



ATTORNEYS FOR APPELLANT

Valerie K. Boots
Megan Elizabeth Shipley
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Catherine Elizabeth Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Michael Bass Chatman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 22, 2022
Court of Appeals Case No.
22A-CR-934
Appeal from the
Marion Superior Court
The Honorable
Sheila A. Carlisle, Judge
Trial Court Cause No.
49D29-2101-F3-2684

Pyle, Judge.

Statement of Case

[1] A jury convicted Michael Bass Chatman (“Chatman”) of Level 3 felony aggravated battery¹ for injuries he inflicted on J.M.C., his ten-month-old son. At trial, a pediatric nurse practitioner testified, based on information she had acquired from other medical professionals, that J.M.C.’s injuries were likely caused by abuse. On appeal, Chatman contends that the pediatric nurse practitioner’s testimony about what the other medical professionals had told her was inadmissible hearsay, and he asks us to vacate his conviction and order a new trial. Finding that the nurse practitioner’s testimony was admissible under Indiana Evidence Rule 703, we affirm Chatman’s conviction.

[2] We affirm.

Issue

Whether the trial court abused its discretion in allowing the pediatric nurse practitioner to testify as to what other medical professionals had told her about J.M.C.’s condition, where she used that information to conclude that J.M.C.’s injuries were likely caused by abuse.

Facts

[3] In January 2021, Chatman lived with his two sons, K.M., who was fifteen years old, and J.M.C. On January 13, 2021, Chatman woke up K.M. at 11:00 a.m.

¹ See IND. CODE § 35-42-2-1.5.

and asked him to check on J.M.C., who was still asleep. Minutes later, K.M. checked on J.M.C., who was sleeping but “wasn’t looking right.” (Tr. Vol. 2 at 183).

[4] Chatman’s sister, Deborah Mathis, and her daughter, Dominique Torrence (“Torrence”), came over to check on J.M.C. When they arrived, J.M.C. was pale and unresponsive, his lips were turning purple, he could barely keep his eyes open, and he was gasping for air. Torrence called 911 and began CPR on J.M.C.

[5] J.M.C. was unresponsive when paramedics arrived at Chatman’s apartment. Paramedic Nicole Hale (“Paramedic Hale”) put a bag valve mask on J.M.C. because he was not breathing. She noticed that J.M.C. had marks on his forehead, underneath his chin, and around his arm and that he was “pale, very cool” and “limp.” (Tr. Vol. 3 at 6–7). J.M.C. had a low heart rate, which indicated he was in danger of going into pre-cardiac arrest. Paramedics administered NARCAN because J.M.C. had smaller pupils, was unresponsive, and was not breathing, all indicating a potential opiate overdose. On the way to Riley Children’s Hospital (“the hospital”), Paramedic Hale continued to ventilate J.M.C., and he was intubated by someone else once he arrived at the hospital.

[6] Members of the Child Protection Team assessed J.M.C.’s condition. The Child Protection Team is a unit composed of specially trained doctors and nurse practitioners who determine whether a child’s injuries were likely the result of

abuse. To that end, the Child Protection Team relies on lab work, often performed by other medical professionals, and collaborates closely with other surgeons and doctors to conclude whether abuse may have occurred. The Child Protection Team “work[s] together with other medical professionals” and must “collect a history about what happened” including “past medical history, family history, social history, history of present illness or what . . . led up to the presentation.” (Tr. Vol. 3 at 88–89).

[7] Pediatric Nurse Practitioner Anne Gordon (“Nurse Gordon”) was a member of the Child Protection Team. Before examining J.M.C., Nurse Gordon spoke to other members of the Child Protection Team and reviewed J.M.C.’s medical records to see what treatment J.M.C. had received and what the clinical findings showed at that point. Those records indicated that J.M.C. had been struggling to breathe and that his vital signs—blood pressure, heart rate, and body temperature—had been low, leading Nurse Gordon to conclude that J.M.C. was possibly in shock. Nurse Gordon also reviewed J.M.C.’s score on the Glasgow Coma Scale, a measurement of a patient’s level of consciousness. J.M.C.’s low score indicated that he had no purposeful movements, was not responsive to voices, and was not opening his eyes spontaneously. Finally, Nurse Gordon reviewed the results of J.M.C.’s MRI, which indicated hypoxic injuries caused by a lack of oxygen to the brain and significant injuries to J.M.C.’s upper right thigh.

[8] Nurse Gordon then conducted her own examination of J.M.C. and observed discoloration on his forehead, cheek, right flank, and leg, and under his arm.

She also observed severe bruising on his right leg. She further noticed that some of J.M.C.'s injuries had blistered and were starting to peel, which led Nurse Gordon to believe those injuries were burns, not bruises. She determined that J.M.C.'s right leg was swollen to the point that it required surgery. Nurse Gordon concluded that J.M.C.'s injuries were consistent with "non-accidental trauma" or "child abuse." (Tr. Vol. 3 at 103). She based this conclusion on her determination that there was no history that showed a plausible explanation for J.M.C.'s pattern bruising, burns, swelling, and injury. About two weeks after J.M.C. was discharged from the hospital, Nurse Gordon followed up with J.M.C. to assess his condition.

[9] The State charged Chatman with Level 3 felony aggravated battery and Level 3 felony battery resulting in serious bodily injury to a person less than fourteen years old. The State also alleged that Chatman was an habitual offender.

[10] Nurse Gordon testified at Chatman's March 14, 2022 trial. The State asked her about J.M.C.'s condition based on "the stuff that you – you reviewed," and Chatman objected on hearsay grounds. (Tr. Vol. 3 at 91–92). The trial court overruled the objection, finding that the information Nurse Gordon had acquired from other sources was admissible under the hearsay exception for statements made for the purpose of medical diagnosis or treatment. Nurse Gordon testified that those sources of information indicated that J.M.C. was struggling to breathe and his vital signs were low, which led her to conclude that J.M.C. was possibly in shock. The State then questioned Nurse Gordon about J.M.C.'s score on the Glasgow Coma Scale, and Chatman objected on

hearsay grounds, noting that another medical professional, not Nurse Gordon, had performed that test. The trial court overruled the objection, and Nurse Gordon testified that J.M.C.'s Glasgow Coma Scale score was three out of fifteen, the lowest possible score. The State also asked Nurse Gordon about J.M.C.'s MRI results, and Chatman again objected on hearsay grounds because Nurse Gordon had not performed the MRI or interpreted its results. The trial court overruled Chatman's objection. Nurse Gordon testified that the MRI showed evidence of hypoxic injuries caused by a lack of oxygen to the brain and significant swelling and bruising in J.M.C.'s upper right thigh.

[11] The jury convicted Chatman as charged, and he admitted to being an habitual offender. Because of double jeopardy concerns, the trial court vacated Chatman's conviction for Level 3 battery resulting in serious bodily injury to a person less than fourteen years old. It sentenced Chatman to twelve (12) years for the aggravated battery conviction and enhanced the sentence by twelve (12) years for Chatman's adjudication as an habitual offender. The trial court ordered Chatman to fully execute his aggregate sentence of twenty-four (24) years in the Indiana Department of Correction. Chatman now appeals.

Decision

[12] Chatman contends the trial court abused its discretion in allowing Nurse Gordon to testify that (1) J.M.C. was in or near a state of shock when he arrived at the hospital; (2) J.M.C. scored the lowest possible score on the Glasgow Coma Scale; and (3) J.M.C.'s MRI indicated that he had suffered hypoxic brain injuries from lack of oxygen and that he had severe swelling and

bruising in his right flank and thigh. Chatman claims this testimony was inadmissible hearsay because it was based on the statements of other medical professionals.

[13] We review evidentiary rulings for prejudicial abuse of discretion, which occurs where a trial court’s ruling is clearly against the logic and effect of the facts and circumstances before it, or if it misinterprets the law. *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015). Hearsay is a statement that “(1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted.” Ind. Evidence Rule 803(c). Hearsay is inadmissible absent an exception provided by the Rules of Evidence or other law. Ind. Evidence Rule 802. Evidence Rule 803(4) provides an exception for a statement “made by a person seeking medical diagnosis or treatment[.]” *Id.*

[14] Nurse Gordon’s testimony about J.M.C.’s medical condition, based on information she acquired from the other medical professionals, was not admissible under the hearsay exception in Evidence Rule 803(4). Her testimony was based on the statements of other medical professionals, J.M.C.’s medical records, and tests run by other medical professionals. Her testimony was not based on statements from J.M.C. himself about his medical condition. We made the same observation under similar facts in *Perryman v. State*, 80 N.E.3d 234 (Ind. Ct. App. 2017). There, a nurse testified that a social worker had told her that a child had accused Perryman of punching him. *Id.* at 240. We ruled that the nurse’s testimony about the social worker’s statement was not

admissible under Evidence Rule 803(4) because the social worker's statement to the nurse was not a statement by the social worker seeking medical diagnosis or treatment for herself. *Id.* at 247–48. Thus, as in *Perryman*, the trial court here abused its discretion in finding that Nurse Gordon's testimony was admissible under Evidence Rule 803(4) because her testimony did not recount statements by J.M.C. about his own medical condition.

[15] However, Nurse Gordon's testimony was admissible under Evidence Rule 703, which provides: "An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. Experts may testify to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field." To be sure, "such hearsay is inadmissible where it is merely a restatement of another's conclusion 'as a conclusory answer to an ultimate fact in issue,' such that the veracity of the statement is not 'subject to the test of cross-examination.'" *Barrix v. Jackson*, 973 N.E.2d 22, 26 (Ind. Ct. App. 2012) (quoting *Miller v. State*, 575 N.E.2d 272, 274 (Ind. 1991)), *trans. denied*. In such circumstances, the expert's testimony is "merely 'a conduit'" for placing another medical professional's diagnosis into evidence "without meaningful opportunities for cross-examination." *Est. of Benefiel v. Wright Hardware Co.*, 128 N.E.3d 485, 490–91 (Ind. Ct. App. 2019) (quoting *Faulkner v. Markkay of Ind., Inc.*, 663 N.E.2d 798, 801 (Ind. Ct. App. 1996)), *reh'g denied, trans. denied*.

[16] Here, Nurse Gordon testified that she was a nurse practitioner on the Child Protection Team. The Child Protection Team consults with other medical

professionals at Riley Hospital. The Child Protection Team collects the patient’s medical history and then examines the patient, which can lead to other testing. With respect to J.M.C., Nurse Gordon testified that she consulted with the medical professionals who had treated J.M.C., reviewed his medical records, examined J.M.C., took photographs of him, and followed up as the results of his testing were completed. Notably, Nurse Gordon’s testimony about the information she had acquired from others did not concern the “ultimate fact in issue,” i.e., whether J.M.C.’s injuries were likely the result of abuse. *See Barrix*, 973 N.E.2d at 26 (quoting *Miller*, 575 N.E.2d at 274). Rather, based on the information Nurse Gordon acquired from others, she testified about her own independent opinion on that ultimate fact in issue: “overall, in the absence of a plausible explanation, which [they] were not provided, [J.M.C.’s] findings and injuries were most consistent with non-accidental trauma” or “child abuse.” (Tr. Vol. 3 at 103).

[17] Nurse Gordon’s expert opinion as to the cause of J.M.C.’s injuries was based upon evidence of the type reasonably relied upon by experts in the medical field—histories provided by emergency first responders, medical records, and testing. Therefore, Nurse Gordon’s testimony about what she had learned about J.M.C.’s condition from other medical professionals was admissible pursuant to Evidence Rule 703.

[18] Affirmed.

Bradford, C.J., and Tavitas, J., concur.