

**IN THE COURT OF APPEALS OF IOWA**

No. 2-462 / 11-1229  
Filed July 11, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**KYLE JOSEPH LARSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

Kyle Larson appeals from judgment and sentence imposed upon his conviction of sexual abuse in the second degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Linda Fangman, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

**POTTERFIELD, J.**

Kyle Larson was convicted of sexual abuse in the second degree following a 2011 jury trial at which his step-sister testified he anally raped her.

Larson appeals, contending trial counsel was ineffective in failing to object to testimony by a forensic interviewer that the child protection center was opened in the area because “[t]here’s a great need for a child protection center in Black Hawk County especially but also just in Northeast Iowa. The rates of child abuse are pretty high so some legislators in our area lobbied . . . our opening a center in Black Hawk County.” The forensic interviewer, Katie Strub, also testified that it was not uncommon for a child to delay disclosure of sexual abuse. Larson contends trial counsel was ineffective in failing to request a limiting instruction as to Strub’s testimony and in failing to request a jury instruction regarding expert witness testimony.

To succeed on a claim of ineffective assistance of counsel, defendant must show by a preponderance of the evidence: (1) counsel failed to perform an essential duty, and (2) prejudice resulted. See *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011). The testimony as to why the child protection center was opened was arguably irrelevant, but innocuous. See *State v. Crawley*, 633 N.W.2d 802, 806 (Iowa 2001) (noting background information is generally admissible although it may not relate to a consequential fact). Counsel may have chosen, as a matter of strategy, not to call attention to the matter. As to the expert testimony regarding delayed disclosure, Larson acknowledges that this type of testimony is generally admissible. However, he argues that counsel was ineffective for failing to insist on a jury instruction regarding the use of the

testimony by the jury. Because “[i]mprovident trial strategy, miscalculated tactics, and mistakes in judgment do not necessarily amount to ineffective assistance of counsel,” *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992), we preserve Larson’s ineffectiveness claims for possible postconviction proceedings where a record can be made sufficient to discern the difference between improvident trial strategy and ineffective assistance. See *State v. Ondayog*, 722 N.W.2d 778, 786 (Iowa 2006).

Larson also contends there is insufficient evidence to support his conviction, but we disagree. Larson’s step-sister testified that Larson anally penetrated her with his penis after school one day when they were alone in the house in the fall of 2007. She was then in the sixth grade and eleven years old. She stated she went into his room to ask a question, and the next thing she remembered she was on her hands and knees, with Larson behind her. She described his hand placement on her waist, the position of their bodies, and the clothes they were wearing. She said Larson ran away about a month later, never to return. She did not tell anyone at the time because she “just didn’t need to go through it. I mean I don’t want my stepdad mad at me and I didn’t want my mom mad at me.” Viewing the evidence in the light most favorable to the State, see *State v. Knox*, 536 N.W.2d 735, 742 (Iowa 1995), the girl’s testimony was sufficient to convict. See *id.*; Iowa R. Crim. P. 2.21(3) (“Corroboration of the testimony of victims shall not be required.”). We affirm his conviction and preserve his ineffectiveness claims for possible postconviction proceedings.

**AFFIRMED.**