

No. 1-11-3359

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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. 08 CR 5664
	)	
DONNELL WILLIAMS,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Simon and Justice Pierce concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Trial court did not err in admitting out-of-court statements of a minor to her mother and a child-advocacy forensic interviewer, nor did counsel render ineffective assistance by stipulating to a detective's testimony of another out-of-court statement by the minor.

¶ 2 Following a jury trial, Donnell Williams, the defendant, was convicted of four counts of aggravated criminal sexual abuse and one count of attempted criminal sexual assault and sentenced to concurrent six-year prison terms. Williams contends on appeal that the court erred in

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admitting multiple hearsay statements of the victim. He also contends that trial counsel was ineffective for stipulating to testimony of another statement by the victim.

¶ 3 Williams was charged with various counts of attempted criminal sexual assault and aggravated criminal sexual abuse against K.T., who was alleged to be under 13 years old at the time of the offenses between August 1, 2005, and June 1, 2007.

¶ 4 Before trial, the State moved pursuant to section 115-10 of the Code of Criminal Procedure (725 ILCS 5/115-10 (West 2010)) to introduce into evidence two statements by K.T., seven years old at the time of the offenses, describing alleged sexual acts by Williams towards K.T. The motion alleged that K.T. would testify at trial and that her statements would be corroborated by Williams's confession. One statement was made to K.T.'s mother Tomar T. on July 8, 2007. The other statement was made at a victim-sensitive interview on August 20, 2007, at the Children's Advocacy Center (Center) witnessed by police detective Greg Granadon, an assistant State's Attorney (ASA), and forensic investigator Raziya Webster-Lumpkins.

¶ 5 At the motion hearing, K.T.'s mother Tomar T. testified that she asked K.T. on July 8, 2007, if she had been touched inappropriately. She asked because K.T. had a vaginal discharge, had for several months been "freaking out" and panicking in the presence of men, told her brother and cousin "that she was going to make them suck her dick," and grabbed and struck her brother's penis. K.T. replied to Tomar that Williams, Tomar's cousin, had kissed her and put his finger in her vagina. Tomar immediately called the police. K.T. told Tomar that this contact happened in Williams's home at night while Tomar worked at a restaurant. Tomar owned a restaurant from the summer of 2005 until early 2007, and K.T. had stayed in Williams's home less than ten times

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during that period. However, his apartment was in the same building as Tomar and K.T.'s home and Tomar saw him nearly daily. On August 20, 2007, after K.T. returned from a scheduled out-of-state trip to visit family, Tomar took her to the Center for a victim-sensitive interview.

¶ 6 Raziya Lumpkins testified that she was a forensic interviewer for the Center and, on August 20, 2007, interviewed eight-year-old K.T. at the Center for less than an hour. A detective and ASA observed the interview from outside the interview room through a one-way mirror and did not participate. Before the interview, Lumpkins met with the detective and ASA and was apprised of the allegations regarding Williams. When the interview began, Lumpkins introduced herself to K.T. and told her that she was not in trouble and could tell her anything she wanted to in any words she chose. Lumpkins asked questions to determine whether K.T. knew the difference between truth and lies, concluding from her answers that she did. Lumpkins asked K.T. open-ended and non-leading questions; she did not tell her how to respond nor witness anyone else telling her how to respond. K.T. seemed cooperative and "average" during the interview. Lumpkins did not take notes of the interview, explaining that the Center's protocol was for interviewers to neither take interview notes nor prepare an interview report. Before the instant hearing, Lumpkins refreshed her recollection with the detective's report.

¶ 7 K.T. told Lumpkins that Tomar brought her to the Center to truthfully "tell what happened": that Williams – identified by first name and as Tomar's cousin – "tried to molest her." He "tried to have sex with her" by trying "to kiss her on her lips and on her chest, on her skin, and he tried to touch her private parts." K.T. pointed to her vaginal area to explain what she meant by "private parts" and clarified that Williams kissed the skin of her chest. He also "tried to dig in her

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pajamas, and she \*\*\* felt the touch on her private," and that "he told her to suck his dick or private, but she didn't do it." K.T. said that this occurred once in Williams's home when she was seven years old and that she reported it to Tomar. When asked if she had touched Williams, K.T. replied that "she touched his private under a cover with her finger." Lumpkin did not recall seeing K.T. "flash" the one-way mirror during the interview.

¶ 8 Following arguments of the parties, the court found that K.T.'s report or outcry to Tomar and her victim-sensitive interview would be admitted. The court noted that Lumpkins asked K.T. non-leading open-ended questions and found that K.T.'s accounts to Tomar and Lumpkins were consistent. The court found that the time between the incident and K.T.'s outcry was explainable by her age and "the mental and emotional type scenario that that kind of victim goes through," that Tomar "acted reasonably \*\*\* taking the totality of the circumstances into consideration," and that the time between the outcry and the victim-sensitive interview was short.

¶ 9 At trial, K.T. testified that Williams, her second cousin, had lived in the same apartment building as Tomar, K.T., and her siblings. Once, when she was seven years old and during a cold time of the year, K.T. stayed at Williams's home with her brother and Williams's son; K.T.'s brother slept in the son's room while K.T. slept in Williams's bed because she found the couch too hard. When they were in his bedroom, Williams told K.T. that he loved her "in a really inappropriate way," was wearing no underwear, and would try to kiss her. He then kissed her on the mouth and on her chest, having pulled aside her pajamas. She pulled away from him but did not hit him. While Williams did not remove his pajamas, he pulled out his penis, poured a red liquid on it, and told K.T. to "suck his dick \*\*\* like sucking a thumb." She refused though he asked

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repeatedly. He touched her vagina with his mouth and hand; she told him to stop because it was inappropriate. Williams baby-sat K.T. once after the incident. K.T. told her cousin Miriam, and about a year after the incident told Tomar, having remained silent out of fear of "get[ting] into trouble."

¶ 10 K.T. was later examined by a physician and interviewed at the Center, when Tomar took her to the center and told her to tell the truth "about everything that happened." In the Center interview, K.T. did not mention telling Miriam about the incident but did mention the red liquid, that Williams did not fully remove her pajamas, and his assertion that he was not wearing underwear. She could not recall mentioning in the interview that Williams said he loved her, that she hit him, or that he touched her buttocks. She did not remember lifting her shirt in front of the one-way mirror in the interview room. K.T. was interviewed by detectives but could not recall telling them that she told Miriam or that Williams struck her, and she did not tell them (nor Tomar or the Center interviewer) that she bit Williams because she had not.

¶ 11 Tomar T., K.T.'s mother, testified consistently with her hearing testimony, adding that K.T.'s erratic behavior that prompted the touching question included (in addition to the earlier-mentioned incidents) K.T. kicking her brother "in the genitals quite a few times" and drawing a picture of a dog with a bloody penis. Tomar could not recall K.T. expressing concern about Williams before her report, nor K.T. mentioning that she told Miriam about the incident.

¶ 12 Detective Greg Granadon testified that he was assigned K.T.'s case, including the allegations against Williams, on July 8, 2007. He observed Lumpkins' victim-sensitive interview of K.T. at the Center, and he testified generally consistently with Lumpkins' hearing testimony

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regarding the interview. The questions to K.T. to establish that she knew the difference between truth and lies did not include fantasy or fiction. K.T. did not state that she bit Williams or told him to stop, nor that he struck her, touched her buttocks, or put red liquid on his penis. Detective Granadon "believe[d] she only told her mother" about the incident. He could not recall if K.T. "flashed" the one-way mirror during the interview; when shown notes by another observer, he explained that he must not have been looking at the mirror at that moment. After the victim-sensitive interview, Detective Granadon interviewed Tomar, who said that K.T. told her that Williams put his hand and a finger in her vagina; K.T. had not so stated during her interview.

¶ 13 ASA Mariano Reyna testified to interviewing Williams following his arrest, after informing him that he is a prosecutor and advising him of his *Miranda* rights; Williams was not handcuffed. Williams initially denied touching K.T., who he acknowledged to be six to eight years old. He eventually admitted that, on a night when K.T. and her brother stayed with him and his son, he touched K.T. inappropriately on the living room couch while she was awake. He kissed her on the face and mouth, hugged her, kissed her clothed chest, and touched her clothed buttocks. When he did the latter, she "froze" but said nothing. He stopped when he realized that he was molesting K.T. and that it was wrong to do so. He admitted to ASA Reyna that what he did was "sick" and that he acted out of loneliness. He never admitted to touching K.T.'s vagina, exposing his penis to her, or asking her to perform oral sex on him. After Williams's statement, ASA Reyna confirmed outside police presence that he was treated "fine," used the washroom, and ate a sandwich.

¶ 14 Dr. Marjorie Fujara, a physician, testified to examining K.T. at the Center on August 23, 2007. Before the examination, Tomar told Dr. Fujara that Williams allegedly touched K.T.'s

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"private." When Dr. Fujara asked K.T. if anything had happened to make her scared, sad, or embarrassed, she replied that "Donnell molested me." The examination was "normal," which Dr. Fujara opined was unexceptional in light of K.T.'s report of touching about a year earlier.

¶ 15 The parties stipulated that Detective Eileen O'Donnell would testify to interviewing K.T. at the Center on March 12, 2008. K.T. said that Williams put his mouth on her breast, kissed her "hard" on the mouth, touched her clothed vagina and buttocks, and tried to put his hand inside her clothing "but she would not let him." K.T. also told Detective O'Donnell that she bit him when he touched her so he "smacked" her, that he told her sucking his penis would be like sucking her thumb, and that she refused to put her mouth on his penis, which she saw when he removed his pajamas. The parties stipulated that Williams was born in 1978.

¶ 16 Pastor A. Edward Davis and Jerry Johnson testified for the defense that they had known Williams for six years through their church and that he volunteered in various church roles including vacation Bible school. Johnson considered Williams a friend, and Davis would not have approved him for these roles if he did not believe him to have integrity and be "beyond reproach." Both Davis and Johnson heard other church members discuss Williams's reputation, describing him as dedicated and having high moral standards. Neither Davis nor Johnson knew K.T., and their opinions of Williams were not changed by her allegations.

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¶ 17 Following closing arguments, instructions, and jury deliberations, the jury found Williams guilty of one count of attempted criminal sexual assault and four counts of aggravated criminal sexual abuse (mouth to mouth, mouth to chest, hand to buttocks, and hand to vagina).

¶ 18 In his post-trial motion, Williams challenged the sufficiency of the evidence and the grant of a particular State motion *in limine*, but did not challenge the admission of Detective Granadon's testimony, the court's admissibility ruling under section 115-10, or Detective O'Donnell's stipulated testimony. Following argument, the court denied the motion.

¶ 19 Following evidence and arguments in aggravation and mitigation, the court convicted Williams and sentenced him to concurrent prison terms of six years. His motion to reconsider his sentence was denied, and this appeal timely followed.

¶ 20 On appeal, Williams contends that the court erred in admitting multiple hearsay statements by K.T. because they (1) inadmissibly bolstered her testimony, (2) exceeded the scope of the section 115-10 hearsay exception, and (3) were more prejudicial than probative. He similarly contends that trial counsel was ineffective for stipulating to K.T.'s statement to Detective O'Donnell, in that the statement was inadmissible hearsay and improperly bolstered K.T.'s testimony.

¶ 21 Williams admits that he failed to preserve his claim that K.T.'s hearsay statements were erroneously admitted but asserts that the evidence was closely-balanced and asks us to address this claim as plain error. Generally, an issue is preserved – that is, not forfeited – only if it is raised at

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trial and in a post-trial motion. *People v. Leach*, 2012 IL 111534, ¶ 60. However, the plain error doctrine allows us to set aside forfeiture of a clear or obvious error where either (1) the evidence was so closely balanced that the error alone threatens to affect the outcome of trial, regardless of the seriousness of the error, or (2) the error is so serious that it affected the fairness of the defendant's trial and challenges the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Eppinger*, 2013 IL 114121, ¶ 18; *Leach*, 2012 IL 111534, ¶ 60. The defendant bears the burden of showing a plain error, and the first step of plain error analysis is determining whether there was an error at all. *Eppinger*, 2013 IL 114121, ¶ 19.

¶ 22 Hearsay – a statement, other than one made by the witness during his or her trial testimony, offered in evidence to prove the truth of the matter asserted – is generally inadmissible as trial evidence. Ill. Rs. Evid. 801 & 802 (eff. Jan. 1, 2011). Section 115-10 (725 ILCS 5/115-10 (West 2010)) provides a hearsay exception in prosecutions for numerous enumerated offenses including sex offenses, where it is alleged that "a physical or sexual act [was] perpetrated upon or against a child under the age of 13," whereby the court can admit "testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim." 725 ILCS 5/115-10(a)(2) (West 2010). The court may admit such a statement only if (1) the court finds after a hearing "that the time, content, and circumstances of the statement provide sufficient safeguards of reliability," (2) the child either testifies or "is unavailable as a

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witness and there is corroborative evidence of the act which is the subject of the statement," and (3) the statement in question was made before the child became 13 or within three months after the commission of the offense, whichever occurs later. 725 ILCS 5/115-10(b) (West 2010).

¶ 23 In assessing the reliability of a child's out-of-court statement, the court considers the totality of the circumstances; the relevant factors include the child's mental state, spontaneous and consistent repetition of the incident, use of terminology unexpected of a child of similar age, and lack of a motive to fabricate. *In re Brandon P.*, 2013 IL App (4th) 111022, ¶¶ 38-39. While the court must determine that the statement is not the result of adult prompting or manipulation, statements "shall not be excluded on the basis that they were obtained as a result of interviews conducted pursuant to a protocol adopted by a Child Advocacy Advisory Board \*\*\* or that an interviewer or witness to the interview was or is an employee, agent, or investigator of a State's Attorney's office." 725 ILCS 5/115-10(e) (West 2010); *Brandon P.*, 2013 IL App (4th) 111022, ¶¶ 38-39. While the State bears the burden of showing the statement's reliability, the court's decision to admit statements into evidence is reviewed for an abuse of discretion and thus will be set aside only where decision was arbitrary or fanciful or where no reasonable person would agree with the court. *Brandon P.*, 2013 IL App (4th) 111022, ¶¶ 38-39. Moreover, an error regarding the admission of evidence is harmless where there is no reasonable probability that the finder of fact would have acquitted the defendant absent the error. *People v. Stull*, 2014 IL App (4th) 120704, ¶ 104.

¶ 24 This court has repeatedly rejected the argument that multiple witnesses testifying to the child victim's statements under section 115-10 constitute improper cumulative testimony, holding that the statute imposes no such limitation on the number of witnesses who may testify. *Stull*, 2014 IL App (4th) 120704, ¶ 93. Similarly, we have rejected the argument that testimony regarding a child victim's statements constitute improper prior consistent statements when the victim also testifies, noting the vital difference between rehabilitative prior consistent statements and substantive prior consistent statements. *Stull*, 2014 IL App (4th) 120704, ¶¶ 97-101. In *Stull*, the court stated:

"E.S.'s prior statements at issue here, introduced through the testimonies of Russell, Grieve, and Pearson, were properly admitted as substantive evidence under section 115–10 of the Criminal Procedure Code. That means that those statements could be considered substantively by the jury – that is, the jury could consider them along with all of the other evidence in the case when reaching its verdict – regardless of whether E.S. testified at trial consistently or inconsistently with those prior statements."

(Emphasis added.) *Stull*, 2014 IL App (4th) 120704, ¶ 101.

¶ 25 Here, Lumpkins asked K.T. non-leading open-ended questions during the victim-sensitive interview, and nothing in K.T.'s account seems out-of-place for her age. While K.T. did not report

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Williams's offenses for about a year, she answered Tomar decisively once confronted with Tomar's suspicions and provided a plausible explanation of her prior reticence. Tomar gave a credible account of the source of her suspicions, based on reasonable and articulable factors, and explained the lapse of time between the day K.T. reported the offenses, the day Tomar called the police, and the day of the victim-sensitive interview at the Center. It was reasonable for the court to find K.T.'s statements to Tomar and Lumpkins reliable, and the statements were therefore admissible under the provisions of section 115-10.

¶ 26 Just as we have rejected other argued limitations on section 115-10 not included in its text, we decline Williams's invitation to impute into section 115-10 a requirement that the child witness be unable to adequately testify to the alleged incident. The statutory language admits a child's out-of-court statement if she is "unavailable as a witness" and corroborative evidence exists, or if she "testifies at the proceeding" without further limitation. 725 ILCS 5/115-10(b)(2) (West 2010). In other words, and as stated above, the child victim's prior statements are not merely rehabilitative or corroborative of the victim's testimony but substantive evidence by themselves.

¶ 27 Turning to Detective O'Donnell's stipulated testimony and defense counsel's alleged ineffectiveness for entering into the stipulation, Williams argues that one of the offenses – aggravated criminal sexual abuse by touching his hand to K.T.'s buttocks – would not have survived a *corpus delicti* challenge because the only evidence that he touched K.T.'s buttocks came from his confession and O'Donnell's testimony. However, *corpus delicti* is not overparsed in the

manner Williams suggests; that is, a confession need not be corroborated as to each element of the charged offense or offenses. As our supreme court has stated, the:

"*corpus delicti* rule requires only that the corroborating evidence correspond with the circumstances recited in the confession and tend to connect the defendant with the crime. The independent evidence need not precisely align with the details of the confession on each element of the charged offense, or indeed to any particular element of the charged offense." *People v. Lara*, 2012 IL 112370, ¶ 51.

The *Lara* court therefore held that reversal of a defendant's conviction for predatory criminal sexual assault, on the basis that his confession was the only evidence of penetration, was itself reversible error. *Lara*, 2012 IL 112370, ¶ 63.

¶ 28 Williams argues that *Lara* does not supersede the supreme court's decision in *People v. Sargent*, 239 Ill. 2d 166, 185 (2010), that corroborating evidence "must relate to the specific events on which the prosecution is predicated." The *Lara* court noted, however, that:

"*Sargent* recognized that in some instances one type of criminal activity could be 'so closely related' to another type that 'corroboration of one may suffice to corroborate the other.' [Citation.] Thus, *Sargent* suggests that the same corroborating

evidence may suffice to support a defendant's confession to multiple offenses when the offenses possess some distinctive elements. Due to the fact-intensive nature of the inquiry, however, the question of whether certain independent evidence is sufficient to establish specific charged offenses must be decided on a case-by-case basis. Our acknowledgment in *Sargent* that not all elements of each offense must be expressly corroborated in all criminal cases seriously undermines defendant's argument here. Contrary to defendant's claim, *Sargent* may be properly read to support the general rule that corroboration is not compulsory for each element of every alleged offense." *Lara*, 2012 IL 112370, ¶ 26, citing *Sargent*, 239 Ill. 2d at 185.

Given the fact that Williams's offenses all occurred in one incident in a very short time, we find that certain charged offenses were so closely related to other charged offenses that K.T.'s clear corroboration of many of the offenses amply suffices to corroborate the one offense she did not corroborate.

¶ 29 In light of K.T.'s testimony, the admissible testimony of Tomar and Lumpkins, and Williams's confession, and for the reasons stated above in ¶¶ 24-26, we find that the court did not abuse its discretion or err in admitting K.T.'s hearsay statements, and because there was no error

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and the evidence was not closely balanced we find no plain error. We also find, following *Lara*, that Williams was not prejudiced by counsel's stipulation to Detective O'Donnell's testimony – not only on the particular issue of *corpus delicti* but generally – so that counsel did not render ineffective assistance.

¶ 30 Accordingly, the judgment of the circuit court is affirmed.

¶ 31 Affirmed.