IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JAMES ANTHONY STEVENSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D16-3177

_____/

Opinion filed December 27, 2017.

An appeal from the Circuit Court for Escambia County.
J. Scott Duncan, Judge.

Andy Thomas, Public Defender, and Megan Long, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Sharon S. Traxler, Assistant Attorney General, Tallahassee, for Appellee.

JAY, J.

In this direct criminal appeal, we affirm appellant's convictions and sentences for lewd or lascivious molestation, lewd or lascivious conduct, and lewd or

lascivious exhibition. We write only to explain why the trial court did not abuse its discretion by allowing the child victim to testify while seated in front of the jury box.

Prior to trial, the state filed a motion to allow the eight-year-old child victim to give trial testimony while seated in front of the jury box. The motion explained:

> Counsel for the State and Defense would conduct their direct and cross-examination while seated one at a time in a chair next to the child and facing the jury. This arrangement would serve not only to ease the great potential for fear and intimidation a child may suffer while testifying in a large courtroom filled with unfamiliar adults, thereby improving his ability to communicate without fear, but also to place the child closer to the jury so that they may see and hear the child more clearly.

At trial, when the prosecutor announced that the state would be calling the child victim as its next witness, the following exchange transpired:

> [PROSECUTOR]: You granted the motion that he can sit in front of the jury box?
>
> THE COURT: Uh-huh.
>
> [PROSECUTOR]: So can I just put two chairs in front?
>
> THE COURT: Uh-huh.
>
> [DEFENSE COUNSEL]: Do I have to do that? I mean, that's what's the weird part about this motion? Can I still ask questions in my normal way?
>
> THE COURT: Yeah, you can—I mean, I'm going to let you do what you feel comfortable with.
>
> [DEFENSE COUNSEL]: Okay.
>
> [PROSECUTOR]: But the child gets to stay seated at the same place?
>
> THE COURT: Right, yeah.
>
> [PROSECUTOR]: Okay.
>
> . . . .
>
> THE COURT: Do you want me to swear him in?

> [PROSECUTOR]: Well, he was previously told to tell the truth, or you will just say he's been previously sworn unless [defense counsel] has a –
>
> [DEFENSE COUNSEL]: Yeah, that's fine. Say he was previously sworn. I would just note for the record the same objection as before. I feel this is going to be awkward for me. I have no idea how to do this sitting in a chair in front of the child. If I don't do it, I think it looks like I got no heart. It's just putting me in a really bad spot.
>
> [PROSECUTOR]: And, judge, and I have some case law that the confrontation clause is not absolute.
>
> THE COURT: Well—
>
> [DEFENSE COUNSEL]: He's already ruled on it.
>
> [PROSECUTOR]: Okay.
>
> THE COURT: Yeah. I think he has the right to confront. I know it's awkward for Counsel. It's awkward for the child, it's awkward for everybody, but that's the nature of these cases.
>
> [DEFENSE COUNSEL] Right, right.

Afterwards, the victim was examined and cross-examined without further objection.

On appeal, appellant claims that he was denied a fair trial because the trial court allowed the child victim to testify in front of the jury box, which might have appeared as a judicial comment on the victim's testimony and made the victim more sympathetic and credible due to the victim's unique position in the courtroom. While acknowledging that the trial court has broad power to protect child witnesses who have alleged sexual abuse, appellant claims that there is no record evidence that special placement was necessary for the victim's emotional well-being. The state responds that none of these arguments are preserved for appeal because they were

never raised below. As the Florida Supreme Court has observed, proper preservation includes three important components:

> First, a litigant must make a timely, contemporaneous objection. Second, the party must state a legal ground for that objection. Third, "[i]n order for an argument to be cognizable on appeal, *it must be the specific contention asserted as legal ground* for the objection, exception, or motion below." Steinhorst v. State, 412 So.2d 332, 338 (Fla.1982) (emphasis added); accord Rodriguez v. State, 609 So.2d 493, 499 (Fla.1992) (stating that "the specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard on appeal.").

Harrell v. State, 894 So. 2d 935, 940 (Fla. 2005). These three elements are necessary to "'place[ ] the trial judge on notice that error may have been committed, and provide[ ] him an opportunity to correct it at an early stage of the proceedings.'" Id. (quoting Castor v. State, 365 So.2d 701, 703 (Fla.1978)).

Here, because the enhancement of credibility and insufficient record evidence arguments were never raised below, they were not preserved for our review. Rodriguez, 609 So. 2d at 499; see also Spann v. State, 857 So. 2d 845, 852 (Fla. 2003) ("Because the record clearly shows that Spann's trial objection was limited to the expert testimony on the issue of distortion or intentional disguise, and because Spann's argument here is that handwriting expert testimony in general should be barred, the issue was not properly preserved and this claim is procedurally barred.").

To the extent that defense counsel voiced any objection at trial, it was based on counsel's complaint that the seating arrangement made it "awkward" for counsel to question the victim. Specifically, counsel complained that he was uncomfortable cross-examining the child while the child was seated in front of the jury and that if he chose not to sit in a chair while examining the child, the jury would believe that he had "no heart."

In evaluating the propriety of counsel's objection, it is important to remember that trial courts have "'*wide latitude*' to regulate proceedings before them 'in order that the administration of justice be speedily and fairly achieved in an orderly, dignified manner[.]'" Medina v. State, 573 So. 2d 293, 295 (Fla. 1990) (quoting Hahn v. State, 58 So. 2d 188, 191 (Fla. 1952)) (emphasis added). This means that "in the absence of a controlling statute or overriding [r]ule of procedure[,] the method of conducting a trial is within the reasonable discretion of the trial court." Kennick v. State, 107 So. 2d 59, 60 (Fla. 1st DCA 1958). More simply, "[t]he trial court has broad discretion in the manner in which it conducts trials." Friedman v. United States, 87 F. App'x 459, 463 (6th Cir. 2003); see also United States v. Microsoft, 253 F.3d 34, 100 (D.C. Cir. 2001) ("Trial courts have extraordinarily broad discretion to determine the manner in which they will conduct trials.").

In this case, because the trial court had "wide latitude" in regulating the proceedings, Medina, 573 So. 2d at 295, and because counsel's objection went to the presentation mechanics of a child witness's testimony, the trial court's decision was well within its broad discretion. See Baisden v. State, 203 So. 2d 194, 196 (Fla. 4th DCA 1967) ("The conduct of counsel during the progress of the trial is . . . under the supervision and control of the trial court in the exercise of its discretion. . . . [T]he court has a duty to maintain the dignity of the law in the courtroom *which also includes the protection of witnesses under examination*.") (emphasis added); see also § 90.612(1), Fla. Stat. (2014) ("The judge *shall exercise* reasonable control over the mode and order of the interrogation of witnesses and the presentation of evidence[.]") (emphasis added).

The opinion in Ellis v. United States, 313 F.3d 636 (1st Cir. 2002), is consistent with this conclusion. In Ellis, over the objection of counsel, the trial judge allowed the child victim to sit in a chair facing the jurors, but in a way that faced away from the defendant. Id. at 639. Because of this seating arrangement, the child could only make "eye contact with the [defendant] by looking over her right shoulder." Id. Apparently, the child "did not avail herself of this opportunity." Id.

In finding that the trial judge's "core conclusion—that no Confrontation Clause violation occurred"—was neither unreasonable nor obviously incorrect, the United States Court of Appeals for the First Circuit observed:

> In our view, the adequacy of Judge Freedman's findings is buttressed by the *hallmarks of testimonial reliability* made manifest by the record. . . . These include . . . the fact that the witness was required to give live testimony, under oath, in the presence of both the defendant and the jury. To the extent that nervousness, body language, demeanor, and the like are important indicia of credibility, the jurors' entirely unimpaired view of the witness is persuasive. In addition, the petitioner had ample opportunity to cross-examine E.D. and to offer any evidence and arguments that might impugn her credibility. *These are weighty factors*.

Id. at 651 (citations omitted) (emphasis added).

Here, like Ellis, the child gave live testimony—in the presence of appellant and the jury—the jurors had an unimpaired view of the witness, and counsel had an unrestricted opportunity to cross-examine the child. These are indeed "weighty factors" and solidify the reasonableness of the trial court's decision to allow the victim to testify while seated before the jury. Id.; see also Kennick, 107 So. 2d at 60.

AFFIRMED.

WOLF and WINOKUR, JJ., CONCUR.