MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Joseph P. Hunter
Quirk and Hunter, P.C.
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Corey A. Garrett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 7, 2021

Court of Appeals Case No. 21A-CR-70

Appeal from the Delaware Circuit Court

The Honorable Marianne L. Vorhees, Judge

Trial Court Cause No. 18C01-1909-F1-14

May, Judge.

[1] Corey A. Garrett appeals his convictions of Level 1 felony attempted murder[1] and Class A misdemeanor domestic battery.[2] He raises one issue on appeal, which is whether the trial court abused its discretion when it admitted into evidence statements the victim made to a forensic nurse. We affirm.

Facts and Procedural History

[2] Garrett and S.T. began dating in January 2019, and Garrett moved into S.T.'s house in Commack, Indiana, in April 2019. Shortly thereafter, Garrett started working as a machine operator at an automobile parts manufacturing plant in Muncie. He worked second shift from 3:00 p.m. to 11:00 p.m., and S.T. would drive him to and from work. While S.T. was driving Garrett to work on September 6, 2019, the two began arguing about S.T.'s cellphone. Garrett wrestled S.T.'s phone away from her and punched her in the head several times. S.T. was able to drive the car to the nearby Muncie city hall, and she got out of the car.

[3] Around this time, Troy Watters, a sewer maintenance employee, left city hall after a meeting with the mayor. As he walked outside, he saw "a white Suburban pulled up front and [S.T.] there crying, pretty banged up, had knots

[1] Ind. Code § 35-42-1-1 (murder) & Ind. Code § 35-41-5-1 (attempt).

[2] Ind. Code § 35-42-2-1.3 (2019).

on her head." (Tr. Vol. II at 169.) Watters also saw Garrett standing nearby. He was throwing a cellphone against the pavement.

[4] A bystander notified Officer Jimmy Gibson, a Muncie Police Department reserve officer assigned to provide security at city hall, about the disturbance, and Officer Gibson went outside into the parking lot. A crowd of people had gathered around S.T. and directed Officer Gibson to stop Garrett. Officer Gibson radioed for additional assistance, and Officer Ryan Plummer arrived on the scene. After speaking with both S.T. and Garrett, Officer Plummer arrested Garrett. Garrett placed the broken cellphone into a nearby trashcan, and Officer Gibson retrieved it. An EMT also arrived on the scene to care for S.T. S.T. told the EMT that "her boyfriend had struck her in the head four or five times." (*Id.* at 206.) The EMT then transferred S.T. to a nearby hospital, where S.T. received treatment and was discharged.

[5] Garrett remained in jail until September 8, 2019. A correctional officer at the Delaware County Jail informed Garrett prior to his release that he was not to have any contact with S.T., and Garrett signed an affidavit acknowledging that he was not allowed to contact S.T. The jail also called S.T.'s mother, who was listed as S.T.'s secondary contact, and told her that Garrett was being released from jail. S.T.'s mother drove over to S.T.'s house and told S.T. about Garrett's release. S.T.'s mother stayed at S.T.'s house for about forty-five minutes before leaving.

[6] Despite the no-contact order, Garrett returned to S.T.'s house a few hours after his release from jail. At 7:19 p.m., S.T. called 911 and requested assistance in getting Garrett to leave her residence. A neighbor made an anonymous call to 911 and reported screaming and loud thumping coming from inside S.T.'s house. Macy Tuttle, another of S.T.'s neighbors, also called 911. Tuttle reported seeing a man outside beating a woman with a hammer. Sometime thereafter, S.T. placed a FaceTime call to her mother. S.T. was crying and blood was running down S.T.'s face. S.T. told her mother: "He hit me in the head—Corey hit me in the head with a hammer[.]" (Tr. Vol. III at 80.) S.T.'s mother then drove over to S.T.'s house. When she arrived, S.T. was sitting in the back of an ambulance, and police were on the scene.

[7] Officer Blake Barnard of the Yorktown Police Department responded to the 911 calls. Officer Barnard found Garrett sitting inside S.T.'s car, a white sport-utility vehicle with a freshly broken window, and Garrett appeared to be "in a daze[.]" (*Id*. at 94.) Officer Barnard secured Garrett in handcuffs, and then S.T. "came out of the residence, pretty hysterical, screaming." (*Id*.) S.T. told Officer Barnard "that she had gotten struck in the head with a hammer." (*Id*. at 95.) Officer Mike Daugherty of the Yorktown Police Department also arrived at the scene and collected evidence, including pictures of blood stains inside S.T.'s house and on her vehicle. Officer Daugherty found a claw hammer sitting in the backseat of the vehicle.

[8] S.T. was transported to the hospital and treated in the emergency room. Robin Lucas, a forensic nurse, interviewed S.T. after the emergency room doctors

examined her. S.T. told Nurse Lucas that Garrett assaulted her at her house. S.T. described the incident that occurred in front of city hall two days earlier, and then S.T. explained that Garrett came to her house after being released from jail. S.T. told Garrett that she had packed his belongings in a bag by the door, but Garrett "barged into her home." (*Id.* at 23.) S.T. and Garrett started to argue, and Garrett backed S.T. into a corner. He then choked her and said, "Bitch, I've already been in jail," "Bitch, I am going to fuck you up," and "Bitch, I'm going to kill you." (*Id.* at 23-24.)

[9] S.T. then reported to Nurse Lucas that she grabbed a hammer off a nearby table to defend herself, but Garrett wrestled the hammer away from her and started to hit her in the head with it. S.T. was able to maneuver herself away from Garrett and ran outside, but Garrett followed her outside and continued to hit her with the hammer, so S.T. ran back into her house and locked the door. Garrett then used the hammer to smash a window of S.T.'s vehicle. Nurse Lucas also conducted a physical examination, which included documenting S.T.'s injuries on a body map and looking for any signs of intoxication or impairment. Nurse Lucas noticed that S.T. had marks consistent with strangulation on her neck and took pictures of bruises, cuts, and other marks on S.T.'s body. She documented S.T.'s complaints of head, knee, and hip pain. S.T. was released from the hospital that evening, but she passed away three days later from an accidental drug overdose.

[10] On September 15, 2019, the State charged Garrett with Level 1 felony attempted murder and Class A misdemeanor domestic battery.[3] On March 2, 2020, Garrett filed a motion in limine seeking exclusion of statements S.T. made to medical personnel on the basis that such statements were inadmissible hearsay. The State objected to Garrett's motion in limine, and the trial court denied the motion. The trial court held a four-day jury trial from October 12, 2020, to October 15, 2020. Garrett entered a continuing objection at trial to testimony regarding what S.T. told Nurse Lucas about how she was injured, and the trial court overruled the objection. The jury returned a verdict of guilty on each count. The trial court subsequently entered judgment of conviction and imposed an aggregate thirty-six-year sentence – thirty-five years for the attempted murder conviction consecutive to one year for the domestic battery conviction.

Discussion and Decision

[11] Garrett contends that the trial court erred when it allowed Nurse Lucas to testify regarding S.T.'s statements during the forensic examination at the hospital on September 8, 2019. Even when a motion in limine or motion to suppress is filed before trial, we evaluate the trial court's admission of the disputed evidence during an appeal from a completed trial. *Brown v. State*, 929

[3] The State also charged Garrett with Level 3 felony aggravated battery, Level 5 domestic battery by means of a deadly weapon, and Level 6 felony strangulation, but the State dismissed those charges prior to trial.

N.E.2d 204, 206 n.1 (Ind. 2010), *reh'g denied*. Trial courts enjoy wide discretion when ruling on the admission of evidence. *Vasquez v. State*, 868 N.E.2d 473, 476 (Ind. 2007). We generally review a trial court's admission of evidence for an abuse of discretion. *Mack v. State*, 23 N.E.3d 742, 750 (Ind. Ct. App. 2014), *trans. denied*. "A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court misapplies the law." *Id*. However, when a party argues that the admission of evidence constituted a constitutional violation, we apply a de novo standard of review. *Dycus v. State*, 108 N.E.3d 301, 304 (Ind. 2018).

I. Sixth Amendment Confrontation Clause

[12] Garrett argues that his Sixth Amendment right to confront the witnesses against him was violated because statements S.T. made to Nurse Lucas were admitted at trial even though Garrett did not have the opportunity to cross-examine S.T. *See* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."). This right "prohibits the introduction of testimonial statements by a non-testifying witness, unless the witness is 'unavailable to testify, and the defendant had had a prior opportunity for cross-examination.'" *Ward v. State*, 50 N.E.3d 752, 757 (Ind. 2016) (quoting *Crawford v. Washington*, 541 U.S. 36, 54, 124 S. Ct. 1354 (2004)). However, the Confrontation Clause does not prohibit the introduction of nontestimonial statements, and courts look to the statement's "primary purpose" to determine

if it is testimonial or nontestimonial. *Id*. For example, statements made to assist law enforcement in responding to an ongoing emergency are nontestimonial, whereas statements made to law enforcement when there is not an ongoing emergency and "'the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution'" are testimonial. *Id*. (quoting *Davis v. Washington*, 547 U.S. 813, 822, 126 S. Ct. 2266, 2274 (2006)).

[13] While the "primary purpose" test was originally developed to assess the testimonial nature of statements made to law enforcement, the United States Supreme Court expanded the test to statements made to individuals not affiliated with law enforcement, and the Court held that a preschooler's statements to his teachers were nontestimonial "[b]ecause neither the child nor his teachers had the primary purpose of assisting in Clark's prosecution[.]" *Ohio v. Clark*, 576 U.S. 237, 240, 135 S. Ct. 2173, 2177 (2015). In *Ward*, our Indiana Supreme Court applied *Clark* and held that the statements a domestic violence victim made to a forensic nurse were nontestimonial. 50 N.E.3d at 761. The Court explained that "a forensic nurse's primary function is providing medical treatment, not gathering evidence." *Id*. The forensic nurse in *Ward* needed to know the identity of the victim's attacker to develop a safety plan, make appropriate referrals, classify the victim so that her attacker could not learn her whereabouts, and examine the victim for underlying injuries that the medical personnel could not see initially. *Id*. at 762.

[14] Similarly, in *Perry v. State*, we evaluated whether a sexual assault victim's statements to a forensic nurse were admissible when the victim was unavailable to testify. 956 N.E.2d 41, 46-47 (Ind. Ct. App. 2011). We acknowledged that "[s]tatements attributing fault or establishing a perpetrator's identity are typically inadmissible . . . as identification of the person responsible for the declarant's condition or injury is often irrelevant to diagnosis and treatment." *Id*. at 49. Nonetheless, "in cases involving child abuse, sexual assault, and/or domestic violence, courts may exercise their discretion in admitting medical diagnosis statements which relay the identity of the perpetrator." *Id*. We held that the victim's statements to the nurse "describing her physical attack and identifying her assailant were nontestimonial" because "the totality of the circumstances, viewed objectively, indicates that the primary purpose of Nurse Calow's examination and the primary purpose of N.D.'s statements in the course thereof were to furnish and receive emergency medical and psychological care." *Id*. at 56.

[15] Likewise, in the instant case, Nurse Lucas explained that the patient interview "helps us direct our examination," and knowing what happened to the patient was necessary to render a diagnosis. (Tr. Vol. III at 13.) She explained why she asks sexual assault and domestic violence victims about the identity of their abusers:

> Because that—if it's someone that they know, then that goes back to us having a better understanding of whether or not they have a safe place, or, you know, if it's somewhere—someone that they don't know, and it was, you know, just—it just happened

> someplace, then we know their home is probably a safe place for them.

(*Id*. at 15.) Nurse Lucas testified that S.T.'s report of Garrett's attack and the threats he levied against her were "integral" to planning for S.T.'s safe discharge from the hospital. (*Id*. at 34.) The account also helped Nurse Lucas evaluate the severity of S.T.'s pain and determine which areas of S.T.'s body required further examination.

[16] Garrett argues "[t]he statements made by S.T. which were what she said the Defendant said to her . . . are far broader than a statement of the identity of the attacker addressed in Ward, or the identity issue which was the subject of the opinion in Perry v. State." (Appellant's Br. at 9-10.) However, Nurse Lucas' primary purpose in obtaining S.T.'s account of events was the same as that of the forensic nurses in *Ward* and *Perry*. Nurse Lucas needed to know how S.T. sustained her injuries to treat S.T. and plan her release. Therefore, S.T.'s statements to Nurse Lucas were nontestimonial and could be admitted without violating the Confrontation Clause. *See Cardosi v. State*, 128 N.E.3d 1277, 1287 (Ind. 2019) (holding defendant's rights under the Confrontation Clause were not violated by admission of nontestimonial statements).

II. Hearsay

[17] Having concluded that S.T.'s statements to Nurse Lucas were nontestimonial in nature, we next look to whether the statements were admissible pursuant to the Indiana Rules of Evidence. *See Palilonis v. State*, 970 N.E.2d 713, 726-29 (Ind.

Ct. App. 2012) (evaluating both whether statements to a medical provider were admissible under the Indiana Rules of Evidence and whether admission of the statements violated the Confrontation Clause), *trans. denied*. "'Hearsay' means a statement that: (1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted." Ind. R. Evid. 801. Hearsay is generally inadmissible at trial. Ind. R. Evid. 802. However, there are exceptions to the rule against hearsay, including statements made for medical diagnosis or treatment. Ind. R. Evid. 803(4). Thus, a hearsay statement is admissible if it: "(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." The medical diagnosis or treatment exception "is 'based upon the belief that a declarant's self-interest in seeking medical treatment renders it unlikely that the declarant would mislead the medical personnel person she wants to treat her.'" *Ramsey v. State*, 122 N.E.3d 1023, 1030 (Ind. Ct. App. 2019) (quoting *Palilonis*, 970 N.E.2d at 726), *trans. denied*.

[18] Garrett asserts S.T.'s report to Nurse Lucas of statements he made while assaulting S.T. did not satisfy any of the three enumerated purposes listed in Rule 803(4). However, as explained *supra*, S.T.'s account of how she sustained her injuries was necessary for Nurse Lucas to conduct her exam and plan for S.T.'s safe discharge from the hospital. Thus, S.T.'s statements to Nurse Lucas were admissible pursuant to the exception to the rule against hearsay governing

statements made for medical diagnosis or treatment. *See Palilonis*, 970 N.E.2d at 727 (holding statements rape victim made to nurse were admissible pursuant to Evidence Rule 803(4)).

Conclusion

[19] S.T.'s statements to Nurse Lucas were nontestimonial and therefore admission of the statements did not violate Garrett's rights under the Sixth Amendment Confrontation Clause. The statements also were not inadmissible hearsay because they were made for the purpose of medical diagnosis and treatment. Medical personnel needed to know how the injuries occurred to care for S.T. and develop a plan for her release. Therefore, the trial court did not err in admitting the statements, and we affirm.

[20] Affirmed.

Bailey, J., and Robb, J., concur.