

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 20, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2024AP2451-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2018CF380

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHARON MARIE WINDEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: JOHN P. ZAKOWSKI, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Sharon Marie Windey appeals a judgment of conviction, entered following a jury trial, and an order denying her motion for

postconviction relief. Windey argues that her trial attorney was constitutionally ineffective in multiple respects. She also seeks a new trial in the interest of justice, arguing that the real controversy was not fully tried. We reject Windey's arguments and affirm.

BACKGROUND

¶2 Windey and her husband, Don Windey, lived in a household with their two biological children, Steven and Scott, and four adopted children, Suzie, Fiona, Wyatt, and Cynthia.¹ Cynthia was born in 1998 and was the oldest of the adopted children. Wyatt and Suzie were both born in 2002, and Fiona was born in 2003.

¶3 The State alleged that Windey had engaged in abusive conduct against the adopted children, and the case proceeded to a jury trial on twelve counts. Count 1 (physical abuse of a child—intentionally cause bodily harm) pertained to an incident that occurred in October 2017, when Windey allegedly punched Suzie and put her hands around Suzie's neck after becoming angry while Suzie was making pizza.

¶4 Counts 2, 3, and 4 each pertained to an incident that occurred on February 11, 2018. Count 2 (physical abuse of a child—intentionally cause bodily harm) and Count 4 (strangulation and suffocation) were based on allegations that Windey put her arm around Fiona's neck and lifted Fiona up, impeding her breathing. Count 3 (physical abuse of a child—intentionally cause bodily harm, as

¹ Pursuant to the policy underlying WIS. STAT. RULE 809.86(4) (2023-24), we refer to the adopted children, who are the victims in this case, using pseudonyms. All references to the Wisconsin Statutes are to the 2023-24 version.

a party to a crime (PTAC)) alleged that Windey solicited Steven, her oldest biological son, to attack Wyatt and then stopped Fiona from helping Wyatt while Steven was punching him.

¶5 Count 5 (disorderly conduct, PTAC) was based on a February 12, 2018 incident, in which three of the adopted children were walking down the street with backpacks, and a neighbor observed both Steven and Windey approach the children in vehicles and aggressively confront them.

¶6 Counts 6, 7, 8, 9, 10 and 11 were each based on conduct that allegedly occurred between November 9, 2009, and February 15, 2018.² Counts 6, 7 and 8 (child neglect, PTAC) alleged that Windey had intentionally contributed to the neglect of Suzie, Fiona, and Wyatt, respectively. Counts 9, 10 and 11 (causing mental harm to a child, PTAC) alleged that Windey had caused mental harm to Suzie, Fiona, and Wyatt, respectively, by conduct that demonstrated substantial disregard for their mental well-being.

¶7 Finally, Count 12 (causing mental harm to a child, PTAC) alleged that Windey had caused mental harm to Cynthia by conduct that demonstrated substantial disregard for Cynthia's mental well-being between November 9, 2009, and May 26, 2016, the date Cynthia turned 18 and moved out of Windey's home.

² At the start of trial, the charging dates for Counts 6 through 11 were September 1, 2014, through February 11, 2018. However, on the fourth day of trial, the State moved to amend the information to conform to the evidence, such that the charging dates for Counts 6 through 11 would be November 9, 2009 (the date when Wyatt and Fiona were first placed in Windey's home) through February 15, 2018 (the date when the children were removed from the home). The State explained that it was seeking this amendment because "the testimony was clear all four of the kids were testifying to the acts that were occurring when they were all in the household." The defense did not object to the State's proposed amendment, and the circuit court granted the State's motion to amend the information.

¶8 At Windey's six-day jury trial, the State introduced extensive evidence regarding Don's and Windey's treatment of the adopted children during the time that they resided in the Windeys' household, which included the following. Witnesses testified that the Windeys punished the adopted children almost daily, typically for acts that the Windeys considered disrespectful. Windey and Don decided on the punishments together. The punishments included physical discipline, such as spanking the adopted children on their naked buttocks, and Cynthia testified that she sometimes observed bruising on the other adopted children after they were punished. Although Don was "more of the enforcer" for physical punishments, Windey was aware of them. Additionally, Wyatt testified regarding one occasion when Windey held him down while Don punched him in the head.

¶9 Don and Windey also used forced exercise as a form of punishment. For instance, they would force the adopted children to do sets of 25 to 100 push-ups, 50 to 100 sit-ups, 25 to 100 stair runs, and 1- to 2-minute sets of wall-sits. Sometimes the sets would be combined, such that a child would have to complete multiple different exercises as a single punishment. Don and Windey would keep track of whether the adopted children completed the punishments and would add more forced exercise if the children failed to complete them.

¶10 The adopted children were also forced to engage in "front and centers," which involved them lining up in front of Don, Windey, or the fireplace, and looking down without making eye contact for set periods of time lasting up to one hour. The children sometimes had to do this while standing on one leg, and if they dropped a leg, they would be required to start over. The Windeys would also force the adopted children to kneel for hours as a punishment. On some occasions, Fiona "had to kneel in [a] room, and if [Windey] left the room [Fiona] had to

follow her and kneel in the next room.” Wyatt also testified regarding one occasion when he was forced to kneel in his underwear in the living room for several hours after school because of a bad grade.

¶11 Evidence was also introduced that Windey and Don routinely called the adopted children “fat.” The younger children—Suzie, Fiona, and Wyatt—were weighed in the morning, and at times Cynthia was required to supervise the weighing and report the children’s weights to Windey and Don. The children’s weights would “affect how much food they’d get.” The adopted children were not allowed to eat any food in the house without asking first. The adopted children reported that locks were used to restrict their access to food, and police searching the Windeys’ home in February 2018 found padlocks and chains on some of the kitchen cabinet doors.

¶12 Windey and Don also forced the adopted children to eat oatmeal as a punishment. The adopted children were given one to two cups of oatmeal to eat at breakfast. If they did not finish their oatmeal, they would be forced eat it for lunch, and if they did not finish it at lunch, they would be forced to eat it at dinner. The adopted children did not like oatmeal, so it was difficult for them to finish it. On one occasion, Wyatt vomited while eating his oatmeal, and Don made him finish the oatmeal, including the material that he had vomited into the bowl.

¶13 Windey and Don also used “blackouts” to punish the adopted children, which entailed removing “everything” from the children’s rooms, socially isolating them, and requiring them to stand or kneel for a period of time. During the blackouts, the children were not allowed to go to the bathroom and could eat or drink only if given permission. Cynthia testified that she once “wet [her] pants” during a blackout after asking to go to the bathroom and being told

she could not. After she soiled herself, Windey and Don “made [her] stay like that.”

¶14 Cynthia also testified that alarms called “ding-dongers” were installed on the doors to the children’s rooms, which would alert Windey and Don if the children tried to leave their rooms. Because the children were not allowed to leave their rooms to use the bathroom, they would urinate in cups that they snuck into their rooms. Cynthia testified that Suzie once got in trouble for using Febreze to mask the smell of urine in her room.

¶15 Evidence was also introduced that Windey allowed Don to engage in inappropriate sexual activity with the adopted children and made comments to them condoning his behavior. For instance, Cynthia testified that when she was in middle school, Don would make her kiss him on the lips for 30 to 60 seconds at a time, telling her that she needed to practice kissing for her future husband. Windey was sometimes in the same room when the kissing occurred. Cynthia felt uncomfortable with the kissing, so she asked Windey to make Don stop, but Windey responded that this was just a phase that Cynthia was going through as a teenager. Windey and Cynthia also discussed Don getting an erection while Cynthia was sitting on his lap and he was kissing her, and Windey told Cynthia that “sometimes a father loves his daughter so much that his love gets misdirected.”

¶16 Cynthia further testified that when she was in elementary school and middle school, Don would regularly touch her buttocks. According to Cynthia, Windey was aware of the touching, and at one point Cynthia told Windey that it made her uncomfortable and that she wanted it to stop. However, Windey responded that “it was a phase [Cynthia] was going through because [she] was a

teenager” and that Don was simply “showing his love.” Cynthia also testified that she saw Don touch Fiona’s and Suzie’s buttocks “[p]retty regularly.” Suzie confirmed that Don would “grab[]” her butt, and she also testified that Don would kiss her for “[a]s long as he wanted,” sometimes when Windey was present.

¶17 Cynthia testified that Don started paying more attention to her in middle school and high school and started buying special gifts for her and leaving her notes around the house. This made Windey jealous, which led Windey to call Cynthia a “slut” and a “whore.” Windey would also call Fiona a “bitch,” a “whore,” and a “slut.”

¶18 With respect to the October 2017 incident underlying Count 1, Suzie testified that on that occasion, which involved a dispute over pizza, Windey punched her in the back and then grabbed her by the throat and threw her to the floor, which caused her pain.

¶19 As for the February 11, 2018 incident underlying Counts 2, 3 and 4, evidence was introduced that the incident began when Suzie, Fiona, and Wyatt, who were upstairs in a bonus room, told the Windeys that they would not be going to church that morning, which upset the Windeys. Don then left for church, and Windey stayed home. At some point, Suzie, who had a cold, went downstairs to ask Windey for medicine, but Windey refused to give her any.

¶20 Later on, Fiona, Suzie, and Wyatt started to go back downstairs together to again ask Windey to give Suzie medication. They encountered Windey while on the steps and asked for medicine, but Windey responded that Suzie did not “deserve” medicine because she had not gone to church. Fiona testified that Windey then tried to shove the children upstairs. According to Suzie, Windey was “getting increasingly more upset” and “started hitting [the children]

because [they] were not going up the stairs.” Fiona testified that she told Windey to stop touching her, and Windey responded, “I’ll touch you however and whenever I want.” Windey then started shaking Fiona, pulling her hair, and slapping her. At that point, Wyatt pushed Windey away from Fiona, which caused Windey to fall down the stairs.

¶21 After Windey fell, Wyatt heard her pound on the floor and yell for Steven, who was an adult at the time. Steven then came upstairs into the bonus room, got on top of Wyatt, and repeatedly hit Wyatt in the head for about 15 seconds. Fiona started yelling at Steven to get off of Wyatt, but Windey put her arm around Fiona’s neck, lifted Fiona off of the ground, and started swinging her around. Fiona testified that she “couldn’t breathe,” that “[i]t hurt,” and that she “felt like [her] eyes were going to come out of [her] head.”

¶22 Windey testified in her own defense and admitted that, on one occasion, she grabbed Cynthia, pushed her, and held her against the wall at Cynthia’s school because Cynthia was purportedly disrespecting her. She also admitted that she used exercise as a form of discipline and that the adopted children were sometimes required to finish their oatmeal and could not eat other food until they finished it. Additionally, Windey conceded that the adopted children could be punished for telling others about what happened inside the Windeys’ home.

¶23 Windey further admitted to “cuff[ing] [Suzie] in the back” during the October 2017 incident. In addition, she admitted that during the February 11, 2018 incident, she used her hands to “usher[.]” the children up the stairs. She also admitted that she called for Steven after she fell down the stairs, but she asserted that she only wanted him to comfort her and that she did not tell him to punch

Wyatt. She further conceded that she grabbed Fiona from behind and held her briefly when Fiona was trying to intervene in the altercation between Steven and Wyatt.

¶24 In his closing argument, Windey’s defense attorney argued that the adopted children were not telling the truth about what occurred in the Windeys’ household, and he emphasized that there was no evidence that the adopted children were ever injured. He characterized Windey as simply engaging in “parenting” and asserted that she was merely enforcing the rules of her household, just as in “every household in Wisconsin.”

¶25 The jury found Windey guilty of the three physical abuse of a child charges, strangulation and suffocation, and the four charges of causing mental harm to a child, but it found her not guilty of the disorderly conduct charge and the three child neglect charges. Windey subsequently moved for postconviction relief, arguing that the circuit court should grant her a new trial because the real controversy was not fully tried and because her trial attorney was constitutionally ineffective. The court denied Windey’s motion, following a *Machner*³ hearing, and Windey now appeals.

³ See *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

DISCUSSION

I. Ineffective assistance of trial counsel⁴

¶26 To prevail on an ineffective assistance of counsel claim, a defendant must show both that counsel’s performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prove deficient performance, the defendant must point to specific acts or omissions by counsel that are “outside the wide range of professionally competent assistance.” *Id.* at 690. To demonstrate prejudice, the defendant must show that there is “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. If a defendant fails to make a sufficient showing on one prong of the *Strickland* test, we need not address the other. *Id.* at 697.

¶27 Whether an attorney rendered ineffective assistance is a mixed question of fact and law. *State v. Nielsen*, 2001 WI App 192, ¶14, 247 Wis. 2d 466, 634 N.W.2d 325. We will uphold the circuit court’s findings of fact unless they are clearly erroneous. *Id.* However, whether the defendant’s proof is

⁴ On appeal, Windey first argues that she is entitled to discretionary reversal in the interest of justice under WIS. STAT. § 752.35, and she then asserts that she is entitled to a new trial based on ineffective assistance of trial counsel. Our supreme court has explained, however, that “[i]n an exceptional case, *after all other claims are weighed and determined to be unsuccessful*, a reviewing court may determine that reversal is nevertheless appropriate under ... § 752.35.” *State v. Kucharski*, 2015 WI 64, ¶43, 363 Wis. 2d 658, 866 N.W.2d 697 (emphasis added). Consequently, “it is error to jump to § 752.35 as a shortcut.” *State v. McKellips*, 2016 WI 51, ¶52, 369 Wis. 2d 437, 881 N.W.2d 258. We therefore agree with the State that we must “first determine whether Windey proved her ineffective assistance of counsel claim,” and “[o]nly then should [we] address her request for discretionary reversal.”

sufficient to establish ineffective assistance is a question of law that we review independently. *Id.*

A. Failure to object to other-acts evidence

¶28 Windey argues that her trial attorney performed deficiently by failing to object to testimony that Windey claims constituted inadmissible other-acts evidence. More specifically, Windey asserts that her trial attorney should have objected to evidence that: (1) Suzie was spanked during a trip to Florida in 2004; (2) Cynthia was instructed to perform pushups as punishment during the same 2004 trip to Florida; (3) Windey made statements to Cynthia condoning Don’s sexual conduct after Cynthia complained to Windey about it; (4) the Windeys used physical discipline to punish the children, including by spanking their naked buttocks; (5) the adopted children were forced to kneel for extended periods of time; (6) the Windeys limited the adopted children’s food and drink; (7) the Windeys removed the adopted children’s belongings from their rooms; (8) Windey called the adopted children derogatory names; (9) “ding-donger” alarms were installed on the adopted children’s doors; (10) the family practiced Catholicism, and the adopted children were forced to kneel in front of a statue of the Virgin Mary; (11) Cynthia once saw bruises on Wyatt’s face, which she believed were from an altercation with Don; (12) the adopted children were confined to their rooms during “blackouts” and forced to urinate in cups; (13) Don once punched Scott in the head, and Windey did not stop him; (14) Scott suffered depression as a result of his upbringing in the Windeys’ home; and (15) the Windeys imposed group punishments on the adopted children “until one of them fessed up.”

¶29 Windey has failed to show that her trial attorney performed deficiently by failing to object to this evidence. As an initial matter, we note that Windey’s argument regarding the purported other-acts evidence is undeveloped because Windey does not explain why any of the evidence in question was inadmissible under the three-step analysis set forth in *State v. Sullivan*, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998). In fact, Windey does not even cite *Sullivan* in either of her appellate briefs. We could reject Windey’s argument that her trial attorney was ineffective by failing to object to the purported other-acts evidence on this basis alone. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining that this court need not address undeveloped arguments); *State v. Berggren*, 2009 WI App 82, ¶21, 320 Wis. 2d 209, 769 N.W.2d 110 (explaining that an attorney does not perform deficiently by failing to raise a legal challenge that would have been properly denied).

¶30 Regardless, we agree with the State that the majority of the evidence that Windey claims was other-acts evidence was actually direct evidence of the mental harm crimes—specifically, the evidence about Windey condoning Don’s sexual conduct with the adopted children and the evidence that Windey and Don punished the children by using physical discipline, forcing them to kneel for extended periods of time, limiting their food and drink, removing their belongings from the home, calling them derogatory names, installing alarms on their doors, and confining them to their rooms during “blackouts.” This evidence tended to prove that Windey engaged in conduct that caused mental harm to the adopted children, meaning “substantial harm to [their] psychological or intellectual functioning,” and that Windey’s conduct demonstrated “substantial disregard” for the children’s mental well-being. See WIS JI—CRIMINAL 2116.

¶31 As the circuit court recognized in its decision denying Windey’s postconviction motion, the purported other-acts evidence “reflecting on the inner workings of the Windey household [was] necessary to prove the charges of mental harm” because “the State made it clear its theory of the case was that those types of disciplines taken as a whole, like a final straw that breaks a camel’s back, led to mental harm of the children.” Furthermore, to the extent that any of this evidence was not direct evidence of the mental harm crimes, we agree with the State and the circuit court that it constituted admissible “panorama” evidence. See *State v. Dukes*, 2007 WI App 175, ¶28, 303 Wis. 2d 208, 736 N.W.2d 515 (“Evidence is not ‘other acts’ evidence if it is part of the panorama of evidence needed to completely describe the crime that occurred and is thereby inextricably intertwined with the crime.”). As such, the evidence was admissible, and Windey’s trial attorney did not perform deficiently by failing to object to it. See *Berggren*, 320 Wis. 2d 209, ¶21.

¶32 As for the evidence regarding the 2004 trip to Florida, which was outside of the time frame for any of the charges, Windey’s trial attorney testified at the *Machner* hearing that he made a strategic decision not to object to that evidence because he believed that doing so would have only drawn the jury’s attention to it. Trial counsel similarly testified that he made a strategic decision not to object to Scott’s testimony about his depression and the punching incident because he did not want to needlessly highlight that testimony for the jury. We agree with the State that these strategic decisions were reasonable, particularly given that the evidence in question “formed a negligible portion of the evidence presented” during Windey’s six-day trial. Consequently, trial counsel’s failure to object to this evidence did not constitute deficient performance. See *State v. Domke*, 2011 WI 95, ¶49, 337 Wis. 2d 268, 805 N.W.2d 364 (explaining that an

appellate court “will not second-guess a reasonable trial strategy” unless “it was based on an ‘irrational trial tactic’ or ‘based upon caprice rather than upon judgment’” (citation omitted)).

B. Failure to obtain a more definite statement

¶33 Windey also argues that her trial attorney was ineffective by failing to “secure in the record a more definite statement regarding what alleged conduct correlated with which counts.” We agree with the State, however, that this argument rests on the faulty premise that Windey’s trial attorney “could not adequately prepare for trial because he purportedly did not know which conduct correlated to which counts.” To the contrary, trial counsel specifically testified at the ***Machner*** hearing that he “knew what was being alleged on all counts and how they related to each individual victim and what we needed to use as a defense.” Trial counsel further testified that, prior to trial, he spoke with Windey “extensively about the facts for each count” and that he was “able to comfortably narrow down what ... each of the counts would entail so that [he and Windey] were prepared for the trial.” Windey cites no evidence contradicting this testimony or otherwise showing that her trial attorney was unable to prepare for trial because he was unaware of the specific conduct underlying any of the charges. Accordingly, Windey has failed to show that her trial attorney performed deficiently in this regard.

C. Failure to request a jury instruction on self-defense

¶34 Windey next argues that her trial attorney was ineffective by failing to request a jury instruction on self-defense “as to counts 2-4,” which pertained to the February 11, 2018 incident during which Windey was pushed down the stairs.

In support of her claim that a self-defense instruction was warranted as to those counts, Windey cites the following excerpt from her own trial testimony:

Q Were you scared after you got pushed down the stairs?

A Yes.

Q Was the concern based on the number of children that came at you?

A My children have told me in the past that they wanted to hurt me. I told them I didn't believe them. I told them it's okay, everybody probably has some feelings to that. I've always kind of kept it in my mind. They had nightmares where they would—[Suzie], in particular, would—very vivid, killing people and that was a concern for her. She didn't know why she had those repetitive dreams. So I'm not going to lie. It came into my mind that it could be a possibility, yeah.

¶35 Windey fails to explain how this testimony would have supported a request for a self-defense instruction on Counts 2 through 4, and her argument on this point is therefore undeveloped. See *Pettit*, 171 Wis. 2d at 646-47. Moreover, we agree with the State that Windey's trial testimony, taken as a whole, did not support a self-defense claim with respect to the February 11, 2018 incident.

¶36 During her trial testimony, Windey admitted that she called Steven after Wyatt pushed her down the stairs, but she asserted that she only wanted him to comfort her, and she expressly testified that she did not tell Steven to punch Wyatt. Windey also testified that Steven later told her that he had punched Wyatt once in defense of himself because Wyatt was trying to hit him with a video game controller, not because Steven was acting in defense of Windey. Thus, to the extent Windey is now claiming that she acted in self-defense by directing Steven to strike Wyatt during the incident on February 11, 2018, that claim is inconsistent with her trial testimony.

¶37 To the extent Windey means to argue that she was acting in self-defense when she became physical with Fiona while they were standing on the stairs, her own statements also contradict that claim. In a text message regarding the incident, Windey acknowledged that she instigated the physical altercation that day by “pushing [the children] back up the stairs” and “trying to force them back up.” Additionally, Windey never stated in her trial testimony that she was acting in self-defense when she grabbed or otherwise became physical with Fiona on the stairs.

¶38 Because the evidence at trial did not support a self-defense claim with respect to the February 11, 2018 incident, Windey’s trial attorney did not perform deficiently by failing to request a self-defense instruction regarding Counts 2, 3 and 4.

D. Failure to request a jury instruction on reasonable parental discipline

¶39 Windey next contends that her trial attorney should have requested a jury instruction on reasonable parental discipline with respect to “counts it was clearly applicable to: Counts 9-12”—i.e., the charges of causing mental harm to a child.⁵ While Windey acknowledges that her trial attorney “insinuated parental discipline” in his opening statement and closing argument, she asserts that he did

⁵ The record shows that Windey’s trial attorney *did* request a jury instruction on reasonable parental discipline. See WIS JI—CRIMINAL 950. However, during the on-the-record jury instruction conference, counsel stated that the circuit court and the parties had previously “discussed in chambers” that the parental discipline instruction would only apply to Count 1 “because of the nature [of] how the testimony came in and the defense that [the other] crimes didn’t occur.” After the prosecutor indicated that she was “stipulating to that,” the court stated, “In terms of the evidence that was presented I believe it’s an appropriate instruction to give ... and I think it pertains to Count One and that will be presented to the jury. It will be read to the jury fashioned that it refers to Count One only.”

so “in the vaguest possible terms” and that his arguments lacked “the legal authority contextualizing them.”

¶40 As an initial matter, we note that Windey cites no binding legal authority in support of the proposition that WIS JI—CRIMINAL 950, the standard jury instruction regarding reasonable parental discipline, is appropriate in a case involving mental, rather than physical, harm to a child. Regardless, we reject Windey’s argument that her trial attorney performed deficiently by failing to request an instruction on reasonable parental discipline with respect to Counts 9 through 12 because the record shows that, even absent such an instruction, counsel adequately argued the issue of reasonable parental discipline to the jury.

¶41 For instance, in his opening statement, Windey’s trial counsel asserted that although the jury was “going to hear all these things about how [the adopted children] were treated horribly,” the evidence would actually show that the children were well provided for and were simply subject to “discipline,” which was something “that these kids didn’t have before” coming to the Windeys’ household and “didn’t want, necessarily.” Counsel also asserted during his opening statement that “[t]his is a case about questioning parental rights. The right to rear your children in the way you see fit.”

¶42 Later, in his closing argument, Windey’s trial attorney told the jury, “You know what you heard over the course of this week? Parenting. You heard parenting. You heard kids who were not behaving and they got disciplined.” Counsel further argued:

What have you heard? Parenting, discipline, respect. Like every household in Wisconsin and in America. There are rules. If you don’t follow the rules there’s a consequence. You can call it whatever you want. You can call it a blackout, you can call it a timeout, you can call it

grounding, writing an essay. Is that horrible you're going to make a kid write an essay about what they did wrong and make them look up the words in the dictionary? They have to do some exercises. They were told, they were given an opportunity. They said if it's not working, try something else. If that's not working try something else.

¶43 On this record, we agree with the State that even though Windey's trial attorney did not request a jury instruction on reasonable parental discipline with respect to Counts 9 through 12, Windey has not shown that counsel performed deficiently because he nevertheless "argued to the jury that Windey was reasonably disciplining her children."

E. Failure to object to the playing of the children's forensic interviews

¶44 Windey also asserts that her trial attorney was ineffective by "stipulat[ing] to videos [of the adopted children's forensic interviews] being played [at trial] instead of the children testifying directly, even though they were beyond the age where such video testimony is allowed pursuant to the statute. *See* WIS. STAT. § 908.08." This assertion is misleading, however, because each of the adopted children *did* testify at Windey's trial, and her trial attorney cross-examined each of them.

¶45 Moreover, Windey's trial attorney explained at the ***Machner*** hearing that he stipulated to the videos of the forensic interviews being played at trial because he wanted the jury to see "inconsistencies" that were apparent in the forensic interviews and the children's evasive body language, which he believed would suggest to the jury that the children were not being "absolutely honest." Trial counsel also testified that he believed playing the videos would allow him to cross-examine the children regarding any inconsistencies between their forensic interviews and their trial testimony. Based on this testimony, we agree with the

circuit court that trial counsel made a reasonable strategic decision to stipulate to the videos being played at trial, which we will not second-guess on appeal. See *Domke*, 337 Wis. 2d 268, ¶49.

F. Failure to object to leading questions

¶46 Windey next asserts that her trial attorney was ineffective by failing “to object to the State’s endless leading of witnesses.” However, this argument is undeveloped, and we therefore decline to address it. See *Pettit*, 171 Wis. 2d at 646-47. As the State notes, Windey does not identify “what specific leading questions she believes were so damaging that it was deficient performance not to object.” Instead, in support of her argument that her trial attorney was ineffective by failing to object to leading questions, Windey merely states, “See trial transcripts generally.” “It is not this court’s responsibility to sift and glean the record in extenso to find facts supporting [a party’s] argument,” *Jensen v. McPherson*, 2004 WI App 145, ¶6 n.4, 275 Wis. 2d 604, 685 N.W.2d 603, and we will not abandon our neutrality to develop arguments on behalf of a party, *Industrial Risk Insurers v. American Eng’g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

G. Failure to obtain records

¶47 Next, Windey contends that her trial attorney was ineffective by failing “to seek out and obtain records that would have permitted the impeachment of witnesses.” Again, though, this argument is undeveloped. While Windey is apparently asserting that her trial attorney should have obtained records from the adopted children’s “counselors,” she does not identify with any specificity the records that she believes her trial attorney should have obtained. Moreover, Windey does not develop any argument that her trial attorney would have been

allowed to review the adopted children’s counseling records under the legal standard that was in place at the time of her trial. See **State v. Green**, 2002 WI 68, ¶34, 253 Wis. 2d 356, 646 N.W.2d 298, *overruled by*, **State v. Johnson**, 2023 WI 39, 407 Wis. 2d 195, 990 N.W.2d 174. Additionally, Windey does not explain why any such records would have been helpful to her defense. Because Windey has failed to present a developed argument that her trial attorney performed deficiently by failing to obtain “records,” we will not address this issue further.⁶ See **Pettit**, 171 Wis. 2d at 646-47.

H. Failure to adequately cross-examine witnesses

¶48 Finally, Windey contends that her trial attorney “generally was not effective in cross examining the main witnesses.” In support of this assertion, however, she cites only two specific examples from counsel’s cross-examination of Cynthia. She then asserts that “[e]ach of these [instances] alone is sufficient for a finding of imprudent error and prejudice.”

¶49 Again, we conclude that Windey’s argument on this point is undeveloped. While Windey asserts that the examples she cites from her trial attorney’s cross-examination of Cynthia did not result in any “gain to the defense” and that it is unclear what counsel’s questions “established,” that is not the applicable legal standard for demonstrating that an attorney performed deficiently for purposes of an ineffective assistance claim. Instead, the standard is whether counsel’s conduct fell “outside the wide range of professionally competent

⁶ The State asserts that Windey “also appears to suggest in passing that trial counsel should have obtained expert witnesses.” We see no such argument in Windey’s appellate briefs, however, and we therefore decline to address this issue.

assistance.” **Strickland**, 466 U.S. at 690. Windey does not explain how the cited instances from her trial attorney’s cross-examination of Cynthia satisfied this standard, beyond making the conclusory assertion that “[n]one of these are errors that a reasonably prudent criminal defense lawyer would make.” We therefore reject Windey’s argument on this point as undeveloped. See **Pettit**, 171 Wis. 2d at 646-47.

II. New trial in the interest of justice

¶50 Alternatively, Windey seeks a new trial in the interest of justice. As relevant here, we have discretion to grant a new trial in the interest of justice “if it appears from the record that the real controversy has not been fully tried.” WIS. STAT. § 752.35. The real controversy has not been fully tried when “the jury was erroneously not given the opportunity to hear important testimony that bore on an important issue of the case” or “the jury had before it evidence not properly admitted which so clouded a crucial issue that it may be fairly said that the real controversy was not fully tried.” **State v. Mull**, 2023 WI 26, ¶67, 406 Wis. 2d 491, 987 N.W.2d 707 (citations omitted). Additionally, “an error in the jury instructions or verdict questions” may prevent the real controversy from being fully tried. **Vollmer v. Luety**, 156 Wis. 2d 1, 20, 456 N.W.2d 797 (1990). However, our discretionary reversal power is reserved for exceptional cases, **State v. McKellips**, 2016 WI 51, ¶52, 369 Wis. 2d 437, 881 N.W.2d 258, and “should be exercised sparingly and with great caution,” **State v. Williams**, 2006 WI App 212, ¶36, 296 Wis. 2d 834, 723 N.W.2d 719.

¶51 Windey argues the real controversy was not fully tried in this case for four reasons: (1) “mental harm was impermissibly pled”; (2) Counts 1, 2 and 4 confused the jury; (3) “prejudicial other acts permeated the trial”; and

(4) “applicable affirmative defense instructions were not submitted to the jury.” (Formatting altered.) We reject each of these arguments.

¶52 First, we have already rejected Windey’s claim that her trial attorney was ineffective by failing to object to other-acts evidence because: (1) Windey has not explained why any of the evidence was inadmissible under the three-step analysis in *Sullivan*; (2) the majority of the evidence that Windey cites was actually direct evidence of the metal harm charges, or at the very least panorama evidence related to those charges; and (3) Windey’s trial attorney made reasonable strategic decisions not to object to the remaining other-acts evidence. For the same reasons, we reject Windey’s claim that inadmissible other-acts evidence so permeated her trial as to prevent the real controversy from being fully tried.

¶53 Second, we have also rejected Windey’s argument that her trial attorney performed deficiently by failing to request a jury instruction on self-defense and an instruction on reasonable parental discipline with respect to Counts 9 through 12. As explained above, the evidence at trial did not support a self-defense instruction, and Windey’s trial attorney adequately raised the issue of reasonable parental discipline in his opening statement and closing argument. Under these circumstances, we cannot conclude that the absence of jury instructions on self-defense and reasonable parental discipline prevented the real controversy from being fully tried.

¶54 Third, Windey’s claim that “mental harm was impermissibly pled” fails on the merits. Windey argues that the multi-year charging periods for the charges of causing mental harm to a child violated her right to a unanimous jury because it is impossible to know whether, for each count, each of the jurors

determined that the same act or acts by Windey caused mental harm to the specified child.

¶55 We reject this argument because WIS. STAT. § 948.04(1) prohibits a person exercising temporary or permanent control of a child from “caus[ing] mental harm to that child by *conduct* which demonstrates substantial disregard for the mental well-being of the child.” (Emphasis added.) While the statute does not define “conduct,” Black’s Law Dictionary defines that term as “[p]ersonal behavior, whether by action or inaction, verbal or nonverbal; the manner in which a person behaves; collectively, a person’s deeds.” *Conduct*, BLACK’S LAW DICTIONARY (12th ed. 2024); *see also Door Cnty. Highway Dep’t v. DILHR*, 137 Wis. 2d 280, 293-94, 404 N.W.2d 548 (Ct. App. 1987) (“Absent statutory definition, the ordinary and accepted meaning of a word can be established by reference to a recognized dictionary.”). Based on this definition, we agree with the circuit court that a defendant’s “conduct” under § 948.04(1) may include “a series of events.” Thus, contrary to Windey’s claim, the State was permitted to charge her with causing mental harm to a child under § 948.04(1) based on “conduct” that comprised a series of acts taking place over a period of time. Windey cites no legal authority in support of the proposition that any temporal restriction exists with respect to the “conduct” that can form the basis for a charge of causing mental harm to a child under § 948.04(1).

¶56 Moreover, Windey concedes that “[i]f a defendant’s actions in committing separate offenses may properly be viewed as one continuing offense, it is within the State’s discretion to elect whether to charge one continuous offense, or a single offense, or a series of single offenses.” *See State v. Lomagro*, 113 Wis. 2d 582, 587, 335 N.W.2d 583 (1983). She further concedes that “[i]f there is only one crime, jury unanimity on the particular alternative means of committing

the crime is required only if the acts are conceptually distinct. Unanimity is not required if the acts are conceptually similar.” See *id.* at 592. Here, we agree with the State that the punishments and instances of physical and verbal abuse testified to by the State’s witnesses “were not just conceptually similar, they were part of the same [course of] conduct that cumulatively amounted to mental harm to the children.” Consequently, we reject Windey’s argument that any jury unanimity issue existed with respect to the mental harm charges that prevented the real controversy from being fully tried.

¶57 Fourth and finally, we reject Windey’s claim that the real controversy was not fully tried because Counts 1, 2 and 4 confused the jury. The circuit court instructed the jury that Count 1 (physical abuse of a child—intentionally cause bodily harm) alleged that Windey had intentionally caused Suzie bodily harm between October 11 and 13, 2017. In her closing argument, the prosecutor explained that Count 1 “is the pizza incident,” during which Suzie testified that “she was punched in the back and she was choked.”

¶58 The circuit court further instructed the jury that Count 2 (physical abuse of a child—intentionally cause bodily harm) alleged that Windey intentionally caused Fiona bodily harm on or about February 11, 2018. The court instructed the jury that Count 4 (strangulation and suffocation) alleged that Windey “did intentionally impede the normal breathing by applying pressure on the throat or neck of” Fiona on or about February 11, 2018. When discussing Count 2 during her closing argument, the prosecutor explained:

This is the incident for the choking up in the bonus room, right? [Fiona] testified and I told you in jury selection, I told you I was charging two counts for the act where she’s up there choking [Fiona], swinging her around. [Fiona] said she thought her eyes were bulging out of her head. It hurt for her to swallow for a couple of days.

The prosecutor subsequently explained that Count 4 pertained to “the same act” in which Windey grabbed Fiona “by the neck” and impeded her breathing.

¶59 Thus, taken together, the circuit court’s instructions and the prosecutor’s closing argument clearly informed the jury of the allegations corresponding to Counts 1, 2 and 4. Furthermore, the jury never indicated that it was confused by those counts. Consequently, there is no basis for Windey’s assertion that the real controversy was not fully tried because of jury confusion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

