ATTORNEY FOR APPELLANT

Ronald J. Moore
The Moore Law Firm, LLC
Richmond, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Christopher Richardson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 2, 2022

Court of Appeals Case No. 21A-CR-1955

Appeal from the Union Circuit Court

The Honorable Matthew R. Cox, Judge

Trial Court Cause No. 81C01-1810-FA-215

May, Judge.

[1] Christopher Richardson appeals following his convictions of two counts of Class A felony child molesting[1] and one count of Class C felony child molesting.[2] He raises two issues on appeal, which we revise and restate as:

1. Whether a youth counselor provided impermissible opinion testimony vouching for the victim's credibility, which resulted in reversible error; and

2. Whether the trial court erred as a matter of law by ordering Richardson to serve his two sentences for Class A felony child molesting consecutively.

We affirm Richardson's convictions, but reverse and remand for resentencing because the trial court's order that Richardson serve his sentences consecutively without listing any aggravating factors to support the imposition of consecutive sentences was erroneous as a matter of law.

Facts and Procedural History

[2] Richardson met K.M. while they both lived in Liberty, Indiana, and the couple married on September 21, 2002. Three children were born of the marriage, C.R., A.R., and K.R. K.R. was born on September 4, 2007. Richardson and K.M. divorced in 2012. K.M. described her relationship with Richardson after

---

[1] Ind. Code § 35-42-4-3(a) (2007).

[2] Ind. Code § 35-42-4-3(b) (2007).

the divorce as "pretty rocky" but they were still able to arrange for him to be involved in the children's lives. (Tr. Vol. III at 79.) Richardson initially moved in with his parents upon separating from K.M, but in early 2014 Richardson moved into a trailer. The pipes in Richardson's trailer froze shortly thereafter, and Richardson temporarily moved back in with K.M. and the children.

[3] One day when Richardson was living with K.M. and the children, he and six-year-old K.R. were alone in the house, and he asked K.R. to come into the bathroom. Richardson was naked when K.R. entered the bathroom, and Richardson showed K.R. a pornographic video on his iPhone depicting an adult female lying on the floor with an adult male performing a sex act on her. Richardson then told K.R. to lie down on the bathroom floor and spread her legs, which K.R. did, and Richardson put his penis into K.R.'s vagina. Next, Richardson asked K.R. to get into the shower with him. Richardson stood behind K.R. with his hands on her hips, inserted his penis into K.R.'s buttocks, and eventually ejaculated. Richardson directed K.R. not to tell anyone what he did to her.

[4] Sometime later, K.R. and her siblings visited Richardson at his mobile home. While K.R. and her siblings were watching a Disney movie, Richardson called K.R. into the mobile home's bathroom. Richardson was standing naked in the shower with an erect penis. He directed K.R. to get into the shower with him and inserted his penis into her vagina and her rear end. Again, Richardson told K.R. not to tell anyone what he did to her.

[5] In October 2014, Richardson suddenly decided to move to Florida. K.M. testified that, in one of the discussions Richardson had with her before leaving for Florida, Richardson "said he had done some really bad things and, um, he needed to go down there and get his head right, and he was going to live with his, uh, mom, maybe his sister." (*Id*. at 86.) In May 2015, K.M. and the children moved to Wyoming. K.M. then remarried. Richardson eventually returned to Indiana, and he also remarried. Richardson flew to Wyoming in 2016 to visit the children, and the children visited Richardson in Indiana over Christmas.

[6] In April 2017, K.R. told a friend at school what Richardson had done to her, and K.R.'s friend advised K.R. to tell K.M. about what occurred. K.R. then disclosed to K.M. what Richardson did to her while they were living in Indiana, and K.M. reported the matter to the Wyoming authorities. The Natrona County Sheriff's Department in Wyoming initiated an investigation of the allegations, and as part of the investigation, K.R. participated in a forensic interview in Wyoming. After the forensic interview, the Natrona County Sheriff's Department notified Detective Andrew Wandersee of the Indiana State Police about the allegations, and Detective Wandersee took over the investigation. Detective Wandersee reviewed video of the forensic interview conducted in Wyoming. He also spoke with K.M. over the phone and interviewed Richardson at his place of employment.

[7] On October 12, 2018, the State charged Richardson with two counts of Class A felony child molesting and one count of Class C felony child molesting. The

trial court then held a jury trial in June 2021. Detective Wandersee was the first witness to testify at trial. Detective Wandersee explained he reviewed the video of the forensic interview of K.R. conducted in Wyoming, and he believed the forensic interview was very similar to forensic interviews conducted in Indiana. He also testified that, in his experience, it was not unusual for a victim to delay reporting a child molestation. Detective Wandersee further explained that, when he interviewed Richardson, Richardson denied the allegations and "just said it was her mom and that her mom had, you know, put her up to it." (Tr. Vol. II at 231.) On cross-examination, Richardson asked:

> Q. Uh, you've said, again, that over a hundred child molestation, uh, investigations in your career?
>
> A. Yeah, give or take some. Yeah.
>
> Q. And you've done investigations of sexual abuse where it was later determined that that story was fabricated, correct?
>
> A. I've had those, yes.
>
> Q. And you've had cases where you later determined that the other parent is actually coaching the child and, and fabricating those allegations. Correct?
>
> A. Yes.

(*Id*. at 243.) On redirect, the State then asked Detective Wandersee:

Q. Okay. The defense, uh, introduced this, um, this new topic called coaching. Are you familiar with coaching?

A. Yes.

Q. And what does that mean in the context of child molestation cases?

A. Uh, that a family member or somebody outside tells them what to say.

Q. Have you had cases, um, in your past, where you've specifically recognized coaching?

A. Yes.

(*Id*. at 246.)

[8] Detective Wandersee then explained a "red flag" exemplifying coaching is a child using words children do not ordinarily use or not being able to define words the child uses in the forensic interview. (*Id*.) The State's redirect examination of Detective Wandersee continued:

Q. How many times did you have an opportunity to review [K.R.'s] forensic interview?

A. Um, I watched it two or three times.

Q. Okay.

A. At least.

Q. And when was the most recent time you watched it?

A. Uh, just watched it, uh, yesterday.

Q. Okay. Preparation for this trial?

A. Yes.

Q. Okay. Uh, was one of the things you were watching for, uh, signs of coaching?

A. Yes.

Q. Was that one of the things you were looking for before you, uh, uh, made a deter (sic), a charging determination on this case?

A. Yes.

Q. Uh, did you see any signs of coaching in [K.R.]?

A. I didn't.

(*Id*. at 247-48.)

[9] Following Detective Wandersee's testimony, the State called Amanda Wilson, the Executive Director of JACY House Child Advocacy Center in Richmond, Indiana. Wilson testified she had attended trainings related to conducting forensic interviews of child victims, and she had conducted over two thousand forensic interviews between November of 2012 and February of 2021. She also explained the typical procedures and methods she follows in conducting

forensic interviews. Wilson did not personally interview K.R., but she did review the video of the forensic interview conducted in Wyoming. Wilson testified it appeared the Wyoming investigator conducted the forensic interview in accordance with nationally accepted protocols, and she explained those protocols. The State then asked Wilson:

> Q. Okay, okay. Are you familiar with the term coaching?
>
> A. I am.
>
> Q. And what does coaching mean to you?
>
> A. Coaching means that someone is telling someone what information to share or how to share that information. Um—
>
> Q. And in your profession, have you experienced coaching?
>
> A. Say that question again.
>
> Q. In your profession, excuse me, when you're interviewing a child, child victims or alleged child victims, have you noticed or seen instances of coaching?
>
> A. I have noticed and seen, um, incidents of, um, circumstances that would lead someone to draw the conclusion that there could be coaching in that situation, yes.

(Tr. Vol. III at 23.) The State then asked Wilson to describe some of the general signs she looked for to determine if a child had been coached, and she mentioned signs of coaching include a child using more advanced terminology

than what one would expect from someone of the child's age or a child who cannot provide sensory details related to the experience. The State further inquired:

> Q. You had an opportunity to review [K.R.'s] forensic interview, right?
>
> A. I did.
>
> Q. And did you make a determination on whether there were signs of coaching?
>
> [Richardson's Counsel]: Objection.
>
> THE COURT: Overruled.
>
> [Richardson's Counsel]: Vouching.
>
> THE COURT: Overruled.
>
> AMANDA WILSON: Um, in, in my review of her interview, I did not see any signs of coaching in, in that interview.

(*Id*. at 25-26.) Following Wilson's testimony, K.R. described the molestations to the jury. K.M. testified regarding her actions following K.R.'s disclosure and Richardson's behavior before leaving for Florida in 2014. Richardson also testified at trial and denied touching K.R. inappropriately.

[10] The jury found Richardson guilty as charged, and the trial court held a sentencing hearing on August 13, 2021. At the hearing, K.M. read a statement

in which she explained Richardson's actions "shook my whole household." (*Id*. at 180.) Richardson called his current wife to testify regarding the hardship incarceration would have on her and her daughter, Richardson's stepdaughter. Richardson also submitted to the court several letters written by friends and family regarding his character. In its sentencing recommendation, the State noted the tender age of K.R. at the time of the molestations and Richardson's exploitation of his position of trust as K.R.'s father when committing his crimes. Richardson argued K.R.'s age should not be considered as an aggravating factor because it was a material element of the crime. Richardson also contended his lack of a significant criminal history and the impact incarceration will have on his wife and stepdaughter should be considered mitigating circumstances.

[11] The trial court chose to impose advisory sentences on each count and did not enumerate any aggravating or mitigating factors. The court sentenced Richardson to thirty years for the first count of Class A felony child molesting, thirty years for the second count of Class A felony child molesting, and four years for the count of Class C felony child molesting. The trial court ordered the two sentences for Class A felony child molesting to be served consecutively, and the sentence for Class C felony child molesting to be served concurrently with one of his sentences for Class A felony child molesting, resulting in an aggregate sixty-year sentence.

Discussion and Decision

I. Vouching

[12] Richardson contends Wilson's testimony that K.R. did not display signs of coaching during the forensic interview amounted to impermissible opinion testimony vouching for K.R.'s credibility, and the trial court erred in overruling his objection. We afford trial courts broad discretion in ruling on the admission of evidence. *Townsend v. State*, 33 N.E.3d 367, 370 (Ind. Ct. App. 2015), *trans. denied*. "Generally, we review the trial court's ruling on the admission of evidence for an abuse of discretion. We reverse only where the decision is clearly against the logic and effect of the facts and circumstances." *Jones v. State*, 982 N.E.2d 417, 421 (Ind. Ct. App. 2013) (internal citation omitted), *trans. denied*. However, even when the trial court abuses its discretion, we will not reverse the court's judgment if the admission amounts to only harmless error. *Id*. As our Indiana Supreme Court has explained:

> The improper admission is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction. Moreover, "[a]ny error in the admission of evidence is not prejudicial, and [is] therefore harmless, if the same or similar evidence has been admitted without objection or contradiction."

Hoglund v. State, 962 N.E.2d 1230, 1238 (Ind. 2012) (quoting *McCovens v. State*, 539 N.E.2d 26, 30 (Ind. 1989)) (internal citation omitted) (brackets in original), *reh'g denied*.

[13] Rule of Evidence 704(b) prohibits a witness from opining regarding "the truth or falsity of allegations" and "whether a witness has testified truthfully[.]" Such testimony is generally forbidden because it "is considered an invasion of the province of the jurors in determining what weight they should place upon a witness's testimony." *Alvarez-Madrigal v. State*, 71 N.E.3d 887, 892 (Ind. Ct. App. 2017), *trans. denied*. In *Hoglund v. State*, our Indiana Supreme Court held testimony that a specific child is not prone to exaggerating or fantasizing regarding sexual matters is the functional equivalent of saying the child is telling the truth, and therefore, such testimony is barred by Rule of Evidence 704(b). 962 N.E.2d at 1236. Likewise, three years after *Hoglund*, the Indiana Supreme Court clarified that expert testimony "a child *has or has not been coached*" or "the child *did or did not exhibit any 'signs or indicators' of coaching*" constitutes impermissible vouching because the invited inference from this testimony is that the child is telling the truth. *Sampson v. State*, 38 N.E.3d 985, 991-92 (Ind. 2015) (emphases in original). Nonetheless, "testimony about the signs of coaching and whether a child exhibited such signs or has or has not been coached" is permitted "provided the defendant has opened the door to such testimony." *Id.* at 992. "Opening the door refers to the principle that where one party introduces evidence of a particular fact, the opposing party is entitled to introduce evidence in explanation or rebuttal thereof, even though the rebuttal evidence otherwise would have been inadmissible." *Id.* at 992 n.4.

[14] The State contends Richardson opened the door to testimony regarding coaching. (*See* Appellee's Br. at 11 ("Wilson's . . . testimony about coaching

and whether K.R. exhibited indications of coaching was admissible because Richardson opened the door to that testimony. Richardson introduced the concept of coaching during his direct examination of Detective Wandersee.").) However, it was the State, not Richardson, who introduced the concept of coaching into evidence. The State called Detective Wandersee as a witness, and the State elicited from Detective Wandersee testimony that Richardson told the detective he thought K.M. directed K.R. to lie about being molested. Nevertheless, Richardson did not object to this testimony, and Richardson asked Detective Wandersee about his personal experience with purported victims fabricating allegations of molestation. The State then further explored the concept of coaching during its re-direct examination of Detective Wandersee, including testimony that Detective Wandersee viewed the video of the forensic interview several times and did not see any signs of coaching during the forensic interview. Like with Detective Wandersee's direct examination testimony, Richardson did not object to his testimony during the State's re-direct examination.

[15] Richardson did object to Wilson's testimony when the State asked her if K.R. displayed any signs of coaching during the forensic interview, which the trial court overruled. Richardson challenges the trial court's ruling on his objection on appeal. However, Wilson testified after Detective Wandersee. "In general, the admission of evidence that is merely cumulative of other evidence amounts to harmless error as such admission does not affect a party's substantial rights." *In re Paternity of H.R.M.*, 864 N.E.2d 442, 450-51 (Ind. Ct. App. 2007).

Evidence is cumulative if it supports a fact established by existing evidence and is of the same kind or character as the previously admitted evidence. *Id* at 451. Wilson's testimony was cumulative of Detective Wandersee's testimony. They both testified regarding typical signs of coaching and that they did not observe any of these signs in K.R.'s forensic interview. Richardson directs us to *Hamilton v. State* in which we held it was reversible error for the trial court to overrule the defendant's objection and allow a forensic interviewer to testify she did not observe any signs that the alleged child victims had been coached. 43 N.E.3d 628, 634 (Ind. Ct. App. 2015), *aff'd on reh'g*, 49 N.E.3d 554 (Ind. Ct. App. 2015), *trans. denied*. However, unlike in the case at bar, the interviewer's improper vouching testimony in *Hamilton* did not follow similar, unobjected-to testimony and was not cumulative.[3]

[16] Moreover, evidence of Richardson's guilt was substantial. A child molesting conviction may rest on the uncorroborated testimony of the victim, *Deaton v. State*, 999 N.E.2d 452, 457 (Ind. Ct. App. 2013), *trans. denied*, and K.R. testified at length and in detail about the molestations. She was able to describe Richardson's uncircumcised penis and the characteristics of his ejaculate. In addition, K.M. testified Richardson told her he "had done some really bad

[3] On rehearing in *Hamilton*, we clarified the forensic interviewer's testimony was not merely cumulative of her previous, unobjected-to testimony. *Hamilton v. State*, 49 N.E.3d 554, 555 (Ind. Ct. App. 2015) ("Here, the interviewer's final, objected-to statement that D.P. and A.S. did not exhibit *any* signs of coaching is not merely cumulative of the prior unobjected-to testimony regarding two specific indicators of coaching. It includes a much broader range of possible signs of coaching beyond the two specifically mentioned.") (emphasis in original), *trans. denied*.

things" before leaving for Florida, which is also indicative of guilt. (Tr. Vol. III at 86.) Therefore, any error in allowing the testimony to which Richardson objected was harmless.[4] *See Norris v. State*, 53 N.E.3d 512, 524-25 (Ind. Ct. App. 2016) (holding trial court's erroneous admission of vouching testimony was harmless error).

II. Richardson's Sentence

[17] Richardson also argues his sentence is inappropriate given the nature of his offenses and his character. However, within Richardson's argument, he contends the trial court's imposition of consecutive sentences was erroneous as a matter of law. In assessing whether a sentence is improper as a matter of law, we recognize trial courts are afforded a large degree of discretion in imposing sentence, and we review the trial court's decision for an abuse of that discretion. *Lewis v. State*, 31 N.E.3d 539, 541 (Ind. Ct. App. 2015). "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual

[4] Richardson also argues Wilson's general testimony regarding indications of coaching constitutes fundamental error. However, testimony from a forensic interviewer regarding how victims of child molestation behave in general is not error. *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) ("Elferich's testimony did not relate to the truth or falsity of K.C.'s allegations. Rather, Elfreich was making a statement about how victims of child molestation behave in general. Thus, her testimony was not improper vouching."), *trans. denied*; *see also Hobbs v. State*, 160 N.E.3d 543, 555 (Ind. Ct. App. 2020) ("Because Nurse Renz and Nurse Wilson did not testify about M.S.'s or K.H.'s credibility or the truth or falsity of their allegations but testified how child-molesting victims behave in general, there is no impermissible vouching in this case either."), *trans. denied*.

deductions to be drawn therefrom." *Id*. at 541-42. A trial court may abuse its discretion at sentencing by:

> (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law.

Hudson v. State, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019).

[18] The State contends Richardson waived his argument challenging the imposition of consecutive sentences because "Richardson failed to include the standard of review for an abuse of discretion claim and does not provide an abuse of sentencing discretion analysis for this Court's review." (Appellee's Br. at 21-22.) The State is correct that a claim on appeal that a defendant's sentence is inappropriate given the nature of the offense and the defendant's character is separate and distinct from a claim the trial court abused its discretion at sentencing, and the two issues should be analyzed separately. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). Nonetheless, Richardson sufficiently articulates why he believes the trial court's imposition of consecutive sentences was improper and "we are duty bound to correct sentences that violate the trial court's statutory authority to impose consecutive sentences[.]" *Ballard v. State*, 715 N.E.2d 1276, 1279 (Ind. Ct. App. 1999).

[19] Indiana Code section 35-38-1-1.3 allows the trial court to impose the advisory sentence for a felony without listing any aggravating or mitigating factors.

However, the "trial court is required to state its reasons for imposing consecutive sentences or enhanced terms, and a single aggravating circumstance may be sufficient to support the imposition of consecutive sentences." *Gober v. State*, 163 N.E.3d 347, 356 (Ind. Ct. App. 2021) (internal citation omitted), *trans. denied*. Therefore, if the trial court imposes consecutive sentences when it is not required to do so by statute, we "examine the record to insure [sic] that the court explained its reasons for selecting the sentence it imposed." *Lander v. State*, 762 N.E.2d 1208, 1215 (Ind. 2002).

[20] In the case at bar, the trial court did not enumerate any aggravating or mitigating circumstances when it sentenced Richardson. The trial court stated:

> Uh, regarding aggravators and mitigators, uh, the court is simply going to impose a legislative advisory sentence on all three counts. On count one, Mr. Richardson is sentenced to a term of thirty years at the Indiana Department of Correction. On count two, he is sentenced to a period of thirty years at the Indiana Department of Correction. And on count three, he is sentenced to a period of, a term of four years at the Indiana Department of Correction. Count one will run consecutively to counts two and three. Counts two and three will run concurrently.

(Tr. Vol. III at 188.) Nor did the court include any statement of aggravators and mitigators in its written sentencing statement. Thus, the trial court erred by imposing consecutive sentences without finding any aggravating factors. *See Mannix v. State*, 54 N.E.3d 1002, 1011 (Ind. Ct. App. 2016) (holding imposition of an above-advisory sentence without identifying anything unique about the

circumstances of the offense to justify deviating from the advisory sentence was error).

[21] Considering this error, we are left with multiple options regarding how to proceed. *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007), *reh'g denied*. We may exercise our authority under Indiana Appellate Rule 7(B) to review and revise the sentence. *Id*. We may also remand the matter to the trial court for a clarification or a new sentencing determination. *Id*.

[22] As our Indiana Supreme Court has explained, "remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). For example, in *Kayser v. State*, we held remand was not required despite the trial court's reliance on an improper aggravating factor because another aggravating factor listed by the trial court—the defendant's criminal history—supported ordering the defendant to serve his sentences consecutively. 131 N.E.3d 717, 722-23 (Ind. Ct. App. 2019). Likewise, in *Webb v. State*, we held the trial court abused its discretion by not recognizing the defendant's guilty plea as a mitigating factor, but we did not remand for resentencing because uncontested aggravating factors found by the trial court supported the defendant's enhanced sentence. 941 N.E.2d 1082, 1089-90 (Ind. Ct. App. 2011), *trans. denied*.

[23] In the instant action, the trial court failed to enumerate any aggravating or mitigating factors with respect to Richardson's sentence. While the parties proffered proposed aggravating and mitigating factors for the trial court to consider, it is not clear which, if any, the trial court found compelling. Thus, we are left uncertain as to whether the trial court would impose the same sentence absent its error. *See McDonald v. State*, 179 N.E.3d 463, 464 (Ind. 2022) (remanding for resentencing and stating "[w]e are not so sure" trial court would have imposed same sentence had it not misunderstood the nature and effect of sentencing enhancement.) Therefore, we reverse the trial court's imposition of consecutive sentences and remand for resentencing in a manner consistent with this opinion. *See Becker v. State*, 695 N.E.2d 968, 975 (Ind. Ct. App. 1998) (remanding with instructions for trial court to enter more specific sentencing statement).

Conclusion

[24] No reversible error occurred when the trial court allowed Wilson to testify K.R. did not exhibit any signs of coaching during her forensic interview because Wilson's testimony was cumulative of previous, unobjected-to testimony by Detective Wandersee. Moreover, the evidence of Richardson's guilt was substantial. However, the trial court erred as a matter of law when it ordered Richardson to serve consecutively his two sentences for Class A felony child molesting without enumerating any aggravating factors to support the imposition of consecutive sentences. Therefore, we affirm Richardson's

convictions but reverse the imposition of consecutive sentences and remand for resentencing.

[25] Affirmed in part, reversed in part, and remanded.

Brown, J., and Pyle, J., concur.