MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dana L. Love,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 20, 2023

Court of Appeals Case No. 23A-CR-47

Appeal from the Delaware Circuit Court

The Honorable Linda Ralu Wolf, Judge

Trial Court Cause No. 18C03-1710-F5-155

Memorandum Decision by Judge Kenworthy
Judges Bailey and Tavitas concur.

Kenworthy, Judge.

Case Summary

[1] Dana L. Love appeals his convictions for Level 5 felony battery resulting in bodily injury to a person under the age of fourteen[1] and Level 6 felony strangulation.[2] Love raises one issue for our review: Did the trial court err in admitting into evidence a statement Love made to an Indiana Department of Child Services ("DCS") case manager? Concluding any error in admitting the evidence was harmless beyond a reasonable doubt, we affirm.

Facts and Procedural History

[2] On October 15, 2017, Love visited his neighbor, Kelly Schlusser.[3] During Love's visit, Schlusser's five-year-old grandson, B.B., arrived. About twenty minutes after he arrived, B.B. began "play-fighting" with Love, punching Love's stomach and kicking his shins. *Tr. Vol. 2* at 72. At the time, B.B. was under four feet tall and weighed about forty pounds. Love was five feet nine inches tall and weighed around 230 pounds. Love warned B.B. to stop: "don't do it or else[.]" *Id.* at 106. But B.B. continued punching Love, and Love responded by placing his hands around B.B.'s neck, turning B.B. to face him, and holding B.B. off the ground for about forty-five seconds.

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[1] Ind. Code §§ 35-42-2-1(c)(1) & (g)(5)(B) (2016).

[2] I.C. § 35-42-2-9(c)(1) (2017).

[3] In October 2017, Schlusser's last name was Suarez. It had changed to Schlusser by Love's trial.

[3] Once Schlusser told Love to let go of B.B., he did. B.B. immediately ran out of the room. A few minutes later, Schlusser called B.B. back into the room to check on him. She noticed red splotches above his eyes. Love told Schlusser, "it just looks like he's been crying," and "don't baby him." *Id.* at 80. Love left the house shortly after.

[4] Nearly two hours later, Schlusser noticed the splotches around B.B.'s eyes were darkening, and a blood spot had developed in one of his eyes. She called B.B.'s mother, who picked B.B. up and drove him to Ball Memorial Hospital. There, a forensic nurse examined B.B. While examining B.B., the forensic nurse observed petechiae—"pinpoint bruising"—"around [B.B.'s] neck and on his face in several areas and behind his ears" and "a subconjunctival hemorrhage in [B.B.'s] left eye." *Id.* at 149–50. Both symptoms are common signs of strangulation. B.B. and his mother then spoke with members of the Muncie Police Department before B.B. was transferred to Riley Hospital for Children.

[5] Around 2:00 a.m. the next morning, law enforcement officers arrived at Love's residence to arrest him. When police asked if he knew why he was being arrested, Love responded, "probably for squeezing the little boy." *Id.* at 118. Love was taken to the local jail and interviewed by DCS case manager Cindy Baldwin. At the start of the interview, Love told Baldwin "he was not going to talk to [her] until he consulted with his attorney." *Id.* at 7. Baldwin then asked Love what happened between him and B.B. the night before. Love went on to tell Baldwin the "entire story," including placing B.B. in a headlock. *Id.* at 8.

[6] The State charged Love with Level 5 felony battery resulting in bodily injury to a person less than fourteen years of age and Level 6 felony strangulation. Before trial, Love moved to suppress his statement to Baldwin, arguing it was obtained in violation of his constitutional rights. The trial court denied Love's motion. A jury found Love guilty as charged and the trial court sentenced him accordingly.

In View of the Whole Record, It is Clear Beyond a Reasonable Doubt that the Jury Would Have Returned the Same Verdict Absent the Error

[7] Love claims the trial court erred in admitting into evidence the statement he made to Baldwin because it was obtained in violation of his rights under the Fifth Amendment to the United States Constitution and Article 1, Section 14 of Indiana's Constitution.[4] Love claims his rights under *Miranda v. Arizona*[5] were violated when Baldwin continued to question him after he invoked his right to counsel. The State contends any error in admitting Love's statement was harmless beyond a reasonable doubt.[6]

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[4] Love frames his appeal as a challenge to the trial court's denial of his pretrial suppression motion. But Love sought interlocutory appeal of that decision, and this Court did not accept jurisdiction. *See* Ind. Appellate Rule 14(B). Thus, "we consider his appeal as what it is: a request to review the court's decision to admit the evidence at trial." *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014).

[5] 384 U.S. 436, 444–45 (1966) (holding, in part, that if a person questioned by law enforcement "indicates in any manner and at any stage of the [questioning] that he wishes to consult with an attorney before speaking[,] there can be no questioning").

[6] Because we determine any error in admitting the challenged evidence was harmless beyond a reasonable doubt, we need not address the merits of Love's admissibility claim. *See Rawley v. State*, 724 N.E.2d 1087,

[8] We review a trial court's decision to admit or exclude evidence for an abuse of discretion affecting the defendant's substantial rights. *Zanders v. State*, 118 N.E.3d 736, 741 (Ind. 2019). But when determining whether the trial court abused its discretion depends on a legal determination, we review it *de novo*. *Id.*

[9] Admission of evidence obtained in violation of *Miranda* is subject to harmless-error analysis. *Rawley*, 724 N.E.2d at 1090. We will not reverse a conviction if the State can show "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Chapman v. California*, 386 U.S. 18, 24 (1967); *see also Neder v. U.S.*, 527 U.S. 1, 18 (1999) (framing the question as, "Is it clear beyond a reasonable doubt that . . . [the] jury would have found the defendant guilty absent the error?"). "To say that an error did not contribute to the verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." *Alford v. State*, 699 N.E.2d 247, 251 (Ind. 1998) (quoting *Yates v. Evatt*, 500 U.S. 391, 403 (1991)). Put differently, if the State has presented other overwhelming evidence of the defendant's guilt, then an erroneously admitted statement may be considered harmless. *See Rawley*, 724 N.E.2d at 1090.

[10] Whether an error in admitting evidence was harmless in a particular case turns on several factors. These factors include whether the impermissibly admitted evidence was cumulative; the presence or absence of other, corroborating

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1090 (Ind. 2000) (subjecting alleged *Miranda* violation to harmless beyond a reasonable doubt analysis without addressing the merits of defendant's underlying constitutional claim).

evidence on material points; the overall strength of the prosecution's case; the importance of the impermissible evidence in the prosecution's case; and the extent of cross-examination or questioning on the impermissibly admitted evidence. *Zanders*, 118 N.E.3d at 745. Ultimately, the State has the "heavy burden" of showing the constitutional error was harmless. *Id.* at 743.

[11] Even under this demanding standard, we conclude the admission of Love's statement to Baldwin was harmless beyond a reasonable doubt. The State presented other corroborating evidence of Love's offenses besides Love's statement. For example, Schlusser—who witnessed the entire interaction—provided a detailed account of the incident. And B.B.—the victim—also testified about the battery and strangulation. Schlusser's and B.B.'s testimonies made Love's statement to Baldwin cumulative. *See Zanders*, 118 N.E.3d at 752 (defining cumulative evidence as evidence that "'supports a fact established by the existing evidence,' especially existing evidence that 'does not need further support'") (quoting Black's Law Dictionary 675 (10th ed. 2014)).

[12] Moreover, the forensic nurse detailed the pinpoint bruising on B.B.'s neck, face, and ears and observed a hemorrhage in one of B.B.'s eyes. She explained these are common signs of strangulation. And when asked by law enforcement if he knew why he was being arrested, Love responded, "probably for squeezing the little boy." *Tr. Vol. 2* at 118. Given the strength of the State's case and Love's decision not to cross examine Baldwin, we can comfortably say Love's statement to Baldwin was unimportant in relation to everything else the jury heard.

Conclusion

[13] Because admitting Love's statement to Baldwin was harmless beyond a reasonable doubt, we affirm.

[14] Affirmed.

Bailey, J., and Tavitas, J., concur.