MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Mark Chandler,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 23, 2023

Court of Appeals Case No. 22A-CR-2769

Appeal from the Marion Superior Court

The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No. 49D30-2011-F1-35560

Memorandum Decision by Judge Brown
Judges Crone and Felix concur.

Brown, Judge.

[1] Mark Chandler appeals his convictions for child molesting as a level 1 felony, attempted child molesting as a level 1 felony, and two counts of child molesting as level 4 felonies. We affirm.

Facts and Procedural History

[2] In 2014, Sh.M. and Chandler began an intimate relationship and Chandler moved into her home. After two or three months, Chandler became more controlling. In May 2015, Sh.M.'s daughters, E.D., who was about eight or nine years old, S.M., who was "around seven through nine" years old, and K.M. were staying with her. Transcript Volume III at 30. That month, Sh.M. started a new job at Target. Chandler watched Sh.M.'s children while she worked.

[3] During one occasion, Chandler told S.M. to go into her mother's room, said he needed to check her, and placed his finger on her vagina. S.M. felt hurt and scared. At some other time, he touched S.M. on her vagina underneath her clothing while she was on the stairs.

[4] While Sh.M. was at work, Chandler entered E.D.'s room, woke her, told her to come to her mother's bedroom, and grabbed her by the arm. Chandler tried to make her suck his penis. E.D. told him no, and Chandler told her to go back in her room. Chandler called S.M. who went with him. After a few minutes, S.M. returned to her room, and E.D. observed that S.M. "looked scared." Transcript Volume II at 242. During another time, Chandler removed E.D.'s pants and touched her vagina with two fingers. When Chandler touched her,

he was "going deep inside" and "it was . . . hurting and bleeding . . . ." *Id.* at 238-239. Chandler touched E.D. "almost . . . when [her mother] went to work every single night." Transcript Volume III at 8-9.

[5] E.D. refused to give Chandler oral sex at some point while Sh.M. was working, and he "kneed" her in the back which resulted in a bruise. Transcript Volume II at 240. E.D. told her mother that she had something to show her, pulled up her shirt, and showed her a bruise that looked "[l]ike a whip on her back" and a welt. *Id.* at 204. E.D. told her who was responsible for the bruise, Sh.M. confronted Chandler, and he told her that he did not "do it and he had permission from [E.D.'s] father to discipline her." *Id.* At some point after observing the bruise, Sh.M. had an altercation with Chandler. Chandler left the residence and did not stay in the home, but later returned because Sh.M. was "young and scared for [her] own safety." *Id.* at 205.

[6] E.D. hid her mother's keys to prevent her from going to work "[s]o [Chandler] wouldn't . . . try to touch" her or her sisters or "get [them] to do stuff that [they] didn't wanna do." *Id.* at 243. On July 4, 2015, Sh.M. was terminated from her job due to her attendance. At some point, Chandler moved out, S.M. and E.D. told their aunt what Chandler had done, and an investigation began. Jill Carr, a forensic child interviewer, conducted separate interviews with S.M. and E.D. in August 2020. S.M. and E.D. each disclosed that Chandler sexually abused them. After the forensic interviews, Indianapolis Metropolitan Police Detective Nicolle Flynn received a report and took a statement from Sh.M.

[7] On November 25, 2020, the State charged Chandler with: Count I, child molesting as a level 1 felony; Count II, attempted child molesting as a level 1 felony; Count III, battery on a person less than fourteen years old as a level 5 felony; Count IV, child molesting as a level 4 felony; and Count V, child molesting as a level 4 felony. Counts I through IV alleged E.D. was the victim, and Count V alleged S.M. was the victim.

[8] On December 9, 2020, the court held an initial hearing and appointed Attorney Chris Collman as counsel for Chandler. On April 2, 2021, Attorneys Angela Field Trapp, Zachary Smith, and Amanda Blake Price filed a notice of appearance for Chandler. On July 21, 2021, Attorneys Trapp, Smith, and Price filed a motion to withdraw, which the court granted.

[9] On August 3, 2021, the court held a hearing to address the status of Chandler's counsel. The court informed Chandler that he no longer had private counsel representing him and asked if he was going to be able to hire new private counsel. After some discussion, the court found Chandler to be indigent and advised him to talk to Attorney Collman about any issues.

[10] On July 27, 2022, Chandler sent the court a letter indicating that he would be representing himself *pro se*. On July 28, 2022, the court held a hearing to discuss the status of counsel. The court explained that "there are several books that set out the rules of evidence and the rules of trial procedure" and "they can be very complicated." *Id.* at 43. The court indicated it could not help Chandler, he would be at "a huge disadvantage," and that "it's always been

practice to appoint standby counsel." *Id.* at 44. The court explained Chandler's responsibilities if he proceeded *pro se*. It stated that Chandler "could wind up finding that [he] didn't identify all of the potential defenses that were appropriate, any evidentiary issues, and that he would be taking "a great risk." *Id.* at 46. Chandler informed the court that he "went to 9th [g]rade" and had some additional schooling while incarcerated after that. *Id.* at 48. He repeatedly indicated he would represent himself. The court asked Chandler if he was assuring it that he believed he was sufficiently educated and believed it was in his best interest to represent himself, and he answered affirmatively. The court indicated Attorney Collman would serve as standby counsel.

[11] On September 26, 2022, Chandler filed a seventy-eight-page document including handwritten documents, certain police reports, and copies of United States statutes, Indiana Criminal Rules, and Federal Rules of Civil Procedure.

[12] On October 6, 2022, the court held a pretrial conference. Chandler asked for permission "to use all of [Sh.M.'s] statements." *Id.* at 68. The court informed Chandler that he could not read what she said into the record but he could impeach her. After some discussion, the court told Chandler that he needed to read the Rules of Evidence and find out how to impeach and that it could not teach him. The court asked Chandler if he wanted Attorney Collman to remain as standby counsel, he answered in the negative, and the court relieved Attorney Collman.

[13] On October 13, 2022, the court held a pretrial conference. Chandler mentioned police reports and stated: "I'm pretty much just going to open up the door with the police reports." *Id.* at 88. The court stated: "Well, if you do that without having a conversation with me outside of the presence of the jury, I am going to . . . rule a mistrial in this case." *Id.*

[14] On October 16, 2022, the State filed an amended information charging Chandler with: Count I, child molesting as a level 1 felony; Count II, attempted child molesting as a level 1 felony; Count III, battery on a person less than fourteen years old as a level 5 felony; Count IV child molesting as a level 4 felony; and Count V, child molesting as a level 4 felony. Counts I through IV alleged E.D. was the victim, and Count V alleged S.M. was the victim.

[15] On October 17, 2022, a jury trial began. During cross-examination of Sh.M., Chandler asked if she had mentioned to the prosecutor that they had rekindled around January 2014, and Sh.M. answered affirmatively. The following exchange then occurred:

> Q. Okay. I just wanted to make sure because you – in your deposition, you said that –
>
> [Prosecutor]: Objection. Improper impeachment. Your Honor –
>
> THE COURT: Let him ask the question.
>
> [Chandler]: I haven't even –

> THE COURT: Sir, there – remember we talked about a proper way to do this. So you need to make sure you're doing it properly.
>
> [Chandler]: Okay.

Id. at 211. After further testimony, Chandler asked: "[T]hat the time that you said that we rekindled in January of 2014, did you state that inside your deposition? Is that the correct month that you pretty much told [my prior defense counsel] when he asked you that question?" *Id.* at 213. Sh.M. answered: "To my knowledge, yes." *Id.* Sh.M. also stated: "I remember for sure that it was January 1, 2014." *Id.*

[16] Upon questioning by Chandler, Sh.M. testified that she was working at Target during the time she sent her children away from her house and to her cousin's house across the street. Chandler stated: "Well, inside your deposition, you said that I'm the only one," and the prosecutor objected on the basis of improper impeachment. *Id.* at 216. The court sustained the objection. Chandler referenced the deposition again, and the prosecutor objected. Outside the presence of the jury, the court heard arguments from the parties. Chandler asserted in part that he was "not going for impeachment right now" and "I want to go through these statements." *Id.* at 218. The court stated: "[W]hat you're doing is impeachment, but you're doing it improperly." *Id.*

[17] After the jury returned and at a sidebar, Chandler stated:

> You said pretty much the police was called at a – the time that she pretty much said that when she was working at Target, and I

> have records of the police report that . . . the police came out and I wanna (indiscernible) to evidence, because she said her child got hit and she called the police, and around the same time that I was pretty much – she was working at Target.

Id. at 220-221. The court stated that was not her testimony and: "She didn't say that she called the police when her child was hit. You want to enter those police reports into evidence? Is that what you're asking me?" *Id.* at 221. Chandler answered: "No. She said that while she was working at Target . . . the police came over there because I hit her daughter . . . ." *Id.* After some discussion, Chandler stated that he was asking the court to admit "this into our evidence," and the court replied: "Those are not admissible reports." *Id.* at 222. The court asked "what is the reason that makes the police reports admissible?" *Id.* at 223. Chandler answered:

> Well, she said that she called the police while I was watching her – due to the – the time that I – she was working at Target, she called the police because her daughter came to her and she pretty much had a bruise. And then she – after that, she said that me and her broke up. But this is the same time that she's saying that I was watching her kids at Target. Is basically a domestic – she's basically saying a domestic happened – the battery – as you got me charged with.

Id. After further discussion, the court stated "[t]hat police report is not admissible." *Id.* at 225. It informed Chandler that he could "cross-examine [Sh.M.] about what she said, but that police report is not admissible." *Id.* at 226.

[18] During cross-examination of E.D., Chandler asked: "E.D., from your prior statement – your original prior statement, do you recall mentioning to your mother that . . . ." *Id.* at 245. The prosecutor objected on the basis of improper impeachment, and the court sustained the objection. Outside the presence of the jury, Chandler asserted "that's a whole different story what [sic] you said inside your deposition under oath." *Id.* at 249. The court stated: "If you impeach properly, you can get that information out, but you just don't get to say, 'do you remember making this statement,' and read it from the deposition." *Id.* Chandler said: "I don't wanna impeach. It's perjury. She's lying right then and there . . . ." *Id.* He later stated that "if she's not going to admit to what she said inside the deposition . . . then I will have . . . her repeat it over again that she said she don't remember and then I will impeach her." *Id.* at 250. After some discussion, the court stated: "You use the statement to impeach. This is what I said to you a week ago Thursday. You use the statements to impeach." Transcript Volume III at 6.

[19] Chandler continued his cross-examination of E.D. The State then presented the testimony of S.M., Carr, and Detective Flynn. The jury found Chandler guilty as charged. The court found that Count III merged into Count II and sentenced Chandler to an aggregate sentence of seventy-one years.

Discussion

[20] Chandler argues that the trial court's refusal to allow him to impeach Sh.M. and E.D. with their prior statements denied him the right to confront and cross-examine them and violated his right under the Sixth Amendment of the United

States Constitution. He asserts he "was asking proper questions and using a permissible technique." Appellant's Brief at 18. He argues that Sh.M.'s deposition statements were not hearsay under Ind. Evidence Rule 801(d)(1)(A) because she testified and was subject to cross-examination. With respect to his questioning of Sh.M., Chandler points to Sh.M.'s testimony that E.D. showed her the bruise when she returned home from Target, mentions his reference at trial to her deposition, and asserts that the prosecutor's objection "served to confuse and deter [him] from pursuing that line of inquiry." *Id.* at 22. He cites Ind. Evidence Rule 803(8)(B)(i) and contends that the trial court abused its discretion in refusing to admit the police reports which showed that he and Sh.M. had a domestic dispute in June 2015 and that her children were staying in their apartment at the time. He asserts he had "argued that the report contradicted [Sh.M.] testimony that she sent her children to her cousin's house after Chandler bruised E.D." *Id.* at 23 (citing in part Appellant's Appendix Volume II at 232). He contends that the jury would have diminished the credibility of Sh.M.'s testimony if it had heard "about the timing of E.D.'s bruise and the end of her relationship with" him. *Id.* at 28. He also argues that the jury would have diminished its confidence in E.D.'s testimony "[h]ad they heard the inconsistent pretrial statements by E.D. about how many times Chandler had touched her inappropriately." *Id.*

[21] To reverse a trial court's decision to exclude evidence, there must have been error by the court that affected the defendant's substantial rights and the defendant must have made an offer of proof or the evidence must have been

clear from the context. *Woods v. State*, 892 N.E.2d 637, 641 (Ind. 2008). An offer of proof is the method by which the proponent of evidence preserves any error in its exclusion. *Tyson v. State*, 619 N.E.2d 276, 281 (Ind. Ct. App. 1993), *trans. denied*, *cert. denied*, 510 U.S. 1176 (1994). Generally, when a defendant does not make an offer of proof, he has not adequately preserved the exclusion of a witness's testimony as an issue for appellate review. *Wiseheart v. State*, 491 N.E.2d 985, 991 (Ind. 1986). An offer of proof provides the appellate court with the scope and effect of the area of inquiry and the proposed answers, in order that it may consider whether the trial court's ruling excluding the evidence was proper. *Tyson*, 619 N.E.2d at 281. Thus, the offer of proof must demonstrate the substance, purpose, relevancy, and materiality of the excluded evidence in order to enable the appellate court to determine on appeal whether the exclusion was proper. *Id.* "This offer to prove is necessary to enable both the trial court and the appellate court to determine the admissibility of the testimony and the prejudice which might result if the evidence is excluded." *Wiseheart*, 491 N.E.2d at 991. The purpose of an offer of proof is to convey the point of the witness's testimony and provide the trial judge the opportunity to reconsider the evidentiary ruling. *Woods*, 892 N.E.2d at 642. Equally important, it preserves the issue for review by the appellate court. *Id.*

[22] The record reveals that the trial court advised Chandler regarding his decision to proceed without counsel and repeatedly warned him against proceeding *pro se*. Chandler does not challenge the court's advisements in this regard. The record reveals that Chandler did not make an offer of proof with respect to any

prior statements. While he made some arguments regarding them, he did not provide a detailed explanation at trial of the contents of the statements or their relevance. Chandler also did not make an offer of proof with respect to the police reports. To the extent that Chandler cites a police report included in the seventy-eight-page document he filed on September 26, 2022, we cannot say that reversal is warranted even assuming that the police report could be considered. The police report cited by Chandler indicates that a report of a battery was made on June 15, 2015, in which Chandler was listed as the suspect and Sh.M. was listed as the victim. The report alleged that Sh.M. stated that she arrived home from work, Chandler was upset and arguing with her over "not having his lunch ready for him to take to work," Chandler left for work and returned, and they started arguing over the car. Appellant's Appendix Volume II at 233. The report does not mention E.D.'s bruise.[1] Based upon the record, we cannot say that any error was preserved or that reversal is warranted.

[23] For the foregoing reasons, we affirm Chandler's convictions.

[24] Affirmed.

Crone, J., and Felix, J., concur.

[1] Chandler's September 26, 2022 filing contains other police reports involving reports that he had stolen cash and that a child had been shot. The filing also contains a Team Member Verification Report dated June 15, 2022, that lists Target Corporation, and indicates that Sh.M. was terminated on July 4, 2015.