FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3774

CHRISTOPHER COY DUFFY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Washington County.
Timothy Register, Judge.

November 30, 2022

B.L. THOMAS, J.

Appellant Christopher Duffy was convicted of sexual battery of a child under twelve by a person eighteen or older, and he was sentenced to life in prison. Although he raises three issues on appeal, we write only to address the issues involving the admissibility of the child hearsay statements and sufficiency of the State's information. We affirm the judgment and sentence.

We find that the trial court did not err in admitting the six-year-old child's hearsay statements to the Child Protection Team and the child's father. The trial court made sufficient findings that the child's hearsay statements that he performed oral sex on Appellant at Appellant's direction were reliable and in conformity with the requirements of section 90.803(23), Florida

Statutes, and the trial court's ruling was not an abuse of discretion. *See Small v. State*, 179 So. 3d 421, 424 (Fla. 1st DCA 2015). Such rulings must be supported by specific "safeguards of reliability" including specific factual findings. *Id.* (citing *State v. Townsend*, 635 So. 2d 949, 954 (Fla. 1994)). While more findings could have been provided here to underscore the trial court's reasoning, the order reflects that the trial court did not abuse its discretion because it found the child's statements to the Team and the child's unsolicited statements to his father were reliable under the statute and *Small*. The trial court noted the age-appropriate language used by the child and the open-ended questions during the interview with the Child Protection Team.

Furthermore, we note that the information was fairly specific regarding the timeframe of the alleged crime. The child's statements to his father were made within approximately six or seven months of the incident. The interview was conducted soon thereafter. The child testified at trial, some three years after reporting the sexual activity, was cross examined, and confirmed that the Appellant had the child perform oral sex on him, an act constituting capital sexual battery.

The Appellant was not prejudiced by any defect in the information, which specifically charged capital sexual battery under section 794.011(2)(a), Florida Statutes. There was no objection to the information, and any such objection would have been properly denied, or the State could have amended the information before or at trial to conform to the specific act of oral sex. *See Thach v. State*, 342 So. 3d 620, 624 (Fla. 2022). Appellant denied committing any sexual act with the child. Thus, the jury was not presented with conflicting evidence as to the nature of the alleged act; either Appellant had the child perform oral sex on him or he did not. The jury concluded that Appellant did have the child commit the act of oral sex.

We decline to address Appellant's final argument, which he commendably concedes is foreclosed by law. *See Steiger v. State*, 328 So. 3d 926, 932 (Fla. 2021).

AFFIRMED.

ROBERTS and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Robert David Malove of The Law Office of Robert David Malove, P.A., Fort Lauderdale, for Appellant.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.