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Court of Appeals
Division III
State of Washington
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SUPREME COURT
STATE OF WASHINGTON
8/7/2025
BY SARAH R. PENDLETON
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Case #: 1044348

No. 401430

Appellate Court, Div. III COURT
OF THE STATE OF WASHINGTON

State of Washington, Respondent,
v.
Lance A. Stores, Petitioner,

MOTION FOR DISCRETIONARY REVIEW

Treated as a PETITION FOR REVIEW

Lance A. Stores
[Name of petitioner]
D.O.C. # 440602 ~~HSA~~ HSA9S
Stafford Crk. Correction Ctr.
Aberdeen, Washington,
98520
[Address]

Court Case # 22100005120
Appeals Case # 401430

A. Identity of Petitioner

Lance A. Stores [Name] asks this court to accept review of the decision designated in Part B of this motion.

B. Decision

[Statement of the decision or parts of decision petitioner wants reviewed, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration.]

In my first trial, my private attorney took my case to a mistrial. For my second trial, I was appointed an attorney. He made no effort to defend me. The first attorney gave everything to the second attorney and he used none of it. I was convicted on 23 Nov. 2023. First trial date 23 Aug, 2023. I appealed immediately. My appeals attorney sent me a copy of the appeal that was presented to the court and a form for additional grounds for review. The copy he sent me did not in any way represent my actual appeal. I told the attorney and he said to put anything else I had in additional grounds. I did as he said. On June 10 of 2025 I received a denial letter for all of the wrong reasons. They would not review my AGC's. I motioned for reconsider, but it too was denied. My original appeal has never been considered. The reasons for denial were not part of my appeal. (Please read the enclosed letter.) A copy of the decision [and trial court memorandum opinion] is in the Appendix.

C. Issues Presented for Review

[Define the issues which the court is asked to decide if review is granted.]

I don't know what happened to my original appeal. I was locked up in county when I sent it to my appeals attorney, Mr. Dennis Morgan. When I read the final draft to go forward, it was not what I had written. I appealed on grounds of Ineffective Assistance of Counsel. My attorney (court appointed) Mr. Lanz. did not cross examine my accuser about a motive to lie. He did not talk to my witness who had evidence of lying. He did not cross examine the expert witness, Brenda Borders, forensic interviewer who testified in my first trial that it was very possible that the child (BRS) and her mother were lying. He told me throughout the trial that he didn't have to do anything, the state had the burden of proof. These were on my denial letter only as AGC's and not considered. (please read the enclosed letter)

D. Statement of the Case
[The statement should be brief and contain only material relevant to the motion.]

My case is about being accused of molesting a 7 year old girl that my wife and I babysat on a regular basis with her younger sister and once in a while, her older brother. My defense is that I caused problems with the parents relationship and the mom was very angry at me. It is my argument that they are lying. I have good evidence to support my argument but only my attorney from my first trial is defending me with it. My 2nd attorney kept saying we don't need it, the state has the burden of proof. That didn't go so well. My appeals attorney did not put my argument in my appeal. I tried to straighten it out but was unsuccessful. My argument was not reviewed and my appeal was denied. The child is known (please read the enclosed letter) in court as BRS.

E. Argument Why Review Should Be Accepted
[The argument should be short and concise and supported by authority.]

I don't know what 'supported by authority' means but my review should be accepted because after the first trial ended, I have not had anybody in my corner fighting for me legally. It is a clear case of Ineffective assistance of Counsel. Even though I tried to set it straight in my appeal, it did not get corrected by my appeals attorney and consequently my appeal was denied. Going by information that was not in my original appeal, they suggested that my trial attorney was using some tactic. He used no tactic at all. (please read the enclosed letter).

F. Conclusion
[State the relief sought if review is granted.]

My charges are a lie and my case should be dismissed. The worst case scenario is that the case be retried with a different venue. I can not afford an attorney however.

DATED this 2nd day of August, 2025.

Respectfully submitted,

Petitioner

APPENDIX

Lance A. Stores
D.O.C. # 440602
Stafford Creek Correction Ctr.
191 Constantine Way
Aberdeen Washington 98520
Court case # 2210005120
Appeals case # 401430

To: Court of Appeals of the
State of Washington
Division III

Attn: Temple of Justice P.O. 40929
(Washington Supreme Ct.)
Olympia, Wash. 98504-0929

Re: Petition for Discretionary Review by the Washington Supreme Court of a Court of Appeals decision.

Dear sirs,

I want to begin by expressing my appologies for the informality of my letter and the lack of legalese as I am without counsel at this time. I will try to be brief, however in the denial letter of my appeal, it appears that I was not specific enough. Thank you for your time.

I have never been in trouble before and I like to believe in the Criminal Justice System 100%. My case has almost got me thinking it's about the money though, I just don't want to believe it. For my first trial, my wife and I went deep into debt and my 'Big City' lawyer took my case to a hung jury, or a mistrial. His name was Jeff Riback. He told me that he knew I could not afford to pay him for a new trial and he was right. He told me that he would turn over everything he had on my case and that he would

cooperate as needed with my new attorney.

I was assigned a public defender by the County named Christopher Lanz. My trial was set for 2 1/2 months out. The second week, I met with Mr. Lanz at his office. He had received all of the paperwork from Mr. Riback and he assured me that it would go well. I asked him if he would be calling my witnesses and he said yes. Three weeks later I called his office and they said he was on vacation for the next couple of weeks. I called him back 2 weeks before the trial and asked him why he hadn't contacted my wife and my other witness, Clyde yet. He said he was going to call them this week. The day before the trial, I got ahold of him. He told me that we would not need Clyde and that he would talk to my wife at the trial. When he did speak with my wife

he tried to talk her out of testifying but she wanted to. He never even spoke with Clyde. The trial was short and I was declared guilty.

I appealed on the grounds of Ineffective Assistance of Counsel. My entire defense was the the charges were all a lie. Mr. Lanz did not do anything to argue my case. Many months after being in prison, I received a copy of my appeal as it was to be sent to the Court of Appeals. I'm not sure what happened to my original Appeal. I received no copies but my primary reasons for appealing were not listed on the copy I got from my Appeals attorney, Dennis Morgan. I called Mr. Morgan and discussed the problem with him and he instructed me to add them to the 'Additional Grounds for Consideration.' He told me to send it directly to the Court. I did exactly as instructed. A few

months later, I received a letter of denial from the court. It was denied for reasons that had nothing to do with my appeal.

The two main reasons it was denied were one being they claimed I had an issue with taking a lie detector test. This was not an issue for me. I even told Detective Bianchi that I would gladly take the test but it never took place. The second main reason is that they claimed I had a problem with my Attorney, Mr. Lanz not cross examining BRS. Not true. When he told me that he was not going to cross examine her I told him that I was fine with that. I also got a letter from my lawyer, Mr. Morgan saying he didn't know if he wanted to submit a motion for reconsideration until he did some more research. There was a short time line for the motion so I wrote a motion

myself and sent it in. A few days later, I received a letter from Mr. Morgan resigning from my case. I guess I jumped the gun. My motion was denied and my main reasons which were still AGC's were not even considered.

Now to my original Appeal which is not what was submitted to the appeals court.

1) Lexi Stafford, the Mother of BRS had a very good reason to be angry with me and to want to hurt me. I had inserted myself into hers and Nick McCabe's relationship by telling Nick that Lexi left a bag of heroin at our house. My first attorney, Mr. Riback questioned Lexi about the drugs but it was shot down by prosecution as irrelevant. He asked her if she had any reason to be angry with me but it too was shot down for the same reason. Although these questions were deemed irrelevant, the jury had

heard them. Mr. Lanz did not even mention them. These questions were important to my defense.

2) My first attorney, Mr. Riback placed a lot of importance on my witness, Clyde Peterson. Clyde was a good friend and neighbor of Nick and Lexi. He was just a casual acquaintance of my wife and I. A few days after the alleged incident took place, July 1st, Clyde approached me at my home. He told me that he saw something that was unsettling and he thought I should know about it. Nick had taken his phone over to Clyde's house and showed him a video of Lexi and BRS in the hotel room that Lexi was living in at the time.

In the video Lexi was rehearsing with BRS what to say about me molesting her. What Clyde thought I should know is that he saw the date on the video and noticed it was a week before July 1st. Lexi moved out of the hotel and back home before

July 1st. Mr. Riback brought up the video to Nick and he denied it at first. Finally Nick admitted to a video, but argued the content. Mr. Lanz not only did not call Clyde to the stand but didnt even call to talk to him. Clyde's testimony along with Lexi's Motive is the beginning of my defense of it all being a lie just to hurt me.

3) The forensic interview of BRS was conducted by Brenda Borders. Mr. Riback cross examined her for quite a while. He asked her specifically if it was possible for a parent to put a thought or story into a 7 year old childs head and rehearse it over and over to the point that the child believed it to be true. Ms. Borders answered "yes it is possible". Lexi had about 3 weeks to go over this story with BRS before before her interview with Brenda Borders. Mr. Riback also questioned Ms. Borders

about her qualifications and training. She said her training consisted of a two week course followed by a 1 day refresher course a year later. Mr. Lanz dismissed Ms, Borders saying he had no questions of this witness. I questioned him but he said it was not necessary. This combined with the Motive and combined with the video all strongly lead to the possibility of a lie. Mr. Lanz did not effectuate any form of a defense what so ever. These were my prime arguements for 'Ineffective Assistance of Counsel'.

If was also in Mr. Ribacks notes that Lexi Stafford had, not long before, brought charges on the father of BRS of molesting BRS's older brother, by 1 year, Grayson. My wife and I have babysat for Grayson a few times as well. The charges on the father were unfounded and the child remains with his father.

I believe that Mr. Lanz' failure to build any defense at all is good cause for 'Ineffective Assistance of Counsel'. If he had, at a minimum, followed Mr. Ribucks approach, the outcome would have been different. The jury heard only Me denying the charges and my wife saying the same.

This was my orriginal appeal but it was not presented this way. In the end, the Appeals Court did not ever consider my explaination.

'Summary'

* Mr. Lanz was very clear that he wasn't going to do anything because the State had the burden of proof.
* Mr. Lanz did not question Lexi about the drugs or a motive.
* Mr. Lanz did not contact Clyde, an important witness to my defense, let alone call him to the stand.
* Mr. Lanz did not cross examine the

forensic interviewer, Brenda Borders, who could confirm that it was very possible that it was all just a lie.

* I am not the first person that Lexi has accused of the same crime just because she was angry at them.
* Ever since my first trial, I have not had decent legal representation by Klickitat County or the Appeals Court.

Of course I would like to have my case overturned, as it should be but I at least deserve a retrial with an attorney who will defend me to the best of his ability; A fair trial.

Thank you for your consideration in this matter.

Lance A. Stores.

E-Filing

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Transmittal Information

Filed With Court:	Court of Appeals Division III
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DOC filing on behalf of stores - DOC Number 440602

The following documents have been uploaded:
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The DOC Facility Name is Stafford Creek Corrections Center
The E-Filer's Last Name is stores
The E-Filer's DOC Number is 440602
The Case Number is 401430
The entire original email subject is 12,stores,440602,401430,1of1

The following email addresses also received a copy of this email and filed document(s):
paappeals@Klickitatcounty.org,rebeccac@klickitatcounty.org

FILED
JUNE 10, 2025
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON, Respondent, v. LANCE ANDREW STORES, Appellant.	)))))))))	No. 40143-0-III UNPUBLISHED OPINION

COONEY, J. — Lance Stores was charged with child molestation in the first degree and invoked his right to a jury trial. The jury was deadlocked after 2 hours and 18 minutes of deliberations at the conclusion of his first trial, resulting in the court ordering a mistrial. Mr. Stores was later convicted in a second trial.

Mr. Stores appeals, arguing the trial court abused its discretion when it prematurely ordered a mistrial and admitted certain evidence. He further claims his trial attorney was ineffective in not cross-examining the victim and in failing to object to certain evidence. Lastly, Mr. Stores raises three issues in a statement of additional grounds for review (SAG).

Finding no error, we affirm.

BACKGROUND

In 2021, cohabitants Tammie and Lance Stores met Lexi and Nick.[1] Lexi and Nick had recently moved into the neighborhood with their two children, one of whom was their seven-year-old daughter, B.R.S.[2] Shortly thereafter, Tammie began providing childcare for the children.

Tammie babysat both children on July 1, 2022. Mr. Stores returned home from work that evening at approximately 8:00 p.m. He spent much of the evening drinking beer on a bench in front of their residence. B.R.S. and Mr. Stores sat on the bench, covered with a blanket.

Mr. Stores testified that B.R.S. was clinging to him and "just wouldn't leave [him] alone" that evening. Rep. of Proc. (RP) at 830, 832. B.R.S. asked Mr. Stores to tickle her. Mr. Stores responded by poking her in the ribs. B.R.S. showed Mr. Stores what she meant by tickling by running her fingers up his hand. B.R.S. then whispered to Mr. Stores that she wanted to be tickled all over. B.R.S. claimed Mr. Stores tickled her all over, including her "private part." RP at 686, 886. Mr. Stores denied tickling B.R.S. anywhere other than her hand.

[1] We refer to witnesses by their last names only unless necessary for disposition of the issue.

[2] B.R.S. is Lexi's biological child only.

Lexi and Nick retrieved the children from Mr. Stores' residence between 10:00 and 11:00 p.m. At Mr. Stores' request, B.R.S. asked her parents if she could stay the night at Mr. Stores' residence. Mr. Stores told B.R.S. to ask her parents because he did not want to appear as the "bad guy" by saying no. RP at 709, 837.

Lexi and Nick questioned B.R.S. when they arrived home. B.R.S. told Lexi that Mr. Stores had touched her "private part." RP at 686. Lexi and Nick reported the incident to law enforcement two days later. Brenda Borders conducted a forensic interview of B.R.S. on July 11, 2022.

Detective Robert Bianchi later questioned Mr. Stores about B.R.S.'s allegation. Mr. Stores reported that B.R.S. was abnormally clingy that evening and characterized her behavior as "promiscuous." RP at 704. Mr. Stores later testified that he did not understand "promiscuous" implied a desire for sexual gratification and thought it simply meant flirtatious. RP at 845. Mr. Stores told the detective that B.R.S. had asked him to tickle her all over, which he believed meant in inappropriate ways. Mr. Stores told Detective Bianchi that B.R.S. said if he refused to tickle her like she wanted, she would tell her parents that he did tickle her. Mr. Stores agreed with Detective Bianchi's characterization of B.R.S.'s conduct that evening as blackmail.

The State charged Mr. Stores with child molestation in the first degree on October 7, 2022. Mr. Stores' first trial began on August 23, 2023. The trial concluded on August 24, 2023, with a question from the jury after 2 hours and 18 minutes of

deliberations, asking, "What should we do if we cannot come to a unanimous decision?" Clerk's Papers (CP) at 130. The court polled the jury in response to the question. Each juror agreed there was not a reasonable probability of reaching a verdict within a reasonable time frame. The court then consulted with the attorneys who agreed the jury was deadlocked. The court ordered a mistrial.

A second trial was held in November 2023. B.R.S. testified for the State, but Mr. Stores' attorney chose not to cross-examine her. Nick testified, in part, that he had offered to pay for Mr. Stores to take a lie detector test and that he "never thought [Mr. Stores] would do something like that." RP at 756. Detective Bianchi testified that Mr. Stores stated B.R.S. was acting promiscuously and characterized Mr. Stores' description of B.R.S.'s behavior toward him as blackmail.

The jury ultimately found Mr. Stores guilty of child molestation in the first degree.

Mr. Stores timely appeals.

ANALYSIS

MISTRIAL AND EVIDENTIARY RULINGS

Mr. Stores argues the trial court abused its discretion when it prematurely ordered a mistrial, admitted into evidence a recording of B.R.S.'s forensic interview, and overruled his objection to testimony of a polygraph test.

Mistrial

We review a trial court's ruling on a mistrial for abuse of discretion. *State v. Emery*, 174 Wn.2d 741, 765, 278 P.3d 653 (2012).

A court "abuses its discretion when it acts on untenable grounds or its ruling is manifestly unreasonable." *State v. Gaines*, 194 Wn. App. 892, 896, 380 P.3d 540 (2016). A "decision is based 'on untenable grounds' or made 'for untenable reasons' if it rests on facts unsupported in the record or was reached by applying the wrong legal standard." *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995)). A "decision is 'manifestly unreasonable' if the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take,' and arrives at a decision 'outside the range of acceptable choices.'" *Rohrich*, 149 Wn.2d at 654 (citation omitted) (quoting *State v. Lewis*, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990); *Rundquist*, 79 Wn. App. at 793).

Mr. Stores argues the trial court abused its discretion when it prematurely ordered a mistrial. We decline review of the claimed error.

This court may refuse to review a claim of error that was not raised at the trial court level. RAP 2.5. The purpose of this rule is to give the trial court an opportunity to correct any errors before the case is presented on appeal. *State v. Strine*, 176 Wn.2d 742, 749, 293 P.3d 1177 (2013). "[T]here is great potential for abuse when a party does not object because '[a] party so situated could simply lie back, not allowing the trial court to

avoid the potential prejudice, gamble on the verdict, and then seek a new trial on appeal.'" *State v. Weber*, 159 Wn.2d 252, 271-72, 149 P.3d 646 (2006) (quoting *State v. Sullivan*, 69 Wn. App. 167, 172, 847 P.2d 953 (1993)).

After 2 hours and 18 minutes of deliberations, the first jury sent a question to the court, inquiring, "What should we do if we cannot come to a unanimous decision?" RP at 619; CP at 130. The court polled the jury, and each juror agreed there was not a reasonable probability of reaching a verdict within a reasonable amount of time. The court then excused the jury from the courtroom and asked defense counsel, "anything you want to add or position on how to deal with this or—regarding or any motions to make?" RP at 628. Defense counsel responded, "No, Your Honor. I think it's obvious." RP at 628. The court ordered a mistrial and then asked defense counsel, "anything else to add to that?" RP at 631. Defense counsel responded, "Nothing, Your Honor." RP at 631.

Defense counsel's acquiescence to the trial court ordering a mistrial deprived the court of an opportunity to recognize or correct any errors in its ruling. It further allowed Mr. Stores to gamble on the verdict in the second trial and then, if convicted, seek a new trial on appeal. Based on Mr. Stores' failure to object to the court ordering a mistrial, we decline review of his alleged error.

Forensic Interview of B.R.S.

Mr. Stores claims the trial court abused its discretion when it admitted a recording of B.R.S.'s forensic interview into evidence. We decline review of the claimed error.

Fatal to Mr. Stores' claimed error is his failure to object to the admission of the recording. After the State moved to admit the recording into evidence, the court looked to defense counsel for a response. Defense counsel responded, "No objection." RP at 762. The court inquired of defense counsel, "No objection?" RP at 762. Defense counsel responded, "Correct." RP at 762.

A failure to object that evidence is inadmissible waives any claimed error on appeal. *State v. Burns*, 193 Wn.2d 190, 211, 438 P.3d 1183 (2019). Because Mr. Stores failed to object to admission of the recorded forensic interview into evidence, we decline review.

Evidentiary Rulings

Mr. Stores next argues the trial court twice abused its discretion in overruling objections made to Nick's testimony. We disagree.

Generally, we review a trial court's evidentiary rulings for abuse of discretion. *State v. Duarte Vela*, 200 Wn. App. 306, 317, 402 P.3d 281 (2017). Trial courts have "wide discretion in balancing the probative value of evidence against its potential prejudicial impact." *State v. Coe*, 101 Wn.2d 772, 782, 684 P.2d 668 (1984). "Evidentiary error is grounds for reversal only if it results in prejudice." *City of Seattle v.*

Pearson, 192 Wn. App. 802, 817, 369 P.3d 194 (2016). An evidentiary error is prejudicial if "'within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.'" *State v. Smith*, 106 Wn.2d 772, 780, 725 P.2d 951 (1986) (quoting *State v. Cunningham*, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980)).

The first evidentiary ruling Mr. Stores challenges occurred during his cross-examination of Nick:

> [DEFENSE COUNSEL]: Right. So, you thought you could resolve this with words, and that's why you didn't call the police?
>
> [Nick]: Well, we—we originally—yeah, like I said, I didn't want to believe it, *so we originally offered him that we would pay for a lie detector test if he would take it.*
>
> [DEFENSE COUNSEL]: Objection Your Honor. Nonresponsive.
>
> THE COURT: Overruled.

RP at 753 (emphasis added). Although the objection was to the testimony being nonresponsive to the question, Mr. Stores argues on appeal that evidence of polygraph testing is generally inadmissible.

The facts before us are analogous to those in *State v. Terrovona*, 105 Wn.2d 632, 716 P.2d 295 (1986). In *Terrovona*, a witness made a single comment, speculating that a certain individual was the polygraph examiner. *Id*. at 652-53. On review, the Supreme Court held that "[t]he fact that a jury is merely apprised of a lie detector test is not

necessarily prejudicial if no inference as to the result is raised or if an inference to the result is not prejudicial." *Id*. at 652.

Here, no evidence was admitted of a polygraph examination being administered or of Mr. Stores' acceptance or declination of Nick's offer to submit to a test. Rather, Nick simply commented that he offered to "pay for a lie detector test." RP at 753. Nick's lone remark was insufficient for the jury to infer a polygraph test had been administered or that Mr. Stores refused to take one. Mr. Stores was not prejudiced by Nick's statement.

The second evidentiary ruling Mr. Stores challenges occurred during the State's redirect examination of Nick:

> [STATE]: Describe the feeling. Was it a specific concern that you had?
>
> [NICK]: Not at the moment. It was just—just something wasn't—something—something was up, you know?
>
> [STATE]: But could you put your finger on it?
>
> [NICK]: Not at that time. Like I said, *I never thought that he would do something like that.*
>
> [DEFENSE COUNSEL]: Objection. Non-responsive.
>
> THE COURT: Overruled.

RP at 756 (emphasis added).

Courts generally will not permit testimony that takes the form of an opinion regarding the guilt of the defendant. *State v. Demery*, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001). Notably, Mr. Stores objected to Nick's nonresponsive testimony, not to it being

an opinion of guilt. Notwithstanding this deficiency, determining whether testimony is an impermissible opinion on guilt depends on the specifics of the case, the type of witness, the nature of the testimony, the nature of the charges, the type of defense being presented, and the other evidence put before the fact finder. *City of Seattle v. Heatley*, 70 Wn. App. 573, 579, 854 P.2d 658 (1993).

Here, Nick's statement was not an expression of his opinion of guilt. As a lay witness, Nick was testifying about interactions between B.R.S. and Mr. Stores. Nick testified that he felt something was off based on his observations but was unable to determine what was causing the feelings because "[he] never thought [Mr. Stores] would do something like that." RP at 756. The challenged statement did not convey Nick's impression of guilt.

Moreover, Mr. Stores placed similar testimony before the finder of fact prior to the statements he now challenges:

> [DEFENSE COUNSEL]: Alright. So, you didn't have those concerns before this incident, is that correct?
>
> [NICK]: No, I had it—I had—a week or two prior I had some weird kind of feeling, but I kind of just brushed it off, you know? *I didn't think that—I'd never thought something like that would happen.*
>
> [DEFENSE COUNSEL]: Right. So, a week or so before the incident you had these feelings?
>
> [NICK] A little bit. Yeah.

RP at 754 (emphasis added).

It was not manifestly unreasonable for the court to overrule Mr. Stores' objection given the context in which the challenged statement was presented and Mr. Stores' introduction of similar evidence. The trial court did not abuse its discretion in overruling Mr. Stores' objection. Further, Mr. Stores is unable to demonstrate that the outcome of the trial would have been materially affected had the alleged error not occurred.

INEFFECTIVE ASSISTANCE OF COUNSEL

Mr. Stores claims he was provided ineffective assistance by his trial attorney when his attorney failed to cross-examine B.R.S. and failed to object to aspects of Detective Bianchi's testimony. We disagree.

Criminal defendants have a constitutionally guaranteed right to effective assistance of counsel. U.S. CONST. amend. VI; WASH. CONST. art. I, § 22; *State v. Lopez*, 190 Wn.2d 104, 115, 410 P.3d 1117 (2018). A claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal. *State v. Nichols*, 161 Wn.2d 1, 9, 162 P.3d 1122 (2007). Claims of ineffective assistance of counsel are reviewed de novo. *State v. White*, 80 Wn. App. 406, 410, 907 P.2d 310 (1995).

A defendant bears the burden of showing (1) that his counsel's performance fell below an objective standard of reasonableness based on consideration of all the circumstances and, if so, (2) there is a reasonable probability that but for counsel's poor performance the outcome of the proceedings would have been different. *State v.*

McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). If either element is not satisfied, the inquiry ends. *State v. Kyllo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009).

In reviewing the record for deficiencies, there is a strong presumption that counsel's performance was reasonable. *McFarland*, 127 Wn.2d at 335. The reasonableness of counsel's performance is to be evaluated from counsel's perspective at the time of the alleged error and in light of all the circumstances. *Kimmelman v. Morrison*, 477 U.S. 365, 384, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986). When counsel's conduct can be characterized as legitimate trial strategy or tactics, performance is not deficient. *Kyllo*, 166 Wn.2d at 863. A sufficient basis to rebut legitimate trial strategy exists when the defendant demonstrates there is "no conceivable legitimate tactic explaining counsel's performance." *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

Failure to Cross-Examine B.R.S.

Mr. Stores argues that he was denied his right to confront a witness against him when his trial attorney failed to cross-examine B.R.S. Specifically, Mr. Stores contends his trial attorney had no reasonable justification for not questioning B.R.S. because her testimony contradicted statements made in the forensic interview and during the first trial.

Fatal to Mr. Stores' claimed error is his failure to demonstrate B.R.S.'s statements differed between the two trials or between the forensic interview and the second trial.

Mr. Stores does not point to where B.R.S.'s alleged inconsistent statements are located in the record but instead, presumes B.R.S.'s credibility would have been impeached merely by his trial counsel engaging in cross-examination. It is not the appellate court's obligation to search through the record to find evidence supporting the appellant's legal argument. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 819, 828 P.2d 549 (1992). Mr. Stores has not demonstrated that his trial attorney was ineffective in not cross-examining B.R.S.

Notwithstanding this deficiency, it was objectively reasonable for defense counsel to decline cross-examining B.R.S. B.R.S. testified to understanding the difference between good and bad touches. Nevertheless, B.R.S. was unable to state where she had been "bad touched" and failed to definitively identify Mr. Stores as the person who had "bad touched" her. Instead, B.R.S. testified that Mr. Stores was sitting next to her when she was touched. B.R.S. did not name Mr. Stores nor expressly identify him as the person who had "bad touched" her.

Mr. Stores' attorney grasped onto these deficiencies during summation. Defense counsel argued that B.R.S. never revealed "what she means by her privates" or where on her body she had been tickled. RP at 896. He highlighted B.R.S.'s numerous responses of "I don't know" to the State's questions and her "hard time identifying the person who supposedly did this." RP at 896.

In light of all the circumstances, it was a legitimate trial strategy for trial counsel to refrain from cross-examining B.R.S. Mr. Stores' trial attorney was not deficient in declining to cross-examine B.R.S.

Failure to Object

Mr. Stores next argues his trial attorney was ineffective by failing to object to Detective Bianchi's opinions and testimony of Mr. Stores' prior misconduct. We disagree.

The decision to object or not can be a trial tactic. *State v. Stotts*, 26 Wn. App. 2d 154, 165, 527 P.3d 842 (2023). Counsel may choose not to object to avoid highlighting otherwise inadmissible low-value evidence. *Id.* at 166. Therefore, a claim that counsel failed to object to testimony should show the objectionable testimony was central to the State's case. *See State v. Vazquez*, 198 Wn.2d 239, 248, 494 P.3d 424 (2021). The defendant also must show that a failure to object was not merely a trial tactic, and the objection was likely to be successful. *Id.*

Mr. Stores contends that Detective Bianchi twice testified to his opinions of Mr. Stores' statements. The first occurred after Detective Bianchi asked how the tickling began:

> [DETECTIVE BIANCHI]: And [B.R.S.] says no, I want you to tickle me everywhere. And [Mr. Stores] said that that just, to him, meant that he should touch her in inappropriate ways.

> *And I was struck by that that he* said, you know, she—he said that she said I want you to touch me everywhere and that he *would immediately think that would be touching private parts, private areas of her body.*

RP at 705 (emphasis added).

The second challenged incident occurred when Detective Bianchi was discussing B.R.S.'s desire to spend the night at Mr. Stores' residence. Detective Bianchi was surprised that Mr. Stores would consider allowing B.R.S. to stay overnight given B.R.S.'s earlier threat of "if you won't tickle me everywhere, I'm going to tell my parents that you did." RP at 706. Detective Bianchi testified:

> [Y]ou're saying that she's blackmailed you a couple of times and wants to have you do inappropriate things. Do you think it's okay to have her spend the night? And he said well, it's not like Tammie and I won't be sleeping with the kids, they'll be out there on this hide-a-bed. *And I thought that was just—obviously, I thought that was just a very bad reaction.*

RP at 709 (emphasis added).

Mr. Stores asserts these statements amounted to improper opinion evidence. However, Mr. Stores does not explain why refraining from objecting was not a legitimate trial tactic. Indeed, defense counsel may have strategically chosen against objecting to avoid highlighting Detective Bianchi's statements. Further, Mr. Stores has failed to show the outcome of the proceedings would have been different but for trial counsel's failure to object.

Mr. Stores next challenges two instances of Detective Bianchi alluding to acts of prior misconduct.

In the first instance, Detective Bianchi testified:

> [DETECTIVE BIANCHI]: Then, he clearly wanted to tell me about what happened that night and I interrupted him about that. I said I don't want you to think this is just about one night, which would have been, we both agreed was the January—July 1st of 2022. And he—and I said I don't want you to think it's just about that and—
>
> [STATE]: And why did you say that?
>
> [DETECTIVE BIANCHI]:—why did I say that?
>
> [STATE]: Yeah.
>
> [DETECTIVE BIANCHI]: Well, there had been indication that there had been more than one night. And so, without getting into what was said, I—I had basically come to believe that this had been going on for a period of time.
>
> [STATE]: So, you wanted to keep it as open as possible?
>
> [DETECTIVE BIANCHI]: Right. And so, I wanted to tell him that. I wanted to let him know that it was not just about one night. It was more.

RP at 703.

Thereafter, Mr. Stores' attorney cross-examined Detective Bianchi:

> [DEFENSE]: Just so we can get the timeline correct here, Detective Bianchi, the alleged incident would have been on a Friday night, July 1st, 2022, is that correct?
>
> [DETECTIVE BIANCHI]: That's the incident we ended up talking about. That's the incident we essentially focused on in the charges. I had information that some things had happened prior to that, but they—*the information did not develop very well.*

RP at 716 (emphasis added).

Mr. Stores argues he was prejudiced by Detective Bianchi's testimony because it inferred other instances of sexual misconduct. Citing *State v. Saltarelli*, 98 Wn.2d 358, 363, 655 P.2d 697 (1982), Mr. Stores argues that improper evidence of other sexual misconduct is especially prejudicial. We find *Saltarelli* is distinguishable. In *Saltarelli*, the court allowed the State to present testimony of a witness who claimed Saltarelli had also attempted to rape her. *Id.* at 360. The witness testified extensively about the attempted rape and of her escape. *Id.*

Unlike *Saltarelli*, here, the State did not introduce evidence of Mr. Stores engaging in specific acts of sexual misconduct against other victims. Rather, Detective Bianchi alluded to the possibility that misconduct may have occurred on more than one occasion. Further, the State did not follow up on the comment, and the detective dispelled any notion of Mr. Stores having engaged in prior misconduct during Mr. Stores' cross-examination of his testimony.

Mr. Stores fails to establish that his trial attorney's failure to object to acts of prior misconduct was not a trial tactic or that the outcome of the proceedings would have been different but for trial counsel's failure to object.

Mr. Stores did not receive ineffective assistance from his trial counsel.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

RAP 10.10(a) allows an appellant to "file a pro se statement of additional grounds for review to identify and discuss those matters related to the decision under review *that* the defendant believes have not been adequately addressed by the brief filed by the defendant's counsel." (Emphasis in original.) Mr. Stores raises three additional grounds for review related to the effectiveness of his trial counsel.

Although a SAG need not refer to the record or provide citation to authority, an appellant is required to inform this court of the "nature and occurrence of the alleged errors." RAP 10.10(c). A SAG cannot be reviewed if the claim is too vague to properly inform us of the alleged error. *State v. Bluehorse*, 159 Wn. App. 410, 436, 248 P.3d 537 (2011). For the following reasons, we decline review of the issues presented in Mr. Stores' SAG.

In his first SAG, Mr. Stores complains that Lexi had a motive to lie that went unchallenged by his trial attorney. This bare assertion does not provide the particularity necessary for our review. Mr. Stores fails to address how this deficiency fell below an objective standard of reasonableness or how the outcome of the proceedings would have been different but for counsel's alleged deficiency.

In his second SAG, Mr. Stores complains his trial attorney should have cross-examined the child forensic expert, Ms. Borders. Again, Mr. Stores fails to explain how

the outcome of the proceedings would have been different but for the lack of cross-examination of Ms. Borders.

In his third SAG, Mr. Stores complains of his trial counsel's failure to call "Clyde" as a witness. SAG at 2. Mr. Stores neglects to address whether his trial attorney's decision was a legitimate trial tactic or how he was prejudiced by the purported deficiency.

Although we decline review of Mr. Stores' SAG, he is not left without a remedy. Mr. Stores may address these purported errors through a personal restraint petition. *McFarland*, 127 Wn.2d at 338.

Affirmed.

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

Cooney, J.

WE CONCUR:

Lawrence-Berrey, C.J.

Staab, J.

Tristen L. Worthen
Clerk/Administrator

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CASE # 401430
State of Washington v. Lance Andrew Stores
KLICKITAT COUNTY SUPERIOR COURT No. 2210005120

Counsel:

Enclosed please find a copy of the opinion filed by the court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review of this decision by the Washington Supreme Court. RAP 13.3(b), 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact that the moving party contends this court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration that merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of a decision. RAP 12.4(b). Please file the motion electronically through this court's e-filing portal. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of the decision (should also be filed electronically). RAP 13.4(a). The motion for reconsideration and petition for review must be received by this court on or before the dates each is due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW: hcm
c: **E-mail** Honorable Judge Randall C. Krog