# MEMORANDUM DECISION

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IN THE

# COURT OF APPEALS OF INDIANA

Edwing Eduardo Estrada Ramos,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

April 12, 2022

Court of Appeals Case No. 21A-CR-1902

Appeal from the Marion Superior Court

The Honorable Mark D. Stoner, Judge

Trial Court Cause No. 49D32-1904-FA-15837

**Tavitas, Judge.**

## Case Summary

[1] Edwing Eduardo Estrada Ramos was convicted of one count of child molesting, a Class A felony; two counts of child molesting, Level 1 felonies; two counts of child molesting, Level 4 felonies; two counts of incest, Level 5 felonies; two counts of sexual misconduct with a minor, Level 4 felonies; and two counts of battery resulting in bodily injury to a person less than fourteen years of age, Level 5 felonies. Ramos appeals and claims that the trial court abused its discretion when it admitted testimony that he claims constituted improper "drumbeat" testimony and improper vouching. Concluding that the trial court did not abuse its discretion, we affirm Ramos's convictions.

## Facts

[2] Ramos was in a long-term romantic relationship with J.P. ("Mother"), and the couple had three daughters: E.E., who was born in 2003; A.E., who was born in 2006; and Z.P., who was born in 2011. Mother also had another daughter, A.P., who was born in 2009. The couple separated in 2012, after which all four girls lived with Ramos.

[3] On multiple occasions when E.E. was ten years old, Ramos touched E.E.'s vagina with his finger and his mouth; when E.E. was fifteen years old, Ramos began to have sexual intercourse with E.E. Ramos also engaged in sexual behavior with A.E., who testified that Ramos touched her vagina. A.E. also testified that Ramos kissed her all over her body, including on her stomach and vagina. When A.E. resisted Ramos's advances, he told her, "I can kiss you,

you're my daughter, I can do anything." Tr. Vol. III p. 101. Ramos slammed A.E.'s head into the refrigerator on one occasion; he also slapped A.E. with an open hand causing her mouth to bleed.

[4] E.E. saw Ramos tickle A.E., during which he touched A.E.'s breast. Z.P. also saw Ramos touch A.E. on her breast and buttocks. Z.P. also saw Ramos hit A.E. with a paddle and smack A.E.'s face, leaving a bruise. When A.P. was eight years old, Ramos touched her vagina with his fingers while the sisters slept on the floor in Ramos's bedroom.

[5] On April 3, 2019, all four girls went to Mother's house—the first time they had been alone with their mother since their parents separated. A.E. and E.E. told Mother that Ramos sexually abused them. Mother then called the police. As a result, the girls were interviewed at the Child Advocacy Center by Rita Farrell, the director of "ChildFirst" with the Zero Abuse Project, an organization that trains professionals in the field of forensic interviewing and child abuse investigations. *Id.* at 111. E.E. and A.E. told Farrell about Ramos's sexual abuse, but A.P. and Z.P. made no allegations at the time.[1]

[6] On April 25, 2019, the State charged Ramos with nine counts: Count I, child molesting, a Class A felony; Count II, incest, a Level 4 felony; Count III, sexual misconduct with a minor, a Level 4 felony; Count IV, incest, a Level 4 felony; Count V, sexual misconduct with a minor, a Level 4 felony; Count VI, child

[1] A.P. testified at trial, however, that Ramos touched her vagina. Tr. Vol. III pp. 20-24.

molesting, a Level 4 felony; Count VII, battery resulting in bodily injury to a person less than fourteen years of age, a Level 5 felony; Count VIII, child molesting, a Level 4 felony; and Count IX, battery resulting in bodily injury to a person less than fourteen years of age, a Level 5 felony. On March 6, 2020, the State filed three additional counts: Count X, child molesting, a Level 1 felony; Count XI, child molesting, a Level 1 felony, and Count XII, sexual misconduct with a minor, a Level 4 felony. Count III was dismissed prior to trial.

[7] A jury trial was held on July 12-13, 2021. At trial, the State called Farrell as a witness and asked her: "in your experience with interviewing children, do they often struggle with a distinct timeline?" Tr. Vol. III pp. 114-15. Ramos objected, arguing, "think we'll get into [Evidence Rule] 704, and potential bolstering of a witness." *Id*. at 115. The trial court overruled the objection and ruled that Farrell could "testify as to her general knowledge, generally about the forensic interview." *Id*. Shortly thereafter, the State asked Farrell, "[d]uring [E.E.]'s interview, did she disclose anything to you?" *Id*. at 118. Again, Ramos objected, claiming that any answer by Farrell would be concerning "the content of statements that are – that represents witnesses who already testified as to this matter. Any further bringing up of prior statements is simply bolstering on behalf of the State[.]" *Id*. After a discussion held outside the presence of the jury, the trial court ultimately ruled as follows:

> The Court will overrule the objection to the extent that the Court would rule that the witness may respond generally as in yes or no question as to whether or not there was a disclosure and the specific nature of a disclosure without going into the specific

> details or a verbatim statement. The Court doesn't believe that the – simply acknowledging that, A., a statement was made, and the general nature of it constitutes the drum beat repetition that the appellate courts are concerned in this area . . . .

*Id*. at 124.

[8] The State then again asked Farrell if E.E. disclosed anything during the forensic interview, to which Farrell responded, "Yes." *Id*. at 129. The State also asked, "[w]as the nature of her disclos[ure] sexual and physical abuse?" *Id*. Again, Farrell answered in the affirmative. Farrell also stated that E.E.'s demeanor was "emotional and hesitant," which Farrell agreed was an "appropriate" demeanor. *Id*. Farrell testified that A.E. too disclosed sexual and physical abuse by Ramos and that A.E.'s demeanor was "talkative and engaged." *Id*. at 130. Farrell also testified that A.P. and Z.P. did not disclose to her any sexual abuse by Ramos during their respective forensic interviews. Farrell also testified that it is not uncommon for children to delay disclosure of sexual abuse.

[9] At the conclusion of the trial, the jury found Ramos guilty as charged. At the sentencing hearing held on August 23, 2021, the trial court entered judgment of conviction on all counts, except one count of sexual misconduct, and sentenced Ramos to an aggregate term of sixty-six years of incarceration. This appeal ensued.

# Analysis

## *Standard of Review*

[10] We review challenges to the admission of evidence for an abuse of the trial court's discretion. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018) (citing *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015)). We will reverse only where the decision is clearly against the logic and effect of the facts and circumstances. *Id*. (citing *Joyner v. State,* 678 N.E.2d 386, 390 (Ind. 1997). "However, when a trial court's evidentiary ruling rests upon the proper interpretation of a statute or rule of evidence, it inherently presents a question of law, which we review de novo." *Id*. (citing *Patchett v. Lee*, 60 N.E.3d 1025, 1028 (Ind. 2016)).

## *I. Drumbeat Repetition Testimony*

[11] Ramos first argues that the admission of Farrell's testimony constituted impermissible "drumbeat" repetition of A.E. and E.E.'s allegations. "Indiana courts have identified reversible error where the challenged testimony repeated the victim's specific allegations." *Kress v. State*, 133 N.E.3d 742, 747 (Ind. Ct. App. 2019) (citing *Kindred v. State*, 973 N.E.2d 1245, 1248-51 (Ind. Ct. App. 2012), *abrogated in part on other grounds by Sampson v. State,* 38 N.E.3d 985 (Ind. 2015); *Stone v. State*, 536 N.E.2d 534, 540 (Ind. Ct. App. 1989)). Our Supreme Court has "expressed particular concern about eliciting this sort of specific, repetitive testimony before the victim ever testifies. *Kress,* 133 N.E.2d at 747 (citing *Modesitt*, 578 N.E.2d 649, 651 (Ind. 1991)). Ramos argues that permitting Farrell to testify regarding what A.E. and E.E. stated during their

respective forensic interviews amounted to unnecessary and prejudicial repetition of their allegations. We disagree.

[12] First, Farrell testified *after* both A.E. and E.E. testified. Thus, there was no specific, repetitive testimony before the victims ever testified, as was the case in *Modesitt*, 578 N.E.2d at 651. Nor did the trial court permit multiple witnesses to repeatedly testify regarding the details of the victims' out-of-court statements. *Cf. Stone v. State*, 536 N.E.2d 534, 540-41 (Ind. Ct. App. 1989) (holding that trial court erred in allowing five adult witnesses to testify as to the child victim's out-of-court statements that the defendant sexually molested her). Instead, the trial court merely allowed Farrell to testify that both A.E. and E.E. disclosed physical and sexual abuse; Farrell did not testify to the specifics of the allegations as did the witnesses in *Modesitt* or *Stone*.

[13] Thus, the case before us is more akin to that before the court in *Willis v. State*, 776 N.E.2d 965, 968 (Ind. Ct. App. 2002), in which we held that trial court did not err in admitting the testimony of the victim's mother after the victim herself testified because the mother's testimony was brief. *Id*. We also held that the trial court did not err in admitting a video of the interview of the victim because this video revealed nothing that jury had not already heard. *Id*. Here too, Farrell's testimony was brief and did not go into any detail regarding A.E. and E.E.'s disclosures. Also, both A.E. and E.E. were subject to cross-examination prior to Farrell's testimony.

[14] Accordingly, we conclude that Farrell's brief testimony was not impermissible "drumbeat repetition," and the trial court, therefore, did not abuse its discretion in allowing Farrell to testify that A.E. and E.E. made disclosures of Ramos's physical and sexual abuse during their respective forensic interviews. *See Housand v. State*, 162 N.E.3d 508, 515 (Ind. Ct. App. 2020) (holding that trial court did not err in admitting testimony of sexual assault nurse who relayed what the victim told her regarding the defendant's sexual abuse of the victim where the nurse's testimony was "brief and unembellished"); *Kress*, 133 N.E.3d at 748 (concluding that any admission of testimony that was repetitive of victim's was harmless where victim was the first witness to testify, was subject to cross-examination, and gave detailed testimony about the touching, whereas subsequent witnesses gave only general testimony about the existence of the allegations and did not delve into the victim's version of events).

### ***II. Vouching Testimony***

[15] Ramos also claims that the admission of Farrell's testimony constituted impermissible vouching under Indiana Evidence Rule 704(b). This rule provides, "[w]itnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; *whether a witness has testified truthfully*; or legal conclusions." Evid. R. 704(b) (emphasis added). Such vouching "results in an invasion of the province of the jurors in determining what weight they should place upon a witness's testimony." *Watson v. State*, 134 N.E.3d 1038, 1045 (Ind. Ct. App. 2019) (citing *Head v. State*, 519 N.E.2d 151, 153 (Ind. 1988)).

[16] Here, there was no blatant vouching, i.e., Farrell did not testify that she believed A.E. and E.E. were telling the truth. Ramos admits as much. *See* Appellant's Br. p. 14. Instead, he claims that Farrell "praised her [own] credentials and protocol." *Id*. He thus argues that Farrell's "credentials bolstered the reliability of the sisters' testimony just as the defense feared." *Id*. We agree that Farrell's credentials and the protocol she used during her interviews may have given credence to her own testimony and, by inference, to the disclosures of physical and sexual abuse made by A.E. and E.E. But this does not mean that her testimony constituted impermissible vouching. If this were so, any testimony that supported the testimony of a victim could be considered vouching. Evidence Rule 704(b) only prohibits testimony that expresses an opinion concerning whether a witness has testified truthfully. It does not prohibit evidence that merely supports the testimony of a victim.

[17] For these reasons, Farrell's testimony did not amount to impermissible vouching under Evidence Rule 704(b). *See Hobbs v. State*, 160 N.E.3d 543, 555 (Ind. Ct. App. 2020) (holding that there was no impermissible vouching where neither of two nurse witnesses testified about the victims' credibility or the truth or falsity of their accusations but instead testified how child-molesting victims behave in general), *trans. denied*; *Alvarez-Madrigal v. State*, 71 N.E.3d 887, 893 (Ind. Ct. App. 2017) (holding that the testimony of a pediatrician did not constitute impermissible vouching where he did not testify as to the victim's credibility or the truth or falsity of the victim's accusations but instead testified that very few victims of sexual abuse have physical harm caused by the abuse

and that the absence of such physical trauma does not mean that children with no physical trauma fabricated their allegations of abuse); *Baumholser v. State,* 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (holding that testimony of forensic interviewer did not constitute vouching where she testified that most disclosures of sexual abused are delayed in some way because such testimony did not relate to the truth or falsity of the allegations but simply described how child molesting victims behave in general).

## Conclusion

[18] The trial court did not abuse its discretion in admitting the testimony of the forensic interviewer because her testimony was neither a drumbeat repetition of the victims' allegations nor did it constitute impermissible vouching. Accordingly, we affirm.

[19] Affirmed.

Bradford, C.J., and Crone, J., concur.