

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MEAGAN ANN DEGNER,

Defendant-Appellant.

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UNPUBLISHED

June 14, 2016

No. 327025

Eaton Circuit Court

LC No. 14-020371-FH

Before: JANSEN, P.J., and O'CONNELL and RIORDAN, JJ.

PER CURIAM.

Defendant, Meagan Ann Degner, appeals as of right her convictions, following a jury trial, of two counts of second-degree child abuse. MCL 750.136b(3). The trial court sentenced Degner to serve 5 to 10 years' imprisonment. We affirm.

**I. FACTUAL BACKGROUND**

Degner's victims were her 16-year-old stepdaughter and her 14-year-old stepson. At trial, the stepdaughter testified that Degner tied her to her bed at night with straps and rope, where she had to remain until Degner released her at around noon each day. The stepdaughter testified that she and the stepson were tied into bed at night because she had tried to run away to inform Children's Protective Services (CPS) that she was being starved and abused. The stepdaughter testified that she was only fed one meal a day and that Degner frequently beat her. The stepson also testified that Degner tied him into bed, fed him irregularly, and beat him.

The stepdaughter eventually escaped the home and contacted an uncle, who put her in touch with CPS. CPS investigator Nikki Prosen testified that she conducted a forensic interview of the stepdaughter, who disclosed that she had run away from home because she was being tied to her bed. According to Prosen, the stepdaughter stated that her father mainly tied her to the bed, though she also implicated Degner. Prosen noted that the stepdaughter had a red and swollen finger, marks and bruises, and abrasions on her wrists. Prosen sought medical attention for the stepdaughter.

Dr. Jane Sbalchiero, an emergency medical physician, testified that she examined the stepdaughter on the day the stepdaughter escaped. According to Dr. Sbalchiero, the stepdaughter was thin. The stepdaughter stated she was hungry and had only eaten one meal that day. Dr. Sbalchiero discovered that the stepdaughter had a broken finger, abraded wrists, and bruised

thighs. According to Dr. Sbalchiero, the stepdaughter stated her finger was injured when she attempted to use her hand to protect herself while being spanked with a leather belt. Dr. Sbalchiero testified that the stepdaughter did not specify who tied her into bed at night and that she did not ask for the “whole story” because her concern was to “[g]et the diagnosis right . . . and then the proper disposition,” which involved determining whether returning the stepdaughter home would be returning her to safe place. Dr. Sbalchiero recommended that CPS not return the stepdaughter home.

Dr. Stephen Guertin, a pediatrician specializing in child abuse, testified that he interviewed the minors two days after the stepdaughter escaped. According to Dr. Guertin, the purpose of his interview was

to ascertain whether or not a medical diagnosis of abuse or neglect applies. It’s also to figure out what you have to do to help [the stepdaughter]. So, in her case, it would be, look, she’s not menstruating, she needs to see an endocrinologist. She’s way low in weight, she needs to see an endocrinologist. She’s been cutting herself, she needs to see a psychiatrist or a psychologist. She’s been beaten and tied into a bed, she needs to be protected. It’s for those reasons.

According to Dr. Guertin, the stepson stated that he was there because his father had tied him and the stepdaughter into bed at night, his father slapped him, whipped him with a belt, and only fed him once a day. The stepson’s height and weight were normal, but he had chafe marks on his wrists. The stepdaughter stated that “they” tied her into bed and beat her with a belt, but did not indicate whether Degner or her father did so. Dr. Guertin opined that the stepdaughter’s weight, which was 93 pounds, was “extremely low” for her height. He attempted to determine whether the stepdaughter was anorexic but determined that she did not “purposefully disregard food” and was instead hungry and malnourished.

According to Eaton County Police Officer Shane Bartlett, he interviewed the stepson at the hospital. The stepson was fidgety and thin for his age, had marks on his wrists, was very hungry, and refused to answer questions. CPS investigator Elvira Hernandez testified that the stepson refused to give clear answers. Officer Bartlett testified that when he investigated Degner’s home, he discovered straps attached to the stepdaughter’s headboard, Velcro restraints in the home, and discovered that a motion sensor had been installed over the stepdaughter’s bed.

The children’s father also testified against Degner. The jury found Degner guilty as described above.

## II. SUPPORT DOG

Degner contends that the trial court’s decision to permit a support dog to accompany the minors while they testified was improper, and that defense counsel was ineffective for failing to challenge use of the dog. We disagree.

This Court reviews the effect of an unpreserved constitutional challenge for plain error affecting the defendant’s substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). In the absence of an evidentiary hearing, this Court reviews ineffective assistance of

counsel claims for errors apparent from the record. *People v Horn*, 279 Mich App 31, 38; 755 NW2d 212 (2008).

In a recent case, the defendant contended that use of a support dog violated due process principles and that counsel was ineffective for failing to challenge it. *People v Johnson*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2016); slip op at 2-3. This Court determined that defense counsel waived any challenge to the use of a support dog by expressly approving of the trial court's actions. *Id.* We also concluded that the trial court could use its inherent authority to permit a victim to be accompanied by a support animal while testifying. *Id.*; slip op at 4. Use of a support animal did not violate due process because it was not inherently prejudicial. *Id.*; slip op at 6. Finally, the trial court issued sufficient instruction to ensure that the jury did not impermissibly rely on the support dog's presence when reaching a verdict. *Id.*; slip op at 12.

This case is analogous to *Johnson*. In this case, at a pretrial conference, defense counsel stipulated that the support dog could accompany the minor witnesses. Accordingly, Degner's challenge to the use of the dog is waived. See *id.*; slip op at 2-3. Even had defense counsel not so stipulated, the trial court was within its discretion to permit the victims to testify with a support dog. There is no indication from the record that the support dog was disruptive, and the trial court in this case issued a limiting instruction regarding how the jury was to consider the support dog. We conclude that counsel was not ineffective for failing to challenge the use of the dog.

### III. HERNANDEZ'S STATEMENTS

Degner contends that the defense counsel was ineffective for eliciting testimony from CPS worker Hernandez that the stepson had minimized the abuse he suffered. We disagree.

A criminal defendant has the fundamental right to effective assistance of counsel. US Const, Am VI; Const 1963, art 1, § 20; *United States v Cronin*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984). "Whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). When the trial court has not conducted a hearing to determine whether a defendant's counsel was ineffective, our review is limited to mistakes apparent from the record. *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012).

To prove that his defense counsel was not effective, the defendant must show that (1) defense counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that counsel's deficient performance prejudiced the defendant. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). The defendant must overcome the strong presumption that defense counsel's performance constituted sound trial strategy. *People v Vaughn*, 491 Mich 642, 670; 821 NW2d 288 (2012). How counsel questions witnesses is a matter of trial strategy. *Horn*, 279 Mich App at 39.

In this case, defense counsel questioned CPS investigator Hernandez about whether the stepson gave reliable answers to questions during her investigation:

*Q.* And was the information [the stepson] gave you reliable?

THE COURT: Now, you're asking for her opinion; right?

[DEFENSE COUNSEL]: That's fair, yes.

THE COURT: So, you can now give your opinion. Did you, in your opinion, think the information given was reliable?

A. In my opinion, I believe he gave partial information. So, it was partially reliable. But in my opinion, I believed that there was a lot he was holding back.

A review of the record makes it clear that defense counsel's strategy was to convince the jury that the children's father perpetrated the abuse and the children simply viewed Degner as guilty by association. Defense counsel's efforts to show that the stepson did not tell truth, or the entire truth, were consistent with this trial strategy. That the prosecution later rehabilitated Hernandez's answer did not render defense counsel's attempt to attack the stepson's credibility through Hernandez's testimony unreasonable. We conclude that defense counsel acted reasonably by questioning Hernandez about the stepson's truthfulness.

#### IV. STATEMENTS FOR DIAGNOSIS AND TREATMENT

Degner contends that the trial court erred by permitting Dr. Guertin to testify about the minors' statements during his examination and that counsel was ineffective for failing to challenge this testimony. We disagree.

This Court reviews for an abuse of discretion preserved challenges to the trial court's evidentiary rulings. *People v Duncan*, 494 Mich 713, 722; 835 NW2d 399 (2013). The trial court abuses its discretion when its decision falls outside the range of principled outcomes. *Id.* at 722-723. We review de novo the preliminary questions of law surrounding the admission of evidence, such as whether a rule of evidence bars admitting it. *Id.* at 723.

Hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Hearsay is generally inadmissible, unless it is subject to a hearsay exception. MRE 802; *Duncan*, 494 Mich at 724. The improper admission of hearsay may implicate the defendant's state and federal constitutional rights. US Const, Am VI; Const 1963, art 1, § 20; *People v Dendel (On Second Remand)*, 289 Mich App 445, 452-453; 797 NW2d 645 (2010).

However, "[s]tatements made for purposes of medical treatment or medical diagnosis in connection with treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably necessary to such diagnosis and treatment" are admissible. MRE 803(4). This is because people making such statements are usually motivated to tell treating physicians the truth in order to obtain proper treatment. *People v Meeboer*, 439 Mich 310, 322; 484 NW2d 621 (1992). An identification of an assailant is necessary to diagnosis and treatment. *Id.* However, whether a child's statement is sufficiently reliable to be admissible under this rule depends on

(1) the age and maturity of the declarant, (2) the manner in which the statements are elicited (leading questions may undermine the trustworthiness of a statement), (3) the manner in which the statements are phrased (childlike terminology may be evidence of genuineness), (4) use of terminology unexpected of a child of similar age, (5) who initiated the examination (prosecutorial initiation may indicate that the examination was not intended for purposes of medical diagnosis and treatment), (6) the timing of the examination in relation to the assault (the child is still suffering pain and distress), (7) the timing of the examination in relation to the trial (involving the purpose of the examination), (8) the type of examination (statements made in the course of treatment for psychological disorders may not be as reliable), (9) the relation of the declarant to the person identified (evidence that the child did not mistake the identity), and (10) the existence of or lack of motive to fabricate. [*Id.* at 324-325. See *Idaho v Wright*, 497 US 805, 825-826; 110 S Ct 3139; 111 L Ed 2d 638 (1990).]

In this case, both witnesses were older teenagers, sufficiently mature enough to understand their actions and the terminology used. There is no indication that Dr. Guertin used leading questions. While CPS initiated the examination, Dr. Guertin interviewed the children shortly after their injuries and a significant period of time before the trial, and Dr. Guertin's stated motivations for the examination were related to determining whether a diagnosis of child abuse was appropriate and treating the stepdaughter's related health problems. We conclude that the trial court did not plainly err by admitting Dr. Guertin's testimony about the children's statements. We also conclude that counsel was not ineffective for failing to challenge this testimony because counsel need not make futile challenges. See *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010).

We affirm.

/s/ Kathleen Jansen  
/s/ Peter D. O'Connell  
/s/ Michael J. Riordan