2017 IL App (4th) 140813-U

NO. 4-14-0813

FILED
April 5, 2017
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
SHERELL WARFIELD,	)	No. 14CF138
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court did not abuse its discretion in admitting certain statements under section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2012)).

¶ 2 Following a July 2014 trial, a jury convicted defendant, Sherell Warfield, of two counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)). In September 2014, the trial court sentenced defendant to two consecutive terms of 40 years' imprisonment.

¶ 3 Defendant appeals, arguing he is entitled to a new trial as the trial court erred in admitting the victim's hearsay statements to her brother, sister, and mother under section 115-10 of the Code of Criminal Procedure of 1963 (Code)(725 ILCS 5/115-10 (West 2012)). We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Information

¶ 6 In January 2014, the State charged defendant by information with two counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)). The State alleged defendant, who was 17 years of age or older, committed acts of sexual penetration against De. W., who was under 13 years of age, by placing his finger and tongue in or on her vagina.

¶ 7 B. Motion To Admit Hearsay Statements Under Section 115-10 of the Code

¶ 8 In April 2014, the State filed a notice and motion to admit hearsay statements under section 115-10 of the Code (725 ILCS 5/115-10 (West 2012)). Specifically, the State sought to introduce De. W.'s statements to (1) her brother, L.W.; (2) her sister, J.W.; (3) her mother, Regina E.; (4) a responding police officer; and (5) a detective.

¶ 9 In May 2014, the trial court held a hearing to determine whether the time, content, and circumstances of the hearsay statements provided sufficient safeguards of reliability. The following is a summary of the relevant testimony elicited from L.W., J.W., and Regina E.

¶ 10 1. *Statements Made to L.W.*

¶ 11 L.W., who was 16 years old, testified, in December 2013, he lived with his mother, Regina E.; and five of his younger sisters, including J.W. and De. W. One of his sisters, P.T., lived with his aunt. J.W. was 15 years old, and De. W. was 10 years old.

¶ 12 On December 7, 2013, L.W. and his sisters, including P.T., were alone in the family home while their mother was at work. L.W. could not recall whether his younger cousin Stephan was also present. Around 12 p.m., everyone was cleaning except De. W. He told De. W. if she did not help clean, she was going to get in trouble. J.W. was also arguing with De. W.

De. W. initially responded by running around, stomping her feet, and slamming doors. L.W. told De. W. if the house was not cleaned by the time their aunt came over, their aunt would "whup" whoever did not clean up. De. W. responded by saying she would slap her aunt if that happened. L.W. told De. W. if she slapped their aunt, she would be in trouble with their mother, her father, their aunt, and their grandmother. De. W. responded by saying her father, defendant, was "not going to do nothing, because he know what he did to me." L.W. indicated he and his sisters were in the hallway when De. W. made that statement. L.W. asked De. W. what she meant, and De. W. started to cry. L.W. then took De. W. into her room. L.W. testified he suspected something had happened to her based on her statement.

¶ 13 Once L.W. and De. W. were in De. W.'s room, L.W. repeatedly asked, "What did he do?" L.W. testified this was the only type of question he asked of De. W. De. W. initially hesitated to say anything, but then told L.W., one day, when their mother was at work, her father came into her room and then took her to the bathroom, where he told her to take off her pants. Her father went back to their mother's room and then came back to the bathroom to get her. He took De. W. to their mother's room and told her to take off her panties and laid her down. L.W. testified De. W. stated, " 'he put his mouth on my private part.' " L.W. later clarified De. W. used the word "privacy." L.W. had heard De. W. previously refer to her vagina as both her "private part" and "privacy." De. W. told L.W. her father indicated she was being punished for getting in trouble at school. De. W. also indicated the incident occurred before L.W. moved back to Champaign, which was around November 2012. L.W. testified De. W. was crying the entire time she was talking to him, and only he and De. W. were present in the room.

¶ 14 After being told what happened, L.W. called his mother and told her De. W. told him "her daddy [had] molested her." L.W. testified he did not ask De. W. if her father had "molested" her. L.W. also told J.W. what De. W. had stated. The children finished cleaning and then L.W. left. L.W. did not speak with De. W. anymore about the assault. L.W. acknowledged his memory was "a little blurry."

¶ 15 2. *Statements Made to J.W.*

¶ 16 J.W. testified, on December 7, 2013, she got into a fight with De. W because De. W. refused to help clean the family home. L.W. was also "getting on De. W.'s case" to clean. P.T. was not present. Stephen was present.

¶ 17 At some point, L.W. made De. W. go to her room. J.W. thought this was because De. W. was not cleaning. L.W. went with De. W. into her room. At one point, L.W. began yelling out to Stephen and J.W. that De. W. claimed she was going to slap their aunt. Stephen helped list individuals who would give De. W. a "whupping" if she "smacked" their aunt. After naming her father, defendant, De. W. reportedly said to L.W., "my daddy know not to hit me. He know what he did to me." L.W. then called J.W. into the room and told her what De. W. had said. J.W. testified she and L.W. then "forced what he did to her, out of her." However, J.W. testified she did not ask any questions other than "what did he do to you, [De. W.]?" It took a while for De. W. to respond. She was looking down and crying. De. W. eventually stated, "he touched me down there," and she pointed to the area she meant. J.W. asked De. W. what she meant, and De. W. said it was her "private part." J.W. asked De. W. if she was lying, to which De. W. responded, " 'No, I'm not lying. That's my own daddy.' "

¶ 18 After De. W. reported what had happened, L.W. told J.W. to call their mother, which she did. J.W. told their mother De. W. had something to tell her. J.W. testified she was too shocked to say what happened. De. W. walked away with the phone, crying and talking to their mother. After two minutes, De. W. returned and gave the phone to J.W. Their mother indicated she was going to call the police.

¶ 19 While waiting for their mother to return home, J.W. sat down with De. W, who was watching television in the living room. J.W. again asked De. W. if she was lying, to which De. W. responded, " 'That's my own father. That's my daddy. Why would I lie?' " She then started crying. J.W. asked De. W. what her father did to her, and De. W. stated "he put his fingers down there, and he put his mouth down there." J.W. also testified De. W. referred to her vagina as her "private part," "private," and "coochie." J.W. had previously heard De. W. refer to her vagina as her "private" or "coochie." De. W. indicated her father stated it was punishment for getting in trouble at school. Later that day, Stephen left, their aunt came over, and their mother returned home.

¶ 20 3. *Statements Made to Regina E.*

¶ 21 Regina E. testified, around 5 p.m., she received a call at work from L.W., who said De. W. had something for her to hear. She was unsure whether J.W. also spoke with her on the phone. Regina E. spoke with De. W., who was "crying hysterically." She told De. W. to calm down as she was having trouble understanding her. De. W. stated, " 'One day when you was at work, my daddy put his mouth down there.' " Regina E. asked De. W. to repeat herself, which she did. De. W.'s voice was shaking.

¶ 22 Regina E. spoke with L.W. and told him she was going to call the police. She then called her cousin to try to contact defendant. Eventually, Regina E. spoke with defendant and told him what De. W. had reported. Defendant asserted De. W. was lying.

¶ 23 Upon arriving home, Regina E. called the police. L.W. had left, and Stephan was not present. The children's aunt was supposed to come over, but she was not present. Regina E. gave De. W. a hug and told her she was sorry and it was not her fault. She did not otherwise ask De. W. any questions until a police officer arrived. After the officer's arrival, De. W. was asked to explain to the officer, in the presence of her mother, what happened.

¶ 24 4. *Trial Court's Findings*

¶ 25 In the oral pronouncement of its decision, the trial court summarized and evaluated the testimony from each witness to determine whether the State had met its burden to introduce the hearsay statements. The court indicated it carefully considered whether the time, content, and circumstances of the statements provided sufficient safeguards of reliability. In making that determination, the court stated it considered various factors, including (1) the timing of the report, (2) whether the questions that generated the statements were leading, (3) the spontaneity and consistent repetition of answers, (4) whether the answers were volunteered, (5) the demeanor of the child, (6) the child's mental state and bodily gestures, (7) whether the language used and the descriptions were consistent with the child's age and experience, (8) the motive of the child to fabricate, (9) whether the interviewer had any expectation of what the answer would be, (10) the role of any other person including a parent who is present, and (11) whether the child appreciated the importance of the allegations. After considering the evidence presented, the court found the statements made to the detective, L.W., J.W., and Regina E., at

least the statements conveyed over the phone, were sufficiently reliable. However, the court found the State failed to meets its burden to introduce any statements made to the responding police officer, including those made while in Regina E.'s presence.

¶ 26 The following is the trial court's summary and evaluation of the testimony relating to the statements conveyed to L.W., J.W., and Regina E. by phone:

> "[L.W.] was a teenager. He was describing his interaction with [De. W.] and how they were having a discussion about her having to do her part in cleaning up the kitchen and doing her chores and she had made a statement that she did not have to. That then evolved into a conversation about why she wouldn't get in trouble because her father knew what he had done to her and would not discipline her.
>
> That led [L.W.] to take her into a bedroom and with him present asking her why she said that. He did say he had to ask her repeatedly what did he do, what did he do, and he did describe that he could tell the nature of what she was going to say but he had no knowledge as to what the details were. There's no way he could have known. And she then provided him with the statements as to what happened and he even used the phrase her exact words were, quote, 'he put his mouth on my private part.' Later he recalled it was actually privacy so he did not prompt her as to what happened. He simply kept asking her what did he do. Her demeanor was

crying. She was the one that first brought up her dad, and she was the one that supplied all of the details. Again he had no way of knowing what was coming other than the way she had implied. That he would not visit discipline upon her made him think it was something of this nature, but he did not know the details.

I [find] that the timing, content[,] and circumstances of that statement considering all the factors again were very reliable and should she testify that statement would come in."

* * *

[J.W.], *** also a teenager, *** described that that the conversation that she heard was after [L.W.] had talked to [De. W.] in the bedroom. He called her in and made her repeat it. She described that he was repeating what [De. W.] had said and [De. W.] was still there. [De. W.'s] demeanor again was crying, looking down. She was asked what did he do to you, and she recalled the exact words he touched me down there then private part. Later in the living room [J.W.] confronts [De.W.] and says you are lying, stop lying, it's your daddy. She says—the witness describes [De. W.] as crying and describing that her dad put his fingers and mouth in her coochie, later private part. She did not use the word vagina.

She was cross[-]examined about private parts and privacy, and I remember [J.W.] became very upset about all of the different

questions that she was being asked about how the exact words were used. I don't find that that defeats the 115-10 motion. I believe that's consistent with the language that the children use and it would be consistent with not exactly remembering each time that it was discussed how it was phrased but it's clear that the term that [De. W.] was using, either private part, privacy[,] or coochie, those were words used in that household. She described it was punishment for getting in trouble at school. That's [De. W.] who described that.

And again when you look at the circumstances of that statement it is for the trier of fact to weigh the credibility of the witnesses but as far as the credibility in terms of the time, content, and circumstances of the statement I do find that it was not leading, it was not suggestive and in fact if anything [J.W.] was trying to put pressure on [De. W.] to change her story and not to lie and confronted her about that and told her to stop lying and so I find that the time, content[,] and circumstances of the statement do provide sufficient safeguards of reliability.

* * *

[Regina E.] describes she believes [L.W.] called. I understand that [L.W.] and [J.W.] both say they were the ones that called their mother. That's for a jury to sort out but I don't believe that defeats

the 115-10 statement because that does not go to the circumstance of the making of the report to the children so the fact that they both think that they were the ones that put [De. W.] on the phone to their mom doesn't affect what took place that led to calling their mom and that's what I'm focusing on here.

But regardless of who called [Regina E.], and she believes it was [L.W.], it's clear that as far as her interaction with her daughter she had no way of knowing what to expect. She was at work. She had been told by [L.W.] that [De. W.] told us something, I think you need to hear it, and then [Regina E.] got on the phone. She said [De. W.] was crying hysterically and she had to tell her to calm down and all that [Regina E.] said to her daughter was tell me what you told your brother and then made her repeat it and then [De. W.] told her that 'one day when you was at work,' and I'm quoting her as they was conveyed 'my daddy put his mouth down there,' close quote.

There was nothing that was leading, nothing that was designed to provoke that statement. It was volunteered by a child who was very upset and was still suffering the emotional repercussions as described from making that report and at that point [Regina E.] went home and called 911 and then hugged her daughter and told her she was sorry, it was not her fault, and asked

her no further questions so there's nothing about that report at all that was leading or tainted and I find that the time, content, and circumstances of that statement provide sufficient safeguards of reliability."

¶ 27 C. Jury Trial

¶ 28 In July 2014, the trial court held a jury trial. De. W. testified, and the State introduced her prior statements to L.W., J.W., and Regina E. The jury returned a verdict finding defendant guilty of both counts of predatory criminal sexual assault of a child.

¶ 29 D. Posttrial Proceedings

¶ 30 In August 2014, defendant filed a motion for acquittal or, in the alternative, a new trial, alleging the trial court erred in admitting De. W.'s statements to L.W., J.W., and Regina E. Following a September 2014 hearing, the court denied defendant's motion and then sentenced him to two consecutive terms of 40 years' imprisonment. Defendant later filed a motion to reconsider his sentence, which the court denied.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 On appeal, defendant argues he is entitled to a new trial as the trial court erred in admitting De. W.'s statements to L.W., J.W., and Regina E. under section 115-10 of the Code (725 ILCS 5/115-10 (West 2012)). Specifically, defendant contends the court abused its discretion as the statements did not have sufficient safeguards of reliability. Defendant asserts the statements to L.W. and J.W. are unreliable as L.W.'s and J.W.'s testimony differed as to how the statements were prompted, who was present when they were made, to whom they were made,

what occurred in the time surrounding their making, and what the content was of the actual reporting of the alleged crime. Defendant asserts the statements made to Regina E. are unreliable because they occurred after L.W. and J.W. "interrogated" De. W., and the circumstances and content of the phone conversation are unclear. The State maintains the court did not abuse its discretion in admitting the statements.

¶ 34 In a prosecution for a physical or sexual act committed against a child under the age of 13, section 115-10 of the Code (725 ILCS 5/115-10 (West 2012)) allows the following evidence to be admitted as an exception to the hearsay rule: (1) "testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another," and (2) "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."

¶ 35 A hearsay statement may be admitted under section 115-10 only if the (1) trial court conducts a hearing outside the presence of the jury and finds "the time, content, and circumstances of the statement provide sufficient safeguards of reliability"; (2) victim either testifies at the proceeding or is unavailable as a witness and corroborative evidence of the act which is the subject of the statement exists; and (3) out of court statement was made before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later. 725 ILCS 5/115-10(b) (West 2012).

¶ 36 In determining whether a statement offered under section 115-10 is sufficiently reliable, our supreme court has provided the following list of nonexclusive factors to consider: "(1) the spontaneity and consistent repetition of the statement; (2) the mental state of the child in

giving the statement; (3) the use of terminology not expected in a child of comparable age; and (4) the lack of a motive to fabricate." *People v. Bowen*, 183 Ill. 2d 103, 120, 699 N.E.2d 577, 586 (1998). This court has also indicated the trial court should examine whether the child's statement was the product of possible suggestive interview techniques. See *People v. Simpkins*, 297 Ill. App. 3d 668, 677, 697 N.E.2d 302, 307 (1998). The State bears the burden of establishing the statements it seeks to admit under section 115-10 were reliable and not the result of prompting or manipulation. *People v. Zwart*, 151 Ill. 2d 37, 43, 600 N.E.2d 1169, 1171-72 (1992).

¶ 37 When reviewing a trial court's conclusion a statement is sufficiently reliable and thus admissible under section 115-10, we must consider the totality of the circumstances surrounding the making of the statements at issue. *People v. Stull*, 2014 IL App (4th) 120704, ¶ 85, 5 N.E.3d 328. "In so doing, we do not focus on the evidence presented at trial, but instead, only on the evidence presented at the pretrial hearing concerning the reliability of the victim's hearsay statements." *Id.* A trial court's decision to admit evidence under section 115-10 will be reversed only where the record demonstrates the court abused its discretion. *People v. Williams*, 193 Ill. 2d 306, 343, 739 N.E.2d 455, 474 (2000). "An abuse of discretion occurs when the trial court's determination is arbitrary, fanciful, or unreasonable or when no reasonable person would agree with the stance adopted by the trial court." *People v. Applewhite*, 2016 IL App (4th) 140558, ¶ 57, 68 N.E.3d 986.

¶ 38 The record demonstrates the trial court carefully considered whether the time, content, and circumstances of the statements provided sufficient safeguards of reliability. It is undisputed De. W.'s initial statements were spontaneous and consistent. It is also undisputed De. W.'s report of defendant's criminal conduct was consistent. In inquiring further, neither L.W.,

J.W., nor Regina E. provided suggestive or leading questions. De. W. provided the specific details of the assault, and her demeanor was consistent with the account provided. De. W. used language, whether it was "privacy," "private part," "private," or "coochie," that may be expected of a child of her age. While we recognize the inconsistencies in the accounts of the events leading to De. W.'s statements, we find those inconsistencies do not demonstrate the underlying statements were unreliable.

¶ 39 We also find defendant's reliance on *Zwart* and *Simpkins* to be unpersuasive, as both are distinguishable. Unlike *Zwart* and *Simpkins*, 11-year-old De. W. testified at trial, and there was no evidence of (1) previous interviews that may have compromised the reliability of the proffered statements, (2) a recantation, (3) a motive to fabricate, (4) material inconsistencies, or (5) an admission of lying. *C.f. Zwart*, 151 Ill. 2d at 44-46, 600 N.E.2d at 1172-73; *Simpkins*, 297 Ill. App. 3d at 676-79, 697 N.E.2d at 307-09.

¶ 40 Given the evidence presented, we find the trial court did not abuse its discretion in concluding De. W.'s statements to her brother, sister, and mother were sufficiently reliable and therefore admissible under section 115-10.

¶ 41 III. CONCLUSION

¶ 42 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. 55 ILCS 5/4-2002(a) (West 2014).

¶ 43 Affirmed.