MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

Thomas L. Beall,

Appellant-Defendant,

v.

State of Indiana,

Appellee-*Plaintiff*.

November 9, 2023

Court of Appeals Case No. 22A-CR-2990

Appeal from the Delaware Circuit Court

The Honorable Marianne L. Vorhees, Judge

Trial Court Cause No. 18C01-1907-F1-000010

Memorandum Decision by Judge Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of the Case

[1] A jury convicted Thomas Beall of three counts of child molesting as Level 1 felonies and two counts of child molesting as Level 4 felonies. The trial court sentenced Beall to a total of 145 years. Beall now appeals his conviction and presents one issue for our review, which we restate as follows: Whether a defendant's Confrontation Clause rights are violated when the trial court admits evidence containing out-of-court statements before the declarants testify.

[2] We affirm.

Facts and Procedural History

[3] Beall was close friends with Jose Lopez since high school. Lopez was the father of ten children, including a daughter E.L. ("Child 1"), and twin daughters, M.L. ("Child 2") and Li.L. ("Child 3") (collectively, the "Children"). Beall was often at Lopez's house, and Lopez would take his children to Beall's parents' house on the weekends.

[4] On July 6, 2019, when Child 2 and Child 3 were nine years old, they told their mother that Beall had been sexually abusing them. Soon thereafter, Child 1, who was 13 years old, disclosed that Beall had been sexually abusing her.

[5] On July 11, 2019, a board-certified Sexual Assault Nurse Examiner (the "Forensic Nurse") examined the Children at a local hospital. As part of these examinations, the Forensic Nurse took notes about her findings and what the Children told her. For example, both Child 2 and Child 3 told the Forensic

Nurse that Beall touched their genitals with a black object and put his penis in their mouths. They both also told the Forensic Nurse that Beall would make one of them watch while Beall performed sex acts on the other.

[6] Similarly, Child 1 told the Forensic Nurse that Beall had penetrated her digitally and with sex toys, attempted anal sex with her, made her perform oral sex on him, whipped her with an object that had red strings, took nude photographs of her, and made her watch him sexually abuse Child 2 and Child 3. The Forensic Nurse included all this information in her notes which she incorporated into the reports of the examinations (the "Reports").

[7] Beall was arrested on July 12, 2019. At trial, the State sought to admit the Reports. Beall objected on the grounds that the Reports contained hearsay and that the Reports violated Beall's "Sixth Amendment right to confront witnesses." Tr. Vol. II at 81, 86–87, 89. The trial court overruled Beall's objection and admitted the Reports. The Children testified the day after the Forensic Nurse testified.

[8] The jury convicted Beall of three counts of child molesting as Level 1 felonies and two counts of child molesting as Level 4 felonies. The trial court sentenced Beall to a total of 145 years. This appeal ensued.

Discussion and Decision[1]

[9] Beall argues that the trial court violated his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution by admitting the Reports[2] before the Children testified and were cross-examined.[3] Generally, we review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Dycus v. State*, 108 N.E.3d 301, 303 (Ind. 2018) (quoting *Turner v. State,* 953 N.E.2d 1039, 1045 (Ind. 2011)). However, where, as here, a constitutional violation is alleged, we review the trial court's ruling de novo. *Id.* at 304 (citing *Speers v. State*, 999 N.E.2d 850, 852 (Ind. 2013), *cert. denied*).

[10] The Confrontation Clause, which is made applicable to the States by the Fourteenth Amendment, provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." U.S. Const. amend. VI. "The Confrontation Clause applies to an out-of-court statement if it is testimonial in nature, the

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[1] We note at the outset that Beall failed to support most of his Statement of Facts with citations to the Record on Appeal or Appendix, as required by Indiana Appellate Rule 46(A)(6)(a). Beall also failed to support quoted material in his Summary of Argument with citations. Nevertheless, we will address the merits of Beall's appeal.

[2] Beall repeatedly asserts the trial court abused its discretion by admitting the Forensic Nurse's "hearsay testimony" and her Reports. Appellant's Br. at 1, 9, 12, 13. Beall does not identify the testimony he believes the trial court should not have admitted, thereby violating Indiana Appellate Rule 46(A)(8)(d). Our review of the record reveals that Beall did not object to any of the Forensic Nurse's testimony at trial, only the admission of her Reports. Because Beall has failed to identify the allegedly objectionable testimony of the Forensic Nurse, we limit our review to only the admission of the Reports.

[3] Beall argues only that the trial court violated his rights under the United States Constitution; Beall does not argue that the trial court violated his rights under Indiana's counterpart to the Confrontation Clause found in Article 1, Section 13 of the Indiana Constitution.

declarant is not unavailable, and the defendant has had no opportunity to cross-examine the declarant." *Speers*, 999 N.E.2d at 852 (citing *Crawford v. Washington*, 541 U.S. 36, 42, (2004)).

[11] If the declarant appears for cross-examination at trial, however, then the Confrontation Clause "does not bar admission of a statement so long as the declarant is present at trial to defend or explain it." *Crawford*, 541 U.S. at 59 n.9. In this context, the Confrontation Clause "places no constraints at all on the use of [the declarant's] prior testimonial statements." *Id.* (citing *California v. Green*, 399 U.S. 149, 162 (1970)).

[12] Here, it is undisputed that the Children testified at trial. It is also undisputed that Beall cross-examined the Children. Therefore, Beall was afforded the rights guaranteed to him by the Confrontation Clause, and the trial court's admission of the Reports was not a violation thereof. *See Crawford*, 541 U.S. at 53–54, 59 n.9.

[13] Nevertheless, Beall argues that his Confrontation Clause rights were violated because the Children did not testify and were not cross-examined until after the Reports were admitted into evidence. The Confrontation Clause itself does not dictate the order in which the State must present its case, *see* U.S. Const. amend VI, and the United States Supreme Court in *Crawford* clearly stated that the Confrontation Clause does not limit the use of a declarant's prior statements

when the declarant testifies at trial, 541 U.S. at 59 n.9 (citing *Green*, 399 U.S. at 162).[4]

Conclusion

[14] In sum, we conclude that the admission of the Reports did not implicate, let alone violate, Beall's rights under the Confrontation Clause because the Children testified and were cross-examined by Beall at trial. We therefore hold that the trial court did not abuse its discretion when it admitted the Reports.

[15] Affirmed.

Crone, J., and Brown, J., concur.

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[4] Beall also argues that the Indiana Supreme Court's holding in *Ward v. State*, 50 N.E.3d 752 (Ind. 2016), is "squarely at odds" with the U.S. Supreme Court's holding in *Crawford*. Appellant's Br. at 12. This is a blatant misreading of both cases. *Crawford* and its progeny stand for the proposition that a statement is testimonial under the Confrontation Clause if "in light of all the circumstances, viewed objectively, the primary purpose of the conversation was to create an out-of-court substitute for trial testimony." *Ward*, 50 N.E.3d at 759 (internal quotation marks and alteration omitted) (quoting *Ohio v. Clark*, 576 U.S. 237, 245 (2015)). In other words, hearsay does not violate the Confrontation Clause so long as the primary purpose of the hearsay is nontestimonial. *Id.*

The Indiana Supreme Court used this primary purpose test in *Ward* to determine that an unavailable declarant's "statements attributing fault or establishing a perpetrator's identity" are nontestimonial when the identification "serve[d] a primarily *medical*, not testimonial, purpose because a 'physician generally must know who the abuser was in order to render proper treatment because the physician's treatment will necessarily differ when the abuser is a member of the victim's family or household.'" 50 N.E.3d at 759 (quoting *Perry v. State*, 956 N.E.2d 41, 49 (Ind. Ct. App. 2011)). Instead of being "squarely at odds" with the U.S. Supreme Court's holding in *Crawford*, the Indiana Supreme Court's holding in *Ward* is squarely in line therewith.