IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE THE DETENTION OF: JOHNNY DAVIS, Petitioner.	No. 38764-6-II UNPUBLISHED OPINION

Worswick, J. — Johnny Davis appeals his civil commitment under the sexually violent predator (SVP) statute, ch. 71.09 RCW. He argues that (1) the trial court's jury instructions deprived him of due process, (2) the trial court erred in failing to exclude testimony that he suffers from pedophilia, and (3) the trial court committed other evidentiary errors. We affirm.

FACTS

Davis, born on April 7, 1983, pleaded guilty to one count of first degree child rape in 1996. The juvenile court sentenced him to a Special Sex Offender Disposition Alternative (SSODA) under former RCW 13.40.160 (1995), and 24 months' community custody. Then in July 1999, the court revoked his SSODA and committed him to the Juvenile Rehabilitation Administration (JRA). On September 7, 1999, he pleaded guilty to first degree child rape, first degree child molestation, and first degree kidnapping. Based on his plea to these new offenses, the juvenile court made a manifest injustice finding and sentenced him to the JRA until his 21st birthday in 2004.

The State filed its petition seeking involuntary civil commitment of Davis as an SVP on

April 6, 2004. The petition alleged in pertinent part:

> 1. [Davis] has been convicted of four sexually violent offenses, as that term is defined in [former] RCW 71.09.020(15) [(2003)]:
>
> a) On or about December 30, 1996, in the Superior Court for Thurston County, Juvenile Division, [Davis] was convicted of Rape of a Child in the First Degree.
>
> b) On or about October 21, 1999, in the Superior Court for Thurston County, Juvenile Division, [Davis] was convicted of Rape of a Child in the First Degree, Child Molestation in the First Degree, and Kidnapping in the First Degree with Sexual Motivation.
>
> 2. [Davis] currently suffers from a mental abnormality, as that term is defined in [former] RCW 71.09.020(8), specifically: pedophilia.
>
> 3. [Davis's] pedophilia causes him to have serious difficulty in controlling his dangerous behavior and makes him likely to engage in predatory acts of sexual violence unless confined to a secure facility.

Clerk's Papers (CP) at 4-5.

Several witnesses testified at Davis's commitment trial. The State called Richard Peregrin to testify regarding an interview of Davis that he conducted in 1999 at the JRA. Davis at the time provided details of the sexual contact that took place between him and a young girl. Peregrin also recounted a number of other details surrounding sexual encounters Davis described during the interview. The State asked Peregrin whether Davis talked about his relationship with animals, to which Davis's defense counsel objected on relevancy grounds. The trial court allowed the testimony.

The State also called Gianna Fleming Leoncavallo (Fleming), a former forensic therapist with the Special Commitment Center (SCC). Fleming first met with Davis at the SCC in 2004. Fleming offered treatment to Davis, but he told her that he would only do treatment if he were committed to the SCC. Davis objected to this questioning after the answer was given. Following a sidebar, the trial court struck the questioning and issued a limiting instruction.

Davis also testified. Among other topics, he testified about his prior treatment efforts and his drug and alcohol abuse. He testified that if released, he planned to move to California to live with his biological mother and stepfather. When the State asked him why he had not participated in treatment at the SCC, he answered that it was because the SCC programs were inadequate.

The State's expert, Dr. Harry Hoberman, testified that Davis suffered from pedophilia and discussed the details he relied on for this conclusion. He also stated that Davis was likely to reoffend.

Davis then called his own experts, including Dr. Richard Wollert, who testified that Davis did not meet the requisite standard for commitment. Dr. Wollert further testified that he did not believe Davis was likely to reoffend. Davis also called Dr. Theodore Donaldson.
Dr. Donaldson testified that he did not believe Davis's pedophilia diagnosis because it was unclear that he experienced intense recurring fantasies after 16 years of age, because he was under 16 when he committed his most recent offense, and he had not acted on any fantasies after turning 16.

Before the jury reached its verdict, it asked the witnesses several questions. One such question, directed to Davis, stated, "You say treatment at S.C.C. is inadequate but you have never been in it. Why do you say treatment there is inadequate?" CP at 9. But the trial court did not allow Davis to answer that question. On January 15, 2009, the jury returned its verdict and found Davis to be an SVP. The trial court then entered an order civilly committing him. Davis appeals.

ANALYSIS

Jury Instructions

Davis raises a series of challenges to the trial court's jury instructions at his commitment trial. We review challenged jury instructions de novo, within the context of the jury instructions as a whole. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995).

Crime of Sexual Violence

Davis first contends that the trial court, by giving an erroneous instruction, violated his due process rights by commenting on the evidence and by relieving the State of its burden to prove that he had previously been convicted of a "'crime of sexual violence.'"[1] Appellant's Br. at 16. Davis specifically argues that former RCW 71.09.020 (2003) differentiates between a "'sexually violent offense'" and a "'crime of sexual violence,'" such that the jury should have been instructed to find that his prior sexual crimes were committed with violence, in fact, not to find that he committed a prior sexually violent crime. Appellant's Br. at 18.

Article IV, section 16 of the Washington Constitution prohibits the court from conveying its personal perception of the merits of the case or giving an instruction that implies matters of fact have been established as a matter of law. *State v. Levy*, 156 Wn.2d 709, 721, 132 P.3d 1076 (2006). Any remark that has the possible effect of suggesting to the jury that it need not consider an element of an offense may be a judicial comment. *Levy*, 156 Wn.2d at 721.

We review questions of statutory interpretation de novo. *State v. Jacobs*, 154 Wn.2d 596,

[1] Even though Davis did not raise this issue below, he may do so for the first time on appeal under RAP 2.5(a) because a judicial comment in a jury instruction is an error of constitutional magnitude. *State v. Jackman*, 156 Wn.2d 736, 743, 132 P.3d 136 (2006).

600, 115 P.3d 281 (2005). When interpreting a statute, we seek to ascertain the legislature's intent. *Jacobs*, 154 Wn.2d at 600. "'[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.'" *Jacobs*, 154 Wn.2d at 600 [alternation in original] (quoting *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). We determine the plain meaning of a statutory provision from the ordinary meaning of its language, as well as the general context of the statute, related provisions, and the statutory scheme as a whole. *Jacobs*, 154 Wn.2d at 600.

Whenever possible, we read statutes in harmony. *State v. Bays*, 90 Wn. App. 731, 735, 954 P.2d 301 (1998). We interpret statutes to give effect to all language in the statute and to render no portion meaningless or superfluous. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). We avoid a reading that produces absurd results because we do not presume that the legislature intended absurd results. *J.P.*, 149 Wn.2d at 450.

Here, the trial court instructed the jury that, among other elements, in order to establish that Davis was an SVP, the State must prove that he "has been convicted of a crime of sexual violence, namely, Rape of a Child in the First Degree, Child Molestation in the First Degree or Kidnapping in the First Degree with Sexual Motivation." CP at 26.

Former RCW 71.09.020(15) defines a "sexually violent offense" as

> an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense

> as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

And former RCW 71.09.020(16) defines a "sexually violent predator" as "any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility."

Davis encourages us to interpret these statutory provisions in a manner that would lead to an absurd result. There is no support for his proposition that the statute requires the jury to reconsider the underlying events of past sexually violent offenses to determine whether they were committed with violence in fact. The instruction here comprised a neutral and accurate statement of the law and did not contain facts, nor did it convey the trial court's disbelief or belief in any testimony. *State v. Lampley*, 136 Wn. App. 836, 843, 151 P.3d 1001 (2006). Thus, Davis's argument fails.

Alternative Means

Davis next contends that the trial court violated his due process rights by submitting a jury instruction that permitted the jury to commit him based on either the presence of a "mental abnormality" or a "'personality disorder,'" even though the State's petition only alleged that he suffered from a "mental abnormality."[2] Appellant's Br. at 29-32.

Davis cites *In re Application of Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), for his proposition that insufficient notice was given here. *Gault*, not directly on point, involved the issue of whether the State provided timely notice to a juvenile offender and his parents of the specific issues to be raised at the hearing. 387 U.S. at 33-34. The events in *Gault* differ significantly from this case. As the State points out, Davis received copies of experts' reports long before trial, had notice of the personality disorder diagnosis, and failed to raise any concerns regarding this issue at any time preceding or throughout trial.

Even if Davis's contention were correct, any such error was harmless. *See State v. Chino*, 117 Wn. App. 531, 540, 72 P.3d 256 (2003) (instructional error is presumed prejudicial unless it affirmatively appears that the error was harmless). Because Davis received copies of experts' reports long before trial, had notice of the personality disorder diagnosis, and failed to raise any concerns regarding the issue at any time before or throughout trial. Also, while Davis does not have the burden to show that the error was not harmless, he has failed to counter the State's argument that it was. Thus, his argument fails.

---

[2] Jury instruction 3 provided, in relevant part:

> To establish that Johnny Davis is a sexually violent predator, the State must prove each of the following elements beyond a reasonable doubt:
>
> (1) That Johnny Davis has been convicted of a crime of sexual violence, namely, Rape of a Child in the First Degree, Child Molestation in the First Degree or Kidnapping in the First Degree with Sexual Motivation;
>
> (2) That Johnny Davis suffers from a mental abnormality and/or personality disorder which causes him serious difficulty in controlling his sexually violent behavior; and
>
> (3) That this mental abnormality and/or personality disorder makes Johnny Davis likely to engage in predatory acts of sexual violence if not confined to a secure facility.

CP at 26.

Lack of Currently Dangerous Finding

Davis also contends that the trial court violated his due process rights because the jury instructions did not require jurors to find him to be currently dangerous.[3] "In order to commit an individual, and thus significantly curtail his or her rights, due process requires the State to prove that the alleged SVP is mentally ill and currently dangerous." *In re Detention of Moore*, 167 Wn.2d 113, 124, 216 P.3d 1015 (2009).

Our Supreme Court in *Moore* held that "by properly finding all the statutory elements are satisfied to commit someone as an SVP, the fact finder impliedly finds that the SVP is currently dangerous." 167 Wn.2d at 124. Davis distinguishes his case by pointing out that *Moore* involved a bench trial and his case involved a jury. But this distinction is not relevant in light of the Supreme Court's analysis. The *Moore* court explained in detail that the basis for its determination was the statutory language itself, language that also appeared in the jury instructions in Davis's case. 167 Wn.2d at 124-25. Thus, his argument fails.

Undue Emphasis on Possibility of Future Predatory Acts

Davis further contends that the trial court's instructions placed an undue emphasis on one factor: the possibility of future predatory acts of sexual violence.[4] Davis essentially argues that jury instructions 9 through 21, which define first degree child rape, second degree child rape, first degree child molestation, second degree child molestation, indecent liberties committed by

[3] Davis did not raise this issue below but challenges to a jury instruction, asserting that it relieved the State of its burden of proof may be raised for the first time on appeal under RAP 2.5(a). *State v. Brett*, 126 Wn.2d 136, 171, 892 P.2d 29 (1995).

[4] Davis did not object to the jury instructions below.

forcible compulsion, second degree assault, second degree child assault, first and second degree kidnapping, and unlawful imprisonment, led the jury to focus on the third element of the charge, that Davis's "mental abnormality and/or personality disorder makes Johnny Davis likely to engage in predatory acts of sexual violence if not confined to a secure facility." CP at 26, 31-44.

Davis cites *State v. Todd*, 78 Wn.2d 362, 474 P.2d 542 (1970), to support his proposition. In *Todd*, our Supreme Court reversed a conviction based on trial court instructions that overemphasized the penalty the defendant would receive if not sentenced to death. 78 Wn.2d at 376.

While *Todd* reminds us of the due diligence trial courts should afford to the task of issuing jury instructions, it fails to compel reversal and remand for a new commitment hearing in this case, as Davis suggests. Authority to persuade us that the jury instructions in this case were improper simply does not exist. The jury may be instructed as to the types of crimes the law seeks to prevent. The jury was instructed only as to those crimes that Davis would be likely, in view of his past offenses, to commit. Moreover, "[t]he jury is presumed to read the court's instructions as a whole, in light of all other instructions." *State v. Hutchinson*, 135 Wn.2d 863, 885, 959 P.2d 1061 (1998). Davis's argument fails.

Failure to Define "Personality Disorder"

Davis finally contends that the trial court's failure to define the phrase "personality disorder" in a jury instruction violated his due process rights.[5] The relevant jury instruction

[5] After first raising this issue in his brief and then conceding the issue in his reply brief, Davis now raises this issue again in a slightly different manner in a supplemental brief.

provided that in order to establish that Davis is an SVP, the State had to prove, among other elements, "[t]hat Johnny Davis suffers from a mental abnormality and/or personality disorder which causes him serious difficulty in controlling his sexually violent behavior." CP at 26.

Our Supreme Court recently considered this issue in *In re Detention of Pouncy*, 168 Wn.2d 382, 229 P.3d 678 (2010), holding that the term "personality disorder" in a jury instruction was a technical term that must be defined.[6] *Pouncy* abrogated *In re Detention of Twining*, 77 Wn. App. 882, 894 P.2d 1331 (1995). *Pouncy*, 168 Wn.2d at 391. In *Pouncy*, defense counsel raised the issue below and sought a definitional instruction on "'personality disorder.'" 168 Wn.2d at 388-89. Davis did not.

The threshold question is whether this issue is properly before us under RAP 2.5(a). Due process requires that in order for a defendant to be convicted, every element of the charged offense must be proved beyond a reasonable doubt. *State v. O'Hara*, 167 Wn.2d 91, 105, 217 P.3d 756 (2009). And in order to satisfy the constitutional requirement of a fair trial, the jury instructions, when read as a whole, must correctly advise the jury of the applicable law, not be misleading, and permit the defendant to present his theory of the case. *O'Hara*, 167 Wn.2d at 105. But the constitution only requires that the jury be instructed as to each element of the charged offense; the failure to further define one of those elements is not within the ambit of the constitutional rule. *O'Hara*, 167 Wn.2d at 105.

Davis largely relies on *State v. Gordon*, 153 Wn. App. 516, 223 P.3d 519 (2009), for his proposition that this issue is a manifest error affecting a constitutional right. But as the State

[6] *Pouncy* was issued on March 11, 2010, over a year after the commitment trial was held in this case.

points out, *Gordon* involved an instruction regarding an element of an aggravated crime, not a technical term within the element. 153 Wn. App. at 534. Because "personality disorder" is merely a technical term, Davis's failure to raise the issue below was fatal. *See Pouncy*, 168 Wn.2d at 382. Thus, his argument fails.

Alternatively, Davis argues that he was deprived of effective assistance of counsel when his trial counsel failed to seek an instruction defining "personality disorder." The federal and state constitutions guarantee effective assistance of counsel. U.S. Const. amend. VI; Wash. Const. art. I, § 22. An appellant claiming ineffective assistance of counsel must show deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). "Prejudice occurs when, but for the deficient performance, there is a reasonable probability that the outcome would have differed." *State v. Powell*, 150 Wn. App. 139, 153, 206 P.3d 703 (2009). "A reasonable probability 'is a probability sufficient to undermine confidence in the outcome.'" *Powell*, 150 Wn. App. at 153 (internal quotation marks omitted) (quoting *In re Pers. Restraint of Hubert*, 138 Wn. App. 924, 930, 158 P.3d 1282 (2007)). We start with a strong presumption of counsel's effectiveness. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

Davis cites no authority for the proposition that the failure to request a definitional instruction as to "personality disorder" fell below an objective standard of reasonableness. He

simply suggests that his defense counsel should have known of prior court cases suggesting it was a term as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM) and that our Supreme Court had recently taken review of *Pouncy* at the time of his trial. Davis has not made the requisite showing of deficient performance and resulting prejudice here. Thus, his argument fails.

Pedophilia Diagnosis

Davis next contends that the trial court should have excluded testimony that he suffers from pedophilia because he does not qualify for that diagnosis under the DSM-IV.[7] He specifically argues that the State's expert applied the DSM-IV in a manner not generally accepted within the scientific community and that, under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), the evidence is inadmissible.

"We review the trial court's decision to admit or exclude novel scientific evidence de novo." *State v. Cauthron*, 120 Wn.2d 879, 887, 846 P.2d 502 (1993), *overruled in part on other grounds by State v. Buckner*, 133 Wn.2d 63, 65-67, 941 P.2d 667 (1997). But we review the ultimate decision to admit or exclude expert testimony under ER 702[8] for an abuse of discretion. *State v. Willis*, 151 Wn.2d 255, 262, 87 P.3d 1164 (2004). "When a trial court's exercise of its

[7] In his reply brief, Davis attempts to broaden and recharacterize this argument, contending that the trial court's commitment order was based on evidence that was, in part, unreliable. But we do not consider arguments raised for the first time in a reply brief. *See State v. White*, 123 Wn. App. 106, 1115 n.1, 97 P.3d 34 (2004).

[8] ER 702 states:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

discretion is manifestly unreasonable or based on untenable grounds or reasons, an abuse of discretion exists." *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

Once we have made a determination that the *Frye* test is met as to a specific novel theory or principle, trial courts may rely upon that in future cases. *Cauthron*, 120 Wn.2d at 888 n.3. Trial courts are still required to undertake the *Frye* analysis, however, if one party produces new evidence that "seriously questions the continued general acceptance or lack of acceptance as to that theory within the relevant scientific community." *Cauthron*, 120 Wn.2d at 888 n.3. Otherwise, a *Frye* hearing is not necessary. *See In re Detention of Thorrell*, 149 Wn.2d 724, 754, 72 P.3d 708 (2003).

The State counters that Davis waived this argument under RAP 2.5(a) because he did not seek a *Frye* hearing below. The State also argues that the evidence at issue here did not involve new methods of proof or new scientific principles and thus, a *Frye* hearing is not appropriate in this instance. Davis argues that RAP 2.5(a) does not preclude relief here because the issue is of constitutional magnitude.

Davis's attempts to characterize this issue in the *Frye* context and as an issue of constitutional magnitude to avoid his failure to raise the issue below both lack authority. As the State correctly points out, evidence that does not involve new methods of proof or new scientific principles is not subject to the *Frye* test. *State v. Baity*, 140 Wn.2d 1, 10-11, 991 P.2d 1151 (2000). And in *In re Pers. Restraint of Young*, 122 Wn.2d 1, 57, 857 P.2d 989 (1993), our Supreme Court explicitly stated that psychiatric or psychological evidence is not new or novel scientific evidence. Moreover, in *In re Detention of Post*, 145 Wn. App. 728, 755-56, 187 P.3d

803 (2008), *review granted*, 166 Wn.2d 1033, 217 P.3d 782 (2009), Division One of this court addressed a similar challenge to a paraphilia diagnosis, holding that the failure to seek a *Frye* hearing below precluded the issue for review. Davis's argument fails.

Alternatively, Davis argues that if the issue was not preserved for review, he was deprived effective assistance of counsel by his trial counsel's failure to object to the admission of the pedophilia diagnosis evidence.

Davis has not demonstrated that defense counsel's failure to seek a *Frye* hearing constitutes deficient performance, particularly because a *Frye* hearing would not have been appropriate in this case. Before trial, Davis's defense counsel raised concerns regarding Dr. Hoberman's pedophilia diagnosis in an unsuccessful summary judgment motion. The record does not support the contention that there is a reasonable probability that the outcome would have differed had Davis sought a *Frye* hearing. Thus, Davis's ineffective assistance of counsel argument also fails.

Evidentiary Challenges

Davis next contends that the trial court denied him due process by preventing him from introducing evidence as to why he refused treatment at the SCC. He also further contends that the trial court erroneously admitted irrelevant evidence that prejudiced him.

"All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible." ER 402. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of

consequence to the determination of the action more probable or less probable than it would be without the evidence." ER 401. "Although relevant, evidence may be excluded if its 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 time, or needless presentation of cumulative evidence." ER 403. "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." ER 404(b).

As we previously noted, we review the trial court's decision to admit evidence for an abuse of discretion. *State v. Thomas*, 150 Wn.2d 821, 856, 83 P.3d 970 (2004). "When a trial court's exercise of its discretion is manifestly unreasonable or based on untenable grounds or reasons, an abuse of discretion exists." *Powell*, 126 Wn.2d at 258.

Limiting Testimony at Trial

Davis argues that the trial court denied him due process when it allowed the State to introduce evidence that he refused treatment but did not allow him to introduce his own evidence that he did so because of a federal injunction that was in operation when he filed his petition, his understanding of the success rate for treatment at the SCC, and his desire to find a therapist who could help him with treatment. The trial court, however, did allow Davis to testify that he refused treatment because he believed it to be inadequate.

In raising this due process argument, however, Davis fails to adequately articulate why this error rises to the level of a constitutional due process violation. The relevant issue at the

commitment trial was whether he currently had a mental abnormality that made him likely to engage in predatory acts of sexual violence. Former RCW 71.09.020(16). The trial court's refusal to allow him to testify regarding a federal injunction, his understanding of the success rate for treatment at the SCC generally, and his desire to find a therapist who could help him with treatment did not increase the risk that he would be erroneously committed; it only served to avoid unnecessary distractions not relevant to his trial. Moreover, the trial court still allowed him to say that he refused treatment because it was inadequate. The trial court did not deny him his right to due process. Thus, the trial judge did not abuse his discretion by limiting the scope of his testimony.

Irrelevant and Prejudicial Evidence

Davis next argues that the trial court erroneously admitted irrelevant evidence that prejudiced him in five specific instances. First, that Davis refused to participate in treatment at the SCC. Second, that Davis was the subject of a sex offender notification campaign upon his release from JRA. Third, that he abused animals as a child. Fourth, that Davis received a manifest justice disposition in 1999. And fifth, when the State asked Davis on the stand if Fleming's testimony was incorrect as it related to his fantasies regarding young girls. In all of these instances, however, Davis either failed to make a proper objection below to preserve these issues for review on appeal or he now fails to adequately demonstrate how the trial court abused its discretion in admitting this evidence. RAP 2.5(a); RAP 10.3(6). Thus, his argument fails.[9]

[9] Davis also asks us to reverse based on cumulative error. Because we find no errors, this argument also fails. *See State v. Greiff*, 141 Wn.2d 910, 929, 10 P.3d 390 (2000) (application of cumulative error doctrine is limited to instances when there have been several trial errors that standing alone may not be sufficient to justify reversal, but when combined may deny a defendant

a fair trial).

Affirmed.

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

Worswick, J.

We concur:

Penoyar, C.J.

Serko, J.P.T.[10]

[10] Judge Serko is serving as a judge pro tempore of the Court of Appeals, Division II, pursuant to CAR 12(c).