Docket No. 25-

IN THE

SUPREME COURT OF THE UNITED STATES

JEREMIAH BOBB

PETITIONER

Vs.

UNITED STATES OF AMERICA

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DAN B. JOHNSON-Counsel of Record
Member of Supreme Court Bar
Attorney for Petitioner-CJA Counsel
Appointed under 18 U.S.C. Sect. 3006A
LAW OFFICE OF DAN B. JOHNSON, P.S.
1312 North Monroe Street, Suite 248
Spokane, WA 99201
(509) 483-5311
danbjohnsonlaw@gmail.com
Washington State Bar No. 11257

QUESTION PRESENTED

A child-witness's initial interview with the authorities was recorded and the child un-equivocally stated that the Petitioner did not sexually assault/molest her in any way. Due to a failure to understand and apply the rules of evidence, counsel failed to place the exculpatory statement into evidence.

The question presented is:

Where evidentiary legal error by a court combined with ineffective assistance of counsel led to the failure to place into trial evidence a prior denial by a child that the defendant had ever sexually assaulted her, should a so-called "strategic decision" be allowed to excuse the violation of the Sixth Amendment right to effective assistance of counsel?

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IN THE SUPREME COURT OF THE UNITED STATES

JEREMIAH BOBB

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Jeremiah Bobb, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals issued on April 1st, 2025 (App. A) is reported at 25WL6972981 (9th Cir. 2025) and is unpublished. The Order (denying the Petition for Re-Hearing and for Re-Hearing En Banc) issued on June 24th, 2025, is unpublished. (App. B). The *Judgment in a Criminal Case*, Sentencing Order of the District Court (App. C), issued on November 21st, 2023, is unpublished.

STATEMENT OF JURISDICTION

The Court of Appeals entered judgment on April 1st, 2025. (App. A). The Court denied a timely petition for rehearing and/or for hearing en banc on June 24th, 2025. (App. B). The Court of Appeals had jurisdiction pursuant to 28 U. S. C. Sect. 1291. This Court has jurisdiction under 28 U.S.C. Sect. 1254 (1).

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the cause on the cover page.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

United States vs. Jeremiah Bobb, No. 1-21-cr-02005-MKD-1. District Court for the Eastern District of Washington; Judgment in a Criminal Case, entered on November 21st, 2023.

United States vs. Jeremiah Bobb, No. 23-3748. U. S. Court of Appeals for the Ninth Circuit; Judgment (Memorandum Opinion) entered on April 1st, 2025, rehearing denied on June 24th, 2025.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

The following factual background is based on the transcripts and documents filed in the Ninth Circuit Court of Appeals. The transcripts and documents are filed under cause number 23-3748, Docket No's 11, and 16, Volumes 1 to 5 of Excerpts of Record.

A. Statement of Procedure

On August 9th, 2022, the Government filed a *Superseding Indictment* (and *penalty slip*), charging the Defendant with: Count 1- *Sexual Abuse of a Minor*, in violation of 18 U.S.C. Sect. 1153, and 2243(a), and Count 2- *Aggravated Sexual Abuse of a Child*, in violation of 18 U.S.C. Sect. 1153, and 2241(c). 4-ER-831-36.

A jury trial was held beginning on July 24th, 2023, and concluded with a jury verdict on July 31st, 2023, finding the Defendant guilty on all pending charges. (ECF 190). The Defendant was sentenced on November 21st, 2023, in the United States District Court for the Eastern District of Washington before the Hon. Mary M. Dimke, District Judge to a total term of 480 months, (180 months as to Count 1s and 480 months on Count 2, to be served CONCURRENT with each other, among other conditions. 1-ER-2-9. App. C.

B. Statement of Facts.

1. Motions Practice (Pre-Trial)

On July 10th, 2023, the Defendant filed *Defendant's Motion for Admission of Evidence Relating to FRE 412…,* 5-ER-1102-14. App. G. On July 12th, 2023, *Defendant's Supplemental List of FRE 412 Evidence*, was filed, Ex Parte. 5-ER-1053-1102. App. H. On July 21st, 2023, the Court held another Pre-Trial Conference/Motion Hearing. The Courtroom was closed to address the foregoing motion. On July 26th, 2023, the Court filed a A *SEALED Order Regarding Defendant's Motion to Admit Fed. R. Evid. 412 Evidence as to Minor 2- ECF No. 144,* (5-ER-1044-55) App. L, and ruled that pertinent evidence was admissible as to Minor 2 (TT), including that she stated at the first interview with the authorities that Mr. Bobb had not ever sexually assaulted her, along with the fact that two other individuals had assaulted her.

2. Government's Case

The instant case was called to trial on July 24th, 2023. The Court read preliminary instructions to the jury and opening statements were made by the parties.

Lynette Cree/Reed

Ms. Reed stated that she resided in White Swan, Washington, located in the Eastern District of Washington, at 291 A Street, and had lived there all her life. During 2016 and 2017 she resided there with her son, Damian Hooper, and her younger son, Alexander Cree, then her daughter, Galilea Vasquez, and her mother, Charlotte Wyman. She also stated that Jeremiah Bobb and Chaylene Charles resided outside, with two kids. 3-ER-439-40.

She indicated that TT (Minor child 2), was four years old when they moved in but was not sure. Chaylene was pregnant at the time, with the child born later, after they moved in and he was named "SB." She was related to the Defendant, as his aunt, on her mother's side. 3-ER-442.

Ms. Reed said that at some point Chaylene, the Defendant, and their daughter moved into her house. She said the daughter, TT stayed with her daughters a lot and could not remember when Jeremiah Bobb moved out. She could not be sure when Chaylene moved out, but thought the Defendant moved out before summertime, after SB was born in October. 3-ER-453.

On cross-examination, Ms. Reed verified that her partner Maximo lived with her, as well as a person named Johnny Wyman, who slept on the couch. She stated

that Galilea, LT and TT all stayed in the same room. 3-ER-463-67. Later on, LT and Galilea stayed in the living room. She also said that Jeremiah, Chaylene, SB and TT all stayed in a fourth bedroom. 3-ER-469-70.

Ms. Reed stated that LT was brought into her house when she was 14, due to her being homeless and living with her mother in a car. She became LT's guardian and was referred to as "mom" by LT. She said she fulfilled all the roles a parent would, including discipline, but said she never had to. 3-ER-474-75.

She verified that Chaylene was gone a lot before she moved out after SB was born and was gone in March and said the Defendant moved out before the Summer, after Mother's Day. She did not recall where he went or whether he took his belongings with him. 3-ER-476-78.

Ms. Reed had custody of TT and the Defendant's son SB for about one year. She went back to tribal court due to the Defendant challenging her custody of the son, SB. The Defendant was allowed to have visitation. 3-ER-479-80.

She could not remember when she assisted LT in contacting law enforcement due to someone from her school urging them to do so and was present when LT was interviewed by the police. The police came over more than once and she was present for the conversations and had custody of LT at the time. 3-ER-

481-82. Later as she took TT to speak with law enforcement, she had LT with her as well.

When asked about a conversation with law enforcement she said they told her that TT said some things about being a witness to the allegations regarding LT and her kitchen. The child also said that Maximo, her partner, and one of her son's had touched TT. 3-ER-487. TT went home with her that day but left the next morning and had not returned by the time of trial and said she had not had contact with her. 3-ER-487-88.

She said that after the January Tribal Court proceedings she discussed what happened with LT. She said that LT claimed she had been hurt by Jeremiah, the Defendant. She later confronted the Defendant in front of TT. 3-ER-498.

On re-direct Ms. Reed said that when she asked Jeremiah Bobb about that accusation with TT present, he admitted that he had hurt LT but claimed he said, "by raping her". Mr. Murphy stopped her there. On re-cross the witness was shown her written statement and the use of the word "Rape" had not been mentioned. 3-ER-498-502.

LT

LT said she was born in "01 and lived on the Yakama Nation at 291 A Street in White Swan when she was 14 years old, a sophomore in high school. When she moved in, her Aunt Lynette Reed was staying there, along with two cousins, Galilea Vasquez and Alexander Cree. She said Maximo also had been there. 3-ER-519-20.

When she moved in, she said Jeremiah Bobb; Chaylene Charles; and TT, a four year old, lived in a trailer outside. SB was later born to Chaylene, in 2017, she thought, or 18, but could not be sure. It was after she moved in though. 3-ER-520-21.

She claimed that the Defendant sexually assaulted her when she was less than 16, a sophomore at White Swan High School. She graduated in 2019. She said the first time took place in a bathroom with the Defendant entering it after her by climbing in through the window. 3-ER-521-22. She could not remember if it was before or after her 16th birthday. 3-ER-526.

In June, 2019, a Tribal Police Officer came to speak with her. Ms. Reed was present at the time. She said that Ms. Reed was the first person she disclosed the

incident with Defendant to. 3-ER-532-33. She later went with Ms. Reed when TT was interviewed.

The witness did not remember the year that she told Ms. Reed about the Defendant assaulting her but that it occurred after she had been at the Tribal Court at the custody hearing; and was a reaction to the hearing. She agreed she had not told anyone about it prior to that time. 3-ER-536-37. On Re-direct she said she did not disclose until later due to being afraid that no one would believe her. She said that when she found out that the Defendant was trying to take her niece and nephew away. 3-ER-539-40. She denied that Ms. Reed had told her to make up a story about Jeremiah Bobb. 3-ER-541-42.

Jennifer Terami- FBI

After identifying the Defendant, she indicated that their first interview took place on July 6th, 2020, at his residence. Mr. Bobb was not in custody, and his Father, and another Detective were present. She said the interview was recorded. 3-ER-544-45. Government Exhibit 17, (4-ER-823-24), was identified and admitted as a clip of the interview. When speaking to the Defendant, Agent Terami referred to the house located at 219 A Street in White Swan. Mr. Bobb agreed to talk to police again at a later time. 3-ER-547.

Agent Terami was present in October, 2019, when Minor 2, known by the initials' (TT) was interviewed by police and a forensic interviewer. Ms. Cree-Reed and Minor 1 (LT) were also present at the interview. During that interview Minor 2 (TT) made disclosures against individuals other than Mr. Bobb. Ms. Cree-Reed's response was to start crying. After the interview, (TT) was allowed to return home with Ms. Cree-Reed but was removed from the home shortly thereafter. Jessica Ramos, a tribal police officer/interviewer was present, as well. 3-ER-553-54.

Leah Gunderson-FBI

Agent Gunderson conducted an interview of Mr. Bobb on July 17, 2020, and indicated she read him his rights, that he was there voluntarily, and could leave at any time. Mr. Bobb was given a written advice form, which he signed. Government Exhibit 15, (4-ER-819-22). The interview was recorded, and Government Exhibit 18 was identified as a conversation between the two of them. It was admitted without objection and was played for the jury.

She said she asked Mr. Bobb how many times he had sexual contact with the minor victim, ("name began with "L") and the response was less than ten times. However, she said Mr. Bobb denied it when the interview began but his version

later changed. She indicated that the Defendant said "she came on to him". 3-ER-559-60. Mr. Bobb denied ever having sex in the kitchen.

TT

TT was called to the witness stand, outside the presence of the jury and said she was 10 years old and would be attending Fourth grade that Fall. She said she knew how to tell the difference between the truth and a lie. TT explained by examples and agreed that it is not right to tell a lie, because it's bad, and it can be hurtful. Also, that it could maybe get someone in trouble or hurt somebody. She promised to tell the truth and not lie either. Counsel agreed that the jury could be brought in. 4-ER-621-23, App. D.

The Judge asked TT to tell them her first and last name and spell them. (redacted). She said she was going to be in the Fourth grade in the Fall. The Court went through similar questioning and then turned the witness over to the Governnment. On Direct examination, TT said she lived with her mom and dad and had two brothers and two sisters. She lived in Kennewick. She said she used to live with her auntie "LT", along with other people at the same time. TT said she used to live with her grandma, then her other grandma, and then had Auntie Gali, Danielle, Uncle Chimino, Jeremiah and Chay, her biological mother. She said

Jeremiah lived with her and Chay and then got another little brother but could not remember when he was born. She claimed that when she was under the dinner table she saw something happen with Jeremiah and Auntie LT, and said "I saw that Jeremiah was not doing something good, and it hurt Auntie LT." 4-ER-625-27, App. D.

She said it was in the kitchen and that it hurt her Auntie LT by putting his private parts in hers, that can sometimes hurt and said it was hard to explain. When asked: "Okay, you say it can hurt sometimes. Did something like that happen to you." In response, TT said that Jeremiah, Uncle Alex, and Uncle Chimino did it to her. She said it would happen in Uncle Alex's room but did not know for sure where it happened with Uncle Chimino. 4-ER-627-28, App. D.

When asked about Jeremiah she said "I can't remember that either. It was along time ago". However, she said it happened while she was living with Jeremiah, Auntie Gali, Auntie LT, Jeremiah and Chay. She claimed that Jeremiah's skin or some part of Jeremiah touched her private part and that her pants were off. She was asked: "And is that what you're talking about as your private part, the part that's covered up with your pants". She answered "yes. She said it was also covered with her underwear and that it was in both the front and the back. 4-ER-628-29, App. D. The witness was passed by the Government.

The Court held a recess and had a closed hearing. After the Judge reminded the witness that she agreed to tell the truth and not tell a lie defense counsel asked her if she remembered being interviewed when she lived with her grandma and Aunt LT, specifically Lynette Cree. When asked whether she remembered telling the interviewer that Jeremiah had not done anything to her she said she couldn't remember. Counsel asked the witness: "okay, do you remember when you spoke with the woman whose job it was to talk to kids, do you remember describing what happened in the kitchen as though it was a dream?".

The Judge interrupted and held a side-bar, where the parties discussed how the questions should be phrased. At the end of the side-bar, the Court admonished Counsel as to how to ask questions. Defense counsel asked the witness to review her statement and the child said that it did not refresh her memory. 4-ER-631-38, App. D. Defense counsel took no further steps to introduce her prior statements denying that the Defendant had sexually assault her.

SR

SR testified that she was eighteen years old and resided in Newport, Washington, for the last seven years, or so. She said at one point Jeremiah Bobb resided with her family, including her grandpa's daughter, her boyfriend, and

Jeremiah's girlfriend at the time, her sister Chaylene. 4-ER-644. She said she was twelve or thirteen at the time, and indicated she was Jeremiah's cousin, on her mama's side. She then testified that the Defendant …"got aggressive with me, and he touched me." 4-ER-645. She claimed that he touched her on the backside under her pants. She denied that it was consensual. She said she was eventually successful at fighting her way out from under him. She denied that Mr. Bobb said anything to her about sexual things or ask her for anything. She claimed she did not report it at the time due to being scared that no one would believe her. She could not remember how many times she reported it. 4-ER-646. Defense Counsel declined to do any cross-examination.

3- Defense Case

Prior to starting the Defense case, defense counsel Dalan indicated that they planned on calling FBI Special Agent Williamson and indicated that she planned on proposing five questions to her. The Court asked counsel to start with the statements. The first area of inquiry involved establishing the date of the first interview of Minor child 2 (TT); who brought her to the interview, and whether Minor 2 indicated that she knew why they were there. 4-ER-653, App. E. After hearing argument on this issue, the Court reserved ruling. 4-ER-657, App. E. The Court heard further argument with respect to the issue of whether the defense

would be allowed to introduce the critical impeachment evidence wherein TT specifically denied that she was ever sexually assaulted by Jeremiah Bobb.

Ms. Dalan then indicated that they wanted to ask TT if at that interview she [TT] denied that Mr. Bobb had done anything to her. The Court pointed out that it was hearsay and not a prior inconsistent statement, like under 613(b) because she was not asked that question, on direct, (but the Court may have meant cross-examination).

The Court inquired as to what rule of evidence the defense was relying on to get the statement into evidence. The Court pointed out that there were two things that could have been done. First, counsel could have asked the questions on direct, and impeached her with the transcript or she could have asked TT the questions, gave her an opportunity to explain, and then bring in the inconsistent statement under 613(b) if she's asked the direct questions. 4-ER-657-58, App. E.

Judge Dimke indicated that the problem was that the cross-examination did not establish what would need to be done to make the statements admissible at that time. 4-ER-658-59, App. E.

The Court indicated that the testimony was not set up in a way that would establish admissibility under 613(b) because the right questions weren't posed to

the Minor to make it now admissible. 4-ER-659-60, App. E. Ms. Dalan also indicated that an additional area of inquiry would be the child's disclosure against others, which the Court questioned, as well as the witness referring to her memory regarding the Defendant as a dream, as well as the date of a second interview. Mr. Murphy, argued that the statements were hearsay, or already testified to. 4-ER-682-83, App. E.

After a break, defense counsel contended that the witness was unavailable due to her lack of memory and conceded that it was not a hearing or deposition, but a forensic child interview. 4-ER-666-67, App. E.

She argued that under ER 807 (Fed. R. Evid. 807), the residual exception, that the statements were admissible. She pointed out that they had been very clear about the questions they wanted to elicit from Minor 2 (TT), and were unable to do so due to complete lack of memory and inability to refresh her recollections. She also argued that keeping out these statements would violate the Defendant's right to confrontation. Ms. Dalan further responded that Mr. Bobb has a constitutional right to present a defense. 4-ER-666-71, App. E. She did not argue that lack of memory established a sufficient foundation, in and of itself.

Judge Dimke then pointed out that the big issue was the child's initial denials about Mr. Bobb, and further that those were never put in front of her trying to refresh her recollection. She indicated that allowing the evidence in now, without an opportunity to respond, was a problem. Mr. Murphy pointed out that there were prior consistent statements in the second interview of TT that he would use. 4-ER-671-72, App. E.

The Court pondered the issue that if she allowed it, then the Government gets to reopen and potentially go into the second interview of TT which would require the Court to call the witness back, but she indicated that she would not allow the transcript in with no ability to respond under the current posture of the case. 4-ER-673, App. E.

The Judge pointed out that due to the failure to deal with these issues with the child witness they were now having to deal with extrinsic evidence and hearsay issues. The Court inquired as to how the defense planned to proceed and Ms. Dalan persisted in her position that the Agent could answer her pertinent questions. 4-ER-673-74. App. E.

The Court indicated to Mr. Murphy that the line of inquiry was appropriate when the witness was on the stand but that her raising the issue with defense

counsel at the time did not result in proper questions by the defense. Mr. Murphy indicated that the Government should then be able to elicit all of the child's prior consistent statements, due to the child being impeached in absentia under the residual exception to the hearsay rules. He contended that it was "open season" for the United States to place affirmative statements in. He resisted the Court's suggestion to call the witness back. 4-ER-675-77, App. E.

The Court confronted Ms. Dalan with her failure to deal with these issues when the child was testifying but Ms. Dalan persisted. After taking a recess, Judge Dimke fashioned a remedy by ruling that she would allow the defense to elicit some of the statements, under Rule 807, but would also allow the Government to cross-examine about any statements they wanted to elicit that was a prior consistent statement during both the first and second interviews of TT. 4-ER-678-80. App. E.

After further discussion of proposed testimony, defense counsel conferred, and understanding the Court's ruling, declined to call Agent Williamson. 4-ER-690, App. E. Defense counsel made no effort to recall TT as a witness.

The Defendant was questioned by the Court and verified that he would not testify. 4-ER-773-75. The defense rested. 4-ER-787-88, App. E.

After closing arguments and jury instructions, the jury retired to consider the case and returned a verdict of guilty as to both Counts. ECF 190-*Verdict.* The Court entered a written *Order Denying Defendant's Motion to Contact Juror and For New Trial and Denying Defendant's Motion for Acquittal,* filed on October 10th, 2023. 1-ER-10-11.

C- REASONS FOR GRANTING THE PETITION

The following facts and law are clearly established:

- The minor child, Minor 2 (TT)(hereinafter "Minor 2"), was interviewed early in the investigation, while being recorded. The specific portion of the interview with respect to the Petitioner provided, in pertinent part:

  "Erin: Jeremiah said take off your chonies, take off your jeans

  TT: Take off your…let's start over. [unintellible/mumbling]…He looked at the tushie. Let's not say that. Makes me freak out. For he hears that again then he might do it to me. He might [UI} said what I said.

  Erin: Has he ever done-has Jeremiah ever done something like that to you before?

  TT: Not really. (shakes head).

  Erin: When you say not really.

  TT: That means no." 5-ER-1078, App. H.

  The interview continues:

"Erin: No. Has anybody ever done something like that to you before?

TT: Uncle Alex and Uncle Chimino they just want to be nasty with me. Cause when I tell them no, no- [unintellible/mumbling]

Erin: What do they do when they're being nasty?

TT: They take…[unintelligible/whispering]…they lick you with their privates in the butt. So they do that stuff to me. Only those two…"

5-ER-1079, App. H.

- At trial, the following questions and answers took place. On cross-examination at trial, after initial questioning of Minor 2, the following took place with respect to the interview where Minor 2 denied that the Defendant had ever sexually assaulted her:

"Q: Oh, I'm sorry. Before you talked to the woman who speaks with kids, did anyone tell you what you were going to talk with her about?

A: Um, I can't remember.

Q: Okay, And do you remember what you did talk to her about?

A: No, I can't.

Q: Okay. Do you remember that you—do you remember telling the woman who talked to kids that Jeremiah had not done anything to you?

MR. MURPHY: Objection, Your Honor.

THE COURT: On what basis?

MR. MURPHY: Foundation.

THE COURT: Overruled.

Q: (by Ms. Dalan) "Overruled" means you can answer the questions. Do you want me to ask it again?

A: Um…I don't know.

THE COURT: Ms. Dalan, pose the question again.

Q: Okay. I'm gonna try and ask it exactly the same way, and it's now probably a litter bit gone from my head.

So when you were talking – when you were talking to the woman whose job it is to talk to kids, did you – do you remember telling her that Jeremiah did not do anything to you?

A: Um. .. No. I can't remember…."

4-ER-632-33, App. D.

Despite coaching by Judge Dimke, defense Counsel made no effort to introduce the prior exculpatory statement at that time, despite having a recorded statement available. Additionally, there was a failure to adequately cross-examine the witness. The law is clear. The failure of a witness's memory and claim to not remember making a statement is a sufficient foundation for introduction of the prior statement. *United States v. Billie,* 994 F.2d 1562, 1566 (11th Cir. 1993)(citing *Williamson v. United States,* 3130 F.2d 192, 199 (9th Cir. 1962), *cert denied,* 510

U.S. 1099 (1994). *United States v. Monroe,* 943 F.2d 1007, 1012 (9th Cir. 1991(internal quotations omitted)(emphasis added), *cert denied,* 503 U.S. 971 (1992). See also, *United States v. Collicott,* 92 F.3d 973 (9th Cir. 1976).

- The failure to introduce the exculpatory statement/evidence was not a "strategic decision". It was simply an egregious failure to use the tools of the trade, i.e. Rules of Evidence. Even a non-lawyer would have understood the evidence was crucial for the defense. An attorney who is not aware of how the evidence rules applied to this situation cannot be said to have made a "strategic decision".
- Furthermore, Judge Dimke misapplied the evidence rules when she held that the Defendant could not impeach the child with her prior exculpatory statements. Lack of memory on her part was legally sufficient though.

In the ruling herein, the Court below concluded that the decision on whether to call a witness in the defense case involved a "strategic decision". App. A. However, this only became an issue because of a legal error by the Court and defense counsel. The District Court Judge erroneously concluded that there was an inadequate foundation laid by Defense counsel and that any prior statement by the child could not be used. After much discussion and argument, the Judge fashioned a remedy to allow the evidence, but only on penalty of introduction of prior

statements by the child, without requiring her presence at trial! The so-called strategic decision of whether to call the witness, or the child, was created by the Court's errant ruling on the evidentiary issue, as well as the ineffective assistance when the child was initially on the stand. The Panel went on to indicate that the prejudice caused by the failure to impeach the child would not be considered at all due to this alleged strategic decision.

This Court should take this case and hold that the evidence was so critical to the defense that the failure to introduce it could never be excused as a strategic decision. This Court should reconsider this finding and conclude that an error was made and that failure to place into evidence the fact the child previously stated that the Petitioner did not sexually abuse her was not in any way within "the wide range of professionally competent assistance" in violation of the right to effective assistance of counsel. The ruling by the Court below fails to correctly apply the holding in *Strickland v. Washington*, *Supra*, and fails to deal with the Trial Court's legal errors. This Court should take this case in order to correct this ruling which fails to follow Ninth Circuit and United States Supreme Court precedent, including *Strickland*, and the cases cited herein with respect to the lack of memory being a sufficient foundation for introduction of the prior statement of innocence on the part of the Petitioner. The decisions made by defense counsel were based on

ignorance, rather than informed professional deliberations. This Court should take this case and allow a fair trial to take place on Count 2. This case is the perfect vehicle for the Court to establish that it meant what it said with respect in ineffective assistance of counsel, especially when error by the Court in rulings on evidence combined with ineffective assistance to deny the Petitioner a fair trial. Crucial evidence that would have created a reasonable doubt never reached the jury due to these errors and incompetence.

The ruling below clearly departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure that this this Court must exercise this Court's supervisory power.

D. ARGUMENT

In Defendant's *Motion for Admission of Evidence Relating to FRE 412….* 5-ER-1103-14, App. F, counsel pointed out that on October 15th [2019] Minor 2 (TT) was interviewed by a trained child forensic interviewer, and the interview was recorded. Counsel pointed out that in the interview, Minor 2, disclosed sexual abuse by Cree's Son and long-time boyfriend, two men she was residing with at the time, **but denied that Mr. Bobb did anything to her**. (Emphasis supplied). A copy of the transcript of this interview is set forth at 5-ER-1069-98. App. G. There

is no cognizant reason to fail to bring this evidence before the jury. It was a complete denial that the alleged crime had been committed. It was the initial police interview. How can it ever be left out and excused as a strategic decision? There is no way that this should ever be treated as strategic to leave it out.

This Court is urged to grant the subject Petition to establish that it's rulings must be followed. The ruling below ignores this Court's prior rulings as to when ineffective assistance is reversible.

At the trial, Judge Dimke basically reiterates her position as to the admissibility of Minor 2's initial interview statements regarding the other two individuals assaulting her, along with her denial that Mr. Bobb did anything to her. 5-ER-917.

During cross-examination, the Judge held a side-bar, where the parties discussed how the questions should be phrased. The Court admonished Counsel as to how to ask questions. 4-ER-630-32. App. D. There was no attempt made to play the recorded statement to confront the child's lack of memory. This was clearly an error made by defense counsel at that time and was not a strategy-based decision, rather it was simply ineffective assistance of counsel.

Prior to starting the Defense case, Ms. Dalan indicated that they planned on calling FBI Special Agent Williamson and indicated that she planned on proposing five questions to her. Ms. Dalan indicated that they wanted to ask at that interview if she [Minor 2] denied that Mr. Bobb had done anything to her. The Court pointed out that it was hearsay and not a prior inconsistent statement, like under 613(b) because she was not asked that question, on direct, (but the Court may have meant cross-examination).

As set forth, the foregoing testimony by Minor 2 on cross did, in fact, constitute a foundation for introduction of the prior inconsistent statements, but the Court and defense counsel did not seem to understand this.

The Court inquired as to what rule of evidence the defense was relying on to get the statement into evidence. The Court pointed out that there were two things that could have been done. First, Counsel could have asked the questions on direct and impeached her with the transcript or she could have asked Minor 2 the questions, gave her an opportunity to explain, and then bring in the inconsistent statement under 613(b) if she's asked the direct questions. It appears that Judge Dimke did not understand that the child's lack of memory of making the inconsistent statement is foundational. 4-ER-657-60, App. D. Ms. Dalan also indicated that an additional area of inquiry would be the child's disclosure against

others, which the Court questioned, as well as the witness referring to her memory regarding the Defendant as a dream, as well as the date of a second interview. 4-ER-682-83, App. D.

After a break, defense counsel contended that the witness was unavailable due to her lack of memory and conceded that under ER 804 it was not a hearing or deposition, but a forensic child interview. 4-ER-666-67, App. D.

She argued that under ER 807 (Fed. R. Evid. 807), the residual exception, that the statements were admissible. She pointed out that they had been very clear about the questions they wanted to elicit from Minor 2, and were unable to do so due to complete lack of memory and inability to refresh her recollections. She also argued that keeping out these statements would violate the Defendant's right to confrontation. Ms. Dalan further responded that Mr. Bobb has a constitutional right to present a defense. 4-ER-666-71, App. D.

Judge Dimke indicated that allowing the evidence in now, without an opportunity to respond, was a problem. Mr. Murphy pointed out that there were prior consistent statements in the second interview of Minor 2 that he would use. 4-ER-671-72, App. D.

As previously stated, after taking a recess, Judge Dimke fashioned a remedy by ruling that she would allow the defense to elicit some of the statements, under Rule 807, but would also allow the Government to cross-examine about any statements they wanted to elicit that was a prior consistent statement during both the first and second interviews of Minor 2. 4-ER-679-80, App. D.

After further discussion of proposed testimony, defense counsel conferred and declined to call Agent Williamson. Defense counsel made no effort to recall Minor 2 as a witness. 4-ER-690, App. D.

A fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. *Strickland,* 466 U.S. at 685. Among the basic duties of an attorney is "to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." *Strickland*, 466 U.S. at 688.

The law governing ineffective assistance claims, announced in *Strickland*, requires that [the defendant] must demonstrate that (1) counsel's performance fell "outside the wide range of professionally competent assistance" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland,* 466 U.S. at 694. "A reasonable

probability is a probability sufficient to undermine confidence in the outcome." *Id.* This test, however, does not merely question whether the outcome would have been different, but also looks at whether the result was fundamentally unfair or unreliable. *Lockhart v. Fretwell,* 506 U.S. 364 (1993).

In assessing whether there is a reasonable probability that the result of the proceeding would have been different, we "must consider the evidence in its totality." *Wright v. Gramley,* 125 F.3d 1038, 1042 (7th Cir.1997). "Whether such a reasonable probability exists depends, of course, on the nature and strength of the government's case against" the defendant, and "the nature of his attorney's failures." *United States v. Morrison,* 946 F.2d 484, 500 (7th Cir.1991); *see also Wright,* 125 F.3d at 1042 (stating that a verdict supported weakly by the record "is more likely to have been affected by errors than one with overwhelming record support" (quotation marks and citations omitted)).

It is only where the suggested strategy "contradicts the available evidence of counsel's actions" that the strong presumption of competence is rebutted. *Harrington v. Richter*, 562, U.S. 86, 110 (2011). "[W]hen a petitioner shows that counsel's actions actually resulted from inattention or neglect, rather than reasoned judgment, the petitioner has rebutted the presumption of strategy, even if the government offers a possible strategic reason that could have, but did not, prompt

counsel's course of action." *Marcrum v. Luebbers*, 509 F.3d 489, 502-03 (8th Cir. 2007).

Although tactical and strategic decisions are "virtually unchallengeable," (*Strickland*, at 690), that does not mean they are automatically immune

from Sixth Amendment challenge. Courts have recognized that "[i]n exceptional situations … such strategic judgments may also constitute deficient performance." Wayne R. LaFave, et al., 3 *Crim. Proc Sec. 11(c)*(3rd ed. 2011). There comes a point "where alternatives not chosen offered a potential for success [so] substantially greater than the tactics actually utilized" as to lack any grounding in "common sense." *Kellogg v. Scurr*, 741 F.2d 1099, 1102 (8th Cir. 1984). It is "possible on rare occasions to conclude that counsel's fully-informed strategic choices were unreasonable if the choice was so patently unreasonable that no competent attorney would have made it." *Bullock v. Carver*, 297 F.3d 1036, 1047 (10th Cir. 2002). The two prongs for a claim of ineffective assistance of counsel serve separate purposes, with the deficiency analysis looking to counsel's adherence to reasonable professional standards, while the prejudice analysis looks to the weight of the available evidence and its effect on the case, and thus, while the deficiency analysis may shed light on the prejudice analysis, it is improper to simply conflate the two. *U.S. Const. Amend. 6. Andrews v. Davis*, 944 F.3d 1092

(9th Cir. 2019). Failure to understand and apply the rules of evidence, is no less harmful than being inattentive, or neglectful. The harm is the same.

A careful review of Minor 2's trial testimony shows that there was a paucity of evidence to prove that the crime was committed. There was no physical evidence of any kind. There was evidence that the child had accused at least two others, but specifically not the Defendant. The weakness of the Government's case should have been taken into consideration by the Court and the Ninth Circuit's ruling simply ignores this.

Actual prejudice resulting from counsel's ineffective performance occurs where there is a reasonable probability, or a probability sufficient to undermine confidence in the outcome, that, but for counsel's unprofessional errors, the results of the proceeding would have been different. *U.S.C.A. Const. Amend. 6. Payton v. Woodford*, 258 F.3d 905 (9th Cir. 2001). "In making this determination, a court ... must consider the totality of the evidence before the judge or jury." *Strickland,* 466 U.S. at 695, 104 S.Ct. at 2069. As "both the performance and prejudice components of the ineffectiveness inquiry are mixed questions of law and fact," *id.* at 698. Petitioner did not receive effective assistance of counsel in his case and received a 40-year sentence. The unfair trial herein also violated Due Process, under the Fifth Amendment. U.S. Const. Amend. V.

It is the Defendant's contention that his trial attorney's conduct of the examination of witness Minor 2 was almost comical with how inept it was, with devastating consequences for Mr. Bobb. There are few instances of such an egregious case of ineffective assistance of counsel. The Court below simply failes to follow the law set forth by this Court.

Critical evidence that showed that the Minor child initially denied that the Defendant had sexually assaulted her never reached the jury due to a failure on counsel's part to understand and follow the applicable requirements of the rules of evidence, and was compounded by error on the part of the trial Judge. This was so even though the trial court attempted to aid counsel in how to properly examine the witness. It was especially egregious since defense counsel clearly understood that the evidence was crucial to the theory of the defense, among other statements of the child, as well. Defense counsel seemed to be flustered by the child's claimed memory loss and inability to have her memory refreshed. However, a lack of memory of a statement allegedly made does not preclude admission of the prior inconsistent statement if a proper foundation is laid. The making of the previous inconsistent statement is as adequate a foundation for impeachment as a flat denial. *United States v. Billie, Supra,* at 1566 (11th Cir. 1993)(citing *Williamson v. United States, Supra,* at 199 (9th Cir. 1962), *cert denied,* 510 U.S. 1099 (1994). "[T]he

making of the previous [inconsistent] statements may be drawn out on cross-examination of the witness himself, or if on cross-examination the witness has denied making the statement or ***has failed to remember*** the making of the statement may be proved by another witness. *United States v. Monroe, Supra,* at 1012 (9th Cir. 1991(internal quotations omitted)(emphasis added), *cert denied,* 503 U.S. 971 (1992). See also, *United States v. Collicott, Supra.* (9th Cir. 1976).

The Government contended that the decision to not call Agent Williamson to introduce the critical prior inconsistent statement, was a strategic decision, hence not ineffective assistance of counsel. The Court below appears to have adopted this reasoning. However, the problem with this argument and the decision is that the need to make this decision came about because of the gross incompetence of counsel and the lack of recognition by counsel and the Court that the lack of memory by Minor 2 was sufficient to allow the impeachment by inconsistent statement under ER 613.

It can be ineffective assistance of counsel to fail to impeach a witness with their prior denial that the Defendant committed the subject crime. See, *State v. Gasteazoro-Paniagua,* 173 Wash.App. 751, 294 P.3d 857 (2013). In the case of *State v. Horton*, 116 Wash.App. 909, 916-17. 68 P.3d 1145 (2003), the Court held that the Defendant received ineffective assistance of counsel when his trial counsel

failed to follow the procedural requirements of ER 613(b) and impeach a state's witness with her prior inconsistent statements.

In *United States v. Orr*, 636 F.3d 944 (8th Cir. 2011), it is stated that failure to impeach a witness constitutes ineffective assistance when there is a reasonable probability that, absent counsel's failure, the jury would have had a reasonable doubt as to guilt.

During the defense closing argument by Ms. Dalan, no mention was able to be made that Minor 2's first interview with the FBI resulted in a firm denial by her that the Defendant had done anything sexual to her but did accuse two other males.

The fact that the child claimed she could not remember saying it was sufficient to allow impeachment. It appears that the trial Court erred when it held that it was inadmissible due to a lack of prior foundational questions. Also, defense counsel compounded the error and were ineffective due to a failure to recognize and argue that the denial of memory was sufficient. The Court then further compounded the error when Judge Dimke indicated that she conditionally would only allow the introduction of the prior inconsistent statement if the Government was allowed to introduce prior hearsay statements of the child in

rebuttal, without the presence of Minor 2. There is no good reason why the Defense did not ask to recall Minor 2 to the stand.

The Petitioner contends that the critical statements by the child at the initial interview by law enforcement where she specifically and vociferously denied that the Defendant did anything to her was of such importance to the ultimate decision to be made by the jury that any additional evidence that may have been admitted does not overcome the importance of the denial. It should have been presented to the jury to decide the worth of the evidence, even if the Court may have allowed prior consistent statements.

The Government claimed that the failure of the defense was not prejudicial. How can this be when the trial testimony regarding the later allegations by Minor 2 was so limited and subject to alternate explanations? The child indicated that the Defendant's skin touched her. This could have been his hand wiping her bottom, or front due to an accident she may have had when he had sole custody of her.

The failure of defense counsel to follow the applicable rules of evidence led to critical evidence not getting to the jury. In light of the sparse, inconclusive nature of Minor 2's testimony, this evidence was crucial to impeach her credibility, and the prejudice is clear and manifest. a new trial as to Count 2 is the only fair

result that would comport with this Court's past rulings. He received a sentence of 40 years!

There was clearly "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, at 694.. The failure of defense counsel and the Court to allow the impeachment, is unforgivable error in this case. This Court should grant the Writ of Certiorari to apply *Strickland*, and find that defense counsel's failure to introduce this crucial evidence was not "within the wide range of professionally competent assistance." *Strickland,* at 690.

E. CONCLUSION

As set forth in the forgoing argument, this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted this 15th day of September, 2025.

DAN B. JOHNSON- Attorney for Petitioner
1312 North Monroe Street, Suite 248
Spokane, WA 99201
E-Mail: danbjohsonlaw@gmail.com
Telephone: (509) 483-5311

Appendix

Appendix A: Court of Appeals Opinion (April 1st, 2025)

Appendix B: Court of Appeals order denying rehearing and/or Petition for rehearing en banc (June 24th, 2025)

Appendix C: District Court Sentencing Order- Judgment in a Criminal Case

Appendix D: Transcript of Trial Testimony of TT (Minor 2)

Appendix E: Partial Transcript of Trial Proceedings- Day 3

Appendix F: United States Code and United States Constitutional Provisions

Appendix Supplement-
Sealed Documents, Filed Under Seal Herein

(Separately bound):

Appendix G: Motion for Admission of Evidence Relating to FRE 412…

Appendix H: Defendant's Supplemental List of FRE 412 Evidence

Appendix I: Partial Transcript of Pre-Trial Proceedings- conference, July 21st, 2023

Appendix J: Partial Transcript of Additional Pre-Trial Hearing/Conference, July 25th, 2023

Appendix K: Transcript of Jury Trial, Day 2, Vol. II-A, July 26th, 2023 (partial)

Appendix L; Sealed Order Regarding Defendant's Motion to Admit Fed.R. Evid. 412 Evidence as to minor 2

Appendix M: Partial Transcript of Jury Trial, Day 3, Sealed, July 27th, 2023 ER 871-877

Appendix N: Partial Transcript of Jury Trial, Day 3, Sealed, July 27th, 2023, ER 888-892

Appendix O: Partial Transcript of Jury Trial, Day 3, Sealed, July 27th, 2023 ER 893-900