IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JOSEPH ANTOINE KNIGHT,

Appellant,

v. Case No. 5D20-2435

STATE OF FLORIDA,

Appellee.

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Opinion filed August 13, 2021

Appeal from the Circuit Court
for Hernando County,
Stephen E. Toner, Jr., Judge.

Matthew J. Metz, Public Defender, and
Andrew Mich, Assistant Public Defender,
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Whitney Brown
Hartless, Assistant Attorney General,
Daytona Beach, for Appellee.

COHEN, J.

Following a jury trial, Joseph Knight was convicted of lewd or lascivious molestation of a child under the age of 12 and lewd or lascivious exhibition by a defendant 18 years of age or older. He was sentenced to life in prison

on the first count and 15 years on the second, running concurrently. Knight raises two issues on appeal: first, that the trial court erred by failing to conduct a competency hearing before proceeding to trial; and second, that it erred in admitting child hearsay statements.

The State properly concedes error on the first issue. The record does not establish that the trial court held a competency hearing following Knight's evaluation by an expert.[1] See Deferrell v. State, 199 So. 3d 1056, 1061 (Fla. 4th DCA 2016) ("[E]ven if the evaluations unanimously agree that the defendant is competent, the court still must conduct a hearing."). As a result, we remand for a competency hearing and a *nunc pro tunc* determination, if possible, as to whether Knight was competent to proceed to trial. See Yancy v. State, 280 So. 3d 1112, 1113 (Fla. 5th DCA 2019).

The second issue is more problematic. In all cases, regardless of the nature of the charges, trial courts should diligently exercise their role as gatekeepers and ensure that needlessly cumulative evidence is excluded. See McLean v. State, 934 So. 2d 1248, 1261–62 (Fla. 2006) (recognizing trial court's "critical" gatekeeping function in determining admissibility of prior acts evidence); see also Pardo v. State, 596 So. 2d 665, 668 (Fla. 1992) ("[A]

[1] Although the clerk of court entitled a July 2019 proceeding as a competency hearing, that hearing addressed only the admissibility of child hearsay and admissions made by Knight.

trial court must weigh the reliability and the probative value of a child victim's hearsay statement against the danger that the statement will unfairly prejudice the defendant . . . or result in the presentation of needlessly cumulative evidence.").

That gatekeeping function is especially important when addressing the admissibility of child hearsay, as such evidence is often highly prejudicial. See Perry v. State, 593 So. 2d 620, 621 (Fla. 2d DCA 1992) (noting that admission of "repetitious child hearsay from multiple witnesses is unfair to a defendant" (citations omitted)); see also Garcia v. State, 659 So. 2d 388, 392 (Fla. 2d DCA 1995) (noting that defendant may seek to exclude successive hearsay witnesses when such testimony "merely bolsters and adds credence to the child victim's testimony." (citation omitted)). In this case, the trial court allowed not one, not two, but four witnesses to testify to out-of-court statements made by the victim, with much of that testimony being similar. See Perry, 593 So. 2d at 621 (affirming introduction of repetitive child hearsay but noting, "[W]e can envision the prosecution parading an endless stream of hearsay witnesses before the jury, smothering the defendant in an avalanche of consistent statements."). We expect trial courts to adhere to their gatekeeping role by excluding needlessly cumulative evidence to avoid unfair prejudice to defendants.

Nevertheless, Knight has failed to preserve his cumulative evidence argument for appellate review, as he did not raise it at the child hearsay hearing nor object on that basis at trial.[2] See Bass v. State, 35 So. 3d 43, 46 (Fla. 1st DCA 2010). Even if Knight had preserved that argument, his damaging admissions introduced at trial would have rendered any error in the admission of the cumulative evidence harmless. See Heuss v. State, 660 So. 2d 1052, 1057 (Fla. 4th DCA 1995) (applying harmless error principles to admission of improper child hearsay evidence (citing State v. DiGuilio, 491 So. 2d 1129, 1139 (Fla. 1986))).

AFFIRMED IN PART; REMANDED FOR COMPETENCY HEARING.

HARRIS, J., concurs.
SASSO, J., concurs specially, with opinion.

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[2] Knight's pretrial objection focused solely on the lack of reliability and trustworthiness of the out-of-court statements. We find that the trial court did not abuse its discretion in that regard. See Fitzsimmons v. State, 309 So. 3d 261, 264–65 (Fla. 1st DCA 2020).

SASSO, J., concurring specially.

I agree that this case must be remanded consistent with the State's concession and that Appellant has not demonstrated reversible error as to the admission of the child hearsay statements. However, because Appellant did not object below to the cumulative nature of the child hearsay statements, I do not join the portion of the opinion addressing that argument.