

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Levi A. Lord,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 27, 2022

Court of Appeals Case No.
22A-CR-1755

Appeal from the St. Joseph
Superior Court

The Honorable Elizabeth C.
Hurley, Judge

Trial Court Cause No.
71D08-2006-F1-7

Bradford, Chief Judge.

Case Summary

- [1] Levi Lord was charged with and convicted of one count of Level 1 felony child molesting for acts involving his then-stepdaughter, S.H. On appeal, Lord contends that (1) the trial court abused its discretion in admitting the testimony of a forensic nurse relating to statements made by S.H. during her medical examination and (2) the evidence is insufficient to sustain his conviction. Because we disagree with both contentions, we affirm.

Facts and Procedural History

- [2] In 2020, then-forty-seven-year-old Lord and his ex-wife, T.H., lived with T.H.'s eight children, including then-twelve-year-old S.H. Starting when S.H. was nine years old, Lord began rubbing S.H.'s head. Starting when S.H. was ten years old, Lord began rubbing her bottom and genitals when she was washing dishes. When S.H. was between ten and eleven years old, Lord came into S.H.'s bedroom on numerous occasions while S.H. was sleeping. While in her room, he would pull down her pants and touch her backside and genitals.
- [3] Lord eventually began specifically instructing S.H. to wear leggings or shorts, which did not tie and could be easily removed, to bed. In an effort to make the garments harder to remove, S.H. started using shoelaces as a means to tie her leggings and shorts around her waist. While unaware that S.H. was wearing shoestrings around her waist as a belt to bed, at some point, T.H. noticed that shoelaces were missing around the house. On some occasions, Lord tried to

penetrate S.H.'s vagina with his finger. When Lord attempted this, S.H. "kept moving" away from him "because it hurt." Tr. Vol. II p. 37. Lord would eventually leave the room.

[4] On March 12, 2020, T.H. engaged her children in a conversation about "good touch and bad touch." Tr. Vol. II p. 16. During this conversation, S.H. told T.H. that Lord had been touching her inappropriately. After S.H. told her about Lord's actions, T.H. called 911. T.H. and her children were asked to go to a child-advocacy center, where the children were interviewed individually. During their interview with S.H., staff at the center observed that S.H. was wearing pants with a shoelace tied around her waist. After concluding their interviews with the children, staff at the center collected S.H.'s clothing and instructed T.H. to take S.H. to the hospital for a medical examination.

[5] At the hospital, S.H. was examined by forensic nurse Jennifer Riggs ("Nurse Riggs"). Nurse Riggs, who was dressed in blue medical scrubs, spoke to S.H. about why she was being examined. S.H. cooperated with Nurse Riggs and answered her questions. S.H. informed Nurse Riggs that she "was in the forensic department to have a sexual assault exam conducted after she had disclosed touching by her stepfather." Tr. Vol. II p. 74. S.H. identified Lord as her stepfather and told Nurse Riggs that the touching had been occurring approximately every other night "over a period of five to seven months" and that "the last time it had occurred was two days prior." Tr. Vol. II p. 74. S.H. further told Nurse Riggs that

each night that this occurred [Lord] would come into her bedroom she said while everyone else slept. She thought it might be -- she gave me a window of like 3:00 to 4:00 or 1:00 to 2:00. She thought it was pretty late in the night. And he would come into her bedroom in her bed and begin by first touching her butt and then by touching her genital area sometimes over her clothes, sometimes under her clothes. She told me that he would whisper things to her as he would do this. She said sometimes it hurt. And then she said that she had told him to stop or asked him to stop, and when it continued, she tied a shoelace around her pants so that it would make it harder for him to be able to get her pants down.

Tr. Vol. II p. 75.

- [6] S.H. also told Nurse Riggs that Lord had penetrated her vaginally with his fingers causing her pain and, on one occasion, had asked her, “[a]re you wet?” Tr. Vol. II p. 75. Nurse Riggs documented the reported penetration in S.H.’s medical records and conducted a pelvic examination on S.H. During this examination, Nurse Riggs observed that S.H.’s labia were “very red” and irritated and that it appeared as if “any touch or pressure would cause tearing and bleeding to [the genital area] and would be very painful.” Tr. Vol. II p. 79. In completing the examination, Nurse Riggs noted that “there was certainly a lot of redness [and] discomfort down there.” Tr. Vol. II p. 79.
- [7] On June 5, 2020, the State charged Lord with Level 1 felony child molesting. At trial, when asked if Lord’s finger had ever “actually” penetrated her vaginally, S.H. initially stated, “[n]o, not really, like he tried, but it didn’t.” Tr. Vol. II p. 41. However, when S.H. was asked if “not really” meant “a little bit

or not at all,” S.H. clarified that Lord’s finger had gone inside of her “a little bit.” Tr. Vol. II p. 41. Also at trial, Lord’s counsel objected to Nurse Riggs’s testimony regarding what S.H. had told her, arguing that it was impermissible hearsay. The State responded that because S.H. had understood that she was receiving medical treatment when she made the statements to Nurse Riggs, S.H.’s statements fell under the medical treatment or diagnosis exception to the hearsay rule. The trial court agreed with the State and admitted Nurse Riggs’s testimony over Lord’s objection.

[8] At the conclusion of the presentation of evidence, a jury found Lord guilty as charged. The trial court then sentenced Lord to a fifty-year term, with forty-five years executed in the Department of Correction and five years suspended to probation.

Discussion and Decision

[9] Lord contends on appeal that (1) the trial court abused its discretion in admitting Nurse Riggs’s testimony regarding what S.H. told her during S.H.’s examination and (2) the evidence is insufficient to sustain his conviction for Level 1 felony child molesting.

I. Admission of Evidence

[10] Wide discretion is afforded the trial court in ruling on the admissibility and relevancy of evidence. We review evidentiary decisions for abuse of discretion and reverse only when the decision is clearly against the logic and effect of the facts and circumstances. A claim of error in the exclusion or admission of

evidence will not prevail on appeal unless the error affects the substantial rights of the moving party.

Nicholson v. State, 963 N.E.2d 1096, 1099 (Ind. 2012) (internal citations and quotation omitted).

[11] In challenging the admission of Nurse Riggs’s testimony, Lord argues that the testimony amounted to impermissible hearsay. “‘Hearsay’ means a statement that: (1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered into evidence to prove the truth of the matter asserted.” Ind. Evid. Rule 801(c). While hearsay is generally not admissible, it is well-established that statements made for medical diagnosis or treatment “are not excluded by the rule against hearsay.” Ind. Evid. Rule 803(4).

[12] Evidence Rule 803(4) defines a “statement made for medical diagnosis or treatment” as “[a] statement that: (A) is made by a person seeking medical diagnosis or treatment; (B) is made for--and is reasonably pertinent to--medical diagnosis or treatment; and (C) describes medical history; past or present symptoms, pain or sensations; their inception; or their general cause.”

Rule 803(4)’s exception is grounded in a belief that the declarant’s self-interest in obtaining proper medical treatment makes such a statement reliable enough for admission at trial—more simply put, Rule 803(4) reflects the idea that people are unlikely to lie to their doctors because doing so might jeopardize their opportunity to be made well.

VanPatten v. State, 986 N.E.2d 255, 260 (Ind. 2013).

[13] Application of the exception requires that the declarant is motivated to provide truthful information in order to promote diagnosis and treatment and that the content of the statement is such that an expert in the field would reasonably rely on it in rendering diagnosis or treatment. *Id.* The Indiana Supreme Court has previously concluded that

Statements made by victims of sexual assault or molestation about the nature of the assault or abuse—even those identifying the perpetrator—generally satisfy the second prong of the analysis because they assist medical providers in recommending potential treatment for sexually transmitted disease, pregnancy testing, psychological counseling, and discharge instructions.

Id. The second prong of the test is therefore satisfied in this case, leaving us to consider only whether S.H. had been motivated to provide truthful information to Nurse Riggs.

[14] With most declarants, the declarant's desire to seek and receive treatment may be inferred from the circumstances. *Id.* at 260–61.

But in cases like the one here, where the declarant is a young child brought to the medical provider by a parent, we have acknowledged that such an inference may be less than obvious. Such young children may not understand the nature of the examination, the function of the examiner, and may not necessarily make the necessary link between truthful responses and accurate medical treatment. In that circumstance, there must be evidence that the declarant understood the professional's role in order to trigger the motivation to provide truthful information. This evidence does not necessarily require testimony from the child-declarant; it may be received in the form of foundational testimony from the medical professional

detailing the interaction between him or her and the declarant, how he or she explained his role to the declarant, and an affirmation that the declarant understood that role. But whatever its source, this foundation must be present and sufficient.

Id. at 261 (internal citations and quotation omitted). “Appellate review of this issue is necessarily case-specific and turns on the facts and circumstances of each case as they are reflected in its record.” *Id.*

[15] Here, the record clearly demonstrates that at the time of the examination, S.H. believed that she was speaking to Nurse Riggs about Lord’s actions for the purpose of receiving medical diagnosis or treatment. S.H. testified that during the examination, Nurse Riggs had asked her medical questions and questions about her body. S.H. had been cooperative during the examination and had answered Nurse Riggs’s questions. S.H. also testified that she had been to the hospital before to get shots, suggesting that she was aware that one goes to a hospital to receive medical treatment. In addition, Nurse Riggs testified that she had been dressed in blue medical scrubs when she had spoken to S.H. and that she had explained “what [she] was doing and why [she] was doing it.” Tr. Vol. II p. 72. Nurse Riggs also confirmed that she had asked S.H. about her medical history and the reason that she came to the hospital; completed a head-to-toe physical examination of S.H., including a pelvic examination; drawn blood; and taken a urine sample. Importantly, the record reveals that S.H. had informed Nurse Riggs that she “was in the forensic department to have a sexual assault exam conducted after she had disclosed touching by her stepfather.” Tr. Vol. II p. 74.

[16] In arguing that S.H. had not been aware of the reason that she was taken to the hospital, Lord points to the Indiana Supreme Court's decision in *VanPatten* for support. The facts of *VanPatten*, however, are easily distinguishable from the facts of this case. In *VanPatten*, the victims were around six years old. 986 N.E.2d at 257. One of the two recanted her allegations at trial. *Id.* at 258. Also at trial, the nurse who had examined this victim testified to the victim's prior statements during the nurse's examination of the victim. *Id.* On appeal, the Indiana Supreme Court held that the trial court abused its discretion by allowing the nurse to testify regarding the victim's prior statements because the record did not sufficiently establish that the child-victim could make the necessary link between truthful responses and accurate medical treatment. *Id.* at 266–67. The Court did observe, however, that

[w]ere [the victims] older, certainly the State is correct that the appearance of the building, the exam room, and [the nurse's] scrubs and job title would probably be sufficient circumstances from which to infer that the two girls desired to seek medical treatment and were thus motivated to speak truthfully.

Id. at 265.

[17] In this case, S.H. was twelve years old at the time of the examination, twice the age of the victims in *VanPatten*, and S.H. both testified at trial and provided statements to Nurse Riggs that made it clear that she understood why she was at the hospital, *i.e.*, to receive medical care. Also, unlike in *VanPatten*, S.H. has not recanted her allegations, but rather has consistently accused Lord of sexual misconduct. Given these facts coupled with the facts set forth above, we

conclude that the record is sufficient in this case to support the inference that S.H. had desired to seek medical treatment and had therefore been motivated to speak truthfully. We therefore further conclude that the trial court did not abuse its discretion in admitting Nurse Riggs's testimony at trial.

[18] Moreover, even if we had concluded that the trial court abused its discretion in this regard, such error was harmless.

Errors in the admission of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. In determining whether error in the introduction of evidence affected the defendant's substantial rights, this Court must assess the probable impact of the evidence upon the jury. Admission of hearsay evidence is not grounds for reversal where it is merely cumulative of other evidence admitted.

Id. at 267 (cleaned up).

[19] In this case, the challenged testimony, *i.e.*, that S.H. had reported that Lord had penetrated her vagina with his finger, was cumulative of S.H.'s testimony to the same effect. S.H. testified that Lord's finger had penetrated her vagina "a little bit." Tr. Vol. II p. 41. "[P]roof of the slightest penetration is enough to support a conviction" for child molesting. *Spurlock v. State*, 675 N.E.2d 312, 315 (Ind. 1996). As such, S.H.'s testimony alone was sufficient to prove the charged offense and the challenged testimony was, at most, cumulative of S.H.'s testimony. The admission of the challenged evidence is not grounds for reversal. *See VanPatten*, 986 N.E.2d at 267.

II. Sufficiency of the Evidence

[20] When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.”

Mardis v. State, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)).

[21] In order to prove that Lord committed Level 1 felony child molesting, the State was required to prove that Lord, while at least the age of twenty-one, “with a child under fourteen (14) years of age, knowingly or intentionally perform[ed] or submit[ted] to sexual intercourse or other sexual conduct as defined in [Indiana Code section] 35-31.5-2-221.5.” Ind. Code § 35-42-4-3(a)(1). “Other

sexual conduct' means an act involving: (1) the sex organ of one (1) person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object." Ind. Code § 35-31.5-2-221.5.

[22] It is undisputed that at the time the conduct took place, S.H. was under the age of fourteen and Lord was over the age of twenty-one. In challenging the sufficiency of the evidence, Lord asserts that "[t]he State failed to meet its burden in one key area, and that is the fact that there was no clear testimony regarding whether or not an act that falls within the definition of sexual conduct occurred." Appellant's Br. p. 17. In making this assertion, he argues that S.H.'s "testimony regarding digital penetration is ambiguous at best." Appellant's Br. p. 17. However, as we noted above, S.H. testified that Lord's finger had penetrated her vagina "a little bit." Tr. Vol. II p. 41. "[P]roof of the slightest penetration is enough to support a conviction" for child molesting. *Spurlock*, 675 N.E.2d at 315. As such, S.H.'s testimony alone was sufficient to prove that Lord engaged in "other sexual conduct" by penetrating her vagina with his finger.

[23] The judgment of the trial court is affirmed.

Riley, J., and Pyle, J., concur.