MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Andrew W. Foster
The Law Office of Andrew W. Foster, LLC
Rockport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria N. Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Ronald W. Duncan,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 1, 2023

Court of Appeals Case No.
22A-CR-1689

Appeal from the
Spencer Circuit Court

The Honorable
Jonathan A. Dartt, Judge

Trial Court Case No.
74C01-2012-F3-399

Memorandum Decision by Senior Judge Shepard
Chief Judge Altice and Judge Pyle concur.

Shepard, Senior Judge.

[1] Ronald W. Duncan appeals from his convictions of three counts of child molesting, one as a Level 1 felony and two as Level 4 felonies,[1] and one count of vicarious sexual gratification, a Level 4 felony.[2] Duncan argues the trial court erred in allowing a nurse practitioner to testify as to what the child-victim told her during an office visit. Concluding the court acted well within its discretion in admitting the testimony, we affirm.

Facts and Procedural History

[2] L.N. began living with her grandparents, Steven and Michelle Norman,[3] when she was one and one-half years old. Duncan moved in with the Normans in January 2020, when L.N. was six years old. Duncan was married to, but separated from, Tammy Hillenbrand. Steven and Hillenbrand are cousins, and Duncan was Steven's best friend. Hillenbrand had a close relationship with Michelle and L.N., and she often visited their house.

[3] Duncan was unemployed for most of the time he lived with L.N.'s grandparents, and he was alone with L.N. "every other day." Tr. Vol. 2, p. 108. Duncan sometimes met L.N. when she returned home from school. They went swimming and watched movies together.

---

[1] Ind. Code § 35-42-4-3 (2015).

[2] Ind. Code § 35-42-4-5 (2014).

[3] We will refer to Steven and Michelle by their first names.

[4] Several times when Duncan and L.N. watched movies together, Duncan touched L.N. between her legs, both over and under her clothes. This occurred in the living room and in Duncan's bedroom. Duncan also made L.N. touch his genitals, both over and under his clothes. In one instance when they were in Duncan's bedroom, Duncan touched L.N.'s genitals with a small purple device that "made a little buzzing noise." *Id.* at 218.

[5] On October 22, 2020, Hillenbrand visited L.N., and L.N. told her Duncan had touched her inappropriately. Hillenbrand relayed this information to Michelle. Michelle went to L.N.'s room to speak with her, and L.N. said again that Duncan had touched her inappropriately. As they talked, L.N. became so upset that she vomited on her bed.

[6] The next day, Michelle asked L.N. to use a doll to show where Duncan touched her. L.N. put her hand under the doll's underwear. Next, Michelle called a medical office and scheduled an appointment with Nurse Practitioner Robin Strahl. Strahl had provided medical care to L.N. since she was three, seeing her at least once a year for treatment of illnesses and for regular physicals. Michelle and L.N. called Strahl "Dr. Robin." *Id.* at 114. Michelle had previously told L.N. she needed to be truthful when talking with doctors and nurses. L.N. remembered several occasions when Strahl had treated her, and she later testified she understood it was important to be truthful to her doctor.

[7] On October 26, the day of the appointment, Michelle told L.N. they were going to "see Dr. Robin so that she could check her out to make sure that she was okay." *Id.* At the office, Strahl asked L.N. why she needed an appointment. Michelle later testified, without objection, to listening as L.N. "told [the nurse] where all [sic] he touched her at." *Id.* at 116. Next, Strahl visually examined L.N.'s genitals for signs of trauma and found none. According to Michelle, at the end of the examination Strahl recommended Michelle "get [L.N.] into therapy." *Id.*

[8] After the appointment with Strahl, Michelle called the Indiana Department of Child Services, and the police became involved. The State charged Duncan with three counts of child molesting and one count of vicarious sexual gratification. During the jury trial, Strahl described L.N.'s October 26 office appointment. She did not tell L.N. or Michelle she was a nurse practitioner because L.N. "already knew" what her job was based on past visits. *Id.* at 151. Strahl stated the purpose of L.N.'s visit was twofold: to "report inappropriate touching" and to treat "an earache." *Id.* at 153.

[9] Next, Strahl told the jury, over Duncan's objection, that L.N. said her "Uncle Ron" had touched her inappropriately while they were in the living room and his bedroom at L.N.'s grandparents' house. *Id.* at 155. Strahl further stated L.N. told her "that he had touched her bare chest with his hands and his mouth and then she went [on] to say that he also touched her private area with his hands and mouth and tried to actually penetrate her as well with his private area is what she said." *Id.* at 156. Finally, Strahl testified L.N. told her Duncan

had penetrated her with his fingers and had made her rub his penis. Strahl also described for the jury how she performed a visual examination of L.N.'s exterior genitalia for bruises, scratches, or redness, but she found none.

[10] The jury determined Duncan was guilty as charged. The trial court imposed a sentence, and this appeal followed.

Discussion and Decision

[11] Duncan claims the trial court should not have allowed Nurse Strahl to testify about L.N.'s statements to her during the October 26 appointment.

[12] A trial court has broad discretion when ruling on the admissibility of evidence. *Ackerman v. State*, 51 N.E.3d 171 (Ind. 2016). A reviewing court will disturb the court's decision only when it is shown the court abused its discretion. *Id.* "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." *Turner v. State*, 953 N.E.2d 1039, 1045 (Ind. 2011).

[13] Hearsay is "a statement that . . . is not made by the declarant while testifying at the trial or hearing; and . . . is offered in evidence to prove the truth of the matter asserted." Ind. Evid. Rule 801(c). In general, hearsay evidence is inadmissible. Ind. Evid. Rule 802. But the Indiana Rules of Evidence provide several exceptions to the rule against hearsay, including statements made for "medical diagnosis or treatment." Ind. Evid. Rule 803(4). A statement made for diagnosis or treatment is admissible despite being hearsay if the statement:

> (A) is made by a person seeking medical diagnosis or treatment;
>
> (B) is made for—and is reasonably pertinent to—medical diagnosis or treatment; and
>
> (C) describes medical history; past or present symptoms, pain or sensations; their inception; or their general cause.

Id.

[14] Trial courts may admit hearsay evidence under this exception "because the reliability of the out-of-court statement is assured based upon the belief that a declarant's self-interest in seeking medical treatment renders it unlikely the declarant will mislead the person that she wants to treat her." *Nash v. State*, 754 N.E.2d 1021, 1023 (Ind. Ct. App. 2001), *trans. denied*. And a statement made to a non-physician may fall within Rule 803(4) if the statement is made to promote diagnosis or treatment. *McClain v. State*, 675 N.E.2d 329 (Ind. 1996).

[15] In determining the admissibility of hearsay under Rule 803(4), we consider: "(1) whether the declarant's motive was to provide truthful information to promote diagnosis and treatment and (2) whether the content of the statement is such that an expert in the field would reasonably rely on it in rendering diagnosis or treatment." *Perry v. State*, 956 N.E.2d 41, 49 (Ind. Ct. App. 2011). To meet the requirement of the declarant's motivation, the declarant must subjectively believe he or she was making the statement for receiving medical diagnosis or treatment. *McClain*, 675 N.E.2d at 331. In a case involving a young child brought to treatment by someone else, "there must be evidence that the declarant understood the professional's role in order to trigger the motivation to provide truthful information." *Id.*

[16] In *Cooper v. State*, 714 N.E.2d 689 (Ind. Ct. App. 1999), *trans. denied*, Cooper was tried for child molestation, and a nurse testified about the child-victim's statements to her during an examination. Cooper argued the trial court should not have admitted the nurse's hearsay testimony, but this Court determined the child's statements to the nurse met the requirements of the exception set forth in Rule 803(4). The Court concluded the evidence showed the child-victim understood the nurse's role as a medical professional who was providing medical treatment. In particular, the nurse testified she introduced herself to the child, asked her name, and got to know her before explaining the procedure, which would include a physical examination by the doctor. The child told the nurse she understood she was there to be examined, and then she disclosed the molestation to the nurse.

[17] By contrast, in *VanPatten v. State*, 986 N.E.2d 255 (Ind. 2013), the Indiana Supreme Court determined the trial court erred in admitting a forensic nurse's testimony about alleged child-victims' statements, concluding the testimony was inadmissible hearsay. The State alleged the children made their statements to the nurse for the purpose of medical diagnosis or treatment under Rule 803(4), but the Court determined the exception did not apply to the circumstances of the case.

[18] As the *VanPatten* court explained, when a litigant seeks to admit a child's hearsay statements under Rule 803(4), the litigant must set forth a "robust evidentiary foundation" for the statements to "be seen as reliable enough to be admitted." *Id.* at 257. In VanPatten's case, the forensic nurse did not have any

independent recollection of her interviews with the children, stating she typically tells children it is her job to ensure they are "okay." *Id.* at 266. Further, one of the children later recanted her accusations, testifying her prior statements, as described in the nurse's notes, were false. The State noted the nurse performed the interviews in an exam room while wearing scrubs, and she told the children she was a nurse. But the Indiana Supreme Court determined such evidence, standing alone, did not demonstrate the children understood the nurse's medical role.

[19] The facts of Duncan's case are more like the circumstances in *Cooper* than those in *VanPatten*. Nurse Strahl, who L.N. knew as "Dr. Robin," had provided medical care to L.N. for several years before the events at issue. L.N.'s grandmother had previously told L.N. she needed to be truthful when talking with medical professionals, and L.N. testified she understood it was important to tell the truth to her doctor.

[20] On the day of the examination, Michelle told L.N. Strahl needed to "check her out to make sure that she was okay." Tr. Vol. 2, p. 114. Further, Strahl did not wear scrubs or introduce herself, but L.N. already knew about her job from prior visits. Unlike the forensic nurse in *VanPatten*, Strahl testified about her memories of the exam, describing for the jury her process for questioning L.N. and then performing a visual examination of L.N.'s genitals for signs of trauma. In addition, unlike one of the children in *VanPatten*, L.N. did not subsequently disavow her statements to Strahl.

[21] Based on this evidence, L.N. understood Nurse Strahl's role as a medical professional, and the trial court could reasonably conclude L.N. had been motivated to provide truthful information for medical treatment under Rule 803(4). See *Cooper*, 714 N.E.2d at 694 (nurse's testimony about the circumstances of a child's exam showed the child "sufficiently understood the professional role of both the nurse and the doctor who examined her, thus triggering the motivation to provide truthful information").

[22] Duncan does not present argument regarding the second element of the Rule 803(4), standard, which is "whether the content of the [patient's] statement is such that an expert in the field would reasonably rely on it in rendering diagnosis or treatment." *Perry*, 956 N.E.2d at 49. The Appellant's Brief must fully address the issues presented, supported by cogent reasoning and citations to authorities. Ind. Appellate Rule 46(A)(8)(a). Duncan bears the burden of persuasion, and "[w]e are not obligated to develop the argument" for him. *Dukes v. State*, 661 N.E.2d 1263, 1267 (Ind. Ct. App. 1996). As a result, he has waived this issue for appellate review.

[23] The court did not abuse its discretion in admitting Strahl's testimony describing L.N.'s statements during the exam.[4]

[4] The parties dispute whether, even if the trial court had erred in admitting Strahl's testimony, any error would be harmless. We do not need to address this issue.

Conclusion

[24] For the reasons stated above, we affirm the judgment of the trial court.

[25] Affirmed.

Altice, C.J., and Pyle, J., concur.