

[Cite as *State v. Watkins*, 2013-Ohio-804.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-345
J.W.,	:	(C.P.C. No. 11CR-02-607)
Defendant-Appellant.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on March 7, 2013

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for  
appellee.

*Steven A. Larson*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

McCORMAC, J.

{¶ 1} Defendant-appellant, J.W. ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of rape. For the following reasons, we affirm.

**I. BACKGROUND**

{¶ 2} Appellant was indicted on seven counts of rape. According to the indictment, appellant raped his daughter, L.R., when she was six-years old. He pleaded not guilty to the charges and filed a motion to suppress L.R.'s statements to Jennifer Westgate, a forensic interviewer at the Center for Family Safety and Healing ("CFSH"). The trial court held a hearing on the motion, and Westgate testified as follows at the hearing. Westgate interviews child sex abuse victims at CFSH. She avoids the use of leading questions during the interviews, but she does ask questions to focus on

information that the victims provided. Each sex abuse victim has a medical examination after the interview. The medical examiner watches the interview through closed circuit television. Information provided during the interview guides the medical examination. Prosecutors and detectives also watch the interview through closed circuit television so that they do not have to subject the victim to additional interviews. The prosecutors and detectives may suggest questions for Westgate, but Westgate does not have to ask them.

{¶ 3} Westgate interviewed L.R. at CFSH on January 26, 2011. L.R. told Westgate that appellant started raping her when she was in first grade, and she said appellant raped her several times. L.R. identified the areas on her body where appellant touched or penetrated her. Two police detectives watched the interview through closed circuit television.

{¶ 4} Appellant argued that L.R.'s statements to Westgate were inadmissible hearsay. But the trial court concluded that the evidence was admissible under Evid.R. 803(4), as statements for medical diagnosis or treatment. In addition, appellant claimed the evidence would improperly bolster L.R.'s testimony. The trial court rejected that argument, too. Therefore, the court denied appellant's motion to suppress L.R.'s statements to Westgate.

{¶ 5} Appellant also moved to suppress statements he made to police detectives. The court held a hearing on the motion, and Columbus Police Detective David Phillips testified as follows at the hearing: appellant called Detective Phillips on January 11, 2011. Appellant wanted to talk about his daughter's "sexualized" behavior. (Tr. Vol. I, 61.) Detective Phillips obtained appellant's phone number and called him back on a recorded line. Appellant told Detective Phillips that he would wake up to find L.R. having sexual contact with him. Appellant also said that L.R. wanted to engage in anal sex, and he did "something to try to show her that that's not a good idea." (Tr. Vol. I, 63.) Detective Phillips asked to meet appellant later that day, and appellant agreed.

{¶ 6} Detective Phillips and Columbus Police Detective David McGuire went to appellant's house in an unmarked car, and they wore a suit and tie. Appellant invited the detectives into his home, and they sat at the kitchen table. Appellant was not under arrest, and the detectives sat in a position that allowed appellant to freely walk away

from the table. The detectives were not threatening or confrontational. Instead, the atmosphere was "cooperative, friendly, cordial." (Tr. Vol. I, 66.) In fact, appellant was permitted to stop the conversation at any time. Because of the nature of the interview, the detectives did not advise appellant of his constitutional rights to a lawyer and to remain silent.

{¶ 7} Detective Phillips admitted that he was not honest when talking to appellant about the evidence or when he would suggest that appellant was telling the truth. He said that these tactics were a ploy to get appellant to talk. He noted that the technique did not play a major role during the interview, however.

{¶ 8} Appellant told the detectives that when L.R. asked for anal sex, he inserted his fingers and knuckles into her rectum in order to demonstrate to her that she would not like that type of activity. He also noted that he would wake up to find L.R. performing oral sex on him. Given appellant's admissions, Detective Phillips arrested him and took him to jail. While in jail, appellant spoke with Detective Phillips again after waiving his constitutional rights.

{¶ 9} The trial court concluded that appellant's telephone conversation with Detective Phillips was admissible because appellant initiated the contact. The court also determined that appellant's statements in jail were admissible because he waived his constitutional rights. Lastly, the court rejected appellant's argument that the statements he made in his home were inadmissible because the detectives failed to inform him of his constitutional rights. The court concluded that the information was not required because there was no custodial interrogation at appellant's home.

{¶ 10} Next, a jury trial ensued. At trial, L.R. testified that appellant placed his finger inside her vagina two different times, and she said that he put his "private" inside her "bottom" several times. (Tr. Vol. I, 183.) She also said that appellant licked her vagina and made her put his penis in her mouth.

{¶ 11} Westgate testified at trial over appellant's objection. Westgate again testified that she interviews child sex abuse victims at CFSH. She also reiterated that her interviews guide the medical examinations conducted afterward at CFSH. Lastly, Westgate noted that L.R.'s mother did not believe the sex abuse allegations.

{¶ 12} Gail Hornor is a nurse at CFSH. Hornor testified that she examined L.R. after her interview with Westgate. She indicated that she watched the interview through closed circuit television, and she talked with Westgate before the medical examination. Westgate's interview with L.R. guided the examination.

{¶ 13} Detective Phillips' testimony at trial tracked his testimony during appellant's motion to suppress. In particular, Detective Phillips discussed the meeting he and Detective McGuire had at appellant's house. At the beginning of the meeting, Detective Phillips reminded appellant, "I'm here because you called me." (Tr. Vol. II, 356.) Detective Phillips also told appellant, "you're not in our custody. We are not here to run you off to jail." (Tr. Vol. II, 355.)

{¶ 14} At the close of the evidence, the jury found appellant guilty on all seven counts of rape. The trial court sentenced appellant to 15 years to life imprisonment.

## **II. ASSIGNMENTS OF ERROR**

{¶ 15} Appellant has filed a timely notice of appeal and now assigns the following as error:

[I.] The trial court erred in denying Appellant's Motion to \* \* \* suppress prior consistent statements made at the Child Advocacy Center in Children's Hospital as bolstering the testimony of a critical witness[] in violation of the Rules of Evidence and due process protection under the federal and state Constitutions.

[II.] The Court erred by not granting Appellant's Motion to Suppress Statements made to police while being interviewed at his home in violation of Appellant[']s rights as guaranteed under the Fifth and Fourteenth Amendment[s] of the United State[s] Constitution and Article I, Section 10 of the Ohio Constitution.

## **III. DISCUSSION**

### **A. First Assignment of Error: Evid.R. 803(4)**

{¶ 16} In his first assignment of error, appellant argues that the trial court erred by admitting statements L.R. made to Westgate at CFSH. We disagree.

{¶ 17} We need not disturb the trial court's decision to admit L.R.'s statements absent an abuse of discretion. *State v. Dever*, 64 Ohio St.3d 401, 410 (1992). An abuse of discretion connotes more than an error of law or judgment; it entails a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 18} Appellant contends that L.R.'s statements were inadmissible hearsay. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Evid.R. 801(C). Hearsay is inadmissible unless an exception applies. Evid.R. 802. The trial court admitted L.R.'s statements under Evid.R. 803(4), which permits the admission of statements made for purposes of medical diagnosis or treatment. Evid.R. 803(4) applies when a child provides a CFSH employee with information that is necessary for medical treatment or diagnosis. *State v. Schmidt*, 10th Dist. No. 08AP-348, 2009-Ohio-1548, ¶ 10.

{¶ 19} Here, L.R. told Westgate that appellant sexually abused her. She noted what parts of her body were touched during the abuse, and she discussed when the abuse occurred. This information is necessary for medical diagnosis or treatment because it allows a medical examiner to determine whether to test a victim for sexually transmitted diseases and to identify any trauma or injury sustained during the sex abuse. *State v. Arnold*, 126 Ohio St.3d 290, 2010-Ohio-2742, ¶ 32, 37. In fact, Hornor testified that L.R.'s statements to Westgate guided her medical examination.

{¶ 20} Furthermore, the record establishes that L.R. did not have an ulterior motive behind her statements. In particular, the Supreme Court of Ohio has identified several factors establishing that a child made statements for medical diagnosis and treatment "rather than for some other purpose." *State v. Muttart*, 116 Ohio St.3d 5, 2007-Ohio-5267, ¶ 47. Those factors include: (1) the child being questioned in a non-leading manner, (2) the child having no motive to fabricate, and (3) the child providing consistent statements about the sex abuse. *Id.* at ¶ 49. Here, Westgate did not ask L.R. leading questions, and L.R. gave consistent statements about the sex abuse. Additionally, nothing in the record indicates that L.R. had a motive to fabricate. For instance, L.R.'s mother expressed doubts about the allegations, and this confirms that

L.R.'s mother was not fostering the allegations or using them to her advantage. *See State v. D.H.*, 10th Dist. No. 07AP-73, 2007-Ohio-5970, ¶ 46.

{¶ 21} To be sure, detectives watched L.R.'s interview through closed circuit television. But this factor does not change the nature of the interview because the detectives did not control the questioning, and they did not have an overt presence during the interview. *Id.* at ¶ 41.

{¶ 22} Consequently, we conclude that L.R.'s statements to Westgate were admissible under Evid.R. 803(4). Next, appellant argues that Westgate's testimony was improper because it bolstered L.R.'s testimony. But, "[a] party may introduce testimony to 'bolster' or corroborate another witness's testimony as long as the testimony is relevant and not objectionable on specific evidentiary grounds." *State v. Hurst*, 10th Dist. No. 98AP-1549 (Mar. 7, 2000). Here, Westgate's testimony was relevant toward whether appellant sexually abused L.R. In addition, as above, the testimony was admissible under Evid.R. 803(4). Accordingly, there was nothing improper about Westgate's testimony bolstering testimony from L.R.

{¶ 23} For all these reasons, the trial court did not abuse its discretion by admitting L.R.'s statements to Westgate. We overrule appellant's first assignment of error.

#### **B. Second Assignment of Error: Appellant's Interview at his Home**

{¶ 24} In his second assignment of error, appellant argues that the trial court erred by not suppressing statements he made when Detectives Phillips and McGuire interviewed him in his home. We disagree.

{¶ 25} When presented with a motion to suppress a defendant's statements, the trial court assumes the role of the trier of fact. *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Therefore, the trial court is in the best position to resolve questions of fact and evaluate witness credibility. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. On review, we must accept the trial court's factual findings if they are supported by competent, credible evidence. *State v. Stokes*, 10th Dist. No. 07AP-960, 2008-Ohio-5222, ¶ 7. Accepting those facts as true, we must then independently determine, as a matter of law and without deference to the trial court's conclusion, whether the facts

meet the applicable legal standard. *State v. Cogger*, 10th Dist. No. 10AP-320, 2011-Ohio-54, ¶ 10. With this standard in mind, we consider the trial court's decision to deny appellant's motion.

{¶ 26} Under the Fifth Amendment to the United States Constitution, no person "shall be compelled in any criminal case to be a witness against himself." To protect this right, a criminal suspect in a custodial interrogation must be informed of his constitutional rights to remain silent and to have defense counsel. *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966). Appellant claims the interview at his home was a custodial interrogation and that, therefore, his statements during the interrogation were inadmissible because Detectives Phillips and McGuire did not inform him of his constitutional rights, pursuant to *Miranda*.

{¶ 27} A custodial interrogation is questioning initiated by law enforcement after a suspect has been formally arrested or had his freedom restrained in such a way that it is the equivalent of a formal arrest. *California v. Beheler*, 463 U.S. 1121, 1125 (1983). Courts must examine the totality of the circumstances to determine how a reasonable person would have understood the interrogation. *Stansbury v. California*, 511 U.S. 318, 323 (1994).

{¶ 28} Appellant contends that he was subjected to a custodial interrogation in his home because the detectives lied when talking about the evidence and suggesting that he was telling the truth. But detectives have latitude to use this technique when interviewing suspects. *State v. Caulley*, 10th Dist. No. 97AP-1590 (Mar. 14, 2002). In any event, Detective Phillips indicated that the technique did not play a major role in appellant's interview. Appellant also asserts that his interrogation was custodial because of his being arrested at its conclusion. But the arrest, itself, did not make the preceding interrogation custodial, and we instead examine the totality of the circumstances surrounding the interrogation. *See State v. Biros*, 78 Ohio St.3d 426, 441 (1997).

{¶ 29} Under a totality of the circumstances review, we conclude that a reasonable person in appellant's position would not have believed that he was being subjected to a custodial interrogation. For instance, appellant agreed to the interview at

his home after he voluntarily contacted the police. In addition, Detectives Phillips and McGuire arrived for the interview in an unmarked car, and they wore civilian clothing. Furthermore, the atmosphere was "cooperative, friendly, cordial." (Tr. Vol. I, 66.) In fact, the detectives told appellant that he was not in custody, and appellant was permitted to stop the conversation at any time. Likewise, appellant was free to walk around his home.

{¶ 30} For all these reasons, we conclude that appellant was not in custody when Detectives Phillips and McGuire interviewed him at his home. Accordingly, the detectives did not violate appellant's constitutional rights when they declined to provide *Miranda* warnings before the interview. Consequently, the trial court did not err by denying appellant's motion to suppress the statements he made during the interview. We overrule appellant's second assignment of error.

#### **IV. CONCLUSION**

{¶ 31} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

KLATT, P.J. and BROWN, J., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the Ohio Constitution, Article IV, Section 6(C).

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