

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
VINTON COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. 24CA701
 :
 v. :
 :
 DAVID B. LONGWORTH, : DECISION & JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Russell Patterson, Office of the Ohio Public Defender, Columbus, Ohio, for appellant¹.

William L. Archer, Jr., Vinton County Prosecuting Attorney, McArthur, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED:5-5-26

ABELE, J.

{¶1} This is an appeal from a Vinton County Common Pleas Court judgment of conviction and sentence. David Longworth, defendant below and appellant herein, assigns two errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION AND DEPRIVED MR. LONGWORTH OF A FAIR TRIAL BY ADMITTING N.R.'S AND M.R.'S COMPLETE

¹ Different counsel represented appellant during the trial court proceedings.

FORENSIC INTERVIEWS. (02/27/20 ORDER; TRIAL TR. VOL. II AT 456-466)."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT VIOLATED MR. LONGWORTH'S RIGHTS TO A JURY TRIAL AND DUE PROCESS BY FINDING FACTS THAT IT USED TO SENTENCE HIM TO LIFE WITHOUT PAROLE. (TRIAL TR. VOL. II AT 578; 07/01/24 JUDGMENT AT 5-6)."

{¶2} In May 2018, a Vinton County Grand Jury returned an indictment that charged appellant with (1) one count of rape of N.R. (3/28/09) in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (2) one count of rape of N.R. in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (3) one count of rape of N.R. in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (4) one count of rape of M.R. in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (5) one count of rape of M.R. (3/29/10) in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (6) one count of rape of M.R. in violation of R.C. 2907.02(A)(1)(b), a first-degree felony, (7) one count of gross sexual imposition of N.R. in violation of R.C. 2907.05(A)(4), a third-degree felony, (8) one count of gross sexual imposition of N.R. in violation of R.C. 2907.05(A)(4), a third-degree felony, (9) one count of gross sexual imposition of N.R. in violation of R.C. 2907.05(A)(4), a third-degree felony, (10) one count of gross sexual imposition of M.R. in violation of R.C. 2907.05(A)(4), a third-degree felony, (11) one count of

gross sexual imposition of M.R. in violation of R.C.

2907.05(A)(4), a third-degree felony, (12) one count of gross sexual imposition of M.R. in violation of R.C. 2907.05(A)(4), a third-degree felony, (13) one count of possessing criminal tools in violation of R.C. 2923.24(A), a fifth-degree felony, (14) one count of possessing criminal tools in violation of R.C.

2923.24(A), a fifth-degree felony, (15) one count of possessing criminal tools in violation of R.C. 2923.24(A), a fifth-degree felony, (16) one count of endangering children in violation of R.C. 2919.22(A), a third-degree felony, (17) one count of endangering children in violation of R.C. 2919.22(A), a third-degree felony, and (18) one count of aggravated drug possession in violation of R.C. 2925.11(A), a fifth-degree felony.

Appellant entered not guilty pleas.

{¶3} On June 25, 2018, appellant filed a motion to suppress “the anticipated testimony of the Center for Child and Family Advocacy personnel as to what M.R. and N.R. may have said to be inadmissible, as a violation of his constitutional and Sixth Amendment confrontation rights.” On July 22, 2019, appellee filed a motion in limine to introduce the Child Advocacy Center DVD in its case in chief in its entirety.

{¶4} On February 28, 2020, the trial court issued an entry on pending motions. The trial court found:

(1) The two alleged victims, M.R. and N.R. (hereinafter 'victims') were seeking aid and assistance. They were reaching out for help at their school. The sexual abuse was first reported to a school counselor.

(2) The victims' statements are reliable. There are no indications whatsoever that the victims' statements are not reliable.

(3) The victim's statements were made for medical diagnosis and treatment purposes. It is clear from the findings based upon the testimony of Forensic Interviewer Brown and Nurse Anderson that all of the victims' statements were made for purposes of diagnosis and treatment, and no other purpose.

(4) The victims' statements were not made for law enforcement purposes. The statements were made to professionals at Children's Hospital for diagnosis and treatment purposes. No law enforcement officer was present.

(5) The victims' statements are not testimonial in nature. The statements were made to medical professionals at Children's Hospital for medical diagnosis and treatment purposes. The statements were not made to a police officer.

(6) There is no 'Crawford' violation as the objective witness test applies and the statements are not testimonial.

(7) The primary purpose test does not apply as no statements were made to police.

{¶5} Consequently, the trial court denied appellant's motion to suppress, granted appellee's motion to admit the DVDs of N.R. and M.R. in their entirety, and scheduled the matter for a final pre-trial conference.

{¶6} On June 1, 2020 appellant filed (1) an Evid.R. 106 motion in limine that stated that appellant presumed appellee

would introduce the Child Advocacy Center video interviews in whole or in part and requested the court to allow the appellant to introduce the videos in whole or in part, (2) a motion in limine regarding the rape shield law in which he sought to introduce one of the child victim's statements allegedly discussing "her past consensual sexual encounter with a third party," and (3) a motion in limine regarding anticipated testimony to prevent any Child Advocacy Center witness to bolster the victims' credibility.

{¶7} After a September 13, 2023 hearing, the trial court, with a new judge sitting by assignment, ruled on various pending motions. The court (1) granted appellant's Evid.R. 106 motion and allowed him to introduce some or all of the Child Advocacy Center video interviews of the alleged minor victims, (2) overruled appellant's rape shield law motion, (3) overruled appellant's motion regarding Child Advocacy Center employee testimony, (4) overruled appellant's motion regarding Nationwide Children's Hospital employee testimony, and (5) overruled appellant's motion regarding individual *voir dire*.

{¶8} At appellant's February 26-29, 2024 jury trial, South Elementary School Family Support Facilitator Angela Patterson testified that prior to 2018, she knew both N.R. and M.R. well, including that they experienced food insecurity at home and were also "afraid at times." Patterson explained that just prior to

2018, N.R., then a third-grader, went into the school restroom with her phone, removed her clothes, took nude photos of herself and sent them to another third-grader. The school reported this activity to the Sheriff's Department. On January 11, 2018, N.R. disclosed sexual, physical, and drug abuse to Patterson, who, as a mandated reporter, immediately reported the disclosure to Vinton County Children's Services. VCCS instructed Patterson to keep N.R. and her sister, kindergartner M.R., at the school, and an aunt would pick them up.

{¶9} South Central Ohio Job and Family Services (JFS) Social Worker Tischa Harper explained that she received the report concerning N.R. and M.R. on January 11, 2018, and she and her supervisor, Melissa Robson, arrived at the home about 40 minutes later with Deputy Ryan Cain. When they arrived, Harper met appellant and the children's mother, Brittany Blessing. JFS spoke with Blessing separately and she stated that the report "was a lie." As per JFS protocol, Harper referred N.R. and M.R. to Nationwide Children's Hospital, and, after retrieving some personal items and clothing for the girls, left the scene.

{¶10} Parole Officer Dawnette Reaser testified that, on January 11, 2018, she received a call from Children's Services that requested assistance with her parolee, appellant. When Reaser arrived, she found appellant and his live-in girlfriend, Brittany Blessing, at the home. Appellant stated, "Please don't

- - please don't throat punch me Ms. Reaser. I swear I didn't do it." Reaser, who had familiarity with the residence because she had conducted a home visit to approve the location during appellant's parole, conducted the search. In appellant's bedroom, Reaser found "several sex toys. . . some actual drugs and paraphernalia stuff. . . several electronic devices, tablets, phones. . . like a camcorder type thing." Reaser found "two sex toys . . . in a night stand drawer," on Blessing's side of the room, and a "teal blue clitoral stimulator" in a "little bin or basket" and "male enhancement pills" on appellant's side of the bedroom. Reaser noted that she "found it odd that you have to go through the children's room to get to the adult [bed]room." Reaser further explained that she found "some foil with residue and what appeared to be drugs in it . . . some like glass . . . that are known to anybody working in the field to be used for drug use. . . [and] razor blades." Reaser also recovered appellant's cell phone and conducted a drug screen. Appellant did admit that he used methamphetamine and tested positive for it that day.

{¶11} Ohio Bureau of Criminal Investigation Forensic Scientist Stanton Wheasler testified that the foil he tested contained a trace amount of methamphetamine, which Wheasler described as a "post-consumption amount."

{¶12} Vinton County Sheriff Ryan Cain testified that, in January 2018, he was a Sergeant when JFS requested an escort to appellant's home. When Cain arrived, he observed appellant and Brittany Blessing sitting in a vehicle. Cain informed Blessing that JFS wanted to speak with her while Cain stayed outside on the porch with appellant. Because appellant was on probation, the Sheriff's Office summoned appellant's Parole Officer Dawnette Reaser and Cain accompanied Reaser into the residence where Reaser recovered evidence. Cain then inventoried the items, created a receipt for Blessing and appellant. Cain took into evidence three adult personal exotic toys, two bedclothes sheets from the children's room, a box of drug paraphernalia, a blue box, aluminum foil with residue, and two cell phones that belonged to David Longworth. Reaser also secured three tablets, one LG phone and a small notebook laptop. Cain described appellant's bedroom as clearly "pink and girly" on one side, and "more manly" on the other side. Cain stated that another "older man" named "Uncle Chuck" also lived at the residence. Cain conducted a taped interview with Brittany Blessing, who was in custody, and Blessing admitted to drug use.

{¶13} N.R. testified that she is a 14-year-old freshman, lives with Thelma Evans, M.R., and another sister, A.D. Brittany Blessing is her biological mother and she sees her biological father occasionally. In 2018, when she was six or

seven years old, N.R. lived with her mother and appellant, whom she considered a father figure. N.R. stated that appellant sexually assaulted her from the age of four or five until she was seven or eight. N.R. stated it was "an everyday occurrence," and usually happened "when Mom wasn't around, and during the night." During the night, "it would happen on my bed. And during the day, we had a shed outside the back of our house. It happened there. Um, whenever I went with David alone somewhere he'd do it in the car."

{¶14} When asked what appellant did to N.R., she stated that "he'd make me suck his dick" "[a]nytime I wanted anything. . . like ice cream, or like anything to drink when mom wasn't around. When we were alone." N.R. described that when appellant ejaculated, "[u]sually he would make me drink it." Appellant also forced her to "give him a hand job." N.R. testified that appellant would also "make me, uh, f*ck him . . . his dick in my, uh, vagina." Further, appellant would "have [N.R.] touch herself. . . in front of him." Appellant would also use "a green-blue turquoise" vibrator on her.

{¶15} When N.R. tried to tell her mother about the sexual abuse, "[s]he asked me what all he did, and then I told her that it never happened. . . [because] I was scared." At the time, N.R. thought appellant was listening and "I thought he was going to harm us if he knew that my mom found out." N.R. said that

appellant "would abuse my sister [M.R.]. He would, uh, hit her with a switch and would, make her stand with books. Like, not a book, but like a thick book. And would make her stand with it held out until he told her to put it down." N.R. eventually confided in her school principal and her grandmother.

{¶16} Appellee played State's Exhibit G, N.R.'s Nationwide Children's Hospital forensic interview, for the jury from 12:27 p.m. to 2:48 p.m. Details of the interview include:

FI introduced myself and explained my role. FI informed patient that they would get a check up with the doctor after we were done talking. FI reviewed interview guidelines. Patient practiced her understanding and promised to tell the truth. FI engaged patient in rapport building and patient talked about her family and interests. Patient reported that she thought she came here to talk about her dad (David Longworth) touching her in bad places a lot of times. Patient reported that something last happened with her dad "a couple days ago" and first happened when she was either four, six, or seven. When asked by FI, patient reported that all the things that happened with her dad happened at her house, usually outside. Patient reported that her dad has also made her such his "dick" in their cabin house, which is an old little basement house that it at the back of her house. Patient reported that he closes the door and makes her suck it until he says stop, which is when he cums. Patient reported that there are no windows on the cabin house.

Patient reported that her dad tells her to rub his part, she says "no," and he makes her do it.

Patient reported that her dad has a "vibrating thing" which she thinks was green or blue. Patient reported that he puts this on her butt "all the way to" her vagina on top of skin, which happened one time. Patient reported that it tickled, but she didn't like it. Patient reported that she was going to say something, but she didn't because she felt like she would get in

trouble. Patient reported that her dad has a "strong emotion" about her telling people like FI, but patient reported that she thinks it's important so that you can have a proper home with your parents and be safe/healthy. Patient then described a time in which her parents were fighting, her dad locked her mom in the bathroom, and he punched a hole in the wall and threw something. Patient reported that she called the police, then police came and they had to hide under the bed. Patient also talked about her dad "forcing" them to clean their room before eating cereal and even if there is just "one little drop" to clean.

Patient reported that she has seen her mom smoke a brown cigarette, which she "jogged" then hurried to put it back where it was when patient came near. Patient also reported seeing a brown cigarette in the ashtray another time. Patient reported that she sometimes has heard foil from in the bedroom, while her parents were in their bedroom with the door locked. Patient reported that she has seen her mom and dad doing a drug with foil and a black straw thing with a hole in it on a plate. Patient reported that she saw this one time when she was age eight.

Patient also reported that her dad was going to order a "fake dick" to put inside her, but he ordered the vibrating thing instead. Patient reported that her dad said a couple things about ordering something. FI then observed patient lay on the ground on her back and stretch out her arms and legs. Patient reported that he was going to order a thing that is for you to be stretched out while the boy goes in the girl. Patient reported that there is a thing that goes in your mouth so you don't make noise.

Patient reported that her dad has spot on her "part." Patient reported that her dad's "wiener/dick/d-i-c-k" touched her "ass" or "crotch." Patient reported that her dad has asked if he can suck her "boobs" when they get bigger.

Patient reported that she touched her cousin when she was little. Patient reported that she told him to pull up his pants, [A] walked out with his pants down, and her dad whopped her butt one time. Patient reported that her dad began touching her the "next day before

that." Patient reported that he touched her every time she went to bed. FI introduced anatomical drawings of a boy and a girl. Patient referred to the breasts as "boobs," vagina as "vagina," butts as "butt/ass," and penis as "dick/wiener."

Patient also reported that he put his "part" in hers. Patient reported that her dad's three fingers touched her body; FI observed patient gesture toward her genital area. Patient referred to this part as the "vagina," which she reported is used to pee. Patient indicated that he pulled on her underwear and touched her vagina on skin three or four times. Patient demonstrated what her dad's fingers are doing when this happens by moving her fingers together in a forward/backward motion in the air. Patient reported that this "really really bothers" her. Patient reported that it feels good, but still feels bad at the same time. Patient reported that it hurt and her dad still does it even when she has a bump on her private part and it hurts.

Patient reported that her dad has also taken his wiener, bent her over, and rubbed his "dick" or the "vibrating thing" across, down, and in the hole. Patient reported he rubs there on top of skin and she can feel it go in the hole. Patient reported that her dad also takes warm liquid and rubs it on her vagina and on her butt.

Patient reported that her dad "forces" her to suck his wiener. Patient talked about trying to run away to get her mom, but her dad pulls her legs back, holds her onto his bed, and "humps" her. Patient reported that she doesn't "let him go too far in" because it hurts. Patient reported that her dad humped her so hard one time that it hurt. Patient reported that her "bug/vagina" and butt hurt for two days because of that. Patient reported that, when she talked about it, she doesn't tell her dad. Patient then began talking about her dad "forcing" them to eat even if they are stuffed. Patient reported that he says, "Eat it."

Patient reported that her dad showed her "dirty videos" of a boy and girl "fucking" each other and pushing down really hard when in the hole. Patient reported that she heard sounds on the videos. Patient reported that her dad asked if he could do the "fucking" to patient and she said "no." Patient reported that her dad said things

like, "if she will let him" and "if he can do it." Patient reported seeing videos from "porn hut" more than one time, which were typed into "c-r-o-m" rather than on an app. Patient reported that her uncle Chuck was always in his room. Patient reported that her mom was upstairs when patient saw the videos one time and her mom was doing laundry another time.

FI continued to screen for sexual concerns. Patient reported that her dad's fingers also touched her butt and he put his thumb up her "butthole" a few times. FI observed patient begin to pull down the front of her pants. Patient reported that she was trying to hold her breath. Patient reported knowing his thumb went up her butthole because she could feel it go up and that's when she starts to get grouchy.

During this interview, patient intermittently talked to FI about being a normal girl. Patient asked FI multiple times if certain disclosures were normal or bad. Patient reported that she would sometimes say "sure" to things because her dad said she could have ice cream or swim in her pool.

Patient reported that her dad touched her "nipples" with his hands a lot and grabbed onto them. FI observed patient point toward her breasts/nipples while pulling her shirt down and demonstrate in the air by twisting her two fingers together in the air, left to right. Patient reported that her dad made her suck his finger/thumb more than one time by shoving it up her mouth. Patient reported that she sucked it like "dick." Patient then reported that she sucked it like a baby.

Patient indicated that she had to rub his "dick" a lot and licks his three fingers and then rubs her vagina up and down.

While looking at the anatomical drawings, patient reported that the "dick" should be longer because the drawing looked different from her dad's. FI then observed patient draw a picture of her dad's "dick," her "bug," her "butt," and her dad's "dick" when it gets smaller. Patient discussed that a girl "cums" when it goes father into her butt or "bug." Patient indicated on her drawing the "amount" of her dad's "dick" that she has to suck.

Patient reported that she sucked Adam Glover's private part until he came and she drank it, which happened two times when they were both age eight "like yesterday." Patient reported that this happened inside at school. Patient also reported that she kissed Adam on the lips. Patient reported that she drank the cum and it doesn't taste bad once you get used to it. Patient reported that she sucked on Adam's private part longer because it was smaller than a grown-up one and she sucked until he came. Patient reported that this was her idea.

Patient reported that her dad spit on her vagina a couple times and on her "ass" twice. FI observed patient demonstrate by spitting into the trash can.

Patient denied that someone else has ever touched her "boobs." Patient reported that Adam and a couple other boys (age seven - same as patient) touched her vagina. Patient reported that Adam has "spanked" her butt and touched her "ass" and vagina a lot. Patient reported that Adam put his wiener in her butthole while in the bathroom and he pushed in and out. Patient reported that it felt good, unlike an adult "dick."

Patient reported that her dad's "dick" has touched on skin inside her vagina more than one time and it hurts. Patient reported that her dad's "dick" touched on skin inside her "butthole/asshole" and it hurt. Patient reported that it was "on skin" every time. Patient indicated that Adam has also put his "dick" in her "asshole." Patient reported that she went to Adam's house one time and they "had sex," which means they were "fucking each other hard" and Adam put his "part" in her. Patient reported that "fuck" means push in hard. Patient reported that it felt good. Patient reported that she rubbed Adam's "dick," which he didn't ask her to do.

Patient reported that her dad has licked her vagina on skin more than one time and her butt a couple times, which he does when he wants to touch her.

Patient reported that she has seen her mom on top of her dad and they were having sex. Patient reported that she saw this when her parents were in their room "fucking each other" with the door closed and she went to ask her

mom something. Patient reported that she heard them a couple times. Patient denied there being another time in which she has seen someone touch someone else's private part. Patient also reported that her dad has told her to call her mom a "cunt" before. Patient reported that her mom is mean to her and yells at her for no reason. FI screened for physical abuse/discipline. Patient reported that her dad (David) makes her sit in the corner or go upstairs when she's in trouble. Patient reported that her dad has spanked her with a switch across her "ass/booty." Patient reported also being spanked with a belt and hand. Patient reported that she sometimes has gotten marks/bruises from spanks and her dad hurts when he hits. Patient reported that it hurt when he tickles her as well because he grabs a chunk of her skin and pushes down hard. Patient reported that her dad "abuses" her sister with a switch across her "ass." Patient reported that she has seen straight red lines that were "kinda black" on her sister's legs and "ass." FI observed patient draw a line on paper to indicate the length of the marks on her sister.

Patient reported that her dad has made her rub her own private part, including when they were outside and he was working on the pool. FI observed patient gesture toward her genital area to demonstrate.

FI attempted to screen if someone else has ever taken pictures/movies of patient with no clothes on. Patient then reported that she used to "have sex" with her sister when patient was age four. Patient reported that they both pajamas on and she "fucked" her sister. Patient reported that she had one leg on top of her sister's stomach while laying in bed, her sister had one leg under patient's back, and their vaginas were close. Patient reported that her sister pushed down on it. Patient reported that this happened "a few days" and she still does it at age eight.

During this interview, patient also described there being a "special hole" where "cum" (white stuff) comes out of girls' vaginas or boys' "dicks." Patient reported that boys make girls drink it. Patient reported that girls have "air pockets with swirls in it" that's like a "case" where the "dick" goes inside, which makes them "cum." Patient also reported that there was a boy (age

9-10, name unknown) who asked his own sister and patient to suck his "dick" after putting chocolate chip stuff on his "dick." Patient denied that she sucked his "dick." Patient reported that she thinks she was age eight when this happened and the boy moved away.

FI reviewed body safety education with patient. FI thanked patient for talking and concluded the interview.

{¶17} After the video concluded, on cross-examination N.R. stated that her mother and appellant "fought a lot." N.R. said that, after she initially tried to tell her Mom, they never again discussed the matter. Ultimately, N.R. told a teacher, Children's Services removed her from the home, and a relative transported her to Nationwide Children's Hospital. N.R. also testified that when appellant would rape her, she would try to scream, but "he would cover my mouth." N.R. also found her mother and appellant's drugs, and described the home as "hellish." N.R. acknowledged that she watched the video interview once on Thursday, and that she did not recall any distinguishing physical characteristics regarding appellant's body.

{¶18} M.R. testified that she is now 13 years old and lives with her sister, N.R., her sister A.D., and Thelma, her "mamaw and guardian." M.R., a seventh-grader, talks with her mother, but has only seen her biological father once. M.R. testified that at one time, she considered appellant to be her father. During the time she lived with appellant, her mother, and N.R.,

"Uncle Chuck" also lived there, along with Becky (her mother's mother), who lived with them briefly. M.R. estimated that she lived with appellant from around age three to seven. When asked how she felt about appellant, M.R. said, "when he would get mad, he would throw stuff. He, uh, harmed my dog. And he would - - he threw a toy car at me."

{¶19} M.R. testified that when she got in trouble, appellant "would take a stick and bust me. But either that, it would be a stick or a belt. Or his bare hand." When appellant hit her, it left "red marks . . . that make it sting." M.R. explained that appellant would also "take me in a room and make me f*ck him. . . And he would touch my body in certain ways. . . He would stick his dick in my ass. Um, and make me hump him. . . He'd make me f*ck him." M.R. said it happened more than five times. In addition, appellant "would touch me [in] inappropriate ways . . . around my ass and my upper body." Appellant also made M.R., "suck his dick," and this occurred more than five times. This behavior would stop "when mom would come home in the driveway." M.R. told her sister, N.R., about the abuse, but did not tell "a grown up" because she "was scared . . . He would threaten me if I told anyone."

{¶20} Appellee played State's Exhibit H, M.R.'s forensic interview, for the jury. Details of the Nationwide Children's Hospital Interview include:

FI introduced myself and explained my role. FI informed patient that she would get a check up with the doctor after we were done talking. FI reviewed interview guidelines. Patient practiced her understanding and promised to tell the truth. FI engaged patient in rapport building and patient talked about her family and interests. When talking about her pets, patient reported that her "dad" (David) beat up her dog (Maggie) and hit her other dog (Bella) with a plate, which made Bella's head bleed. Patient spontaneously reported that her dad touched her sister "dirty" and touched her "dirty" too. Patient then asked to go ahead and begin.

Patient reported that her dad "touched her dirty" more than one time. Patient reported that it first happened when she was age six. Patient reported that she is now age seven and it still happens. Patient reported that her dad told her not to tell anyone.

Patient reported that her dad makes her suck his "bad boy part/wiener" until he "cums" and makes her drink it. Patient then denied that she has ever been made to drink/asked to drink the white stuff. Patient reported that the "wiener" is the "dick" where white stuff comes out when girls suck it. FI introduced anatomical drawings of a boy and a girl. FI asked patient to identify the private parts on the drawings and observed patient point toward the breasts, vagina, penis, and butts. Patient referred to the breasts as "boobs," the vagina as "bug," butts each as "butt," and penis as "wiener/dick." When asked by FI, patient reported that the wiener is used to "hump and put in girls' bad part or mouth or he rubs it by your middle of your boobs." Patient began talking about the anatomical drawings, humping, and "having sex." Patient reported that she turns over and he makes her suck his wiener, which has happened more than one time. Patient reported that it happened "a bunch of days" and happened whenever her mom was gone, mom was upstairs, or [N.R.] was asleep. Patient reported that her dad has said a bad word, "fuck it," "Do it [M.R.]," and makes her say that she likes his wiener. Patient then stated to FI that she does not like his wiener. FI observed patient point towards the penis on the drawing as she reported that white stuff shoots out of it and it can shoot in the mouth or on the floor. Patient denied that she has ever tasted white stuff and reported that it tastes "nasty." Patient

reported that her dad's hands would push on her head when he made her suck his wiener. Patient denied there being something on his wiener when this happened. Patient reported that she saw white stuff come out of his wiener, which was spreading everywhere. Patient reported that he sometimes sprays it on her face, butt, or "bug." Patient reported that he was going downstairs for a towel to wipe it off her.

Patient reported that her dad "humps" her and makes her "hump" him. Patient reported that he humps her until he "cums" and makes her hump him for "a little bit." Patient reported that his body is shaking up and down and side-to-side when he humps her. Patient reported that their clothes are off when he jumps her and his wiener is touching her butt, "bug," and mouth. Patient reported that his wiener touched inside her butt, which she knew because "he always does that." Patient reported that his wiener touched inside her "bug," which she knew because he "always does that too." Patient reported that her body goes up and down while he humps her. Patient denied that he or she said something when he humps her. Patient reported that her humping him means that he makes her take her clothes off ("even" her "panties") and makes her have "sex" with him. Patient reported that his wiener touched inside her butt. Patient denied that something was on his penis or that something came out of his penis when this happened. Patient then stated, "He really doesn't hump me til he cums." When asked by FI, patient reported that the humping feels "the ouchies" and hurts very badly. Patient also denied that something was on his wiener or that something came out of his wiener when it touched her "bug" or her mouth.

Patient reported that her dad licks her "bad part." Patient later reported that he licked her belly, butt, and "bug" all on top of skin more than one time. Patient reported that he licked her butt "a lot of times."

Patient reported that having sex with her dad means that he made her watch videos of "s-e-x." Patient reported that she saw these videos a couple times, which were videos of boys humping girls, big wieners, and girls sucking boys until they pee and they drink it. Patient reported that her dad said, "Look at it." Patient denied that someone else was around when she saw these videos.

Patient denied that she said something when this happened.

When asked by FI, patient denied that her dad's wiener touched somewhere else on her body. Patient denied that another part of her dad's body touched her body. Patient then reported that her dad's hands went inside her butt. Patient reported that he stuck his hands in her butt, put white stuff on her "crack," "makes a hole so it goes in," then humps her. Patient reported that this feels painful. Patient reported that she said, "Quit that. . . ouch . . . it hurts," and her dad said, "I don't care." Patient also reported that her dad rubs the outside of her butt with his wiener on top of skin. Patient reported that this has happened more than one time. FI observed patient point toward her left butt cheek to indicate the "outside" of her butt. Patient denied that her dad's hands touched somewhere else on her body.

FI screened for other sexual concerns. Patient reported that she had to touch her dad's wiener and butt on top of skin with her hands, which had to move up and down. Patient also reported that her mouth had to touch her dad's butt on top of skin and her mouth had to move up and down. Patient reported that he made her lick his butt more than one time. Patient denied other sexual concerns.

FI screened for other exposure to pornography; patient denied. Patient also denied that someone has ever taken a picture/movie of her with no clothes on. When asked by FI, patient denied that she has ever seen someone touch someone else's private part.

FI screened for exposure to domestic violence; patient denied. Patient reported that her mom and dad have sent them to their room so they won't see mom and dad fighting. Patient reported hearing her mom crying. FI screened for physical abuse/discipline. Patient reported that she gets sent to the corner, sent to bed, or gets her "butt busted" when she's in trouble. Patient reported that her mom and dad have busted her butt/legs/back with a switch, belt, stick, and hands. Patient denied ever getting a mark/bruise. FI observed patient point towards a red mark on her stomach, which she reported was a "strawberry" mark from when she was a baby.

FI reviewed body safety education with patient. FI thanked patient for talking and concluded the interview.

{¶21} After the video played, on cross-examination M.R. acknowledged that she reviewed the video before her testimony and stated that the sexual abuse took place "either in David and Mom's room or downstairs in the middle of the night." M.R. did not recall any distinguishing physical characteristics regarding appellant's body.

{¶22} Ohio Bureau of Criminal Investigations Forensic Scientist Katherine Daily testified that she conducted the DNA testing for State's Exhibit J, a DNA standard from Brittany Blessing. She also conducted testing on State's Exhibit K, BCI Item Number 4, the sexual assault kit from M.R., and State's Exhibit L, BCI Item Number 3, the sexual assault kit from N.R. The evidence items sent for DNA analysis included two separate swabs from a sexual device, one from the swabbing of the inside, as well as one from the swabbing of the outside of the sexual device. DNA standards from [N.R.], [M.R.], Brittany Blessing, and David Longworth were also forwarded. On a sexual device, Daily found DNA mixtures from appellant and N.R. as major contributors.

{¶23} At the close of appellee's evidence, the trial court denied appellant's Crim.R. 29 motion for judgment of acquittal on Counts 13, 15, 16, and 17 of the indictment.

{¶24} Appellant's son, Colin Longworth, testified that he lived with appellant from 2011 to 2016 pursuant to a court order. Part of the time he lived with his father, Brittany Blessing, N.R., M.R., and Longworth's Uncle Charles. Longworth testified that M.R. and N.R. "loved my father. Uh, they treated him like they would treat a father. Very loving. Um, you know, playful. Uh, they would hug him all the time. They even called him dad."

{¶25} Devin Warner testified that she attended high school with appellant, has known him for 30 years, and the two shared a romantic relationship in 2020. Warner testified regarding appellant's tattoos and a quarter-sized mole near his penis.

{¶26} Julie Heinig testified that she is employed by DNA Diagnostics Center as the forensics laboratory director and DNA technical leader. Heinig reviewed BCI's DNA testing and noted that neither N.R. or M.R.'s rape kit revealed any foreign DNA. Further, N.R.'s Y-STR testing (Y-chromosome test) was negative for male DNA, and N.R. and M.R.'s underwear did not contain appellant's DNA.

{¶27} After deliberation, the jury found appellant guilty on all counts of the indictment. The trial court ordered a Presentence Investigation and set the matter for sentencing.

{¶28} At appellant's June 4, 2024 sentencing, appellant declined his right of allocution and the trial court found with regard to the R.C. 2929.12 seriousness and recidivism factors:

(1) injury was exacerbated by the victims' age (they were each under the age of 10); (2) both victims suffered serious physical harm; (3) the Defendant held a position of trust; (4) Defendant's relationship (step father) with the victims facilitated the offenses; (5) the offenses were committed while Defendant was on Post Release Control; (6) Defendant had a history of criminal convictions; (7) Defendant had not responded favorably to sanctions previously imposed, and, (8) Defendant shows no remorse, and accepts no responsibility in this matter.

{¶29} The court further found:

given the ages of the individual child victims (each under 10 years of age) and the facts as presented to the Court and jury, that this was a continuing course of criminal conduct involving these victims, and that was the worst form of the crimes.

{¶30} After the trial court considered the record, the pre-sentence investigation report, statements of counsel, and considered the R.C. 2929.11 principles and purposes of sentencing and the R.C. 2929.12 seriousness and recidivism factors, the court sentenced appellant to serve:

Count One: Rape of N.R. - term of life imprisonment without parole.

Count Two: Rape of N.R. - term of life imprisonment without parole.

Count Three: Rape of N.R. - term of life imprisonment without parole.

Count Four: Rape of M.R. - term of life imprisonment without parole.

Count Five: Rape of M.R. - term of life imprisonment without parole.

Count Six: Rape of M.R. - term of life imprisonment without parole.

Count Seven: Gross Sexual Imposition of N.R. - 60 months.

Count Eight: Gross Sexual Imposition of N.R. - 60 months.

Count Nine: Gross Sexual Imposition of N.R. - 60 months.

Count Ten: Gross Sexual Imposition of M.R. - 60 months.

Count Eleven: Gross Sexual Imposition of M.R. - 60 months.

Count Twelve: Gross Sexual Imposition of M.R. - 60 months.

Count Thirteen: Possessing Criminal Tools - 6 months.

Count Fourteen: Possessing Criminal Tools - 6 months.

Count Fifteen: Possessing Criminal Tools - 6 months.

Count Sixteen & Seventeen: Endangering Children (N.R. and M.R.) - counts merge with Counts 1-12 and the state elects to proceed with sentencing on those counts for purposes of sentencing.

Count 18: Aggravated Possession of Drugs - 6 months.

As to the Rape convictions, Counts One and Four are Ordered to be served consecutively to each other. Counts Two, Three, Five and Six are Ordered to be served concurrently with each other and concurrently with Counts One and Four.

As to the Gross Sexual Imposition convictions, Counts Seven and Ten are Ordered to be served consecutively to each other and consecutively to Counts One and Four. Counts Eight, Nine, Eleven and Twelve are Ordered to be served concurrently with each other and concurrently with any other concurrent sentence.

As to the Possession of Criminal Tools convictions (Thirteen, Fourteen and Fifteen), they are Ordered to be served concurrently with each other and concurrently with any other concurrent sentence.

As to the Aggravated Possession of Drugs conviction (Count Eighteen), same is Ordered to be served concurrently with the other concurrent sentences.

{¶31} In addition, the trial court ordered that appellant (1) register as a Tier II Sex Offender for 25 years for the 6 counts/convictions of Gross Sexual Imposition, (2) register as a Tier III Sex Offender for a lifetime period for the 6 counts/convictions of Rape, (3) serve a 5-year postrelease control term for each gross sexual imposition conviction, (4) serve up to 2-year postrelease control term for each possession of criminal tools and aggravated possession of drugs conviction, and (5) pay costs. This appeal followed.

I.

{¶32} In his first assignment of error, appellant asserts that the trial court abused its discretion and deprived him of a

fair trial when it admitted N.R.'s and M.R.'s forensic interviews. Specifically, appellant contends that Ohio Supreme Court case law required the trial court to review each interview line by line and exclude inadmissible hearsay.

{¶33} Appellee argues that, because appellant failed to object at trial to the admission of the complete forensic interviews, we must review the matter for plain error. Appellant, however, claims that his motion to preclude the forensic interview statements sufficiently preserved his hearsay claim for review. He further points out that the parties and trial court "expended significant effort on whether N.R.'s and M.R.'s statements fell within the hearsay exception for statements made for the purpose of medical diagnosis or treatment."

Standard of Review

{¶34} Generally, appellate courts review trial court evidentiary decisions under the abuse-of-discretion standard of review. *State v. Lykins*, 2019-Ohio-3316, ¶ 23 (4th Dist.), citing *State v. Minton*, 2016-Ohio-5427, ¶ 19 (4th Dist.), citing *State v. Nguyen*, 2013-Ohio-3170, ¶ 44 (4th Dist.). "An abuse of discretion" means that the court acted in an "unreasonable, arbitrary, or unconscionable" manner or employed "a view or action that no conscientious judge could honestly have taken." *State v. Kirkland*, 2014-Ohio-1966, ¶ 67, quoting *State v. Brady*,

2008-Ohio-4493, ¶ 23. Moreover, a trial court generally abuses its discretion when it fails to engage in a “sound reasoning process.” *State v. Morris*, 2012-Ohio-2407, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). Additionally, “[a]buse-of-discretion review is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court.” *State v. Darmond*, 2013-Ohio-966, ¶ 34.

{¶35} Although appellate courts ordinarily review trial court evidentiary decisions using the abuse-of-discretion standard of review, appellate courts review claims that the trial court’s evidentiary decision denied a defendant his right to confront witnesses under the Sixth Amendment using the de novo standard of review. *Minton* at ¶ 19, *Nguyen* at ¶ 44, citing *State v. Osman*, 2011-Ohio-4626, ¶ 78 (4th Dist.); *Lykins*, *supra*, at ¶ 24. However, because appellant failed to object at trial before the presentation of the complete forensic interviews, appellee contends that we must review for plain error.

{¶36} As noted, in general the admission or exclusion of evidence lies within a trial court’s discretion, and a reviewing court should not reverse absent an abuse of discretion and material prejudice. *State v. Conway*, 2006-Ohio-2815, ¶ 62, citing *State v. Issa*, 93 Ohio St.3d 49, 64 (2001). However, “if

the party wishing to exclude evidence fails to contemporaneously object at trial when the evidence is presented, that party waives for appeal all but plain error.” *State v. Hancock*, 2006-Ohio-160, ¶ 59-60, *State v. Barrett*, 2004-Ohio-2064, ¶ 20 (4th Dist.); Crim.R. 30(A).

{¶37} Civ.R. 52(B) governs plain-error review in criminal cases. *State v. Bagley*, 2014-Ohio-1787, ¶ 55. Crim.R. 52(B) affords appellate courts discretion to correct “[p]lain errors or defects affecting substantial rights” notwithstanding an appellant’s failure to timely raise those errors in the trial court. In such cases, the appellant bears the burden of demonstrating plain error on the record - i.e., the existence of a plain or obvious error that affected the outcome of the trial and resulted in a manifest miscarriage of justice.” *See, e.g., State v. West*, 2022-Ohio-1556, ¶ 3, citing *State v. Perry*, 2004-Ohio-297, ¶ 22. Therefore, to prevail on a claim that the trial court committed plain error, an appellant must demonstrate that an error occurred, that such error constitutes an obvious defect in the trial proceedings, and that the error affected the outcome of the trial. *See, e.g., State v. Gordon*, 2018-Ohio-259, ¶ 23. A court recognizes plain error with the utmost caution, under exceptional circumstances, and only to prevent a miscarriage of justice. *State v. Saleh*, 2009-Ohio-1542, ¶ 68. Under plain-error review, “[w]e may reverse only when the record

is clear that defendant would not have been convicted in the absence of the improper conduct.” *Id.*, citing *State v. Williams*, 79 Ohio St.3d 1, 12 (1997).

{¶38} In the case sub judice, we recognize that appellant did not lodge a specific objection at trial in order to preserve the record on appeal. Although appellant did file a pre-trial motion in limine regarding the forensic interviews, he also filed a pre-trial motion in limine to request the trial court to allow him to introduce the child advocacy center interviews, in whole or in part. In a similar situation, in *State v. Alliman*, 2023-Ohio-2617 (6th Dist.), Alliman moved to disqualify one of the State’s witnesses prior to trial via a motion in limine, that the trial court denied. The court held that the trial court’s denial of the motion in limine merely constitutes a preliminary interlocutory order that required renewal of appellant’s objection at trial in order for the trial court to consider the admissibility of the witness’s testimony in its actual context. *Id.* at ¶ 8, citing *State v. Alliman*, 2023-Ohio-206 (6th Dist.), ¶ 23-24. The rationale for this view is that trial courts should be provided a full opportunity to consider the merits of an issue during the actual trial, rather than express a preliminary view before the evidence is fully developed.

{¶39} In the case sub judice, it appears that appellant did not object at trial to the introduction of the interviews. Once again, it is well-established that in order to preserve the record on appeal, a party must renew an objection at trial to evidence that the party previously objected to in a motion in limine.

"Although extremely useful as a trial technique, the ruling in a motion in limine does not preserve the record on appeal. The ruling is a tentative, preliminary or presumptive ruling about an evidentiary issue that is anticipated but has not yet been presented in its full context. An appellate court need not review the propriety of such an order unless the claimed error is preserved by an objection, proffer, or ruling on the record when the issue is actually reached and the context is developed at trial."

State v. Grubb, 28 Ohio St.3d 199, 203 (1986).

{¶40} Furthermore, this court has explained:

Generally, a defendant who fails to raise a Confrontation Clause issue during the trial court proceedings forfeits the right to present it for the first time on appeal. *State v. Arnold*, 147 Ohio St.3d 138, 2016-Ohio-1595, 62 N.E.3d 153, ¶ 65; *State v. Louis*, 2016-Ohio-7596, 73 N.E.3d 917 (4th Dist.), ¶ 46; *State v. Smith*, 2016-Ohio-5062, 70 N.E.3d 150 (4th Dist.), ¶ 74; see *State v. Anderson*, 151 Ohio St.3d 212, 2017-Ohio-5656, 87 N.E.3d 1203, ¶ 44. Additionally, an "[o]bjection on one ground does not preserve other, unmentioned grounds." " *State v. Hairston*, 2016-Ohio-8495, 79 N.E.3d 1193, ¶ 34 (10th Dist.), quoting *State v. Wallace*, 10th Dist. Franklin No. 08AP-2, 2008-Ohio-5260, ¶ 25. Thus, objecting to testimony on the basis of hearsay or relevancy generally does not preserve a Confrontation Clause issue. *State v. Sibole*, 2nd Dist. Clark No. 2017-CA-68, 2018-Ohio-3203, ¶ 9; *Hairston* at ¶ 34; *State v. Harris*, 1st Dist. Hamilton No. C-130442, 2014-Ohio-4237, ¶ 14. Consequently, because here appellant did not specifically object at trial to the

alleged hearsay statements on the basis that they constituted hearsay and violated his rights under the Confrontation Clause, it can be argued that we may review the claimed violation only for plain error. *State v. Parsons*, 9th Dist. Lorain No. 18CA011328, 2019-Ohio-5021, ¶ 6 (defendant forfeited all but plain error with respect to Confrontation Clause issue when defendant “objected to a portion of [the] testimony on the basis that it called for a legal conclusion from the witness,” but “he did not object to any of it on hearsay grounds”).

State v. Russell, 2022-Ohio-1746, ¶ 90 (4th Dist.).

{¶41} In *State v. Carbaugh*, 2023-Ohio-1269 (5th Dist.), the Fifth District considered a case in which a jury found the defendant guilty of rape, with a sexually violent predator specification, and gross sexual imposition. Similar to the case at bar, Carbaugh argued that the trial court’s decision to admit the video of the forensic interview of the child victim at the Child Advocacy Center in its entirety constituted prejudicial error because law enforcement coordinated it and obtained evidence for future prosecution. In particular, Carbaugh argued that the interview should not be admitted into evidence under the Evid.R. 803(4) hearsay exception for statements made for medical diagnosis or treatment. *Id.* at ¶ 63. Counsel, however, failed to object pursuant to Evid.R. 803(4) to any statement related to the victim’s testimony, or to the admission of the interview as evidence. *Id.* at ¶ 64. The Fifth District concluded that on appeal Carbaugh did not raise plain error and thus, the court declined to consider it. *Id.* at ¶ 67.

{¶42} The Fifth District further noted that the victim testified at trial, was available for cross-examination concerning statements she made during the child advocacy center forensic interview and the trial court did not deny Carbaugh's right to confrontation. *Id.* at ¶ 68, citing *Crawford*, 541 U.S. 36 at 59, fn. 9. The court thus concluded that Carbaugh could not demonstrate a reasonable probability that, but for the admission of the victim's forensic interview, the result of the trial would have been different, as even without the interview, the victim identified appellant as her attacker and detailed the sexual assault during her jury trial testimony. *Id.* at ¶ 74.

{¶43} In the case sub judice, appellant did not renew his objection when appellee played the video for the jury. In fact, appellant deferred cross-examination of each witness until the respective video played, and even filed a pre-trial Evid.R. 106-related motion in limine that stated that appellant presumed appellee would introduce the Child Advocacy Center video interviews, in whole or in part, and requested the court to allow the appellant to introduce the videos in whole or in part.

Hearsay and the Confrontation Clause

{¶44} Appellant contends that the videotaped statements admitted into evidence at trial constitute inadmissible hearsay. Hearsay is defined as "a statement other than one made by the declarant while testifying at the trial or hearing, offered in

evidence to prove the truth of the matter asserted." Evid.R. 801(C). Hearsay is inadmissible unless it falls under an exception to the Rules of Evidence. Evid.R. 802; *State v. Maxwell*, 2014-Ohio-1019, ¶ 129; *Lykins* at ¶ 92. An out-of-court statement offered for reasons other than the truth is not hearsay. *State v. Lewis*, 22 Ohio St.2d 125, 132-133 (1970). Rather, "[i]t is well established that extrajudicial statements made by an out-of-court declarant are properly admissible to explain the actions of a witness to whom the statement was directed." *State v. Thomas*, 61 Ohio St.2d 223, 232 (1980).

{¶45} Relevant to the case at bar, Evid.R. 803(4) contains an exception for "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." This exception is based in the inherent reliability underlying the nature of those statements.

[A] fundamental assumption underlying the medical-treatment exception is that that particular hearsay is reliable. *Dever*, 64 Ohio St.3d at 410-411, 596 N.E.2d 436. "[The] exception is premised on the theory that a patient's statements to her physician are likely to be particularly reliable," *United States v. Tome* (C.A. 10, 1995), 61 F.3d 1446, 1449, and "carr[y] special guarantees of credibility," *White v. Illinois* (1992), 502 U.S. 346, 356, 112 S.Ct. 736, 116 L.Ed.2d 848.

State v. Muttart, 2007-Ohio-5267, ¶ 39.

{¶46} Appellant, however, points to *State v. Arnold*, 2010-Ohio-2742 to support his argument that a trial court must evaluate forensic interviews and exclude inadmissible hearsay. In *Arnold*, the Ohio Supreme Court addressed whether the introduction as evidence of "out-of-court statements made by a child to an interviewer employed by a child-advocacy center" in a criminal prosecution violates the Confrontation Clause. *Arnold* at ¶ 11. In *Arnold*, the court explained the context of such statements:

The objective of a child-advocacy center like the CCFA is neither exclusively medical diagnosis and treatment nor solely forensic investigation. " 'The purpose of a Children's Advocacy Center is to provide a comprehensive, culturally competent, multidisciplinary response to allegations of child abuse in a dedicated, child friendly setting.' " Nancy Chandler, *Children's Advocacy Centers: Making a Difference One Child at a Time* (2006), 28 Hamline J.Pub.L. & Policy 315, quoting National Children's Alliance, *Accreditation Guidelines for Children's Advocacy Centers* (2004) 5.

"Prior to the development of the Children's Advocacy Center model, 'traditional child abuse investigations often subject(ed) the child to multiple interviews.' " *Id.* at 332, quoting Lisa Snell, *Child Advocacy Centers: One Stop on the Road to Performance-Based Child Protection* (June 2003) 1. A child-advocacy center's " 'number one goal' " is to reduce trauma to a child-abuse victim by coordinating the interview to include professionals from multiple agencies, which, in turn, can reduce the number of interviews needed and improve the quality of the investigation, the diagnosis, and the recommendation for treatment. *Id.* at 323. Additionally, " '[t]hey help children avoid the trauma of repeating their story at various stops along the legal and judicial path.' " *Id.* These interdisciplinary teams

often include law-enforcement professionals, prosecutors, medical and mental-health personnel, and child advocates. *Id.* at 324.

Id. at ¶ 29-30.

{¶47} The *Arnold* court concluded that “statements made to interviewers at child-advocacy centers that are made for medical diagnosis and treatment are nontestimonial and are admissible without offending the Confrontation Clause.” *Id.* at ¶ 2. The court further held that “statements made to interviewers at child-advocacy centers that serve primarily a forensic or investigative purpose are testimonial and are inadmissible pursuant to the Confrontation Clause.” *Id.* Thus, the *Arnold* court’s decision rests upon its analysis of the Confrontation Clause.

{¶48} Generally, statements made for the purpose of medical diagnosis and treatment are considered reliable because “facts reliable enough to be relied on in reaching a diagnosis have sufficient trustworthiness to satisfy hearsay concerns.” *State v. Dever*, 64 Ohio St.3d 401, 411 (1992), quoting 2 McCormick on Evidence (4th Ed.1992) 250; accord *Muttart* at ¶ 41. Thus, “[i]f a statement is made for purposes of diagnosis or treatment, it is admissible pursuant to Evid.R. 803(4).” *Muttart* at ¶ 34, quoting *Dever*, 64 Ohio St.3d at 414. A court must determine whether a child-victim’s statement was made for the purpose of

medical diagnosis or treatment may consider the following non-exhaustive list of factors:

(1) whether the child was questioned in a leading or suggestive manner, *see, e.g., Dever*, 64 Ohio St.3d 15 at 410, 596 N.E.2d 436, citing *Idaho v. Wright* (1990), 497 U.S. 805, 110 S.Ct. 3139, 111 L.Ed.2d 638; (2) whether there is a motive to fabricate, such as a pending legal proceedings such as a "bitter custody battle," *id.*, citing [*State v.*] *Boston*, 46 Ohio St.3d [108,] at 108, 545 N.E.2d 1220 [(1989)]; and (3) whether the child understood the need to tell the physician the truth, *id.*, citing *People v. Meeboer* (1992), 439 Mich. 310, 322-323, 484 N.W.2d 621.

Muttart at ¶ 49.

{¶49} Furthermore, courts may consider "the age of the child making the statements, which might suggest the absence or presence of an ability to fabricate, and the consistency of her declarations." *Id.*, citing *Broderick v. King's Way Assembly of God Church*, 808 P.2d 1211, 1219-1220 (Alaska 1991).

Additionally, "the court should be aware of the manner in which a physician or other medical provider elicited or pursued a disclosure of abuse by a child victim, as shown by evidence of the proper protocol for interviewing children alleging sexual abuse." *Id.*, citing *State v. Gersin*, 76 Ohio St.3d 491 (1996).

In general, "[C]ourts have consistently found that a description of the encounter and identification of the perpetrator are within [the] scope of statements for medical treatment and diagnosis.'" *State v. Echols*, 2015-Ohio-5138, ¶ 27 (8th Dist.), quoting *In re D.L.*, 2005-Ohio-2320, ¶ 21 (8th

Dist.), citing *State v. Stahl*, 2005-Ohio-1137, ¶ 15 (9th Dist.); *State v. Richardson*, 2015-Ohio-824, ¶ 36 (12th Dist.); *Lykins*, *supra*, 2019-Ohio-3316, at ¶ 99.

{¶50} Moreover, in sexual assault cases that involve young victims, the State often presents testimony from a child advocacy social worker. Statements made to a child advocacy social worker may serve dual purposes: "(1) to gather forensic information to investigate and potentially prosecute a defendant for the offense, and (2) to elicit information necessary for medical diagnosis and treatment of the victim." *Arnold*, 2010-Ohio-2742, at ¶ 33.

In general, statements serve an investigative purpose when they do not help the treatment provider diagnose a medical condition or recommend treatment. Thus, a rape victim's statement that the defendant "shut and locked the bedroom door before raping her; her descriptions of where her mother and brother were while she was in the bedroom with [the defendant], of [the defendant]'s boxer shorts, of him removing them, and of what [the defendant]'s "pee-pee" looked like; and her statement that Arnold removed her underwear" "likely were not necessary for medical diagnosis or treatment." *Arnold* at ¶ 34.

On the other hand, statements made while the medical professional obtains the victim's history, such as whether the defendant's penis entered the victim's vagina, generally fall within the medical-diagnosis-and-treatment exception. *Arnold* at ¶ 37. For instance, statements identifying the defendant as the perpetrator of the crime, where the defendant touched the victim, and how the sexual contact occurred generally are statements obtained for medical diagnosis and treatment. *State v. Felts*, 2016-Ohio-2755, 52 N.E.3d 1223 (4th Dist.), ¶ 39, citing *Arnold* at ¶ 32, 38 (explaining that "information regarding the identity of the perpetrator,

the type of abuse alleged, and the time frame of the abuse allows the doctor or nurse to determine whether to test the child for sexually transmitted infections"); *State v. Taylor*, 8th Dist. Cuyahoga No. 101704, 2015-Ohio-2513, 2015 WL 3899165, at ¶ 44 (noting that "statements regarding the identity of the perpetrator, the type of abuse alleged, the time frame of the abuse, and the identification of the areas where the child had been touched, were all for medical diagnosis"); *State v. Williams*, 1st Dist. Hamilton No. C-140199, 2015-Ohio-3968, 2015 WL 5772109, ¶ 31 ("Obtaining a thorough history regarding the causation and nature of the injury is an important component of medical diagnosis and treatment"); *State v. Echols*, 8th Dist. Cuyahoga No. 102504, 2015-Ohio-5138, 2015 WL 8484088, ¶ 27, quoting *In re D.L.*, 8th Dist. Cuyahoga No. 84643, 2005-Ohio-2320, 2005 WL 1119809, ¶ 21 (" 'courts have consistently found that a description of the encounter and identification of the perpetrator are within scope of statements for medical treatment and diagnosis' ").

Lykins at ¶ 100-101.

{¶51} The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court held that the Confrontation Clause guarantees a defendant's right to confront those "who 'bear testimony'" against him. *Id.* at 51. The clause essentially "guarantees the defendant a face-to-face meeting with witnesses appearing before the trier of fact." *Coy v. Iowa*, 487 U.S. 1012, 1016 (1988). The clause thus protects a defendant's rights to "'physically . . . face those who testify against him, and . . . to conduct cross-examination.'" *Id.* at

1017, quoting *Pennsylvania v. Ritchie*, 480 U.S. 39, 51 (1987). A testimonial out-of-court statement of a witness who does not appear at trial is thus inadmissible unless the witness is unavailable and the defendant had a prior opportunity for cross-examination. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 309 (2009), citing *Crawford*, 541 U.S. at 54.

{¶52} In *Lykins, supra*, a jury found the defendant guilty of three counts of rape of a child. On appeal, Lykins challenged, inter alia, the victim's videotaped interview from the Mayerson Center at Cincinnati Children's Hospital, a child advocacy center. *Id.* at ¶ 2. Like the case at bar, Lykins argued that the introduction of the interview video violated his right to confront witnesses against him and argued that the interview was not related to a medical purpose but, instead, investigatory in nature. *Id.* at ¶ 87. We held that the record did not clearly indicate that the entire purpose of the Mayerson Center interview was investigative and that it did not serve any medical diagnosis or treatment related purpose. *Id.* at ¶ 105. We also observed in *Lykins* that "the Confrontation Clause is not violated by admitting a declarant's out-of-court statement, as long as the declarant is testifying as a witness and subject to full and effective cross-examination." *Lykins* at ¶ 89, citing *California v. Green*, 399 U.S. 149, 150 (1970).

This conclusion is supported by comparing the purposes of confrontation with the alleged dangers in admitting an out-of-court statement. Confrontation: (1) insures that the witness will give his statements under oath—thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the ‘greatest legal engine ever invented for the discovery of truth’; (3) permits the jury to decide the defendant’s fate to observe the demeanor of the witness in making his statement; thus aiding the jury in assessing his credibility.

Id.

{¶53} We further noted that the *Green* court also stressed that none of its decisions that interpreted the Confrontation Clause required the exclusion of “out-of-court statements of a witness who is available and testifying at trial.” *Id.* at 161. Instead, most cases “focused on precisely the opposite situation – situations where statements have been admitted in the absence of the declarant and without any chance to cross-examine him at trial.” *Id.* These situations had been subjected to careful scrutiny because they dispensed “altogether with the literal right to ‘confrontation’ and cross-examination . . .” *Id.* at 162. Thus, we held that the Confrontation Clause does not require the exclusion of prior statements of a witness who testifies at trial. *Lykins* at ¶ 90, citing *Green* at 164; accord *State v. Arnold*, 2016-Ohio-1595, ¶ 66 (stating that “admission of hearsay does not violate the Confrontation Clause if the declarant testifies at trial”); *State v. Kersbergen*, 2015-Ohio-3103, ¶ 68 (12th Dist.) (determining that victim’s out-of-court

statements made at Mayerson Clinic did not violate Confrontation Clause when victim testified at trial); *State v. Gray*, 2012-Ohio-4769, ¶ 48 (12th Dist.) (holding that “when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements”); *State v. Issa*, 2008-Ohio-5906, ¶ 16 (2d Dist.) (“Confrontation Clause does not bar admission of out-of-court statements where the defendant has the benefit of full and effective cross-examination of the declarant at the trial.”). Thus, when a victim testifies at trial and the defendant has the opportunity to conduct a full cross-examination regarding the out-of-court statements, the admission of the victim’s videotaped statements does not violate the Confrontation Clause. *Lykins* at ¶ 91.

{¶54} We also recognize that the Tenth District Court of Appeals recently considered this issue in *State v. Hardy*, 2024-Ohio-5926 (10th Dist.):

Regardless of whether [the minor victim’s] out-of-court statements during the forensic interview and medical examination were testimonial or non-testimonial, the Confrontation Clause did not bar the introduction of those statements in this case because Judy testified at trial and was subject to cross-examination. “[W]hen the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements. * * * The Clause does not bar admission of a statement so long as the declarant is present at trial to defend or explain it.” *Crawford* at 59, fn. 9, 124 S.Ct. 1354. See *State v. Arnold*, 147 Ohio St.3d 138, 2016-Ohio-1595, 62 N.E.3d

153, ¶ 66 (quoting fn. 9 of *Crawford*); *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 113 (same). Consistent with this principle, this court has held that the admission of a child's statements in a forensic interview or testimony about a child's statements in a forensic interview does not violate the Confrontation Clause when the child testifies at trial and is subject to cross-examination. See, e.g., *State v. S.A.A.*, 10th Dist. No. 17AP-685, 2020-Ohio-4650, 2020 WL 5798211, ¶ 15-17; *State v. C.C.B.*, 10th Dist. No. 18AP-782, 2019-Ohio-3631, 2019 WL 4272001, ¶ 31-32; *State v. Simms*, 10th Dist. No. 10AP-1063, 2012-Ohio-2321, 2012 WL 1894276, ¶ 42. Because Judy testified at trial and was subject to cross-examination in this case, the Confrontation Clause did not bar the introduction of her prior statements to Cooley and Dr. Huber during the forensic interview and the medical examination.

Hardy at ¶ 35.

{¶55} Finally, appellant points to *State v. Carson*, 2025-Ohio-2409 (10th Dist.) to support his argument that the trial court abused its discretion when it admitted the forensic interviews. A jury found Carson guilty of three counts of rape of a child. Similar to the case at bar, the State introduced the victim's forensic interview statements. The trial court admitted the statements pursuant to the medical diagnosis or treatment exception to the hearsay rule contained in Evid.R. 803(4). On appeal, the court concluded that the trial court erred when it admitted the entire forensic interview without first considering whether the primary purpose of certain statements was for medical diagnosis or treatment, or whether

those statements are admissible under a different Evid.R. 803 hearsay exception. *Id.* at ¶ 64.

{¶56} We believe, however, that *Carson* is distinguishable from the case sub judice in at least three ways. First, unlike the case at bar, the *Carson* court noted that *Carson* “is a case where the evidence of the defendant’s guilt is far from overwhelming.” *Id.* at ¶ 58. Second, unlike the case at bar, *Carson* objected to the forensic interview at trial. Finally, and most important, unlike the case at bar the victim in *Carson* did not testify at trial. *Id.* at ¶ 66.

{¶57} In the case sub judice, our review reveals that both victims testified at trial and were subject to thorough cross-examination. “The jury was able to personally observe [their] physical characteristics and demeanor.” *Carbaugh, supra*, 2023-Ohio-1269, at ¶ 75. Thus, any arguable inadmissible evidence collected in the forensic interview is cumulative to other evidence admitted at trial concerning appellant’s sexual assaults on N.R. and M.R. *Id.* Moreover, in examining factors to determine whether the victims’ statements were made for the purpose of medical diagnosis or treatment, we observe that (1) the victims were not questioned in a leading or suggestive manner, (2) no law enforcement officers were present during the child advocacy center interviews, (3) no evidence exists in the record to show that the victims had a motive to fabricate their

testimony, such as a pending legal proceeding, and (4) the victims did appear to understand the need to tell the truth. *Muttart, supra*, 2007-Ohio-5267, at ¶ 49.

{¶58} We readily acknowledge some memory gaps did appear to exist in the victims' trial testimony as they no longer recalled certain details that they had provided in the interview. A jury could consider these inconsistencies when assessing witness credibility. However, we point out that, sadly, due to circumstances beyond the victims' control, over six years elapsed from the time the victims confided in school staff until the date of the trial, a lifetime in the life of a child. Moreover, according to their testimony the abuse began as early as four years prior to the reporting.

{¶59} It is also important to recognize that a conviction may rest solely on the testimony of a single witness, including the alleged victim, if believed, and no requirement exists that a witness' testimony must be corroborated in order to be believed. *See State v. Washington*, 2023-Ohio-1667, ¶ 120 (8th Dist.) (jury heard directly from the victim regarding five incidents of rape). Moreover, "[i]t is well settled that a rape conviction may rest solely on the victim's testimony, if believed, and that "[t]here is no requirement that a rape victim's testimony be corroborated as a condition precedent to conviction." ' " *State v. Schroeder*, 2019-Ohio-4136, ¶ 84 (4th

Dist.), quoting *State v. Horsley*, 2018-Ohio-1591, ¶ 74 (4th Dist.); *State v. Canterbury*, 2015-Ohio-1926, ¶ 62 (4th Dist.); quoting *State v. Patterson*, 2014-Ohio-1621, ¶ 40 (8th Dist.); quoting *State v. Lewis*, 70 Ohio App.3d 624, 638 (4th Dist. 1990).

{¶60} In the case sub judice, the jury found the testimony from N.R. and M.R. to be compelling. More important, as appellee points out, based on the trial testimony of N.R. and M.R., the appellant's cross examination of the witnesses, and the corroborating physical evidence that contained N.R.'s and appellant's DNA, we do not believe for purposes of argument that a reasonable probability exists that, but for the admission of the forensic interviews, the result of the trial would have been different. Consequently, we conclude that appellant has not demonstrated that the trial court committed a plain or obvious error that affected the trial's outcome and constituted a miscarriage of justice.

{¶61} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

II.

{¶62} In his second assignment of error, appellant asserts that the trial court violated his due process rights when it found facts that it used to sentence him to life in prison without parole. In particular, appellant contends that the

trial court did not present the jury with a special verdict form to establish that the victims, N.R. and M.R., were less than 10 years old at the time of the offenses. Appellee candidly concedes that no special verdict form established that N.R. and M.R. were less than 10 years old at the time of the offenses. Consequently, appellee agrees that the trial court appeared to have erred when it sentenced appellant to serve life sentences without possibility of parole on the rape counts (Counts 1-6).

{¶63} When reviewing felony sentences, appellate courts apply the standard of review outlined in R.C. 2953.08(G)(2). *State v. Prater*, 2019-Ohio-2745, ¶ 12 (4th Dist.), citing *State v. Graham*, 2018-Ohio-1277, ¶ 13 (4th Dist.); *State v. Dillon*, 2025-Ohio-5394, ¶ 10 (4th Dist.). Under R.C. 2953.08(G)(2), “[t]he appellate court's standard for review is not whether the sentencing court abused its discretion.” Instead, R.C. 2953.08(G)(2) specifies that an appellate court may increase, reduce, modify, or vacate and remand a challenged felony sentence if the court clearly and convincingly finds either:

(a) That the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence is otherwise contrary to law.

{¶64} “[C]lear and convincing evidence is that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. Thus, an appellate court may vacate or modify any sentence that is not clearly and convincingly contrary to law if the appellate court concludes, by clear and convincing evidence, that the record does not support the sentence.

{¶65} In the case sub judice, the jury found appellant guilty, inter alia, of six counts of rape in violation of R.C. 2907.02(A)(1)(b). For example, as it relates to Count One, as appellant points out, the trial court instructed the jurors that before they could find appellant guilty of rape as charged in the indictment:

you must find beyond a reasonable doubt that beginning on May 1, 2017 and continuing through September 1, 2017, and in Vinton County, Ohio, the defendant engaged in sexual conduct with . . ., who was not the spouse of the defendant when the other person was less than thirteen years of age, whether or not the defendant knew the age of such person.

The trial court defined “sexual conduct,” and other related terms, and instructed the jurors: “If your verdict is guilty,

you will separately decide beyond a reasonable doubt whether N.R. was less than ten years of age at the time of the offense. If your verdict is not guilty, you will not consider this issue." Moreover, the court gave similar instructions for the other five rape counts and instructed the jurors that it would provide them with 18 verdict forms - one for each count included in the indictment. "[W]hen you have reached a verdict[,]" the court instructed, "you will complete the form . . . that corresponds to your decision and sign the verdict forms in ink." Moreover, the court further stated, "[w]hen all 12 of you agree on a verdict, all of you should sign the appropriate verdict form in ink."

{¶66} The record contains the signed verdict forms for Counts 1-6. However, as appellant points out, for a R.C. 2907.02(A)(1)(b) conviction a trial court may only sentence a defendant to life without possibility of parole if the jury made special findings under R.C. 2907.02(B), which provides:

(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

. . .

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

R.C. 2907.02(A)(1)(b) (April 6, 2023 version)².

{¶67} Once again, we acknowledge that appellee concedes that no special verdict forms establish that the victims were under ten years of age at the time of the offenses. Therefore, we agree with both parties that the trial court erred in sentencing appellant to life sentences without parole on Counts 1-6 and this court must remand this cause for resentencing. Therefore, we sustain appellant's second assignment of error.

{¶68} Accordingly, for all of the foregoing reasons we affirm the trial court's judgment in part, reverse the judgment in part relating to appellant's sentence and remand this cause for resentencing consistent with this opinion.

JUDGMENT AFFIRMED IN PART,
REVERSED IN PART AND REMANDED FOR
RESENTENCING CONSISTENT WITH THIS
OPINION.

² As appellant points out, the General Assembly amended R.C. 2907.02 in August 2024, but the amendment is not relevant in the case sub judice.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed in part, reversed in part, and this cause remanded for resentencing consistent with this opinion. Appellee shall recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Vinton County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.