[Cite as *State v. Jeffries*, 2018-Ohio-5039.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106889

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MA-KIA S. JEFFRIES

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-610609-A

BEFORE: Laster Mays, J., S. Gallagher, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: December 13, 2018

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Ma-Kia S. Jeffries ("Jeffries") appeals his conviction and asks this court to vacate his conviction and remand to the trial court for a retrial. We affirm.

{¶2} Jeffries was found guilty, after a bench trial, of one count of gross sexual imposition, a third-degree felony, in violation of R.C. 2907.05(A)(4); one count of gross sexual imposition, a fourth-degree felony, in violation of R.C. 2907.05(A)(1); and two counts of kidnapping, a first-degree felony, in violation of R.C. 2905.01(A)(4). Each kidnapping count contained a sexual motivation specification.

I. Facts

{¶3} At trial, A.J., Jeffries's daughter, described four incidents of sexual abuse

perpetrated by Jeffries. First, A.J. testified to an incident when she and her sister were playing in the bathtub when she was four years of age. After her sister was told to go to bed, her father took her to a room, put petroleum jelly on her buttocks, and placed his penis inside of her buttocks. A.J. testified that Jeffries did not fully penetrate, but instead just placed his penis inside of her butt cheeks. A.J. testified that when he was done, white stuff came out of his penis.

{¶4} The second incident that A.J. described is when Jeffries appeared to be drunk, and they both were in the kitchen. Jeffries placed his hand inside of A.J.'s pants and rubbed her vagina. A.J. clarified that Jeffries's hand rubbed her inside of her pants but over her underwear.

{¶5} A.J. described the third incident as occurring in a little room in the home. She stated that after her father drank a beer, he laid down on top of her while they were both on the floor. A.J. was lying on her stomach, and Jeffries, while both of them were clothed, rubbed his penis between her thighs. The fourth incident occurred while A.J. and Jeffries were both in the car. Jeffries stated to A.J. that he was supposed to be the first person to take her virginity.

{¶6} A.J. told her grandmother about the abuse. A.J.'s grandmother reported what A.J. told her to the police. Esther Bradley ("Bradley"), currently a special investigator with the Cold Case Sexual Assault Unit at the Cuyahoga County Prosecutor's Office, testified that at the time she worked with A.J., she was a Child Protection Specialist with the Cuyahoga County Department of Children and Family Services ("CCDCFS"). As part of her duties at CCDCFS, Bradley worked with the Sexual Abuse Intake Unit, which meant that Bradley would make contact with families that were dealing with sexual abuse. Bradley arranged interviews with the child victims and any witnesses. The purpose of the interviews were to ensure that the children were safe and to provide access to counseling and mental health services.

{¶7} Bradley testified that she was assigned to investigate the sexual abuse allegations involving A.J. During the trial, the state asked Bradley the following, "I want to learn from you did you learn information from [A.J.] about activities that occurred between her father and her that caused you to make referrals for mental health counseling." (Tr. 181.) Defense counsel objected, the trial court sustained the objection, and the state asked if they could approach the bench. Defense counsel argued that Bradley's testimony has nothing to do with referral for medical treatment or diagnosis. So it should not be allowed. The state argued that it had several cases from the Eighth District regarding the testimony of child advocacy social workers. The state argued,

> [i]n sexual assault cases involving young victims, there's often testimony from a child advocacy social worker. And courts have acknowledged the dual role of medical diagnosis/treatment and investigation gathering of evidence of social workers who interview a child who may be the victim of sexual abuse.
>
> Only those statements made for the purpose of diagnosis and treatment are admissible under 803(4).
>
> So the statements that she's getting — social workers are often in the best position to help determine proper treatment for minor children.

(Tr. 184.)

{¶8} The trial court ruled in favor of the state, stating,

> [o]kay. Well, based on this case law and based on the foundation that was already made during Miss Bradley's testimony that one of the purposes of interviewing an alleged victim is to provide services and counseling, I will allow it. The objection is overruled.

(Tr. 186.) Bradley then testified that A.J. disclosed that Jeffries sexually abused her. Specifically A.J. disclosed the first instance of abuse when her father rubbed his penis between her buttocks.

{¶9} At the conclusion of the trial, the trial court found Jeffries guilty and sentenced him to life in prison with the possibility of parole after 20 years. Jeffries filed this appeal and assigns one error for our review:

> I. The trial court abused its discretion by permitting an investigator to testify about hearsay statements made by an alleged victim.

II. Law and Analysis

{¶10} Jeffries argues that A.J.'s statements to Bradley did not fall under the Evid.R. 803(4) exception because Bradley was not a medical professional, and her interview was not for the purpose of medical diagnosis or treatment. "'It is well established that, pursuant to Evid.R. 104, the introduction of evidence at trial falls within the sound discretion of the trial court.'" *Caruso v. Leneghan*, 8th Dist. Cuyahoga No. 99582, 2014-Ohio-1824, ¶ 32, quoting *State v. Heinish*, 50 Ohio St.3d 231, 553 N.E.2d 1026 (1990).

{¶11} In addition,

> [t]he decision whether to admit or to exclude evidence rests within the sound discretion of the trial court. *State v. Brown*, 8th Dist. Cuyahoga No. 99024, 2013-Ohio-3134, ¶ 50, citing *State v. Jacks*, 63 Ohio App.3d 200, 207, 578 N.E.2d 512 (8th Dist.1989). Therefore, an appellate court that reviews the trial court's decision with respect to the admission or exclusion of evidence must limit its review to a determination of whether the trial court committed an abuse of discretion. *Id.*, citing *State v. Finnerty*, 45 Ohio St.3d 104, 107, 543 N.E.2d 1233 (1989). An abuse of discretion requires a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable. *State v. Minifee*, 8th Dist. Cuyahoga No. 99202, 2013-Ohio-3146, ¶ 23, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

State v. Marshall, 8th Dist. Cuyahoga No. 100736, 2015-Ohio-2511, ¶ 16.

{¶12} Jeffries contends that Bradley's testimony regarding A.J.'s disclosures where inadmissible hearsay. We disagree. In *State v. Fears*, 8th Dist. Cuyahoga No. 104868, 2017-Ohio-6978, this court decided that the testimony of Shannon Sneed ("Sneed"), a child sex

abuse investigator with the CCDCFS, like Bradley, was admissible. Like Bradley, Sneed testified that

> when she receives a case, she initially evaluates the child's safety to determine whether the alleged perpetrator has access to the child. Sneed then meets with the child and the child's family members. Sneed testified that, thereafter, she assesses the case in order to determine whether "the child is safe * * *, if they need to see a doctor, if they need to go to the hospital, what services would they benefit from." She also stated that she would determine whether the case should be closed or whether ongoing services are needed. Sneed testified that in conducting interviews with the children and family where there has been a disclosure of abuse, "it is very important that we refer to a doctor for counseling." She noted that in some cases, however, the children have already been to a hospital or have had counseling.
>
> Sneed testified that once she has evaluated the child, she then makes a disposition of "unsubstantiated, indicated, or substantiated." At that point in time, if the department finds a sex abuse allegation is "substantiated" or "indicated," they are required to contact law enforcement. Sneed stated that while it is necessary to report an allegation of a crime against children to law enforcement, her primary purpose in meeting with the children is for medical diagnosis and treatment and to ensure the children's safety.

Id. at ¶ 13-14.

{¶13} Bradley's and Sneed's testimony regarding their function and position were identical. Also, in *Fears*, the child victim disclosed the sexual abuse to Sneed, and Sneed testified as to what the child told her at trial. In *Fears*, with regards to Sneed's testimony, this court ruled that,

> [h]earsay is an out-of-court statement offered for the truth of the matter asserted. Evid.R. 801(C). Hearsay is inadmissible unless it falls within a specific exception outlined in the rules of evidence. Evid.R. 802. Statements made for the purposes of medical diagnosis and treatment "are a clearly defined, longstanding exception to the rules of hearsay." *State v. Echols*, 8th Dist. Cuyahoga No. 102504, 2015-Ohio-5138, ¶ 27. Evid.R. 803(4) allows for the admission of "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Additionally, "'courts have consistently found that a description of the encounter and identification of the

> perpetrator are within [the] scope of statements for medical treatment and diagnosis."' *Echols*, quoting *In re D.L.*, 8th Dist. Cuyahoga No. 84643, 2005-Ohio-2320, ¶ 21, citing *State v. Stahl*, 9th Dist. Summit No. 22261, 2005-Ohio-1137, at ¶ 15; *State v. Richardson*, 12th Dist. Clermont Nos. CA2014-03-023, CA2014-06-044, and CA2014-06-045, 2015-Ohio-824, ¶ 36.
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> In sexual assault cases involving young victims, there is often testimony from a child advocacy social worker. And courts have acknowledged the "dual role" — medical diagnosis/treatment and investigation/gathering of evidence — of social workers who interview a child who may be the victim of sexual abuse. *See State v. Arnold*, 126 Ohio St.3d 290, 2010-Ohio-2742, 933 N.E.2d 775, ¶ 33. Only those statements made for the purpose of diagnosis and treatment are admissible under Evid.R. 803(4). *State v. Muttart*, 116 Ohio St.3d 5, 2007-Ohio-5267, 875 N.E.2d 944, ¶ 46 (regardless of whether a child less than ten years old has been determined to be competent to testify, the child's statements may be admitted at trial as an exception to the hearsay rule if they were made for purposes of medical diagnosis or treatment); *State v. Goza*, 8th Dist. Cuyahoga No. 89032, 2007-Ohio-6837, ¶ 39. Social workers are oftentimes in the best position to help determine the proper treatment for the minor, which treatment includes determining which home was free of sexual abuse. *State v. Durham*, 8th Dist. Cuyahoga No. 84132, 2005-Ohio-202, ¶ 33, citing *Presley v. Presley*, 71 Ohio App.3d 34, 39, 593 N.E.2d 17 (8th Dist.1990).
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> To the extent a victim's statement to a social worker is for investigative or prosecutorial purposes, the statement will not fall within the hearsay exception under Evid.R. 803(4). *See State v. Rose*, 12th Dist. Butler No. CA2011-11-214, 2012-Ohio-5607, ¶ 42. The fact that the information initially gathered by the social workers was subsequently used by the state in its prosecution, however, does not change the fact that these statements were not made for investigative or prosecutorial purposes. *Muttart* at ¶ 62. Trial courts are entrusted with recognizing the point at which nontestimonial (admissible under Evid.R. 803(4)) statements become testimonial (falling outside the hearsay exception). *See Davis v. Washington*, 547 U.S. 813, 828, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006).

Id. at ¶ 36-38.

{¶14} Jeffries also argues that A.J.'s credibility was called into question because A.J.'s testimony and Bradley's testimony differed as to how many times Jeffries sexually assaulted A.J. We acknowledge that Bradley's testimony gave more details than A.J.'s testimony. However, the testimony regarding a young victim's statement to social workers is admissible regardless of whether the statements "are consistent or inconsistent with the victim's trial testimony." *State*

v. Freeman, 8th Dist. Cuyahoga No. 92809, 2010-Ohio-3714, ¶ 49, citing *Durham*. *Id*. at ¶ 39. "That is not to say that any statement made by a declarant in aid of treatment is admissible under the rule: 'The exception is limited to those statements made by the patient which are reasonably pertinent to an accurate diagnosis and should not be a conduit through which matters of no medical significance would be admitted.' Staff Note to Evid.R. 803(4)." *Echols*, 8th Dist. Cuyahoga No. 102504, 2015-Ohio-5138, ¶ 28. Bradley testified that she used the information A.J. gave her to make a determination about whether she needed counseling. (Tr. 186.)

{¶15} In addition, this was a bench trial. We can presume that the trial court only considered relevant evidence in rendering its decision.

> In reviewing a bench trial, "an appellate court presumes that a trial court considered nothing but relevant and competent evidence in reaching its verdict," and this presumption "may be overcome only by an affirmative showing to the contrary by the appellant." *State v. Wiles*, 59 Ohio St.3d 71, 86, 571 N.E.2d 97 (1991). *See also State v. Montgomery*, 10th Dist. Franklin No. 13AP-512, 2014-Ohio-4354, ¶ 20, citing *State v. Rowe*, 2d Dist. Montgomery No. 25993, 2014-Ohio-3265, ¶ 45 ("Appellate courts presume that a trial court only considered relevant and admissible evidence in a bench trial.").

State v. Pearson, 10th Dist. Franklin Nos. 14AP-793 and 14AP-816, 2015-Ohio-3974, ¶ 13.

{¶16} We find that the trial court did not abuse its discretion when it permitted Bradley to testify about statements made by A.J.

{¶17} Therefore, we overrule Jeffries's sole assignment of error.

{¶18} Judgment affirmed.

It is ordered that the appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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ANITA LASTER MAYS, JUDGE

FRANK D. CELEBREZZE, JR., J., CONCURS;
SEAN C. GALLAGHER, P.J., CONCURS WITH SEPARATE OPINION

SEAN C. GALLAGHER, P.J., CONCURRING:

{¶19} I concur with the majority decision and agree that the trial court did not abuse its discretion when it permitted the testimony of the child protection specialist pursuant to Evid.R. 803(4). I am constrained by the recent precedent from our district. However, I write separately to address concerns regarding the scope of testimony that may be elicited under the parameters of Evid.R. 803(4).

{¶20} What was once a rule considered too narrowly constrained, Evid.R. 803(4) has been transformed into a rule that liberally permits testimony of "[s]tatements made for purposes of medical diagnosis or treatment" in cases involving allegations of sexual abuse of a child. Although I fully appreciate the gravity of such cases, I believe the rule has been expanded too far beyond its intended purpose.

{¶21} Unlike Evid.R. 807, which recognizes a separate hearsay exception for statements of children under 12 years of age in sexual abuse cases and contains carefully prescribed admissibility requirements, Evid.R. 803(4) sets forth a general hearsay exception that is often used in cases where Evid.R. 807 does not apply. As the Supreme Court of Ohio has stated, "[r]egardless of whether a child less than ten years old has been determined to be competent to

testify pursuant to Evid.R. 601, the child's statements may be admitted at trial as an exception to the hearsay rule pursuant to Evid.R. 803(4) if they were made for purposes of medical diagnosis or treatment." *State v. Muttart*, 116 Ohio St.3d 5, 2007-Ohio-5267, 875 N.E.2d 944, syllabus. The Supreme Court of Ohio has further recognized that under the Evid.R. 803(4) exception, "unavailability is irrelevant to the question of admissibility" and the mere fact that the information gathered may later be used by the state "does not change the fact that the statements were not made for the state's use." *Id.* at ¶ 62, 64.

{¶22} Without the admissibility requirements contained in Evid.R. 807, Evid.R. 803(4) has become a gateway to introducing the specific details of abuse necessary to support a conviction. There are no safeguards against use of the rule to bolster an alleged victim's testimony or to aid the prosecution in obtaining a criminal conviction.

{¶23} In this matter, Bradley was not a medical professional, but the child protection specialist who interviewed the victim. Bradley testified that the purpose of conducting an interview is to make sure that the child is safe and to obtain information to determine whether the child will benefit from mental health counseling. She further testified that she uses open-ended questions and permits the child to provide the information. The court permitted the prosecution to elicit testimony from Bradley about very specific details of sexual abuse provided by the victim. The victim did testify at trial and was subject to cross-examination.

{¶24} Courts have acknowledged the dual rule of social workers who interview a child that may be the victim of sexual abuse — to gather information to investigate and potentially prosecute an offense, and to elicit information necessary for medical diagnosis and treatment of the victim. *See State v. Arnold*, 126 Ohio St.3d 290, 2010-Ohio-2742, 933 N.E.2d 775, ¶ 33; *State v. Fears*, 8th Dist. Cuyahoga No. 104868, 2017-Ohio-6978, ¶ 37. If the child's statements

were made for purposes of medical diagnosis or treatment, they may be admitted pursuant to Evid.R. 803(4). *Fears* at ¶ 37, citing *Muttart*, 116 Ohio St.3d 5, 2007-Ohio-5267, 875 N.E.2d 944, at ¶ 47. Under the scope of statements made for purposes of medical diagnosis or treatment, courts have allowed the admission of statements that provide a description of the encounter and identification of the perpetrator. *Arnold* at ¶ 38; *Fears* at ¶ 36, 42. Such testimony is permitted under the ambit of having been made for purposes of medical diagnosis or treatment, even though Evid.R. 803(4) never contemplated the introduction of the explicit details of a crime relayed to a social worker interviewing the victim.

{¶25} As the Staff Notes to Evid.R. 803(4) provide: "The rule * * * extends the common law doctrine to admit statements made to a physician without regard to the purpose of the examination or need for the patient's history." Further, the exception was intended to be "limited to those statements made by the patient which are reasonably pertinent to an accurate diagnosis and should not be a conduit through which matters of no medical significance would be admitted." Evid.R. 803(4) Staff Notes.

{¶26} As recognized by Justice Wright in his dissent in *State v. Dever*, 64 Ohio St.3d 401, 420-421, 1992-Ohio-41, 596 N.E.2d 436 (Wright, J., dissenting),

> The temptation is great to liberally construe the hearsay exceptions to allow more effective prosecution of these crimes. We must remember, however, that our ruling on the scope of this hearsay exception will apply with equal force to cases in which the evidence is overwhelming and to cases in which a doctor's statements are the only evidence that supports a conviction. * * *
>
> * * * Evid.R. 102 mandates that this court construe the Ohio Rules of Evidence in accordance with the common-law basis for those rules. It is not the province of this court to eviscerate those rules in order to make it easier for the state to prosecute certain categories of crime.
>
> The * * * liberal interpretation of Evid.R. 803(4) will actually allow prosecutors to evade the carefully considered controls of Evid.R. 807. * * * I believe that

> Evid.R. 807 strikes the appropriate balance between the needs of the child, the rights of the defendant, and the state's interest in prosecuting this crime, and I am saddened to see [Evid.R. 803(4)] stripped of its effectiveness so prematurely.

{¶27} Nevertheless, the Supreme Court of Ohio has thus far rejected a restrictive application of the rule in situations where a child is involved. *Dever* at 410. Trial courts have broad discretion to admit testimony under the rule after considering the circumstances surrounding a child victim's statement, and the Supreme Court has set forth a nonexhaustive list of considerations for deciding the purpose of a child's statements. *Muttart,* 116 Ohio St.3d 5, 2007-Ohio-5267, 875 N.E.2d 944, at ¶ 48-49.

{¶28} Ohio courts have continued to broadly interpret Evid.R. 803(4) and given special consideration to cases involving child sexual-abuse victims. I am constrained by the existing state of the law to find no abuse of discretion occurred in this matter. However, the Supreme Court of Ohio may wish to revisit the parameters of testimony that may be elicited under the medical diagnosis or treatment exception in such cases.