MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael S. Beeman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 16, 2023

Court of Appeals Case No.
22A-CR-1669

Appeal from the
Madison Circuit Court

The Honorable
Angela G. Warner Sims, Judge

Trial Court Cause No.
48C01-2001-F2-11

Memorandum Decision by Senior Judge Shepard
Judges Mathias and Tavitas concur.

Shepard, Senior Judge.

[1] A jury found Michael S. Beeman guilty of one count of Level 4 felony child molesting.[1] Beeman appeals, contending that the trial court abused its discretion by excluding evidence of a prior sexual abuse allegation made by the victim against another person. We affirm.

Facts and Procedural History

[2] From March of 2017 to March of 2018, six-year-old V.C. lived with her mother, Kimberly Boes, in a two-bedroom home. Michael Beeman, who was nineteen years old at that time, was related to V.C. She thought of him as a brother and referred to him as "Bubby." Tr. Vol. II, p. 51. Occasionally, Beeman would stay at V.C.'s home when he was in town and would sleep in the living room. Boes sometimes trusted Beeman to supervise V.C. for a brief period of time in her absence.

[3] On one occasion when Beeman was staying with them, V.C. watched a movie on her mother's cell phone in her mother's bedroom. Boes was in the kitchen cooking and listening to music. Beeman entered Boes' bedroom, closing the door behind him, and then sat on the bed. V.C. was lying down on her stomach with her head facing the pillows, wearing a nightgown and shorts.

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[1] Ind. Code §35-42-4-3(b) (2015).

[4] Beeman "got on top of [V.C.]," "pulled down the front of his pants," and "started going up and down." Tr. Vol. 1, p. 233. V.C. said her "mom's bed was screeching" when this was happening. Tr. Vol. 2, p. 100. Beeman's penis touched V.C.'s buttocks and it felt wet, though there was no skin-to-skin contact because V.C. was wearing shorts.

[5] V.C. asked Beeman to stop, and yelled for her mother. Beeman did not say anything, and V.C.'s mother did not respond. Eventually, V.C. was able to squirm and get off the bed. Before she opened the door to leave the room, Beeman threatened, "If you tell anyone, I will kill you, your whole family, your friends and your mom." Tr. Vol. 1, 237. V.C., who was "upset and worried," ran to her room and cried. *Id.*

[6] V.C. did not report the abuse to her mother. However, Boes noticed that her daughter's behavior toward Beeman changed when V.C. was around six and one-half years old. V.C., who prior to the incident had been excited to have Beeman stay at their house, asked her mother not to let Beeman stay with them. And if he did stay with them, V.C. remained in her room. She did not want to be left alone with him, asking her mother not to leave the house without her if Beeman was there.

[7] In November 2019, V.C. attended a body safety presentation at school after which she disclosed that she was the victim of sexual abuse by someone other than Beeman. During the Department of Child Services' investigation, V.C.

denied the allegations to the caseworker and also to her mother. The matter was deemed unsubstantiated based on V.C.'s denial.

[8] Later, V.C. told her mother about Beeman's sexual abuse, and Boes contacted the Department. V.C., who was eight years old at that time, submitted to a forensic interview. At first she was "reluctant and hesitant" to discuss what Beeman had done, but eventually disclosed the sexual abuse. Tr. Vol. 2, p. 80.

[9] The State charged Beeman with child molestation, after which Beeman moved to admit evidence under exceptions to Indiana Evidence Rule 412.[2] His motion set out the following bases for admissibility: (1) a sufficiently similar prior sexual act occurred, giving V.C. knowledge with which to imagine the allegation against Beeman; and (2) a person other than Beeman molested V.C. He also claimed that the exclusion of this evidence "would violate [his] constitutional rights." Appellant's App. Vol. 2, p. 63.

[10] Beeman's amended motion reiterated his claim that exclusion would violate his constitutional rights. And he argued the evidence was relevant to show a "prior sexual act [alleged by V.C. against another person] occurred," and it was sufficiently similar in nature to give V.C. knowledge to imagine the allegation

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[2] "Rule 412 precludes introduction of evidence of any prior sexual conduct of an alleged victim of a sex crime or a witness in a sex crime prosecution unless the evidence would establish evidence of prior sexual conduct with the defendant, would bring into question the identity of the defendant as the assailant, or would be admissible as a prior offense under Rule 609." *Conrad v. State*, 938 N.E.2d 852, 855 (Ind. Ct. App. 2010). The common law exception to Rule 412 exists "for situations where the victim has admitted the falsity of a prior accusation of rape or where a prior accusation is demonstrably false." *Id.*

against Beeman, and that another person had molested V.C., not Beeman. *Id.* at 73. In the alternative, he argued the prior sexual act did not occur, and that V.C.'s prior false accusation should be admitted because it was "sufficiently similar" to the present allegation to give V.C. the "knowledge to imagine or falsify the alleged molestation charge." *Id.*

[11] Two hearings were held on Beeman's request. In the first, Beeman argued that the exclusion of the evidence would violate his Sixth Amendment rights. And he reiterated he would use the evidence to show that V.C. had prior sexual experience from which she derived knowledge, or that V.C. made a prior false allegation of sexual abuse. Beeman later stated, "I'll conceive [sic] from the past sexual experience, I probably, that I have a problem [because] I don't think the information favors me[,] but as it relates to anything related to [the] false allegation, I do believe that it's warranted to be admitted." Tr. Vol. I, p. 137.

[12] In the second hearing, David Casiano, the DCS employee who worked with V.C., testified on behalf of the defense. Casiano stated that V.C. originally made an allegation of sexual abuse against Dakota Barton, but then denied the allegation when Casiano spoke with her. V.C. also told her mother and the forensic interviewer at the Kid's Talk Advocacy Center that the allegation against Barton was not true. Casiano testified, however, that if V.C. realleged the incident, the report would be reopened.

[13] By the time of this hearing, now eleven-year-old V.C. explained her allegation against Barton and why she had recanted. She testified that Barton used his

hand to touch V.C. and H.M. in their "down area" also described as their "private parts." *Id.* at 186. About a week later, V.C. told Carrie Ann Mullins, H.M.'s mother, who was Barton's girlfriend, about the incident to which she replied, "Why are you ruining our family[?]" *Id.* at 190. Mullins then accused V.C. of lying, and V.C. went to a bedroom and cried. She later lied and recanted her story because she "didn't want [Mullins and Barton] to say those things to [her] again." *Id.* at 191. She steadfastly maintained at the hearing, however, that her allegation that Barton had used his hand to touch her genitalia was true.

[14] Next, the court asked Beeman's counsel to summarize his request saying, "the court needs to know specifically what evidence you're asking um, to be admitted um, and arguments in support of admission of the specific evidence." *Id.* at 200. Counsel's sole argument was that V.C.'s prior allegation of sexual abuse against Barton was admissible as a demonstrably false accusation. The court denied counsel's request, saying "the court finds, based on the evidence, that the complaining witness, today, indicated that she did not make false allegations. So, based on the record, the court doesn't find that the accusations have [been] proven to be demonstrably false at this point." *Id.* at 206.

[15] During her testimony at trial, V.C. mentioned the forensic interview (for the Barton allegations) but only as a temporal marker describing when she disclosed Beeman's sexual abuse to her mother (after the forensic interview). Beeman renewed his motion to introduce evidence of the Barton allegation because "during the [Rule 412] hearing [] she said she had no recollection of

[the interview] but now it appears that she is referencing" it. Tr. Vol. II, p. 6. However, the record shows that during the prior hearing, V.C. testified that she remembered speaking to the forensic interviewer, but she did not remember recanting her allegation against Barton at that time. The court denied the motion. Beeman was convicted.

Discussion and Decision

[16] Beeman says trial counsel advanced two grounds for the admissibility of the challenged evidence: (1) V.C. recanted her allegation against the other man; and (2) the molestation by the other man provided the source of her knowledge of sexual matters. Appellant's Br. pp. 6-7. He argues although the court ruled against him on the first ground, the court failed to address the latter. He claims the court's exclusion of the evidence and failure to address the second ground denied his constitutional right to cross examine V.C. on the latter ground.

[17] "We afford broad discretion to a trial court's decisions on whether to admit or exclude evidence, and review such decisions for an abuse of discretion." *Conrad*, 938 N.E.2d at 855. "An abuse of discretion occurs when the trial court's ruling is clearly against the logic of the facts and circumstances before it." *Id.* "Errors in the admission or exclusion of evidence are considered harmless unless they affect the substantial rights of a party." *Housand v. State*, 162 N.E.3d 508, 513 (Ind. Ct. App. 2020) (quoting *Whiteside v. State*, 853 N.E.2d 1021, 1025 (Ind. Ct. App. 2006)), *trans. denied*. "To determine whether

an error in the admission of evidence affected a party's substantial rights, we assess the probable impact of the evidence on the jury." *Id.*

[18] We agree with the State's observation that Beeman abandoned his claim that the prior allegation of sexual abuse proved a source of sexual knowledge unrelated to Beeman. Beeman did include the argument in his amended motion, but he did not advance it at the two hearings held on the matter. Beeman's counsel asserted the argument at the first hearing, but eventually conceded he thought the evidence did not favor him.

[19] At the second hearing, Beeman explicitly advanced the demonstrably false prior accusation ground. After the hearing, he clarified his argument for the court, solely reiterating the demonstrably false prior accusation ground. Apparently, the trial court did not address Beeman's argument about a prior source of sexual knowledge because it had been abandoned. And Beeman does not now argue that the court's "failure" constituted fundamental error. We conclude that he abandoned that claim, and it has been waived on appeal.

[20] Even if the alleged error had been preserved, we again note the dissimilarity between the alleged incidents of sexual abuse. The "Sixth Amendment may be implicated when a defendant establishes that the victim engaged in a similar pattern of sexual acts." *Oatts v. State*, 899 N.E.2d 714, 722 (Ind. Ct. App. 2009).

And Beeman notes the State's use of the sexual innocence inference theory[3] during closing argument to support his claim of error. Regarding that theory, Indiana has adopted the compromise position that the defendant bears the burden "to show that the prior sexual act occurred and that the prior sexual act was sufficiently similar to the present sexual act to give the victim the knowledge to imagine the molestation charge." *Id.* at 724.

[21] Beeman has not met that burden. The sexual acts in the two allegations differ so drastically that any sexual knowledge V.C. might have gained from Barton's alleged abuse could not have served as the basis from which she could have imagined the sexual abuse allegation against Beeman. Indeed, the Barton allegations involved the use of Barton's hand on V.C.'s genitalia, while the Beeman allegations involved him rubbing his penis against her buttocks until it felt wet. Further, the argument that the Barton abuse had occurred was undercut by V.C.'s prior recantations. And the State's requested inference in closing would not be undermined by the Barton allegations because her

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[3] The sexual innocence inference theory has been described as follows:

> The theory is based on the premise that because most children of tender years are ignorant of matters relating to sexual conduct, a child complainant's ability to describe such conduct may persuade the jury that the charged conduct in fact occurred. To demonstrate that the child had acquired sufficient knowledge to fabricate a charge against the defendant, the theory reasons, the court should allow the defense to offer evidence that the child acquired sexual experience with someone else before he or she accused the defendant.

899 N.E.2d at 724 (quoting Grant v. Demskie, 75 F.Supp.2d 201, 213 (S.D.N.Y. 1999) (quoting Clifford S. Fishman, Consent, Credibility, and the Constitution: Evidence Relating to a Sex Offense Complainant's Past Sexual Behavior, 44 CATH. U.L.REV. 709, 806 (1995))).

knowledge of fondling would not lead her to have knowledge to imagine abuse resulting in ejaculation.

[22] Though we find no error, we conclude that any error would be harmless beyond a reasonable doubt. That analysis depends on: (1) "the importance of the witness' testimony in the prosecution's case"; (2) "whether the testimony was cumulative"; (3) "the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points"; (4) "the extent of cross-examination otherwise permitted"; and (5) "the overall strength of the prosecution's case." *Hall v. State*, 36 N.E.3d 459, 468 (Ind. 2015)(quoting *Delaware v. Van Arsdall*, 475 U.S, 573, 684 (1986)).

[23] The sexual acts are different, and V.C. recanted the Barton allegations to several people. However, when it came to the allegations against Beeman, V.C. provided a consistent narrative over the course of several years, despite her delayed disclosure. She described Beeman staying at her home, where he slept while there, the sexual abuse that occurred, the threats Beeman made to harm her and her family if she disclosed, and her changed view of Beeman. V.C.'s mother and Beeman corroborated many of the details of Beeman's interaction with V.C. and her mother (aside from those of the sexual abuse) during the times he stayed at their home. And Boes testified about her daughter's changed behavior toward Beeman when V.C. was around six and one-half years old. In contrast, the Barton allegation evidence was not strong when compared to V.C.'s credible and consistent narrative, which was corroborated in various ways by other witnesses. *See Standifer v. State*, 718 N.E.2d 1107, 1111 (Ind.

1999) (denial of opportunity to fully cross-examine the witness was harmless beyond a reasonable doubt given the ample evidence introduced to support the convictions). We conclude that the error, if any, in the exclusion of the evidence was harmless beyond a reasonable doubt.

Conclusion

[24] We find no error in the trial court's decision to exclude evidence of a prior sexual abuse allegation.

[25] Affirmed.

Mathias, J., and Tavitas, J., concur.