MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

J.K.,

Appellant-Respondent

v.

State of Indiana,

Appellee-Petitioner

February 27, 2024

Court of Appeals Case No.
23A-JV-1772

Appeal from the Huntington Circuit Court

The Honorable Amy C. Richison, Magistrate

Trial Court Cause Nos.
35C01-2303-JD-14
35C01-2208-JD-34
35C01-2211-JD-40

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] J.K. was adjudicated a delinquent child for acts that would be Level 3 felony child molesting[1] and Level 4 felony child molesting,[2] if committed by an adult. The trial court also determined that, by committing these acts, J.K. violated the conditions of his probation in two other delinquency matters. J.K. now brings this consolidated appeal. He presents four issues, which we restate as follows:

I. Whether the trial court abused its discretion in holding a consolidated hearing where it heard evidence on the new delinquency allegations and on the State's petitions to revoke J.K.'s probation in other delinquency matters;

II. Whether there was a sufficient foundation to admit the victim's statements to a sexual assault nurse examiner under the hearsay exception for statements made for the purpose of seeking medical diagnosis or treatment;

III. Whether the State proved beyond a reasonable doubt that J.K. committed the delinquent acts; and

[1] Ind. Code § 35-42-4-3(a).

[2] I.C. § 35-42-4-3(b).

IV. Whether the State proved by a preponderance of the evidence that J.K. violated the conditions of his probation.

[2] We affirm.

Facts and Procedural History

[3] While J.K. was on probation in two delinquency matters, the State filed a new delinquency petition alleging that J.K. committed acts that, if committed by an adult, would be Level 3 felony child molesting, Level 4 felony child molesting, and Class B misdemeanor battery.[3] The State also petitioned to modify the dispositional decrees imposing probation in the other delinquency matters. All allegations concerned the abuse of K.B., a four-year-old girl who lived with J.K.

[4] The State asked the trial court to conduct a consolidated fact-finding hearing. J.K. objected, expressing concerns that the State would elicit hearsay evidence that could be considered on the petitions to modify, but not properly considered on the delinquency petition. The trial court acknowledged J.K.'s evidentiary concerns but decided to conduct a consolidated hearing. The trial court adopted the following process to ensure that "the record w[ould] be clear": "For each witness, . . . you're going to give me all the information that applies to the petition alleging delinquency. . . . Then you're going to elicit information you want me to consider about the petition to modify. Then we'll do that same process[.]" Tr. Vol. 2 p. 37. The trial court determined that this procedure was

[3] I.C. § 35-42-2-1(c)(1).

"the best way to balance the concerns of the juvenile with the desire for efficiency that the State reports." *Id.* The trial court also referred to its role as the fact-finder, noting: "I could find that the State failed to prove beyond a reasonable doubt the allegations in the petition alleging delinquency, but still find that [the State] proved it by a preponderance for purposes of the petition[s] to modify. I can do that." *Id.* at 36.

[5] The fact-finding hearing was held in April 2023. In presenting evidence on the delinquency petition, the State elicited testimony that K.B. made a disclosure that led to an interview with a representative from the Department of Child Services ("DCS"), then an exam by a sexual assault nurse examiner named Kathryn Hillman ("Nurse Hillman"). K.B. did not testify. However, the State sought to admit statements that K.B. made to Nurse Hillman. The State asserted that, because of foundational testimony from Nurse Hillman—including testimony indicating that "she explained her role" to K.B., who "indicated she understood"—there was a sufficient foundation to admit the statements under the hearsay exception for statements made for the purpose of medical diagnosis or treatment. *Id.* at 93. J.K. objected, arguing that there was "no information that would indicate that the child ha[d] an understanding that she[] [was] there for medical-related purposes." *Id.* at 88. J.K. ultimately claimed that there was insufficient evidence demonstrating "any indicia of reliability to allow that hearsay." *Id.* at 90. The trial court admitted the statements, "find[ing] that the foundation ha[d] been properly laid" for admitting the statements under the hearsay exception. *Id.* at 93.

[6] Nurse Hillman testified that, during the exam, K.B. said that her female sex organ hurt. When Nurse Hillman asked K.B. why she might be in pain, K.B. said it was because J.K. touched her. K.B. said that J.K. "put his tail in [her] body." *Id.* at 106. There was evidence that K.B. used the term "tail" to refer to a penis. *Id.* at 106–07. There was also evidence that K.B. used the term "body" to refer to "her female sex organ." *Id.* at 107. When Nurse Hillman sought clarification, K.B. said that J.K.'s "tail" touched the "inside" of her "body." *Id.* at 107. When asked how many times this happened, K.B. held up two fingers. K.B. said the touching "made her feel sad." *Id.* She also said that J.K. "put his finger in her butt," *id.* at 106, and put his "mouth on [her] nipples," *id.* at 108.

[7] During the exam, Nurse Hillman observed an abrasion on K.B.'s labia minora, an injury typically caused by blunt force trauma. Nurse Hillman also observed "[s]ignificant redness around the anus and anal folds, and tenderness." *Id.* at 97. She testified that the redness and tenderness around the anus could be caused by "a number of things," including "from abuse." *Id.* The State later presented scientific evidence indicating that swabbing from K.B.'s external genitalia contained a DNA profile that was "a mixture of two individuals." *Id.* at 151. K.B. was assumed to be a contributor, and the combined DNA profile was "at least one trillion times more likely if it originated from [K.B.] and [J.K.] than if it originated from [K.B.] and an unknown, unrelated individual." *Id.*

[8] On the delinquency petition, the hearsay evidence was limited to K.B.'s statements to Nurse Hillman. However, in questioning witnesses on the

petition to modify, the State elicited statements K.B. made to other individuals. As to the petition to modify, J.K. stipulated that he had been on probation.

[9] The trial court entered true findings for Level 3 felony child molesting and Level 4 felony child molesting, but declined to enter any finding for the battery allegation because it "believe[d] the facts [were] encompassed within the findings of the Level 3 felony and Level 4 felony." *Id.* at 234. The court also determined that J.K. violated the conditions of his probation. In entering the true findings, the trial court referred to the statements K.B. made to Nurse Hillman, remarking: "The only statements that give me a logical explanation as to how [J.K.'s] DNA got on [K.B.'s] external genitalia are [K.B.'s] statements to Nurse [] Hillman. That's where the evidence is consistent." *Id.* at 235.

[10] For the new true findings, the trial court placed J.K. on formal probation for one year and ordered him to complete a residential treatment program. As for the petitions to modify, the trial court extended J.K.'s probation by one year and ordered him to participate in the treatment program. J.K. now appeals.

Discussion and Decision

[11] "When the State seeks to have a juvenile adjudicated to be delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of that crime beyond a reasonable doubt." *Al-Saud v. State*, 658 N.E.2d 907, 908 (Ind. 1995). In contrast, when the State alleges that a juvenile violated the conditions of his probation, the State need only prove by a preponderance of the evidence that the juvenile committed the alleged acts.

E.g., *C.S. v. State*, 817 N.E.2d 1279, 1281 (Ind. Ct. App. 2004). Along these lines, whereas the Indiana Rules of Evidence limit the range of evidence presented on a delinquency petition, those rules do not apply when the State is merely claiming that a juvenile violated the conditions of his probation. *Cf. id.*

I. Consolidated Hearing

[12] J.K. argues that the trial court should have held separate fact-finding hearings on the delinquency petition and the two petitions to modify. He frames the issue as whether the trial court erred in denying his motion to bifurcate the proceedings. The State claims that "bifurcate" is an inaccurate term in this context. Regardless, the parties agree that we should review for an abuse of the trial court's discretion, which occurs when the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court errs on a matter of law. *See, e.g.*, *Santelli v. Rahmatullah*, 993 N.E.2d 167, 175 (Ind. 2013).

[13] "Phases of the examination" of witnesses—including the manner and mode of examination—"are under the control of, and within the discretion of, the trial court." *S.E. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 37, 44 (Ind. Ct. App. 2014) (quoting *Sowders v. Murray*, 280 N.E.2d 630, 634 (Ind. Ct. App. 1972)). Indeed, Evidence Rule 611 gives courts latitude, directing that courts "should exercise reasonable control over the mode and order of examining witnesses and presenting evidence," with an aim to "(1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment." Moreover, evidentiary procedures pose

less risk of prejudice where, as here, there was a bench trial. *See, e.g., Laughlin v. State*, 101 N.E.3d 827, 830 (Ind. Ct. App. 2018). That is because, "in bench trials, we assume the judge knows and follows the applicable law." *Id.*

[14] J.K. points out that, by holding a consolidated hearing, "the trial court was inherently subjected to three of the State's witnesses retelling the disclosures made by K.B. regarding the alleged sexual touches between [J.K.] and K.B." Appellant's Br. p. 27. According to J.K.: "[T]here was no purpose in taking this testimony during the same evidentiary hearing as the adjudication matter[,] as the trial court could have easily conducted the [f]act-[f]inding [h]earing for the adjudication and made a decision as to whether or not the allegations of delinquency were true." *Id.* He further argues: "[T]here was absolutely no reason for the trial court to have conducted . . . [the] [h]earing in the manner that it did other than to assist the State with being able to get the trier of fact, the trial court, to hear testimony that would otherwise not be admissible." *Id.*

[15] The State responds that consolidating the hearings was designed to "save witnesses the time and hardship of appearing in court at separate proceedings for the same subject[.]" Appellee's Br. p. 26. Directing us to the trial court's remarks, the State contends that the trial court "explicitly indicated that it would not consider evidence only admissible for the modification hearing in determining whether J.K. was delinquent." *Id.* at 27. The State ultimately argues that "[t]he combination of the two proceedings did not prejudice J.K. because the juvenile court knew what evidence it could consider for each of the hearings," and stated that it would only consider the proper evidence. *Id.*

[16] We agree with the State. The trial court indicated that it would follow the law. Thus, in light of the court's "broad discretion in determining the order of proof and in controlling trial proceedings," *Wray v. State*, 547 N.E.2d 1062, 1066 (Ind. 1989), and absent any showing of actual prejudice, *see id.*, we are unpersuaded that the trial court abused its discretion in declining to hold separate hearings.

II. Hearsay Exception

[17] J.K. claims that K.B.'s statements to Nurse Hillman were inadmissible hearsay. Hearsay is "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. Evidence Rule 801(c). Indiana Evidence Rule 802 generally prohibits hearsay, specifying that "[h]earsay is not admissible unless these rules or other law provides otherwise." There are several exceptions to the rule against hearsay. *See generally* Evid. R. 803. One exception is for a statement made for medical diagnosis or treatment. *See* Evid. R. 803(4). Evidence Rule 803(4) sets forth the parameters of this exception, which applies to "[a] statement that: (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." As the Indiana Supreme Court explained in *VanPatten*, the hearsay exception set forth in Evidence Rule 803(4) "reflects the idea that people are unlikely to lie to their doctors" or other health care providers "because doing so might jeopardize their opportunity to be made well." *VanPatten v. State*, 986 N.E.2d 255, 260 (Ind. 2013).

[18] In "deciding whether to admit evidence" under a hearsay exception, the trial court must decide any threshold "question of fact by a preponderance of the evidence." Evid. R. 103(f). Moreover, the trial court has broad discretion in admitting or excluding evidence, and we review its evidentiary rulings for an abuse of that discretion. *Combs v. State*, 168 N.E.3d 985, 990 (Ind. 2021).

[19] On appeal, J.K. focuses on the Indiana Supreme Court's *VanPatten* decision. In that case, our Supreme Court explained that trial courts must engage in a "two-step analysis for admission under [Evidence] Rule 803(4)" to ensure that the proffered hearsay statements are reliable enough for admission. *VanPatten*, 986 N.E.2d at 260. In assessing reliability, a court must ask two questions: "First, 'is the declarant motivated to provide truthful information in order to promote diagnosis and treatment,' and second, 'is the content of the statement such that an expert in the field would reasonably rely on it in rendering diagnosis or treatment.'" *Id.* (quoting *McClain v. State*, 675 N.E.2d 329, 331 (Ind. 1996)).

[20] The *VanPatten* Court applied the test to "statements made by victims of sexual assault or molestation about the nature of the assault or abuse," and noted that admissibility tends to turn on the first prong of the analysis. *Id.* That is because these types of statements—"even those identifying the perpetrator"—"generally satisfy the second prong of the analysis because they assist medical providers in recommending potential treatment for sexually transmitted disease, pregnancy testing, psychological counseling, and discharge instructions." *Id.*

[21] As to the first prong—i.e., "is the declarant motivated to provide truthful information in order to promote diagnosis and treatment"—the Court noted that "the declarant's motive to promote treatment or diagnosis" is "crucial to a determination of reliability." *Id.* For the statements to be admissible, there must be sufficient foundational evidence that the declarant "subjectively believe[d] that [they] w[ere] making the statement for the purpose of receiving medical diagnosis or treatment." *Id.* (quoting *McClain*, 675 N.E.2d at 331). With adult declarants, "this is generally a simple matter . . . [because] 'the declarant's desire to seek and receive treatment may be inferred from the circumstances.'" *Id.* (quoting *McClain*, 675 N.E.2d at 331). However, "where the declarant is a young child," our Supreme Court has "acknowledged that such an inference may be less than obvious." *Id.* That is because "[s]uch young children may not understand the nature of the examination" or "the function of the examiner," and they "may not necessarily make the necessary link between truthful responses and accurate medical treatment." *Id.* at 261. Thus, when the declarant is a young child, "there must be evidence that the declarant understood the professional's role in order to trigger the motivation to provide truthful information." *Id.* (quoting *McClain*, 675 N.E.2d at 331).

[22] Establishing an adequate foundation "does not necessarily require testimony from the child-declarant[.]" *VanPatten*, 986 N.E.2d at 261. Rather, there may be "foundational testimony from the medical professional detailing the interaction between [the professional] and the declarant, how [the professional] explained [their] role to the declarant, and an affirmation that the declarant

understood that role." *Id.* The *VanPatten* Court noted that "[a]ppellate review" of the adequacy of the foundation "is necessarily case-specific and turns on the facts and circumstances of each case as they are reflected in [the] record." *Id.* (contrasting cases). However, "whatever its source, this foundation must be present and sufficient" for the hearsay statements to be admissible. *Id.*

[23] J.K. argues that the State did not establish a sufficient foundation under the first prong of the test, failing to demonstrate that K.B. "understood what Nurse Hillman's role was in the forensic examination or the role of doctors or nurses in general." Appellant's Br. p. 23. J.K. acknowledges that Nurse Hillman provided at least some foundational testimony, although he contends that the testimony did not demonstrate how "K.B. understood what Nurse Hillman's role was as a nurse." *Id.* at 22. J.K. suggests that the State should have presented testimony from "K.B., or her parents, concerning past experience with medical facilities or medical providers," indicating that a court "could reasonably infer" from this sort of testimony "that K.B. knew why she was being examined[.]" *Id.* J.K. also points out that K.B. participated in a DCS interview immediately before Nurse Hillman conducted her examination. He asserts that K.B. "would have already had the previously-stated allegations" at the "top of [her] mind" during the "examination by Nurse Hillman." *Id.*

[24] The State responds that Nurse Hillman's testimony "provided sufficient evidence that K.B. was informed and understood the nature of Nurse Hillman's role for [K.B.'s] statements to be reliable." Appellee's Br. p. 16. As to Nurse Hillman's testimony, the State elicited testimony that Nurse Hillman told K.B.

"that [she] was a nurse and that [she] was going to check [K.B.'s] body and make sure that everything looked okay and make sure that [K.B.] was safe[.]" Tr. Vol. 2 pp. 83–84. Nurse Hillman said that she learned from an intake form that K.B. had seen a doctor about a week before the examination. When the State asked Nurse Hillman whether she "discussed . . . with [K.B.] . . . how [Nurse Hillman's] role may have differed or been the same as what [K.B.] had seen at the doctor's office a week ago," Nurse Hillman said: "Yes." *Id.* at 84. Nurse Hillman added that she "asked if [K.B.] remembered anyone listening to her with a stethoscope . . . or checked her body then, and then . . . said [she] was going to do something similar," telling K.B. that "[t]here were not any doctors where [they] were, that [there] were just nurses, but [that she] was going to do something similar to the doctor's office." *Id.* Nurse Hillman noted that K.B. did not ask any questions about Nurse Hillman's role in the examination. When the State asked whether K.B. "indicate[d] that she understood what [Nurse Hillman's] role was as a nurse," Nurse Hillman said: "She did." *Id.*

[25] In addition to eliciting testimony about Nurse Hillman's interactions with K.B., the State elicited testimony about the environment in which the exam was conducted. That is, Nurse Hillman testified that the facility was structured like a doctor's office, with a front lobby area and exam rooms in the back. Nurse Hillman was wearing scrubs when she met K.B. and took her into the exam room, where only Nurse Hillman and K.B. were present. The exam room contained a chair with stirrups, and K.B. changed into a gown before her exam.

[26] In arguing that the State failed to lay a sufficient foundation, J.K. points out that, in *VanPatten*, the child-victims "were examined by [a nurse] only after being extensively interviewed at DCS, muddying the issue of whether the underlying motivation even from their parents was to seek medical treatment for their children or to assist the police in their investigation." 986 N.E.2d at 265. He argues that here, as in *VanPatten*, a DCS interview took place before the forensic interview. Critically, however, *VanPatten* did not involve the sort of detailed testimony Nurse Hillman provided regarding her interactions with K.B. Indeed, in *VanPatten*, our Supreme Court stated that the examining nurse "had no specific memory of what she said" to the child-victims, and added that the State presented "no testimony" bearing on whether the child-victims knew "the importance of telling the truth in a medical examination[.]" *Id.* Moreover, whereas the nurse in *VanPatten* "observed the DCS interview before she met with the [child-victims]"—"raising the concern that her questioning may have steered the answers to support the allegations brought up in the interview," *id.*—here, there is no indication that Nurse Hillman observed K.B.'s interview with DCS.

[27] As the Indiana Supreme Court has explained, when a defendant challenges the adequacy of the foundation to admit hearsay statements under the exception set forth in Evidence Rule 803(4), "[a]ppellate review . . . is necessarily case-specific and turns on the facts and circumstances of each case as they are reflected in [the] record." *VanPatten*, 986 N.E.2d at 261. Having reviewed the record, we conclude that Nurse Hillman's testimony provided sufficient indicia

of reliability to support admitting K.B.'s statements under the hearsay exception for statements made for medical diagnosis or treatment. Thus, the trial court did not abuse its discretion in admitting the challenged testimony.

III. True Findings

[28] J.K. challenges the sufficiency of the evidence supporting his true findings for Level 3 felony child molesting and Level 4 felony child molesting. J.K.'s challenge largely turns on his contention that the trial court should have excluded K.B.'s statements to Nurse Hillman. *See* Appellant's Br. p. 13 ("[T]he State failed to present sufficient evidence, excluding Nurse Hillman's retelling of K.B.'s allegations, to prove that [J.K.] committed the delinquent acts of [c]hild [m]olesting."). Regardless, when reviewing a challenge to the sufficiency of the evidence supporting a true finding, we will not reweigh the evidence or judge the credibility of the witnesses. *E.g., S.D. v. State*, 847 N.E.2d 255, 257 (Ind. Ct. App. 2006), *trans. denied*. Rather, we view the evidence in a light most favorable to the judgment, and affirm if a fact-finder could reasonably conclude from the evidence that the child engaged in the alleged conduct. *See id.*

[29] To obtain the true finding for Level 3 felony child molesting, the State was obligated to prove that, sometime between March 1, 2023 and March 20, 2023, J.K. "knowingly or intentionally perform[ed] or submit[ted] to sexual intercourse or other sexual conduct" with K.B., who was under the age of fourteen. Ind. Code § 35-42-4-3(a). In this context, "sexual intercourse" means

"an act that includes any penetration of the female sex organ by the male sex organ." I.C. § 35-31.5-2-302. "Other sexual conduct" means "an act involving: (1) a sex organ of one (1) person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object." I.C. § 35-31.5-2-221.5. As for Level 4 felony child molesting, the State was obligated to prove that, during the same time frame—at which point K.B. was under the age of fourteen—J.K. "perform[ed] or submit[ted] to any fondling or touching, of either [K.B.] or [J.K.], with intent to arouse or to satisfy the sexual desires of either [K.B.] or [J.K.]" I.C. § 35-42-4-3(b).

[30] As earlier discussed, K.B.'s statements to Nurse Hillman were properly admitted under the hearsay exception for statements made for the purpose of medical diagnosis or treatment. As for those statements, K.B. told Nurse Hillman that J.K. put his "tail" inside her "body." There was evidence that K.B. used the term "tail" to refer to a penis, and there was evidence that she used the term "body" to refer to her female sex organ. K.B. also said that J.K. "put his finger in her butt" and put his mouth on her nipples. Tr. Vol. 2 p. 106, 108. Moreover, Nurse Hillman saw injuries on K.B. that were consistent with sexual abuse, and there was evidence that J.K.'s DNA was on K.B's genitalia.

[31] This was sufficient evidence to support the true findings for child molesting. *See generally, e.g.*, *Sallee v. State*, 51 N.E.3d 130, 135 (Ind. 2016) (noting that a determination of guilt beyond a reasonable doubt "can be sustained on the testimony of a single witness, even where the evidence is uncorroborated").

IV. Revocation of Probation

[32] J.K. challenges the sufficiency of the evidence supporting the trial court's decision to revoke his probation in his two earlier delinquency matters. But it is undisputed that, as a condition of his probation, J.K. was obligated to refrain from committing additional delinquent acts. And we have already concluded that the State presented sufficient evidence to prove beyond a reasonable doubt that J.K. committed two additional delinquent acts. We therefore conclude that the State presented sufficient evidence to support revoking J.K.'s probation.

Conclusion

[33] The trial court did not abuse its discretion in holding a consolidated hearing or in admitting K.B.'s statements to Nurse Hillman. Moreover, there was sufficient evidence to support the true findings and the revocation of probation.

[34] Affirmed.

Pyle, J., and Tavitas, J., concur.

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