MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Ryan M. Gardner
Deputy Public Defender
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Joseph M. Collins, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 21, 2021

Court of Appeals Case No. 21A-CR-857

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D05-1906-F3-53

Pyle, Judge.

Statement of the Case

[1] Joseph M. Collins, Jr. ("Collins") appeals, following a jury trial, his conviction for Level 4 felony child molesting[1] and challenges the admission of evidence. Specifically, Collins argues that the trial court abused its discretion by allowing the State to ask leading questions to the child victim during her direct examination. Concluding that the trial court did not abuse its discretion, we affirm Collins' conviction.

[2] We affirm.

Issue

Whether the trial court abused its discretion in its admission of evidence.

Facts

[3] In May 2018, eighteen-year-old Collins was with his six-year-old step-sister, H.H. ("H.H."), and other siblings at his step-mother's ("H.H.'s mother") house for Collins' birthday party. Collins was in H.H.'s bedroom with her and was brushing and styling her hair. Collins then told H.H. to go into her closet, lie down, and "[p]ull down [her] clothes[,]" including her "pants" and "[u]nderwear." (Tr. Vol. 2 at 204, 205). Collins then removed his pants and underwear, laid on top of H.H., and did "[s]omething inappropriate" to her. (Tr. Vol. 2 at 206). Specifically, Collins touched H.H.'s "[b]ottom with his

[1] IND. CODE § 35-42-4-3.

"[p]rivate" and asked her, "Do you like it?" (Tr. Vol. 2 at 207, 208). Collins stopped when he heard someone approaching the bedroom. Collins told H.H. to put on her clothes, not to tell anyone what had happened, and to "act natural." (Tr. Vol. 2 at 208).

[4] In November 2018, while H.H. was on her school computer, she entered a computer search of "boys' privates in girls' butts." (Tr. Vol. 2 at 185). The school contacted H.H.'s mother to discuss H.H.'s computer search. Thereafter, H.H. disclosed to her mother that Collins had touched her, and H.H.'s mother contacted the police. H.H. underwent a forensic interview and indicated that Collins had touched her "bottom" with his "private area[.]" (State's Exs. 10, 11). H.H.'s mother phoned Collins about H.H.'s allegations, and he denied that he had touched her and said that it was probably someone else.

[5] The State charged Collins with Level 4 felony child molesting.[2] The trial court held a three-day jury trial in March 2021. The State presented multiple witnesses who testified to the facts as set forth above.

[6] During H.H.'s direct examination testimony, she had a "hard" time explaining how Collins had touched her bottom with his penis. (Tr. Vol. 2 at 204). The prosecutor asked H.H. to speak up multiple times. H.H. testified that after Collins had told her to go into the closet, pull down her pants and underwear, and lie down, he had done "[s]omething inappropriate" to her. (Tr. Vol. 2 at

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[2] The State also charged Collins with Level 3 felony child molesting but later dismissed that charge.

206). H.H. then said that she "d[id]n't know how [to] . . . explain it" and that she "d[id]n't know what [to] call it[.]" (Tr. Vol. 2 at 206). The prosecutor and H.H. then engaged in the following colloquy:

> Q Was [Collins] in the closet with you?
>
> A Yes.
>
> Q And was he close to you?
>
> A Mhmm. (Affirmative response).
>
> Q Did he, was he close enough to touch you?
>
> A Yes.
>
> Q Did [Collins] touch you?
>
> A Yes.

(Tr. Vol. 2 at 206-07). Collins then objected to the State's question as leading. The State responded by asking the trial court for "some leeway" since H.H. was a nine-year-old child. (Tr. Vol. 2 at 207). The trial court agreed and overruled the objection. Thereafter, H.H. testified that Collins touched her "[b]ottom with his "[p]rivate" and asked her, "Do you like it?" (Tr. Vol. 2 at 207, 208). H.H. also testified that she did her computer search to "look[] up what [Collins] [had] do[n e]" to her and "to figure [it] out[.]" (Tr. Vol. 2 at 210).

[7] The jury found Collins guilty as charged. The trial court imposed an eight (8) year sentence. Collins now appeals.

Decision

[8] Collins argues that the trial court abused its discretion by allowing the State to ask leading questions to H.H. during her direct examination. Specifically, he asserts that the State's question to H.H. regarding whether Collins had touched her was a leading question that should have been excluded under Indiana Evidence Rule 611.

[9] The State responds that H.H.'s "direct examination was proper in light of her tender age, the sensitive nature of the subject matter of her testimony, and her lack of familiarity with the terminology to describe what [Collins] had done to her." (State's Br. 12). We agree with the State.

[10] The admission and exclusion of evidence falls within the sound discretion of the trial court, and we review the admission of evidence only for an abuse of discretion. *Wilson v. State*, 765 N.E.2d 1265, 1272 (Ind. 2002). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Conley v. State*, 972 N.E.2d 864, 871 (Ind. 2012), *reh'g denied*.

[11] Indiana Evidence Rule 611 provides that "[l]eading questions should not be used on direct examination *except* as necessary to develop the witness's testimony." Evid. R. 611(c) (emphasis added).[3] A leading question is one that

[3] Evidence Rule 611 also allows leading questions "when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party." Evid. R. 611(c).

suggests the desired answer to the witness. *Williams v. State*, 733 N.E.2d 919, 922 (Ind. 2000). "However, the mere mention of a subject to which a witness is desired to direct his or her attention is not considered to be a suggestion of an answer." *Id.* Our Indiana Supreme Court has explained that leading questions are allowed "on direct examination to develop the testimony of certain kinds of witnesses-for example, children witnesses; young, inexperienced, and frightened witnesses; special education student witnesses; and weak-minded adult witnesses." *Id.* "The use of leading questions on direct examination generally rests within the trial court's discretion." *Id.*

[12] Here, our review of the record reveals that the prosecutor's questions were necessary to help develop H.H.'s testimony. Specifically, H.H., who was a young child nervous about testifying and inexperienced about the terminology to explain body parts, had difficulty discussing the details of how she had been molested by Collins. "When a child is a witness, it is permissible for the trial court to allow leading questions, given the varying degrees of comprehension of young people." *King v. State*, 508 N.E.2d 1259, 1263 (Ind. 1987). Accordingly, the trial court did not abuse its discretion by allowing the State some leeway and allowing the State to ask leading questions during H.H.'s direct examination. *See, e.g.*, *Riehle v. State*, 823 N.E.2d 287, 294 (Ind. Ct. App. 2005) (concluding that the trial court did not abuse its discretion by allowing the State to use leading questions in order to elicit information from the ten-year-old, reluctant victim about the details of how she had been molested by the defendant), *trans. denied*.

[13] Affirmed.

Bailey, J., and Crone, J., concur.