MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

William Butch Barclay,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 12, 2023

Court of Appeals Case No. 23A-CR-322

Appeal from the Lake Superior Court

The Honorable Salvador Vasquez, Judge

Trial Court Cause No. 45G01-2101-F1-2

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] At William Barclay's jury trial on child molestation charges, the trial court admitted a video recording of a pretrial hearing at which Barclay appeared in jail clothing. The jury ultimately found Barclay guilty. Barclay now contends that the jury's observation of him in jail clothing violated his right to due process and entitles him to a new trial. We affirm Barclay's convictions, finding he has failed to establish any due process violation.

Facts

[2] Barclay is the stepfather of H.N. (Stepson), who lives in Crown Point with his wife (Stepdaughter), son, and daughter, A.N. Barclay often would host Stepson's children at his home in Fishers or stay with Stepson's family in Crown Point. And in 2015, when A.N. was seven years old, Barclay moved into the basement of Stepson's home.

[3] In 2020, Stepson's family invited their neighbors over for dinner. The neighbors included two girls, four-year-old C.S. and six-year-old S.S. Barclay, who had been drinking, joined them intermittently during the evening. Around 10:00 p.m., as the neighbors prepared to leave, C.S.'s mother found C.S. in the basement kneeling by Barclay, who had been drinking alcohol. Barclay was lying on the floor awake with his pants down by his ankles. C.S.'s shorts and underwear were on the floor. After retrieving C.S.'s clothes, C.S.'s mother quickly carried her from the basement, washed C.S.'s hands, and asked C.S. if Barclay touched her. C.S. responded that she just wanted to go home. C.S.'s

mother reported her observations to Stepson and Stepdaughter before C.S.'s family hurriedly left.

[4] Stepson and Stepdaughter awakened Barclay and confronted him about the observations of C.S.'s mother. Barclay said he did not recall what happened when he was with C.S. But he acknowledged that if the observations of C.S.'s mother were correct, that "[w]e had a problem." Tr. Vol. IV, p. 70. Stepdaughter responded that they indeed had a problem, to which Barclay responded, "That's life in the fast lane." *Id.* Barclay then went back to sleep.

[5] Stepson and Stepdaughter contacted C.S.'s parents to say that they would call law enforcement. Both families called 911. Stepson and Stepdaughter told A.N. that police were coming and asked if Barclay had ever touched her. A.N. began to cry and reported that Barclay had molested her repeatedly from ages 4 to 7. A.N. later told the responding officers that Barclay had touched her genitals and wanted her to touch his. After finding Barclay asleep in the basement, police took Barclay to a hotel because he no longer was welcome in Stepson's home.

[6] C.S.'s mother took C.S. to the hospital for a sexual assault examination. Barclay's DNA was found on C.S.'s external genitalia and the crotch of her underwear. Swabs of C.S.'s left hand and internal genitalia also contained male DNA but not enough for further testing. C.S. told the hospital examiner that Barclay had touched her vagina with his hands and his mouth and made her

touch his penis with her hands in an up-and-down motion. She repeated these statements during a videotaped interview by a forensic examiner.

[7] Meanwhile, hoping to return to Stepson's home, Barclay texted Stepson to discuss the allegations. Barclay asserted that when A.N. visited his home in Fishers, he would dry A.N. off and pat her buttocks after her shower. Barclay also asserted that A.N. once approached him while he was in a towel, touched his genitalia, and performed oral sex on him for 10 seconds before he stopped her.

[8] Barclay voluntarily spoke to the police. When asked whether the allegations by C.S. and A.N. were true, Barclay responded, "Not to the extent that they are saying." State's Exhibit 29(A), 00:08:30. Barclay then told police that C.S. asked him to go downstairs with her and that he did not remember what happened after that.

[9] The State charged Barclay with seven counts of child molesting. Four of the counts—charged as a Class A felony, a Class B felony, a Level 1 felony, and a Level 3 felony—alleged molestations of A.N.[1] Three of the counts—charged as Level 1, Level 3, and Level 4 felonies, respectively—alleged molestations of C.S. After his arrest, Barclay made a series of recorded telephone calls from the

[1] Effective July 1, 2014, a new version of the child molesting statute—Indiana Code § 35-42-4-3—took effect, reclassifying Class A felony child molesting as a Level 1 felony. Two of the four charged offenses against A.N. occurred before, and two counts occurred after, that statutory revision. P.L. 247-2013, § 6.

jail. He alleged during the calls that A.N. had initiated sexual contact and C.S. had sat on his face while he was unconscious.

[10] Before Barclay's jury trial, the State filed a "Motion for Admission of [C.S.'s] Statements Under Protected Persons Statute." App. Vol. II, p. 125. *See generally* Ind. Code § 35-37-4-6(a)(1), (c)(1) (specifying that a "protected person" includes a child sex crime victim who is less than 14 years old at the time of the offense and less than 18 years old at trial). Under that statute, the State sought to have seven-year-old C.S. declared unavailable to testify at trial and to admit into evidence, in place of C.S.'s testimony, the videotaped statements she made during her forensic interviews. *See* Ind. Code § 35-37-4-6(e)-(g). After a hearing on the motion, at which C.S. testified and underwent cross-examination by Barclay, the trial court eventually granted the State's motion.

[11] At trial, after C.S.'s forensic interviews were admitted into evidence, Barclay moved to admit the transcript of the protected person hearing so that the jury could consider his cross-examination of C.S. *See generally* Ind. Code § 35-37-4-6(j) (authorizing a defendant to introduce a transcript or video of the protected person hearing when a protected person's statements during forensic interviews are admitted under subsection (e) of that statute). The State then moved to admit the video of the protected person hearing. Barclay objected because the hearing video showed him wearing jail clothes. The trial court overruled Barclay's objection and admitted both the transcript and the video of the protected person hearing.

[12] The jury found Barclay guilty as charged. Due to double jeopardy concerns, the trial court entered judgment of conviction on only three of the child molesting counts: the Class A and Level 1 felony counts relating to A.N.'s molestations and the Level 1 felony count relating to C.S.'s molestation. After entering judgment of conviction on the verdicts, the trial court sentenced Barclay to 77 years imprisonment. Barclay appeals.

Discussion and Decision

[13] As his only contention on appeal, Barclay argues that the trial court violated his right to due process under the Fourteenth Amendment to the United States Constitution when it admitted the video of the protected person hearing showing him in jail clothing. The Fourteenth Amendment prohibits any State from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. art. I, amend. XIV, § 1. Whether a defendant was denied due process is a question of law we review de novo. *Saucerman v. State*, 193 N.E.3d 1028, 1030 (Ind. Ct. App. 2022).

[14] "[T]he State cannot, consistently with the Fourteenth Amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes." *Estelle v. Williams*, 425 U.S. 501, 512 (1976). A jury's required presumption of innocence may be affected by the jail clothing, which is a reminder throughout trial of the defendant's arrest and in-custody status. *Id.* at 504.

[15] But Barclay is not complaining about wearing jail clothes during his trial. Instead, he focuses on the jury's viewing of him in jail clothes throughout the

38-minute video of the protected person hearing played to the jury during his four-day jury trial. We have distinguished the playing of a video depicting the defendant in jail clothing from the scenario in *Estelle*, in which the defendant appeared throughout trial in jail clothing. *Southern v. State*, 878 N.E.2d 315, 321 (Ind. Ct. App. 2006) (affirming admission of polygraph examination video showing the defendant in jail uniform).

[16] But even if *Estelle* governs, Barclay would not be entitled to relief. *Estelle* recognized that the defendant must establish he was compelled to stand trial in jail garb. *Id.* at 510-13. Moreover, the defendant may waive this claim by failing to object or to otherwise bring the matter to the trial court's attention. *Id.* at 512. For that reason, when determining whether a due process violation arises from a defendant's appearance in jail clothing, "we must focus upon what actions the accused and [the accused's] attorney took to alleviate what they now see as a problem." *Bronaugh v. State*, 942 N.E.2d 826, 830 (Ind. Ct. App. 2011) (quoting *Bledsoe v. State*, 274 Ind. 286, 410 N.E.2d 1310, 1314 (1980)).

[17] Barclay simply assumes he was compelled to wear jail clothing during the videotaped hearing. The record contains no evidence of any objection by Barclay to his jail clothing at the hearing or of any limitations on his wearing of non-jail clothing there. Yet the prospect that the State or Barclay or both would seek to admit the hearing video at Barclay's trial was obvious well before the hearing. *See* Ind. Code § 35-37-4-6(e), (j) (providing for admission at the defendant's trial of the protected person's recorded statements); Ind. Code § 35-37-4-8(d) (providing for videotaping of protected person's statements). The

failure to object to being tried in jail clothes "negates the compulsion necessary to establish a constitutional violation." *French v. State*, 778 N.E.2d 816, 821 (Ind. 2001). Barclay has failed in his burden of establishing that the State compelled his wearing of jail attire at the videotaped hearing.

[18] And even if Barclay proved compulsion, the trial court's admonishment cured any error. Before playing the video, the trial court instructed the jury not to consider Barclay's jail clothing both generally and "in making the ultimate decision as to whether the State has proved its case beyond a reasonable doubt." Tr. Vol. V, pp. 37-38. "We presume the jury followed the trial court's admonishment" and that the challenged evidence played no part in the jury's verdict. *Francis v. State*, 758 N.E.2d 528, 532 (Ind. 2001). Yet Barclay claims, without citation to authority, that the limiting instruction could not cure any error here because the jury saw Barclay in jail clothes. His argument fails to recognize that *Estelle* did not establish a per se rule invalidating every conviction arising from a trial in which the defendant was observed in jail clothing. *Bledsoe*, 410 N.E.2d at 1313. Barclay has failed to rebut the presumption that the admonishment cured any error.

[19] In any case, any error from admission of the video was harmless beyond a reasonable doubt. *See Hall v. State*, 36 N.E.3d 459, 467-68 (Ind. 2015) (citing *Chapman v. California*, 386 U.S. 18, 24 (1967)) (ruling that when a preserved error implicates a federal constitutional right, the error must be harmless beyond a reasonable doubt to avert reversal). Our Supreme Court has recognized that the jury's view of the defendant in jail clothing is not inherently

prejudicial when the jury already knows that the defendant was jailed. *French*, 778 N.E.2d at 821. Here, before the video was admitted, the jury had listened to three recorded phone calls in which Barclay participated while jailed pending trial. The jury therefore knew Barclay had been jailed when it saw him in jail clothing in the video.

[20] Moreover, the evidence against Barclay was overwhelming and further cements our view that any error was harmless beyond a reasonable doubt. C.S.'s mother caught Barclay on the floor with his pants down and penis exposed while a partially undressed C.S. knelt beside him. The forensic evidence showed Barclay's DNA on C.S.'s panties and genitalia. A.N.'s trial testimony detailed Barclay's molestations of her over a three-year period. And Barclay's own statements to Stepson and police reflect an admission of sexual activity with the two victims, although he blamed the victims for the contact.[2]

[21] We affirm the trial court's judgment.

Riley, J., and Bradford, J., concur.

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[2] Barclay also suggests that the trial court was not obligated to introduce both the video and the transcript under the protected person statute and therefore could have easily avoided the jury's exposure to Barclay dressed in jail clothing. *See* Ind. Code § 35-37-4-6(j). Barclay only offers this argument as part of his due process claim based on the jury's view of his jail clothing. He does not allege a separate statutory violation. As Barclay has not shown any harm from the video, we need not address this particular part of his due process claim.