# MEMORANDUM DECISION





IN THE
# Court of Appeals of Indiana

Clinton McGuire,
*Appellant-Defendant*

v.

State of Indiana,
*Appellee-Plaintiff*

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August 13, 2024

Court of Appeals Case No.
23A-CR-3136

Appeal from the Boone Superior Court

The Honorable Matthew C. Kincaid, Judge

Trial Court Cause No.
06D01-2201-F1-12

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**Memorandum Decision by Judge Weissmann**
Judges Vaidik and Foley concur.

**Weissmann, Judge.**

[1] Clinton McGuire was convicted of molesting his girlfriend's 11-year-old stepdaughter, M.W.-H. On appeal, McGuire argues that the trial court improperly allowed hearsay testimony about statements the child's stepmother, J.S., made during a medical examination of M.W.-H. Assuming this testimony was erroneously admitted, we find it was harmless error and thus affirm.

## Facts

[2] In the summer of 2021, M.W.-H. and her two sisters lived with J.S. in an apartment complex in Lebanon, Indiana. The family met McGuire, then 30 years old, at the complex's swimming pool. McGuire lived there, too, with his wife and children. McGuire befriended M.W.-H.'s family, visiting them for game nights and watching the children when J.S. worked. After a few months, McGuire moved in with M.W.-H.'s family due to marital issues with his wife. At first, McGuire and J.S. were just friends. But later, they became romantically involved.

[3] After McGuire moved in, J.S. noticed that he was treating M.W.-H. differently than her sisters and becoming more physically affectionate with her. At least three times, McGuire molested M.W.-H. by touching her genitals and engaging in sexual intercourse with her. Although M.W.-H. told J.S. about McGuire's actions, J.S. did not believe her until she found concerning pictures of the pair on McGuire's phone. When J.S. confronted McGuire about the pictures, he initially denied any wrongdoing. But McGuire ultimately admitted to twice

putting his fingers inside M.W.-H.'s vagina at her request. Tr. Vol. II, p. 211-12. J.S. did nothing with this information and only kicked McGuire out after observing him kissing M.W.-H.

[4] The authorities only became involved after M.W.-H.'s younger sister mentioned the molestations at school, prompting a police investigation. As part of the investigation, M.W.-H. was examined at a local hospital by a forensic nurse, Kristen Morris. The examination revealed physical signs consistent with penetrating vaginal trauma. But Morris could not determine whether the trauma had occurred recently or years earlier when M.W.-H. was allegedly abused by an uncle when she was about 6 years old.

[5] The State charged McGuire with two counts of child molesting for engaging in sexual intercourse or other sexual conduct with M.W.-H., a Level 1 felony, and touching and fondling M.W.-H., a Level 4 felony. During McGuire's jury trial, the State elicited testimony from Nurse Morris that, in part, relied on J.S.'s statements during the medical history portion of M.W.-H.'s examination. According to Nurse Morris, J.S. advised her that M.W.-H. had asked McGuire to touch her vagina; McGuire and M.W.-H. had kissed in J.S.'s presence; and M.W.-H. did not use tampons.

[6] McGuire objected, arguing that these statements were hearsay. He contended the statements did not fall under the medical treatment exception to the hearsay rule, as they were not made by M.W.-H. while seeking medical treatment. Nurse Morris, however, explained that the hospital's policy was to gather such

information from the parent rather than directly from the child. The trial court therefore overruled McGuire's objection. The jury found McGuire guilty on both counts, and he received an aggregate sentence of 30 years imprisonment.

## Discussion and Decision

[7] On appeal, McGuire argues that Nurse Morris's testimony constituted inadmissible hearsay as it related to the statements J.S. made during M.W.-H.'s medical examination. The State offers no counter to this argument, relying instead on the harmless error doctrine.[1]

[8] A trial court has broad discretion to admit evidence. *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). "We therefore disturb its ruling only if it amounts to an abuse of discretion, meaning the court's decision is clearly against the logic and effect of the facts and circumstances or it is a misinterpretation of the law." *Id.*

[9] Generally, "hearsay is inadmissible unless the [Indiana Rules of Evidence] or other law provide otherwise." Ind. Evidence Rule 802. Relevant here, the Rules of Evidence provide an exception for statements made by a person seeking medical treatment. Ind. Evid. R 803(4). At McGuire's trial, the State successfully argued to the trial court that the challenged statements fell under this exception. Yet on appeal, the State makes no attempt to defend this position and essentially concedes that the challenged statements were

[1] We reject the State's threshold argument that McGuire waived this issue by failing to offer a proper objection at his trial.

wrongfully admitted. Thus, we assume that McGuire is correct that the challenged statements should have been excluded as hearsay.

[10] That said, "[t]he erroneous admission of hearsay does not require reversal unless it prejudices the defendant's substantial rights." *Blount*, 22 N.E.3d at 564. This prejudice analysis focuses on the "probable impact the evidence had upon the jury in light of all of the other evidence that was properly presented." *Id.* If the conviction is supported by "independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict, the error is harmless." *Id.*

[11] Any error in the admission of Nurse Morris's testimony about J.S.'s statements was harmless because that testimony was largely cumulative of other properly admitted evidence. For instance, Nurse Morris testified that J.S. told her M.W.-H. asked McGuire to touch her vaginal area. Tr. Vol. II, p. 185. But J.S. also testified to this fact, and McGuire does not challenge her testimony. *Id.* at 211-12. Likewise, Nurse Morris testified that J.S. reported witnessing McGuire and M.W.-H. kissing—a fact to which J.S. testified as well. *Id.* at 185, 213.

[12] The only fact provided by Nurse Morris's hearsay testimony that was not otherwise admitted into evidence was that M.W.-H. used menstrual pads rather than tampons. This evidence related to McGuire's claim that M.W.-H.'s vaginal changes were the product of tampon use rather than sexual contact. But this was a minor detail unlikely to have impacted the jury's verdict. *See Corbally v. State*, 5 N.E.3d 463, 470 (Ind. Ct. App. 2014) (finding improper admission of

evidence to be harmless error where "there is little likelihood the challenged evidence contributed to the conviction").

[13] Aside from the cumulative nature of the challenged statements, a substantial amount of independent evidence supported McGuire's convictions. M.W.-H. provided direct testimony that McGuire touched the inside of her vagina with his hand and twice raped her. M.W.-H.'s physical examination revealed signs consistent with vaginal penetration. This first-hand account of being molested by McGuire is compelling evidence which alone supports the conviction. *See Smith v. State*, 163 N.E.3d 925, 929 (Ind. Ct. App. 2021) ("In general, the uncorroborated testimony of the victim is sufficient to sustain a conviction."). Lastly, there was evidence that McGuire admitted to placing his fingers inside M.W.-H.'s vagina.

[14] All in all, the record reflects "overwhelming independent evidence" of McGuire's guilt that leads only to the conclusion that the erroneous introduction of the challenged hearsay was harmless error. *Corbally*, 5 N.E.3d at 471.

[15] Affirmed.

Vaidik, J., and Foley, J., concur.

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