

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Roel Amos Hernandez Morales,
Appellant-Morales,

v.

State of Indiana,
Appellee-Plaintiff.

March 7, 2023

Court of Appeals Case No.
22A-CR-402

Appeal from the Vanderburgh
Superior Court

The Honorable Robert J. Pigman,
Judge

Trial Court Cause No.
82D03-2102-F1-841

Memorandum Decision by Judge Weissmann
Judges May and Crone concur.

Weissmann, Judge.

- [1] Roel Morales appeals his convictions for attempted child molestation, child solicitation, and attempted voyeurism, arguing that the trial court committed fundamental error by admitting alleged vouching evidence and evidence of prior bad acts. Finding no fundamental error, we affirm.

Facts

- [2] Morales moved into a house with E.L. in 2016. E.L. has three daughters, two of whom were adults at the time and another, J.C.L., who was 9 years old. Around 2018 or 2019, Morales began repeatedly molesting and exposing himself to J.C.L. Morales would enter J.C.L.'s bedroom and, under the pretext of giving her a massage, pull down her pants and lie on top of her. Morales would then touch J.C.L. inappropriately with both his hands and penis. Morales told J.C.L. not to tell her mother. J.C.L. complied because she was embarrassed, scared, and worried she would not be believed. Morales and J.C.L.'s mother eventually married.
- [3] One day, after several years of molestations, J.C.L. found Morales's phone in the bathroom of their home, hanging in a black mesh bag from a knob on the wall. Reaching a breaking point, J.C.L. showed one of her sisters the phone and disclosed that Morales had been inappropriately touching her for years. J.C.L. then called the police, hoping that the phone might contain proof of Morales's crimes.

- [4] Police recovered the SD card from Morales's phone. On it they found several videos that showed Morales start recording with his phone's video camera and then carefully position the phone in the mesh bag so that it pointed toward the toilet with the camera lens unobstructed. One of these videos captured a woman using the toilet.
- [5] The State charged Morales with two counts each of Level 1 felony attempted child molestation, two counts of Level 4 felony attempted child molestation, one count of Level 6 felony child solicitation, and one count of Level 6 felony attempted voyeurism. During Morales's jury trial, the State introduced evidence that victims of child molestation often do not report the crimes for years after the fact. The State also introduced testimony from J.C.L.'s older sister, who revealed that Morales also touched her inappropriately while she was an adult. Morales did not object to either piece of evidence.
- [6] The jury found Morales guilty on one count each of Level 1 felony attempted child molestation, Level 4 felony attempted child molestation, Level 6 felony child solicitation, and Level 6 felony attempted voyeurism. But the jury acquitted him of the remaining two counts of attempted child molestation. The trial court imposed an aggregate 30-year sentence.

Discussion and Decision

- [7] Morales appeals his convictions, arguing the trial court erred in admitting certain evidence at his trial. The decision to admit or exclude evidence is committed to the trial court's "sound discretion and is afforded great deference

on appeal.” *Carpenter v. State*, 786 N.E.2d 696, 702 (Ind. 2003). Typically, a trial court’s evidentiary decision will be reversed only if “it represents a manifest abuse of discretion that results in the denial of a fair trial.” *Id.* But because Morales did not contemporaneously object to the admission of the evidence at trial, his arguments are waived on appeal. To circumvent his waiver, Morales must meet a higher standard of review—that of fundamental error.

- [8] The fundamental error doctrine is “extremely narrow.” *Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013). It 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).

I. Vouching Evidence

- [9] Morales first argues the State violated Indiana Evidence Rule 704(B) by introducing evidence vouching for the truth of the J.C.L.’s claims that Morales molested her. Rule 704(B) prohibits a witness from testifying about whether another witness “has testified truthfully.” The admission of such vouching evidence constitutes an “invasion of the province of the jurors in determining what weight they should place upon a witness’s testimony.” *Gutierrez v. State*, 961 N.E.2d 1030, 1034 (Ind. Ct. App. 2012).
- [10] Morales focuses on the following exchange between the State prosecutor and Detective Michael Kennedy, during which Detective Kennedy was questioned about the typical timing of child molestation disclosures:

Q: So we've got a year and a half to two year (sic) and a half gap between the touching happening and her telling someone for the first time. Is that common or uncommon based on your experience and your training with these cases?

A. That's very common. In my investigations I've had cases where someone is molested or sexually battered, abused, and it's an immediate reaction because that's just the way that that person is wired. I've had cases where I interviewed a 70 year old lady in her 70's and she was molested when she was 9 or 10 and I was the first person she ever told; knowing the statute of limitations had expired and nothing could ever happen, but that is how long she waited and she wanted to come out and just make, uh, put it on the record. . . . So, there is no rhyme or reason, we've heard of the fight or flight or freeze instinct and people disclose this kind of stuff and how much they disclose whenever they are ready.

Q. Okay. So you talk about it's up to the victim to really decide how much they say and when they say it. Is it common for victims to tell different people different pieces of that?

A. Absolutely, especially children. Um, you know the children, the child usually tells the trusted person in their life, whether it's a friend at school, a teacher, a family member, a parent, or a sibling and usually they tell just enough to get the process started. And when the ball gets rolling that's when we usually get more information.

Q. So it's not like the child just sits down and says this is what I have to tell you, that's everything that happened; that's all that happened; and I'm done with my disclosure. That's not how it works?

A. That has happened, but that is not the norm.

Tr. Vol. III, pp. 87-89 (cleaned up).

[11] To Morales, Detective Kennedy was impermissibly bolstering J.C.L.’s credibility to the jury. We disagree. “Once a child’s credibility is called into question, proper expert testimony may be appropriate.” *Steward v. State*, 652 N.E.2d 490, 499 (Ind. 1995). While cross examining J.C.L., Morales questioned J.C.L. several times about why she delayed reporting the molestation. Tr. Vol. III, pp. 25-30. This line of questioning opened the door for Detective Kennedy to explain the typical pattern of child molestation reporting. *See Pierce v. State*, 135 N.E.3d 993, 1005 (Ind. Ct. App. 2019). At no point did Detective Kennedy mention J.C.L. by name or state that this case fits within the pattern. Nor did he give his opinion on whether J.C.L. was telling the truth. Witnesses may make “a statement about how victims of child molestation behave in general” without it being considered impermissible vouching. *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016); *see also Otte v. State*, 967 N.E.2d 540, 548 (Ind. Ct. App. 2012) (finding testimony “does not cross the line into impermissible vouching” when referring to the general behavior of domestic violence victims). Thus, Detective Kennedy’s testimony was not inadmissible under Evidence Rule 704(B).

[12] Morales contends that our precedent on this point is wrong. He argues that the Indiana Supreme Court’s decision in *Steward v. State*, which limited the introduction of “Child Sexual Abuse Accommodation Syndrome” evidence, demands the exclusion of Detective Kennedy’s testimony. 652 N.E.2d at 498-99. But this Court has already rejected Morales’s exact argument. *Baumholser*, 62 N.E.3d at 416 (Stating “testimony from [the witness], which does not

mention [Child Sexual Abuse Accommodation Syndrome], did not run afoul of Ind. Evidence Rule 704(b) as applied in *Steward*.”). Accordingly, we see no error, much less fundamental error, in the admission of Detective Kennedy’s statement.

II. Prior Bad Acts Evidence

[13] Morales next contends that the trial court fundamentally erred in admitting testimony from J.C.L.’s sister that Morales also touched her inappropriately while she was an adult. Tr. Vol. II, pp. 225-26. He alleges that the admission of this evidence violated both Evidence Rules 404(b) and 403. We find no violation of either.

[14] Rule 404(b) limits the admissibility of evidence showing the defendant engaged in other crimes, wrongs, or acts to prove the defendant’s character for engaging in similar actions. To determine the admissibility of evidence under Rule 404(b), the trial court must first “determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant’s propensity to commit the charged act.” *Hicks v. State*, 690 N.E.2d 215, 221 (Ind. 1997). If so, the court must balance the probative value of the evidence against its prejudicial effect pursuant to Rule 403. *Fairbanks v. State*, 568 119 N.E.3d 564, 568 (Ind. 2019).

[15] The State essentially concedes that the testimony from J.C.L.’s sister was evidence of Morales’s prior bad act, solely relevant to proving his likelihood of committing the charged crimes, and therefore inadmissible under Rule 404(b).

Yet, the State argues that Morales waived the issue by failing to object to evidence at trial; nor can he circumvent waiver under the fundamental error doctrine's higher standard of review. We agree.

[16] The exception to waiver for fundamental error is reserved for “egregious circumstances.” *Brown v. State*, 799 N.E.2d 1064, 1068 (Ind. 2003). This was not an egregious circumstance. J.C.L.’s sister testified that Morales inappropriately touched her breast through her clothes when she was an adult. As this was a trial for, in part, child molestation involving Morales placing his penis on J.C.L.’s bare skin, the introduction of a prior act of a brief touch of a fully clothed adult was only weakly prejudicial to Morales. Indeed, this court has previously found that testimony about prior acts of *actual* child molestation was not fundamental error when the testimony was “brief and lacked detail” so as to have a “minimal impact on the jury.” *Manuel v. State*, 793 N.E.2d 1215, 1219 (Ind. Ct. App. 2003). Here, JC.L.’s sister merely responded affirmatively to the State’s question on whether Morales ever touched her “in a way she did not like” and motioned towards her breasts. Tr. Vol. II, pp. 224-26. Like in *Manuel*, this testimony did not sufficiently impact the jury to constitute fundamental error.¹

¹ Our conclusion also forecloses relief to Morales under Evidence Rule 403. That rule allows the exclusion of otherwise admissible evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.” Ind. Evid. R. 403. Because Morales failed to object on Rule 403 grounds at trial, he waived the issue except for fundamental error review. We find the alleged violation of Rule 403 was not fundamental error for the same reasons as the Rule 404(b) violation—minimal prejudice.

Conclusion

[17] Finding no fundamental errors in the admittance of any evidence during Morales's trial, we affirm.

May, J., and Crone, J., concur.