

No. 1-10-0673

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 29131
	)	
SHAWN JOHNSON,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Karnezis concurred in the judgment.

**ORDER**

- ¶ 1 **HELD:** Where no evidence was presented as to how the defendant's and victim's clothing was laundered, the trial court's restriction of cross-examination of the State's DNA expert on the topic of laundry and transference was not a clear abuse of discretion resulting in manifest prejudice to the defendant.
- ¶ 2 Following a jury trial, defendant, Shawn Johnson, was convicted of predatory criminal sexual assault, aggravated criminal sexual abuse, and was sentenced to consecutive terms of 30 and 7 years in prison, respectively. On appeal, defendant contends he was denied his right to confront the witnesses against him where the trial court did not allow his attorney to question the State's DNA expert about an innocuous reason for the presence of his DNA on the victim's underwear, the only physical evidence against him. For the reasons that follow, we affirm.
- ¶ 3 Defendant's conviction arose from events that occurred beginning in August 2003 through October 2005. Following defendant's arrest, the State charged him with 26 sexual crimes against

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his step-daughter, S.S., and proceeded to trial on 5 of those counts.

¶ 4 At trial, S.S. testified that on October 29, 2005, when she was 10 years old, she lived in Chicago with her mother, her siblings, and defendant. She had been living with defendant, who was married to her mother, for approximately six years. Somewhere between 5 p.m. and 6 p.m. on the date in question, defendant called S.S. to her room. When she met defendant in her bedroom, he closed the door and demanded she take her clothes off. This had happened previously and was not an unusual occurrence. Defendant insisted she take her clothes off and lie on the floor next to her bed with her head against the door, so she did. Defendant took off his clothing and got on top of her so they were face-to-face. S.S. stated defendant moved his body around in circles on top of her, with his penis touching her vagina.

¶ 5 After approximately two minutes, S.S.'s mother opened the door, which was partially blocked by S.S.'s head, squeezed into the room, and started yelling. S.S. immediately put on her underwear and the rest of her clothes, and then accompanied her mother to a nearby gas station, where her mother used the payphone to call the police.

¶ 6 S.S. testified she went to the hospital with her mother and the police. There, she told the emergency room doctor what happened. The doctor examined S.S. and gave her a shot. At some point, she gave her underwear to the doctor.

¶ 7 Following the examination, S.S. spoke with a man from the Illinois Department of Children and Family Services (DCFS). A few days later, S.S. had an interview with a woman at the Chicago Children's Advocacy Center (the Center). During the interview, she told the woman defendant touched her vagina some time during the summer of 2003.

¶ 8 S.S. further testified that prior to the incident that occurred on October 29, 2005, there were instances where defendant treated her inappropriately. The incidents began with defendant doing "less" to her, but progressed to incidents similar to what happened on October 29. When the prosecutor questioned S.S. about the period when she was eight and nine years old, S.S. testified

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there were many occasions in her bedroom, defendant's bedroom, or in the kitchen, during which defendant would touch her vagina or butt or would have her disrobe, put her hand on his penis, and move her hand up and down until sometimes, "white, silky stuff [would] come out of his private part." S.S. said she did not know how often these incidents occurred, but they were too frequent to count. When pressed, S.S. said these incidents occurred more than once a day, every day, for a total of more than 20 times per-week. Sometimes her siblings or mother were at home when these incidents occurred.

¶9 S.S. testified she complained to her mother once in 2004. Around March of 2004, she talked to the police about what had been happening to her, at which point, she was taken to the Center and spoke with a woman there. S.S. testified she did not remember everything she said at the interview, but she did remember being nervous and afraid because defendant had always told her not to tell anyone what was happening because she would be put into foster care. S.S. stated she tried to tell the woman about what was going on, but it was difficult to talk about it. She told the woman there were no problems and that although she had gone to a doctor, she did not know why. S.S. acknowledged she told the woman she knew the difference between a good touch and a bad touch, but that no one had touched her in a bad way and no one had ever had her "touch their private."

¶10 At some point, S.S. and the woman took a break in their interview. After the break, S.S. told the woman defendant would have her touch his "ding-a-ling," a word S.S. used to refer to a penis. When asked further questions about the interview, S.S. acknowledged she told the woman defendant had her touch his penis on one occasion, sometime in December 2003. S.S. acknowledged she did not tell the interviewer these things before the break because she was afraid of her mother.

¶11 Diane Siegel testified that in her capacity as a forensic interviewer with the Center, she spoke with S.S. on November 2, 2005. S.S. told Ms. Siegel that on October 29, 2005, she followed defendant's directions to pull down her pants and underwear and lie on the floor. S.S. reported defendant, who had taken off his jeans and shorts, laid on top of her and moved his butt around. She

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also stated his private part touched her private part on the outside. S.S. told Ms. Siegel her mother came in the room, told defendant to get off her, and told S.S. to get dressed. S.S. and her mother then went to a gas station to use the telephone.

¶ 12 Ms. Siegel testified S.S. also reported defendant used his hand to touch her private part under her clothes more than one time during the summer of 2003. When Ms. Siegel asked S.S. what she meant by "private part," she pointed to her vagina. Ms. Siegel asked whether defendant's hand had touched her vagina since the episodes in 2003, and S.S. answered no.

¶ 13 S.S.'s older sister, P.S., testified that in October 2003, when she was 10 years old, defendant came into her room, closed the door, and had her take off all her clothes. Defendant got undressed, sat on her bed, and rubbed his penis up and down with his hand. At some point, "white stuff" came out of his penis. Defendant told P.S. to come closer. When she did, he stopped rubbing himself and touched her chest and the outside of her vagina with his hands. Eventually, defendant told P.S. to get dressed. P.S. did not tell her siblings about what happened because she was afraid. After school the next day, the same thing happened. Again, she did not tell her siblings about what defendant did because she was afraid. When asked to explain, P.S. stated that at the time, she was afraid if she said anything she would get in trouble and be taken away from her mother.

¶ 14 P.S. further testified that in July of 2004, just before her 11th birthday, defendant called her into his bedroom, had her close the door, and get undressed. Defendant took off all his clothes and had P.S. lie down on her back on the bed. Defendant got on top of her, with his penis touching the outside of her vagina, and moved up and down. P.S. estimated this lasted for approximately 10 minutes. At some point, she realized something had come out of defendant's penis because she could feel it on her body. Defendant then got off P.S. and had her get dressed. P.S. went to the bathroom to wash up and then went back outside. P.S. did not tell anyone what happened because she was afraid. In particular, she was afraid she would be put into foster care. According to P.S., events like these happened "a couple of more times." The encounters stopped when she started

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getting her period.

¶ 15 Chicago police Detective Arnold Weddington testified that in March 2004, he was assigned to investigate allegations of sexual crimes perpetrated against S.S. and P.S. by defendant. According to Detective Weddington, the case was suspended after P.S. and S.S. were interviewed at the Center, as there was not enough evidence to proceed. On October 29, 2005, he was notified of a new incident involving S.S. and P.S. Four days later, Detective Weddington observed an interview between S.S. and Ms. Siegel at the Center. Following the interview, the case became an ongoing investigation.

¶ 16 Carey Kato, a forensic interviewer at the Center, testified that she interviewed S.S. on March 16, 2004. She established that S.S. knew the difference between the truth and lies and discussed with her the difference between good touches and bad touches. S.S. related that no one had ever touched her "private part" or asked her to touch his. Ms. Kato asked S.S. if she knew what she had come to the Center to talk about. S.S. became silent and shook her head no. S.S. confirmed she had seen a doctor, but said she did not know why. When S.S. became silent and indicated she was afraid she would become a foster child and began to cry, Ms. Kato decided to take a break.

¶ 17 A few minutes later, Ms. Kato continued the interview. S.S. told Ms. Kato defendant had called her into a room, pulled out his "ding-a-ling" – which S.S. explained was a private part on a boy – and had her touch it with her hand. S.S. related that she told her mother about the encounter. When Ms. Kato asked when this happened, S.S. said it was around Christmastime. S.S. stated she was afraid of her mother, and again, she was afraid of becoming a foster child.

¶ 18 The parties entered into a number of stipulations, including the following. On October 29, 2005, Dr. Veena Ramaiah treated S.S. in the emergency room, performed an examination, and compiled a sexual assault kit, which she turned over to the Chicago police. The kit was inventoried and a proper chain of custody was maintained. A buccal swab was taken from defendant, sealed, inventoried, and transported to the State crime laboratory for analysis, following a proper chain of

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custody.

¶ 19 Kelly Ashton-Hand, who was accepted as an expert in forensic biology, testified she worked for the Illinois State Police as a forensic DNA analyst and forensic biologist. Ms. Ashton-Hand was assigned to S.S.'s case and received the sexual assault kit that had been assembled in the hospital. The kit included vaginal, oral, and rectal swabs, as well as a pair of underwear. Ms. Ashton-Hand tested the swabs for the presence of semen and saliva and found none. She then inspected and tested the crotch panel of the underwear in several ways. Upon visual inspection, Ms. Ashton-Hand found yellowish-brown stains. A light-source test revealed 11 stains made by body fluids, three of which subsequently tested positive for semen. Ms. Ashton-Hand explained trace semen was identified on the underwear, which meant there was a limited amount of semen on the underwear. Ms. Ashton-Hand cut out the three stains, packaged them, and sent them out for DNA testing.

¶ 20 On cross-examination, defense counsel established Ms. Ashton-Hand found only a trace amount of semen on the underwear, and she could not say when the semen was deposited there. Counsel then attempted to ask Ms. Ashton-Hand whether the semen could have gotten on the underwear "from secondary transference." The State objected on the basis that the question was hypothetical and not supported by the evidence. The trial court sustained the objection. At a sidebar-conference, defense counsel indicated he wanted to question Ms. Ashton-Hand about articles she had faxed to the defense. The trial court stated counsel could ask Ms. Ashton-Hand about transference, but could not go into hypotheticals "that have possibilities all over the place." Specifically, the trial court barred defense counsel from posing hypothetical questions regarding laundering because no witness had testified on the topic.

¶ 21 Ms. Ashton-Hand testified transference was the transfer of matter, including semen or sperm heads, from one object to another. She agreed that an example of direct transference would occur if defense counsel shook her hand and his sweat transferred to her hand. It would be possible her hand could test positive for the presence of counsel's DNA profile. Ms. Ashton-Hand explained that

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secondary transference of biological fluid could occur if an intermediate area object was involved. As an example, Ms. Ashton-Hand stated: "So if I touch someone and that person goes to touch someone else, it's possible that my DNA ends up on that second person." Defense counsel then attempted to ask Ms. Ashton-Hand about the existence of studies where secondary transference occurred where garments were put in a washing machine together, but the trial court sustained the State's objection. At another sidebar conference, the trial court acknowledged there was evidence in the record defendant and S.S. lived together in a family home, but noted there had been no evidence presented regarding laundry. The trial court informed defense counsel that if he were to present a witness who testified as to how laundry was done in the home, then he could then recall Ms. Ashton-Hand and ask her about transference during the laundering process. The trial court also sustained the State's objections to defense counsel's attempts to question Ms. Ashton-Hand about a published article on transference occurring during laundering.

¶ 22 On redirect examination, Ms. Ashton-Hand agreed her findings for the presence of semen on the underwear were consistent with defendant rubbing his penis against the outside of S.S.'s vagina and ejaculating, and then S.S. putting on her underwear.

¶ 23 Janice Youngsteadt was accepted as an expert in forensic DNA analysis. In the course of her employment as a DNA analyst with the Illinois State Police crime laboratory, she was assigned to S.S.'s case. She developed a DNA profile from a buccal swab collected from defendant, as well as a DNA profile from a blood standard collected from S.S. Ms. Youngsteadt tested the cuttings from S.S.'s underwear and found a mixture of two individuals' DNA profiles, one male and one female. The female profile matched S.S.; the male profile matched defendant. Specifically, Ms. Youngsteadt testified the male DNA profile would be expected to occur in approximately one in 3.7 quintillion unrelated black individuals.

¶ 24 After the State rested, defendant moved for a directed finding, which was denied. Defendant did not present any evidence and rested. In chambers, defense counsel raised an objection to the

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trial court's refusal to allow cross-examination of Ms. Ashton-Hand on the issue of transference, in particular, cross-examination based on published articles on the topic of the possibility of sperm being transferred during laundering, which counsel indicated Ms. Ashton-Hand had faxed to him. The trial court indicated it would not be changing its ruling, explaining that the topic of laundering was never brought out during the witnesses' testimony.

¶ 25 The jury found defendant guilty of two counts of predatory-criminal sexual assault and three counts of aggravated-criminal sexual abuse. The trial court denied defendant's motion for a new trial. At sentencing, the trial court indicated the counts of predatory-criminal sexual assault would merge. The court thereafter imposed a sentence of 30 years for predatory-criminal sexual assault, to run consecutive to three concurrent terms of 7-years' imprisonment for the counts of aggravated-criminal sexual abuse. Defendant filed a motion to reconsider sentence, which was denied.

¶ 26 On appeal, defendant contends he was denied his sixth amendment right to confront the witnesses against him and present a defense where the trial court did not allow his attorney to question Ms. Ashton-Hand on the topic of secondary transference of semen in the laundry. He argues, because DNA was the only physical evidence against him, and because the State repeatedly emphasized the DNA evidence in closing arguments, it was particularly crucial to his defense that he be able to present an alternative, innocuous reason for its presence on S.S.'s underwear. He challenges the trial court's refusal to allow defense counsel to introduce published articles concerning secondary transference in the laundering process, as well as the court's decision to allow Ms. Ashton-Hand to testify that the presence of his DNA was consistent with the factual scenario described by S.S. at trial. He asserts these errors were not harmless.

¶ 27 The sixth amendment right to confrontation includes a criminal defendant's right to cross-examine witnesses against him. *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000). While any permissible matter that affects the witness's credibility may be developed on cross-examination, a defendant's rights under the confrontation clause are not absolute. *Id.* The latitude of

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cross-examination is a matter within the sound discretion of the circuit court, and, on review, we will not disturb a trial court's decision to restrict cross-examination absent a clear abuse of discretion resulting in manifest prejudice to the defendant. *Id.*

¶ 28 Expert witnesses may be cross-examined for the purpose of explaining, modifying, or discrediting their testimony. *People v. Stults*, 291 Ill. App. 3d 71, 79 (1997). However, during cross-examination, the assumptions suggested in a hypothetical question must be supported by the record. *Id.*

¶ 29 In the instant case, none of the witnesses testified defendant's and S.S.'s clothing was laundered together. While there was testimony they lived in the same household, defendant did not elicit any testimony regarding laundry, despite having had the opportunity to cross-examine S.S. and P.S. and to present his own witnesses. Absent any evidence regarding laundering, hypothetical questions regarding laundry were improper. Accordingly, we cannot find the trial court abused its discretion in restricting defendant from asking Ms. Ashton-Hand questions based on the premise that defendant's and S.S.'s clothing mingled in the wash.

¶ 30 Although the trial court did not allow defendant to present hypothetical questions to Ms. Ashton-Hand regarding laundry, defendant was nevertheless allowed to elicit responses from her that there was only a trace amount of semen on S.S.'s underwear and she could not say when the semen was deposited on S.S.'s underwear. Defense counsel also was able to elicit a general explanation of the theory of secondary transference. Thus, the record demonstrates defendant had the opportunity to make the jury aware of his theory of the case – that his DNA ended up on S.S.'s underwear through secondary transference. We find no abuse of discretion resulting in manifest prejudice to defendant.

¶ 31 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 32 Affirmed.