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2016 IL App (4th) 140423-U

NO. 4-14-0423

FILED
August 5, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
LYN Y. NIEMANN,	)	No. 13CF488
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in allowing a witness to testify to the demeanor of one of the victims during the initial interview.

(2) The trial court did not err in allowing the physician to testify as an expert witness on her diagnosis the children were victims of sexual abuse.

(3) The physician's testimony regarding statements the two children made (each saw defendant abuse someone else) was improper because those statements were not pertinent to diagnosis or treatment.

(4) Defendant failed to establish plain error, as the evidence was not closely balanced and the children testified before the jury about seeing defendant abuse the others.

¶ 2 A jury convicted defendant, Lyn Y. Niemann, of eight counts of predatory criminal sexual assault (720 ILCS 5/11-1.40(a)(1) (West 2012)), and the trial court sentenced him to natural life in prison. Defendant appeals, claiming he was denied a fair trial when (1) Heather Forrest, an investigator for the Department of Child and Family Services (DCFS),

testified as a "human lie detector"; (2) Dr. Mary Kathleen Buetow, a pediatrician, testified the victims were sexually abused without physical evidence; and (3) Dr. Buetow testified the victims stated they observed another victim being abused. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant by information with eight counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)). The information alleged, in 2012, defendant committed acts of sexual penetration with An. N. (born December 2000), Ad. N. (born April 2003), and D.K. (born March 2002), who were under 13 years of age, in that defendant, age 36 or 37, placed (1) his penis into the anus of each child, (2) a sex toy into the anus of each child, and (3) his mouth on the sex organs of An. N. and Ad. N. The victims involved were his fiancée's children, An. N. and Ad. N., and a child who was a friend of the family's, D.K., who had extended visits with defendant and his fiancée and temporarily resided with them.

¶ 5 The allegations arose from statements made on March 23, 2013, when An. N. and Ad. N. were visiting their biological father. An. N. and Ad. N. divulged information to their father that implied defendant had sexually abused them and D.K. This prompted their father to contact the police and DCFS.

¶ 6 A. Child Advocacy Center Interviews

¶ 7 1. *An. N.'s Interview*

¶ 8 On March 26, 2013, Sheree Foley, a DCFS investigator, interviewed An. N. regarding the statements he made to his father three days prior. At the time of the interview, An. N. was 12 years old. An. N. claimed defendant "[stuck] his pee pee in both, in both of our butts and use[d] toys, sexual toys." He described the "sexual toys" in detail, and remembered one of

them looked like a penis and one had "curly things on [it]," vibrate[d], and ha[d] a light at the end of it. He stated defendant uses these toys by "[sticking] it in our butts to stretch out our butt hole [*sic*] out so he could stick his pee pee in our butt." An. N. stated he would get in trouble and be grounded, spanked, or have to write out sentences. If he wanted to get out of writing sentences, he would tell defendant, who would then consult with their mother. After defendant spoke with An. N's mother, he would call An. N. into his bedroom and tell him to get undressed. An. N. stated defendant would start these encounters by "suck[ing] me and stuff like that, make me feel good, and, and then he'll do that, he'll do his thing[,] *** [s]tick his pee pee in my butt." An. N. also added defendant would use lubricant on the sex toys and on his penis. An. N. said a "white" substance would come out of defendant's penis. An. N. added defendant would request him to place his penis inside defendant's anus and perform oral sex on defendant's penis—but An. N. refused.

¶ 9 An. N. also discussed times defendant would take him to his workplace, where the sexual contact continued. When defendant's officemate left for lunch, defendant would lock the door and start engaging in sexual contact. An. N. stated defendant would use lubricant or lotion located in his desk. Defendant would tell An. N. if he told anyone he would be in "so much trouble" and he would not "know how to get out of [it]." He estimated these occurrences happened about once a week, but it had been a while since the last incident. In discussing the reasons why An. N. decided to tell his father about the abuse, he stated, "[dad was] talking about it and want[ed] to know what [was] going on so I finally opened up and said, hey, this is what's happening. I want this to happen and get fixed to where it's not gonna happen anymore [be]cause *** some days [m]om will come pick us up and we, we both are just depressed, not

wanting to leave" (referencing the every-other-weekend visitations An. N. and Ad. N. had with their biological father).

¶ 10 2. *Ad. N.'s Interview*

¶ 11 On March 26, 2013, Foley also conducted an interview with Ad. N. At the time of the interview, Ad. N. was 9 years old. Ad. N. stated when he was in trouble, instead of being spanked or writing sentences, defendant would say, "You know what? You waited long enough. We're just gonna do a trade-off." Ad. N. described a "trade-off" as when defendant "sticks his pee pee in my butt." He stated it happened "a lot" but it had been a while since the last occurrence. Ad. N. described lubricant defendant applied to his penis and the "sexual toys" defendant "put in [his] bottom just to get [him] stretched out." Ad. N. said when defendant would begin anal penetration, he would say "ow," but defendant would say, "stop." Ad. N. estimated these incidents started when he was six years old.

¶ 12 Ad. N. said these encounters started when defendant called his name from another room. Defendant would tell Ad. N. to take off his pants, underwear, and socks and lie on the bed. Defendant put cartoons on the television and then he would start the "trade-off." Defendant started the "trade-off" by applying lubricant to his penis and rubbing lubricant on Ad. N.'s buttocks. Ad. N. recounted defendant would "start sticking it in my butt and I'd say 'Ow,' and he would be like, 'It's not even in yet.' " Ad. N. said he would sometimes rub defendant's penis at his request because defendant "[said] that if I do that, that he would suck me." Ad. N. stated when defendant engaged in oral intercourse, defendant would pull down his pants and rub himself while he sucked Ad. N.'s penis. Defendant would rub himself until "he squirt[ed]" "white stuff." Ad. N. said he had observed defendant masturbating and he and An. N.

masturbate as well. Ad. N. also stated these encounters continued at defendant's workplace. Defendant kept "sexual toys" in a toolbox. Defendant told Ad. N. not to tell anyone.

¶ 13 3. *D.K.'s Interview*

¶ 14 On March 27, 2013, Heather Forrest, an investigator at DCFS, conducted an interview with D.K. At the time of the interview, D.K. was 11 years old. During the interview, D.K. did not acknowledge any inappropriate interactions with defendant. Forrest believed, based on D.K's body language and movements, there was something more that D.K. wanted to talk about. Forrest informed D.K. she would be available to talk if he wanted to talk or if anything came up.

¶ 15 On April 1, 2013, Forrest met with D.K. again, at his request, to continue the interview. D.K. spoke of the "trade-off" system mentioned by An.N and Ad. N., and he stated defendant would say, "if you *** don't want sentences, come in here and follow me." D.K. said, defendant had "put his front part in our bottoms" three or four times. D.K. said he would lie down flat on his stomach, naked, on the bed. Defendant would then apply lubricant to his penis before beginning penetration. D.K. recalled one incident when defendant used a toy on him that he described as "[a] black thing with a little knob, a circle." D.K. said most of these incidents occurred in defendant and his fiancée's bedroom and the "toys" were stored in drawers that were built into their bed frame. D.K. stated he, An. N., and Ad. N. would go to work with defendant, defendant would lock the door, and then would ask An. N. to pull his pants down and sit on his lap. D.K. also observed pictures on defendant's computer of a "little kid," and in particular, he observed a photo of a child "doing something to his mommy, like front part to a woman" where the child "[had] his hand in it."

¶ 16 B. Search Warrants

¶ 17 On March 25, 2013, a search warrant was executed at defendant's workplace, the Champaign-Urbana Public Health District. A bottle of lotion was found in defendant's desk. On March 27, 2013, a search warrant was executed at defendant's residence. In An. N.'s dresser, the investigator found three bottles of lubricant and a black vibrating anal plug with brown debris on the tip. In defendant and his fiancée's bedroom, there were a number of lubricants in the drawers of the bed frame, a box of 10 lubricants in the closet, anal desensitizing spray, numerous sex toys, and many firearms.

¶ 18 C. Police Interviews

¶ 19 On March 27, 2013, defendant was interviewed by the police. Defendant denied ever touching the children in a sexual manner. He recalled an incident where An. N. had "jock itch" and he administered lotion to An. N.'s groin area to demonstrate how to properly apply the lotion. Defendant stated he gave the children lubricant to masturbate. Defendant said the sex toys belonged to him and his fiancée and denied the children ever used them, but the children were aware of what they were. He described different forms of punishment he administered to the children, such as spanking, grounding, writing sentences, and taking items from them. Defendant stated the children went to work with him during regular business hours and the weekends, when no one else would be in the building. Defendant said the lotion in his desk at work was for his elbows.

¶ 20 Sometime after the investigation began, defendant's fiancée, An.N and Ad.N's mother, made a statement to the police. She recalled an incident from 2005 involving defendant and An. N. She opened the door to An. N.'s bedroom and observed An. N. and defendant in bed together and saw "movement underneath the covers." An. N. said he and defendant were tickling each other. She also recalled an incident involving D.K. and defendant, when D.K. resided with

them. She walked into her bedroom, which she shared with defendant, and saw defendant "playing with himself" and applying lotion to his genitals. Defendant was not wearing pants. She believed defendant had an erection at the time. She then saw D.K., lying on his stomach, naked, in front of defendant on the bed playing a video game.

¶ 21 D. DNA Evidence

¶ 22 The Illinois State Police compared the deoxyribonucleic acid (DNA) of An. N., Ad. N., D.K., defendant, and his fiancée to the DNA found on the sex toys. An. N.'s DNA was positively associated with a dildo, an inflatable bulb, a "booty beads" vibrator, and the black anal plug found in An. N's dresser with the brown residue. Defendant's DNA was also positively associated with the "booty beads" vibrator.

¶ 23 E. Testimony at Trial

¶ 24 From March 31, 2014, to April 4, 2014, a jury trial was held. The jury heard the testimony of a number of individuals, including each child victim and defendant. The children testified consistently with their interviews as recounted above. Each of them testified to seeing defendant sexually abuse the other two. Defendant challenges only the testimony of Dr. Mary Kathleen Buetow and Heather Forrest in this appeal.

¶ 25 1. *Dr. Buetow*

¶ 26 Dr. Buetow, a board-certified pediatrician, testified at trial regarding her interviews and examinations of An. N. and Ad. N. Dr. Buetow was licensed to practice pediatrics in Illinois since 1965 and had special training in child abuse and neglect. On April 1, 2013, she conducted physical examinations on An. N. and Ad. N. as a referral from the child protection team with DCFS. An. N. informed Dr. Buetow he (1) had been subject to anal intercourse by defendant since he was six years old, (2) was a victim of oral sex performed on

him by defendant, (3) had been exposed to sex toys, and (4) had observed his younger brother, Ad. N., being sexually abused. Dr. Buetow performed a physical examination of An. N., which included his anus and genitals, and determined there were no unusual findings.

¶ 27 Dr. Buetow also testified regarding her interview and physical examination of Ad. N. She testified Ad. N. provided a history involving anal intercourse with defendant since he was five years old. He told Dr. Buetow he submitted to anal intercourse to get out of punishment. He said sex toys were used on him to "stretch his bottom," and prior to intercourse, defendant would lubricate his penis. Ad. N. stated defendant would perform oral sex on him as a reward for being good at school. Ad. N. also discussed that he observed defendant performing sex on others.

¶ 28 Dr. Buetow also performed a physical examination on Ad. N. She testified, at the time of the examination, the skin around his anus was "somewhat red and irritated," but she could not say whether it was due to loose stool, sex toys, or sexual intercourse. She added she inspected both children several days after any possible anal intercourse, and if there were any tears or irritations, they would have healed rapidly, and therefore, she did not anticipate finding any. As a result, Dr. Buetow diagnosed An. N. and Ad. N. as victims of sexual abuse.

¶ 29 The following questioning of Dr. Buetow occurred on direct examination:

> "Q. So based upon your training and experience, was your visual inspection of both [An. N.] and [Ad. N.'s] anus, for example, was that consistent with the history they provided you?
>
> A. Yes.
>
> Q. And did you, based upon the history and the physical examination, did you diagnose the boys with anything?

A. I did.

Q. And what was that?

A. Both of them were victims of sexual abuse, which included anal intercourse, and included oral sex to their penis."

¶ 30 On cross-examination, Dr. Buetow further explained how she reached her diagnosis:

"Q. Doctor, you based your diagnosis on what the boys said; is that correct?

A. Correct.

Q. Did you also base that upon things you'd been told by DCFS and other people involved in this case?

A. I noted the consistency of the information that I had been given by DCFS with what the boys were telling me.

Q. Their physical, though, you said the physical exams you did didn't corroborate necessarily your diagnosis; is that correct?

A. That's not correct.

Q. That's not correct? You said that – I believe you said that it was not necessarily – it could be from loose stools or bulky stools, or it could be from intercourse. It could be from either of those things, correct?

A. Yes, but it didn't interfere with my diagnosis.

Q. Had the boys not given you detail, would you still have diagnosed them as being sexually abused?

A. It would be very difficult for any physician to make a diagnosis without getting an appropriate history."

¶ 31 Prior to the close of trial, the trial court made a record of a conversation outside the presence of the jury that occurred during Dr. Buetow's testimony:

"THE COURT: Finally, during the course of the questioning of Dr. Buetow she was asked about taking a history, *** from [Ad. N.] and [An. N] ***. There was an objection when she was asked what she learned in terms of the history that [An. N.] had supplied. I overruled the objection. There was then another objection posed to a similar question when it was asked of Dr. Buetow, what was the history that [Ad. N.] had supplied, and at that point I conducted a side bar to make sure I understood what the defense was objecting to. [Defense counsel] indicated that she was objecting because this was hearsay, and this was not part of what was offered pursuant to the 115-10 motions. Was there anything further you wished to add to that objection then, [defense counsel]?

[DEFENSE COUNSEL]: Your honor, I understand that it was taken in the course of medical history and an exam by the doctor, but it was also not a normal medical exam. It was potentially a forensic medical, only to determine information that would—could be used [for] court purposes, and for the prosecution of my client, and that was also part of my objection.

> THE COURT: All right. None of that objection was raised at the bench, I would note. Had that objection *** been made, perhaps the State could have gone into further detail, but I believe they laid sufficient foundation that it would come in as a treating physician. Again, none of those objections were made, which is why I called the parties up here. But even then I believed that there was a sufficient foundation, that it was apparent that Dr. Buetow was seeing the children as a treating physician, and not simply for the purposes of litigation. The statements that were offered as part of the history would come in specifically under 725 ILCS 5/115-13, as statements for the purpose of diagnosis, which would be consistent with the purpose of diagnosis, which would be consistent with Dr. Buetow's testimony as to why she was conducting the interviews as part of her overall examination of the children. It would also come in pursuant to Illinois Rules of Evidence 803-4 and there was a sufficient foundation to establish that a history is essential for a diagnostic determination."

¶ 32 2. *Heather Forrest*

¶ 33 Forrest testified at trial regarding her interview with D.K. following the allegations of sexual abuse. As mentioned, D.K. first met with Forrest on March 27, 2013, and stated he never had any inappropriate interactions with defendant. Forrest noted D.K. was initially outgoing and happy, but "when anything came up about anything possibly ever happening to him or to any of his friends, he—his body language would kind of close in. He

would put his head down and he would be very quick, no, no, no answers, or he would redirect and [say] hey, look at this color of the crayon." Forrest gave D.K. an invitation to resume the interview later, if he decided he wanted to speak further. At trial, the following questioning occurred on direct examination regarding D.K.'s first interview with Forrest:

> "Q. Based upon your training and experience, what did you—what did those body movements, that body language lead you to believe?
>
> A. It led me to believe that there was something that [D.K.]—there was something more that [D.K.] wanted to talk about. What[,] I did not know, but that there was something more."

¶ 34 On April 1, 2013, D.K. voluntarily resumed his interview with Forrest and divulged information defendant had sexually abused him.

¶ 35 F. The Verdict

¶ 36 On April 4, 2014, the jury began deliberations. During deliberations, the jury sent a note to the trial court, which read, "If you personally feel the defendant is guilty, but you feel the State did not prove its case, should you base your verdict on personal opinions?" The parties agreed to the following response: "You have been provided with all of the instructions of law. Please refer to the instructions and continue to deliberate." The jury issued verdicts of guilty on all eight counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)) and at defendant's request, the court polled the jury and each juror acknowledged the verdicts as his or hers.

¶ 37 G. Posttrial Motion and Sentencing

¶ 38 On April 15, 2014, defendant filed a motion for acquittal, or in the alternative, a motion for a new trial. Among other things, defendant argued (1) the trial court erred when it allowed Forrest to testify as to statements made by D.K. pursuant to section 115-10 of the Code of Criminal Procedure (Code) (725 ILCS 5/115-10 (West 2012)); (2) the court erred when it allowed Dr. Buetow to testify regarding statements An. N. and Ad. N. made to her out of court, as they were for the purpose of litigation, not treatment; and (3) he was not proved guilty beyond a reasonable doubt.

¶ 39 On May 16, 2014, the trial court held a hearing on defendant's motion and denied it. In response to defendant's contention that he was not proved guilty beyond a reasonable doubt, the court stated the evidence was overwhelming and the "testimony of three victims, all three of the boys were very clear, very credible, very convincing, and detailed. The amount of physical corroboration as well [h]as made this one of the strongest cases of repeated multiple victim sexual molestation this court has ever seen. If it had been a bench trial, the results would have been precisely the same." The court then proceeded to sentencing. The court noted, since defendant was convicted of predatory criminal sexual assault of a child against two or more victims, a mandatory life sentence applied (720 ILCS 5/11-1.40(b)(1.2) (West 2012)). The court added, "If it were not mandatory but only permissive, the court's sentence would be exactly the same, to remove this man permanently from all access to children."

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 Defendant appeals, claiming he was denied a fair trial. More specifically, defendant claims he was denied a fair trial when (1) Heather Forrest testified, based on D.K's body movements and language during the first interview, she concluded D.K. had "something

more" he wanted to discuss; (2) Dr. Buetow testified to a sexual abuse diagnosis without physical evidence; and (3) Dr. Buetow testified An. N. and Ad. N. each stated they observed another victim being abused. The State asserts defendant forfeited these issues on appeal because he failed to object to the alleged errors at trial and he did not raise the issues in a written posttrial motion. In response, defendant asserts we should consider these issues under the plain-error doctrine because the evidence is so closely balanced.

¶ 43 The plain-error doctrine is a narrow and limited exception to the forfeiture rule and allows a reviewing court to consider unpreserved error when a clear and obvious error occurred and (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error"; or (2) "that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). Under a plain-error analysis, the defendant bears the burden of persuasion. *People v. Herron*, 215 Ill. 2d 167, 187, 830 N.E.2d 467, 480 (2005). We begin our plain-error analysis by first determining whether any error occurred at all. *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1059 (2010).

¶ 44 A. "Human Lie Detector" Testimony

¶ 45 Defendant argues when Forrest testified D.K.'s body language indicated there was something more he wanted to say during his initial interview, it was inadmissible "human lie detector" testimony suggesting D.K. was not telling the truth during his initial interview and his later statements were more reliable. The State disagrees and contends Forrest's opinion testimony was proper, as it did not go to D.K.'s credibility, but merely stated it appeared he had more he wanted to say.

¶ 46 Defendant, citing *People v. Williams*, 188 Ill. 2d 365, 368, 721 N.E.2d 539, 542 (1999), argues this court should address this issue under a *de novo* standard because the admission of this evidence turns on a question of law. The State responds this court should address this issue under an abuse-of-discretion standard because the trial court did not rely upon an erroneous, broadly applicable rule of law, citing *People v. Caffey*, 205 Ill. 2d 52, 792 N.E.2d 1163 (2001). We agree with the State. See *People v. Simpkins*, 297 Ill. App. 3d 668, 683, 697 N.E.2d 302, 312 (1998) (when a trial court admits opinion testimony that goes to a witness's credibility, we review this decision under the abuse-of-discretion standard). An abuse of discretion occurs when a trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Ward*, 2011 IL 108690, ¶ 21, 952 N.E.2d 601.

¶ 47 Forrest testified when she initially interviewed D.K., he was happy and outgoing, but when questions arose asking if anything ever happened to him or his friends, he had quick "no" answers, put his head down, and would redirect. Defendant argues the following exchange between the State and Forrest regarding her opinion on D.K.'s body movements was inadmissible "human lie detector" testimony:

> "Q. Based upon your training and experience, what did you—what did those body movements, that body language lead you to believe?
>
> A. It led me to believe that there was something that [D.K.]—there was something more that [D.K.] wanted to talk about. What[,] I did not know, but that there was something more."

¶ 48 A "human lie detector" is a witness who provides opinion testimony about another witness's credibility. *People v. Henderson*, 394 Ill. App. 3d 747, 753-54, 915 N.E.2d 473, 478 (2009). The determination of a witness's credibility is a question for the jury to decide. *Henderson*, 394 Ill. App. 3d at 753, 915 N.E.2d at 478. Hence, it is inadmissible opinion testimony and "useless in the [jury's] determination of innocence or guilt." *United States v. Williams*, 133 F.3d 1048, 1053 (7th Cir. 1998).

¶ 49 However, Forrest never testified it was her opinion D.K. was being untruthful, only that she believed, based on his body movements, there was something more he wanted to discuss. The testimony could be construed, as the State suggests, as an explanation for Forrest's making a second interview available to the witness. We find no error in the admission of this testimony.

¶ 50 B. Dr. Buetow's Diagnosis Testimony

¶ 51 Defendant next argues Dr. Buetow improperly testified as an expert witness. More specifically, defendant contends Dr. Buetow provided improper expert testimony that An. N. and Ad. N. were sexually abused without physical evidence because (1) she was not qualified to deliver an expert opinion as to whether the victims were being truthful; (2) her diagnosis was based on the victims' provided oral history, and therefore, it "impinged on the province of the jury to determine credibility and assess the facts of the case"; and (3) she did not provide the jury with any information beyond the knowledge of an average layperson.

¶ 52 We review a trial court's decision to admit expert testimony under the abuse-of-discretion standard, as previously set forth. *People v. Becker*, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 1142 (2010). " 'In Illinois, generally, an individual will be permitted to testify as an expert if his experience and qualifications afford him knowledge which is not common to lay persons

and where such testimony will aid the trier of fact in reaching its conclusion.' " *People v. Lerma*, 2016 IL 118496, ¶ 23, 47 N.E.3d 985 (quoting *People v. Enis*, 139 Ill. 2d 264, 288, 564 N.E.2d 1155, 1164 (1990)). Therefore, expert testimony is proper when the witness has experience and qualifications beyond that of the average juror's and when it will aid the jury in reaching its verdict. *People v. Cloutier*, 156 Ill. 2d 483, 501, 622 N.E.2d 774, 784 (1993).

¶ 53 In essence, defendant argues Dr. Buetow's diagnosis was not based on physical evidence, only on the victims' statements, and therefore, her expert opinion was the victims were being truthful, impinging on the province of the jury to make credibility determinations. This argument is belied by the record. Dr. Buetow testified the physical examination she performed on An. N. and Ad. N. was consistent with the oral history they provided. Dr. Buetow never testified she found the victims' statements to be credible. Rather, she opined An. N. and Ad. N. had been sexually abused, and the basis of such an opinion included the oral history statements each victim provided. Expert witnesses may provide opinions on the ultimate issue of the case, and this does not invade the province of the jury because the trier of fact is not required to accept the expert's conclusion. *People v. Willett*, 2015 IL App (4th) 130702, ¶ 98, 37 N.E.3d 469; see also Ill. R. Evid. 704 (eff. Jan. 1, 2011).

¶ 54 Defendant also argues Dr. Buetow did not provide the jury with any information beyond the knowledge of an average layperson. This contention undermines Dr. Buetow's experience and qualifications. Dr. Buetow is a board-certified pediatrician with decades of training and experience in diagnosing sexual abuse. This experience provided her with knowledge not common to laypersons. Dr. Buetow testified regarding the physical examinations she conducted on An. N. and Ad. N. and how she reached her diagnosis. This testimony provided the jury with information beyond the knowledge of an average layperson.

¶ 55 Accordingly, Dr. Buetow's testimony regarding her opinion An. N. and Ad. N. were sexually abused was proper expert testimony. We find the trial court did not abuse its discretion by allowing Dr. Buetow to testify as an expert witness, and thus, no error occurred.

¶ 56 C. Dr. Buetow's Hearsay Testimony

¶ 57 Last, defendant argues it was error for Dr. Buetow to testify to hearsay statements made by (1) An. N., when he told her he observed Ad. N. being sexually abused by defendant; and (2) Ad. N., when he told her he observed another person being sexually abused by defendant. The State asserts this testimony was proper, and if there was any error, it was harmless in view of the overwhelming evidence of guilt. We note, plain-error analysis continues to apply because this issue was not properly preserved. Even though defense counsel made an objection during Dr. Buetow's testimony, the objection was made on the basis that An. N.'s and Ad. N.'s interviews were for the purpose of prosecution not treatment. As this court has previously held, "[a] defendant may not change or add to the basis for his objection on review. A specific objection to evidence eliminates all grounds not specified." *People v. McClendon*, 197 Ill. App. 3d 472, 482, 554 N.E.2d 791, 797 (1990).

¶ 58 The hearsay exception at issue is codified in section 115-13 of the Code and states, as follows:

> "In a prosecution for violation of [section 11-1.40], statements made by the victim to medical personnel for the purposes of medical diagnosis or treatment including descriptions of the cause of symptom, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment shall be admitted as

an exception to the hearsay rule." 725 ILCS 5/115-13 (West 2012).

¶ 59 "A trial court is vested with discretion in determining whether the statements made by the victim were reasonably pertinent to the victim's diagnosis or treatment." *People v. Monroe*, 366 Ill. App. 3d 1080, 1091, 852 N.E.2d 888, 900 (2006). Therefore, we continue our review under the abuse-of-discretion standard.

¶ 60 In asserting these statements made by the victims are beyond the scope of section 115-13, defendant cites *People v. Boling*, 2014 IL App (4th) 120634, ¶ 103, 8 N.E.3d 65. In *Boling*, the victim, K.A., made statements to a sexual assault nurse examiner that the defendant had also abused her cousin, A.W. *Id.* ¶ 55. This court held "[K.A.'s]statement *** regarding defendant's apparent abuse of A.W. *** [was] not reasonably pertinent to diagnosis or treatment and [was] therefore inadmissible under section 115-13 of the Code." *Id.* ¶ 103. We find the same error occurred in this case. The subject statements made by An. N. and Ad. N. were not reasonably pertinent to diagnosis or treatment and, therefore, were inadmissible.

¶ 61 D. Plain Error

¶ 62 Because we have concluded error occurred, we must next determine whether the evidence was "so closely balanced that the error alone threatened to tip the scales of justice against the defendant." *Sargent*, 239 Ill. 2d at 189, 940 N.E.2d at 1058. Defendant argues the evidence in his case is closely balanced because of the (1) errors that occurred and (2) closeness of the evidence, as exemplified by the note the jury sent to the trial court during deliberations.

¶ 63 In order for the jury to find defendant guilty of predatory criminal sexual assault of a child, the State was required to prove (1) defendant was 17 years of age or older, (2) he

committed an act of sexual penetration, and (3) the victim was under 13 years of age (720 ILCS 5/11-1.40(a)(1) (West 2012)).

¶ 64 The information An. N., Ad. N., and D.K. provided during their Child Advocacy Center interviews was corroborated throughout the State's investigation. As the trial court noted at sentencing, the amount of detail and precision provided by the victims made their testimony more credible and convincing. Additionally, the victims' stories remained consistent throughout the case, despite their young ages (with the exception of D.K., who initially told Forrest he had never been sexually abused because he was embarrassed, but five days later admitted defendant had sexually abused him). Defendant's fiancée's statements to the police, DNA evidence, and the results from the search warrants further corroborated the victims' allegations. Moreover, An. N. testified at trial he observed defendant sexually abuse Ad. N. and D.K. Ad. N. testified he observed defendant sexually abuse An. N. and D.K. Thus, the admission of their statements to Dr. Buetow in this regard was merely cumulative and not prejudicial.

¶ 65 Nevertheless, defendant relies on the jury's note sent to the trial court during deliberations to argue his case was closely balanced. The note read, "If you personally feel the defendant is guilty, but you feel the State did not prove its case, should you base your verdict on personal opinions?" The trial court appropriately responded to the jury's inquiry with an instruction to apply the instructions of law as provided and "[t]he jury is presumed to follow the instructions that the court gives it." *People v. Taylor*, 166 Ill. 2d 414, 438, 655 N.E.2d 901, 913 (1995). It appears the jurors overcame any uncertainties and resolved those against defendant. Further, each juror confirmed their individual verdicts in open court. In conclusion, the evidence is not closely balanced. As a result, defendant cannot establish plain error.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 68 Affirmed.