

NO. 49375-6-II

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

STATE OF WASHINGTON, Respondent

v.

CHRISTOPHER ALLAN ALLRED, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-01436-6

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

ANNE M. CRUSER, WSBA #27944
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

TABLE OF CONTENTS

RESPONSE TO ASSIGNMENTS OF ERROR..... 1

 I. The trial court did not err in admitting the expert testimony of
 Monica Hernandez. 1

STATEMENT OF THE CASE..... 1

ARGUMENT 4

 I. The trial court did not err in admitting the expert testimony of
 Monica Hernandez. 4

CONCLUSION..... 8

TABLE OF AUTHORITIES

Cases

| | |
|--|------|
| <i>State v. Ferguson</i> , 100 Wn.2d 131, 667 P.2d 68 (1983)..... | 5 |
| <i>State v. Guloy</i> , 104 Wn.2d 412, 705 P.2d 1182 (1985) | 5 |
| <i>State v. Halstein</i> , 122 Wn.2d 109, 857 P.2d 270 (1993)..... | 8 |
| <i>State v. Jones</i> , 71 Wn.App. 798, 863 P.2d 85 (1993)..... | 6, 7 |
| <i>State v. Kirkman</i> , 159 Wn.2d 918, 155 P.3d 125 (2007) | 5 |
| <i>State v. Koepke</i> , 47 Wn.App. 897, 738 P.2d 295 (1987) | 5 |
| <i>State v. Korum</i> , 157 Wn.2d 614, 141 P.3d 13 (2006)..... | 5, 6 |
| <i>State v. Kronich</i> , 160 Wn.2d 893, 161 P.3d 982 (2007) | 5 |
| <i>State v. Powell</i> , 166 Wn. 2d 73, 206 P.3d 321 (2009)..... | 5 |
| <i>State v. Stenson</i> , 132 Wn.2d 668, 940 P.2d 1239 (1997)..... | 7 |
| <i>State v. Stevens</i> , 58 Wn.App. 478, 794 P.2d 38 (1990) | 7 |

Rules

| | |
|--------------------|---|
| RAP 2.5(a) | 6 |
| RAP 2.5(a)(3)..... | 5 |

RESPONSE TO ASSIGNMENTS OF ERROR

I. The trial court did not err in admitting the expert testimony of Monica Hernandez.

STATEMENT OF THE CASE

A.A. was sixteen years-old when her step-father, Christopher Allred, began sexually abusing her. RP 127. It lasted until she was nineteen years old. RP 127. A.A. did not learn until after she reported the abuse that Allred was not actually her real father. RP 123. Her family had misled her until she was twenty, and she was unaware her real father died when she was three. RP 123. A.A. has a brother who is three years younger than she is. RP 123.

A.A. and her brother were home-schooled. RP 126, 157. Although her mother served primarily as her teacher, Christopher Allred controlled her grades. RP 163-67, 242-44. He held her back in grades 8 and 11, deciding that she was not ready to go to the next grade. RP 165-168. He also decided not to let A.A. graduate on time and withheld her diploma. RP 163-168. Without a diploma, A.A. was unable to go to college or find a good job. RP 165-66.

When A.A. was sixteen, Allred began sexually abusing her by kissing her, groping and sucking her breasts, putting his fingers in her vagina, and putting his mouth on her vagina. RP 129. He also put his penis into her mouth. RP 129. On one occasion A.A. tried to get away from

Allred when he put his finger in her vagina but he forcibly pulled her back down by her arm and told her she had to stay there. RP 131. She was too afraid to yell for help. RP 131. On at least one occasion A.A.'s brother was in the room when Allred performed oral sex on her. RP 137-38. Her brother was positioned in such a way that his head was facing in a totally different direction than where she and Allred were positioned. RP 138. The abuse often happened in the afternoon, and would sometimes occur when Allred would make A.A. wrestle with him. RP 133. As a way of punishing A.A., Allred would force her to box him and would attack her in her bed and tell her to try to escape. RP 134. When she failed to escape, he instituted a punitive exercise regimen to begin each morning at 5:00 a.m. RP 135. It turned out the exercise regimen was simply a pretext for Allred to get more private time with A.A. and digitally rape her. RP 135. As she would do a push up, for example, he would slide his thumb into her vagina. RP 135. Allred made her wear specific clothes of his choosing during the workouts. RP 136. On one occasion when Allred had climbed into A.A.'s bed and began groping her breasts, her mom walked into her room. RP 142. Both Allred and A.A. denied anything had happened and A.A.'s mother accepted the answer. RP 142. Prior to A.A.'s mom questioning her about the incident, Allred had warned her not to tell her mother. RP 142. This was consistent with what Allred had told her when

he first began abusing her: That if she told anyone about it they wouldn't believe her. RP 143. Allred told A.A. the purpose of the sexual abuse was to teach her how to please her husband in the future. RP 143.

When A.A. was eighteen years-old she was diagnosed with lymphoma. RP 136. A.A. received chemotherapy for six months, and then radiation for four months. RP 137. Allred took a break from sexually assaulting A.A. during the time she was on chemotherapy, but the abuse resumed when she began radiation. RP 137. Around this time, Allred decided to start charging A.A. rent to live in her home, even though she lacked a high school diploma because he was withholding it and she didn't have a job. RP 171. A.A. eventually disclosed the abuse, but gave more detailed accounts of what happened as the investigation progressed. During cross examination at trial, A.A. was aggressively and repeatedly questioned about her failure to give only a singular, unchanging statement about what happened to her. RP 151-233. Defense counsel questioned her repeatedly on her evolving disclosure of all of the abuse she suffered (for example, she didn't mention in her first disclosure that the defendant had forced her to masturbate in front of him), and on her decision not to disclose the abuse to her teenage brother. RP 151-233.

The State called Detective Monica Hernandez to testify about the investigation and to give expert testimony on delayed disclosure. RP 373.

Detective Hernandez testified

Delayed disclosure is when a individual comes in and discloses to somebody, and then later discloses more information, feeling more comfortable, circumstances change, being believed by somebody. Typically kids who are told that, “No one’s ever going to believe you,” or threatened or -- there’s a number of circumstances that, that come about where kids are -- have a delayed disclosure or they -- they’ll disclose a partial incident and then come out with more.

RP 373.

Allred objected to this testimony on the ground that it was “irrelevant” because it was “general information.” RP 374. The court allowed the testimony to stand. RP 374.

Allred was convicted of all counts. This timely appeal followed the imposition of judgment.

ARGUMENT

I. The trial court did not err in admitting the expert testimony of Monica Hernandez.

As an initial matter, the testimony Allred now complains of was not objected to at trial on the ground he now raises. At trial, Allred objected to the testimony being “irrelevant.” To the extent he provided any support or argument in favor of his objection, it was the witness was being

called upon to talk about her experience in other cases, which should have no relevance to this case. RP 372-74. Allred also suggested, through his questions in aid of objection, that he was challenging the foundation for the testimony. RP 375-76. Allred did not object to this testimony on the ground that it was improper “profile” testimony—the objection he now raises. See Brief of Appellant at pg. 7. As such, this Court should decline to review this issue because it was not preserved below. In *State v. Powell*, the Supreme Court held:

On appeal, a party may not raise an objection not properly preserved at trial absent manifest constitutional error. *State v. Kronich*, 160 Wn.2d 893, 899, 161 P.3d 982 (2007); RAP 2.5(a)(3). We adopt a strict approach because trial counsel's failure to object to the error robs the court of the opportunity to correct the error and avoid a retrial. *State v. Kirkman*, 159 Wn.2d 918, 935, 155 P.3d 125 (2007). We will not reverse the trial court's decision to admit evidence where the trial court rejected the specific ground upon which the defendant objected to the evidence and then, on appeal, the defendant argues for reversal based on an evidentiary rule not raised at trial. *State v. Korum*, 157 Wn.2d 614, 648, 141 P.3d 13 (2006); *State v. Ferguson*, 100 Wn.2d 131, 138, 667 P.2d 68 (1983); *State v. Koepke*, 47 Wn.App. 897, 911, 738 P.2d 295 (1987) (“A party may only assign error in the appellate court on the specific ground of the evidentiary objection made at trial.”) (citing *State v. Guloy*, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985)).

State v. Powell, 166 Wn. 2d 73, 82–83, 206 P.3d 321 (2009).

Likewise, in *Korum*, supra, the Supreme Court held the defendant failed to preserve an issue on appeal when he raised an ER 403 objection

on appeal, but cited only lack of foundation as the basis for his objection at the trial court. *Korum*, 157 Wn.2d at 648. Because Allred chose not to raise the profiling objection below, he deprived the trial court of the opportunity to consider and rule on the issue. In his brief, Allred makes no attempt to establish that consideration of this issue for the first time on appeal is warranted under RAP 2.5(a). As it is his burden to do so, this issue should not be considered for the first time in this appeal. The issue has been waived.

Even if this issue had not been waived, Allred's claim lacks merit. The testimony offered was not "profile" testimony about sexual abuse victims, used to prove the existence of sexual abuse by demonstration that a victim matches a particular profile. Rather, this testimony was offered to rebut Allred's assertion that A.A. had fabricated her claim of sexual abuse out of whole cloth, with the evidence of the fabrication being both her failure to disclose every detail of the abuse during her very first disclosure, and her decision not to disclose to her brother (a decision that any girl or woman could easily understand).

The case Allred primarily relies upon, *State v. Jones*, 71 Wn.App. 798, 863 P.2d 85 (1993), supports the trial court's decision in this case. "[E]xpert testimony generally describing symptoms exhibited by victims may be admissible when relevant and when not offered as a direct

assessment of the credibility of the victim.” *State v. Stevens*, 58 Wn.App. 478, 497, 794 P.2d 38 (1990). Expert testimony about a profile of sexual abuse victims, or about child sexual abuse “syndrome,” is not admissible when offered to prove the existence of sexual abuse or to prove the defendant is guilty. *Jones*, supra, at 819. The *Jones* Court went on to say “However, we agree with the current trend of authority that such testimony may be used to rebut allegations by the defendant that the victim’s behavior is inconsistent with abuse.” *Id.* That is precisely what occurred in this case: Allred argued that A.A.’s delayed disclosures were inconsistent with abuse, and proved that she fabricated her accusations. The testimony of Detective Hernandez was offered solely to rebut this claim. It was not offered to enable the state to argue that Allred must have committed the acts he was accused of because A.A.’s behavior established that she had been abused. In short, this was not “profile” or “syndrome” testimony. The trial court did not err in overruling Allred’s relevancy objection to this testimony.

Even if the court’s ruling was erroneous, the error was harmless. Because this claim is one of evidentiary error, it is nonconstitutional and requires reversal only if the error, within reasonable probability, materially affected the outcome. *State v. Stenson*, 132 Wn.2d 668, 709, 940 P.2d 1239 (1997), citing *State v. Halstein*, 122 Wn.2d 109, 127, 857 P.2d 270

(1993). Here, the testimony was in fair rebuttal to Allred's cross-examination of A.A. The case against Allred was very, very strong. The jury heard that he controlled A.A.'s life like a dictator and treated her like a sex slave. The inference to be drawn from him holding her back in 8th and 11th grade was so that he could force her to stay in his home, and as his virtual prisoner, for as long as possible. By not allowing her to graduate, he ensured that she couldn't leave the home and have a life of her own. A.A.'s description of the exercise regimen was a clear pretext on Allred's part to get A.A. alone when no one else was likely to see so he could digitally penetrate her. Finally, at least one act of abuse was *witnessed* by A.A.'s mom. Mrs. Allred testified about seeing the breast groping that occurred in A.A.'s bedroom. RP 271-72. If any error occurred, it was harmless. The convictions should be affirmed.

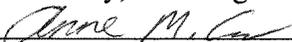
CONCLUSION

The convictions should be affirmed.

DATED this 25th day of July, 2017.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: 
ANNE M. CRUSER, WSBA #27944
Senior Deputy Prosecuting Attorney, OID# 91127

CLARK COUNTY PROSECUTING ATTORNEY

July 25, 2017 - 2:51 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49375-6
Appellate Court Case Title: State of Washington, Respondent v. Christopher Allred, Appellant
Superior Court Case Number: 15-1-01436-6

The following documents have been uploaded:

- 3-493756_Briefs_20170725145043D2739769_2928.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Brief - Respondent.pdf

A copy of the uploaded files will be sent to:

- glinskilaw@wavecable.com

Comments:

Sender Name: Jennifer Casey - Email: jennifer.casey@clark.wa.gov

Filing on Behalf of: Anne Mowry Crusier - Email: Anne.crusier@Clark.wa.gov (Alternate Email: CntyPA.GeneralDelivery@clark.wa.gov)

Address:
Clark County Prosecuting Attorney
PO Box 5000
Vancouver, WA, 98666
Phone: (360) 397-2261 EXT 4476

Note: The Filing Id is 20170725145043D2739769