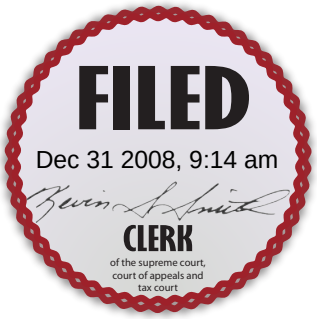

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IN THE
COURT OF APPEALS OF INDIANA

RONALD DANIELS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0806-CR-371
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven J. Rubick, Judge Pro Tempore
Cause No. 49G04-0711-FC-238046

December 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Ronald Daniels appeals from his convictions and sentence for two counts of Child Molesting, each as a Class C felony, following a jury trial. Daniels raises two issues for our review:

1. Whether the trial court committed reversible error when it prevented Daniels from questioning his victim, D.H., about whether D.H. had ever been instructed by her mother to lie.

2. Whether the trial court impermissibly attached a twelve-year habitual offender enhancement to each of Daniels' convictions.

We affirm.

FACTS AND PROCEDURAL HISTORY

On three separate occasions in the evening of November 6, 2007, Daniels entered the bedroom of eleven-year-old D.H. and molested her. D.H. was the daughter of Daniels' girlfriend at that time, M.H. Two of the molestations involved Daniels touching D.H.'s vagina with his finger. The next morning, D.H. informed her older sister of what had happened, and M.H. and the police were notified shortly thereafter. D.H. told the investigating officer what had happened, and the officer arrested Daniels.

On November 8, the State charged Daniels with two counts of child molesting, each as a Class C felony. At the ensuing jury trial, the following exchange took place during Daniels' cross-examination of D.H.:

Q All right. And was your grandmother supposed to know if [Daniels] was spending the night [at M.H.'s house]?

MS. DEPREZ [for the State]: Objection . . . .

* * *

[Judge removes the jury.]

MS. DEPREZ: Judge, the reason that the grandparents didn't know Mr. Daniels was staying there is because of the previous domestic violence incident, and that's the same response, same question, and I'm assuming the same response that Mr. Kress [Daniels' trial counsel] got at the child hearsay hearing when he asked [D.H.'s older sister] if she had ever lied to her grandparents about him being there. Yes, she had lied because the grandparents were very upset about him being around, so allowing that question to be asked puts me then in a position to bring up the domestic violence incident between the Defendant and [M.H.] and now we're trying a [domestic violence] case instead of a child molest.

THE COURT: Mr. Kress?

MR. KRESS: Mr. Daniels has requested that I inquire of this witness and other witnesses as to whether or not they were always entirely truthful to the best of his knowledge, inasmuch as credibility is the entirety of the State's evidence. He has told me that he believes that [D.H. and D.H.'s older sister] were instructed to tell lies about him being in the house, and one of those lies was that he was at the home to the grandmother. I think this is all, you know, the bottom line is, this behavior is all happening at the same time frame as the alleged molest. I've told Mr. Daniels, and Mr. Daniels, do you agree that I've told you that you take a chance by me asking these questions?

THE DEFENDANT: Yes, you have.

* * *

THE COURT: Well, you can make your offer of proof now, but we are not trying [the domestic violence] case [to] this jury . . . .

* * *

QUESTIONS BY MR. KRESS:

Q [D.H.], did you ever have to tell your grandmother that Ronnie wasn't there when he was there?

A Yes.

Q You know that was a lie, right?

A Yes.

Q All right. Do you know if [your older sister] ever did that?

A Yes.

Q Okay. And your mom told you to do that, right?

A Yes.

* * *

THE COURT: The State's objection is sustained. . . .

Transcript at 40-43.

Later in the trial, the State called M.H. as a witness. During Daniels' cross-examination of M.H., the following exchange took place:

Q Have you ever told Ronald that [D.H.] has lied to you?

A Yes, I have told him that.

Q In fact, the day you had that telephone conversation with him, didn't you preface your comments by saying, 'I know [D.H.] has lied but she told me that you touched her'?

A No, I don't recall that.

Q Okay. But [D.H.] has lied to you in the past, correct?

A Yes, but not about anything of this sort.

Q Okay.

A Small things, what normal children lie about—cleaning their room, being on the phone late.

Id. at 93.

Following the presentation of evidence and deliberations, the jury found Daniels guilty as charged. Daniels then stipulated to his status as an habitual offender. The court

sentenced Daniels to the advisory sentence of four years on each conviction, to run concurrently. The court then enhanced Daniels' sentence on each count by twelve years for being an habitual offender. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Admission of Evidence

Daniels first argues that the trial court abused its discretion when it barred him from cross-examining D.H. about her having been instructed by her mother to lie to her grandmother on occasion. Our standard of review of a trial court's findings as to the admissibility of evidence is for an abuse of discretion. Speybroeck v. State, 875 N.E.2d 813, 818 (Ind. Ct. App. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id. "Generally, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. In determining whether an evidentiary ruling affected a party's substantial rights, the court assesses the probable impact of the evidence on the trier of fact." Bell v. State, 820 N.E.2d 1279, 1281 (Ind. Ct. App. 2005), trans. denied.

The trial court did not abuse its discretion in barring Daniels from cross-examining D.H. about whether M.H. had instructed D.H. to lie to D.H.'s grandmother. While the credibility of the victim in this case was of particular importance, Daniels impeached D.H.'s credibility through his cross-examination of M.H. Insofar as Daniels' concern during D.H.'s testimony, then, was to again challenge D.H.'s credibility, that additional evidence was merely cumulative. "Evidence that is merely cumulative is not grounds for

reversal." Jeter v. State, 888 N.E.2d 1257, 1267 (Ind. 2008). Additionally, the specific testimony Daniels sought to elicit from D.H. necessarily implicated a domestic violence charge that was pending against Daniels at the time of this trial. As such, and in light of M.H.'s testimony, the court permissibly barred Daniels from pursuing that line of questioning with D.H. See Ind. Evidence Rule 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of . . . confusion of the issues, or misleading the jury, . . . or needless presentation of cumulative evidence.").

Issue Two: Habitual Offender Enhancement

Second, Daniels contends, and the State concedes, that the trial court erred when it attached Daniels' habitual offender enhancement to each of Daniels' convictions. Daniels then argues that we must remand that issue to the trial court for correction. As our Supreme Court has repeatedly stated:

> when defendants are convicted of multiple offenses and found to be habitual offenders, trial courts must impose the resulting penalty enhancement upon only one of the convictions and must specify the conviction to be so enhanced. Failure to specify requires that we remand the cause to the trial court to correct the sentence as it regards the habitual offender status.

McIntire v. State, 717 N.E.2d 96, 102 (Ind. 1999) (citations omitted); see, e.g., Davis v. State, 843 N.E.2d 65, 67 (Ind. Ct. App. 2006). However, our Supreme Court has also applied the following exception: "The only time we have found remand for re-sentencing to be unnecessary is when we affirmed all convictions and the trial court ordered identical sentences to run concurrently." Id. at 102 n.9. That is the case here, where the trial court

imposed concurrent four-year sentences and, as discussed above, we are affirming Daniels' convictions. Accordingly, we affirm the trial court in all respects.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.