

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jason Weaver,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 20, 2022

Court of Appeals Case No.
22A-CR-1209

Appeal from the Madison Circuit
Court

The Hon. Andrew Hopper, Judge

Trial Court Cause No.
48C03-2002-F1-312

Bradford, Chief Judge.

Case Summary

- [1] Over the course of five years, Jason Weaver repeatedly molested his biological daughter J.W. J.W. was eventually able to convince somebody that she had been molested, and the State charged Weaver with four counts of child molesting. At trial, in addition to J.W. testifying in detail about Weaver’s molestation, four witnesses testified that J.W. had told them that Weaver had molested her, without any of the four witnesses going into further detail. A jury convicted Weaver of one count of Level 1 felony child molesting, and the trial court sentenced him to forty-three years of incarceration. Weaver contends that the admission of the testimony of the four witnesses regarding what J.W. had told them constituted fundamental error. Because we disagree, we affirm.

Facts and Procedural History

- [2] J.W., born in 2004, is the biological daughter of Weaver. When she was seven years old, J.W. lived with Weaver in Anderson. One day, Weaver and J.W. were alone in the living room watching television when Weaver grabbed J.W.’s breast underneath her shirt. This was just the first time Weaver molested J.W.; in fact, Weaver “sexually [] harmed” J.W. “[m]ore [times] than [she could] count” from ages seven through twelve. Tr. Vol. II pp. 136, 141–42.
- [3] J.W. sometimes stayed at her grandmother’s house in Anderson, where she slept on the floor next to her grandmother’s bed. When she was eleven years old, J.W. awoke one night to find Weaver touching her chest and vagina with his hands. Weaver put his fingers inside J.W.’s vagina, which felt “[c]old and – scary.” Tr. Vol. II p. 143. Weaver also touched J.W.’s vagina with his mouth,

and his tongue would go inside her vagina. On one of these occasions, it happened in J.W.'s bedroom. J.W. later recalled that she had been wearing pink and black tie-dyed pants with a black shirt that had a pink heart on it and that Weaver had been wearing a red shirt with black stars on it. J.W. could not recall how many times this had happened.

[4] More than once, Weaver touched the inside and outside of J.W.'s vagina with his penis. Once, when J.W. was twelve, she and Weaver walked to Weaver's friend's house. Weaver touched J.W.'s vagina with his penis in a bedroom at his friend's house. When Weaver put his penis in J.W.'s vagina, she felt that her "stomach was tight and it just felt—gross. And then [she] fe[lt] nothing." Tr. Vol. II p. 162. Another time at Weaver's friend's house, Weaver made J.W. fellate him to ejaculation. J.W. "couldn't breath[e]" and was "[j]ust numb." Tr. Vol. II p. 169. The fellatio also happened more than once, beginning when she was nine years old and ending when she was twelve. Weaver told J.W. that if she told anyone about his molestation, he would hurt himself or her younger sister.

[5] J.W. and her younger sister were removed from their biological parents' home in October of 2016. When J.W. saw Weaver at the proceeding to terminate his parental rights in December of 2018, she began to have "nightmares and flashbacks." Tr. Vol. II p. 170. In February of 2019, J.W. told her therapist what Weaver had done to her, and the State eventually charged him with Class A felony child molesting, Class C felony child molesting, Level 1 felony child molesting, and Level 4 felony child molesting.

[6] During trial, J.W.'s adoptive mother testified that J.W. had disclosed to her therapist that Weaver had touched her in a "[s]exually inappropriate" way. Tr. Vol. II p. 18. A detective also testified that J.W. had disclosed "[s]exual abuse [and] child molestation" during an interview. Tr. Vol. II p. 97. A second detective testified that J.W. had disclosed "child molest" by Weaver. Tr. Vol. II p. 90. After J.W. testified, a forensic interviewer testified that J.W. had disclosed allegations of "child molestation" during the interview. Tr. Vol. II p. 235. The jury found Weaver guilty of Level 1 felony child molestation, and trial court sentenced him to forty-three years of incarceration.

Discussion and Decision

[7] Weaver argues that the admission of certain evidence constituted fundamental error. Specifically, Weaver points to the testimony from J.W.'s adoptive mother, two police detectives, and her forensic interviewer that J.W. had made accusations of child molesting against him. The admission of evidence is generally reviewed for an abuse of discretion. *Goldsberry v. State*, 821 N.E.2d 447, 453–54 (Ind. Ct. App. 2005). An abuse of discretion occurs when the trial court's decision is "clearly against the logic and effect of the facts and circumstances" before it. *Id.* at 454. The "decision whether to admit evidence will not be reversed absent a showing of manifest abuse of discretion by the trial court resulting in the denial of a fair trial." *Id.* When reviewing the trial court's decision to include or exclude evidence, this Court "consider[s] the evidence in favor of the trial court's ruling and any unrefuted evidence in the defendant's favor." *Id.*

[8] Weaver acknowledges that he failed to object to the testimony he now challenges on appeal. (see Tr. Vol. II 89–91, 97–98, 118–19, 232). “Failure to object at trial to the admission of evidence results in waiver of that issue on appeal.” *Kubsch v. State*, 784 N.E.2d 905, 923 (Ind. 2003). Weaver attempts to avoid the effects of his waiver by claiming that the admission of the evidence amounted to fundamental error. See, e.g., *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010) (“A claim that has been waived by a defendant’s failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred.”). The exception for fundamental error is “extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process.” *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006). To be fundamental, the error must either “make[] a fair trial impossible or constitute[] clearly blatant violations of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.” *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009). The exception applies “only in egregious circumstances.” *Brown v. State*, 799 N.E.2d 1064, 1068 (Ind. 2003).

[9] Cumulative evidence is “that which goes to prove what has already been established by other evidence.” *Davis v. State*, 456 N.E.2d 405, 409 (Ind. 1984). Cumulative evidence is “not inadmissible per se.” *Id.* Witness testimony may be admitted if it is competent and relevant and “will not be rejected simply because it is cumulative.” *Id.*; *Stone v. State*, 536 N.E.2d 534, 537 (Ind. Ct. App.

1989), *trans. denied*. “However, its potential to prejudice the jury must not outweigh its probative value in such cases.” *Stone*, 536 N.E.2d at 538.

Evidence is only unfairly prejudicial if it “will induce the jury to decide the case on an improper bases, commonly an emotional one, rather than on the evidence presented.” *Id.* at 539.

[10] The trial court did not make a fair trial impossible or clearly violate Weaver’s due process rights by admitting the evidence at issue. Unlike J.W.’s specific and detailed testimony, the other witnesses only testified in very general terms. J.W.’s adoptive mother testified only that J.W. had revealed that Weaver had touched her in a sexually inappropriate way. The forensic interviewer’s testimony also briefly and generally described J.W.’s disclosure that Weaver had sexually abused her. Similarly, the detectives’ testimony did not elaborate on the nature or extent of the abuse, only that J.W. had disclosed child molestation committed by Weaver. None of this testimony—which conveyed, at most, no more information than could be gleaned from the charging information—constituted “drumbeat repetition” of J.W.’s testimony, but, rather, extremely brief summaries of J.W.’s allegations devoid of any detail.

[11] Weaver likens this case to *Modesitt v. State*, 578 N.E.2d 649 (Ind. 1991), and *Stone*, 536 N.E.2d at 534, cases in which the court reversed child-molesting convictions due to “drumbeat repetition of the victim’s original story[.]” *Modesitt*, 578 N.E.2d at 652. Those cases, however, are readily distinguished. In *Modesitt*, three witnesses testified in detail regarding what the victim had told them about the alleged molestation before the victim herself testified. *Id.* at

650. In *Stone*, five witnesses altogether testified in detail regarding the victim's out-of-court statements to them, with one witness repeating two "account[s] of the molestation" that had been relayed to her and four others "repeat[ing the victim's] out of court statements to them as to what happened in its entirety." *Stone*, 536 N.E.2d at 536. The facts of *Modesitt* and *Stone* are a far cry from the facts of this case, in which J.W. was the only witness who testified in any detail regarding Weaver's molestation of her. The holdings of *Modesitt* and *Stone* are therefore inapplicable to the facts of this case.

[12] The facts of this case are much closer to those in *Norris v. State*, 53 N.E.3d 512 (Ind. Ct. App. 2016), in which the admission of testimony of two witnesses that "merely provided an overview of the situation and a summary of [the victim's] accusations, without elaborating on [the victim's] evidence" did not deprive Norris of a fair trial. *Id.* at 526. As we did in *Norris*, we conclude here that the admission of the evidence at issue in this case did not prevent Weaver from having a fair trial. *See also Craig v. State*, 630 N.E.2d 207, 211–12 (Ind. 1994) (concluding that the improper admission of hearsay testimony of two witnesses that "confirmed but did not elaborate upon" the victim's testimony would have had only minor impact on the jury because there was little to undermine the victim's credibility); *McGrew v. State*, 673 N.E.2d 787, 796 (Ind. Ct. App. 1996) (concluding that the improper admission of hearsay testimony from two witnesses whose testimony was "brief and consistent with" the victim's testimony did not "constitute drumbeat repetition of the victim's statements"), *summarily aff'd* 682 N.E.2d 1289, 1292 (Ind. 1997); *Caley v. State*, 650 N.E.2d 54,

57 (Ind. Ct. App. 1995) (concluding that admission of a prior consistent statement given to the police by the victim was erroneous under *Modesitt* but did not constitute reversible error because the statement “neither explained nor elaborated upon the testimony already adduced at trial”), *trans. denied*.

[13] The judgment of the trial court is affirmed.

Pyle, J., and Weissmann, J., concur.