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IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ERIC ALAN BULLINGTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D18-2197

Opinion filed May 1, 2020.

Appeal from the Circuit Court for Hillsborough County; Vivian T. Corvo, Judge.

Howard L. Dimmig, II, Public Defender, and Terrence E. Kehoe, Special Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Helene S. Parnes, Senior Assistant Attorney General, Tampa, for Appellee.

SALARIO, Judge.

Eric Alan Bullington appeals from his convictions and sentences for two counts of sexual battery involving familial authority and one count each of lewd or lascivious molestation of a victim between twelve and fifteen by someone over eighteen, use of a child in a sexual performance, and incest. He was sentenced to two

consecutive life terms for the sexual battery counts, consecutive fifteen-year terms for the lewd or lascivious molestation and sexual performance counts, and a five-year consecutive term for incest. The trial court erroneously admitted prior consistent statements that A.B. made to two detectives and a nurse practitioner describing the sexual abuse to which she was subject and identifying Mr. Bullington as her abuser. On the facts of this case, however, we deem the error harmless. Accordingly, we affirm.

I.

We refer to the victim in this case as A.B. She is Mr. Bullington's daughter and, in November 2016, was fourteen years old and in middle school. She told three of her school friends that something was going on at home that she did not like. One of them was concerned enough to suggest that A.B. talk to a teacher, which A.B. did. Afterward, the sheriff's office became involved. A.B. told detectives about multiple acts of sexual abuse committed against her by Mr. Bullington. An investigation followed, which included A.B. being physically examined by two nurse examiners.

Mr. Bullington was arrested and charged with (1) three counts of sexual battery involving familial authority, (2) one count of lewd or lascivious molestation, (3) one count of incest, (4) one count of use of a child in a sexual performance, which was based on a thumbnail image recovered from Mr. Bullington's cellular phone depicting an exposed penis and what was alleged to be A.B.'s arm, and (5) three counts of child pornography, which were based on three thumbnail images of what was alleged to be A.B.'s exposed breast or breasts also recovered from Mr. Bullington's cellular phone. The case went to trial in March 2018. At trial, and beginning in opening statements, Mr. Bullington's defense was that A.B. fabricated and reported the allegations giving rise to

the charges so that she would be removed from her family, who lived in poor circumstances, and have a chance to live a better life.

A.B.'s testimony. A.B. was the State's first witness. She testified with specificity about the acts of sexual abuse performed by Mr. Bullington. Because she was not comfortable using explicit terminology—both when she first reported the abuse and at trial—she referred to the penis as "the part that he pees out of" or "his taco," the vagina as "the part that [she] pees out of" or her "taco," and breasts as "boobs" or "the things that get in the way." Using these descriptions, she described multiple acts of penis-to-vagina, mouth-to-penis, mouth-to-vagina, mouth-to-breast, and hand-to-breast contact in multiple locations beginning in fourth or fifth grade and continuing over a period of years. She also testified that Mr. Bullington penetrated her vagina with both his penis and his finger. She described the events in detail, including the placement of her and Mr. Bullington's bodies and when and where Mr. Bullington usually ejaculated, and she explained that her mother had sometimes witnessed the abuse and did not do anything about it. She testified that on the morning she told her friends that something was wrong, Mr. Bullington had placed his hand and mouth on her breast.

While A.B. was testifying, the State introduced several thumbnail images recovered from Mr. Bullington's cellular phone. These included three images depicting A.B. wearing a red blouse in positions that could be deemed suggestive—one with her arms outstretched above her head and two with her chest thrust forward. A.B. identified herself in the photographs and testified that Mr. Bullington told her to pose that way because he wanted to take pictures of her chest. Another image—the one that was the subject of the sexual performance count—depicted an exposed and erect penis near an arm. Although A.B. was not identifiable in the image because the arm was all one could

see, she testified that it was her arm because there was a pink armband around her wrist that she recognized as one she wore. Finally, A.B. testified about the three thumbnail images depicting an exposed breast or breasts. Again, although A.B. was not identifiable in the images, she testified that the breasts depicted in the images were hers.

Perhaps anticipating that she would be cross-examined about it, the State asked A.B. whether anyone else had ever had improper sexual contact with her. A.B. testified that while visiting the home of one of Mr. Bullington's friends, the friend's son penetrated her vagina with his penis. This happened only once, but A.B. could not remember when. A.B. told her parents what happened, but nothing came of it.

On cross-examination, A.B. described the uncomfortable conditions in which she lived. At the time A.B. told her friends that something was wrong, she was living in a tent at a campground with Mr. Bullington, her mother, and her three siblings. The family had lost their home and had been living in hotels, other campgrounds, and once with A.B.'s aunt and uncle. A.B. testified that she had to sleep between her mother and her father in the tent. She could shower only once a week and could do laundry only infrequently. She did not enjoy many of the comforts that other children do. She did not like some of her parents' strict rules, including that she was not allowed to have a boyfriend. (On redirect, the State elicited testimony that Mr. Bullington told A.B that this was because he was the only person who could be with her sexually.)

A.B. testified that around the time she reported the abuse, she had been reading a book about a young boy who was being abused by his mother. When he reported the abuse, he was moved to his aunt's house and lived a more comfortable life for a period of time. A.B. testified that she was not happy living in the tent with her

family. After she reported the abuse, A.B. was moved to her aunt and uncle's house. She enjoys a substantially improved quality of life and is happy there. She testified that she told one of the detectives who interviewed her that one reason she reported the abuse was so that she would not have to live in the tent any longer.

The defense also cross-examined A.B. about the images recovered from Mr. Bullington's phone. With regard to the image of the penis and arm, A.B. testified that she recognized both her own hand and the hairband, which the defense tried to call into question with A.B.'s testimony during a deposition that she recognized only the hand. More generally, she testified that her father had images of other naked women on his phone, which A.B. knew because her mother had shown them to her.

The prior consistent statements. The deputy who initially interviewed A.B. also testified for the State. The State asked the deputy about the words A.B. used to identify sex organs, and he testified that she used the word "taco" to refer to both the penis and the vagina and "things that get in the way" to refer to the breasts. The State then asked what A.B. told him about what happened with Mr. Bullington. Mr. Bullington objected that such testimony was hearsay. The State responded that the testimony was admissible as a nonhearsay prior consistent statement under section 90.801(2)(b), Florida Statutes (2018). The trial court agreed and overruled the objection. The deputy thereafter testified in detail to the abuse A.B. described to him, and that description of the abuse was substantially similar to that testified to by A.B. earlier in the trial.

A second detective testified over a hearsay objection that A.B. told her that her father penetrated her vagina with his penis and that her mother knew. The detective also testified, based on what A.B. told her, regarding the number of times and places the encounters with Mr. Bullington had occurred. A.B. used the same terms for

sexual organs in talking to the detective that she did during her testimony. Her statements were, in relevant part, consistent with her trial testimony.

A nurse practitioner who treated A.B. also testified, again over a hearsay objection, about what acts A.B. told her Mr. Bullington had committed—including a specific description of Mr. Bullington's oral and digital contact with her breasts on the morning A.B. reported the abuse, a specific description of an episode of Mr. Bullington penetrating her vagina two days prior, and more general descriptions of sexual abuse. As the State began to elicit this testimony, Mr. Bullington objected on hearsay grounds. The trial court overruled the objection, reasoning that the testimony was admissible under section 90.803(4) because it involved statements for purposes of medical diagnosis or treatment. Mr. Bullington did not again object to the nurse practitioner's testimony, even as she testified that A.B. identified him as the perpetrator of the acts of sexual abuse she reported.

The State's other evidence. In addition to the testimony concerning A.B.'s statements about the abuse, the State had two principal elements of proof. Through the testimony of two nurse practitioners who examined A.B., the State presented evidence of injuries to parts of A.B.'s vagina that were consistent with penetration and, in some instances, showed signs that healing had been disrupted by regular contact over time, thus suggesting repeated sexual contact. The defense countered that evidence on cross-examination by eliciting alternative causes of those injuries—including the use of tampons, the limited hygiene A.B. was able to practice under her living conditions, and the prior sexual assault on A.B. that did not involve Mr. Bullington—that could have been responsible. The evidence established that these alternative causes were possible. One of the nurse practitioners also testified, however,

that A.B.'s vagina showed signs of chronic injury and, in particular, that the condition of A.B.'s hymen was more consistent with that of an older woman than a fourteen-year-old girl.

The State also presented a crime laboratory analyst from the Florida Department of Law Enforcement who testified about a DNA test that matched Mr. Bullington's DNA to a swab of A.B.'s breast. Defense cross-examination of the analyst revealed that there were ways, given the close conditions in which the family lived, that Mr. Bullington's DNA could have come to be on A.B.'s breast that did not involve sexual activity.

Closing arguments and the verdict. The State began its closing argument by telling the jury that this was a case about courage. The prosecutor explained:

> [A.B.] didn't only have to come and tell you complete strangers what had happened, she had to tell the initial deputy that arrived on scene what had been going on. She had to tell a detective who interviewed her what had been happening to her.
> . . . .
>
> And then finally telling you all yesterday what she had been enduring at the hands of her own biological father for a significant period of time. And not only answer my questions but then be cross examined by defense counsel and explain what she ultimately disclosed back in November of 2016.

(Emphasis added.) The State then argued that A.B.'s testimony, taken together with the photographs, the evidence of injury to A.B., and the DNA established Mr. Bullington's guilt on all counts. Later, the State told the jury that "we know what [A.B.] disclosed on the witness stand, to law enforcement, to the nurse examiner, that on that morning when she told law enforcement about what happened on November 29th of 2016."

The defense argued that the State's case hinged on whether the jury believed A.B. "[b]ecause if you don't believe [A.B.], what we heard from all the other witnesses is that there are reasonable explanations for everything" that did not include sexual abuse. The defense then advanced the theory that A.B. had fabricated her allegations because she no longer wanted to be living in the tent with her family and argued that Mr. Bullington's alternative explanations for the State's other evidence must leave the jury with a reasonable doubt as to his guilt.

The jury returned a mixed verdict. It acquitted Mr. Bullington of one count of sexual battery and all three counts of child pornography. It convicted Mr. Bullington of the remaining two counts of sexual battery and the counts of lewd or lascivious molestation, incest, and use of a child in a sexual performance. This is Mr. Bullington's timely appeal.

II.

Mr. Bullington argues that the trial court erred by admitting statements by the detectives and the nurse practitioner about what A.B. told them because those statements were hearsay and were not admissible under section 90.801(2)(b)'s provision regarding prior consistent statements. We note, however, that the trial court did not admit the nurse practitioner's testimony under section 90.801(2)(b); it admitted them as statements for purposes of medical treatment or diagnosis under section 90.803(4). Mr. Bullington has made no appellate argument concerning the trial court's ruling under section 90.803(4), either in his initial brief or (after the State pointed it out in its answer) in the reply brief. In accord with our precedents, we treat any argument that the nurse examiner's testimony was not admissible under section 90.803(4) as having

been abandoned. See Roop v. State, 228 So. 3d 633, 642 (Fla. 2d DCA 2017) (citing I.R.C. v. State, 968 So. 2d 583, 588 (Fla. 2d DCA 2007)).

As such, the question in this case is whether the trial court's admission of the detectives' testimony about what A.B. told them under section 90.801(2)(b) constitutes reversible error. We review a trial court's evidentiary decision for abuse of discretion, understanding that its discretion is limited by the rules of evidence and controlling decisions interpreting them. See Roop, 228 So. 3d at 639.

A.

The statements A.B. made to the detectives were offered by the State as prior consistent statements to corroborate A.B.'s in-court testimony in the face of Mr. Bullington's defense that she was making up the allegations of abuse. We know this because this is the reason the State gave for trying to have them admitted after Mr. Bullington objected. The difficulty is that prior consistent statements are usually inadmissible hearsay and cannot be used for this purpose. See Tumblin v. State, 29 So. 3d 1093, 1100 (Fla. 2010). A prior consistent statement may be admissible, however, where it meets an exception to the rule against hearsay or, alternatively, where it does not constitute hearsay at all. See Roop, 228 So. 3d at 639.

Here, the State argued and the trial court agreed that A.B.'s statements to the detectives did not constitute hearsay because such statements are excluded from the definition of hearsay under section 90.801(2)(b). Section 90.801(2)(b) of the evidence code states:

> A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is:
>
> . . . .

> Consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication.

Thus, a prior consistent statement is not inadmissible as hearsay when (1) the declarant testifies at trial and is subject to cross-examination about the statement and (2) the statement is made to rebut a charge of improper influence, motive, or recent fabrication. See also Chandler v. State, 702 So. 2d 186, 197-98 (Fla. 1997).

The first requirement is not a problem here because A.B. was in fact present at the trial and subject to cross-examination. The second requirement is a problem, however, because the cases interpreting section 90.801(2)(b) hold that a prior consistent statement is admissible only if the statement is made before the recent fabrication by the declarant or before the improper influence or motive arose. See Howard v. State, 288 So. 3d 1239, 1251 n.6 (Fla. 2d DCA 2020) ("[W]here, as here, a witness's prior consistent statement is 'offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication,' 'the statement must have been made before the existence of a reason to falsify arose.' " (first quoting § 90.801(2)(b); and then quoting Quiles v. State, 523 So. 2d 1261, 1263 (Fla. 2d DCA 1988))); Bianchi v. State, 528 So. 2d 1309, 1311 (Fla. 2d DCA 1988) ("While section 90.801(2)(b) provides that a prior consistent statement is not objectionable if it is offered to rebut an express or implied charge of improper influence, motive, or recent fabrication, the statement must be 'made *prior* to the existence of a fact said to indicate bias, interest, corruption, or other motive to falsify.' " (quoting Preston v. State, 470 So. 2d 836, 837 (Fla. 2d DCA 1985))). Stated inversely, "a prior consistent statement remains inadmissible if it is made after the existence of a reason to falsify arises."

Szuba v. State, 749 So. 2d 551, 553 (Fla. 2d DCA 2000) (emphasis added) (citing Quiles, 523 So. 2d at 1261).

Mr. Bullington's charge that A.B. fabricated the allegations of abuse is based on a motive that existed before she made statements concerning the abuse to the detectives and nurse. The defense theory was that A.B. was influenced by a book about a child who bettered his circumstances by reporting abuse and, based on that influence, went to school and told the story to friends until it reached school officials and was reported. Under this theory, all of the statements A.B. made to the detectives were consistent with her trial testimony but were nonetheless made after the facts giving rise to the charge of fabrication existed. Therefore, the detectives' testimony regarding what A.B. told them about the abuse was not admissible under section 90.801(2)(b). See, e.g., Keffer v. State, 687 So. 2d 256, 258 (Fla. 2d DCA 1996) (reversing a sexual battery conviction based on the erroneous admission of the victim's prior consistent statements where, among other things, the victim's alleged motive to fabricate—to mislead her roommate about her involvement with the defendant—predated her statements to police officers); Browne v. State, 132 So. 3d 312, 318 (Fla. 4th DCA 2014) (reversing an attempted sexual battery conviction based on the erroneous admission of the victim's prior consistent statements to her friend where the alleged motive to fabricate—that the victim wanted to rekindle a relationship with an ex-boyfriend—predated the statements); Lazarowicz v. State, 561 So. 2d 392, 394 (Fla. 3d DCA 1990) (reversing a sexual battery conviction based on the erroneous admission of prior consistent statements where the alleged motive to fabricate—that the victim wanted to stop her father's preventing her from being with her boyfriend—predated the statements).

It is, of course, possible that A.B.'s statements to the detectives would have been admissible under the hearsay exception for statements of a child victim under section 90.803(23). That statute, however, requires that the State give notice to the defendant and that the trial court conduct a hearing and make specific findings of fact related to the applicability of the exception. Id. The State did not seek the admission of A.B.'s out-of-court statements concerning the abuse under this theory, and as a result, the trial court did not conduct the required hearing or make the required findings. Given that state of affairs, the disputed evidence was not admissible on this basis. See Hopkins v. State, 632 So. 2d 1372, 1377 (Fla. 1994) ("Absent the specific findings of reliability mandated by [section 90.803(23)], a reviewing court cannot determine whether the statements were in fact reliable."). As such, we are required to conclude that the trial court erred in admitting the testimony of the detectives as to what A.B. told them about the sexual abuse.

B.

The State argues that any error in the admission of A.B.'s prior consistent statements was harmless. See Chandler v. State, 702 So. 2d 186, 198 (Fla. 1997) ("The improper admission of prior consistent statements is also subject to harmless error analysis."). To show that the trial court's error was harmless, the State must "prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla. 1986). To the extent A.B.'s prior consistent statements were harmful, it was because they supported A.B.'s in-court testimony that her father abused her as alleged by the State—i.e., that it made her trial testimony more believable because she had said the same

thing prior to trial. The error here was harmless, then, only if there is no reasonable probability that the jury believed A.B. and convicted Mr. Bullington because her prior consistent statements made her testimony more believable than it was on its own.

The decisions on whether and under what circumstances the erroneous admission of a prior consistent statement to support a witness's in-court testimony is harmful or harmless reach varying results. Among those finding the error harmless are decisions like Heynard v. State, 689 So. 2d 239, 251 (Fla. 1996), in which a trial court allowed a police officer to testify that a rape and kidnapping victim told him she had been raped and gave a description that matched the defendant. The victim testified at trial, identified the defendant as one of her assailants, and described the clothing he was wearing at the time of the events. Id. The supreme court held that the victim's prior statements to the police officer were admissible and, at all events, that any error in admitting them was harmless. Id. The court explained that because the officer's testimony about what the victim told him "was nothing more than a generalization of specific information which [the victim] testified to at trial from her own personal knowledge, we find any error . . . harmless beyond a reasonable doubt." Id.

The supreme court's decision in Chandler is to similar effect. There, a witness testified at trial that the defendant admitted to her that he committed the murder for which he was being prosecuted. 702 So. 2d at 198. The State persuaded the trial court to admit a prior sworn statement of the witness in which she said the same thing. Id. Although the supreme court found the prior consistent statement admissible, it also found any error in the admission of the statement harmless. Id. It explained that although "the statement may have bolstered [the witness's] credibility . . ., the jury had ample information from which to assess [her] credibility and weigh her testimony

accordingly" such that any error was "harmless beyond a reasonable doubt." Id. at 198-99. Still other cases reach analogous outcomes. See, e.g., Roop, 228 So. 3d at 644-45 (finding any error in the admission of a victim's single prior consistent statement on a recorded 911 call harmless where the natural inference was that the victim was either telling the truth or lying both times and the defense theory was highly incredible).

On the other hand, we also have cases finding error in admitting prior consistent statements harmful, as in Szuba, in which the witnesses to offenses of aggravated battery and criminal mischief gave differing descriptions of the perpetrator. 749 So. 2d at 552. One witness, however, testified that the defendant spontaneously admitted the battery to him. Id. Over a hearsay objection, the trial court allowed a detective to testify that the witness told him the same thing during his investigation of the offense. Id. We held that the admission of the prior consistent statement was error because the witness had a reason to falsify at the time of the prior consistent statement—he was being questioned as the person responsible for the party at which the crimes occurred. Id. at 553. We found the error harmful because, in view of the discrepancies of the testimony of the other witnesses, the credibility of the witness whose testimony was at issue was "critical" to the case. Id.

Our decision in Keffer v. State, 687 So. 2d 256, 257 (Fla. 2d DCA 1996), involved the erroneous admission of prior inconsistent statements in a sexual battery prosecution. The victim testified at trial that the defendant penetrated her vagina with his fingers but was impeached on cross-examination with deposition testimony in which she stated that she did not know if penetration had occurred. Id. In response, the State had the officers investigating the offense testify that the victim told them that the defendant had penetrated her vagina with his finger. Id. We held that the prior

consistent statements of the victim were inadmissible prior consistent statements. Id. at 258. And we held that the error was not harmless because it bolstered the victim's trial testimony after the defense showed that she said something different at deposition, and given the swearing contest between the victim and defendant, that "impermissible strengthening" of her testimony was "critical." Id. Here too, there are other cases to similar effect. See, e.g., Bianchi, 528 So. 2d at 1311 ("In view of the fact that the credibility of the witnesses here was critical, this was not harmless error.").

The varying results these cases reach can be explained by the fact that the answer to the question the harmless error test asks—whether there is a reasonable possibility the error contributed to the verdict—is ultimately dependent on the individual facts of each case. See, e.g., State v. Davis, 720 So. 2d 220, 229-30 (Fla. 1998) (looking to "all the circumstances in this record" to determine whether an error is harmless); Salas v. State, 972 So. 2d 941, 944 (Fla. 5th DCA 2007) (explaining that a "harmless error analysis . . . requires us to consider the totality of the circumstances"). As the supreme court's foundational decision in DiGuillo explained:

> Application of the [harmless error] test requires an examination of the entire record by the appellate court including a close examination of the permissible evidence on which the jury could have legitimately relied, and in addition an even closer examination of the impermissible evidence which might have possibly influenced the jury verdict.

491 So. 2d at 1135. Thus, it would be incorrect to treat a case like Heynard as stating a categorical rule that admission of a prior consistent statement is harmless whenever the prior consistent statement is a generalization of what the witness testified to at trial, and it would be incorrect to treat a case like Keffer as standing for a rule that the admission of such statements are harmful whenever credibility is a significant issue. Each case

identifies considerations that are important, but each case also turns on its facts. See, e.g., Jones v. State, 54 So. 3d 1085, 1086 (Fla. 4th DCA 2011) (noting, in a case where a prosecutor improperly bolstered an expert in closing, that "this type of comment comes perilously close to being the basis for reversal, and it is only under the specific facts of this case that we find the error to be harmless").

Here, we recognize four facts related to the detectives' testimony that could militate in favor of calling the trial court's error harmful. First, the credibility of A.B.'s allegations was a significant issue in this case, and as discussed above, the erroneous admission of prior consistent statements has been found to be harmful in cases where credibility is important. Second, the testimony came from detectives, and there are cases stating that erroneously admitted testimony is more likely to be harmful when it comes from law enforcement because of the risk that they will be perceived as more believable than a lay witness. See, e.g., Perez v. State, 371 So. 2d 714, 716-17 (Fla. 2d DCA 1979); Peterson v. State, 874 So. 2d 14, 17 (Fla. 4th DCA 2004). Third, although the State did not say that the jury should believe A.B. because she told the detectives the same things she said at trial, the State did address the fact that she told law enforcement about being abused by her father more than once in its closing arguments, and the State's highlighting inadmissible evidence in closing can be a factor in determining that the error was harmful. See, e.g., Bussey v. State, 184 So. 3d 1138, 1148 (Fla. 2d DCA 2015). And finally, the jury here gave a mixed verdict—convicting on the abuse charges but acquitting on the child pornography charges—and cases have also recognized that that can be a factor in finding that an error is harmful. See, e.g., Antoury v. State, 943 So. 3d 906, 909 (Fla. 5th DCA 2006).

Notwithstanding that this case bears some commonalities with precedents finding errors harmful, there are several factors specific to this case that resolve it in favor of finding the error in admitting A.B.'s prior consistent statements to the detectives harmless. The first is that, given the nature of the defense theory at trial, the credibility-enhancing effect of the prior consistent statements on the jury, if any, would have been insignificant. This was not a case where the defense theory was merely that a victim's trial testimony was not credible maybe because of an inconsistency with prior testimony or the accounts given by other witnesses. In circumstances like that, one might say that the admission of the victim's prior consistent statements to police bolstered her trial testimony because the fact that the victim said the same thing before might make her trial testimony seem more credible in the jury's eyes. See, e.g., Keffer, 687 So. 2d at 258. But here, the defense theory was that A.B. fabricated the abuse from the beginning and falsely reported it to the detectives (among others) so that she would be removed from her family to better living conditions. In that telling, A.B.'s trial testimony was just the continuation of a planned lie that began with the initial false reports to the detectives, made for that immediate purpose.

Given that theory, the fact that A.B. reported the same kind of abuse to the detectives as she described at trial was unlikely to bolster her trial testimony in any material way; the jury was either going to believe that both the reports and the testimony were true or that they were not. A.B. was subjected to thorough cross-examination by Mr. Bullington's counsel during which she was asked about the facts underlying her alleged fabrication of the abuse and her decision to report it. The jury heard this cross-examination and was able to make its own determination about whether A.B. made the abuse up or was telling the truth. Given the defense theory at trial, the fact that A.B.

reported to detectives what she testified to at trial was not as material as it might have been in cases like Szuba or Keffer. Cf. Chandler, 702 So. 2d at 198-99 (finding error in the admission of prior consistent statement harmless where "after considering the context in which [the witness's] testimony was presented, that the jury had ample information from which to assess [the witness's] credibility and weigh her testimony accordingly"); Roop, 228 So. 3d at 644 (finding any error in the admission of prior consistent statement harmless where the defense theory was such that "if one thought the witness might be lying in court" one would also think "that he might have been lying at the time of the earlier statement as well").

Second, the jury heard prior consistent statements from the nurse practitioner, the admissibility of which has been abandoned as an issue on appeal. The nurse examiner testified that A.B. told her (1) that on the morning she reported the abuse, her father had touched and licked her breast, (2) that two days prior to the report the father had penetrated her vagina with his tongue, and (3) that her father had repeatedly sexually abused her. Although this testimony did not cover as many instances of abuse as the reports A.B. made to the two detectives and was not phrased in the idiosyncratic language A.B. used while testifying at trial, it matched A.B.'s testimony directly on two specific instances of abuse and on the fact that she had been abused repeatedly over time. Because the nurse examiner's statements dovetailed with A.B.'s trial testimony in material respects, the fact that the detectives testified to additional specifics that were not included in the nurse examiner's testimony would not have further supported the prosecution's theory that A.B. was abused at the hands of her father in any significant way. See Hojan v. State, 3 So. 3d 1204, 1210 (Fla. 2009)

("[W]here the evidence introduced in error was not the only evidence on the issue to which the improper evidence related, the introduction can be harmless.").

Third, there was significant other evidence that corroborated A.B.'s trial testimony that she was abused. That included (1) proof that Mr. Bullington's DNA was on his daughter's breast on the same day that she alleged he had touched and licked it, (2) proof of trauma to A.B.'s genitals of such intensity and duration that it was described as being the product of repeated injury causing the genitals to appear as those of an older woman, and (3) photographs on Mr. Bullington's phone of A.B., although dressed, posed suggestively as to highlight her breasts. Although this evidence by itself would not have proved the case against Mr. Bullington beyond a reasonable doubt, it certainly did corroborate A.B.'s testimony that she was sexually abused by her father to the extent that one would not expect the bolstering effect of the detectives' testimony to have affected the jury's deliberations.

In light of all of the evidence at trial taken in its context, therefore, we find the error harmless beyond a reasonable doubt.

III.

For the foregoing reasons, we affirm Mr. Bullington's convictions and sentences.[1]

Affirmed.

LaROSE, J., and CASE, JAMES R., ASSOCIATE SENIOR JUDGE, Concur.

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[1]Mr. Bullington raises a second appellate issue related to the content of the written judgment and sentence. We find no merit in that issue and do not address it further.