

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 61777-0-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
AMARJEET SOHAL,)	
)	
Appellant.)	FILED: November 16, 2009
)	

Appelwick, J. — A jury convicted Sohal of second degree assault. During his trial, two police officers testified about the veracity of the key witnesses' stories during interrogations immediately after the incident. Defense counsel did not object to the testimony. Sohal now argues ineffective assistance of counsel for failure to object to improper opinion testimony. We affirm.

FACTS

The evening of January 23, 2008, friends Amarjeet Sohal and Harjap Singh were drinking at Sohal's residence. Later that evening, Munish Raj and Ajay Kumar joined them. At some point during the night, Sohal and Singh began to argue. Kumar and Raj decided to separate the two men in order to prevent any harm. Raj took Singh outside where Singh started smoking. Sohal

remained in the house with Kumar. Sohal came outside and they began arguing again. Sohal approached Singh and Singh fell to the ground. Singh quickly stood back up and continued smoking. Sohal and Raj then left in Raj's car. When they started to drive away, Raj's headlights revealed blood on Singh's clothes. Raj dropped Sohal in an area with shops and a motel. Meanwhile, Kumar remained at the house with Singh. Singh lifted his shirt and showed Kumar that he had been stabbed. Kumar called Raj and urged him to return to the house. When Raj returned, they called 911. Neither Raj nor Kumar had seen Sohal with a knife or the actual stabbing.

During police interviews soon after the incident, Raj and Kumar both denied being present at the scene during the stabbing. They told the police that they had not seen anything, because they had gone to get pizza. Upon their return, they discovered Singh lying in the driveway, bleeding. But, after further questioning, both men eventually changed their stories to the one above. At trial, both Raj and Kumar admitted that that they made up the story about getting pizza and had lied about not being present during the stabbing. According to Kumar, they made up the story so Sohal and Singh would not get into trouble. Raj said that he did not want to be involved in the situation and did not want anything to happen to Sohal and Singh. They also said they changed their story after feeling threatened by the police. They feared they would go to jail.

The interviewing detectives testified subsequent to Raj and Kumar. They spoke about their opinions as to the veracity of the stories told by Raj and Kumar immediately following the stabbing. Detective Adam Howell testified that at the

beginning of the questioning, Kumar “[w]asn’t very responsive to pointed direct questioning. He seemed to really stick to what I interpreted to be a prepared statement and then when he was asked questions that it didn’t appear that he was ready for he would attempt to stall or concoct in the process.” In response to many questions “it was just pretty apparent that he was attempting to formulate a response as opposed to just recalling something from memory.” Howell testified that he challenged Kumar, saying that he knew Kumar was lying. Eventually Kumar “started telling us the complete story, then it was much more subdued, more -- he seemed much stronger and more . . . at ease with what he was telling me.”

Howell also described his interview with Raj. Raj began the interview “visibly nervous, visibly shaking, making . . . furtive glances around the room, fidgeting.” According to Howell, when Raj changed his story, his posture changed: “There’s a point where someone eventually becomes truthful with you where, you know, the posturing kind of goes away, where they physically submit.” Raj “seemed to visibly relax as kind of a burden had been lifted off of him.”

Defense counsel elicited testimony from Howell about some of his statements to Raj and Kumar during their interviews, before the two men changed their stories. Howell told Kumar that the police were trying to determine if he was a suspect or a witness. Howell also told Kumar that he did not have any time for his bullshit and that he knew Kumar “was blowing smoke up [his] ass.” According to Howell, these statements were an interview tactic.

Detective Debra Calhoun also testified about the interviews with Raj and Kumar. She stated that after Kumar changed his story he seemed more relaxed and answered more quickly and naturally. She testified that after Raj changed his story “[h]e also became more relaxed and it seemed like he was telling the truth. . . . He didn’t have to think about what his answers were.”

Raj said that Singh, told them to make up a story so Sohal would not get into trouble. Singh, testified that Sohal did not stab him. According to Singh, he was at Sohal’s house with Raj and Kumar. Raj and Kumar left to get pizza. Singh went outside to have a cigarette. While he was smoking in the driveway, a couple of men came from a black car and stabbed him. The men then ran away. Singh did not know the men.

After hearing all the testimony, the jury convicted Sohal of the lesser offense of second degree assault. Sohal now appeals.

DISCUSSION

Sohal alleges that he received ineffective assistance of counsel, because his attorney failed to object to the two detectives’ testimony about their opinions of the veracity of Raj and Kumar’s stories.¹ Ineffective assistance requires a showing that counsel’s representation fell below an objective standard of reasonableness and that that the deficient performance prejudiced the defense.

¹ Recently, the Washington Supreme Court released State v. King, No. 80948-8, 2009 WL 3298059 (Wash. Oct. 15, 2009). In King, the Court reiterated that admission of witness opinion testimony on an ultimate fact, without objection can sometimes be raised for the first time on appeal. Id. at *3. An explicit or nearly explicit statement on an ultimate issue of fact can constitute manifest error allowing for review on appeal. Id. at *5. Sohal does not claim manifest constitutional error allowing for review for the first time on appeal. He merely alleges ineffective assistance for the failure to object.

State v. Thomas, 109 Wn.2d 222, 225–26, 743 P.2d 816 (1987). In evaluating representation, “scrutiny of counsel’s performance is highly deferential and courts will indulge in a strong presumption of reasonableness.” Id. at 226. We presume proper representation. State v. Hendrickson, 129 Wn.2d 61, 77, 917 P.2d 563 (1996), overruled on other grounds by Carey v. Musledin, 549 U.S. 70, 127 S. Ct. 649, 166 L. Ed. 2d 482 (2006). Matters of trial tactics or strategy cannot support a showing of deficiency. Id. at 77–78.

In this case, the detectives testified as to their opinions about the veracity of two witnesses. “Generally, no witness may offer testimony in the form of an opinion regarding a witness’s credibility; such testimony is unfairly prejudicial to the defendant because it invades the exclusive province of the jury.” State v. Sutherby, 138 Wn. App. 609, 617, 158 P.3d 91 (2007), aff’d, 165 Wn.2d 870 (2009). In particular, opinion testimony from a police officer may influence a jury. State v. Barr, 123 Wn. App. 373, 384, 98 P.3d 518 (2004).

“The decision of when or whether to object is a classic example of trial tactics. Only in egregious circumstances, on testimony central to the State’s case, will the failure to object constitute incompetence of counsel justifying reversal.” State v. Madison, 53 Wn. App. 754, 763, 770 P.2d 662 (1989). In this case, the defense had to overcome Raj and Kumar’s trial testimony in which both men described the events leading up to the stabbing. They stated that they had concocted the story that they had not been at the house when the stabbing occurred. Raj and Kumar admitted that they had lied to police. All this testimony occurred before the detectives took the stand and described their interviews with

Raj and Kumar.

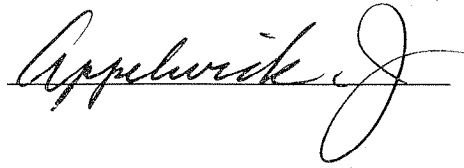
The defense attempted to overcome this damning witness testimony by casting Raj and Kumar as liars. In closing, Sohal's attorney told the jury that Raj and Kumar told two conflicting stories and were "admitted liars." He said Raj and Kumar were "clearly liars" and that the jury had to decide "whether they lied the first time or the second time or whether they lied here in court." The defense also emphasized the pressure applied to Raj and Kumar during their police interviews. He said that Raj and Kumar felt threatened by the police so they changed their stories.

Based on defense counsel's cross-examination and closing, the failure to object to the opinion testimony was tactical. The defense used the fact that Raj and Kumar had told multiple stories to raise credibility issues about the two key witnesses. The police testimony also allowed the defense to emphasize the pressure and scare tactics employed by the detectives. Counsel elicited that the fear and anxiety caused by the interview methods caused Raj and Kumar to change their stories. Allowing the detectives' testimony without objection was a tactic to further demonstrate credibility issues raised by the witnesses during their testimony and cannot support a claim of deficient performance.

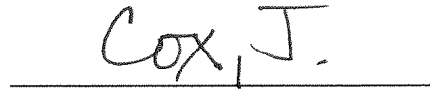
Even if the failure to object to the opinion testimony was deficient, Sohal cannot prove prejudice. Prejudice requires a showing that "there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." Hendrickson, 129 Wn.2d 78. Here, Raj and Kumar testified before the detectives and admitted that they had lied to the police. Whatever opinions

detectives Howell and Calhoun expressed merely confirmed what the witnesses, themselves, had told the jury. Given that the witnesses admitted that they had lied, a different result would be unlikely even without the detectives' testimony.

We affirm.

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WE CONCUR:

A handwritten signature in cursive script, reading "Dwyer, A.C.J.", written over a horizontal line.A handwritten signature in cursive script, reading "Cox, J.", written over a horizontal line.