MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE COURT OF APPEALS OF INDIANA

William Scott Miles,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 25, 2022

Court of Appeals Case No. 22A-CR-78

Appeal from the Marion Superior Court

The Hon. Angela Dow Davis, Judge

Trial Court Cause No. 49D27-1803-FA-7293

Bradford, Chief Judge

Case Summary

[1] In or around 2013, K.M., who was born in 1999, lived with her mother ("Mother") and her mother's boyfriend, William Miles, in Indianapolis. One day in the summertime, Miles anally penetrated K.M. and had her fellate him afterwards. One day the next summer, Miles again had K.M. fellate him, and, around three weeks after that, he fondled her on the outside of her vagina. Mother witnessed the last incident and spoke with K.M. and Miles separately in the garage. After his conversation with Mother, Miles told K.M. that he had told Mother "everything." At the time, however, the authorities were not contacted.

[2] Several years later, K.M. told a school police officer that Miles had molested her, and a jury ultimately convicted him of Class A felony child molesting, Class B felony sexual misconduct with a minor, and Level 4 felony sexual misconduct with a minor. Miles contends that the trial court abused its discretion in admitting evidence related to what he told K.M. following his conversation with Mother in the garage. Because we disagree, we affirm.

Facts and Procedural History

[3] When she was between the seventh and eighth grades, K.M. lived with Mother and Miles in a house on Granner Circle in Indianapolis. One day when Mother was not at home, Miles told and "prod[ed]" K.M. to come to his bedroom and "put his penis in [her] butt." Tr. Vol. III p. 2. Afterwards, Miles had K.M. fellate him. On another occasion the next summer, Miles told K.M. to come to

his room when Mother was gone. The next morning, K.M. came to Miles's room, where he pulled his pants down and made K.M. fellate him.

[4] Around three weeks later, Miles entered K.M.'s bedroom while she was sleeping, pulled her pants down, and started "messing [with her] vagina" on the outside. Tr. Vol. II p. 237. At some point, Mother cracked the door open, and Miles told K.M. to be quiet. After Mother left, Miles told K.M. that, if questioned by Mother when they went downstairs, to tell her that he had been tickling her. Mother spoke with K.M. and Miles separately in the garage, and, after speaking with Miles about her conversation with Mother, K.M. decided not to report him to the police.

[5] Around four years later, when K.M. was a senior in high school, she reported the incidents to a school police officer. The State ultimately charged Miles with Class A felony child molesting, Class C felony child molesting, Class B felony sexual misconduct with a minor, and Level 4 felony sexual misconduct with a minor. In February of 2019, the State filed a notice of intent to offer evidence of other incidents of sexual activity between Miles and K.M., and Miles responded with a motion *in limine*, which motion the trial court granted.

[6] Miles's jury trial began on September 14, 2021. During K.M.'s direct examination by the State, the following exchange occurred:

> [Prosecutor] When your mom and the Defendant came back in the house from the garage, did the Defendant say anything to you about telling your mom about what -- about the three incidents that happened in the Granner Circle house?
>
> [K.M.] Yes.

> [Prosecutor] What did he say?
>
> [K.M.] He said that he's told -- he told everything that happened there, and that I didn't have to worry about it, that he was sure enough to tell her all the stuff that has happened.

Tr. Vol. III pp. 4–5.

[7] Mother was called as a defense witness, and, during cross-examination, the following exchange occurred:

> [Prosecutor] In your deposition, did you say that the -- did you say that the defendant said in your presence, "I told your mother everything, and if you want me to turn myself in, I will, regarding the things that happened in the Granner Circle house"? That's a yes?
>
> THE COURT: No, she said no.
>
> [Mother]: No.

[Sidebar during which the State requests, and the trial court grants, permission to impeach Mother with her deposition]

> [Prosecutor]: May I approach?
>
> THE COURT: You may.
>
> [Mother]: Okay.
>
> [Prosecutor]:
>
> [Prosecutor] Did it help refresh your memory of what you said?
>
> [Mother] Yes.
>
> [Prosecutor] Did you say that?
>
> [Mother] Yes.

Tr. Vol. III pp. 113–14. On redirect, however, Mother testified that Miles had never confessed to her that he had inappropriately touched K.M. in the Granner Circle home. Also during trial, the State made an offer of proof

regarding the evidence of other bad acts by Miles, which consisted of K.M.'s testimony. The offer of proof included K.M.'s accounts of being forced to shower with Miles and wash his body, waking up and finding her hand on Miles's penis, Miles briefly performing anal sex on her, and being forced to fellate Miles, most of which had occurred out-of-state and none of which had occurred in the Granner Circle home.

[8] At the conclusion of trial, the jury found Miles guilty of Class A felony child molesting, Class C felony sexual misconduct with a minor, and Level 4 felony sexual misconduct with a minor, and the trial court sentenced him to an aggregate sentence of thirty-five years of incarceration.

Discussion

I. Admission of Evidence

[9] Miles contends that the trial court abused its discretion in admitting Mother's and K.M.'s testimony regarding his statements about what he told Mother in the garage. A trial court has broad discretion in ruling on the admissibility of evidence. *Washington v. State*, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003). We will reverse a trial court's ruling on the admissibility of evidence only when it constitutes an abuse of discretion. *Id*. An abuse of discretion occurs only where the trial court's ruling is clearly against the logic and effect of the facts and circumstances and the error affects the party's substantial rights. *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013).

[10] Miles contends that the trial court abused its discretion in allowing K.M. to testify regarding his statements and the line of questioning that led to Mother

admitting, after being shown a transcript of her deposition, that she had previously testified that she had heard Miles tell K.M. that he had told her "everything" in the garage. Miles argues that this testimony, read together with Mother's testimony that Miles had never confessed to any inappropriate behavior in the Granner Circle home, must have caused the jury to infer that Miles had been talking about other, uncharged acts.

[11] While Miles does not argue that his statement itself is inherently inadmissible hearsay, he argues that it should have been excluded because it refers to inadmissible evidence of other bad acts. We do not, however, accept Miles's premise that the jury necessarily interpreted evidence regarding his statement as referring to uncharged acts. The questioning of K.M. and Mother was specifically about whether Miles told Mother about events that had occurred in the Granner Circle home, and in neither K.M.'s nor Mother's testimony is there any hint that Miles's use of the word "everything" referred to anything else, much less what those other acts might be.[1]

[12] Moreover, at least in regard to Mother's testimony, the State's use of her deposition during cross-examination was valid impeachment. A prior, sworn, inconsistent statement made by a declarant may be used to impeach a witness, and that evidence is generally admissible as non-hearsay under Evidence Rule 801(d)(1)(A). *Martin v. State*, 736 N.E.2d 1213, 1217 (Ind. 2000). At trial,

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[1] Given the amount of his argument spent on the testimony in the State's offer of proof, Miles seems to be implying that the jury must have somehow inferred that the other charged acts were the ones described in the offer of proof. This is highly improbable, to the say the least, because the jury did not hear the offer of proof.

Mother testified that Miles never confessed to her that he sexually abused K.M. inside the Granner Circle home, testimony inconsistent with her deposition testimony that she heard Miles say, "I told your mother everything, and if you want me to turn myself in, I will, regarding the things that happened in the Granner Circle house." Tr. Vol. III pp. 113–14. Given that Mother's deposition testimony was made under oath, the State was free to admit that statement to "elucidate, modify, explain, contradict, or rebut" the inconsistencies in her direct-examination testimony. *Stokes v. State*, 908 N.E.2d 295, 302 (Ind. Ct. App. 2009) (outlining the scope of cross-examination).

[13] Even if Mother's testimony could be read as including acts outside of the charges brought against Miles, it is well established that a defendant may "open[] the door to otherwise inadmissible evidence" by "inject[ing] an issue into the trial" that leaves the jury with a false or misleading impression about the facts of the case. *Id*. (citing *Tawdul v. State*, 720 N.E.2d 1211, 1217 (Ind. Ct. App. 1999)), *trans. denied*. Because Mother's testimony injected the issue of the validity of Miles's confession into the trial, Miles opened the door to the admission of evidence contradicting that testimony on cross-examination, which included Mother's prior testimony. We conclude that the trial court did not abuse its discretion in admitting K.M.'s and Mother's testimony regarding Miles's admission.

[14] We affirm the judgment of the trial court.

Najam, J., and Bailey, J., concur.