Kirkman*, 159 Wn.2d 918, 927, 155 P.3d 125 (2007). In each instance, such testimony invades a function of the jury to determine credibility and guilt or innocence. *Black*, 109 Wn.2d at 348; *Kirkman*, 159 Wn.2d at 927. When a witness violates one of these strictures, the defendant's due process right to a fair trial is infringed. *Kirkman*, 159 Wn.2d at 927.

Evidence rulings typically are reviewed for abuse of discretion. A trial judge's decision to admit or exclude evidence under these provisions is reviewed for abuse of discretion. *Diaz v. State*, 175 Wn.2d 457, 462, 285 P.3d 873 (2012). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). An appellate court will only consider the specific objection raised in the trial court. *State v. Guloy*, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985). The failure to raise an objection waives any challenge to the evidence. *Id.*; *State v. Boast*, 87 Wn.2d 447, 451-52, 553 P.2d 1322 (1976). As a general rule, the failure to raise an issue in the trial court precludes appellate review of the issue. RAP 2.5(a). The most common exception to that rule is that a claim raising a manifest constitutional error may be reviewed. RAP 2.5(a)(3). A claim is manifest if the facts in the record show that the constitutional error prejudiced the defendant's trial. *State v.*

McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). However, if the necessary facts are not in the record, "no actual prejudice is shown and the error is not manifest." *Id.*

It is the last two of these principles that govern this case. Because there was no objection to the now-challenged testimony, this court can consider the arguments only if the record establishes prejudicial constitutional error that puts this case within the reach of RAP 2.5(a)(3). That is not the case here.

The detective's testimony did not state that Mr. Reid was lying to him. The detective believed someone was probably lying during the investigation, but never stated that any specific person he talked to was doing so. In order to constitute an improper opinion, the testimony must be a nearly "explicit statement of opinion on the credibility of the defendants or victims." *Kirkman*, 159 Wn.2d at 938. The evidence cited does not meet that threshold. The detective did not identify who he specifically thought was not being truthful and was not an opinion on that person's statement. Instead, he was explaining why he kept going back to the witnesses for further information as the case developed. Having not identified any person or testimony that he suspected was untruthful, this testimony did not constitute an improper opinion.[2]

[2] Similar testimony presenting the converse of this issue was one of the issues presented in *Kirkman*. There an officer had testified that he told the child victim that it was important that she tell him the truth. *Id.* at 925. She then told the officer what had happened to her and the officer repeated those statements to the jury. *Id.* Our court concluded that this testimony did not constitute a statement that the officer thought the victim was telling the truth and was not manifest constitutional error. *Id.* at 931.

We reach the same conclusion, although for a different reason, with respect to the challenged testimony of Ms. Woodraska. Her challenged testimony is ambiguous and, thus, does not amount to a clear statement of guilt despite its wording. This argument involves the following sentences in the transcript of her testimony in response to the prosecutor's question on direct examination about why she did not want Mr. Reid visiting with the children:

> Well, I don't want [him] to hurt them. I don't want them – I mean, he's physically abusive. And as far as I know, he sexually abused them. I know for sure. I don't want them to get hurt. And that's the only reason I would ask that he just not hurt them anymore.

Report of Proceedings (RP) at 209.

The idiom "as far as I know," does not express an opinion that defendant is guilty, but merely states the possibility that he is guilty, so the claimed error arises from the sentence, "I know for sure." As the statement in the record is written, it is unclear *what* Ms. Woodraska is testifying that she knows. Mr. Reid asserts that it applies to the previous sentence about sexual abuse and is an opinion on his guilt. However, it seems from the context equally likely, if not more likely, that the statement is a part of the following sentence, and that she essentially said, "He's physically abusive, and as far as I know he sexually abused them. I know for sure that I don't want them to get hurt." Read this way, Ms. Woodraska has merely stated the possibility that he is guilty and expressed a desire to protect her children from potential harm. It is impossible to determine from

the record whether Ms. Woodraska stated an opinion as to Mr. Reid's guilt. The ambiguous statement may have been closer in time to one sentence or another, but again the written transcript simply does not tell us that.[3]

Accordingly, neither of the claimed instances constitutes a clear statement about the defendant's guilt that makes the alleged error of a manifest constitutional nature. The claims are without merit.

Ineffective Assistance of Counsel

Mr. Reid also argues that his counsel was ineffective in failing to challenge the noted statements as well as in failing to object to other evidence including the mother's testimony concerning statements made by A.L.R., testimony about physical violence, and statements made by a child welfare investigator. His argument does not satisfy his heavy burden in this proceeding.

The Sixth Amendment guaranty of counsel requires that an attorney perform to the standards of the profession. Counsel's failure to live up to those standards will require a new trial when the client has been prejudiced by counsel's failure. *McFarland*, 127 Wn.2d at 334-35. In evaluating ineffectiveness claims, courts must be highly deferential to counsel's decisions. A strategic or tactical decision is not a basis for

[3] Indeed, the failure to object is suggestive that defense counsel did not think it was a comment on guilt, but merely an affirmation that Ms. Woodraska wanted to protect her children.

finding error. *Strickland v. Washington*, 466 U.S. 668, 689-91, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Under *Strickland*, courts apply a two-prong test: whether or not (1) counsel's performance failed to meet a standard of reasonableness and (2) actual prejudice resulted from counsel's failures. *Id.* at 690-92. When a claim can be disposed of on one ground, a reviewing court need not consider both *Strickland* prongs. *Id.* at 697; *State v. Foster*, 140 Wn. App. 266, 273, 166 P.3d 726, *review denied*, 162 Wn.2d 1007 (2007).

Initially, Mr. Reid presents the previous two arguments as evidence that counsel performed ineffectively by failing to object to the "guilt" testimony. As we have found that neither claim was substantiated, these arguments do not show that counsel performed ineffectively. Accordingly, the first prong of the *Strickland* standard was not established and we need not further address this aspect of the claim. 466 U.S. at 690, 697.

Mr. Reid next argues that counsel should have objected to the testimony of Ms. Woodraska that A.L.R. told her that Mr. Reid hurt her in her private parts and that he had been physically abusive to A.R.E. He also points to testimony by Ms. Karen Winston concerning her follow up with Ms. Woodraska after the forensic interview of A.L.R.

Actions of the trial attorney cannot be considered ineffective assistance of counsel where those actions were in furtherance of a reasonable trial strategy. Consequently, in examining the claimed deficiencies in trial counsel's representation, it is necessary to bear in mind the defense theory of the case. Defense counsel focused on the fallout from a contentious divorce. He pointed to evidence that Ms. Woodraska had sought to

severely limit and prevent access by Mr. Reid to the children prior to any allegations of abuse. He then argued that subsequent, escalating allegations of alcoholism, physical abuse, and then sexual abuse were part of a pattern of actions by Ms. Woodraska aiming to limit Mr. Reid's access to their children by any means necessary. *See* RP at 214-20. He then also pointed to inconsistencies in the testimonies of prosecution witnesses to cast doubt on the allegations of molestation. In light of this overarching trial strategy, several of the evidentiary issues complained about on appeal were useful or necessary to establish that theory of the case, and cannot be used to establish a claim of ineffective assistance of counsel.

Evidence of physical abuse presented was from testimony by Ms. Woodraska and A.R.E. Since the defense theory of the case involved characterizing Ms. Woodraska's various allegations as ploys to gain custody of the children, the defense needed some testimony from Ms. Woodraska concerning physical abuse in order to make this argument. Some of this testimony was even in response to defense's cross-examination. *See* RP at 227-28. For instance, defense counsel asked Ms. Woodraska, "A year and a half later you're back again with CPS allegations, and you do get it amended to get closer to the original custody arrangements that you wanted?" RP at 228. The court made note of such evidence being entered without objection and offered the defense an opportunity to enter a limiting instruction, but defense declined citing trial strategy as the reason. RP at 349, 382.

The testimony given by Ms. Winston concerning her discussion with Ms. Woodraska also was useful to the defense. Mr. Reid characterizes this testimony as a statement by a credentialed expert of belief in the allegations. However, all the testimony amounted to was a statement that Ms. Winston informed Ms. Woodraska of prudent further actions to provide safeguards against potential abuse. RP at 154-55. This recommendation did play into defense counsel's argument that the allegations were all about Ms. Woodraska restricting Mr. Reid's access to his children. It amounted to evidence of a discussion concerning how to restrict such access.

These noted instances were part of the defense trial strategy and do not establish that counsel erred.

The statements Ms. Woodraska claims A.L.R. made to her track exactly the statements A.L.R. made in the forensic interview, which was admitted into evidence under the child hearsay rule. It is difficult to see how Ms. Woodraska's quoting A.L.R. would have any effect on the outcome after the jury had already been presented with a video of A.L.R. making the same quoted statements. Trial counsel could have objected and the evidence would likely have been stricken, but it would not have substantively changed the evidence before the jury, and may have appeared combative. Thus, any error here did not prejudice Mr. Reid, let alone cast doubt on the outcome of the trial.

None of the allegations establish that defense counsel failed to adequately represent Mr. Reid. The evidence was either admissible, consistent with the defense

theory of the case, or cumulative to other properly admitted evidence. Accordingly, Mr. Reid has not established that his counsel performed ineffectively.

The convictions are affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Brown, A.C.J.

Fearing, J.