MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christian O. Rentas Benitez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 28, 2023

Court of Appeals Case No. 21A-CR-2427

Appeal from the Elkhart Superior Court

The Honorable Teresa L. Cataldo, Judge

Trial Court Cause No. 20D03-1808-F1-11

Memorandum Decision by Judge Brown
Judges Bradford and Pyle concur.

Brown, Judge.

[1] Christian O. Rentas Benitez appeals his convictions for two counts of child molesting. He argues that the trial court erred in excluding evidence of allegations of sexual assault made in a prior Indiana Department of Child Services ("DCS") investigation and in informing him of the sanctions it could impose if he willfully violated its prior order.

Facts and Procedural History

[2] In June 2018, the child ("K.R."), who was born in September 2012 to Benitez and A.P. ("Mother"), lived with Benitez. When Mother picked K.R. up for visitation, K.R. could not sit down in the car, acted timidly, "wasn't her normal self at all," appeared to be in pain, and, when Mother questioned K.R., she stated "poppie stuck his thing in my butt," and "please, mom, don't tell, I am going to get in trouble." Transcript Volume II at 52, 64. Mother took K.R. to the hospital and called DCS. K.R. underwent a forensic interview and examination. She later testified to multiple incidents with Benitez, including that he had touched her "bottom" and "front and mouth" with "[h]is private area," he had taken her into the bathroom and penetrated her anus with his penis, and he had penetrated her vagina with his penis. Transcript Volume III at 226.

[3] On August 17, 2018, the State charged Benitez with Count I, child molesting as a level 1 felony for sexual intercourse with K.R., and Count II, child molesting as a level 1 felony for having knowingly performed or submitted to other sexual conduct with K.R.

[4] On August 23, 2020, in Defendant's Motion to Introduce Evidence of Prior False Allegations, Benitez indicated his intention to introduce at trial "evidence of a [sic] false allegations of sexual assault by the alleged victim that the alleged victim had been sexually assaulted by . . . a person involved in an intimate relationship with [Mother]" and that the allegations were part of a former DCS investigation. Appellant's Appendix Volume II at 42-43. On March 2, 2021, the court held a hearing on Benitez's motion and heard the testimony of Tanya Gutierrez, the DCS Assistant Family Case Manager of Tippecanoe County, who testified about the prior DCS investigation, and the court denied Benitez's motion.

[5] At trial, after the conclusion of the State's case, Benitez indicated his desire to testify. The prosecutor stated, "I just want to make sure that [his counsel] has, in fact, instructed the rulings on the motions in limine, that he cannot discuss the DCS, the reasons for the custody change, everything that we've talked about ad nauseam." Transcript Volume IV at 13. Benitez's counsel asked him if they had a conversation about the trial court's prior order, if he heard the prosecutor's comment, whether he knew "what the court is not going to allow [him] to talk about," if he went "into that, that could be a violation," and he could not "get into the reasons for the custody change and the DCS investigation involving . . . [Mother] and [Mother's former boyfriend]," all to which Benitez answered affirmatively. *Id.* at 13-14. The court then stated:

> And you understand, Mr. Rentas Benitez, that if you willfully violate that motion in limine, that I will hold you in contempt for

> causing a mistrial and that I can hold you in contempt, which you get no good-time credit for, as long as I pretty much desire. If I hold you in contempt more than, I think, it's 180 days, I must have a separate contempt hearing. And I'll tell you right now that if you cause a mistrial on the last day, after we've been here for three days, we're going to have a hearing and it's going to be held in contempt for longer than 180 days. And you understand that you get no good-time credit and that you just sit there for 180 days. So I just wanted to make you aware of that before we go through with this. All right?

Id. at 14. Benitez responded, "[t]hat's fine," the court recessed for five minutes to give him an opportunity to confer with counsel, and when they returned, Benitez agreed that he no longer wished to testify. *Id.*

[6] The jury found Benitez guilty as charged, and the court sentenced him to fifty years on Count I and fifty years each on Counts I and II to run consecutively.

Discussion

I.

[7] The first issue is whether the trial court erred in refusing to permit Benitez to present prior allegations of sexual assault. Benitez argues the court erred in excluding evidence of prior, allegedly false allegations of sexual assault in contravention of Ind. Evidence Rules 412 and 608(b), "the Rape Shield Statute concerns must yield to Sixth Amendment right to cross-examination," and his "right to compulsory process of witnesses" and to present a defense were violated when the court denied his pretrial motion to introduce a prior, allegedly false allegation at trial. Appellant's Amended Brief at 10, 13. He

claims that the "admittedly hearsay-laden evidence" is relevant and that the prior allegation is demonstrably false. *Id.* at 12. The State claims that Ind. Evidence Rule 412 does not apply, Ind. Evidence Rule 608(b) bars admission of the prior allegations, and existing Indiana Supreme Court precedent "accommodate[s] the constitutional dimensions of cross-examination." Appellee's Brief at 19.

[8] The decision to admit or exclude evidence is within the trial court's sound discretion and is afforded great deference on appeal. *Carpenter v. State*, 786 N.E.2d 696, 702 (Ind. 2003). When the admission of evidence is predicated on a factual determination by the trial court, we review under a clearly erroneous standard of review. *Candler v. State*, 837 N.E.2d 1100, 1103 (Ind. Ct. App. 2005) (citing *Davenport v. State*, 749 N.E.2d 1144, 1148 (Ind. 2001), *reh'g denied*); *see also State v. Luna*, 932 N.E.2d 210, 214-215 (Ind. Ct. App. 2010). "However, the Indiana Supreme Court, in addressing the same issue of whether charges were false or demonstrably false, held that appellate courts review a trial court's ruling concerning the sufficiency of the foundation for an abuse of discretion." *Candler*, 837 N.E.2d at 1103 (citing *State v. Walton*, 715 N.E.2d 824, 828 (Ind. 1999)). In doing so the *Walton* Court noted: "Because the predicates or foundation requirements to admissibility often require factual determinations by the trial court, these findings are entitled to the same deference on appeal as any other factual finding, *whether that is described as a clearly erroneous or abuse of discretion standard.*" *Id.* at 1103-1104 (quoting *Walton*, 715 N.E.2d at 828) (emphasis added in *Candler*). "Although these standards of review have been

treated the same, the clearly erroneous standard appears semantically to be more correct than the abuse of discretion standard when applied to factual determinations of the trial court." *Id.* at 1104.

[9] Ind. Evidence Rule 412 provides that "evidence offered to prove that a victim or witness engaged in other sexual behavior" or "evidence offered to prove a victim's or witness's sexual predisposition" is not admissible except in:

> (1) Criminal Cases. The court may admit the following evidence in a criminal case:
>
> > (A) evidence of specific instances of a victim's or witness's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;
> >
> > (B) evidence of specific instances of a victim's or witness's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and
> >
> > (C) evidence whose exclusion would violate the defendant's constitutional rights.

[10] We note that Rule 412 only precludes evidence of a complaining witness's prior sexual conduct. *Walton*, 715 N.E.2d at 826. Evidence of prior false accusations of rape made by a complaining witness does not constitute "prior sexual conduct" for rape shield purposes. *Id.* In presenting such evidence, the defendant is not probing the complaining witness's sexual history. *Id.* Rather, the defendant seeks to prove for impeachment purposes that the complaining witness has previously made false accusations of rape. *Id.* Viewed in this light,

such evidence is more properly understood as verbal conduct, not sexual conduct. *Id.* (citing *Little v. State*, 413 N.E.2d 639, 643 (Ind. Ct. App. 1980); *Hall v. State*, 374 N.E.2d 62, 65 (Ind. Ct. App. 1978)). "To the extent a defendant offers evidence of prior false accusations of rape to impeach the credibility of the witness, we hold that its admission does not run afoul of the Rape Shield Rule." *Walton*, 715 N.E.2d at 827.

[11] Ind. Evidence Rule 608(b) provides:

> **Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of another witness whose character the witness being cross-examined has testified about.

[12] In *Walton*, the Indiana Supreme Court noted, "[a]s adopted, Rule 608(b) provides no exceptions for prior false accusations, and given that such evidence goes directly to an accuser's character for truthfulness, it would seem to fall clearly within the ambit of the rule," but that "evidentiary constraints must sometimes yield to a defendant's right of cross-examination." 715 N.E.2d at 827. *See also Jacobs v. State*, 22 N.E.3d 1286, 1289-1290 (Ind. 2015) ("[T]he evidence rule preventing evidence of specific acts of untruthfulness must yield to a defendant's Sixth Amendment right of confrontation and right to present a

full defense").[1] "[A] common law exception has survived the 1994 adoption of the Indiana Rules of Evidence, and this exception provides that evidence of a prior accusation of rape is admissible if: (1) the victim has admitted that his or her prior accusation of rape is false; or (2) the victim's prior accusation is demonstrably false." *Luna*, 932 N.E.2d at 212 (citing *Walton*, 715 N.E.2d at 828). The common law exception to prior false accusations of rape has been interpreted to apply not only to rape, but also to prior false allegations of other sex crimes. *Id.* at 213. "[E]vidence of prior false accusations of rape is admissible to attack the credibility of the accusing witness, notwithstanding the general exclusionary edict of Rule 608(b)." *Walton*, 715 N.E.2d at 827. K.R. did not admit to making prior false accusations, and therefore, the accusations must be demonstrably false. The Indiana Supreme Court observed that "[t]he Court of Appeals pointed out that while 'no bright line rule can be established' for determining whether a prior accusation is demonstrably false, the demonstrably false standard is 'more stringent than a mere credibility determination.'" *Id.* at 828 (citing *State v. Walton*, 692 N.E.2d 496, 501 (Ind. Ct. App. 1998), *vacated on trans*.).

[13] The record reveals that the trial court observed the testimony Manager Gutierrez gave concerning the prior allegations K.R. made against a former

[1] To the extent Benitez asserts that the court violated his right to present a defense and be heard under Article 1, Section 13 of the Indiana Constitution, he presents no separate argument and analysis. Thus, any separate state constitutional claims are waived because of his failure to make a cogent argument under that provision. *See Pierce v. State*, 29 N.E.3d 1258, 1267-1268 (Ind. 2015) (citing Ind. Appellate Rule 46(A)(8)(a)); *see also Davis v. State*, 907 N.E.2d 1043, 1048 (Ind. Ct. App. 2009).

boyfriend of Mother. During an offer of proof, she testified that she interviewed Mother, who did not believe the prior allegation, thought K.R. had been coached, stated that K.R. was known to lie, and indicated that Mother's parent, A.H., believed the same. Gutierrez later stated that the result of her investigation of the prior allegations was that she "did not have enough corroborating evidence outside of the child's statement that supported the allegations were true," "[w]e did not find enough evidence to substantiate; therefore, we did unsubstantiate [sic] the claims of sexual abuse," and she "felt that this could potentially be . . . reexamined at another time." Supplemental Transcript at 35, 40. In its order denying Benitez's motion to introduce evidence, the trial court found that Mother "admitted that K.R. might have been alone with [Mother's former boyfriend] for short periods of time," Benitez "did not call K.R. to testify" during the hearing, K.R. "never acknowledged that the accusation she made was false," "no reliable evidence was presented to prove that the accusation K.R. made was demonstrably false," and "[t]he only evidence presented at the hearing was that Child Services did not substantiate or corroborate K.R.'s complaint." Appellant's Appendix Volume II at 52-53. We cannot say the evidence demonstrates that the prior allegation was demonstrably false or that the court erred in excluding the evidence which Benitez wished to introduce. *See Candler*, 837 N.E.2d at 1102 (holding the trial court did not err by excluding evidence of a prior allegation of sexual misconduct and that "[t]he only evidence presented was that the Child Protective Services did not pursue her complaint; and that after a brief period of

time when she was removed from her stepfather and mother's home, that she returned to live with them.").

II.

[14] The next issue is whether fundamental error occurred when the trial court discussed possible sanctions it could impose for willful violation of its previous order prior to Benitez testifying. Benitez argues that "the United States Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Appellant's Amended Brief at 14, 19.[2] The State responds that no error occurred and that trial courts have wide latitude to manage proceedings.

[15] To the extent Benitez did not object at trial and was required to do so, he must show that the trial court's decision constituted fundamental error. *See Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013) (observing that failure to object at trial waives the issue for review unless fundamental error occurred). Fundamental error is an extremely narrow exception that allows a defendant to avoid waiver of an issue. *Cooper v. State*, 854 N.E.2d 831, 835 (Ind. 2006). It is error that makes "a fair trial impossible or constitute[s] clearly blatant violations of basic and elementary principles of due process . . . present[ing] an undeniable and substantial potential for harm." *Id.* "This exception is available only in

[2] To the extent Benitez cites Article 1, Section 13 of the Indiana Constitution, he presents no separate argument and analysis. Thus, any separate state constitutional claim is waived. *See Pierce*, 29 N.E.3d at 1267-1268 (citing Ind. Appellate Rule 46(A)(8)(a)); *see also Davis*, 907 N.E.2d at 1048.

'egregious circumstances.'" *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010) (quoting *Brown v. State*, 799 N.E.2d 1064, 1068 (Ind. 2003)), *reh'g denied*. "Fundamental error is meant to permit appellate courts a means to correct the most egregious and blatant trial errors that otherwise would have been procedurally barred, not to provide a second bite at the apple for defense counsel who ignorantly, carelessly, or strategically fail to preserve an error." *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014), *reh'g denied*.

[16] Whether it is rooted directly in the Due Process Clause of the Fourteenth Amendment or the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. *Saintignon v. State*, 118 N.E.3d 778, 786 (Ind. Ct. App. 2019) (citing *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142 (1986)). "Although the right to present a defense is of the utmost importance, it is not absolute." *Id.* (citing *Marley v. State*, 747 N.E.2d 1123, 1132 (Ind. 2001)). "[T]he accused, as is required by the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id.* (citing *Marley*, 747 N.E.2d at 1132 (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S.Ct. 1038 (1973))). "Indiana trial courts possess the inherent power to sanction parties and attorneys for violating orders in limine and causing mistrials." *Allied Prop. and Cas. Ins. Co. v. Good*, 919 N.E.2d 144, 154 (Ind. Ct. App. 2009). "This power is designed to protect the integrity of the judicial system and to secure compliance with the court's rules and orders." *Id.*

[17] The record reveals that the trial court informed Benitez of the possible sanctions it could impose if he willfully violated its previous order, Benitez stated "[t]hat's fine," he did not dispute the court's ability to impose sanctions, the court asked if Benitez and his counsel would like to take five minutes to confer, and Benitez no longer wished to testify after the break. He responded affirmatively when asked if he and his attorney had conversations regarding him testifying, and he responded "[n]o" when asked "[d]id anybody threaten you, in any way, or offer you anything of value in order to get you not to testify?" Transcript Volume IV at 14-15. In light of the record, we cannot say fundamental error occurred.

[18] For the foregoing reasons, we affirm Benitez's convictions for child molesting.

[19] Affirmed.

Bradford, J., and Pyle, J., concur.