

71224-1

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NO. 71224-1-I

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

STATE OF WASHINGTON

Respondent

v.

PATRICK S. CRICK,

Appellant

BRIEF OF RESPONDENT

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I. ISSUES

1. Was the evidence sufficient to find the defendant guilty of child molestation first degree?
2. Should the court have given the jury a unanimity instruction?
3. Was it an abuse of discretion to deny the defendant's two motions for mistrial?
4. Did the defendant receive ineffective assistance of counsel?

II. STATEMENT OF THE CASE

Sometime between mid-June 2011 and July 15 2011 K.B. stayed at the defendant, Patrick Crick's, home in Granite Falls for a couple of weeks. K.B., born July 1999, was 11 years old at the time she stayed with the defendant's family. The defendant lived with Tracy Conrad, K.B.'s cousin, and Ms. Conrad's children, including R.C. who was one year younger than K.B. K.B. and R.C. were good friends at the time and K.B. liked the defendant's family a lot. 10-29-13 RP 46, 51-54, 126-127; 10-30-13 RP 231-232, 234, 329, 338-339, 342.

During the time that K.B. stayed at the defendant's home the girls put up a tent on the porch and slept there for some nights.

The defendant made a habit of checking on the girls before bed, and sometimes gave them candy. On one occasion the girls invited the defendant to come into the tent with them for a while. The defendant did so and laid down. The defendant had never done that before. Eventually K.B. and R.C. fell asleep. K.B. awoke with a start when she realized someone was moving around in the tent. She opened her eyes slightly and saw that the defendant was leaning over her. K.B. was wearing basketball shorts, a tank top, underpants, and a bra. The defendant touched K.B. on her breast under her clothing. After about one to two minutes the defendant touched K.B. under her underpants near her vagina. K.B. noticed the defendant's hands were cold when he did that. K.B. was so afraid she froze, and did not say anything. After the defendant was done touching K.B. he turned to R.C. and hunched over her for a bit. He then kissed each girl's forehead and left the tent. 10-29-13
RP 112-124.

After the defendant left the tent K.B. started to cry. She attempted to wake R.C. but was unsuccessful doing so. She eventually cried herself to sleep. The next morning K.B. did not tell R.C. what happened, but acted like everything was normal. Eventually K.B. did tell R.C. what happened and expressed a

desire to go home. Ms. Conrad did not have gas money so she asked K.B. to wait for a few days when the family planned to go to K.B.'s home anyway for a planned birthday party for K.B. and her younger sister. 10-29-13 RP 125-127; 10-30-13 RP 289, 358, 368.

After this incident K.B. did not go over to the defendant's house again. K.B. had never before missed a family Christmas gathering. The next Christmas she was put on restriction for refusing to do some chore her parents required her to do and was not allowed to go to the family gathering. K.B. was happy that she did not have to go. K.B. also expressed reluctance to her parents at having the defendant's family come to their home. 10-29-13 RP 133-134; 10-30-13 RP 251, 300.

In September 2012 K.B. went to a concert with a friend. While she was gone her mother discovered K.B. had a Facebook account. K.B. had been restricted from that social media site, and her mother was angry when she found out that K.B. had violated this restriction. As a result of this discovery K.B.'s mother went through her room. Her mother found K.B.'s diary in which K.B. had put a note expressing her feelings. The note included information about the defendant touching her on her breast and vagina the year before. K.B.'s parents were shocked to learn that the defendant

had touched K.B. that way. K.B. had not told her parents what happened because she was afraid. After K.B. came home they talked to K.B. about the note. K.B. confirmed what happened. K.B.'s parents had K.B. tell Ms. Conrad what happened. Both K.B.'s parents and Ms. Conrad reported the incident to CPS. 10-29-13 RP 128; 10-30-13 RP 236-245, 290-297.

The defendant was charged with one count of first degree child molestation. 1 CP 56-57. He was convicted after jury trial. 1 CP 4, 27.

III. ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE TO FIND THE DEFENDANT GUILTY OF FIRST DEGREE CHILD MOLESTATION.

The defendant challenges the sufficiency of the evidence to find him guilty of first degree child molestation. Evidence is sufficient to sustain a conviction if after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom" State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All

reasonable inferences are drawn in favor of the verdict, and most strongly against the defendant. State v. Gentry, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). Circumstantial and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In order to convict the defendant of child molestation first degree the State was required to prove beyond a reasonable doubt that (1) on or about June 1, 2011 to July 20, 2011 the defendant has sexual contact with K.B, (2) that K.B. was less than 12 years old at the time of the sexual contact and was not married to the defendant, (3) that K.B. was at least 36 months younger than the defendant, and (4) that the acts occurred in the State of Washington. 1 CP 36; RCW 9A.44.083. Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party. 1 CP 37; RCW 9A.44.010(2).

Contact is intimate if it is of the nature that a person of common intelligence could fairly be expected to know that, under the circumstances, the parts touched were intimate and therefore the touching was improper. State v. Harstad, 153 Wn. App. 10, 21, 218 P.3d 624 (2009). The upper thigh near the groin, the hips, and

lower abdomen have been held to be “intimate parts.” Id., Matter of Welfare of Adams, 24 Wn. App. 517, 521, 601 P.2d 995 (1979). Breasts are “intimate parts” as a matter of law. Adams, 24 Wn. App. at 519, State v. Jackson, 145 Wn. App. 814, 819, 187 P.3d 321 (2008). “Proof that an unrelated adult with no caretaking function has touched the intimate parts of a child supports the inference that the touching was done for the purpose of sexual gratification.” State v. Whisenhunt, 96 Wn App. 18, 23, 980 P.2d 232 (1999).

Here the evidence showed that K.B. was 11 years old when she spent between 1-1/2 and 3 weeks overnight at the defendant’s home. The circumstantial evidence showed the defendant was at least 36 months older than K.B. and that she was not married to the defendant. The defendant met K.B. in 2009 when she would have been 10 years old. The defendant was Ms. Conrad’s boyfriend. The defendant drove K.B.’s family belongings from Nevada to Washington, indicating that he was over 16 at the time. 10-29-13 RP 46, 49, 52; 10-31-13 RP 525. The age difference between the defendant and K.B. and the nature of their relationship is circumstantial evidence that they were not married. State v. Bailey,

52 Wn. App. 42, 51, 757 P.2d 541 (1988), affirmed, 114 Wn.2d 340 (1990).

K.B.'s testimony also proved that the defendant touched her for the purpose of sexual gratification. The defendant touched K.B. on her breast and on her groin area near her vagina under her clothing. Although the K.B. was a guest in his home the defendant was not her caregiver in the sense that in that role he would have to touch her breast or vagina. In Harstad the court found the defendant's argument that he performed a de facto caretaking function that would explain his touching of the two victims was unsupported by the evidence. There the defendant covered up the victim with a blanket. This court found that was not the kind of caretaking function that would require close contact with an unrelated child's intimate parts. Id. at 23.

The context in which the defendant touched her also suggests that touching her was for his sexual gratification and not for any legitimate purpose. She was a child old enough to take care of any of her own personal hygiene. The touching occurred at a time when the defendant could reasonably believe both girls were asleep, in a place removed from any other person who could observe what he was doing. A rational trier of fact could infer from

these facts that the defendant took the opportunity to touch K.B. in her intimate parts at a time and place that the touching would go undetected because he wanted to touch her for his sexual gratification.

The defendant's arguments challenging the sufficiency of the evidence all relate to the credibility of the witnesses. When considering whether there was sufficient evidence to support the charge a reviewing court gives deference to the trier of fact who resolves conflicting testimony, evaluates the credibility of the witnesses, and weighs the persuasiveness of the evidence. State v. Lubers, 81 Wn. App. 614, 619, 915 P.2d 1157, review denied, 130 Wn.2d 1008 (1996). Credibility determinations are therefore not reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The jury clearly found K.B. more credible than the defendant and R.C., the only two other people who could testify directly as to what happened in that tent on that summer night. Because K.B.'s testimony provided sufficient evidence that the defendant had sexual contact with her, there was sufficient evidence to find him guilty of the charge.

B. THE DEFENDANT'S RIGHT TO A UNANIMOUS VERDICT WAS NOT VIOLATED.

The defendant argues that touching K.B. on her breast and touching her on her vagina were two separate acts. Without an instruction directing jurors to be unanimous as to which act constituted the crime or an election by the prosecutor he claims his right to a unanimous jury verdict was violated.

Where several distinct acts are alleged, and any one of them could constitute the crime charged the jury must be unanimous in regard to which act constituted the charged crime. State v. Kitchen, 110 Wn.2d 403, 411, 756 P.2d 105 (1988), abrogation on other grounds recognized, In re Stockwell, 179 Wn.2d 588, 316 P.3d 107 (2014). In that case in order to ensure juror unanimity the prosecution must either elect which act it relies upon to support the charge or the court must instruct the jury that all 12 must agree that the same underlying act was proved beyond a reasonable doubt. State v. Petrich, 101 Wn.2d 566, 572, 683 P.2d 173 (1984), overruled on other grounds, Kitchen, 110 Wn.2d at 107.

However, neither a unanimity instruction nor an election is necessary when the acts testified to constitute a continuing course of conduct. State v. Handran, 113 Wn.2d 11, 17, 775 P.2d 453

(1989). Whether the defendant's acts constitute a continuing course of conduct is evaluated in a commonsense manner. Id. Where the alleged conduct occurs in one place during a short period of time between the same aggressor and victim, the assault constitutes a continuing course of conduct. Id.

Here the evidence shows that the defendant touched K.B. at a single location, the tent. Touching her breast and then her vagina occurred within a short period of time. K.B. stated that the defendant first touched her breast, under her clothing. Then within a minute or two he touched her vagina. 10-29-13 RP 120-122. Evaluating this evidence in a commonsense manner touching her breast and then her vagina was a single course of conduct. No error occurred when no unanimity instruction was given and the prosecutor did not elect which touching constituted the child molestation charge.

The defendant argues that his right to a unanimous verdict was violated because touching K.B.'s breast and then her vagina, would constitute sufficient independent criminal conduct to meet the first element of the charge, citing State v. Harstad, 153 Wn. App. 10, 21, 218 P.3d 624 (2009). The issue in that case was whether there was sufficient evidence to prove sexual contact when the

defendant was alleged to have touched one victim on her thigh under her clothing near her vagina and another victim on her upper thigh over her clothing. Id. at 21-22. That case does not support the defendant's position because jury unanimity was not at issue there. Additionally, unlike this case, the defendant's actions in Harstad constituted distinct acts against two different victims.

The defendant also relies on the Court of Appeals decision in Kitchen. BOA at 15 citing State v. Kitchen, 46 Wn. App. 232, 730 P.2d 103 (1986), affirmed 110 Wn.2d 403. Kitchen does not support the defendant's position here because it involved several distinct instances where the defendant engaged in sexual intercourse with the victim occurring during an approximately 15 month period of time. Unlike Kitchen the acts here occurred on a single night, in a single place between the same two people.

In this regard the case is like Handran. There the court found a defendant who broke into his ex-wife's home, kissed her and then struck her. 113 Wn.2d at 12. The defendant argued the court should have given a unanimity instruction because the kiss and the slap were two different assaults. Id. at 17. The court rejected the argument noting that the assaults occurred at the same time and place, between the same two people. Id.

Even if the defendant's acts could be characterized as distinct, any error in failure to instruct on unanimity or to elect which act constituted the crime is harmless if a rational trier of fact could have found each incident prove beyond a reasonable doubt. Handran, 113 Wn.2d at 17-18. Here K.B. was clear in her testimony that the defendant touched both her breast and the area around her vagina. A rational trier of fact could find that the defendant committed first degree child molestation based on touching her in either location.

C. THE COURT ACTED WITHIN ITS DISCRETION WHEN IT DENIED BOTH OF THE DEFENDANT'S MOTIONS FOR MISTRIAL.

On the first day of testimony the court informed the parties that over the lunch period it received an email from a jury coordinator that Mr. Steenis, one of the jurors who had been excused, reported that "the defendant was seen mouthing 'I didn't do this.'" Mr. Steenis heard this statement made by some women as he was leaving the courthouse. He was unsure if those women were on the panel or not. 2 CP __ (sub 40); 10-28-13 RP 67, 76. Based on this information the defense moved for a mistrial. 10-28-13 RP 77.

As a result of that information the court held a hearing in which it interviewed each of the 13 sitting jurors individually as well as Mr. Steenis. No sitting juror was aware of any conversations outside the courtroom relating to the defendant's case. Nor did any juror state that he or she was aware that anyone was trying to give the juror outside information about the case. Each juror promised to tell the court if that were the case. 10-28-13 RP 79-100. Mr. Steenis testified that as he was leaving the courthouse after being excused another juror who had been excused said the defendant looked in her direction the day before and mouthed "I'm not guilty" or "I didn't do this." There was no discussion about whether the defendant was guilty or not. Mr. Steenis did however recall the excused juror thought the defendant's conduct made him look more guilty. 10-28-13 RP 105-107. The court concluded that nothing appeared to have been communicated to any of the sitting jurors. Based on that, and that the defendant had entered a not guilty plea, the court denied the motion for mistrial. 10-28-13 RP 110-111.

On the next day of trial the court received another email regarding juror communications. The email was from a sitting juror who stated that another juror on the panel asked him if he had "certain feelings about the case." 2 CP __ (sub 41). The court

individually questioned that juror about the conversation. The juror testified that another juror asked him during a break whether he had any feelings about the case “like if I were swinging to the different sides.” The juror did not respond to the question. 10-29-13 RP 142.

The court then questioned the second juror. That juror stated that she talked to the first juror and did comment “sure hope the person is not guilty. You hate to see somebody’s life ruined, you know, just things of that nature.” 10-29-13 RP 149. The defense moved for a mistrial. 10-29-13 RP 145. The court excused the second juror. It denied the motion for mistrial without prejudice to allow the defense attorney to present new information or authority. 10-29-13 RP 151-153. Defense counsel indicated the next day that he did not have any additional material to present to the court regarding his motion for mistrial. 10-30-13 RP 173.

The defendant argues that the trial court committed error when it denied both of his motions for mistrial based on alleged misconduct of jurors. The trial court should grant a mistrial motion only when the defendant has been so prejudiced that nothing short of a new trial can insure the defendant receives a fair trial. State v. Jungers, 125 Wn. App. 895, 901-902, 106 P.3d 827 (2005). A trial

court's denial of a motion for mistrial is reviewed for an abuse of discretion. State v. Lewis, 130 Wn.2d 700, 707, 927 P.2d 235 (1996). The appellate court will find an abuse of discretion only when "no reasonable judge would have reached the same conclusion." State v. Hopson, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989).

Initially the court should consider whether any misconduct even occurred. During the course of a trial a juror may communicate with others as long as the nature of the case is not discussed. State v. Depaz, 165 Wn.2d 842, 858-859, 204 P.3d 217 (2009). Communications with others about the case before the court releases the jury from its prohibition against communicating about the case is misconduct. Id.

In the first instance of alleged juror misconduct the individuals involved had been excused by the court and were no longer involved in the case. Because there was no testimony from the woman Mr. Steenis referred to there is no direct evidence anyone in the venire saw the defendant doing anything. Assuming for the sake of argument that someone in the venire did see the defendant's conduct, that person's brief discussion with Mr. Steenis after being released from service was not misconduct. Further,

jurors are permitted to observe people in court. 1 CP 42-43 (permitting jurors to consider the witnesses' memory and manner while testifying). The jurors did nothing wrong when they looked at the defendant at the moment he mouthed his declaration of innocence.

In the second instance the jurors' comment that she hoped the defendant was not guilty did not indicate one way or the other whether she thought the evidence showed that the defendant was guilty. Nor did the juror that she spoke to indicate what he thought about the evidence so far.

Even if the court were to conclude that some misconduct occurred the court did not abuse its discretion when it denied the mistrial motions because the defendant had not been prejudiced. None of the sitting jurors indicated any knowledge of the conversation between Mr. Steenis and the other excused juror. Nor did they indicate any awareness that the defendant had made any comment in court about his innocence. The defendant speculates that other jurors observed the defendant's conduct and came to some conclusion about his guilt or innocence. In light of what the record does show, this speculation does not support the conclusion

the trial court abused its discretion when it denied the defendant's first motion for mistrial.

Only two jurors were present during the conversation involved in the second mistrial motion. Whatever conversation passed between those two had no impact on the remainder of the panel. One of the two jurors clearly committed no misconduct because he did not even make a passing reference to the case outside deliberations. Assuming that the second juror committed misconduct by suggesting that she had made up her mind before deliberations began, that alone would not lead to the conclusion that she was biased, and therefore should be removed from the panel. State v. Hatley, 41 Wn. App. 789, 795, 706 P.2d 1083, review denied, 104 Wn.2d 1024 (1985). Despite that, the court acted within its discretion when it chose to remove the juror from the panel rather than granting a mistrial. State v. Eggers, 55 Wn.2d 711, 349 P.2d 734 (1960). Without any evidence that juror talked to any other juror, the court ensured that even if that juror had a bias, it would not affect the verdict by removing her from the panel.

D. THE DEFENDANT IS NOT ENTITLED TO A NEW TRIAL ON THE BASIS OF INEFFECTIVE ASSISTANCE OF COUNSEL.

Finally, the defendant asserts that he received ineffective assistance of counsel that entitles him to a new trial. A defendant in a criminal case has a Sixth Amendment right to effective assistance of counsel. In re Stenson, 142 Wn.2d 710, 757, 16 P.3d 1 (2001). To demonstrate ineffective assistance of counsel the petitioner must show that (1) defense counsel's performance was deficient, i.e. it fell below an objective standard of reasonableness based on a consideration of all of the circumstances and (2) the petitioner suffered prejudice due to counsel's deficient performance, i.e. there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The defendant must make both showings in order to establish grounds for a new trial on this basis. Id. at 687.

Where counsel's conduct can be characterized as legitimate trial strategy the defendant is not entitled to a new trial. State v.

McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). To rebut the presumption that counsel performed reasonably he must show that “there was no conceivable legitimate tactic explaining counsel’s performance.” State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011) quoting, State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

This standard is highly deferential to defense counsel. In re Monschke, 160 Wn. App. 479, 490, 251 P.3d 884 (2010). Courts will strongly presume defense counsel acted reasonably until the defendant shows in the record the absence of a legitimate tactical reasons supporting trial counsel’s conduct. Id.

The defendant asserts that counsel performed deficiently in two ways. First, counsel did not propose a jury unanimity instruction. Second, counsel was unprepared for trial as a result of receiving transcripts of witness interviews shortly before trial. He alleges each of these instances of misconduct prejudiced him.

1. The Decision To Not Request A Unanimity Instruction Did Not Prejudice The Defendant.

Defense counsel did not propose a unanimity instruction. 1 CP 41-51. Nor did he object when that instruction was not part of the court’s proposed instructions to the jury. 10-31-13 RP 556-558.

The defendant claims his failure to do so constitute deficient performance that prejudiced him.

Prejudice is not demonstrated unless counsel would have succeeded had he done the act that the defendant argues that he should have performed. McFarland, 127 Wn.2d at 337, n. 4. In McFarland the defendant complained that his attorney failed to make a motion to suppress evidence. Where the record showed there was a substantial basis on which to deny the motion, the defendant had failed to establish prejudice. Id.

Here, as discussed, the record shows that the defendant's conduct was a continuing course of conduct rather than two distinct assaults upon K.B. For that reason there was no basis on which to give a unanimity instruction. If defense counsel had proposed a unanimity instruction the court would not have given it. Thus the defendant does not show that counsel's failure to do so prejudiced him.

Moreover even if there is some reason to believe the court would have given a unanimity instruction had one been requested the defendant was not prejudiced when no such instruction was given. When a unanimity instruction is warranted, failure to give such instruction is harmless where there is substantial evidence

supporting each act that constitutes the crime. Handran, 113 Wn.2d at 17-18. K.B.'s testimony provides substantial evidence that he touched her on both her breast and her vagina.

The defendant claims he was prejudiced because his testimony that he pulled K.B.'s shirt down could have cast doubt on her testimony that he touched her breast. The defendant testified that only one of the girl's stomachs was exposed when he pulled her shirt down. He believed, but was unsure whether it was K.B. He did not see any area of the child's breast exposed. 10-31-13 RP 539, 544-546, 548. He categorically denied touching the child on the skin on her breast or vagina. 10-31-13 RP 549-550. If believed, the defendant's hands were nowhere near K.B.'s breasts. Thus the testimony regarding both K.B.'s breasts and vagina presented the jury with an either-or choice; either the defendant touched those spots or he did not. The defendant's testimony did not therefore create reasonable doubt regarding touching one but not the other part of K.B.'s body. His testimony does not provide grounds to establish prejudice resulted from the failure to instruct on jury unanimity.

2. Trial Counsel Did Not Provide Constitutionally Deficient Performance When He Proceeded To Defend The Defendant At Trial After The Court Denied His Motion To Continue Trial.

Prior to trial the State provided the defense with interviews that law enforcement had conducted with witnesses in CD and DVD format in April or May, 2013. 2 CP (sub 33); 10-25-13 RP 3. Counsel had reviewed the interviews in that format before trial. 10-25-13 RP 6. Approximately three days before the October 25, 2013 trial call date the prosecutor informed defense counsel that he was in the process of having several of those interviews transcribed and would provide copies to defense counsel when they were completed. Defense counsel received those transcripts between October 23 and October 25. 10-25-13 RP 3-4. Defense counsel sought a continuance on the basis that he had received the transcripts of the interviews shortly before trial. 10-25-13 RP 4-5. The trial court concluded that the transcripts were not new information and denied the motion to continue. 10-25-13 RP 9.

Defense counsel renewed his motion to continue the following Monday, the first day of trial. Counsel explained that he relied on the State to prepare written transcripts of the interviews because the defendant had limited financial resources. Counsel represented that but for having the transcripts available to review

only the weekend before trial started he was ready to proceed to trial. Based on that representation the trial court again denied the motion to continue. 10-28-13 RP 2-7.

The defendant argues that counsel performed deficiently when he decided to proceed to trial when counsel admitted that he was unprepared for trial. BOA at 25. The defendant does not suggest what counsel could have done other than proceed to trial when the court denied both of his continuance motions. Because counsel really had no other options but to try the case under those circumstances it cannot be said that trial counsel performed deficiently when he did try the case.

The defendant also argues that he was prejudiced because counsel stated that he was not prepared to try the case without having the transcripts of the interviews more than a few days before the trial actually commenced. He argues that because defense counsel lacked adequate time to review the transcripts before trial his theory of the defense likely suffered. BOA at 26. This argument should fail for two reasons.

First it is entirely speculative. It is not sufficient to simply allege prejudice. McFarland, 127 Wn.2d at 334. The prejudice prong of an ineffective assistance of counsel claim fails unless

there is an affirmative showing in the record that the defendant suffered actual prejudice. Id. There is no such evidence in this record.

Second, the record demonstrates that counsel's representation did not suffer because he received the transcripts of interviews shortly before the trial began. Counsel had reviewed the interviews in other formats and was familiar with what the witnesses had previously said. Counsel had made a strategic decision to not have the transcripts prepared at the defendant's expense before trial. That suggests that counsel did not believe he needed a great amount of time to review them as part of his trial preparation. Counsel had the weekend to read through the transcripts and familiarize himself with those for use in cross-examination. Counsel demonstrated that he was familiar with the contents of those transcripts when he used them to cross examine K.B. and R.C. 10-30-13 RP 195, 205-214; 10-31-13 RP 429-433, 435-436.

IV. CONCLUSION

For the foregoing reasons the State asks the Court to affirm the defendant's conviction for child molestation first degree.

Respectfully submitted on December 9, 2014.

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