COURT OF APPEALS
DECISION
DATED AND FILED

January 3, 2018

Diane M. Fremgen
Acting Clerk of Court of Appeals

Appeal No. 2016AP2128-CR **Cir. Ct. No. 2013CF838**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES E. ANDERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Affirmed*.

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

¶1 PER CURIAM. James Anderson appeals a judgment of conviction for various criminal offenses, entered upon jury verdicts, and an order denying his motion for postconviction relief. The evidence at trial established that the victim, Anderson's mother, escaped from Anderson after he committed acts of physical violence against her, including strangulation. At trial, the State called the emergency room physician who treated the victim, as well as two police officers who interviewed her following her escape.

¶2 Anderson argues his trial attorney was constitutionally ineffective for failing to retain a medical expert to counter the emergency room physician's testimony. However, Anderson has failed to demonstrate that the alleged deficiency prejudiced his defense. He significantly overstates the emergency room physician's testimony. In fact, Anderson's postconviction expert agreed with the physician's testimony in most respects. In light of all the trial evidence, Anderson has failed to demonstrate a reasonable probability of a different result if his trial counsel had countered the treating physician's testimony with his own medical expert's testimony.

¶3 Anderson also faults his trial counsel for failing to object to the police officers' testimony in which they described what the victim had told them. Anderson claims this testimony improperly "bolstered" the victim's credibility and constituted hearsay. We reject these arguments because Anderson's and the victim's respective credibility were critical issues from the very beginning of the trial, and Anderson has failed to establish that the testimony was hearsay. For related reasons, we also conclude the admission of the officers' testimony was neither plain error nor constitutionally problematic. We affirm in all respects.

BACKGROUND

¶4 An Amended Information charged Anderson with attempted first-degree intentional homicide, kidnapping, felony intimidation of a witness, strangulation and suffocation, false imprisonment, aggravated battery of an elderly person, and disorderly conduct, all as acts of domestic abuse. Additionally, Anderson was alleged to have used a dangerous weapon during the commission of the attempted homicide, kidnapping, false imprisonment, and disorderly conduct offenses. Anderson was bound over for trial, which occurred over three days in July 2014.

¶5 At trial, Anderson's seventy-one-year-old mother, Jodie, testified that she was residing in Kaukauna with Anderson.[1] Anderson had been threatening violence against Jodie for approximately one and one-half years prior to the evening of September 14, 2013. Jodie testified that on that night, she was lying in her bed when Anderson approached her doorway. He appeared angry, entered the room, reached down, and choked Jodie "very, very, very hard" to the point where she had difficulty breathing. Jodie testified his other hand was on her chest, and he pushed her up and down in the bed as he choked her. Jodie thought he said, "Tonight's the night you're going to die" as he choked her. Her head struck the bed's headboard during the incident.

[1] Consistent with the spirit of WIS. STAT. RULE 809.86 (2015-16), we use pseudonyms for the victims to protect their identities.

All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶6 After he had released his hold, Anderson stood up and slapped Jodie across her face "extremely hard." Jodie testified he then grabbed her by the hair and ear and threw her off the bed to the floor. Anderson again choked and threatened Jodie while she was on the ground. He noticed a cell phone lying on the bed, picked it up, and cracked it in half to prevent Jodie from calling anyone.

¶7 Eventually, Anderson allowed Jodie to stand up. He told Jodie to get dressed and said "we're going and getting him, too." Jodie understood "him" to refer to Anderson's father and Jodie's estranged husband, Jack. Anderson had previously threatened to kill Jack, and the two had a prior physical altercation with each other. Jodie testified that Anderson left her alone for a few seconds, after which time he returned with a handgun.

¶8 Anderson had Jodie get into her car and drive them toward Jack's location. Jodie spotted a gas station en route and told Anderson she was feeling ill. Against Anderson's wishes, Jodie stopped, got out of the car, and entered the gas station. She got help from the employee inside, who locked the doors and hid Jodie in a utility closet until police arrived. When Jodie returned to the main area of the store to place a call to warn Jack, she noticed her car was gone from the storefront.

¶9 Officer Lucas Meyer interviewed Jodie approximately one hour later at the Fox Valley Metro Police Department. Meyer testified Jodie appeared visibly shaken, and he noticed and photographed several bruises and scratch marks on her body. Later, Jodie discovered that some of her hair had been pulled out. Meyer, upon further inspection, also found a large, bleeding laceration behind Jodie's ear.

¶10 At trial, Meyer recounted how Jodie had described the incident to him during the interview. Defense counsel did not object to this testimony, and on cross-examination he highlighted some inconsistencies between Jodie's statements to Meyer and her trial testimony.

¶11 Following her interview, Jodie was transported by ambulance to a hospital, where Dr. Michael Broderdorf performed an examination. Broderdorf asked Jodie what had happened. She repeatedly told him her son had tried to kill her, and she then described the attack. Broderdorf testified Jodie had "a large area of bruising, swelling over the left side of the head," "bruising of the cheeks," a "petechiae-like rash around her cheeks and her neck,"[2] a "bruise behind her right shoulder, some bruising about her left arm," and the laceration behind her right ear. Broderdorf testified he believed these injuries were consistent with Jodie's description of the attack.

¶12 Defense counsel did not object during Broderdorf's testimony. On cross-examination, Broderdorf acknowledged Jodie had not told him at the time of the examination that she had a dermatological condition known as rosacea, or skin redness. Defense counsel also questioned Broderdorf regarding why he failed to mention petechiae in his physician's note, which he wrote immediately after he examined Jodie. Broderdorf responded that the situation was "dynamic" and he was using generic terms like "bruising" to describe the injuries he was seeing.

[2] Broderdorf described petechiae as small hemorrhages that occur when capillaries rupture and bleed into the skin due to pressure, including strangulation. Broderdorf acknowledged petechiae can have other causes, including certain medications.

¶13 Investigator Daniel Running interviewed Jodie after she arrived at the hospital. Jodie's statements to Running at the hospital, which he related at trial, generally tracked Jodie's trial testimony. Defense counsel did not object to this line of questioning, but he did cross-examine Running regarding some inconsistencies between Jodie's trial testimony and her statement to Running on the morning after the incident.[3]

¶14 Anderson contended from the trial's inception that Jodie's credibility was a central issue. Anderson testified in his own defense, and he acknowledged having a physical altercation with his mother on the night of September 14. However, Anderson claimed that they had merely engaged in some "minor pushing" and that he had twice slapped Jodie across the face. Anderson denied choking Jodie, breaking her cell phone, using a handgun, or forcing his mother into the car. He testified that when Jodie did not come out of the gas station, he drove himself home and left Jodie at the store.

¶15 Anderson's defense presentation also consisted of testimony from his older brother and his sister, who, respectively, testified that Jodie was "untrustworthy" and "extremely untruthful." They also testified that Jodie generally has reddish, rosy cheeks. Jodie herself acknowledged during her cross-examination that she has rosacea.

¶16 The jury found Anderson guilty of committing all the charged offenses, but it acquitted him of the dangerous weapon penalty enhancer as to the

[3] The prosecution also acknowledged some inconsistencies in its direct examination, eliciting Running's testimony that Jodie never informed him during the interview that she had been subjected to a second act of strangulation while on the floor.

counts for which that had been charged. The circuit court ultimately sentenced Anderson to a number of concurrent sentences totaling ten years' initial confinement and ten years' extended supervision.

¶17 Anderson filed a motion for postconviction relief, seeking to vacate his conviction on the basis of ineffective assistance of trial counsel. He asserted his trial counsel should have objected to the allegedly premature "impermissible bolstering" of Jodie's testimony by the two law enforcement officers, who "retold near-verbatim" Jodie's story. Anderson also asserted Broderdorf was not qualified as an expert to opine that Jodie's injuries were consistent with her description of the assault, and, even if his testimony was proper, Anderson's trial counsel was ineffective for failing to retain a medical expert to rebut Broderdorf's testimony. In support of his postconviction motion, Anderson offered the opinion of Dr. Brian Linert, an assistant medical examiner for Milwaukee County.

¶18 Both Linert and Anderson's trial counsel testified at a subsequent ***Machner***[4] hearing, after which the circuit court denied Anderson's postconviction motion. The court concluded trial counsel's refusal to object to the police officers' testimony was a reasonable trial strategy, which sought to attack the victim's credibility by highlighting inconsistencies between her trial account and the statements she gave the officers. The court also determined the evidence against Anderson was overwhelming, and, as a result, Anderson suffered no prejudice even if his trial counsel had performed deficiently by not objecting to the allegedly improper "bolstering" testimony. As for trial counsel's failure to call a medical expert to rebut Broderdorf's testimony, the court concluded Anderson was not

[4] *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

prejudiced by the failure. The court reasoned that defense counsel had explored the notion that certain of Jodie's apparent injuries were actually attributable to her rosacea and, in any event, Linert could not rule out strangulation as a possible cause of those injuries. Anderson now appeals.

DISCUSSION

¶19 Anderson raises two arguments on appeal. First, he contends he received constitutionally ineffective assistance from his trial counsel. Second, he contends the admission of the police officers' testimony regarding the statements Jodie made to them constituted "plain error" in that it amounted to impermissible "bolstering" testimony elicited prior to an attack on the victim's credibility. We reject both arguments.

I. Ineffective Assistance of Trial Counsel

¶20 Anderson alleges two instances of ineffective assistance by his trial counsel. First, he faults his trial attorney for failing to retain a medical expert to counter Broderdorf's testimony. Anderson asserts that, had his trial counsel performed an adequate investigation and secured testimony along the lines of what Linert offered, the jury would have heard a persuasive "alternative explanation" for some of Jodie's apparent injuries. Second, Anderson challenges his trial attorney's failure to object to the officers' testimony regarding what Jodie told them about the incident, as, in his view, this testimony constituted impermissible "bolstering" testimony offered to support Jodie's credibility.

¶21 Under ***Strickland v. Washington***, 466 U.S. 668 (1984), to prevail on an ineffective assistance of counsel claim, a defendant must show both that counsel performed deficiently and that the deficient performance caused prejudice.

Id. at 687. Our review of counsel's performance is highly deferential. ***State v. Jenkins***, 2014 WI 59, ¶36, 355 Wis. 2d 180, 848 N.W.2d 786. The defendant must show that the attorney's representation fell below an objective standard of reasonableness under all the circumstances. ***Id.*** "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." ***Strickland***, 466 U.S. at 687. We will attempt to reconstruct the circumstances under which defense counsel made his or her decisions when evaluating the reasonableness of his or her conduct. ***Jenkins***, 355 Wis. 2d 180, ¶36.

¶22 A defendant proves prejudice by demonstrating there is a reasonable probability that, but for counsel's unprofessional conduct, the result of the proceeding would have been different. ***Id.***, ¶37. A "reasonable probability" is a probability sufficient to undermine our confidence in the outcome. ***Id.*** "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding."[5] ***Strickland***, 466 U.S. at 693.

¶23 Whether a circuit court properly granted or denied relief on an ineffective assistance of counsel claim presents a mixed question of fact and law. ***Jenkins***, 355 Wis. 2d 180, ¶38. We review a circuit court's findings of historical fact—including its findings of the circumstances of the case and counsel's

[5] We observe that Anderson's brief incorrectly states the applicable prejudice standard. Anderson cites foreign decisions for the proposition that a "reasonable *possibility*" of a different result is all that is required. Regardless of what courts in other jurisdictions have opined regarding the prejudice prong of ***Strickland v. Washington***, 466 U.S. 668 (1984), in Wisconsin it is well established that we must search for a "reasonable probability" of a different outcome. *See* ***State v. Jenkins***, 2014 WI 59, ¶37, 355 Wis. 2d 180, 848 N.W.2d 786; ***State v. Starks***, 2013 WI 69, ¶55, 349 Wis. 2d 274, 833 N.W.2d 146 (quoting ***Cullen v. Pinholster***, 563 U.S. 170, 189 (2011)).

conduct—using the "clearly erroneous" standard. ***Id.*** However, whether counsel's conduct constitutes ineffective assistance of counsel is a question of law, which we review de novo. ***Id.***

A. Failure to Retain a Medical Expert

¶24 Anderson contends a more thorough examination of the evidence of Jodie's injuries would have alerted his trial counsel of the need to procure expert testimony regarding potential alternative causes. He relies on ***Gersten v. Senkowski***, 426 F.3d 588 (2d Cir. 2005), a child sexual assault case in which the court concluded trial counsel performed ineffectively by failing to discover that "exceptionally qualified medical experts could be found who would testify that the prosecution's physical evidence was not indicative of sexual penetration and provided no corroboration whatsoever of the alleged victim's story." ***Id.*** at 608. While such testimony in that case would have cast substantial doubt on the victim's credibility, we cannot reach the same conclusion here. Regardless of whether trial counsel was deficient for not retaining a medical expert who would have testified consistently with Linert's ***Machner*** testimony, there is not a reasonable probability that the result of the trial would have been different.

¶25 The jury was fully apprised of the defense theory that the "petechiae-like rash" around Jodie's neck and cheeks was attributable to her rosacea, not her being strangled. This notion was a significant point in defense counsel's closing argument. Trial counsel asked the jury to compare photographs of the victim, and he directly claimed the bruising and redness depicted in those photographs was due to rosacea. He emphasized that none of the terms "petechiae," "rupture," or

"capillaries" appeared in Broderdorf's physician's note.[6] Counsel argued there was "no physical evidence of strangulation" and that Broderdorf was "embellishing to help their side because he feels sorry for her."

¶26 As a medical expert, Linert's testimony might have added some marginal value to the defense theory, but it was not the game-changing testimony Anderson contends. In particular, Broderdorf never testified that Jodie's injuries were caused by strangulation, only that they were "consistent with" Jodie's description of the attack. During both direct examination and cross-examination, Broderdorf conceded that there are other causes of petechiae, including certain medications.

¶27 Linert believed it was more likely that Broderdorf's "petechiae" diagnosis was rosacea, but he could not definitively opine that was the case. Linert agreed that the redness on Jodie's face was a "petechial pattern," but he believed the pattern was "consistent with a rash, something you might see in the context of rosacea or maybe lupus." Linert testified he reached this conclusion because, typically, in dealing with homicides caused by strangulation, he has noted "small pinpoint, red hemorrhages" in areas of the victim's eyes. Linert had not seen any indication of this phenomenon in Jodie's case. However, Linert conceded on cross-examination he could not say with "[o]ne hundred percent" certainty that the petechial hemorrhaging on Jodie's face was not caused by

[6] Although, for purposes of our analysis here, we need not decide whether counsel performed deficiently by failing to obtain an independent expert medical opinion, we note that the fact the physician's note did not specifically reference petechial hemorrhaging cuts against such a finding. Defense counsel was not put on notice Broderdorf had identified such a condition. Defense counsel testified at the ***Machner*** hearing that he was surprised by Broderdorf's trial testimony that Jodie's facial redness was petechiae.

strangulation. As for Jodie's other injuries, Linert opined that Jodie's contusions were "nonspecific" and could have occurred by way of the events Jodie described or in any number of other ways.

¶28 In addition to his relatively weak medical opinion, the effectiveness of Linert's testimony would also have been hampered by the fact that, as a forensic pathologist responsible for conducting autopsies, Linert primarily deals with identifying the cause of an individual's death. Linert had examined only "six or seven" living patients with petechial hemorrhaging, mostly children with rashes. Those rashes were typically caused by viral infections that produced the pattern on the extremities or torso rather than on the face. Linert conceded he had never examined someone with a petechial pattern who was still living and alleged to have been strangled.

¶29 Moreover, Anderson's appellate argument regarding supposed "alternative causes" for Jodie's injuries ignores relevant trial evidence. There was no evidence of any specific alternative causes presented at trial, nor did Linert testify that he could do more than merely speculate regarding other causes.[7] Indeed, in response to a cross-examination question regarding whether Linert could testify that there was an alternative cause for Jodie's various injuries, Linert stated his opinion was based on Jodie's "description of the events, and this pattern of injury does fit that description of events."

[7] For example, by way of explaining what might have caused the laceration behind Jodie's ear, Linert testified that older people can experience skin breakdown as a result of an allergic reaction or scratching. He also testified that head trauma and bruising can be caused by, for example, a fall.

¶30 There was also significant other trial evidence that supported Jodie's account of the crimes. Anderson's own version of events at trial admitted that a physical altercation had occurred. The State presented photographs of Jodie's injuries. Police responding to the scene of the altercation discovered the bedroom was in disarray, and they located a cell phone in the room that was broken in half. After the incident, Anderson returned to the residence, switched vehicles, and fled to a campground outside of Wisconsin, where he was ultimately apprehended a few days later, all indicating consciousness of guilt.[8] *See* ***State v. Quiroz***, 2009 WI App 120, ¶18, 320 Wis. 2d 706, 772 N.W.2d 710.

¶31 Against this backdrop, we cannot conclude trial counsel's failure to retain a medical expert who would have testified consistent with Linert's opinion prejudiced Anderson. Linert's relatively weak testimony, considered in light of all the trial evidence, does not demonstrate a reasonable probability of a different result had such evidence been adduced.

B. Failure to Object to "Bolstering" Testimony

¶32 Anderson also faults his trial attorney for "failing to object to sweeping and cumulative [testimony] bolstering" Jodie's account of the crimes. This testimony apparently consisted of both Meyer's and Running's recitation of what Jodie had told them during their respective interviews with her. Anderson argues he was prejudiced by his counsel's failure to object because the jury, in

[8] Anderson denied he had gone camping in an attempt to evade police. However, the jury was not required to accept this self-serving testimony. *See* ***State v. Kucharski***, 2015 WI 64, ¶24, 363 Wis. 2d 658, 866 N.W.2d 697.

effect, heard Jodie's story four times, creating an "unfairly stacked" deck against Anderson.[9]

¶33 In cases like the present one, where the primary witnesses to the crimes are the victim and the defendant, the jury's verdict is often a matter of which person the jury finds to be more credible. *See* ***State v. O'Brien***, 223 Wis. 2d 303, 326, 588 N.W.2d 8 (1999). Anderson correctly observes that, generally, a witness's credibility cannot be bolstered until his or her credibility is attacked. *See* ***State v. Johnson***, 149 Wis. 2d 418, 427, 439 N.W.2d 122 (1989), *decision confirmed on reconsideration*, 153 Wis. 2d 121, 449 N.W.2d 845 (1990). Once an attack on a witness's credibility has been made, eliciting "bolstering" testimony from other witnesses is acceptable only to respond to that specific attack. ***Id.***

¶34 While Anderson claims the challenged testimony here "preceded Anderson's general challenge to [Jodie's] credibility and dealt with many, many more specific areas that Anderson never specifically attacked," the record belies this assertion. To the contrary, the defense placed Jodie's credibility at issue almost immediately. Trial counsel began his opening statement by stating the jury's job was to "determine the credibility" of Jodie and Anderson. After discussing the anticipated testimony, counsel reiterated a statement he had made

[9] Anderson also appears to argue some of Broderdorf's testimony was inadmissible to the extent Broderdorf described at trial what Jodie had said to him in the emergency room. Although Anderson argues Broderdorf's testimony was prejudicial, he does not separately explain why Broderdorf's discussing what Jodie told him in the emergency room was objectionable. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped arguments will not be addressed). Moreover, he concedes in his reply brief that Broderdorf's testimony concerning what Jodie told him was admissible under the hearsay exception for statements for purposes of medical diagnosis or treatment. *See* WIS. STAT. § 908.03(4).

during the jury voir dire, that "there's two sides to every story, and you are definitely going to hear that here in the next few days, and it's for you to decide the credible version of which events actually occurred." This emphasis on witness credibility had the effect of opening the door to the "bolstering" testimony to which Anderson now objects. *Cf.* ***State v. Eugenio***, 210 Wis. 2d 347, 358, 565 N.W.2d 798 (Ct. App. 1997), *aff'd*, 219 Wis. 2d 391, 579 N.W.2d 642 (1998) (recognizing that an attack on a witness's character can occur during an attorney's opening statement).

¶35 Even more compelling, this theme continued during Jodie's cross-examination, which occurred prior to either officer's testimony. Defense counsel questioned Jodie about: (1) her failure to call the police in response to Anderson's purported threats; (2) inconsistencies in her statements to the police following the incident about both the events that had transpired on September 14 and the prior threats; and (3) the manner in which Jodie claimed the attack happened. Under these circumstances, Anderson's claim that he never placed Jodie's credibility in question prior to the challenged testimony strains credulity. As such, the testimony did not constitute impermissible "bolstering" under ***Johnson***. Therefore, trial counsel did not perform deficiently by failing to object. *See* ***State v. Maloney***, 2005 WI 74, ¶37, 281 Wis. 2d 595, 698 N.W.2d 583.

¶36 Anderson also appears to argue the officers' testimony was hearsay. His brief, however, fails to explain how this is so, and the State's response does little more than recite the circuit court's rationale that their testimony would have been admissible as a prior inconsistent statement by the victim, *see* WIS. STAT. § 908.01(4)(a)1., or a prior consistent statement by the victim, *see* WIS. STAT. § 908.01(4)(a)2., neither of which is hearsay. In the plain-error section of his brief-in-chief, Anderson appears to concede the officers' testimony can be

properly classified as "prior consistent statements by [Jodie]." Anderson's reply brief does not otherwise address the purported hearsay aspects of the officers' testimony.

¶37 Given the arguments (or lack thereof) on appeal, we conclude Anderson has not demonstrated his attorney performed deficiently by failing to object to the officers' testimony on hearsay grounds. Notably, a prior statement does not fall outside the hearsay rule merely because it is consistent with the witness's testimony; rather, the statement must be consistent *and* "offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive." WIS. STAT. § 908.01(4)(a)2. The latter requirement involves a complex inquiry, *see* ***State v. Gershon***, 114 Wis. 2d 8, 11-12, 337 N.W.2d 460 (Ct. App. 1983), one in which Anderson does not engage. For our purposes, given Anderson's undeveloped argument and apparent concession, it is sufficient to presume that had his trial counsel objected on such grounds, the objection would have been overruled. *See* ***id.*** at 11 ("Because the challenged testimony was offered on the issue of the child's credibility, it is not hearsay evidence.").[10]

[10] We note that in ***State v. Gershon***, 114 Wis. 2d 8, 337 N.W.2d 460 (Ct. App. 1983), the defendant argued the circuit court erred under WIS. STAT. § 904.03 by "allowing into evidence five versions of the child's story, in opposition to his one." ***Id.*** at 13. This is essentially Anderson's argument here, although unlike the defendant in ***Gershon***, he does not couch it in terms of weighing the evidence's probative value against the danger of unfair prejudice. The ***Gershon*** court concluded the danger of prejudice was minimal because the jury received a limiting instruction that the testimony was to be considered only for the purpose of rebutting a charge or inference of recent fabrication. ***Id.*** While it does not appear such an instruction was given in this case, Anderson does not assert his trial counsel was ineffective for failing to request a limiting instruction, and we do not develop arguments on a party's behalf. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

II. Plain Error

¶38 Anderson also argues it was plain error for the circuit court to admit the officers' "bolstering" statements. The plain error doctrine allows appellate courts to review errors waived by a party's failure to timely object. ***State v. Cameron***, 2016 WI App 54, ¶11, 370 Wis. 2d 661, 885 N.W.2d 611; *see also* WIS. STAT. § 901.03(4). A plain error is one that is fundamental, obvious, and substantial, and we use our reversal power sparingly—for example, when a basic constitutional right has not been extended to the accused. ***State v. Jorgensen***, 2008 WI 60, ¶21, 310 Wis. 2d 138, 754 N.W.2d 77. Indeed, application of the plain error doctrine has been consistently measured by constitutional error. ***Id.***

¶39 For the reasons discussed above, *see supra* ¶¶32-37, we conclude it was not error for the circuit court to admit the officers' testimony describing what Jodie had told them about the incident. Additionally, we reject Anderson's characterization of the purported error as being of a constitutional dimension. Even if the circuit court could have properly sustained an objection to the testimony, we are unpersuaded that the admission of the testimony—which Anderson agrees was merely cumulative to what Jodie had already testified—so infected the trial with unfairness that the resulting conviction constituted a denial of due process. *See* ***State v. Lammers***, 2009 WI App 136, ¶25, 321 Wis. 2d 376, 773 N.W.2d 463.

By the Court.—Judgment and order affirmed.

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