

# 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.



---

## ATTORNEY FOR APPELLANT

Aaron J. Stoll  
The Law Office of Aaron J. Stoll, LLC  
Fort Wayne, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General for Indiana  
Nicole D. Wiggins  
Deputy Attorney General  
Indianapolis, Indiana

---

# IN THE COURT OF APPEALS OF INDIANA

---

David E. Molnar,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 30, 2022

Court of Appeals Case No.  
21A-CR-2321

Appeal from the Allen Superior  
Court

The Honorable Frances C. Gull,  
Judge

Trial Court Cause No.  
02D05-2005-F3-41

**Bailey, Judge.**

## Case Summary

- [1] Following a jury trial, David Molnar (“Molnar”) appeals his conviction of rape, as a Level 3 felony.<sup>1</sup>
- [2] We affirm.

## Issues

- [3] Molnar raises two issues on appeal which we restate as follows:
- I. Whether the trial court abused its discretion when it restricted the scope of Defense counsel’s closing argument.
  - II. Whether any alleged error in the admission of the recording of Molnar’s interview with law enforcement was harmless.

## Facts and Procedural History

- [4] On December 5, 2019, then-eighteen-year-old C.S. took the bus to work. Molnar sat next to C.S. on the bus and the two engaged in small talk. Molnar asked C.S. if C.S. was gay and, when C.S. replied that he was, Molnar stated that he was also gay or bisexual but “wasn’t really out about it.” Tr. v. II at 214-15.

---

<sup>1</sup> Ind. Code § 35-42-4-1(a).

[5] C.S. and Molnar exited the bus at the same stop, and Molnar told C.S. that C.S. “had a nice ass.” *Id.* at 215. C.S. entered the bus station to use the restroom. Molnar followed C.S. into the restroom, walked up behind C.S. in a restroom stall, and put his hand over C.S.’s mouth. Molnar whispered to C.S., “Be quiet, don’t say anything.” *Id.* at 203. Molnar then pushed C.S. down into a sitting position on the toilet seat and “forced” his penis into C.S.’s mouth. *Id.* at 204. Several minutes later, Molnar told C.S. to stand up, took C.S.’s hand and had C.S. fondle Molnar’s genitals, and then placed C.S.’s hand on C.S.’s own penis and had C.S. fondle himself.

[6] A few moments later, an overhead bus station speaker announced the departure for the next bus, and C.S. told Molnar he had to go to work or else the group home where he lived would call the police. C.S. then rinsed off his hands, left the restroom, and took the bus to the Dairy Queen where he worked. At work, C.S. told his boss that he had been assaulted at the bus station, and C.S. called the group home where he lived to inform them of the same. C.S.’s caseworker from the group home picked him up at the Dairy Queen, drove him to the group home, and then drove him to the police station where C.S. reported that he had been sexually assaulted. C.S. was examined at the Sexual Assault Treatment Center, and samples were taken from C.S.’s body, including his genitals, for DNA testing.

[7] On December 10, 2019, police located Molnar at the bus station and requested that he come to the police station for an interview. Molnar agreed and rode his bicycle from the bus station to the police station. Police interviewed Molnar in

a room at the police station and recorded the interview. Both Detectives John Chambers (“Det. Chambers”) and Mike Schultz were in the room, but only Det. Chambers questioned Molnar. At the beginning of the interview, Det. Chambers read to Molnar his *Miranda* rights, including his right to speak to a lawyer and his right to end the interview at any time. Det. Chambers also confirmed that Molnar was at the interview voluntarily. Molnar read out loud the waiver that said he did not want a lawyer at that time, and he signed the document waiving his rights.

[8] Molnar subsequently told the police that he did not speak to anyone or sexually assault anyone in the bus station restroom on December 5. Molnar affirmed that “nothing occurred, nothing happened” with him in the bus station restroom that day. State’s Ex. 1 at 9:53; State’s Ex. 6 at 9:14. Molnar stated that he had various illnesses and “can’t even get a hard-on.” State’s Ex. 1 at 10:03; State’s Ex. 6 at 9:25. Det. Chambers asked Molnar if he could take a sample from him for a DNA test to rule him out as a suspect. Molnar then stated, “Can I talk to an attorney before I...” and then pointed toward a document laying on the table in front of Det. Chambers. State’s Ex. 1 at 11:04. Molnar stated that he would then contact the police “right away” and it should “only take fifteen to twenty minutes.” *Id.* at 11:12. Det. Chambers informed Molnar that the police could get his DNA that day with a search warrant, but it would be easier for Molnar to consent. Molnar then stated, “Oh, then I’ve really got no choice there, right?” *Id.* at 11:40. Det. Chambers informed

Molnar that he did have a choice but it would be easier if he consented to DNA testing. Molnar then said, “that’s fine, we’ll do that.” *Id.* at 12:10.

[9] Det. Chambers then exited the room while the other officer stayed in the room with Molnar. When Det. Chambers soon returned to the room, he again read to Molnar the *Miranda* rights and the waiver of those rights, including the right to have a lawyer before being searched. Molnar signed and dated the waiver of those rights, and Det. Chambers then took oral swab samples from Molnar’s mouth. Molnar then told the officers that he remembered talking to C.S. on December 5 and shaking C.S.’s hand. When Det. Chambers asked if anything occurred between Molnar and C.S. in the bathroom, Molnar said, “no.” *Id.* at 14:10. At the end of the interview, Molnar was permitted to leave.

[10] On May 8, 2020, the State charged Molnar with rape, as a Level 3 felony, and sexual battery, as a Level 6 felony.<sup>2</sup> In March of 2021, law enforcement sought and obtained a search warrant for testing of Molnar’s DNA. The results of that DNA test revealed that Molnar’s DNA was found on C.S.’s genitals on December 5, 2019—the day C.S. was examined at the Sexual Assault Treatment Center.

[11] On March 22, 2021, Molnar filed a motion to suppress “all evidence obtained” as a result of his December 10, 2019, police interview. *App.* at 67. At the April 30, 2021, suppression hearing, the State admitted into evidence the unredacted,

---

<sup>2</sup> I.C. § 35-42-4-8(a).

complete recording of the December 10, 2019, police interview of Molnar. The State conceded that any DNA results obtained pursuant to Molnar’s alleged consent to a search at his police interview were inadmissible because that consent was obtained in violation of Molnar’s constitutional rights. However, the State noted that it had cured that problem by subsequently seeking and obtaining a search warrant for testing of Molnar’s DNA. Molnar argued that the court should still suppress any of the statements he made at the December 10, 2019, interview “once he ... asked, ‘Can I talk to an attorney?’”<sup>3</sup> Tr. v. II at 32. On June 2, 2021, the trial court denied Molnar’s motion to suppress.

[12] Molnar’s jury trial was conducted on August 17 through 19 of 2021. At the beginning of the trial, outside the presence of the jury, Molnar renewed his motion to suppress. The State subsequently introduced its Exhibit 6—a redacted version of the December 10, 2019, police interview with Molnar—into evidence over Molnar’s objection and played Exhibit 6 for the jury. Molnar “renewed” his motion to suppress on the record and noted the motion to suppress was in reference to “[t]he DNA and the interview.” Tr. v. III at 56.

[13] At trial, Molnar did not testify. However, his counsel argued in both his opening and closing statements to the jury that Molnar did engage in sexual

---

<sup>3</sup> Although Molnar objected to the admission of evidence of his DNA obtained as a result of the December 10, 2019, interview and also—at trial—to the DNA evidence obtained as a result of the search warrant issued in March 2021 and admitted into evidence as State’s Exhibit 7, Tr. v. III at 56, on appeal he only challenges the admission of the recording of his December 10, 2019, interview—i.e., not the admission of DNA evidence.

conduct with C.S. but it was consensual. During the State’s closing argument to the jury, the prosecutor noted that Molnar had lied in his interview with law enforcement by denying any sexual conduct with C.S. The prosecutor opined that Molnar lied because he was hoping that his DNA would not be found on C.S. In Molnar’s closing argument, his lawyer implied that Molnar lied to the officers because he was “embarrassed” to admit he was gay or bisexual. *Tr. v. III* at 110. The State objected and the trial court sustained the objection because there was “no evidence in the record to support that argument.” *Id.* The trial court struck the comment from the record. In its rebuttal closing statement, the State again referenced Molnar’s lies to police.

[14] The jury found Molnar guilty as charged. At sentencing, the trial court vacated the sexual battery conviction “as it is consumed [sic] in” the rape conviction. *Id.* at 140. The court sentenced Molnar to sixteen years executed in the Department of Correction (DOC) on the rape conviction. This appeal ensued.

## Discussion and Decision

### Closing Arguments

[15] Molnar challenges the trial court’s ruling restricting part of his counsel’s closing argument to the jury.

It is well settled that the proper scope of final argument is within the trial court’s sound discretion. On appeal, we will not find an abuse of discretion unless the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it. In seeking reversal of a conviction, however, it is incumbent

upon the appellant to establish that the trial court's abuse of discretion was "clearly prejudicial" to his rights. Moreover, any abuse of discretion in restricting the scope of closing argument is subject to harmless error analysis.

*Nelson v. State*, 792 N.E.2d 588, 591-92 (Ind. Ct. App. 2003) (citations omitted), *trans. denied*; *see also Hall v. State*, 177 N.E.3d 1183, 1195 (Ind. 2021).

[16] During closing argument, an attorney "may argue both law and facts and propound conclusions based upon his or her analysis of the evidence." *Lambert v. State*, 743 N.E.2d 719, 734 (Ind. 2001); *see also, e.g., Neville v. State*, 976 N.E.2d 1252, 1260 (Ind. Ct. App. 2012) ("[A]n attorney may properly argue any logical or reasonable conclusions based on his or her own analysis of the evidence." (citing *Bennett v. State*, 423 N.E.2d 588, 592 (Ind. 1981))). However, "counsel does not have the right to misstate the law or argue a theory unsupported by the evidence during closing arguments." *Dixey v. State*, 956 N.E.2d 776, 783 (Ind. Ct. App. 2011); *see also Jefferson v. State*, 891 N.E.2d 77, 87 (Ind. Ct. App. 2008) ("It is improper for counsel in argument to comment on matters not in evidence, and it is the duty of the trial court to see that they refrain from doing so." (quoting *Trice v. State*, 519 N.E.2d 535, 538 (Ind. 1988))), *trans. denied*.

[17] Here, the following relevant statements were made during Molnar's closing argument:

DEFENSE COUNSEL: ... He denied assaulting anyone. He denied sexually assaulting anyone when Detective Chambers made it more clear what they were talking about. Yeah, David



told them ... that he shook hands with C.S.[,] right? All they did was shake hands. He didn't want to tell he was gay, he didn't want to say he was bisexual—

PROSECUTOR: Objection, Your Honor. There's not a shred of evidence of any of this.

THE COURT: Sustained.

DEFENSE COUNSEL: David's embarrassed—

PROSECUTOR: Objection. Move to strike. Same objection: No evidence.

THE COURT: You are entitled to argue the evidence and characterize it. There is no evidence in the record to support that argument. I'll sustain the objection, strike the comment from the record.

Tr. v. III at 110-11.

[18] The trial court correctly noted that the above statements by defense counsel were not supported by any evidence in the record. There is simply no evidence from which it could be inferred that Molnar lied to the police because he was embarrassed to say he was gay during the police interview, as defense counsel argued. Molnar points to C.S.'s testimony that Molnar told C.S. on the bus on December 5, 2019, that Molnar was gay or bisexual but “wasn't really out about it.” Tr. v. II at 214-15. However, Molnar has pointed to no evidence that he was embarrassed about his sexuality—or anything else—during the police interview. Molnar's statement to C.S. on the bus does not support a

logical inference that Molnar lied to police five days later because he was embarrassed to admit to the police that he was gay.<sup>4</sup>

[19] Moreover, even if we assume for argument's sake that the trial court erred in excluding Molnar's argument in closing that Molnar lied to police about the sexual encounter with C.S. because Molnar was embarrassed to admit to police that he was gay, that error was harmless. Defense counsel made the excluded statements as support of his theory that the sexual encounter with C.S. was consensual but that Molnar initially lied to police about the consensual sex only because he was embarrassed to admit to them that he is gay. However, C.S. testified that the sexual encounter was non-consensual and Molnar had the opportunity to—and did—extensively cross-examine C.S. regarding that claim. In addition, Molnar's counsel was permitted to argue—and did argue—in both his opening and closing statements that the sexual encounter was consensual.

[20] Given the DNA evidence showing that there was a sexual encounter between C.S. and Molnar, C.S.'s testimony that he did not consent to the sexual encounter, and the lack of any evidence that the encounter was consensual,<sup>5</sup> we cannot say the jury would have believed that the sexual encounter was

---

<sup>4</sup> Molnar notes that the prosecutor also speculated in his closing argument about the reason Molnar lied to the police about having sexual contact with C.S.—i.e., that Molnar lied because he did not think his DNA would be found on C.S. However, Molnar did not object to those statements in the prosecutor's closing argument, nor does he challenge those statements on appeal. Furthermore, the prosecutor's statements were permissible as they were based on evidence from the interview that, when the police asked Molnar about any reason why his DNA would be found on C.S., Molnar admitted shaking hands with C.S. but denied any other contact.

<sup>5</sup> Of course, the argument of Molnar's counsel that the encounter was consensual is not evidence.

consensual even if Molnar’s counsel had been permitted to argue to the jury that Molnar lied to police about the sex with C.S. only because Molnar was embarrassed to admit he is gay. *See Nelson*, 792 N.E.2d at 594 (holding any error in excluding the scope of defendant’s closing argument was harmless where, “given the eyewitness testimony of Detective Campbell and the arresting officers, we cannot say that the jury would have believed Nelson’s theory of defense if he had reiterated it in his closing argument”). Molnar has failed to establish that the alleged error in restricting the scope of his closing statement was clearly prejudicial. *See id.* at 592.

[21] The restriction on the scope of Molnar’s closing argument was not against the logic and effect of the facts and circumstances before the trial court. The trial court’s ruling was not an abuse its discretion or clearly prejudicial.

## Admission of Evidence

[22] Molnar challenges the admission of the redacted recording of his December 10, 2019, interview with police, contained in State’s Exhibit 6.<sup>6</sup> Molnar filed a pre-trial motion to suppress that evidence on the grounds that the police continued to question him after he asked for an attorney. However, because he appeals following a completed trial, the issue is properly framed as whether the trial

---

<sup>6</sup> The portion of the interview redacted from Exhibit 6 is that portion related to Molnar’s DNA sample—i.e., the request for Molnar’s consent to a search, Molnar’s request for an attorney, the subsequent conversation regarding consent versus a search warrant, Molnar’s alleged waiver of rights and consent to the search, and the taking of a sample from Molnar’s mouth. Exhibit 6 does include the statements Molnar made to police after his DNA sample was taken—i.e., the statements that he talked to C.S. and shook hands with him but that nothing else occurred.

court abused its discretion when it admitted the evidence. *See Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013). We will not disturb that ruling unless it is clearly against the logic and effect of the facts and circumstances before the court. *See Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2013).

[23] Even the erroneous admission of evidence does not require reversal unless it prejudices the defendant's substantial rights. *Id.*

To determine whether an evidentiary error was prejudicial, we assess the probable impact the evidence had upon the jury in light of all of the other evidence that was properly presented. If we are satisfied 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.* (citations omitted).

[24] “When a subject is in custody, *Miranda* [*v. Arizona*, 384 U.S. 436 (1966)] requires that he be informed of the right to the presence and advice of counsel during custodial interrogation by the police, of the right to remain silent, and that any statement he makes may be used as evidence against him.” *Bryant v. State*, 959 N.E.2d 315, 322 (Ind. Ct. App. 2011). Molnar does not challenge his initial waiver of his *Miranda* rights at the beginning of the December 10, 2019, interview. Thus, it is clear that the statements Molnar made in the interview prior to his request for an attorney were admissible. *See, e.g., Carter v. State*, 490 N.E.2d 288, 291 (Ind. 1986) (holding a confession was properly admitted where the defendant “had been fully advised of his *Miranda* rights, indicated his

understanding of them, was a mature individual of normal intelligence, and was not interrogated for any inordinate amount of time”).

[25] However, Molnar contends that the statements he made after he asked for a lawyer should have been suppressed because the interview was a custodial interrogation<sup>7</sup> and the police continued to question him even after he asked to speak to a lawyer. *See, e.g., Bean v. State*, 973 N.E.2d 35, 40 (Ind. Ct. App. 2012) (noting, where a person in custody unequivocally invokes his right to counsel, police questioning must cease immediately), *trans. denied*. The State counters that Molnar’s request for an attorney was ambiguous so the statements he made thereafter were admissible. *See e.g., Anderson v. State*, 961 N.E.2d 19, 26 (Ind. Ct. App. 2012) (noting an accused’s request for counsel must be unambiguous and unequivocal in order to require the cessation of police questioning) (citing *Carr v. State*, 934 N.E.2d 1096, 1102 (Ind. 2010)), *trans. denied*.

[26] Even assuming—without deciding—that Molnar was in custody and his request for an attorney was unambiguous, any error in admitting the statements he made after requesting a lawyer was harmless. “To be harmless, the erroneously admitted evidence must be unimportant in relation to everything else considered by a jury on the issue in question.” *Bean*, 973 N.E.2d at 45. “It is

---

<sup>7</sup> The State asserts that Molnar waived his argument that he was in custodial interrogation by not raising the claim in the trial court. However, the State’s assertion is incorrect. In both his memorandum in support of his motion to suppress and at the hearing on the motion to suppress, Molnar argued that the December 10, 2019, interview was a custodial interrogation. Molnar has not waived that issue.

well-settled that even the improper admission of evidence is harmless error when the erroneously admitted evidence is merely cumulative of other evidence before the trier of fact.” *Garber v. State*, 152 N.E.3d 642, 646 (Ind. Ct. App. 2020) (quotation and citation omitted); *see also Howard v. State*, 122 N.E.3d 1007, 1017 (Ind. Ct. App. 2019) (citing *Pierce v. State*, 29 N.E.3d 1258, 1268 (Ind. 2015)) (same), *trans. denied*.

[27] Here, Molnar asserts that the court should have suppressed the following statements he made to police after requesting an attorney: that he spoke to C.S. on December 5 and shook C.S.’s hand, but that “nothing [else] occurred in the bathroom” that day. State’s Ex. 6 at 14:10. However, to the extent those statements are relevant, they are cumulative of his clearly admissible prior statements to police in which he denied ever having sexual contact with C.S. The pertinent statements made by Molnar—both before and after his request for counsel—are the denials of sexual contact with C.S. The only additional details in his statement following his request for counsel—i.e., that Molnar spoke with C.S. and shook his hand—are unimportant in relation to the other, independent evidence that Molnar had non-consensual sexual contact with C.S. *See Bean*, 973 N.E.2d at 45. Because Molnar’s conviction is supported by independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the jury’s verdict, any error in the admission of the statements Molnar made after requesting an attorney was harmless beyond a reasonable doubt. *See Blount*, 22 N.E.3d at 564.

## Conclusion

[28] The trial court did not abuse its discretion when it restricted the scope of defense counsel's closing argument and, even if it had erred, any such error would have been harmless. Further, even assuming Molnar was in police custody and unambiguously requested legal counsel, any error the trial court made when it admitted into evidence the statements Molnar made to the police following his request for counsel was also harmless error.

[29] Affirmed.

Najam, J., and Bradford, C.J., concur.