MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert M. Williams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 26, 2023

Court of Appeals Case No. 22A-CR-2498

Appeal from the Madison Circuit Court

The Honorable David A. Happe, Judge

Trial Court Cause No. 48C04-2012-F1-2899

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Following a jury trial, Robert M. Williams ("Williams") was convicted of child molesting as a Level 1 felony[1] and child molesting as a Level 4 felony.[2] Williams now appeals. We restate the appellate issues as follows:

I. Whether expert testimony about the behavioral patterns of sexually abused children is admissible when the expert testimony helps the jury understand the evidence; and

II. Whether, by failing to object to the State's closing argument, Williams waived any claim that the State invited the jury to draw an impermissible inference from the expert testimony.

[2] We affirm.

Facts and Procedural History

[3] In December 2020, the State charged Williams with Level 1 felony child molesting and Level 4 felony child molesting. A jury trial commenced in June 2022, resulting in a mistrial. A second jury trial commenced in August 2022. The State's first two witnesses were E.N. and A.N., Williams's stepchildren and the victims of the charged offenses. The children last lived with Williams approximately five or six years before the trial.

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[1] Ind. Code § 35-42-4-3(a).

[2] I.C. § 35-42-4-3(b).

[4] As of the trial, E.N. was twelve years old. E.N. testified that when he was six or seven years old, Williams followed him into the bathroom amid a family cookout and pool party. E.N. said that Williams shut the door and approached E.N. from behind. At that point, Williams squeezed E.N.'s buttocks, then reached around and squeezed E.N.'s penis. The touching was under E.N.'s swim trunks. E.N. asked Williams to stop, but Williams kept touching him. Williams stopped touching E.N. when someone walked into the house.

[5] A.N.—who was ten years old as of the jury trial—testified about an interaction with Williams when she was five or six. A.N. testified that Williams came into her room, where she was on the bed with a blanket, playing with electronics. Williams closed the door. He took A.N.'s blanket and told her to put down the electronics. A.N. complied. Williams then got on the bed. A.N. testified that Williams used his hand to touch her "privates," a word she used to refer to her vagina. Tr. Vol. IV pp. 31–32; State's Ex. 2. A.N. testified that Williams's hand went inside of her privates, causing her to feel scared and sad. When A.N.'s mother came home, Williams stopped touching A.N. and went outside.

[6] Eventually, the children began living with their maternal aunt ("Aunt"). Aunt testified that in November 2020, after E.N. had been living with her for about two years, E.N. told her that Williams had touched his privates. Aunt notified the Indiana Department of Child Services. Aunt testified that when E.N. told her what happened, he seemed "nervous, upset, and a little scared[.]" Tr. Vol. IV p. 68. She said that, after E.N. told her what happened, he became depressed and started "getting into a lot of trouble with school." *Id.* at 71.

[7] Aunt testified that, a short while after E.N. told her what happened, A.N. told Aunt that Williams had touched her privates. In telling Aunt, A.N. was "very upset." *Id.* at 73. A.N. "was crying" and "couldn't catch her breath." *Id.* It was "[a]lmost like she was having an anxiety attack." *Id.* Either before or shortly after A.N. told Aunt, A.N. "had some bed wetting." *Id.* at 74.

[8] E.N. was questioned about his delay in telling anyone about the touching. E.N. testified that he waited to tell anyone because he did not think anyone would believe him. E.N. said that he ultimately told Aunt because he thought she would believe him. As for A.N., she testified that Williams threatened her around the time of the touching, so she did not want to tell her mother.

[9] After the State presented testimony from a DCS caseworker, a detective, and a forensic interviewer, the State intended to call Holly Renz ("Renz") as a witness. Renz is a Registered Nurse who served as the Director of a Sexual Assault Treatment Center for twenty-three years. Renz is also a board-certified pediatric sexual nurse examiner, one of seventeen such nurses in Indiana. The State intended to call Renz to testify about behavioral patterns in children who have been sexually abused, including reasons they often wait to tell anyone.

[10] Outside the presence of the jury, Williams objected to the admission of any testimony from Renz. During a brief colloquy, the trial court noted that Williams had challenged the admissibility of Renz's testimony at the first trial. The court incorporated the parties' prior arguments concerning the testimony.

[11] According to Williams, Renz's testimony was inadmissible because she did not interview the children or have firsthand knowledge about their allegations. He claimed that Renz's testimony was irrelevant because she would be testifying "on her knowledge outside the scope of this case[.]" *Id.* at 157. Williams also asserted that the testimony "would be another form of vouching for the children's testimony." Tr. Vol. II p. 87. He added: "[I]t's not relevant, there's no foundation to be laid, and it's all speculation." *Id.*

[12] In response, the State argued that Renz was qualified to testify as an expert, asserting that Renz "has specialized knowledge through her extensive training, experience, and professional experience that will help the trier of fact to understand the evidence or to determine a fact at issue." *Id.* at 88. The State asserted that Renz would speak to "the disclosure process for victims, child victims of sexual abuse, as well as the various factors that attribute to the disclosure process, factors and red flags that present to clinicians and parents that could indicate whether or not there is . . . underlying abuse." *Id.* The State ultimately argued that Renz's testimony "is wholly relevant and it's reliable, and defense objections at this point go to weight, not to admissibility." *Id.*

[13] The trial court incorporated its prior evidentiary ruling, overruling the objection and concluding the testimony was admissible as expert testimony. The court reasoned that the testimony would be "helpful to the jury . . . particularly in the issues of disclosure, psychology, and factors related to delayed disclosures which is something outside the ordinary understanding of jurors and something

about which [Renz] has abundant foundation to testify." Tr. Vol. IV p. 158. Williams did not seek a limiting instruction as to the proper use of the evidence.

[14] Over Williams's objection, Renz testified about her understanding of "the dynamic of child sexual abuse and how children . . . assimilate it," including "how they . . . talk about it"—the "whole disclosure process." *Id.* at 163. Renz testified that, more than 90% of the time, children do not immediately tell anyone about the sexual abuse. She explained that "many times they don't tell until either the perpetrator[] [is] out of the home or no longer in their life," which leads to a "feeling of safety[.]" *Id.* at 169. Renz also testified about behaviors children might exhibit that "could be indicators of potential abuse," behaviors that Renz referred to as "[r]ed flags[.]" *Id.* at 171. Renz explained that sometimes children "will have been potty trained and suddenly they have regressive behaviors where . . . they wet the bed" or "wet their pants." *Id.* Renz also testified that children who had been sexually abused "might have nightmares" or exhibit "a demeanor change." *Id.* She said that these behaviors were "indicators that are . . . concerning to both parents as well as sexual assault nurse examiners," prompting a "need to peel the onion[.]" *Id.* at 172.

[15] In its closing argument, the State referred to the evidence about each child's behavior around the time they told Aunt about the touching, including E.N.'s nightmares and troubles in school, and A.N.'s bedwetting. The State turned to Renz's testimony about "red flags," noting that Renz "does not know these children," "does not know this case," and "did not know . . . the behaviors displayed by th[e] children." Tr. Vol. V at 7. The State argued that Renz was

testifying that "based on her professional training and experience these are common red flags that she . . . sees in victims of sexual abuse." *Id.* at 7–8. Williams did not object to the content of the State's closing argument.

[16] The jury found Williams guilty as charged, and the trial court entered judgments of conviction. Following a sentencing hearing, the trial court imposed consecutive sentences, ordering Williams to serve an aggregate term of thirty-six years, with thirty-one years executed in the Indiana Department of Correction and five years suspended to probation. Williams now appeals.

Discussion and Decision

I. *Admissibility of the Expert Testimony*

[17] Williams argues that the trial court erred in admitting Renz's testimony. In general, trial courts have "wide discretion in ruling on the admissibility of evidence." *Shinnock v. State*, 76 N.E.3d 841, 842 (Ind. 2017). We review those evidentiary rulings for an abuse of discretion, reversing "only when the decision is clearly against the logic and effect of the facts and circumstances." *Id.* at 843.

[18] Here, Renz testified as an expert witness. Under Indiana Evidence Rule 702(a), a witness "who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." The "[e]xpert scientific testimony is admissible only if the court is satisfied that the expert testimony rests upon reliable scientific principles." Ind. Evid. R. 702(b).

[19] On appeal, Williams does not dispute that Renz was qualified to testify as an expert witness. Instead, he directs us to *Steward v. State*, wherein our Supreme Court referred to this type of expert testimony as "pattern evidence" regarding the behaviors of victims of sexual abuse. 652 N.E.2d 490, 491 (Ind. 1995). Purporting to rely on *Steward* and its progeny, Williams argues that the trial court erred in admitting Renz's testimony because the expert testimony was "irrelevant, unreliable, misleading, and amounted to improper vouching for the victims." Appellant's Br. at 10. He claims that the testimony "did not act to assist the trier of fact to understand the evidence presented or to determine a fact at issue and merely served the purpose of inviting the jury to infer that because the children were exhibiting certain behaviors, . . . the children were telling the truth and that sexual abuse must have taken place." *Id.* at 11. Williams argues that evidence of victim behavioral patterns is admissible only if "a child's credibility has been called into question by the defense discussing or presenting evidence of unexpected behavior by the child." *Id.* at 13.

[20] Although Williams directs us to *Steward*, he does not address the scope of that decision. That is, in *Steward*, our Supreme Court identified "three major purposes" for introducing evidence regarding the behavioral patterns of victims:

> (1) [T]o prove directly[—]through either implication or explicit testimony of the expert's conclusion[—]the fact that abuse actually occurred; (2) to counter claims that the testimony or behavior of alleged victims is inconsistent with abuse or otherwise not credible; and (3) *to opine that, because the behavioral characteristics of the child comport with the syndrome profile, the child is likely to be telling the truth*.

652 N.E.2d at 493–94 (emphasis added). In the opinion, the Court "explore[d] the first and second of these applications" while "summarily affirm[ing] the Court of Appeals decision as to the third." *Id.* at 494; *cf.* Ind. Appellate Rule 58(A)(2) ("[T]hose opinions or portions thereof that are summarily affirmed by the Supreme Court . . . shall be considered as Court of Appeals'[s] authority."). Without modifying Indiana caselaw regarding the admissibility of pattern evidence for the third purpose, the Court addressed whether the State could use this type of evidence for the first two purposes. *See Steward*, 652 N.E.2d at 491.

[21] In the underlying Court of Appeals decision—which we refer to as *Steward I*—this court addressed arguments akin to those Williams now presents. Indeed, this court confronted the assertion that using pattern evidence "to show that [the victim] exhibited behavior [that] was consistent with victims of child sexual abuse . . . tainted [a] conviction" because "such evidence is irrelevant, unreliable[,] and misleading" and "tantamount to permitting the expert witness to vouch for the victim's credibility." *Steward v. State*, 636 N.E.2d 143, 146 (Ind. Ct. App. 1994), *summarily aff'd in pertinent part*.

[22] In resolving *Steward I*, this court made a critical distinction between expert testimony (1) that involves a *direct* comment on the credibility of a victim and (2) that which "may be considered an *indirect* comment" on the credibility of a victim. *Id.* at 147 (emphasis added). As to a direct comment on the credibility of a victim, Evidence Rule 704(b) expressly prohibits this type of direct opinion testimony, stating: "Witnesses may not testify to opinions concerning . . . the truth or falsity of allegations" or "whether a witness has testified truthfully[.]"

Therefore, it is generally "improper for the State to solicit an opinion from an expert regarding whether a witness is telling the truth." *Ward v. State*, 203 N.E.3d 524, 532 (Ind. Ct. App. 2023).

[23] But Evidence Rule 704(b) "is not violated by testimony that does not offer an opinion about whether any particular statement by a witness is true or not," even if that testimony could be considered an *indirect* comment on the credibility of a victim. *Id.*; *cf. Steward I*, 636 N.E.2d at 146. In *Steward I*, this court discussed the distinction between admissible and inadmissible expert testimony, and specifically addressed the admissibility of pattern evidence. 636 N.E.2d at 146. Summarizing precedent, the court stated: "While not allowing experts to testify directly regarding a victim's credibility, Indiana courts have consistently allowed expert testimony concerning whether a particular victim's behavior is consistent with the behavioral patterns of victims of sexual abuse." *Id.* The court noted that, so long as the expert witness does not directly comment on the credibility of the victim, pattern evidence is generally admissible "to show that [a victim] exhibited behavior consistent with other victims of child abuse." *Id.* at 146. In this way, the expert's testimony about behavioral patterns "assist[s] the jury in understanding the facts." *Id.* This is one of the central functions of expert testimony. *See* Evid. R. 702(a) (permitting expert testimony that "will help the trier of fact to understand the evidence").

[24] In the decades since *Steward I* was decided, this court has repeatedly rejected claims of impermissible vouching where—as here—the expert witness did not opine about the credibility of the victim. *See, e.g.*, *Hobbs v. State*, 160 N.E.3d

543, 555 (Ind. Ct. App. 2020) (determining "there [was] no impermissible vouching" when the expert witness "did not testify about [either child victim's] credibility or the truth or falsity of their allegations but testified how child-molesting victims behave in general"), *trans denied*; *Baumholser v. State*, 62 N.E.3d 411, 415 (Ind. Ct. App. 2016) ("[The expert] testimony did not relate to the truth or falsity of [the child's] allegations. Rather, [the expert] was making a statement about how victims of child molestation behave in general. Thus, [the expert] testimony was not improper vouching."), *trans. denied.* Along these lines, on more than one occasion, we noted that "[e]xpert testimony that an individual's subsequent behavior is consistent or inconsistent with that observed from other victims is a type of evidence [that] is admissible." *State v. Velasquez*, 944 N.E.2d 34, 43 (Ind. Ct. App. 2011) (alteration in original) (quoting *Stout v. State*, 612 N.E.2d 1076, 1080 (Ind. Ct. App. 1993), *trans. denied*), *trans. denied*.

[25] Here, we conclude that the challenged expert testimony—which involved no direct opinion about the credibility of the children—helped the jury understand specific evidence about the children's behaviors, including evidence that several years had passed before the children reported the touching. Thus, we conclude that the testimony was admissible under Evidence Rule 702(a), which allows expert testimony that "will help the trier of fact to understand the evidence."[3]

[3] Williams cursorily mentions Evidence Rule 403, but he does not accurately state the rule or otherwise develop cogent argument applying the rule. *See* Appellant's Br. p. 12. Concluding that Williams has waived any appellate argument under Evidence Rule 403, we do not discuss the interplay between Rule 403 and

II. Scope of the State's Closing Argument

[26] At trial, Williams challenged only the admissibility of the expert testimony—evidence we concluded was admissible for at least one purpose. On appeal, he makes a distinct claim, which is that the State ultimately misused the evidence.

[27] Williams directs us to the State's closing argument, asserting that the State "hammered on the behaviors that the children exhibited and highlighted Renz's testimony to the jury." Appellant's Br. p. 9. He asserts that the State "invite[d] the jury to infer that the allegations must be true because the children behaved in these manners and exhibited these red flags." *Id.* at 14. He also claims that the State "used the evidence and testimony of Renz to imply and bolster that sexual abuse had occurred." *Id.* at 15. All in all, Williams argues that the State used the pattern evidence to "establish[] that the abuse had occurred." *Id.* at 16.

[28] To proactively address concerns about the use of evidence, a defendant may pursue a motion in limine. This type of motion "is a request that the court enter an order precluding the opposing party (his attorney, experts, and witnesses) from using or mentioning evidence to the jury [in a way] that the moving party deems inadmissible, prejudicial, or otherwise insufficient as a matter of law." 6 Ind. Prac., Trial Handbook for Indiana Lawyers § 2:9. A defendant may also request a limiting instruction pursuant to Evidence Rule 105, which states: "If the court admits evidence that is admissible . . . for a

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Rule 702. *See* Appellate Rule 46(A)(8)(a) (requiring cogent appellate argument); *Wilkes v. Celadon Grp., Inc.*, 177 N.E.3d 786, 790 (Ind. 2021) ("To avoid waiver on appeal, a party must develop a cogent argument.").

purpose[—]but not . . . for another purpose[—]the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly."

[29] Here, Williams did not pursue a motion in limine. Nor did he request a limiting instruction. *See Humphrey v. State*, 680 N.E.2d 836, 840 (Ind. 1997) ("[B]y failing to request an admonition [the defendant] has waived any error based on the absence of an admonition."). Nevertheless, although these procedural mechanisms help to curtail misuse of otherwise-admissible evidence, they do not preserve a claim that the State has misused the evidence through improper argument. Rather, as the Indiana Supreme Court has explained, a defendant "waives possible error concerning the prosecutor's closing argument when he fails to object to the argument at trial." *Isaacs v. State*, 673 N.E.2d 757, 763 (Ind. 1996). "The correct procedure to be employed when an improper argument is alleged is to request an admonishment, and if further relief is desired, to move for a mistrial." *Id.* Moreover, the "[f]ailure to request an admonishment or move for a mistrial results in waiver of the issue." *Id.*

[30] Ultimately, because Williams did not object to the way in which the State used Renz's testimony in its closing argument, we conclude that Williams waived any claim of error predicated on the content of the closing argument.

Conclusion

[31] The trial court did not abuse its discretion in admitting expert testimony about behavioral patterns exhibited in sexually abused children, which helped the jury

understand the evidence. Moreover, by failing to object to the State's closing argument, Williams waived any claim based on the content of the argument.

[32] Affirmed.

Altice, C.J., and May, J., concur.