

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

OCTOBER 3, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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

No. 95-0687-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RANDY SCHRAMKE,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Brown County: SUSAN E. BISCHER, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Randy Schramke appeals a judgment convicting him of sexually assaulting a child and an order denying his postconviction motion. He argues that a school counselor improperly commented on the truthfulness of the complainant's allegations and that he was denied effective assistance of counsel because his trial counsel failed to object and move to strike

the counselor's testimony. He also requests a new trial in the interest of justice. We reject these arguments and affirm the judgment and order.

Schramke was a guest in the victim's home for one week. The nine-year-old victim reported to a school counselor that, on three or four occasions, Schramke entered her bedroom in the middle of the night and had sexual contact with her. The prosecutor asked the counselor what she did when she received this information, and the counselor responded:

"Well, I was -- I told her I was very pleased that she told me the truth. And I reinforced the fact that when something like this happens, it is important to tell, so somebody can help."

Schramke argues that the counselor's answer violates the rule set out in *State v. Haseltine*, 120 Wis.2d 92, 96, 352 N.W.2d 673, 676 (Ct. App. 1984), that prohibits a witness from stating an opinion that another competent witness is telling the truth.

The counselor's statement did not violate the *Haseltine* rule. In making this determination, this court must examine the purpose and the effect of the testimony. See *State v. Jensen*, 147 Wis.2d 240, 254 n.3, 432 N.W.2d 913, 919 (1988). The purpose for the prosecutor's question and the witness's answer was not to bolster the credibility of the victim. Rather, it was a part of a lengthy recitation of circumstances surrounding the initial disclosure and the investigative steps taken. A reasonable jury would not construe the counselor's statement as a comment on the victim's credibility, but merely as a statement intended to set the victim at ease. With respect to the effect of the counselor's statement, there is no substantial probability that the statement usurped the jury's function as the arbiter of the victim's credibility. The statement was not cloaked with an "aura of scientific reliability." *Haseltine*, 120 Wis.2d at 96, 352 N.W.2d at 676. The counselor claimed no expertise in determining the truthfulness of a child's sexual assault allegation. The counselor testified only to what she told the victim and offered no opinion regarding her actual impression of the victim's credibility.

Because the testimony did not violate the *Haseltine* rule, Schramke's trial attorney cannot be faulted for his failure to object on that basis. In addition, Schramke has not established that the defense was prejudiced by this statement. Counsel's statement was a single brief remark that neither party stressed during the trial. Trial counsel's failure to object does not undermine the fundamental fairness of the trial or bring into question the reliability of the verdict. See *Lockhart v. Fretwell*, 113 S. Ct. 838, 842 (1993).

Finally, there is no basis for granting a new trial in the interest of justice. This court's power of discretionary reversal under § 752.35, STATS., must be exercised with caution, and only in exceptional cases. *State v. Ray*, 166 Wis.2d 855, 874, 481 N.W.2d 288, 296 (Ct. App. 1992). We conclude that the real controversy was fully and fairly tried, there was no miscarriage of justice and retrial is not likely to result in a different verdict.

By the Court. – Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.