

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dakota Haaff,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 22, 2022

Court of Appeals Case No.
21A-CR-2026

Appeal from the Knox Superior
Court

The Honorable Gara U. Lee,
Judge

Trial Court Cause No.
42D01-1807-F5-42

Bailey, Judge.

Case Summary

- [1] Dakota Haaff was tried by a jury and found guilty of rape, as a Level 3 felony,¹ and child seduction, as a Level 5 felony.² On appeal, Haaff argues that the prosecutor committed misconduct by “appealing to the jury’s passions and prejudices . . . during opening and closing statements.” Br. of Appellant at 4. Haaff contends that the alleged misconduct amounts to fundamental error.
- [2] We affirm.

Facts and Procedural History

- [3] In August 2021, Haaff was brought to trial on allegations that he committed rape, as a Level 3 felony, and child seduction, as a Level 5 felony. The jury heard evidence that Haaff worked an overnight shift at a juvenile detention facility in late May 2018, at which time Haaff was twenty-five years old. One detainee was S.B., a seventeen-year-old girl who was alone in a secure room.
- [4] S.B. testified that Haaff initially checked on her every fifteen minutes. She explained that Haaff began checking on her more frequently, “[p]robably about every five minutes,” which seemed odd to S.B. Tr. Vol. 3 at 102. When Haaff

¹ Ind. Code § 35-42-4-1(a)(1).

² I.C. § 35-42-4-7(m).

checked on S.B., he tried to engage her in conversation. At one point, he passed S.B. a piece of gum under the door. He also brought her an orange.

[5] According to S.B., “it just got a little weird,” so she “said that [she] was going to go to bed[.]” *Id.* After S.B. told Haaff she was going to bed, “[h]e started coming into [her] room.” *Id.* at 105. The first time Haaff entered S.B.’s room “he was sitting on [the] bed . . . trying to touch” S.B. *Id.* Haaff told S.B. that she “couldn’t get in trouble because control couldn’t see that [her] door was open.” *Id.* Haaff also said that there were no working cameras or no cameras.

[6] S.B. explained how Haaff “forced himself onto [her] and was caressing [her].” *Id.* at 106. “He forced his hand down [her] pants.” *Id.* at 107. S.B. “asked him to stop multiple times” and “told him no.” *Id.* He forced his hand down her pants “[o]ver four to five times.” *Id.* at 108. At one point, Haaff “forced his fingers” inside her vagina. *Id.* at 106. He asked S.B. if she “liked it.” *Id.* at 107. Haaff also “attempted to try and stick his penis in [her].” *Id.* at 106. S.B. felt afraid because Haaff “could have done anything in his power.” *Id.* at 109.

[7] Later, Haaff slipped his phone under the door. As S.B. recounted: “He told me that if I didn’t tell anybody, he will let me use his phone.” *Id.* S.B. used the phone to call her mother, Teresa. When Haaff walked away from the door, S.B. lowered her voice to a whisper, telling Teresa what Haaff had done. According to S.B., Teresa was ready to spring into action, but S.B. asked her to wait until the morning because she “was in fear . . . with him being the only

guard there at the moment.” *Id.* at 112. S.B. was concerned that if Teresa called the facility, Haaff “could have done something worse to [her].” *Id.*

[8] Call log evidence showed that Teresa received a call at 12:29 a.m., with the call lasting more than eight minutes. Teresa testified about the call, explaining that S.B. reported that “one of the guards was making her do stuff that she didn’t want to do[.]” *Id.* at 46. Teresa testified that her “first thought was to get up, get on [her] clothes, and drive” there, and she told S.B. she “was going to try to call there[.]” *Id.* Teresa said that S.B. sounded scared and begged Teresa not to intervene. S.B. thought Haaff “was the only guard there” and she did not want to “have to be there with him all night” following a call to the facility. *Id.* at 47.

[9] After a shift change the following morning, S.B. asked for a guard she knew and then told that guard what happened. An investigator with the Department of Child Services spoke with S.B., who relayed the events and said that Haaff “had asked her not to talk about the situation and had offered the use of his cellphone in exchange for her keeping quiet about the incident.” *Id.* at 137. Haaff told the investigator that he let S.B. use his phone because he knew she was supposed to get two phone calls but had only gotten one. A detective later spoke with Haaff about the phone. Haaff said that he could no longer afford the phone bill because he lost his job “so he got rid of the phone.” *Id.* at 74.

[10] At times in its opening and closing arguments, the prosecutor narrated events from Teresa’s perspective. In its opening argument, the prosecutor focused on S.B.’s cry, stating that a cry was “the first thing that Teresa heard from S.B.”

when she was born and something Teresa heard “in S.B.’s voice again as she quietly whispered to her on the telephone in the middle of the night, momma this man is making me do stuff.” *Id.* at 24. The prosecutor also spoke about S.B., stating that she “didn’t have an easy life.” *Id.* The State characterized S.B. as a “scared, troubled, nervous, emotional young girl[.]” *Id.* at 27.

[11] In its closing argument, the State spoke about a parent’s concern for a child’s safety. The State noted that “[m]ost parents have a love for their kids that you just can’t describe,” stating how difficult it is “[t]he first time you leave your kid behind to go to work, the first time you leave your kid at daycare, the first time the kid leaves the house, the first time they go away to school[.]” *Id.* at 164. The State asserted that parents “all think the same thing; pray they’re safe.” *Id.* The State pivoted to Teresa’s perspective, arguing that Teresa “struggled right along with her daughter” while S.B. was at the facility. *Id.* at 165. The State asserted that, while Teresa was in bed “wondering about S.B. and whether she was safe,” S.B. was locked in a facility with Haaff, who was sexually abusing her. *Id.* at 165. The State argued that S.B. “should have been safe.” *Id.* at 166.

[12] Haaff did not object to the State’s characterization of S.B nor did he object when the State narrated from Teresa’s perspective or spoke of parental concern.

[13] Before deliberations, the jury received the final instructions. Among them were instructions that (1) the jurors were the exclusive judges of the evidence; (2) statements made by the attorneys are not evidence; and (3) the verdict must be based on the law and facts as the jury finds them, not on sympathy or bias.

[14] The jury found Haaff guilty as charged. The trial court entered judgment of conviction and imposed an aggregate sentence of fifteen years executed.

[15] Haaff appeals.

Discussion and Decision

[16] When a person (1) alleges prosecutorial misconduct but (2) fails to object to the statements at issue, we will reverse only upon a showing of fundamental error. *See, e.g., Brummett v. State*, 24 N.E.3d 965, 966 (Ind. 2015) (discussing *Ryan v. State*, 9 N.E.3d 663 (Ind. 2014)). “Fundamental error is an extremely narrow exception” with the appellant facing “the heavy burden of showing that the alleged errors are so prejudicial to the defendant’s rights as to ‘make a fair trial impossible.’” *Ryan*, 9 N.E.3d at 668 (quoting *Benson v. State*, 762 N.E.2d 748, 756 (Ind. 2002)). Put differently, to establish fundamental error, the appellant “must show that, under the circumstances, the trial judge erred in not *sua sponte* raising the issue” because the errors “(1) ‘constitute clearly blatant violations of basic and elementary principles of due process’ and (2) ‘present an undeniable and substantial potential for harm.’” *Id.* (quoting *Benson*, 762 N.E.2d at 756). This narrow exception “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.” *Id.* (citing *Baer v. State*, 942 N.E.2d 80, 99 (Ind. 2011)).

[17] In reviewing for fundamental error, we look at the error “in the context of all that happened and all relevant information given to the jury[.]” *Id.* In doing so, it is appropriate to consider the jury instructions and the evidence adduced at trial. *See id.* For example, “our courts have declined to find fundamental error when they have determined a prosecutor made improper comments but where the comments were isolated statements and there was ample evidence of [the] defendant’s guilt.” *Kelly v. State*, 122 N.E.3d 803, 807 (Ind. 2019).

[18] As to prosecutorial misconduct, it is well-settled that a prosecutor commits misconduct by asking the jury to convict the defendant for any reason other than his guilt. *E.g.*, *Cooper v. State*, 854 N.E.2d 831, 837 (Ind. 2006).

[19] On appeal, Haaff argues that the prosecutor committed misconduct by “repeatedly [making] statements that had nothing [to do] with the question of Haaff’s guilt or innocence.” Br. of Appellant at 9. Haaff focuses on statements related to (1) Teresa’s “feelings of maternal protectiveness” and “anxiety about S.B.’s safety”; (2) “S.B.’s difficult life”; and (3) “the jurors’ concerns for the safety of their own children[.]” *Id.* at 11. He asserts that those matters “had no bearing” on his guilt, *id.*, and statements related to those matters “appeal[ed] to the jury’s emotions and their sympathy for S.B. and S.B.’s mother,” *id.* at 9.

[20] Assuming without deciding that the challenged statements collectively amounted to prosecutorial misconduct, here, only fundamental error is reversible. *See Brummett*, 24 N.E.3d at 966. As Haaff acknowledges, this case distilled to a credibility determination with the jury having to “decide if S.B.’s

allegations were accurate.” Br. of Appellant at 11. At trial, Haaff was able to cross-examine S.B. and other witnesses. In closing arguments, Haaff cast doubt on whether S.B. disclosed a sexual assault over the phone, suggesting that a parent would have immediately intervened after receiving that type of phone call. Haaff also cast doubt on whether S.B. was telling the truth, pointing to inconsistencies in her statements about her interactions with Haaff. At bottom, nothing about the challenged statements impeded Haaff’s ability to vigorously cross-examine witnesses on crucial points and attempt to persuade the jury.

[21] Moreover, the jury was instructed that statements by the attorneys are not evidence and that the verdict must not be based on sympathy or bias. The jury was further instructed that they were the exclusive judges of the evidence and were to reach a verdict based on their determination of the law and the facts.

[22] Placing the challenged statements in context, even if we were to conclude that the prosecutor committed misconduct, Haaff has not met his heavy burden of demonstrating that the statements were so prejudicial as to make a fair trial impossible. That is, assuming there was error, the error was not fundamental.

[23] Affirmed.

Mathias, J., and Altice, J., concur.