COURT OF APPEALS
DECISION
DATED AND FILED

July 2, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP244-CR **Cir. Ct. No. 2008CF433**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT T. WARRINER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Fond du Lac County: DALE L. ENGLISH, Judge. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 BRENNAN, J. Robert T. Warriner appeals from a judgment of conviction entered after a jury found him guilty of first-degree sexual assault of a child, and from an order denying his motion for postconviction relief. For the reasons which follow, we affirm.

BACKGROUND

¶2 The State filed an Information against Warriner, charging him with repeated sexual assault of a child, as a repeat offender, contrary to WIS. STAT. §§ 948.02(1), (2), 948.025(1) & 939.62(1)(c) (1999-2000).[1] The State alleged that between January 1, 1999, and December 2000, Warriner repeatedly sexually assaulted his daughter, C.C.W.,[2] who was between the ages of five and seven at the time.

¶3 At trial, sixteen-year-old C.C.W. testified that she spent weekends with her father during the summers of 1999 and 2000. At the time, Warriner was living with his mother, and C.C.W. shared a bedroom with him there. C.C.W. testified that they slept in the same bed, and when she fell asleep, C.C.W. would be under the sheets while Warriner was on top of them. When she awoke, however, Warriner would be under the sheets as well. In addition, C.C.W. awoke on two occasions to find that her legs felt numb and tingly "like Jello," that the area around her vagina felt sore and like it had been rubbed raw, and that she had a trace of a "white yellow" fluid on her legs that she knew was not hers.

¶4 Warriner did not testify at trial. The defense's strategy, presented through cross-examination of the State's witnesses and two defense witnesses, was apparently to attack C.C.W.'s credibility in a manner to create a general denial.

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] Throughout Warriner's appellate submissions, Warriner's appellate counsel refers to both of Warriner's victims by their full names. We identify them both by their initials to protect their privacy, as did the State. In the future, we direct Warriner's appellate counsel to do the same.

¶5 The jury found Warriner guilty of first-degree sexual assault of a child. The time period of Warriner's crimes, between January 1, 1999, and December 2000, straddled the effective date of the initial Truth-In-Sentencing ("TIS-I") legislation. Because the case was charged under the pre-TIS-I law, the parties all agreed that Warriner should be sentenced under that law. Given the severity of the offense, coupled with Warriner's history of sexually assaulting young girls, the court sentenced Warriner to the maximum sentence, fifty years.

¶6 Warriner filed a motion for postconviction relief that included all of the claims for relief that he now raises on appeal. The court held a ***Machner*** hearing,[3] at which Warriner's trial counsel testified. Following the hearing, the postconviction court denied the motion. Warriner appeals.

¶7 Additional facts are included in the remainder of the opinion as necessary to resolve Warriner's claims.

DISCUSSION

¶8 Warriner raises four issues on appeal: (1) whether the trial court properly instructed the jury on the first-degree-sexual-assault-of-a-child count; (2) whether the trial court properly admitted evidence of Warriner's prior conviction for sexually assaulting a child; (3) whether Warriner is entitled to have his conviction overturned because the jury's verdict left it unclear what sentencing structure applies; and (4) whether his trial counsel was ineffective. We address each in turn.

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

I. Warriner's argument that the trial court improperly instructed the jury on the first-degree-sexual-assault-of-a-child count is undeveloped and unsupported by legal authority.

¶9 The Information claimed that Warriner:

> between January 01, 1999 to December, 2000, in the City of Fond du Lac, Fond du Lac County, Wisconsin, did commit three or more violations of sec. 948.02(1) or (2) Wis. Stats. involving the same child who had not yet attained the age of sixteen, C.C.W., DOB 07/22/1993, contrary to sec. 948.025(1), 939.62(1)(c) Wis. Stats., a Class B Felony, and upon conviction may be sentenced to a term of imprisonment not to exceed forty (40) years.

¶10 At the close of evidence, the trial court addressed the jury instructions with the parties. The State agreed with the trial court that because C.C.W. had testified that Warriner had only sexually assaulted her on two occasions, a jury was likely to acquit on the charge for engaging in repeated sexual assault of the same child, which required evidence of three or more assaults. *See* WIS. STAT. § 948.025(1).[4]

¶11 The trial court agreed, however, over Warriner's objections, to read the instruction for first-degree sexual assault of a child, which required proof of sexual contact or sexual intercourse with a person who has not attained the age of thirteen years of age. *See* WIS. STAT. § 948.02(1).[5] Warriner argued that the State could not bring that charge because the defense had "relied upon what the maximum penalty would be for a 16 year old," that is, the defense presumed that

[4] WISCONSIN STAT. § 948.025(1) states: "Whoever commits 3 or more violations under s. 948.02(1) or (2) within a specified period of time involving the same child is guilty of a Class B felony."

[5] WISCONSIN STAT. § 948.02(1) states: "FIRST DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B felony."

the State would only prosecute Warriner for second-degree sexual assault of child, requiring evidence of sexual contact or sexual intercourse with a person who has not attained the age of sixteen years. *See* § 948.02(2).[6]

¶12 The trial court rejected Warriner's argument, stating as follows:

> [Warriner's counsel's] argument, which I continue to believe lacks merit, is that he and his client relied on, maybe for lesser included offense purposes only, that it was the second degree sexual assault penalty that Mr. Warriner was facing.
>
> Because, although the Information cites to both 948.02(1) which is first degree sexual assault of a child, or (2) second degree sexual assault of a child, and although the Information actually gives [C.C.W.'s] birth date, that since it also says, who had not yet attained the age of 16, that based on that, that if the Court gave a lesser included offense instruction for a first degree sexual assault of a child, he's claiming he's prejudiced because they always assumed it would only be a second degree sexual assault of a child because of the phrasing of the Information.
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> And my ruling is that, that argument is without merit because, first of all, the Information charges -- references both 948.02(1) or (2) so it wasn't limited to 948.02(2), first of all. So there's notice there. Second, the age of [C.C.W.], which was obviously known to the defendant, her father, is also included in the Information.
>
> And since the Information referenced both (1) or (2) and it referenced the cutoff age of the second, I don't think that solely the phrase, who had not yet attained the age of 16, is a sufficient basis for the Defense to claim now that if I do give a lesser included offense instruction, it has to be second degree sexual assault of a child.
>
> I don't think there's any prejudice whatsoever. And again, I think that argument lacks merit.

[6] WISCONSIN STAT. § 948.02(2) states: "SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class BC felony."

¶13 On appeal, Warriner complains that "first degree sexual assault should not have been a lesser included charge of three or more acts of sexual assault." (Formatting altered.) However, Warriner's argument is completely undeveloped and lacks a single reference to either the record or to legal authority. As such, we decline to review the issue because it is inadequately briefed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). However, to the extent that Warriner's argument now is the same as it was before the trial court, we note that the trial court's decision is well reasoned and amply supported by the record and legal authority.

II. The trial court did not err in admitting evidence of Warriner's prior conviction.

¶14 Prior to trial, the State moved to admit evidence of other acts at trial. Specifically, the State wanted to introduce evidence related to Warriner's conviction for sexually assaulting his ex-girlfriend's daughter, L.K.C., when she was a child. Warriner opposed admission of the evidence, but the trial court, after engaging in the other acts analysis set forth in ***State v. Sullivan***, 216 Wis. 2d 768, 576 N.W.2d 30 (1998), ruled that the evidence was admissible.

¶15 At trial, L.K.C. testified that when she was between nine and ten years old Warriner was living with her and her mother, from June 1999 through August 2000. She testified that sometimes she was left in Warriner's care and that he would take her from her bedroom to the living room where he placed both his fingers and his mouth on her vagina. L.K.C. testified that this "happened a lot."

¶16 City of Fond du Lac Police Detective Brian Bartelt, who interviewed Warriner after L.K.C. reported the assaults, also testified. Bartelt testified that while Warriner initially denied L.K.C.'s allegations, Warriner later admitted to

inserting his fingers into L.K.C.'s vagina after she placed them there and to performing oral sex on L.K.C. on two different occasions.

¶17 On appeal, Warriner argues that the trial court erroneously exercised its discretion when it permitted the evidence of his prior conviction to be admitted at this trial.[7] We disagree.

¶18 "[E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith." WIS. STAT. § 904.04(2)(a) (2011-12). However, other acts evidence is admissible for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." ***Id.***

¶19 In ***Sullivan***, our supreme court set forth a three-step analysis for courts to follow when determining the admissibility of other acts evidence. *See* ***id.***, 216 Wis. 2d at 771-73. Specifically, courts must consider: (1) whether the evidence is offered for a proper purpose under WIS. STAT. § 904.04(2) (2011-12); (2) whether the evidence is relevant; and (3) whether the evidence's probative value is "substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of

[7] In his brief-in-chief, Warriner simply argues that evidence of his prior conviction should not have been heard by the jury. Although he mentions ***State v. Sullivan***, 216 Wis. 2d 768, 576 N.W.2d 30 (1998), he does so only in the context of complimenting the trial court for its "very careful [***Sullivan***] analysis." He makes no meaningful mention of the ***Sullivan*** factors or of WIS. STAT. § 904.03 or its balancing test. Warriner simply argues that any juror hearing the evidence of his prior conviction would be put "in a mind to convict." Thus, we conclude his argument is that the trial court improperly found that the evidence of the prior conviction was not unfairly prejudicial under § 904.03.

time or needless presentation of cumulative evidence[.]" ***Sullivan***, 216 Wis. 2d at 772-73.

¶20 The proponent of the other acts evidence bears the burden of establishing that the first two prongs are met by a preponderance of the evidence. ***State v. Marinez***, 2011 WI 12, ¶19, 331 Wis. 2d 568, 797 N.W.2d 399. Once the first two prongs of the test are satisfied, the burden shifts to the opposing party "to show that the probative value of the [other acts] evidence is substantially outweighed by the risk or danger of unfair prejudice." ***Id.*** In cases involving sexual assault, particularly those where the victim is a child, greater latitude is permitted in applying the ***Sullivan*** framework, and other acts evidence is admitted more liberally. *See* ***State v. Davidson***, 2000 WI 91, ¶¶36-44, 236 Wis. 2d 537, 613 N.W.2d 606.

¶21 Whether to admit other acts evidence lies within the trial court's discretion, and we will not reverse the trial court's decision absent an erroneous exercise of discretion. *See* ***Sullivan***, 216 Wis. 2d at 780. A trial court properly exercises its discretion when it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion a reasonable judge could reach. ***Id.*** at 780-81.

¶22 In his brief-in-chief, Warriner limits his argument to whether he was unfairly prejudiced by the State's evidence, complaining in general and conclusory terms that the admission of the prior offense was harmful to his case. It is not until his reply brief that Warriner first attempts, again, in a conclusory and underdeveloped manner, to address the first two ***Sullivan*** factors. We will not address arguments raised for the first time in a reply brief because they deprive the opposing party of an opportunity to respond. *See* ***Northern States Power Co. v.***

National Gas Co., 2000 WI App 30, ¶21 n.6, 232 Wis. 2d 541, 606 N.W.2d 613 (1999). As such, we look simply to whether the trial court erroneously exercised its discretion when it found that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice.

¶23 During the hearing on the State's motion to admit the evidence, the trial court articulated its reasoning for concluding that the probative value of the evidence was not outweighed by the danger of unfair prejudice as follows:

> … I do think that the evidence is probative, actually rather substantially probative ….
>
> So then with the evidence being probative, then we get to the third issue, whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury. …
>
> Most certainly having the jury hear that … Warriner admitted performing oral sex on a nine- or ten-year-old girl on two occasions. That she claims that he did other things to her over a long period of time when he's charged with having sexual contact with his own daughter. This most certainly is prejudicial. There's just no way around it.
>
> I agree with [the prosecutor] that if I accept [defense counsel's] argument, I'd never let in other acts evidence. And the law is to the contrary. In fact, the law is to the point now where in child sexual assault cases, I have to afford greater latitude in every step in the Sullivan analysis in deciding this.
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> … Once the jury hears it, they hear it. But … the jury will be instructed, that if I allow it in, it's to be considered only for limited purposes and the law presumes that juries follow instructions. And I'm more than satisfied in Fond du Lac County with the cases I've had, that the jury does follow instructions and tries to do what's right.
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> So when I think about balancing this out, I actually think the probative value is high here. I don't think this is, you know, there's some probative value. I mean, I think that the probative value for intent most certainly. Motive kind of relates to that. And to a lesser extent, identity is

> high based on, again, gender, position of trust, time frame, ages at various times, wasn't an isolated act. They were repetitive. And again, I don't find the fact that the acts are -- well, I don't find that the claimed acts are different to be such that would make it a whole less, a whole lot less probative.
>
> So then is the probative value substantially outweighed by the danger of unfair prejudice. And I just don't see that it is in this case. I think the probative value actually outweighs the danger of unfair prejudice. And I think that prejudice can be addressed in the instruction. That's what the law provides.

¶24 The trial court spent a substantial amount of time assessing the probative value of the evidence, ultimately concluding that "probative value [was] high." The court then reasoned that, while the evidence was certainly prejudicial, that any prejudice could be cured by a jury instruction limiting the jury's use of the evidence and ensuring that it was only considered for the proper purpose for which it was admitted. In fact, the trial court read the following instruction to the jurors on two occasions:

> …evidence has been presented regarding other conduct of the defendant for which the defendant is not on trial. Specifically, evidence has been presented that the defendant performed oral sex on and inserted his fingers in the vagina of [L.K.C.] who was 9 to 10 years old during the time in question.
>
> If you find that this conduct did occur, you should consider it only on the issues of motive, intent and identity. You may not consider this evidence to conclude that the defendant has a certain character or a certain character trait and that the defendant acted in conformity with that trait or character with respect to the offense charged in this case.
>
> The evidence was received on the issues of motive, that is, whether the defendant has a reason to desire the result of the offense charged. Intent, that is, whether the defendant acted with the state of mind that is required for the offense charged. Identity, that is, whether the prior conduct of the defendant is so similar to the offense charged that it tends to identify the defendant as the one who committed the offense charged.

> You may consider this evidence only for the purposes I have described, giving it the weight you determine it deserves. It is not to be used to conclude that the defendant is a bad person and for that reason is guilty of the offense charged.[8]

¶25 Warriner explicitly states in his brief that the trial court "as usual, engaged in a very careful [***Sullivan***] analysis." And he does not argue that the trial court did not give the proper limiting instruction to the jury. *See* ***State v. Searcy***, 2006 WI App 8, ¶59, 288 Wis. 2d 804, 709 N.W.2d 497 (2005) (We assume juries follow properly given instructions.). Rather, Warriner merely complains that the trial court "failed to appreciate the importance and volatility that the jury would place on such evidence, even with the limiting instruction." Warriner's argument is nothing more than a disagreement with the trial court's proper exercise of its discretion. That does not provide a sufficient basis for us to overturn the trial court's decision. *See* ***Marinez***, 331 Wis. 2d 568, ¶19 (opposing party's burden "to show that the probative value of the [other acts] evidence is substantially outweighed by the risk or danger of unfair prejudice").

¶26 Furthermore, our review of the record demonstrates that the trial court considered the relevant facts and rationally applied those facts to step three of the ***Sullivan*** analysis, taking into consideration the fact that we give more latitude in applying that framework in child sexual assault cases. *See* ***Marinez***, 331 Wis. 2d 568, ¶20. As such, Warriner has not convinced us that the trial court

[8] We note that identity was not an issue in this case and the trial court's finding in that regard is unsupported in the record. However, that was not the only "proper purpose" under WIS. STAT. § 904.04(2) (2011-12) for which the evidence was admitted. *See* ***Sullivan***, 216 Wis. 2d at 772-73. And, as we previously set forth, we do not address whether the trial court admitted the evidence for a proper purpose because Warriner has not properly brought that issue before this court.

erroneously exercised its discretion when it determined that the probative value of the other acts evidence outweighed any danger of unfair prejudice.

III. We will not overturn the judgment of conviction because the jury did not specify the exact date on which Warriner sexually assaulted his daughter.

¶27 Next, Warriner contends that we should overturn his conviction because the jury did not specify the exact date on which he sexually assaulted his daughter, and that therefore, it is unclear whether the sentencing court should have applied the sentencing structure set forth before or after the enactment of TIS-I. We disagree.

¶28 First, Warriner's argument, again, is underdeveloped, conclusory, and fails to cite to almost any relevant legal authority. While Warriner's counsel contends that the lack of legal authority on this issue is "precisely the point," arguing that the trial court had no authority to apply the pre-TIS-I law, he fails to even provide legal authority for his assertion that the sentencing structure changed or the exact date on which it did so.[9] We will not address such inadequately developed arguments. *See* ***Pettit***, 171 Wis. 2d at 646.

¶29 Second, even if Warriner had properly briefed the issue on appeal, we need not address the merits of his argument because Warriner waived his right to challenge the sentencing structure used by the trial court when his counsel agreed that the trial court should apply the pre-TIS-I structure. *See* ***State v.***

[9] Warriner appears to refer to 1997 Wis. Act 283, commonly referred to as Truth-in-Sentencing I ("TIS-I"), which changed the amount of time a convicted defendant actually serves in prison. TIS-I went into effect on December 31, 1999. *See* WIS. STAT. § 973.01(1). The Information alleged that Warriner sexually assaulted C.C.W. between January 1999 and December 2000.

Howard, 2001 WI App 137, ¶12, 246 Wis. 2d 475, 630 N.W.2d 244. Warriner cannot now object to the application of the pre-TIS-I sentencing laws when he agreed to their application at sentencing.

¶30 Third, we note that even if the trial court erred in applying the pre-TIS-I sentencing structure (although we make no such finding here), any error in doing so was harmless because, as the State points out, and Warriner fails to refute, Warriner was sentenced under the more lenient of the two structures. Therefore, any error in applying the pre-TIS-I sentencing structure was harmless. *See* ***State v. Sherman***, 2008 WI App 57, ¶8, 310 Wis. 2d 248, 750 N.W.2d 500 ("The harmless error rule applies to errors at sentencing."); ***State v. Bean***, 2011 WI App 129, ¶24 n.5, 337 Wis. 2d 406, 804 N.W.2d 696 (unrefuted arguments are deemed admitted).

IV. Warriner's trial counsel did not provide ineffective assistance.

¶31 Finally, Warriner complains that his trial counsel was ineffective for: (1) calling two reputation witnesses, both of whom testified that C.C.W. was "truthful"; (2) putting forth an imperfect jail alibi; and (3) failing to explore Warriner's sister's motivation for planting the sexual abuse story in C.C.W.'s mind. All of his arguments are without merit.

¶32 The right to the effective assistance of counsel derives from the Sixth Amendment to the United States Constitution, made applicable here by the Fourteenth Amendment, and article 1, section 7 of the Wisconsin Constitution. *See* ***State v. Sanchez***, 201 Wis. 2d 219, 225-26, 548 N.W.2d 69 (1996). In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that his attorney's performance was deficient and that he was prejudiced as a result of his attorney's deficient conduct. *See* ***Strickland v. Washington***, 466 U.S. 668,

687 (1984). To prove deficient performance, the defendant must identify specific acts or omissions of his attorney that fall "outside the wide range of professionally competent assistance." ***Id.*** at 690. To show prejudice, the defendant must demonstrate that the result of the proceeding was unreliable. ***Id.*** at 687. If the defendant fails on either prong—deficient performance or prejudice—his ineffective assistance of counsel claim fails. ***Id.*** at 697. We strongly presume counsel has rendered adequate assistance. ***Id.*** at 690.

¶33 We review an ineffective assistance claim as a mixed question of law and fact. ***State v. Kimbrough***, 2001 WI App 138, ¶27, 246 Wis. 2d 648, 630 N.W.2d 752. "We will not reverse the trial court's factual findings unless they are clearly erroneous," but we review the effectiveness and prejudice questions independently of the trial court. ***Id.***

A. Reputation Witnesses

¶34 First, Warriner argues that his trial counsel erred in calling two social workers, Diane Schermann and Lindsay Krueger, to testify that C.C.W. had a reputation for dishonesty. At trial, both witnesses testified that they believed C.C.W. was a truthful person.

¶35 At the ***Machner*** hearing, trial counsel testified that neither Schermann nor Krueger would speak to him before the trial, but that he had obtained reports from them during discovery in which they each stated that C.C.W. was not a truthful person and that she was not to be trusted. Unfortunately for Warriner, each testified to the contrary at trial, and the trial court prohibited trial counsel from impeaching them with extrinsic evidence of their prior statements.

¶36 We cannot conclude that trial counsel was deficient for calling the two witnesses because counsel had a reasonable basis for believing that their testimony would be helpful to the defense in that both had written reports saying that C.C.W. was dishonest. Counsel apparently tried to talk to the two witnesses prior to trial, but they would not speak with him. And although perhaps one could speculate with hindsight that that refusal to talk to counsel should have tipped him off to the fact that they would not be helpful, that is simply second-guessing. Counsel would have been faulted for not calling witnesses whose reports were helpful.

¶37 However, even if the decision to call them was deficient, and despite the fact that his attempt to use the witnesses to discredit C.C.W. was not successful, we cannot conclude that it was prejudicial. C.C.W. herself testified at length to numerous occasions on which she had lied, and she even acknowledged telling Krueger that lying was a natural thing for her and that lying caused her to get into trouble. Given C.C.W.'s own testimony that she had a history of untruthfulness, Schermann's and Krueger's testimony to the contrary was largely irrelevant and not calling them as witnesses would not have altered the outcome of the trial. *See* ***Strickland***, 466 U.S. at 687.

B. Jail Alibi

¶38 Next, Warriner challenges trial counsel's decision to put on evidence that Warriner was in jail for a significant portion of the time period applicable to the charges against him because it made Warriner look bad to the jury and did not provide a complete defense. At the ***Machner*** hearing, trial counsel testified that when he decided to put in evidence of Warriner's time in jail, he did so because he had already lost his motion to exclude the other acts evidence of Warriner's prior

conviction for sexual assault, and did not think that knowledge that Warriner was in jail would do any additional harm. He did, however, believe the evidence could help defeat the charge that Warriner engaged in three or more acts of sexual assault by eliminating much of the time the assaults were alleged to have occurred.

¶39 Trial counsel's decision to include evidence of Warriner's time in jail was a strategic one, and therefore, is virtually unassailable. *See* ***Strickland***, 466 U.S. at 690-91. Furthermore, we agree with counsel's assessment that given the damaging impact of the evidence of Warriner's prior sexual assault conviction, additional evidence that he served time in jail was not prejudicial. *See* ***id.*** at 687.

C. Warriner's Sister's Revenge Motive

¶40 Finally, Warriner argues that his trial counsel was ineffective for failing to adequately explore Warriner's sister's motivation to plant the sexual assaults in C.C.W.'s mind. Warriner argues that his sister hated him, stemming from a time when she left her children in Warriner's care. At trial, trial counsel called several of Warriner's siblings, all of whom testified that the sister and her sons (who also testified against Warriner) were liars. Trial counsel testified at the ***Machner*** hearing that he used those witnesses to show that Warriner's sister was "the black sheep of the family" who "was capable of just about anything."

¶41 In other words, trial counsel did impeach Warriner's sister's credibility and the jury was aware that the sister had a reputation for lying. That it did not know the exact reasons for his sister's propensity for untruthfulness is irrelevant and does not undermine our confidence in the outcome of the trial. *See* ***Strickland***, 466 U.S. at 687.

¶42 For all of the reasons set forth above, we affirm.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.