

FILED
Court of Appeals
Division III
State of Washington
9/17/2020 4:01 PM

No. 37228-6-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

ERIC RAY STALFORD,

Appellant

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

NO. 18-1-00731-03

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

Terry J. Bloor, Deputy
Prosecuting Attorney
BAR NO. 9044
OFFICE ID 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509) 735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

I. RESPONSE TO ASSIGNMENTS OF ERROR.....1

II. STATEMENT OF FACTS1

III. ARGUMENT10

 A. The prosecutor’s closing argument did not cross a line into misconduct and the facts were so overwhelming that counsel’s arguments had little to do with the verdicts.....10

 1. Standard on review for prosecutorial misconduct10

 2. In her closing argument the prosecutor never made a “clear and unmistakable” expression of her personal opinion and, therefore, there was no misconduct.....11

 3. Even if misconduct were established, it was not flagrant or ill-intentioned and did not result in prejudice.....17

 B. The defendant is correct concerning the dates of offense and the dates of the prior sex convictions in Oregon.....19

IV. CONCLUSION.....19

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Allen, 161 Wn. App. 727, 255 P.3d 784 (2011)12-13
State v. Brett, 126 Wn.2d 136, 892 P.2d 29 (1995)13
State v. Burch, 197 Wn. App. 382, 389 P.3d 685 (2016)15
State v. Christopher, No. 45694-0-II, 2015 WL 4627884 (Wash. Ct. App. Aug. 4, 2015)16, 18
State v. Emery, 174 Wn.2d 741, 278 P.3d 653 (2012)10-11
State v. Fiallo-Lopez, 78 Wn. App. 717, 899 P.2d 1294 (1995)13-14
State v. Jackson, 150 Wn. App. 877, 209 P.3d 553 (2009)14-15
State v. Korum, 157 Wn.2d 614, 141 P.3d 13 (2006)13
State v. Papadopoulos, 34 Wn. App. 397, 662 P.2d 59 (1983)12
State v. Price, 126 Wn. App. 617 (2005) *abrogated by State v. Hampton*, 184 Wn.2d 656 (2015)12
State v. Ramos, 164 Wn. App. 327, 263 P.3d 1268 (2011)15
State v. Sargent, 40 Wn. App. 340, 698 P.2d 598 (1985)11-12
State v. Stenson, 132 Wn.2d 668, 940 P.2d 1239 (1997)10-11
State v. Thorgersen, 172 Wn.2d 438, 258 P.3d 43 (2011)17
State v. Warren, 165 Wn.2d 17, 195 P.3d 940 (2008)14

I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The State disagrees: The prosecutor's closing argument did not personally vouch for the credibility of the victim.
- B. The State agrees: The dates of the offenses are not accurate on the Judgment and Sentence.

II. STATEMENT OF FACTS

The individuals involved:

R.H.: The alleged victim, D.O.B. 12/21/09. RP¹ at 543. He testified that the defendant, who he called "dad," put his hand on R.H.'s private part and put his mouth on his private part. RP at 703, 708-09.

R.H.'s father left the family home when R.H. was two-years-old and has not been part of his life. RP at 568-69. He has been incarcerated since 2012. RP at 544.

D.G.S.: R.H.'s mother. RP at 543. She met the defendant online in October 2014. RP at 546. They moved in together and later married in October 2015. RP at 548. Because R.H. had very little contact with his natural father, he referred to the defendant as "dad." RP at 552.

Pastor Mel Steinmeyer: Pastor of Gateway Foursquare Church where the defendant, D.G.S., and R.H. went. RP at 621, 623. After R.H.

¹ Unless otherwise indicated, "RP" refers to verbatim report of proceedings from jury trial on 08/26-30/19.

revealed sexual abuse to his mother, she took him to see Pastor Steinmeyer. RP at 562-63. R.H. told him about the defendant inappropriately touching him. RP at 628.

Alice Steinmeyer: Pastor Steinmeyer's wife. RP at 607-08. She also spoke to R.H. in private and he told her that the defendant had been touching his penis, that he had to touch the defendant's penis, and "white stuff" had come out of the defendant's thing. RP at 612-14.

Mari Murstig: Child Forensic interviewer who interviewed R.H. on 05/09/18. RP at 684, 691. He told her that in addition to the touching, the defendant performed oral sex on him. See Exhibit 7.

The events: "Q: How did you feel after you told? R.H.: A big weight was lifted off me, but I lost my dad."

D.G.S. became aware of part of the sexual abuse during an evening in May 2018 when the defendant was working out of town. RP at 555, 561. R.H. peeked into a bathroom where she was giving a younger child a bath. RP at 555. R.H. saw something on the toilet seat and said, "Ew, gross. That looks like semen." RP at 556. Concerned about how her 8-year-old would know about semen, D.G.S. questioned R.H. and he eventually told his mother that the defendant was touching his "weiner." RP at 559. She telephoned the defendant, who denied touching R.H. inappropriately. RP at 560, 562.

She then called her pastor, Mel Steinmeyer. RP at 562. The pastor and his wife, Alice, met with D.G.S. and R.H. the following day. RP at 564. R.H. repeated that the defendant had been touching his penis to Pastor Steinmeyer. RP at 628. Alice then spoke to R.H. alone and he admitted that he also had to touch the defendant's penis and that white stuff came out. RP at 613-14.

D.G.S. went to the police. RP at 643. Child forensic interviewer Mari Murstig conducted an interview with R.H. on May 9, 2018. RP at 691. He added that the defendant was performing oral sex on him. Ex. 7.

R.H. was cross-examined aggressively including a question, "Have you ever told a fib?" RP at 726. However, his direct testimony was powerful, ending with this question and answer:

Q: After you told, how did that make you feel?

A: It felt good. Like—like a big weight just got lifted off my back—but it didn't feel as good . . . because I lost my dad." RP at 721.

The defendant's flight from the state:

The defendant was not arrested following the interview with Ms. Murstig; he was interviewed by Detective Brian Pochert of the Kennewick Police Department on May 14, 2018. RP at 651. They arranged for a follow-up interview on May 21, 2018. RP at 652.

However, the defendant caught a plane to Salt Lake City and never made the interview. RP at 652, 680. Before departing the defendant emailed a co-worker, Justin Widmer, on May 20, 2018 the following:

Subject line: Sorry my friend.
Justin, please forgive my action. My phones are in my desk the PIN number is 0262. My computer password is ERIC15419360766. If possible you could pick up my blue pickup from the airport the keys are in the consol. My home depot card is on my desk an[d] the fuel cards are in the visor. It may be a gigantic lack of faith an[d] I know I let everyone down. Though innocent I could see the writing on the wall. Please if you find it in your heart to forgive me that would be awesome. Please know that it has been an honor an[d] privilege to have gotten to know an[d] to become your brother. Please know I am safe an[d] this email address will be terminated after sending this message. I hope it don't end up in your spam folder . . . A wayward brother.

RP at 662-63.

The part about the email address terminating was true; Mr. Widmer forwarded the email from his office phone to his personal phone and that was the only retrievable copy. RP at 660. There were bank records showing the defendant made transactions in San Diego, Tijuana, and Coos Bay, Oregon. RP at 567. He was located in Oregon on September 27, 2018. RP at 656-57.

The trial testimony and the prosecutor's closing argument:

The prosecutor's closing argument covered 27 pages of transcript. RP at 774-801. Of that the defendant has cited the following: lines 4-11 on

page 787, lines 18-21 on page 788, lines 2-10 on page 789, lines 8-22 on page 792, lines 12-13 on page 793 and lines 3-16 on page 796.

The prosecutor's closing argument tracked jury instruction number 1, CP 199-202, which is based on WPIC 1.01, specifically the portion stating:

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation of belief of a witness or your evaluation of his or her testimony.

CP 200-01.

The prosecutor repeated, "You are the judges of the credibility of the witnesses." RP at 784. The prosecutor then discussed the factors in the instruction that a jury may use to determine a witness's credibility: the opportunity of the witness to observe, the ability of the witness to observe accurately, the quality of a witness's memory, the manner of the witness while testifying, any personal interest the witness might have, and the reasonableness of the witness's statements in the context of all of the other

evidence. CP 200-01; RP at 784-85. It is helpful to address all of the arguments the defendant cites.

Regarding the opportunity-to-observe factor, the prosecutor referred to this as the “he knows because he lived it” factor. RP at 785. The prosecutor described how R.H. testified about body positions, about how the defendant shook his penis, and how he would put a blanket on the floor before a sexual encounter. RP at 786-87. In this context, the prosecutor argued,

Remember how [R.H.] told you, “He put my hand on there, and I would pull it away,” and his dad would get mad. Yeah. How do you know that? How do you know that your dad would get mad if you pulled your hand away? Just makin’ that out of thin cloth—or maybe that’s not the right term, but just making that out of thin air? No. That happened. That’s why he knows that. Because he lived it.

RP at 787, lines 4-11.

Continuing with the “he had an opportunity to observe because he lived it” theme, the prosecutor spoke about testimony from R.H. about a conversation he had with the defendant.

It happened during campouts. Called it ‘their time’ when mom was not home. “Do you remember that time”—wow. Okay, did he have—his dad putting his mouth on his private, and when asked, “Did he ever say anything to you?” “Yeah. He would ask me if it felt good.” Do you remember what little eight-year-old [R.H.] said? Can you even forget it?
He said, “I told him that it felt good, but I didn’t mean it. I just didn’t want to hurt his feelings.” Whoa. You can’t

make that up. That is confusion. That is love. That is sexual abuse. Remember how he described when he would put his mouth on his potty, and they said—was asked, “Where were your clothes?” “Oh, my underwear was down here (indicating),” and he pointed to his knees. He remembers that. That is a very significant detail.

RP at 788-89, lines 11-23 and line 1. (Italics are the portion the defendant cited as misconduct.)

The prosecutor continued speaking about R.H.’s “opportunity to observe” and stated the following:

How about the opportunity of the witness to observe or know the things he talked about? Remember when he would say, “He would come in my room before work,” and his dad, “Do you want to cuddle or do you want to do something else?” Sometimes they would cuddle, but sometimes he would say, “Let’s do something else, just to get him out of my face.” I mean, makin’ that detail up? No. That’s what an eight-year-old boy would say. Credible. Credible.

RP at 789, lines 2-10.

Continuing to track the Jury Instruction No. 1, regarding factors the jury could consider to determine credibility, the prosecutor then spoke about R.H. and the “ability of the witness to observe accurately,” “the quality of a witness’s memory while testifying,” “the manner of the witness while testifying,” and “any personal interest that the witness may have in the outcome.” CP 200-01; RP 789-92. Concerning R.H.’s personal interest in the case, the prosecutor stated,

I don't know, ladies and gentlemen. Were there any adults who have an interest in him being dishonest? I mean, when you think about it, kid's tellin' the truth, kid's lyin', or maybe some adult's gettin' this kid to lie. Any adults around him that want to sink this guy (indicating)? That are like, "Okay, [R.H.]. You know, you gotta go in there and you gotta say X, Y, Z, P, D, Q, because this guy's gotta go down. So, this is why and this is why."

No. Everybody—nothing like that came out. Nothing. He loves his dad. He lost his dad also, and he understands that, and he understood it from the very beginning. How would an eight-year-old come up with all of this? It's impossible. Impossible.

RP at 792, lines 8-22.

The prosecutor returned to discussing factors a jury can consider to determine credibility pursuant to WPIC 1.01 and Jury Instruction 1, discussed "any bias or prejudice that the witness may have shown," and the reasonableness of his testimony in the context of all the other evidence. CP 201; RP at 792-93. Regarding this factor, reasonableness of R.H.'s testimony in context of all the other evidence, the prosecutor talked about the initial discovery of the abuse by D.G.S.

Is it reasonable how it came out? It was spontaneous. "That looks like semen." Complete spontaneous disclosure. Completely spontaneous. No one's questioning him. Spontaneous. And then mom began to ask how her eight-year-old child knows about semen, and that's how this all came out. It was spontaneous.
And when his mom asked, he told the truth. He told the truth. He also told several important people in his life. Told Pastor Mel. . . . He also told (the Pastor's wife, Alice), who's also an authoritative figure in his life. Somebody he

trusts, his Sunday school teacher He also told a child forensic interviewer.

RP at 793-94. (Italics are the only portion cited by the defendant.)

The prosecutor then argued that the sequence of sexual abuse described by R.H. made sense. The abuse would start slowly, with touching on the outside of clothing. RP at 795. The abuse would graduate to places where they could be alone, with the defendant calling it “our special time.” RP at 796. In that context the prosecutor argued:

Remember where it happened. The campouts. He called it “our special time.” You can’t make that up. His room. Their room. Places that they could be alone. Think about where [R.H.] describes it happening. It makes sense in light of all the other evidence you’ve heard. Remember that he wanted to keep baby out of the room. Remember that he would---that [R.H.] told you, “He wanted me to go check on mom to see if she was asleep so we could have our special time.” How do you make that up unless it happened to you. You can’t. You cannot. Because that’s exactly what his dad told him. And he remembers getting up and going to check if his mother was asleep. And remember that mom saw this man in his underwear spooning her kid. Now, he had known this boy for less than three years. Red flag? Yeah. Yeah. Think about that. She witnessed that. Maybe she didn’t want to believe it. Looking back, yeah, that’s weird.

RP at 796. (Italics are the only portion cited by the defendant.)

The prosecutor then referred to the last catchall factor in WPIC 1.01, “[A]ny other factors that affect your evaluation or belief of a witness” CP 201. The prosecutor asked, “What other evidence do you have

that he’s—that the kid is credible?” RP at 798. The prosecutor referred to the defendant’s flight from the State. *Id.*

The defendant also complains about Powerpoint slides in the prosecutor’s closing argument saying “[R.H.] = Credible.” Br. of Appellant at 8. However, the defendant does not claim those slides had personal opinions of the prosecutor. Br. of Appellant at 6-7.

The defendant was convicted of two counts of Child Molestation in the First Degree and one count of Rape of a Child in the First Degree with aggravating factors of “pattern of sexual abuse” and “abuse of trust.” CP 240-48.

III. ARGUMENT

A. The prosecutor’s closing argument did not cross a line into misconduct and the facts were so overwhelming that counsel’s arguments had little to do with the verdicts.

1. Standard on review for prosecutorial misconduct.

First, the defendant has the burden to show that the prosecutor’s closing argument constituted misconduct. *State v. Emery*, 174 Wn.2d 741, 759, 278 P.3d 653 (2012). If the defendant did not object at trial, the defendant is deemed to have waived any error, unless the prosecutor’s misconduct was so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice. *State v.*

Stenson, 132 Wn.2d 668, 727, 940 P.2d 1239 (1997). “Under this heightened standard, the defendant must show that (1) ‘no curative instruction would have obviated any prejudicial effect on the jury’ and (2) the misconduct resulted in prejudice that ‘had a substantial likelihood of affecting the jury verdict.’” *Emery*, 174 Wn.2d at 761.

As argued below, the defendant cannot show that the prosecutor’s argument constituted misconduct, much less flagrant or ill-intentioned misconduct, and cannot show that there was resulting prejudice.

2. In her closing argument the prosecutor never made a “clear and unmistakable” expression of her personal opinion and, therefore, there was no misconduct.

A classic case involving a prosecutor vouching for the credibility of a witness is *State v. Sargent*, 40 Wn. App. 340, 343-44, 698 P.2d 598, 60 (1985) where the prosecutor said:

I believe Jerry Lee Brown. I believe him when he tells us that he talked to the defendant, that the defendant told him that he had beaten his wife in the past and had gone into counseling, just like Mr. VanderVelden said. *I believe him* when he said that his wife was once beaten, Mr. Sargent once beat his wife, and his attitude towards it was she had it coming, just as another witness testified, Chris Giles. When he said that Joe Sargent killed his wife, that he, Joe Sargent, told him that he killed his wife, he was believed. *There was no other reason he would be testifying other than the fact that the people that called him as a witness believed what he has to say.* (Emphasis added in the opinion.)

The *Sargent* court stated that “Prejudicial error does not occur until such time as it is clear and unmistakable that counsel is not arguing an inference from the evidence, but is expressing a personal opinion.” *Id.* at 344. Of course, it was “clear and unmistakable” that the prosecutor in *Sargent* was expressing a personal opinion. But the prosecutor in this case never crossed that line.

The “clear and unmistakable” standard has been widely adopted. In *State v. Papadopoulos*, 34 Wn. App. 397, 400, 662 P.2d 59, 61 (1983) the court stated,

A statement by counsel clearly expressing his personal belief as to the credibility of the witness or the guilt or innocence of the accused is forbidden. It is not uncommon for statements to be made in final arguments which, standing alone, sound like an expression of personal opinion. However, when judged in the light of the total argument, the issues in the case, the evidence discussed during the argument, and the court's instructions, it is usually apparent that counsel is trying to convince the jury of certain ultimate facts and conclusions to be drawn from the evidence. Prejudicial error does not occur until such time as it is clear and unmistakable that counsel is not arguing an inference from the evidence, but is expressing a personal opinion.

As stated in *State v. Price*, 126 Wn. App. 617 (2005) *abrogated* by *State v. Hampton*, 184 Wn.2d 656 (2015), “A statement by counsel clearly expressing his personal opinion as to the credibility of a witness or the guilt of the defendant is misconduct.” *State v. Allen*, 161 Wn. App.

727, 746, 255 P.3d 784, 793 (2011) used the same test. “Prejudicial error will not be found unless it is ‘clear and unmistakable’ that counsel is expressing a personal opinion.”

Also see *State v. Brett*, 126 Wn.2d 136, 175, 892 P.2d 29, 49 (1995). “Prosecutors may, however, argue an inference from the evidence, and prejudicial error will not be found unless it is ‘clear and unmistakable’ that counsel is expressing a personal opinion.”

State v. Korum, 157 Wn.2d 614, 141 P.3d 13 (2006) is also helpful. The defendant argued that the prosecutor vouched for a witness’s credibility by eliciting testimony that he understood that the State would revoke his plea bargain if it was not satisfied with the truthfulness of his statement and repeating that in closing argument. The *Korum* court held this was not improper and stated, “This court has held that it is misconduct for a prosecutor to express a personal belief about the credibility of a witness. Here, however, the prosecuting attorney did not express a personal belief about Mellick's credibility.” *Id.* at 650.

State v. Fiallo-Lopez, 78 Wn. App. 717, 899 P.2d 1294 (1995) is also helpful. The prosecutor argued about the credibility of the police,

[I]f you think that the cops . . . are lying, ask yourselves, don’t you think they would have done a much better job? . . . The fact is, they didn’t. And the fact that they didn’t and the fact that differences exist resulting from lapse[s] in time and differences in perspective, and differences in training

indicates that, in fact, everybody is telling the truth about their honest recollection about what happened.

Id. at 730. The court held that these statements did not cross the line into improper vouching but were based on the evidence showing the police were truthful. *Id.*

State v. Warren, 165 Wn.2d 17, 30, 195 P.3d 940, 946 (2008) is consistent with these cases. The prosecutor argued the details in the victim's testimony had gave it a "badge of truth" and a "ring of truth." The prosecutor referred to specific parts of the victim's testimony and said it "rang out clearly with truth in it." *Id.* *Warren* held these were not improper arguments because the prosecutor did not explicitly state a personal opinion and because prosecutors are given a wide latitude to discuss reasonable inferences for the evidence.

In *State v. Jackson*, 150 Wn. App. 877, 884-85, 209 P.3d 553, 557-58 (2009) the prosecutor recounted the jury instruction stating the jurors have the duty to determine a witness's credibility. The prosecutor, like the prosecutor in this case, went over the factors in the jury instruction concerning credibility: quality of the witness's memory, the manner of the witness while testifying, bias or prejudice, and personal interests. *Id.* at 884. The cited evidence and stated, "[H]is (a police officer's) testimony was accurate and true." *Id.* The *Jackson* court held this was not vouching

because the prosecutor reminded the jurors of the instruction that they were the sole judges of credibility and the argument was based on the evidence presented at trial. *Id.* at 884-85.

The defendant cites two cases contrary to the majority of cases. *State v. Ramos*, 164 Wn. App. 327, 341 n.4, 263 P.3d 1268 (2011). The defendant's citation in *Ramos* is dicta; in fact it is a footnote. The *Ramos* court found the prosecutor committed misconduct by cross-examining the defendant about his acquaintances in the drug world and their criminal convictions. *Id.* at 337. The prosecutor also argued in closing that the jury should convict the defendant "so people can go out there and buy some groceries at the Cost Cutter or go to a movie at the Sunset Square and not have to wade past the coke dealers in the parking lot." *Id.* at 338. These two facts taken together resulted in the *Ramos* court reversing the conviction. Footnote 4 in *Ramos* was dicta because it was not necessary to the court's decision and is not binding authority. *State v. Burch*, 197 Wn. App. 382, 403-04, 389 P.3d 685, 697 (2016).

But even if this were the holding in *Ramos*, the defendant has overstated footnote 4 in *Ramos*. That footnote states,

The prosecutor argued that 'the truth of the matter is [the police witnesses] were just telling you what they saw and they are not being anything less than 100 percent candid.' While *Ramos* timely objected, the trial court overruled the

objection. We conclude the prosecutor improperly vouched for the credibility of the police witnesses.

Ramos, 164 Wn. App. 327 at 341 n.4.

The defendant writes that this leads to the conclusion that “A prosecutor also improperly vouches for the credibility of a witness by stating a witness is telling the truth.” Br. of Appellant at 10. That is not exactly what the prosecutor said and what *Ramos* found was improper.

And assuming the prosecutor’s argument was a stand-alone comment—and the *Ramos* court does not provide any reason that the statement was based on evidence cited by the prosecutor—the *Ramos* court could conclude this was a “clear and unmistakable” opinion of the prosecutor. On the other hand, if the prosecutor provided evidence to support this statement, the *Ramos* court’s footnote is not consistent with the vast majority of cases regarding on vouching for a witness. In any event since it is dicta the importance of the footnote can be ignored.

The other case cited by the defendant is an unpublished opinion in *State v. Christopher*, No. 45694-0-II, 2015 WL 4627884 (Wash. Ct. App. Aug. 4, 2015). The *Christopher* court stated, “During closing argument, the prosecutor expressly told the jury that Hausinger ‘was under oath and he was telling the truths.’ In this context, the prosecutor engaged in impermissible vouching because it directly commented on Hausinger’s veracity.” *Id.* at *9. The *Christopher* court distinguished *Jackson*, stating

that the prosecutor's remarks in that case were based on the evidence and with the advise that the jury alone determines credibility. So, like *Ramos*, the prosecutor's comment in *Christopher* appears to be a stand-alone statement, not supported by the evidence. If so, it was a clear and unmistakable expression of personal opinion. If not, *Christopher* is an outlier among cases dealing with when a prosecutor vouches for a witness.

The defendant also complains about the prosecutor's use of Powerpoint slides but provides no example of a clear and unmistakable expression of personal opinion. Rather, all of the slides cite evidence supporting the credibility of R.H.

An attorney is given wide latitude in closing argument to argue reasonable inferences from the evidence, including regarding the credibility of witnesses. *State v. Thorgeresen*, 172 Wn.2d 438, 448, 258 P.3d 43 (2011). Here, the prosecutor never crossed the line into clearly and unmistakably expressing her own opinion. The defendant has not established that the closing argument constituted misconduct.

**3. Even if misconduct were established, it was not
flagrant or ill-intentioned and did not result in
prejudice.**

Why would the prosecutor's argument be deemed flagrant or ill-intentioned? The defendant would answer, the prosecutor should have realized the dangers of the argument based on a footnote *Ramos* and an

unpublished decision. However, neither case resulted in a reversal of the conviction: *Ramos* was reversed on other grounds and in *Christopher* the conviction was affirmed because the court found that the prosecutor's conduct was not so ill-intentioned that it caused prejudice. *See Christopher*, 2015 WL 4627884 at *10.

As stated above, the vast majority of cases would not find the prosecutor's argument constituted misconduct because there was no clear and unmistakable expression of personal opinion. The defendant cannot prove that the argument was a flagrant or ill-intentioned attempt to vouch for a witness.

Further, the argument was not prejudicial. The prosecutor's argument referenced WPIC 1.01 and CP 200-01 and told the jurors that they were the sole judges of credibility. The prosecutor referenced the factors in that instruction and cited evidence on each point. CP 200. If the trial court thought that the prosecutor was expressing a personal opinion it could have easily been addressed.

The defendant was convicted because of the power of R.H.'s testimony, R.H.'s consistent statements to his mother, his pastor, the pastor's wife, and the forensic child interviewer, and the defendant's flight from justice. There was no prejudice to the defendant.

B. The defendant is correct concerning the dates of offense and the dates of the prior sex convictions in Oregon.

The State will amend the Judgment and Sentence after the remand.

IV. CONCLUSION

The prosecutor's closing argument did not constitute misconduct.

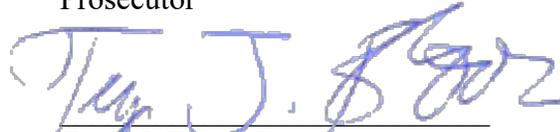
The argument is consistent with caselaw, was not flagrant or ill-intentioned and there was no prejudice to the defendant.

Regarding the scrivener's errors in the Judgment and Sentence, the State agrees and will amend the listed dates of offense for the crimes herein and the dates of sentence for the prior convictions in Oregon.

RESPECTFULLY SUBMITTED on September 17, 2020.

ANDY MILLER

Prosecutor



Terry J. Bloor, Deputy

Prosecuting Attorney

Bar No. 9044

OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Jill S. Reuter
Eastern Washington Appellate Law
P.O. Box 8302
Spokane, WA 99203

E-mail service by agreement
was made to the following
parties: admin@ewalaw.com

Signed at Kennewick, Washington on September 17, 2020.


Demetra Murphy
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

September 17, 2020 - 4:01 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 37228-6
Appellate Court Case Title: State of Washington v. Eric Ray Stalford
Superior Court Case Number: 18-1-00731-7

The following documents have been uploaded:

- 372286_Briefs_20200917160045D3067325_1035.pdf
This File Contains:
Briefs - Respondents
The Original File Name was 372286 Stalford - Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- admin@ewalaw.com
- andy.miller@co.benton.wa.us
- jill@ewalaw.com

Comments:

Sender Name: Demetra Murphy - Email: deme.murphy@co.benton.wa.us

Filing on Behalf of: Terry Jay Bloor - Email: terry.bloor@co.benton.wa.us (Alternate Email: prosecuting@co.benton.wa.us)

Address:
7122 W. Okanogan Place
Kennewick, WA, 99336
Phone: (509) 735-3591

Note: The Filing Id is 20200917160045D3067325