[Cite as *State v. Alliman*, 2023-Ohio-2617.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio	Court of Appeals No. OT-21-024
Appellee	Trial Court No. 2020CR I 036A
v.	
James Alliman	**DECISION AND JUDGMENT**
Appellant	Decided: July 28, 2023

* * * * *

James J. VanEerten, Ottawa County Prosecuting Attorney, and
Thomas A. Matuszak, Assistant Prosecuting Attorney, for appellee.

Michael H. Stahl, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This matter is before the court on appellant's, James Alliman, "Application for Reconsideration and Application for En Banc Consideration," which was filed on February 6, 2023. For the following reasons, we grant appellant's application for reconsideration and reverse the judgment of the Ottawa County Court of Common Pleas.

Our resolution of the application for reconsideration in appellant's favor renders his application for en banc consideration moot, and it is hereby denied.

{¶ 2} On January 25, 2023, we issued our decision in appellant's direct appeal, affirming the judgment of the Ottawa County Court of Common Pleas, and holding inter alia, that a licensed independent social worker, Diane Ottney, did not offer expert testimony requiring her to be qualified as an expert, and that the admission of two of the state's timeline exhibits, State's Exhibit Nos. 1 and 2, was erroneous but harmless. *State v. Alliman*, 2023-Ohio-206, --- N.E.3d ---- (6th Dist.).

{¶ 3} Following our decision in *Alliman*, appellant timely filed the present motion seeking reconsideration under App.R. 26(A)(1) and en banc review under App.R. 26(A)(2).

{¶ 4} When reviewing a motion for reconsideration, we must determine "whether the motion * * * calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." *Matthews v. Matthews*, 5 Ohio App.3d 140, 450 N.E.2d 278 (10th Dist.1981), syllabus.

{¶ 5} In his motion, appellant argues that our decision in *Alliman* is in conflict with several other decisions that were previously released from this court. According to appellant, those decisions include, inter alia, *State v. Boaston*, 2017-Ohio-8770, 100 N.E.3d 1002 (6th Dist.), *State v. Walls*, 2018-Ohio-329, 104 N.E.3d 280 (6th Dist.), *State*

v. Kamer, 6th Dist. Wood No. WD-20-084, 2022-Ohio-2070, *State v. McGlown*, 6th Dist. Lucas No. L-07-1163, 2009-Ohio-2160, and *State v. Solether*, 6th Dist. Wood No. WD-07-053, 2008-Ohio-4738.

{¶ 6} First, appellant argues that *Alliman* held that "the pretrial ruling on the admissibility of expert testimony and a Crim.R. 16(K) violation does not preserve the error if an objection is not later made at trial." This, appellant contends, is in conflict with our decision in *Boaston*.

{¶ 7} In *Alliman*, we examined appellant's argument that one of the state's experts, Mindy Koskela, should have been precluded from testifying based upon the state's failure to provide an expert report. We rejected the argument for two reasons: (1) appellant waived the argument by failing to challenge Koskela's testimony at trial, and (2) the state furnished Koskela's expert report to appellant more than 21 days in advance of trial, thus conforming to the requirements of Crim.R. 16(K). It is the first reason that appellant contends is in conflict with *Boaston*.

{¶ 8} The facts in *Boaston* are different than the facts in this case. In *Boaston*, the defendant did not object to the admission of expert testimony until the trial had commenced. In failing to object prior to trial, we found that the defendant waived his argument under Crim.R. 12. *Boaston* at ¶ 53. Here, by contrast, appellant *did* move to disqualify Koskela prior to trial via a motion in limine, which was denied by the trial court. Our application of waiver, then, stemmed not from the application of Crim.R. 12,

but rather because the trial court's denial of appellant's motion in limine was merely 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 Koskela's testimony in its actual context. *Alliman* at ¶ 23-24. In light of this difference, we find that our decision in *Alliman* is not in conflict with *Boaston*.

{¶ 9} Second, appellant argues that *Alliman* is in conflict with *Walls* as to the second reason we articulated in rejecting appellant's argument concerning the admissibility of Koskela's testimony. According to appellant, our determination that the state's provision of Koskela's expert report in advance of trial complied with Crim.R. 16(K) ignores our decision in *Walls* where we held that an expert report must disclose the expert's testimony, findings, analysis, conclusions or opinions to avoid a "trial-by-ambush." *Walls* at ¶ 39.

{¶ 10} We squarely addressed this argument in our decision in *Alliman*, where we found that "the summary provided by the state contained all of the information that Koskela ultimately ended up providing during her testimony at trial." Consequently, our decision in *Alliman* is in harmony with the legal principle articulated in *Walls*, where we found an expert's testimony should have been excluded because it exceeded the scope of the expert report provided by the state prior to trial. The two decisions are not in conflict.

{¶ 11} Third, appellant asserts that our determination in *Alliman* that the state's witness, Diane Ottney, provided lay testimony, not expert testimony, is in conflict with

our decisions in *Kamer*, *McGlown*, and *Solether*. In *Alliman*, we found that Ottney's testimony about the symptoms of child sexual abuse did not constitute expert testimony and thus the trial court did not err in permitting her to testify without qualifying her as an expert. We reasoned:

> Ottney utilized her first-hand knowledge of child sexual abuse to draw conclusions that a rational person would form based on the observed facts. Specifically, Ottney identified common symptoms of child sexual abuse that she noticed while dealing with hundreds of victims throughout her career. She later testified as to certain behaviors she observed while counseling B.A. and V.A. At no point did she apply a specialized process of reasoning available only to specialists. Moreover, to the extent she offered opinions or drew inferences during her testimony, those opinions and inferences were "(1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." Evid.R. 701. As such, Ottney testified as a lay witness, not an expert witness.

Alliman at ¶ 34.

{¶ 12} Appellant argues that the foregoing reasoning conflicts with our decisions in *Kamer*, *McGlown*, and *Solether*. Having carefully reviewed those decisions, we agree with appellant that our decision in *Alliman* is in conflict with *McGlown* and *Solether*.

{¶ 13} In *McGlown*, we recognized that several Ohio courts have found that "the manner in which child victims of sexual abuse disclose and report that abuse is beyond the knowledge and experience of lay persons." *McGlown*, *supra*, 6th Dist. Lucas No. L-07-1163, 2009-Ohio-2160, at ¶ 41, citing *State v. Bortner*, 9th Dist. Lorain No. 02CA008189, 2003-Ohio-3508; *State v. Carey*, 2d Dist. Miami No.2002-CA-70, 2003-Ohio-2684; *State v. Carte*, 8th Dist. Cuyahoga No. 72955, 1999 WL 13962 (Jan. 14, 1999); *State v. James*, 3d Dist. No. 6-94-18, (Aug. 24, 1995). Similarly, in *Solether*, we held that an officer's testimony about delayed reporting by sexual assault victims "is not within the knowledge of the average juror," "required 'specialized knowledge,'" and "is properly categorized as expert testimony" notwithstanding the fact that such testimony was based upon the officer's personal experience. *Solether*, *supra*, 6th Dist. Wood No. WD-07-053, 2008-Ohio-4738, at ¶ 65.

{¶ 14} Relying upon *McGlown* and *Solether*, the dissent in *Alliman* correctly observed that a lay person can testify regarding personal observations of human behavior, but does not have the specialized training or expertise to testify as to the specifics of delayed disclosure, which is what Ottney did in this case. *Alliman*, *supra*, 2023-Ohio-206, --- N.E.3d ----, at ¶ 137 (Mayle, J., dissenting). Here, testimony regarding delayed disclosure of sexual abuse and symptoms of such abuse were "explained to the jury precisely because it is not common knowledge and may even seem counterintuitive to a lay person." *Id.* Thus, Ottney's testimony was, in fact, expert testimony, not merely lay

witness testimony. Our conclusion otherwise was obviously erroneous, and therefore reconsideration is warranted.

{¶ 15} The record below establishes that the state did not provide an expert report from Ottney, as required under Crim.R. 16(K). A trial court may not permit expert testimony in a criminal case without the state's provision of an expert report. Consequently, we conclude that the trial court erred in allowing Ottney to provide expert testimony concerning delayed disclosure of sexual abuse at trial.

{¶ 16} Having found that the trial court erred in admitting the expert testimony, we must determine whether that error was harmless under Crim.R. 52(A). *State v. Boaston*, 160 Ohio St.3d 46, 2020-Ohio-1061, 153 N.E.3d 44, ¶ 59. In order to do so, we apply the three-part analysis set forth in the Ohio Supreme Court's decision in *Boaston*, as follows:

> "First, it must be determined whether the defendant was prejudiced by the error, i.e., whether the error had an impact on the verdict. * * * Second, it must be determined whether the error was not harmless beyond a reasonable doubt. * * * Lastly, once the prejudicial evidence is excised, the remaining evidence is weighed to determine whether it establishes the defendant's guilt beyond a reasonable doubt." (Citations omitted).

Id. at ¶ 63, quoting *State v. Harris*, 142 Ohio St.3d 211, 2015-Ohio-166, 28 N.E.3d 1256, ¶ 37.

{¶ 17} As noted by the dissent in *Alliman*, this case hinges upon the credibility of the victims in this case who alleged that appellant abused them when they were children. Importantly, the victims waited several years before they first disclosed the sexual abuse. In an attempt to address the question of why the victims waited so long to disclose the abuse, the prosecution sought testimony from Ottney as an expert in childhood sexual abuse on the issue of delayed disclosure. This testimony had the effect of bolstering the victims' credibility and making their allegations of sexual abuse more believable by eliminating the concern about why it took them so long to disclose the abuse.

{¶ 18} Admittedly, the prosecution also elicited testimony about delayed disclosure from Koskela. Thus, one could argue that the testimony was merely duplicative, and thus harmless. However, Ottney's testimony differed from Koskela's testimony, because Koskela had never met the victims in this case and thus her testimony was limited to the basic symptoms of child sexual abuse and the prevalence of delayed disclosure of sexual abuse among child victims. Ottney, on the other hand, applied her familiarity with cases involving delayed disclosure of child sexual abuse to the victims in this case. After identifying the symptoms that are commonly manifest by victims of child sexual abuse, Ottney testified as to the victims' manifestation of such symptoms.

{¶ 19} This distinction between Koskela, who did not know the victims, and Ottney, who had counseled with the victims, was emphasized by the state during its direct examination of Ottney. Indeed, the state began this line of examination with the

question, "Now, unlike Ms. Koskela who just testified, you, yourself, know [B.A.] and [V.A.], don't you?"

{¶ 20} In light of the foregoing, we find that Ottney's expert testimony bolstered the credibility of the victims in this case. Consequently, we find that the erroneous admission of such testimony had an impact on the verdict and prejudiced appellant. Moreover, we cannot say, beyond a reasonable doubt, that the error was harmless. When excising the erroneously admitted expert testimony and weighing the remaining evidence, we do not find that appellant's guilt is established beyond a reasonable doubt. Accordingly, we find that appellant's seventh assignment of error is well-taken.

{¶ 21} Upon reconsideration of our decision in *Alliman*, we now find that the trial court committed reversible error in permitting Ottney to offer expert testimony at trial where the state failed to provide appellant with an expert report under Crim.R. 16(K). Therefore, we reverse the judgment of the Ottawa County Court of Common Pleas and remand this matter to the trial court for a new trial.

{¶ 22} It is so ordered.

Judgment reversed,
and remanded.

Thomas J. Osowik, J. _____
JUDGE

Christine E. Mayle, J.
CONCURS AND WRITES SEPARATELY. _____
JUDGE

Charles E. Sulek, J.
CONCURS IN PART, AND DISSENTS, IN PART. _____
JUDGE

MAYLE, J.

{¶ 23} I concur in the lead decision granting reconsideration, but I do so for the reasons articulated in my original dissent. I also believe it necessary to address several aspects of the dissenting opinion on the current motion.

{¶ 24} All three judges on this panel agree that the trial court erred by sending the jury to deliberate with the state's script for examining the victims. We agree that the state improperly appealed to the jurors' sympathy when the assistant prosecutor told them: "If you come out of that jury room with not guilty verdicts, you know the message that [B.A.] and [V.A.] are going to receive is that after having gone through all that trauma, at the end of the day, you didn't believe them and they will remember that for the

rest of their lives." And now we all agree that the trial court erred when it allowed Ottney to testify as an expert witness when the state failed to provide the defense an expert report as required by Crim.R. 16(K). Yet, the dissent persists in its belief that these combined errors do not require reversal.

{¶ 25} To be clear, I believe that the *cumulative* effect of these three errors requires reversal—not one error alone. And that is because this case rested solely on the credibility of the victims. There was no physical evidence, no confession, and no eyewitnesses. Without question, this type of independent evidence is not required to sustain a conviction; the victims' testimony alone, if believed by the fact-finder, may sustain a conviction. *See State v. Riffle*, 9th Dist. Medina No. 07CA0114-M, 2008-Ohio-4155, ¶ 13 ("[T]he state's case 'contained no physical evidence and rested solely on the credibility of the state's witnesses.' * * * While this is certainly sufficient evidence, it is not overwhelming."). But where the victims' credibility is central to the case, the more errors that are committed—particularly errors in admitting evidence that has the effect of bolstering the victims' credibility—the more difficult it is to say, with any degree of confidence, that the evidence did not impact the jury's credibility determinations, and, thus, its verdict. *State v. Carter*, 5th Dist. Stark No. 2002CA00125, 2003-Ohio-1313, ¶ 38 ("[N]umerous harmless errors may add up to harmful error."); *State v. Jones*, 1st Dist. Hamilton No. C-950005, 1995 WL 763604, * 3 (Dec. 29, 1995) (finding that three

unobjected-to errors in the admission of evidence combined to produce cumulative error requiring reversal).

{¶ 26} The dissent, while acknowledging that this case hinged upon the credibility of the victims, denies that the improperly-admitted evidence bolstered the victims' credibility and dismisses the erroneously-admitted evidence as merely duplicative. Specifically, with respect to Ottney's testimony, it concludes that her testimony did not bolster the victims' credibility "in any appreciable way" and was duplicative of Koskela's.

{¶ 27} The Cambridge dictionary defines "bolster" as "to support or improve something or make it stronger." (*See* https://dictionary.cambridge.org/us/dictionary/english/bolster, last accessed Jul. 17, 2023). Black's Law Dictionary defines it to mean "[t]o enhance (unimpeached evidence) with additional evidence." Black's Law Dictionary (11th ed. 2019). Ottney testified about the signs and symptoms exhibited by sexual abuse victims, then described behaviors exhibited by B.A. and V.A. that are consistent with those signs and symptoms. Without a doubt, the state called Ottney to testify to "support," "enhance," or "improve" B.A. and V.A.'s testimony "with additional evidence" in an effort to "make it stronger." If Ottney's testimony did not bolster the victims' credibility in any appreciable way, we can be sure the state would not have called her to testify.

{¶ 28} It is also worth noting that Ottney's testimony was not just "duplicative" of Koskela's testimony. It was *intentionally* duplicative and was meant to drive home the state's position that the victims exhibited signs and symptoms of sexual abuse and were not unique in failing to immediately report it. During its closing, the state highlighted for the jury that it had heard about delayed disclosure "from not one, not two, but three counselors." This court has recognized that the state's action in emphasizing improper testimony for the jury may make it more likely that the defendant was prejudiced by its admission. *See State v. Walls,* 2018-Ohio-329, 104 N.E.3d 280, ¶ 51 (6th Dist.). *See also State v. Ferricci,* 8th Dist. Cuyahoga No. 110208, 2022-Ohio-1393, ¶ 73, *appeal not allowed,* 169 Ohio St.3d 1431, 2023-Ohio-381, 202 N.E.3d 720, quoting *State v. Morris*, 141 Ohio St.3d 399, 2014-Ohio-5052, 24 N.E.3d 1153, ¶ 31 ("[T]he conduct of the prosecutor 'may combine with an evidentiary error to cause greater impact.'"). Here, while downplaying the significance of Ottney's testimony on the basis that it was duplicative, the dissent ignores that the state not only emphasized the testimony in its closing, but also argued that it should be believed precisely *because* it was duplicative of other testimony.[1]

[1] Strangely, the dissent maintains that "the questions of what are the signs and symptoms of child sexual abuse and what is the prevalence of delayed disclosure were not at issue in the trial." Clearly, Ottney and Koskela testified *because* the signs and symptoms of child sexual abuse and delayed disclosure were at issue and experts were needed to explain why the victims did not immediately report their abuse and had even initially denied abuse.

{¶ 29} The same can be said of the prosecutor's summaries. The dissent calls this evidence "merely duplicative" of the victims' testimony. First, this is patently inaccurate. As I did in my original dissent, I would point to Exhibit 1, the state's script for examining B.A., which indicates that B.A. ran into the barn and hid, whereas B.A. testified that she ran into a cornfield, and even described that she lay on her belly, her father followed her but gave up, and she dusted the dirt off herself when she got up—very specific details that were at odds with the state's attorney's summary. Despite this discrepancy, the dissent calls the exhibits "entirely" duplicative of the victims' testimony and says that the victims testified to "*all* of the information" contained in the summaries. (Emphasis in original.) This is obviously untrue.

{¶ 30} Even setting aside this misstatement, the dissent excuses the error in admitting the summaries by rationalizing that the state "did not include any information reflecting the inferences and conclusions to be drawn from B.A.'s and V.A.'s testimony." This is an incredible contention given that the exhibits contained the very facts the state wanted the jury to find, crafted succinctly and organized into table form—carefully worded by the state's attorney—for ease of use. They were the Cliff's Notes version of the victims' expected testimony intended for reference during deliberations.

{¶ 31} The dissent is critical that I continue to consider these errors cumulatively because "Alliman does not raise and separately argue the issue of cumulative error in his application for reconsideration despite including it as an assignment of error in his

underlying appeal." I do not read his motion so narrowly. Rather, I believe his motion must be read in conjunction with his merit brief, and we must decide the motion with reference to what has already been decided in this appeal. And as I previously stated, with each piece of erroneously-admitted evidence, it becomes more difficult to say that the improper evidence did not impact the verdict. I simply stand by the same conclusions I reached when we considered these errors the first time around.[2]

{¶ 32} With that said, I emphasize again that it is the cumulative effect of the errors here that persuades me that reversal is required. "To affirm a conviction in spite of multiple errors, we must determine that the cumulative effect of the errors is harmless beyond a reasonable doubt." *State v. Anderson*, 7th Dist. Mahoning No. 03MA252, 2006-Ohio-4618, ¶ 80, citing *State v. DeMarco*, 31 Ohio St.3d 191, 195, 509 N.E.2d 1256 (1987). The cumulative error doctrine "most often applies where the evidence is not overwhelming or when the outcome depends upon witness credibility." *State v. Baber*, 2021-Ohio-1506, 171 N.E.3d 1257, ¶ 38 (1st Dist.), *appeal allowed,* 164 Ohio St.3d 1419, 2021-Ohio-2923, 172 N.E.3d 1043, and *appeal dismissed as improvidently allowed,* 166 Ohio St.3d 532, 2021-Ohio-4121, 188 N.E.3d 152.

---

[2] The dissent comments that neither my opinion nor the lead decision addresses Alliman's argument that we must reconsider our determination that the admission of State's Exhibits 1 and 2—the state's attorney's summaries—was harmless. It correctly points out that due to a copying error, page seven of Alliman's motion (where this argument appears) was not included in digital copies provided to the judges and their staff attorneys. As I have attempted to make clear, my opinion rests on the *cumulative* effect of the errors here and not on any one error, so I find it unnecessary to specifically address this argument.

{¶ 33} Again, the dissent acknowledges that this case turned on the credibility of the victims, but it finds that there was overwhelming evidence of guilt because the victims described their abuse; the victims disclosed sexual abuse to a counselor; V.A. had an emotional response to seeing the word "rape" on an exam, then sent a stream-of-consciousness message to her school counselor; the victims exhibited some emotional disturbances and behaviors consistent with (but not necessarily unique to) sexual abuse victims; and a psychiatrist posited sexual abuse as a possible explanation for the victims' failure to respond favorably to medication prescribed to treat bipolar disorder.

{¶ 34} When courts consider whether overwhelming evidence of guilt exists, they often look at evidence like confessions, eyewitness testimony, DNA evidence, or other physical evidence. *See, e.g., State v. Morris,* 2012-Ohio-6151, 985 N.E.2d 274, ¶ 53 (9th Dist.), *aff'd,* 141 Ohio St.3d 399, 2014-Ohio-5052, 24 N.E.3d 1153 (concluding that there was not overwhelming evidence of guilt "[i]n the absence of any confession, physical evidence, or eyewitnesses" other than the testimony of the victim herself); *State v. Hall*, 1st Dist. Hamilton No. C-170699, 2019-Ohio-2985, ¶ 39 (finding that where case lacked physical evidence and was premised on witness credibility, erroneous admission of expert testimony and improper comments by the state during closing were not harmless); *State v. Williams*, 6 Ohio St.3d 281, 291, 452 N.E.2d 1323 (1983) (concluding that there was overwhelming evidence of guilt where defendant made incriminating statements to three witnesses, he had the murder weapon in his possession, and testimony established that

defendant's claim that gun accidentally fired was not feasible); *State v. Sargent*, No. 2015-Ohio-704, 29 N.E.3d 331, ¶ 35 (6th Dist.) (concluding that the victim's credibility was central to the case, therefore, the erroneous admission of other-acts evidence, which could affect the jury's weighing of credibility, was not harmless); *State v. Hart*, 2018-Ohio-3272, 118 N.E.3d 454, ¶ 42 (8th Dist.) (explaining that in a case "where credibility is paramount," it could not say that the erroneous admission of other-acts evidence was harmless).

{¶ 35} In my view, the evidence relied on by the dissent—while certainly more than sufficient to sustain Alliman's conviction—is not "overwhelming evidence," as that term is used by courts when finding error harmless beyond a reasonable doubt. Certainly, as with most issues, there are cases finding harmless error that could be analogized to some degree with this one. *See, e.g.*, *State v. Morrison*, 9th Dist. Summit No. 21687, 2004-Ohio-2669, ¶ 66 (finding that "[d]espite the absence of any physical evidence indicating that [victims] were sexually abused by Appellant, the record [wa]s replete with testimony from the children's counselors proving that the children were indeed sexually abused"); *State v. Carpenter*, 7th Dist. Monroe No. 19 MO 0010, 2020-Ohio-5295. After all, cumulative-error and harmless-error inquiries are necessarily case-specific. *Baber* at ¶ 38. It is therefore easy to find common threads to highlight within detailed fact patterns—but no two cases are completely alike. In *Morrison* and *Carpenter*, for instance, the courts found only one error—an error in an expert commenting on her belief

that the victim was being honest (*Morrison*), and an error in admitting undisclosed expert testimony (*Carpenter*). We cannot know how those courts would have ruled if there had been a multitude of additional errors, such as the admission into evidence of the prosecutor's proposed findings of fact and the prosecutor imploring the jury not to send a message to the victims that it did not believe them.

{¶ 36} In sum, this case still boils down to the victims' credibility. And while ***we*** may find the victims credible, we must resist the urge to sit as the trier of fact in this case. That is not our role. "The jury is the sole judge of the weight of the evidence and the credibility of witnesses." *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964). A jury must have the opportunity to determine Alliman's guilt after considering only *properly-admitted* evidence. Simply put, Alliman has the constitutional right to a fair trial, and he did not receive one in this case due to the cumulative impact of several egregious errors. I therefore agree with the lead decision that Alliman's motion for reconsideration should be granted.

SULEK, J.

{¶ 37} I join with the lead opinion's conclusion that Mindy Koskela's testimony was properly admitted. I also agree with the lead opinion's conclusion on reconsideration that it was error for the trial court to allow Diana Ottney to testify as an expert witness

and that her testimony should have been excluded as a result of the state's failure to provide defendant James Alliman with an expert report as required by Crim.R. 16(K). However, I would hold that the admission of Ottney's testimony was harmless beyond a reasonable doubt. Accordingly, I would deny Alliman's application for reconsideration.

I. Trial Testimony

{¶ 38} Making a harmless error determination warrants a detailed examination of the evidence. In this case, the trial consisted of seven witnesses for the state.

B.A.

{¶ 39} The state first presented the testimony of B.A. She began by explaining that she was 20 years old, but was not currently working because she has "very bad" anxiety and is very nervous. B.A. testified that she is currently prescribed lithium as a mood stabilizer, Latuda for depression and anxiety, and Ambien to sleep. B.A. also testified that she has been in therapy "for as long as I can remember, from a young age," and that she has been seeing her current therapist since December 2019.

{¶ 40} In addition to the therapy, B.A. developed a close relationship with her high school counselor, Callie Haas. B.A. testified that she was an average student, who had good attendance during her sophomore and junior years. But, during her senior year, B.A. had very poor attendance and only attended school for about two months. Before she stopped attending school, B.A. changed her phone number because she was getting

text messages from Alliman, and she wanted to put the past behind her and "be better, actually be happy."

{¶ 41} After B.A. stopped attending school, Haas reached out and B.A. agreed to meet with her. When the two met in September 2019, B.A. became overwhelmed with emotion while she was talking and disclosed the sexual abuse by Alliman. B.A. testified that she had no intention of disclosing the sexual abuse when she began talking with Haas. And while she was glad that she told Haas, she stated she "[was] not happy it all came out because [Alliman] has so much to lose. I didn't, I didn't tell anybody because he works on the railroad. That's good money. He was paying child support. It was helping my mom and me out. So, I didn't want him to have to lose a good job for it."

{¶ 42} B.A. spoke with a detective that same day, but initially did not want to pursue charges. Several weeks later, however, B.A. listened to a school speaker share her history of abuse, and after talking with the speaker, B.A. changed her mind and decided to pursue charges.

{¶ 43} B.A. next testified to the specific details of Alliman's abuse. B.A. testified that the abuse first occurred during the fall when she was ten years old. Her mother worked at a corn maze almost all day, every day. Alliman worked on the railroad, but he would usually be asleep at home when B.A. and her sister got home from school. One time, however, B.A. was upstairs on the bed in her room playing "the little clip game" on her Nintendo DS, while her sister, V.A., was downstairs taking a shower. Alliman came

upstairs into B.A.'s room and over towards the bed. He pulled B.A.'s pants down and got on top of her. B.A. testified that Alliman then "put his penis in my vagina." A couple of seconds later, she heard the toilet flush downstairs, and Alliman immediately got up, pulled his pants up, and ran downstairs. B.A. testified that Alliman told her that she should not tell anybody or he would kill her. When Alliman left the room, B.A.'s pants were still down.

{¶ 44} B.A. testified that she never told anyone what had happened because Alliman said he would kill her. Alliman is a large man, standing six feet, seven inches tall, and weighing approximately 385 pounds, and B.A. testified that she was scared of him because he towered over her. Whenever B.A. did something wrong, Alliman would become very upset, and she was afraid of him when he would discipline her.

{¶ 45} B.A. then described a second incident of sexual abuse that occurred in 2016, right before the start of her freshman year. B.A. was spending the night at a friend's house who lived nearby. In the morning, B.A.'s friend's dad received a phone call from Alliman, stating that he wanted to speak to B.A. On the phone call, Alliman told B.A. that he just found out that B.A.'s mother was cheating on him with one of his friends from work. B.A. felt terrible because she did not know that her parents were having trouble. Alliman came and picked up B.A. and drove to their home. B.A. testified that Alliman pulled around to the back of the house, where he started crying and telling B.A. what her mom had done. B.A. felt terrible and hurt, and she saw her dad

crying, which she had never really seen before. B.A. slid over on the truck seat and gave her dad a hug. Alliman hugged her back and then grabbed B.A. and pulled her pants down. Alliman climbed on top of B.A. and put his penis in her vagina. B.A. testified that it only happened for a couple of seconds because she was strong enough to squirm away, and she kneed his testicles and pushed him out of the truck. B.A. opened the passenger door, pulled up her pants, and fled towards the corn field behind their house. B.A. described in detail where she went and laid on the ground to hide from her dad.

{¶ 46} B.A. laid on the ground in the cornfield for ten or fifteen minutes, and then hid behind a carport at her house for another five or ten minutes before she started going back to her friend's house. B.A. dusted herself off and called her friend, who met her halfway. B.A. was crying when she met her friend, but told her just that her parents were cheating on each other. B.A. testified that she did not disclose the sexual abuse to her friend because she was scared and did not know what her friend would think of her.

{¶ 47} B.A. next testified to her history of self-harm. B.A. stated that she began cutting herself in approximately 2012, when she was twelve or thirteen years old. B.A. would use a razor blade to cut herself on several areas of her body. B.A. showed some of her scars to the jury. She also identified a photo that she took showing scars on her thighs. B.A. testified that when she looks at the photo,

> I can see a bunch of different scars from different times at a point in my life. When I see it, I actually see that there was, I was hurt, I was

> suffering, and asking for help. And nobody wants to walk around in shorts with scars like that. Everybody sees them. Everybody asks. Those scars aren't who I am today. Far from.

B.A. also showed the jury a tattoo on her arm that she got to cover up some of the scars. B.A. explained that the tattoo has special meaning to her because portions of it symbolize that she tried to commit suicide twice, but did not, and kept going.

{¶ 48} After a brief line of questioning where B.A. adopted the statements contained in State's Exhibit No. 1 as her own, B.A. began the final portion of her testimony pertaining to an interview that she had with Detective Amanda Cross in 2017. B.A. testified that she was not sure if she had ever met Cross before the interview. During the interview, Cross asked B.A. if Alliman ever sexually abused her, and B.A. denied that he had. B.A. told Cross that "he wouldn't do that." However, B.A. testified that her statements to Cross were not the truth, and that she was scared at the time. B.A. elaborated,

> I wasn't ready for it to come out. I really, I mean you have somebody tell you they're going to kill you if you say something. You trust one human being that you're supposed to trust and supposed to be there. And when they say something to you like that, how are you supposed to trust a stranger? Somebody who you never really talked about,

about something that, that big. I couldn't push myself to come out with it then.

And [V.A.] my little sister said something about it, and I completely took that away from her. I said "No, that wouldn't happen."

{¶ 49} On cross-examination, the defense played an audio recording of that interview with Cross. B.A. was asked why the jury should believe her when she disclosed the sexual abuse in 2019, and not believe her when she denied any sexual abuse in 2017. B.A. responded that her 2017 denial should not be believed "[b]ecause of the videos like how I said it to [Cross][3] and how I paused and I wasn't ready, you could tell I was not ready for that in 2017."

{¶ 50} Finally, the defense asked B.A. if it was true that while her parents were going through a divorce in 2016, she told a guardian ad litem that she wanted visitation with her dad, even though that would have occurred after the alleged sexual abuse. B.A. offered a lengthy explanation on re-direct:

Everybody has two parents. A lot of people are not okay without being two parents – having two parents there. I'm a strong believer in everybody deserves second chances. Even if that means five chances or seven chances, he's still my dad.

[3] B.A. mistakenly referred to "Mr. Detective LaRue," with whom she met after disclosing the abuse to Haas in 2019.

I wish things didn't happen the way they happened with my dad. I still wanted to see him. He was still my dad. And I hate having to grow up saying that my dad is not around. My dad, I was in cheerleading for twelve years. My dad only went to maybe two or three competitions. I wanted my dad there. And I wanted to give him a second chance.

And he lived with his parents, so I knew there would be people there all the time. So I said I wanted to still see him. I wasn't ready just to not have him there.

I don't – even though my dad was always there for my sister, I always, always, always, wanted to be a daddy's girl because of my grandpa. Because my grandpa is not my dad. I wanted to have a connection with my dad.

So, I still did not want to see him, but I wanted to take precaution as to. It sucks. I haven't seen him. This is the first time I've seen him in a long time. I hate that this is happening, but I can't do anything to change it. But I wish there was a way that he could still be there, but not be there.

So, I did tell them. I didn't mean it that way. I wasn't ready to say just good-bye to my dad. I couldn't. Even though he hurt me, I still put that behind me because family comes first.

V.A.

{¶ 51} The next witness to testify was B.A.'s sister, V.A. At the time of trial in 2021, V.A. was 17 years old, and a senior in high school. V.A. testified that when she was a little girl, she had a good relationship with her father. She loved and trusted him, and felt loved by him. At some point in time, however, V.A. began to become afraid of her dad. She testified that Alliman would get angry and throw things. One time, he threw a refrigerator at V.A.'s mother. Another time he kicked the family dog and held down the button on the shock collar for a long time after the dog went to the bathroom in the house. Yet another time, he took V.A.'s toy out of her hands and threw it at the wall or floor and broke it. V.A. also testified that Alliman would spank her using a lot of his strength, leaving bruises all over her body. All of these things made V.A. feel scared.

{¶ 52} V.A. then began to testify about the instances of sexual abuse. The first instance occurred between July and October 2008, when V.A. was five years old. V.A. and her sister had just recently stopped sharing a bedroom. V.A. testified that one night she woke up and Alliman was on top of her. She remembered that it was hard to breathe. V.A. testified that Alliman was "holding me down and covering my mouth and telling me to be quiet and not say anything or he would take me away and hurt me. It was then he had vaginal intercourse with me." V.A. stated that she was not able to move and could not fight back. She remembered that it felt like it lasted forever, but was probably just a few minutes. After Alliman left the room, V.A. stayed there scared and cuddled her stuffed animals.

{¶ 53} V.A. also testified that in September 2009, when she was six years old, she started to notice Alliman watching B.A. while she showered. V.A. testified that the weather was warm at the time, but it was getting colder. She also recalled that B.A. was approximately eight years old at the time.

{¶ 54} V.A. testified that another instance of sexual abuse occurred between November 2011 and February 2012, when she was eight years old. V.A. stated that the same thing happened that she described the first time, and she affirmed that Alliman entered her bedroom, woke her up out of her sleep, and engaged in vaginal intercourse with her.

{¶ 55} The next instance occurred in June 2012, when V.A. was eight years old. V.A. remembered the time because she had the opportunity to ride in a helicopter on Father's Day, and the pilot let her fly it for a few seconds. V.A. testified that around that time, she woke up to Alliman on top of her again. He held her down, covered her mouth, and told her to shut up. Alliman had vaginal intercourse with her and told her that if she ever said anything, he would take her away and hurt her.

{¶ 56} V.A. next testified to another two instances of sexual abuse that occurred between August and October 2013, when V.A. was ten years old. V.A. again testified that both times she woke up to Alliman on top of her and that he had vaginal intercourse with her. Alliman repeated that she should not say anything or he would take her away and hurt her. V.A. testified that these instances lasted between ten to fifteen minutes.

{¶ 57} The sixth instance of sexual abuse occurred in August 2014, when V.A. was 11 years old. Two weeks after V.A. was baptized at her church, she again woke up to Alliman on top of her, having vaginal intercourse. V.A. stated that Alliman made the same threats that she should not say anything or he would take her away and hurt her. V.A. testified that she did not tell anyone about the sexual abuse because she was scared of Alliman; she had seen him be violent and he had threatened her.

{¶ 58} The seventh instance of sexual abuse occurred between March and April 2016, when V.A. was 12 years old. V.A. remembered that time frame because she had chicks and ducks then. V.A. once more testified that she woke up and Alliman was on top of her, having vaginal intercourse. Alliman again threatened her not to say anything or he would take her away and hurt her.

{¶ 59} V.A. testified that the next two instances of sexual abuse occurred in June 2016, when she was still 12 years old. V.A.'s mom had recently had hernia surgery and could not walk up the steps to sleep upstairs. V.A. again described that she woke up to Alliman on top of her, covering her mouth and telling her not to make any noise. Alliman had vaginal intercourse with V.A. both times and told her that if she ever said anything he would take her away and hurt her.

{¶ 60} The last instances of sexual abuse occurred between July and August 2016, when V.A. was approximately 12 or 13 years old. These instances were not charged in

the indictment, but V.A. testified that Alliman had vaginal intercourse with her three more times during this period.

{¶ 61} V.A. testified that the abuse stopped in 2016 or 2017 when her parents divorced and Alliman moved out.

{¶ 62} Regarding the impact of the sexual abuse, V.A. testified that she has been seeing counselors off and on since she was six years old. V.A. stated that the abuse has caused her a lot of psychological and emotional trouble. V.A. was six years old when she first tried to commit suicide by hitting herself and smashing her head into the wall "because I just didn't want to be there anymore." V.A. also tried to run away. She testified that she was placed in the psychiatric ward for a week after that.

{¶ 63} In addition, V.A. testified that she began cutting herself when she was in the seventh or eighth grade. One time she tried to kill herself by cutting "really deep" on her legs. V.A. testified that she is still cutting herself, although she has not done it in a while. When she cut herself, she would often cut her thighs. V.A. then authenticated some pictures from the summer of 2020, which depicted the cuts on her legs. V.A. testified that Alliman knew that she and B.A. were cutting themselves. She remembers Alliman texting B.A. when B.A. was a freshman or sophomore and encouraging her to cut herself and do drugs like mushrooms.

{¶ 64} V.A. stated that she began taking medications when she was six years old. She has been on so many that she does not remember all of them. She does remember

that she began taking lithium when she was in fifth grade and has taken other medications for anxiety, depression, and anger. V.A. testified that at the time of the trial she was not currently taking any of those medications.

{¶ 65} V.A. also described an incident from April 2020, where she had an emotional breakdown. In a criminal justice course, the word "rape" was used two or three times during an exam. V.A. testified that this was a "trigger word" for her but she tried to push through and finish the exam. When she finished, she went to Callie Haas's office, where she broke down crying. Haas asked V.A. to write down how she was feeling. V.A. wrote,

> I couldn't move I couldn't do anything he was to big I was so scared the things he said why me why did this happen to me this is my fault why did it have to happen to [B.A] too I wish I said something sooner so it didn't happen so many times what he would do knowing I was alone through it knowing how it felt to not talk about it how I acted out and no one listened they just thought I had his bi polar no one asked what was truly wrong how I wanted to say something but couldn't the threat how strong he was and how scared I was how I never knew when it would happen again but knew it would happen never being able to act like it happened having to act normal and hide it all being so scared when we would be alone and just not knowing

V.A. testified that she had been feeling that way since the abuse started, "just feeling empty and alone." She stated that she felt worse after she found out in 2019 that it happened to B.A. too.

{¶ 66} V.A. next testified to her interview with Detective Amanda Cross in 2017. Cross asked V.A. if her father had ever touched her inappropriately or sexually, and V.A. denied that he had. V.A. testified at trial that she did not tell Cross the truth because she was still really scared. Alliman had moved out of the house by that time, but he was living with his parents three houses down. V.A. also had the opportunity to tell the guardian ad litem that was appointed during the divorce, but she did not disclose the abuse to him because, again, she was scared.

{¶ 67} V.A. testified that she finally disclosed the abuse in 2019. She was at her grandparents' house for dinner when B.A. disclosed that Alliman had been sexually abusing her. V.A. saw how strong her sister was being, and she wanted to support her and did not want it to happen to anyone else. Like B.A., V.A. showed the jury a tattoo on her arm that has special meaning to her because portions of it symbolize that she tried to commit suicide, but did not, and kept going.

{¶ 68} As the last part of her direct testimony, V.A. identified and adopted State's Exhibit No. 2, which was the summary of the instances of sexual abuse that she prepared with the prosecutor's office.

{¶ 69} On cross examination, defense counsel asked V.A. to read back portions of her 2017 interview with Cross:

> Cross: "So, you know there is parts on your body that nobody should ever touch. And has he ever touched you in any of, in any of those parts?"
>
> V.A.: "Um, not while I've been awake."
>
> Cross: "Was there ever any time where your underwear seemed to be on different or maybe your shirt was pulled up? Ever notice anything that was odd to you?
>
> V.A.: "No, um, no."
>
> Cross: "But you never felt him actually touch you, but you were sleeping, so you don't know for sure?"
>
> V.A.: "No, um no."

{¶ 70} Defense counsel also asked V.A. about her interview with Detective LaRue that occurred in 2019, after B.A. had disclosed her abuse. V.A. acknowledged that she did not tell LaRue the full truth and did not disclose to him that she had been sexually abused. On re-direct, V.A. explained that she did not tell the truth in 2017 or 2019 because she was still scared and was not ready yet. According to V.A., she wanted to say something but did not have the courage to do so. V.A. also explained that she only met

with Detective LaRue for approximately one hour and his appearance reminded her of her dad, which made her uncomfortable.

{¶ 71} Finally, defense counsel asked V.A. about a video that she posted to social media in which she portrays herself destroying her dad's $10,000 hot tub because he stole her dog. V.A. testified that in reality, Alliman received the hot tub for free from a friend, who likewise received it for free because the electrical system did not work. V.A.'s mom's boyfriend encouraged her to demolish the hot tub with axes and sledge hammers so that he could bring his working hot tub over. V.A. acknowledged destroying the hot tub despite being afraid of her father.

Callie Haas

{¶ 72} Following V.A.'s testimony, the state called Callie Haas as a witness. Haas testified that she met B.A. in 2017, when B.A. was a sophomore. Haas and B.A. developed a relationship, and the two met with some regularity. Haas testified that B.A. carried a lot of weight on her shoulders, and B.A. would talk to Haas about some of the toxic relationships she had at home. Eventually, Haas became concerned about B.A.'s attendance during her senior year. In reaching out to B.A., Haas learned that B.A. had moved out of her home and was living with her boyfriend.

{¶ 73} Haas then recounted a time when B.A. came to her office during a period where B.A. had poor attendance. Haas noticed that B.A. was "very numb" and did not engage in the usual conversations they had together. Haas testified that B.A. was not

crying, but she could tell that there was something B.A. wanted to say. B.A. then disclosed Alliman's sexual abuse to Haas. Haas testified that after B.A. disclosed the sexual abuse, B.A. initially appeared to be happy and relieved to have finally told someone. But she became a little scared and regretful when she realized that Haas had to report the disclosed abuse.

{¶ 74} After Haas reported the abuse, Detective LaRue came to speak with B.A. Haas sat in on that meeting. At the conclusion of the interview, B.A. indicated that she did not want to press charges because it happened a long time ago and she did not want anyone to get in trouble. Two months later though, B.A. attended a presentation put on by one of Haas's former students. The former student had been sexually abused and spoke to the students about her experience. After the presentation, B.A. met with the speaker, and Haas participated in that conversation. Haas testified that during the conversation, she sensed that B.A. developed a sense of hope and the motivation to tell her story.

{¶ 75} Haas next testified about her relationship with V.A., which began when V.A. was a sophomore. Haas described that V.A. had a very different demeanor than B.A. in that V.A. was nervous and on edge whenever she was in Haas's office. B.A. explained to V.A., however, that she had been going to Haas for counseling or whenever she has a problem, and that appeared to help V.A. begin to trust Haas. Haas also did not discuss B.A.'s disclosure with V.A. because she wanted school to be a safe place for

V.A. and not a place that V.A. had to constantly speak about what was going on with B.A.

{¶ 76} Haas then described a time when V.A. came to her office very upset. V.A. had been taking an exam, and the exam used a word that "triggered" V.A. According to Haas, V.A. was angry, rocking back and forth, and crying. Haas helped V.A. calm down. Another time when V.A. came to Hass upset, Haas suggested that V.A. write down what she was feeling to help her calm down. Haas verified that the message V.A. read during her testimony was the same message that she received. Finally, Haas testified that V.A. discussed sexual abuse one other time when she came to Haas's office very angry and said something to the extent of "I wish I was good enough so he didn't have to ruin my sister's life as well." Based on their previous conversations, Haas believed that V.A. was speaking about the sexual abuse that both V.A. and B.A. experienced.

Mindy Koskela

{¶ 77} The state next called Mindy Koskela as an expert witness in the field of counseling and treatment for victims of child sexual assault. Koskela emphasized that she has never met, interviewed, or interacted in any way with B.A. and V.A. Instead, Koskela testified more generally to child sexual abuse.

{¶ 78} Koskela testified that when looking for signs and symptoms of child sexual abuse, she considers whether there has been a change in behavior patterns. For five-year-olds, Koskela would look for whether the child is reaching developmental milestones,

whether he or she is demonstrating regressive behaviors such as beginning to wet or soil himself or herself, and whether he or she is demonstrating extreme changes in anger, hostility, or wanting to withdraw. Koskela added that the child might have difficulty developing relationships or might have inappropriate boundaries. Another factor Koskela would look for is if the child has advanced sexual knowledge for his or her age.

{¶ 79} For older children, Koskela would look for some of the same symptoms, but also more self-mutilating or self-harm. In her experience, Koskela has seen many forms of self-harm, including head banging, cutting, burning, eating disorders, and punching walls. She explained that self-harm often times gives the individual a sense of control and allows him or her to express a physical pain in response to the sexual abuse. Koskela was then shown a picture of the cuts on V.A.'s legs. Koskela commented that she would classify the cuts as self-harm and described that it was "up there" on the spectrum of severity.

{¶ 80} Koskela then testified regarding delayed disclosure. Koskela explained that most disclosure of sexual abuse is delayed, with around 40 percent disclosing the abuse up to five years after it occurred. Koskela even stated that sometimes people will not disclose until they reach adulthood. Koskela also testified that she often has clients who had an opportunity to disclose the sexual abuse to a trusted person but chose not to. Some of the reasons that a person would not disclose the abuse are that the person may not realize the significance of it because it is something that has always just happened, or

the offender has threatened the person, or the person may not want to see the consequences of the family breaking apart or a loved one going to jail. On that last point, Koskela testified that it is fairly common that a person would not disclose the sexual abuse, even if he or she knows that it is wrong, because he or she does not want to see something bad happen to a loved one. When asked what it normally takes for a person to finally disclose the sexual abuse, Koskela replied that there can be multiple reasons, including that the person finally feels safe or the person has reached a developmental milestone and now understands that the sexual abuse was wrong.

Diana Ottney

{¶ 81} The next witness to testify was B.A.'s and V.A.'s therapist, Diana Ottney. Ottney's testimony began with an explanation of trauma focused therapy, detailing that a therapist will first address the symptoms of trauma before addressing the trauma itself. Ottney then testified that over the last 12 years she has worked with "a couple hundred" youth that have been victims of sexual abuse or assault. She stated that she knows the youth have been victims of sexual abuse or assault either based on their symptoms or based on their disclosure. Regarding the symptoms that she looks for in an individual that has not disclosed the abuse, Ottney testified that "[t]here is a laundry list, but anger; risky, more risky behavior sometimes falls in that; self-harming; you'll see the anxiety and depression." After an objection, Ottney was asked the same question, and again responded,

> Again, self harming. It could be depression, withdraw, isolation, or sometimes anger. Usually see it throughout, not just one category. You usually see it, you may see it at school. They may start getting in more trouble. You may see it at home, where they're not following the rules or there is a lot more arguing. You may see it in criminal behavior, where they're doing more riskier things with a friend. It could be drug use. There is a lot of –

{¶ 82} Following another objection regarding the expert nature of the testimony, the state indicated that it would proceed with Ottney as a fact witness.

{¶ 83} Notwithstanding the state's pronouncement, it asked Ottney to provide testimony that attempted suicide was a common symptom of prior sexual abuse, that delayed disclosure is very common, that there is no time frame for disclosing the abuse and that it can be within 30 days of the beginning of a therapy relationship or it can take years, and that most of the time victims do not speak up out of fear.

{¶ 84} Ottney then testified regarding her interaction with B.A. According to Ottney, during their initial meeting in December 2019, B.A. was extremely anxious and was "dumping." Ottney explained that B.A. was sharing a lot of things that had happened, including past trauma, but that she was "all over the place" and was hard to track. Ottney testified that it has taken a long time to build trust with B.A. because "in general when you have a trauma, you don't trust adults at all."

{¶ 85} Ottney next described B.A.'s symptoms, testifying that B.A.'s symptoms of anxiety and depression "are huge." B.A. struggles every day with her thoughts and worries, and Ottney's treatment has focused on coping skills to help control those symptoms. Ottney testified that despite meeting with B.A. for a year and a half, B.A. is still not ready to talk about the trauma in detail in therapy sessions.

{¶ 86} Ottney also testified that she helped B.A. prepare for trial by talking with her about coping skills and by helping her understand that she is "a survivor, not necessarily a victim." The goal was to help B.A. control her stress and anxiety—which sometimes manifests itself as anger or irritation—so that she would be prepared to answer the questions at trial.

{¶ 87} Ottney next testified regarding her interaction with V.A. Ottney began treating V.A. in March or April 2021, only a few months before the trial. Ottney described V.A. as "very guarded." In addition, Ottney testified,

> The only emotion that she'll show to other people is usually more anger and irritation. However, if you peel back that, you can see she just feels alone. Her, she has anxiety, but hers is mostly depression. She deals with it herself. She has self-harmed in the past for quite sometime, quite extensively.

When shown pictures of cuts on V.A.'s legs, Ottney testified that the pictures depict a "pretty bad" level of self-harm.

Agent Bill Marshall

{¶ 88} Following Ottney, the state called Bill Marshall, who is an investigative agent with the Ottawa County Prosecutor's Office. Marshall testified that he reviewed the investigation conducted by Cross and LaRue and stated that he would have done things differently. First, he would have investigated more thoroughly B.A.'s and V.A.'s allegations of physical abuse such as being spanked with a belt. Second, he would have tried to interact with B.A. and V.A. on more of a human level as opposed to interviewing them with more of a law enforcement mindset. Finally, he would have had one group interview with each of the girls as opposed to doing a series of interviews.

Dr. Vishwas Mashalkar

{¶ 89} The last witness to testify for the state was V.A.'s psychiatrist, Dr. Vishwas Mashalkar. Mashalkar testified that he saw V.A. as a patient between 2017 and 2019, beginning when she was sixteen years old. During that time, V.A. presented with severe depressive symptoms and suicidal ideations. V.A. also displayed anger, agitation, irritability, depression, anxiety, and insomnia. Mashalkar testified that he saw some initial success with prescribing lithium for V.A., but the success did not last. Mashalkar also tried prescribing Latuda, which is used for bipolar depression, but it did not help V.A. Mashalkar explained that when the treatments did not work, he began to suspect that there were other, environmental issues that were causing V.A.'s problems. At first, Mashalkar primarily believed that it was V.A.'s parents' divorce and custody proceedings

that was contributing to the problem, but he later came to believe that V.A. may have been subjected to sexual abuse. Mashalkar asked V.A. directly if she suffered sexual abuse, but V.A. denied it.

{¶ 90} Mashalkar next testified that he also treated B.A. briefly for about a year, beginning when B.A. was hospitalized at Rescue Crisis, an in-patient facility for children. Mashalkar testified that B.A. was displaying a lot of behavioral issues and B.A.'s mother was having a difficult time with her, but B.A. did not want medical treatment, so Mashalkar offered her therapy and counseling services.

{¶ 91} Finally, Mashalkar testified that he was not surprised that in 2019 B.A. and V.A. disclosed the sexual abuse; he anticipated that it would have come out at some point.

II. Analysis

{¶ 92} Under harmless error analysis, "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." Crim.R. 52(A). In determining whether the erroneous admission of Ottney's testimony affected Alliman's substantial rights so as to require a new trial, it must first be determined whether Alliman "was prejudiced by the error, i.e., whether the error had an impact on the verdict. * * * Second, it must be determined whether the error was not harmless beyond a reasonable doubt. * * * Lastly, once the prejudicial evidence is excised, the remaining evidence is weighed to determine whether it establishes [Alliman's] guilt beyond a reasonable

doubt." (Internal citations omitted). *State v. Boaston*, 160 Ohio St.3d 46, 2020-Ohio-1061, 153 N.E.3d 44, ¶ 63, quoting *State v. Harris*, 142 Ohio St.3d 211, 2015-Ohio-166, 28 N.E.3d 1256, ¶ 37; *State v. Morris*, 141 Ohio St.3d 399, 2014-Ohio-5052, 24 N.E.3d 1153.

{¶ 93} Thus, the focus is on "both the impact that the offending evidence had on the verdict and the strength of the remaining evidence." *State v. Moore*, 2021-Ohio-765, 168 N.E.3d 921, ¶ 38 (6th Dist.), quoting *Morris* at ¶ 25. "[T]he cases where imposition of harmless error is appropriate must involve either overwhelming evidence of guilt or some other indicia that the error did not contribute to the conviction." *Id.*, quoting *State v. Rahman*, 23 Ohio St.3d 146, 151, 492 N.E.2d 401 (1986). Notably, our role "is not to sit as the supreme trier of fact, but rather to assess the impact of this erroneously admitted testimony on the jury." *Morris* at ¶ 29, quoting *Rahman* at 151, fn. 4.

{¶ 94} Having examined all of the evidence, I agree with the panel that this case hinges upon the credibility of B.A. and V.A. Upon review of the trial testimony, Ottney's testimony did not bolster their credibility in any appreciable way. Thus, Alliman was not prejudiced by the admission of this evidence.

{¶ 95} Ottney's testimony can be fairly divided into two parts. In the first part, Ottney testified generally about delayed disclosure and the symptoms she sees in child sexual abuse cases. Those symptoms include anger, risky behavior, self-harming, anxiety, depression, withdrawal, isolation, drug use, and suicidal ideations. As

recognized by the lead opinion, this testimony is duplicative of Koskela's testimony, which likewise identified symptoms of child sexual abuse to include demonstrating regressive behaviors, extreme changes in anger, hostility, or wanting to withdraw, difficulty developing relationships or having inappropriate boundaries, and self-harm like head banging, cutting, burning, eating disorders, and punching walls. As to the delayed disclosure aspect, both Ottney and Koskela testified that delayed disclosure is common and often sexual abuse is not disclosed out of fear.

{¶ 96} While caselaw has established that these topics fall within the domain of expert witnesses, the jury did not need to hear from two experts to believe that a child who is sexually abused is going to experience all sorts of emotional problems and may not disclose the abuse right away, particularly where no contradictory expert testimony is provided. A basic understanding of human nature and the tragically increasing prevalence of this type of abuse in society leads me to conclude that any reasonable juror would have believed Koskela's general testimony regarding child sexual abuse. Therefore, to the extent that Ottney provided expert testimony on delayed disclosure and the signs and symptoms of child sexual abuse, her testimony is entirely duplicative and had no impact on the jury's verdict.

{¶ 97} The concurring opinion disagrees that this aspect of Ottney's testimony had no impact on the jury's verdict and suggests that the testimony was made more prejudicial because the state emphasized it in its closing and argued that it should be

believed because it was duplicative of other testimony: "[the jury] had heard about delayed disclosure 'from not one, not two, but three counselors.'" Notably, Alliman has never raised this argument. Nevertheless, the questions of what are the signs and symptoms of child sexual abuse and what is the prevalence of delayed disclosure were not at issue in the trial. The record contains no contrary evidence even remotely suggesting that the expert testimony provided by Koskela was incorrect or untrue. Instead, defense counsel cross-examined Koskela solely to elicit her admission that she had not interviewed B.A. and V.A. and thus had no opinion on whether they were or were not victims of child sexual abuse. Thus, the jury's verdict could not have been prejudicially impacted by Ottney's testimony on a subject that was not in dispute.

{¶ 98} In the second part of Ottney's testimony, she elaborated on her treatment of B.A. and V.A. and her observations of their symptoms. The lead opinion concludes that this portion of Ottney's testimony bolstered the credibility of B.A. and V.A. because Ottney "applied her familiarity with cases involving delayed disclosure of child sexual abuse to the victims in this case." It is important to remember, however, that Ottney began treating B.A. and V.A. *after* their disclosure of sexual abuse. Ottney did not testify that B.A.'s and V.A.'s symptoms led her to conclude that they were sexually abused despite their non-disclosure. Thus, Ottney's testimony bolsters B.A.'s and V.A.'s credibility only to the extent that their symptoms match what would be expected from someone who experienced child sexual abuse.

{¶ 99} The uncontroverted testimony from Koskela identified the symptoms of child sexual abuse as regressive behaviors, extreme changes in anger, hostility, or wanting to withdraw, difficulty developing relationships or having inappropriate boundaries, and self-harm like head banging, cutting, burning, eating disorders, and punching walls.

{¶ 100} In this case, Ottney testified that B.A. has difficulty developing trust and has significant struggles with anxiety and depression. Ottney's treatment with B.A. has focused on coping skills to be able to manage the stress and anxiety that B.A. experiences, which sometimes manifests itself as anger or irritation.

{¶ 101} Regarding V.A., Ottney testified that she is "very guarded" and usually just displays anger and irritation. Ottney described that V.A. has some anxiety, but mostly just deals with depression and feeling alone. Ottney also recognized that V.A. has self-harmed quite extensively.

{¶ 102} Thus, as described by Ottney, the symptoms experienced by B.A. and V.A. closely align with the symptoms that Koskela identified.

{¶ 103} If Ottney's testimony was the only evidence of B.A.'s and V.A.'s symptoms, then I would agree that her testimony would not be harmless. But the transcript is replete with testimony regarding the mental and emotional anguish that B.A. and V.A. have experienced. First, B.A. and V.A. described their own history of psychological and emotional trouble. Both of them have been seeing counselors since

they were little children, both of them have been prescribed medication to deal with anxiety and mood disorders, and both of them have engaged in pervasive self-harm and have even attempted suicide.

{¶ 104} In addition to their testimony, Haas testified that B.A. carried "a lot of weight on her shoulders" and that V.A. became angry, was rocking back and forth, and was crying when she saw the word "rape" during an exam.

{¶ 105} Finally, Dr. Mashalkar testified that between 2017 and 2019 he treated V.A. for severe depressive symptoms and suicidal ideations. According to Mashalkar, V.A. also displayed anger, agitation, irritability, depression, anxiety, and insomnia. Mashalkar likewise treated B.A. when she was hospitalized at Rescue Crisis and having "a lot of behavioral issues."

{¶ 106} Excluding Ottney's testimony, a reasonable person reviewing the remaining testimony from the trial could only conclude that B.A. and V.A. have dealt with significant mental and emotional issues throughout their lives, and that those mental and emotional issues align with the symptoms of child sexual abuse. Therefore, Ottney's description of B.A.'s and V.A.'s symptoms is redundant and had no impact on the jury's verdict.

{¶ 107} Further, after excising Ottney's testimony, the remaining evidence establishes Alliman's guilt beyond a reasonable doubt. In addition to the mental and emotional symptoms that B.A. and V.A. have experienced, other factors give credence to

their allegations of sexual abuse. First, B.A.'s and V.A.'s testimony describes in detail Alliman's conduct and the circumstances surrounding the conduct. Second, Haas's description of B.A.'s behavior when she disclosed the sexual abuse gives credibility to the disclosure. Third, B.A.'s initial reluctance to press charges and the subsequent change in her decision following her conversation with Haas's former student makes it more likely that she is not fabricating the allegations. Fourth, V.A.'s emotional response to seeing the word "rape" on an exam, and her subsequent stream-of-consciousness message to Haas about the abuse suggests that she is telling the truth. Finally, V.A.'s credibility is bolstered by Mashalkar's testimony that because the medical interventions were not working, he suspected that environmental factors were causing V.A.'s problems, and he was not surprised, but in fact expected, that V.A. would have disclosed the sexual abuse.

{¶ 108} The concurring opinion reaches the opposite conclusion, and believes that there is not overwhelming evidence of Alliman's guilt. On this point, it is simple enough to say that we just disagree. However, the concurring opinion—while stopping short of establishing a bright-line rule—suggests that cases turning upon witness credibility can never reach the level of overwhelming evidence of guilt, but that some other independent evidence such as confessions, eyewitness testimony, DNA evidence, or other physical evidence is required for the error to be considered harmless. I do not believe that such a

generalized standard is warranted under existing caselaw, but instead each case must be analyzed under its particular facts.

{¶ 109} For example, I find the present situation to be most similar to *State v. Carpenter*, 7th Dist. Monroe No. 19 MO 0010, 2020-Ohio-5295, ¶ 51-68, in which the Seventh District held that any error in allowing a witness to testify as an expert without first providing an expert report as provided in Crim.R. 16(K) was harmless because the evidence against Carpenter was substantial. In that case, the evidence consisted of A.C.'s testimony regarding the details of the sexual abuse by her father, Carpenter, how she remembered it based upon what was happening in her life, her history of cutting herself and self-harm, and why she finally disclosed the repeated abuse five years after it began. The school counselor to whom A.C. disclosed the abuse testified that A.C., who was 11 or 12 years old at the time, was shaking and in tears and was having suicidal thoughts. The pediatric nurse practitioner who examined A.C. testified that the examination was normal, which was not unexpected given that the last incident of abuse occurred nearly one year prior. The nurse practitioner also testified that early onset of menstruation as well as self-harm can be signs of sexual abuse. The police chief who interviewed A.C. and Carpenter also testified, noting that Carpenter believed A.C. to be a truthful person and never called her a liar. In addition, a second child victim, G.B., also testified. G.B. was the daughter to Carpenter's ex-girlfriend, and the half-sister to Carpenter's son. G.B., who was nine years old at the time of the trial, described the abuse. G.B.'s mother

testified that she did not know about A.C.'s disclosure. Two forensic interviewers who spoke with G.B. also testified, and their interviews with G.B. were played for the jury. In the interviews, G.B. identified the parts of her body that Carpenter touched. Based upon all of this evidence, the Seventh District concluded,

> The evidence was overwhelming that [Carpenter] sexually abused both girls. Both A.C. and G.B. testified that [Carpenter] sexually abused them. And neither girl knew that the other had disclosed abuse. In other words, they disclosed abuse by [Carpenter] independently of each other. This bolstered their testimonies. Additionally, the nurse who examined A.C. testified that A.C.'s condition was consistent with sexual abuse. And both A.C.'s counselor and her mother corroborated her disclosure. Moreover, the jury viewed the videos of G.B.'s forensic interviews so they were able to view her demeanor as she disclosed the abuse to the interviewers.

Id. at ¶ 68.

{¶ 110} In *Carpenter* there was no confession, eyewitness testimony, DNA or other physical evidence supporting the conviction. Nevertheless, the Seventh District determined that the evidence of guilt was overwhelming based upon the victims' testimony and the other evidence bolstering their credibility.

{¶ 111} Likewise, in a case relied upon by the concurring opinion, the judges on the panel were split regarding whether there was overwhelming evidence of guilt. In *State v. Morris*, 2012-Ohio-6151, 985 N.E.2d 274 (9th Dist.), the Ninth District held that the trial court's admission of two instances of other acts evidence were not harmless error. In that case, Morris was charged with two counts of raping his minor stepdaughter, S.K. At the trial, the state introduced evidence that Morris had once drunkenly propositioned a different, adult stepdaughter. *Id.* at ¶ 14. Also, the state introduced evidence that Morris would act out and kick the family dog if his wife refused to have sex with him. *Id.* at ¶ 41. The authoring judge held that the trial court abused its discretion in admitting that testimony because it constituted impermissible other acts testimony. In deciding that the trial court's error was not harmless, the authoring judge noted that the other acts testimony was highly inflammatory and was "aimed at convincing the jury that Mr. Morris is a sex-crazed pervert." *Id.* at ¶ 56. Further, the state repeatedly emphasized the other acts testimony, eliciting evidence about it from three different witnesses and referencing it on seven different occasions during closing, including referring to the adult stepdaughter as Morris's "victim." *Id.* at ¶ 59. The authoring judge also determined that there was not overwhelming evidence of Morris's guilt, reasoning that "[i]n the absence of any confession, physical evidence, or eyewitnesses other than S.K. to sexual conduct or even sexual contact between Mr. Morris and S.K., the State's case rested largely on

S.K.'s credibility." *Id.* at ¶ 53. The authoring judge did, however, acknowledge that there was other circumstantial evidence that impacted S.K.'s credibility:

> Although there was corroborating circumstantial evidence offered by S.K.'s mother and sister, each of whom testified that they had once seen a suspicious-looking situation, neither was able to testify as an eyewitness to any acts of molestation or rape. Various witnesses testified about S.K.'s emotional problems and to certain times over the years when S.K. seemed to be struggling with a secret that she was unable to reveal. But S.K. admitted that her emotional problems were not entirely caused by Mr. Morris and that she had been depressed before her mother met him.
>
> S.K.'s mother's testimony about Mr. Morris's odd behavior during sexual intercourse provided some circumstantial corroboration of S.K.'s testimony. S.K.'s credibility was best supported by her own testimony describing how her relationship with Mr. Morris went through phases that seemed to move toward sexualization over time as bolstered by her counselor's testimony that her account was consistent with the "grooming" behavior of a pedophile preparing a child for molestation.

Id. at ¶ 53-54. Nonetheless, the authoring judge concluded that because of the highly inflammatory nature of the other acts evidence, it could not declare that the error was

harmless beyond a reasonable doubt. *Id.* at ¶ 59. The second judge on the panel concurred in judgment only without opinion.

{¶ 112} Notably, the third judge on the panel dissented on the basis that the subject testimony was not impermissible other acts evidence, but even if it was, the admission of the testimony was harmless beyond a reasonable doubt because the remaining evidence "constituted overwhelming proof of Morris' guilt." *Id.* at ¶ 62-63 (Carr, P.J., dissenting). The dissenting judge reasoned:

> The victim's detailed and consistent testimony established that Morris repeatedly raped her over a period of seven or eight years. She described how Morris' behaviors towards her evolved in a manner that the victim's counselor testified were consistent with the ways in which a pedophile would groom his victim to facilitate future molestation. * * * The lack of physical evidence in a case where such evidence was unlikely due to the passage of time does not detract from the victim's testimony. In addition, although there were no third-party eye witnesses to any acts of rape, Mother testified that she observed what she believed to be inappropriate sexual activity between Morris and S.K.

{¶ 113} Like *Carpenter* and the dissent in *Morris*, the present case contains overwhelming evidence of Alliman's guilt notwithstanding the absence of any confession, eyewitness, DNA or other physical evidence. This is not simply a "he

said/she said" situation and B.A.'s and V.A.'s testimony does not exist in a vacuum. As discussed above, there is more than substantial evidence supporting the credibility of B.A. and V.A. that must be considered. Based on the record before this court, I am convinced beyond a reasonable doubt that the jury would have reached the same verdict had Ottney's testimony not been presented because (1) Ottney's testimony was duplicative and had no prejudicial impact and (2) because the rest of the evidence overwhelmingly demonstrated Alliman's guilt. Therefore, I would hold that while the trial court erred in allowing Ottney to testify, that error was harmless.

{¶ 114} As a final matter, the concurring opinion, despite concluding that the admission of Ottney's testimony was *not* harmless error, desires to resolve this case on the basis of cumulative error. I find it notable that Alliman does not raise and separately argue the issue of cumulative error in his application for reconsideration despite including it as an assignment of error in his underlying appeal. The closest Alliman comes to raising the issue is in the last two sentences before his conclusion wherein he states, "As the dissent points out, this was essentially a credibility contest. Yet, the Panel's decision to find both errors "(sic) harmless, separately or cumulative, is contrary to the decision in *Kamer*." Alliman then proceeds to quote the portion of *Kamer* that sets forth the harmless error standard. Therefore, since it was not raised by Alliman, I do not think it is necessary to reach the question of cumulative error.

{¶ 115} Nonetheless, even if it were necessary to reach the issue, the cumulative effect of the three identified errors did not deny Alliman a fair trial.

{¶ 116} To find cumulative error, there must be "a reasonable probability that the outcome below would have been different but for the combination of separately harmless errors." *State v. Moore*, 2019-Ohio-1671, 135 N.E.3d 1114, ¶ 54 (2d Dist.).

{¶ 117} The first identified error was the admission of hearsay evidence in the form of State's Exhibits 1 and 2. As discussed in the original decision, State's Exhibits 1 and 2 were merely duplicative of the testimony provided at trial by the victims. *State v. Alliman*, 2023-Ohio-206, 206 N.E.3d 765, ¶ 54 (6th Dist.). The exhibits consisted of tables listing the date of the event, the victim's age, the location, a brief description of what was alleged to have occurred, the memory aid that helped the victim remember, and the count that the event was associated with. State's Exhibits 1 and 2 did not include any information reflecting the inferences and conclusions to be drawn from B.A.'s and V.A.'s testimony; the exhibits merely presented a summary of the testimony in table form without any commentary. Furthermore, *all* of the information contained in State's Exhibits 1 and 2 was testified to by B.A. and V.A., respectively. Where there were minor discrepancies—for example B.A. testified that she was playing the Nintendo DS when the first abuse happened, but the exhibit states that she was watching television—those discrepancies went unexplored by defense counsel on cross-examination. Thus, Alliman

suffered no prejudice from the inclusion of exhibits that were entirely duplicative of the victims' testimony.[4]

{¶ 118} The second identified error was the prosecutor's statements in closing inviting the jury to render a verdict based upon sympathy for the victims rather than the evidence presented during the trial. In the underlying appeal, the majority determined that the statements did not taint the fairness of the trial because the sentiment conveyed by the statements was not pervasive throughout the trial and because the trial court immediately admonished the prosecutor and provided a curative instruction to the jury to render their verdict based upon the facts and not on sympathy for B.A. and V.A. *Id.* at ¶ 96. In this context, I agree that the prosecutor's statements in closing had very little, if any, prejudicial effect.

---

[4] Notably, in his application for reconsideration, Alliman argues that we must reconsider our determination that the admission of State's Exhibits 1 and 2 was harmless. Neither the lead opinion nor the concurring opinion addresses Alliman's argument. This is perhaps due to a copying issue where page 7 of his application, on which the argument is found, is missing from the digital copies provided to the judges and staff attorneys. The copy of Alliman's application that was filed with the court and which is accessible through the Ottawa County Clerk of Court's website includes page 7.

Nevertheless, Alliman's argument is unavailing. Alliman simply cites our decision in *State v. Searfoss*, 2019-Ohio-4619, 135 N.E.3d 853 (6th Dist.), and asserts that the admission of State's Exhibits 1 and 2 was not harmless. Alliman's argument does not call to our attention an obvious error or an issue that was raised but not considered when it should have been. Instead, he merely disagrees with our conclusion. "A motion for reconsideration is not designed for use in instances when a party merely disagrees with the conclusions reached and the logic used by the appellate court." *Key Realty, Ltd. v. Hall*, 2021-Ohio-1868, 173 N.E.3d 831, ¶ 52 (6th Dist.), quoting *Deutsche Bank Natl. Trust Co. v. Greene*, 6th Dist. Erie No. E-10-006, 2011-Ohio-2959, ¶ 2.

{¶ 119} Finally, the third identified error was the trial court's improper admission of Ottney's testimony. As discussed at length above, I do not think that the admission of Ottney's testimony had any prejudicial impact on the jury's verdict.

{¶ 120} "There can be no such thing as an error-free, perfect trial, and * * * the Constitution does not guarantee such a trial." *State v. Hall*, 75 Ohio St.3d 195, 212, 661 N.E.2d 1068 (1996). Here, while there were three identified errors, none of the errors prejudiced Alliman's substantial rights. In my view, the first and third identified errors had *no* prejudicial impact, and the second identified error had very little, if any at all. "Such errors cannot become prejudicial by sheer weight of numbers." *Id.* Accordingly, I conclude that there is not "a reasonable probability that the outcome of the trial would have been different but for the combination of the separately harmless errors." *Alliman* at ¶ 105, quoting *State v. Moore*, 6th Dist. Wood No. WD-18-030, 2019-Ohio-3705, ¶ 87.

{¶ 121} For the above reasons, I respectfully concur in part and dissent in part.