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Court of Appeals
Division I
State of Washington

NO. 72628-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

EURAN J. WOODS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE TIMOTHY A. BRADSHAW

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Where evidence that the defendant was prostituting the victim was necessary to explain why the victim delayed reporting being strangled, and to show the defendant's motive, did the trial court properly exercise its discretion in admitting the evidence?

2. Where defense counsel had established a standing objection to the pimping evidence and made a strategic choice not to include that evidence in the limiting instruction, has the defendant failed to establish that his counsel was constitutionally ineffective in failing to make a contemporaneous objection or request a limiting instruction?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged the defendant, Euran J. Woods, by amended information with one count of assault in the second degree, alleged to have been committed in early September 2011, with a special allegation that the crime was committed against a

family or household member.¹ CP 28. In 2014, a jury found Woods guilty as charged, and found the special allegation proven. CP 51-52. The trial court imposed a high-end standard range sentence of nine months in jail and twelve months of community custody.² CP 53-56. Woods timely appealed. CP 60-61.

2. SUBSTANTIVE FACTS.

Brittany Englund met Woods in late 2009 through a mutual friend, Michael Marknsen,³ at whose house Englund was living. 2RP⁴ 252. Englund and Woods quickly entered a dating relationship that frequently involved working together to sell drugs, with Woods supplying Englund with large quantities of cocaine that she would deliver to customers. 2RP 254-55. Over time, Woods began to isolate Englund, who was herself a drug addict, from her

¹ The State originally also charged Woods with another count of assault in the second degree – domestic violence for an incident in April 2012 that occurred in Snohomish County, but did not proceed to trial on that count after Woods objected to venue. 2RP 3-4; CP 1, 12-13.

² The trial court ordered Woods to report to jail by October 24, 2014, one week after sentencing. CP 56. Woods failed to report as ordered and, as of the writing of this brief, has been on warrant status ever since. Supp. CP __ (sub 57).

³ Marknsen's name is transcribed phonetically as "Markinson" in the verbatim report of proceedings, but the State's trial brief indicates that the proper spelling is "Marknsen." CP 10.

⁴ The verbatim report of proceedings consists of seven volumes. The first, an excerpt containing only the victim's testimony (inaccurately labeled as occurring on September 16, 2014), is referred to by Woods as "RP," and will be referred to in this brief as "1RP." The other six volumes contain a complete transcript of the entire trial, and were prepared by Woods at the State's request after the Brief of Appellant was filed. Those volumes are consecutively paginated and will be referred to as "2RP."

friends. 2RP 255, 257, 293. In the spring and summer of 2011, despite the negative aspects of their relationship, Englund was in love with Woods, and believed Woods when he told her that he loved her and that they would someday have a wonderful life together, in which they would both work "normal" jobs rather than selling drugs. 2RP 258-59.

At some point in 2011, Englund and Woods had a fight in the driveway of Marknsen's house, where Woods was now living with Englund. 2RP 259. During the argument, Woods threw Englund's keys away and dragged her up the driveway by her hair, telling her what a horrible person and mother she was and that he could not believe he had wasted his time on her.⁵ 2RP 259-60.

In August 2011, Woods began telling Englund that she needed to be his equal in the relationship, and that she needed to earn money through prostitution in order to do so. 2RP 219, 261.

Woods purchased dresses and shoes for Englund to wear, and over the next several weeks Englund engaged in prostitution several times a week at Woods' direction. 2RP 261-63. Woods would drive her to Aurora Avenue in Seattle and tell her what part of the road to stay on and how much money she should demand

⁵ Englund's mother and stepfather had custody of Englund's young daughter. 2RP 318.

from customers. 2RP 261. Englund gave the money she earned to Woods. 2RP 265.

After a particularly frightening interaction with a customer, Englund begged Woods not to make her prostitute herself anymore. 2RP 263. Woods agreed to let Englund stop streetwalking, but began advertising her services on Backpage.com instead. 2RP 263. Woods took photos of Englund, posted online advertisements, and purchased a cell phone that he demanded be used only for prostitution activities—Woods prohibited Englund from using the phone for any personal calls because he did not want anyone in her personal life to have the number. 2RP 264-65.

At some point in August 2011, Woods noticed that Englund had been silencing the phone to avoid answering calls from potential customers. 2RP 267. Englund told Woods she didn't want to prostitute herself anymore, and during the ensuing fight Woods strangled Englund with both hands around her throat until she lost consciousness. 2RP 267-68. Although Englund's neck and throat hurt badly afterwards, the red marks on her neck faded by the next day. 2RP 271. Later, Woods apologized. 2RP 237. Englund still loved Woods, did not want to see him get in trouble,

and believed it would not happen again, so she did not report the assault to the police. 2RP 272-73.

In early September 2011, another fight occurred on the day Englund had an abortion. 2RP 274. Late that night, in their bedroom at Marknsen's house, Englund looked at Woods' phone and discovered pictures proving Woods had lied to her about his interactions with another woman earlier in the night. 2RP 274-75. When Englund confronted Woods, he became angry and yelled at her for questioning his actions and for not being grateful for everything he did for her. 2RP 275. Woods threw the 110-pound Englund to the ground. 2RP 275, 279. He then picked her up and held her against the wall with both hands wrapped around her neck, strangling her as he screamed at her. 2RP 275-77. Noises began to sound as if they were all far away and Englund's vision went black except for a small circle in the middle as Englund lost consciousness. 2RP 269-70, 276, 282.

When Englund regained consciousness a short while later, Woods was still holding her against the wall and shouting at her. 2RP 278. Englund's hearing remained abnormal, and her neck and throat hurt, making talking painful. 2RP 282. The assault continued, with Woods at one point throwing her to the ground and

kicking the side of her left arm, and at one point grabbing her leg as she was on the bed and pulling so hard that Englund felt like her leg "was going to pop off." 2RP 275-76, 279. When the assault finally ended in the early hours of the morning and Woods went to sleep, Englund went to sleep as well instead of calling the police. 2RP 284. Woods apologized, and Englund believed him because she loved him. 2RP 284.

The next day, Englund noticed bruising on her neck. 2RP 285. Two or three days after the incident, on September 11, 2014, Englund attended a gathering at her mother's house to celebrate her stepfather's birthday. 2RP 286. Englund's family was aware of her drug addiction, and Englund's mother, Sherrilyn Meyer, was surprised to see Englund that day, as she had not been coming to family functions lately. 2RP 228, 230-31.

Meyer noticed that Englund appeared upset and uncharacteristically withdrawn; Englund was not even paying attention to her daughter, which was highly unusual. 2RP 231, 234, 290. Before dinner, Meyer heard Englund go upstairs and close a bedroom door. 2RP 231, 290. When she did not reappear after a few minutes, Meyer went upstairs and found Englund crying on the

floor of the walk-in closet in her daughter's room, which had also been Englund's room as a child. 2RP 231, 290-91.

When Meyer asked if Englund was okay, Englund began sobbing. 2RP 231-32, 291. Meyer got down on the floor and wrapped her arms around her daughter; asking what was going on and telling her that it was okay to talk about it. 2RP 232. Without speaking, Englund pulled down the neck of her hooded sweatshirt to reveal dark purple, finger-shaped bruises on her throat. 2RP 232, 239, 291. Meyer had Englund lift up her long hair, and observed that Englund's neck was almost completely encircled with dark purple bruises, so much so that the bruises "looked like a necklace." 2RP 232, 239, 291.

The bruises Meyer saw in the middle of the front of Englund's neck were two dark, side by side, thumb-shaped ovals. 2RP 238. From each one, a continuous line of bruising extended toward the back of Englund's neck. 2RP 238. On each side of the back of her neck, a set of four horizontal finger-shaped bruises was visible, with each set spread apart and pointing toward the opposing set of four fingermarks. 2RP 239.

As Englund showed her mother the bruises, she was crying hysterically and saying that Meyer could not tell anyone. 2RP 240.

Meyer asked Englund if she had any other bruises, and Englund showed her a large, raised, dark purple bruise on the side of her bicep. 2RP 240-41, 293. Englund told Meyer what had happened, but refused to let her take any photographs or call the police, and insisted that she would "deal with it." 2RP 241, 293-94. Due to Englund's prior police interactions as a drug addict, she was not confident that the police would help her, and she was fearful that Woods would retaliate with further abuse if she reported the incident. 2RP 293-94.

Meyer put Englund to bed with icepacks and Aleve, and Englund remained upstairs for several hours until the rest of the guests had departed. 2RP 236, 243, 294-95. Englund then came downstairs, quickly said her goodbyes, and went back to Woods. 2RP 243, 295. She never reported the assault to the police until she was contacted by a detective in 2012.⁶ 2RP 296-97.

At trial, Englund, Meyer, and a detective testified to the facts above. The detective also testified that the after-effects of

⁶ In April 2012, another assault by Woods resulted in Englund's hospitalization with facial fractures that required reconstructive surgery. CP 12. Police officers contacted her at the hospital; during a subsequent interview with a detective, Englund disclosed the 2011 assaults for the first time. CP 13. However, the jury heard only that Englund disclosed the charged assault after a detective contacted her in 2012, with no explanation provided for why contact was initiated. 2RP 202-03, 296.

strangulation can include bruising or marks on the throat, a raspy voice or other vocal changes, and soreness of the neck or throat. 2RP 209-10. Woods testified on his own behalf, but did not call any other witnesses. 2RP 328-42. He denied ever supplying drugs to Englund or selling drugs with her. 2RP 333. He denied ever participating or encouraging her prostitution activities, which he claimed he became aware of in early 2011. 2RP 335. He also denied that any of the assaults described by Englund ever occurred. 2RP 333-34.

He agreed that Englund had had an abortion in early September 2011, but denied that any argument or fight occurred that day. 2RP 340. Woods claimed that they had not been at Marknsen's house at all that day, and instead had gone to a motel after the abortion, using a car Englund's mother had rented for her. 2RP 341. Woods claimed that he stayed with Englund for only three or four hours that day before leaving, that he subsequently didn't see or speak to Englund for three or four days, and that Englund had no bruises when he next saw her. 2RP 342.

In closing argument, however, Woods conceded that the bruises seen by Englund's mother had indeed existed, and merely argued that they had not been caused by him. 2RP 379. Woods

offered no suggestion as to who else might have inflicted them or what Englund's motive for lying would have been. 2RP 369-80.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING EVIDENCE THAT WOODS WAS ENGLUND'S PIMP UNDER ER 404(b).

Woods contends that the trial court abused its discretion in admitting testimony that Woods acted as Englund's pimp. He contends that the races of the defendant, victim, and jurors rendered such evidence "a subtle appeal to deep-seated racial stereotypes" and thus unduly prejudicial. This claim should be rejected. Not only is there no evidence in the record regarding the race of the victim and jurors, but the evidence had nothing to do with race and was properly admitted to explain the victim's delay in reporting the charged assault and to show the defendant's motive for using force against her.

- a. Relevant Facts.

During pretrial motions, the parties litigated the admissibility under ER 404(b) of various acts by the defendant beyond the

charged incident.⁷ 2RP 16-38. These included the August 2011 strangulation, Woods' promotion of Englund's prostitution, the incident where Woods dragged Englund by her hair up Marknsen's driveway, an incident where Woods slammed Englund's head into the car window as she was driving them up a different driveway, the fact that there was a third occasion on which Woods choked Englund to unconsciousness, and minimal details about the April 2012 assault that led to Englund reporting the 2011 strangulations. 2RP 27-29, 33-34.

The State argued that the proffered evidence of domestic violence was admissible to explain why Englund refused to allow her mother to take photographs of her bruises or report the incident to the police, why she remained in a relationship with Woods after the charged incident, and why she finally reported the incident in April 2012. 2RP 19. Woods argued that it was all inadmissible character or propensity evidence, and that Englund's alleged memories of the incidents were insufficiently specific. 2RP 20-25.

⁷ Woods is mistaken when he asserts that "the State did not identify any intent to admit evidence of alleged pimping activities under ER 404 (b) [sic] in its Trial Memorandum." Br. of Appellant at 8. In a section titled "Motion to Admit Defendant's Prior Bad Acts Under ER 404(b)," the State's trial memorandum states, "The State is seeking to introduce the prior incidents of threats, violence **and promoting** to explain Ms. Englund's delay in reporting." CP 20 (emphasis added).

However, at no time did Woods raise concerns about racial bias regarding any of the proffered evidence, nor was race discussed at any point during the trial, including pre-trial motions and voir dire. 2RP 20-25.

The trial court found by a preponderance of the evidence that the proffered acts occurred, and stated that it began the ER 404(b) analysis by presuming the acts were inadmissible because they were prejudicial. 2RP 29. However, citing State v. Baker,⁸ the trial court found that testimony about the August 2011 strangulation and the pimp/prostitute relationship were necessary for jurors to accurately assess Englund's delay in reporting as well as Woods' motive and intent, and were thus admissible. 2RP 31-33. The trial court ruled that the State could offer one driveway incident of its choosing, but excluded the other and the third strangulation on the grounds that they were cumulative and thus unduly prejudicial.

2RP 36-37. The court also excluded any reference to the April 2012 assault on the grounds that it was not relevant to the delay in reporting and was too prejudicial. 2RP 30-31.

⁸ 162 Wn. App. 468, 259 P.3d 270 (2011).

b. The Trial Court Properly Exercised Its Discretion In Admitting The Pimping Evidence To Explain Englund's Delay In Reporting And As Evidence Of Motive.

Although evidence of prior bad acts is generally inadmissible to prove the character of a person in order to show conformity therewith, such evidence may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ER 404(b); State v. Lough, 125 Wn.2d 847, 854-55, 889 P.2d 487 (1995).

Where the victim of a domestic violence offense has behaved in a way that would otherwise be inexplicable to the jury, such as by recanting, giving inconsistent statements, or delaying reporting the offense, evidence of prior bad acts by the defendant has overriding probative value and is admissible despite the risk of unfair prejudice. State v. Gunderson, 181 Wn.2d 916, 924 n.2, 925, 337 P.3d 1090 (2014); State v. Baker, 162 Wn. App. 468, 475, 259 P.3d 270 (2011).

To admit evidence of prior bad acts, the trial court must:

- (1) find by a preponderance of the evidence that the acts occurred,
- (2) identify the purpose for which the evidence is admitted, (3) find that the evidence is relevant to that purpose, and (4) determine that

the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. State v. Kilgore, 147 Wn.2d 288, 292, 5 P.3d 974 (2002); State v. Saltarelli, 98 Wn.2d 358, 362, 655 P.2d 697 (1982). A trial court's decision to admit or exclude evidence under ER 404(b) is reviewed for abuse of discretion, and may be upheld on any grounds supported by the record. Gunderson, 181 Wn.2d at 922; In re Marriage of Rideout, 150 Wn.2d 337, 358, 77 P.3d 1174 (2003). A trial court abuses its discretion only when no reasonable judge would have reached the same conclusion. State v. Emery, 174 Wn.2d 741, 765, 278 P.3d 653 (2012).

Here, evidence that Woods had directed and profited from Englund's prostitution activities, and had previously assaulted Englund to ensure her continued compliance with his prostitution-related plans, was highly relevant to explain why Englund did not allow her mother to take photographs of her injuries and did not report the charged assault until approximately seven months after it happened. Woods does not challenge the admission of the August 2011 strangulation itself, which occurred during an argument about Englund's desire to stop prostituting herself; he merely challenges the admission of evidence regarding Woods and Englund's pimp-

prostitute relationship. Br. of Appellant at 5, 8-12. However, that evidence was necessary to demonstrate the high level of control that Woods exercised over Englund's life. It was also necessary to show that Woods had established a pattern—as seen in the August 2011 strangulation after Englund tried to end the prostitution scheme and the charged strangulation after Englund looked at Woods' phone without permission—of violently assaulting Englund whenever she went against his wishes.

That level of control, and that pattern of using violence to ensure Englund's obedience, was highly relevant to Englund's delay in reporting the charged assault. Without the pimping-related evidence, the jury would not have had a complete picture of the relationship and thus would have been unable to accurately assess what weight, if any, it should give Englund's delay in reporting when evaluating her credibility. The evidence thus had a very high probative value.

The pimping evidence was also highly relevant to Woods' motive in the charged assault. The existence of an ongoing pimp-prostitution relationship that financially benefited Woods gave Woods a clear incentive to ensure Englund's continued obedience to his wishes by punishing her any time she stepped out of line. It

thus helped explain why Woods reacted so severely to Englund looking at his phone without permission and questioning his actions in the charged incident. See State v. Rooks, 130 Wn. App. 787, 794, 125 P.3d 192 (2005) (history of relationship between defendant and victim, including defendant's controlling and abusive behavior, was relevant to prove motive).

Not only was the challenged evidence highly probative, but its prejudicial impact was relatively low, particularly in comparison to the other evidence admitted under ER 404(b) that Woods does not challenge on appeal. After hearing that Woods and Englund had sold drugs together and that Woods had strangled Englund and dragged her by her hair in incidents preceding the charged assault, the fact that Woods also had a business relationship with Englund that centered around prostitution would not have been particularly inflammatory. The trial court appropriately limited the risk of undue prejudice from Woods' prior bad acts by limiting the amount of evidence admitted under ER 404(b) to only what was necessary, and excluding additional acts that were largely cumulative. 2RP 30-37.

Woods' argument that the pimping evidence was unduly prejudicial is based on two unsupported assertions. The first is that

Englund is white and the jury was “mostly white,” while Woods is black, an assertion for which Woods provides no citation to the record. Br. of Appellant at 5. Although the record on appeal does indicate that Woods is black, the State has been unable to find any indication whatsoever of Englund’s race or that of any of the jurors. CP 8. The second is Woods’ assertion, for which he similarly provides no authority, that testimony regarding the existence of a pimp-prostitute relationship between a man who happens to be black and a woman who happens to be white, without anything more, constitutes an appeal to racial bias. Br. of Appellant at 8-12. This Court should reject Woods’ argument as unsupported by the record and authority. See RAP 10.3(a)(5), (6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (declining to consider argument unsupported by citation to the record or authority); DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) (“Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”).

This is not a case where “a careful word here and there” was used to trigger racial bias. State v. Monday, 171 Wn.2d 667, 678,

257 P.3d 551 (2011). Other than the jury learning of the pimp-prostitute relationship between Woods and Englund, Woods does not contend that anything occurred during the trial that would have highlighted Woods' or Englund's race, or in any way played to racial bias or stereotypes. The State has been similarly unable to find any reference or allusion, however subtle, to race or race-related issues anywhere in the verbatim report of proceedings, either in or out of the jury's presence.⁹ There is thus no evidence that the admission of the challenged evidence caused any more prejudice to Woods than the relatively low level of prejudice discussed above that would have applied to a defendant of any race.

The trial court correctly concluded that evidence of Woods and Englund's pimp-prostitute relationship had a high probative value that was not substantially outweighed by the risk of unfair prejudice—thereby possessing the required “overriding probative value.” Gunderson, 181 Wn.2d at 924 n.2, 925; see Baker, 162 Wn. App. at 475. The trial court properly exercised its discretion in admitting it.

⁹ The only reason Woods' race appears in the record on appeal is because it is included in the Superform and on the fingerprint page of the judgment and sentence. CP 8, 57.

2. WOODS HAS FAILED TO ESTABLISH THAT HIS COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE.

Woods contends that his trial counsel was constitutionally ineffective in failing to object to and request a limiting instruction regarding the pimping evidence. This claim should be rejected. Woods' counsel objected to the admission of the challenged evidence during pretrial motions, and made a tactical decision not to request that the prostitution-related evidence be included in the limiting instruction.

a. Relevant Facts.

As described in section C.1.a. above, Woods' trial counsel opposed the admission of all of the ER 404(b) evidence when the issue was litigated during pretrial motions. 2RP 20-24. Defense counsel also indicated that he viewed the pimping allegations as a fruitful area of cross-examination should they be admitted. 2RP 25. The trial court ruled against Woods as to the admissibility of certain categories of ER 404(b) evidence, including the pimping evidence, and did not indicate that any further objections would be required to preserve Woods' objection on the issue. 2RP 27-38. Accordingly, when the pimping evidence was eventually elicited during Englund's testimony, Woods did not object again. 2RP 261-67.

During cross-examination, he questioned her regarding alleged inconsistencies between her testimony and prior statements regarding her prostitution activities. 2RP 305-13.

The trial court gave a limiting instruction proposed by the State, which stated:

Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of testimony regarding prior assaults of Ms. Englund by the defendant and may be considered by you only for the purpose of assessing Ms. Englund's state of mind and her credibility. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.

CP 38; 2RP 62, 246. Defense counsel indicated that this instruction was acceptable, and did not request that a limiting instruction be given regarding the pimping evidence. 2RP 61, 246. In closing argument, the prosecutor told the jury that the limitations imposed by the limiting instruction applied to both the prior assaults and the pimping evidence. 2RP 365.

- b. Woods Has Failed To Establish That His Trial Counsel's Performance Was Both Deficient And Prejudicial.

A defendant in a criminal case has a constitutional right to the effective assistance of counsel. U.S. CONST. amend. VI; WASH. CONST. art I, § 22; State v. Grier, 171 Wn.2d 17, 32, 246 P.3d 1260

(2011). In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that (1) defense counsel's performance was deficient and (2) that the deficient performance prejudiced the defendant. State v. Cienfuegos, 144 Wn.2d 222, 226-27, 25 P.3d 1011, 1014 (2001); Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984). A claim of ineffective assistance of counsel fails if either prong of that test is not met. Strickland, 466 U.S. at 673.

- i. Defense counsel's performance was not deficient.

In order to show that defense counsel's representation was deficient, a defendant must show that "it fell below an objective standard of reasonableness based on consideration of all the circumstances." State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). There is a strong presumption that counsel's representation was effective, and the defendant bears the burden of showing that the representation was deficient. Grier, 171 Wn.2d at 35. "If trial counsel's conduct can be characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel." State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002).

When trial defense counsel does not request a limiting instruction, Washington courts presume that counsel was making a legitimate tactical decision to avoid drawing additional attention to unfavorable evidence. State v. Humphries, 181 Wn.2d 708, 720, 336 P.3d 1121 (2014). Thus, absent concrete evidence to rebut that presumption, the failure to request a limiting instruction cannot support a claim of ineffective assistance of counsel. See id.

Woods has failed to rebut the presumption that his counsel's choice not to request a limiting instruction specifically for the pimping evidence was a tactical decision. Defense counsel may indeed have wished to avoid drawing further attention to the evidence. Alternatively, he may have realized that a limiting instruction would have prevented the jury from using Englund's testimony about the pimping evidence in ways that were advantageous to Woods. Defense counsel had made good use of Englund's testimony regarding the pimping by highlighting allegedly inconsistent statements she had previously made on that particular topic. 2RP 305-13. Given that he wanted the jury to use Englund's testimony about the pimping as evidence of her unreliability as a witness, a limiting instruction requiring the jury to use the pimping evidence only to evaluate Englund's delay in reporting and Woods'

motive would have been disadvantageous. Either way, the choice not to propose a limiting instruction regarding the pimping evidence was a legitimate trial tactic, and did not constitute deficient performance.

Woods' trial counsel was also not deficient in failing to renew his objection to the pimping evidence when it was eventually elicited from Englund, because his opposition during pretrial motions had already established a standing objection. State v. Kelly, 102 Wn.2d 188, 193, 685 P.2d 564 (1984) ("Unless the trial court indicates further objections are required when making its [pretrial] ruling, its decision is final, and the party losing the motion in limine has a standing objection.>").

- ii. Defense counsel's performance did not prejudice Woods.

In order to show that he was prejudiced by allegedly deficient conduct, a defendant must show that defense counsel's errors were "so serious as to deprive him of a fair trial." Cienfuegos, 144 Wn.2d at 230. This requires "the existence of a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 229. Absent evidence in the record that the jury used evidence of prior

bad acts for an improper purpose, a defendant has not established that the failure to request a limiting instruction prejudiced him.

State v. Humphries, 170 Wn. App. 777, 798, 285 P.3d 917 (2012), aff'd in part, rev'd in part on other grounds, 181 Wn.2d 708, 336 P.3d 1121 (2014).

Here, Woods points to nothing in the record suggesting that the jury used the pimping evidence for an improper purpose. Woods' argument as to prejudice turns on his unfounded assertions regarding the race of Englund and the jurors and the supposed appeal to racial bias that Woods contends was inherent in the pimping evidence. Br. of Appellant at 15-16. For the reasons set out in section C.1.b. above, the pimping evidence was not an appeal to racial bias; there was therefore no heightened racial bias that needed to be checked through a limiting instruction about the pimping evidence specifically. Moreover, any potential prejudice from not including the pimping evidence in the limiting instruction that was given was negated when the prosecutor instructed the jury in closing argument to apply the limiting instruction to the pimping evidence as well.

Finally, the evidence against Woods was strong. Englund's testimony about the strangulation was corroborated by her mother's

testimony about seeing bruises in the shape of two hands wrapped around her daughter's neck. Englund's credibility was further bolstered by her matter-of-fact testimony regarding highly embarrassing aspects of her life, and the fact that Englund's testimony about events at the family gathering on September 11, 2011, was remarkably consistent with Meyer's, even as to small details.

Woods' credibility, in contrast, was undercut by his denial that Englund had any bruises on her a few days after the day of her abortion, as well as his flat denial of all the illegal behavior Englund had admitted engaging in with Woods. Meyer's testimony about the bruises was so credible that even defense counsel was forced to acknowledge in closing argument that the bruises had indeed existed, and to argue instead that someone other than Woods had inflicted them. However, there was no evidence or suggestion offered to the jury about who else might have strangled Englund or any possible motive she would have had to lie about Woods' role in the assault. There is therefore no reasonable probability that the jury's verdict would have been different had defense counsel requested a limiting instruction regarding the pimping evidence.

There was also no prejudice from defense counsel's failure to contemporaneously object to the pimping evidence because, as noted above, defense counsel had a standing objection. Because Woods has failed to establish that his trial counsel's performance was deficient and prejudicial, his claim of ineffective assistance of counsel fails.

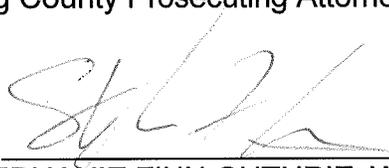
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Woods' conviction.

DATED this 16th day of September, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to James M. Womack, the attorney for the appellant, at jim@lawgrp.com, containing a copy of the BRIEF OF RESPONDENT, in State v. Euran J. Woods, Cause No. 72628-5, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 16 day of September, 2016.

LeBrame

Name:

Done in Seattle, Washington