[Cite as *State v. Noon*, 2026-Ohio-4355.]

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

State of Ohio

Appellee

v.

Travis James Noon

Appellant

Court of Appeals No. {87}WD-25-037

Trial Court No. 2023 CR 0315

DECISION AND JUDGMENT

Decided: November 3, 2026

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Kristofer Kristofferson, Assistant Prosecuting Attorney, for appellee.

Karin L. Coble, for appellant.

* * * * *

DUHART, J.

{¶ 1} Appellant, Travis James Noon, appeals from the judgment of the Wood County Court of Common Pleas convicting him, following a jury trial, of the offense of rape. For the reasons that follow, the trial court's judgment is affirmed.

Background and Facts

{¶ 2} Noon was indicted on two counts of rape, in violation of R.C. 2907.02(A)(1)(b) and (B), both felonies of the first degree. Both counts alleged that the

victim, C.W., was less than 10 years of age when Noon raped her. Count one alleged rape that occurred between June 12, 2023 and June 15, 2023, while count two alleged rape that occurred between June 15, 2023 and June 19, 2023.

{¶ 3} A 3-day jury trial was held on the matter. The State presented evidence and testimony by police Sergeant Andy Mulinix; minor victim C.W.; the victim's grandfather, T.H.; sexual assault nurse examiner ("SANE") Lori Blevins; forensic scientist Logan Schepeler; the victim's mother, M.H.; and police Detective Matthew Robinson. Thereafter, the defense did not present any witnesses and rested its case.

Sergeant Andy Mulinix and the 911 Call

{¶ 4} Bowling Green Police Division ("BGPD") Sergeant Andy Mulinix was the first to testify. He stated that on June 19, 2023, at approximately 11:00 p.m., he responded to a 911 call reporting that Noon had been involved in sexual conduct with the caller's daughter. Sergeant Mulinix contacted BGPD Detective Matthew Robinson for investigation.

{¶ 5} In the 911 call, which was played for the jury, a dispatcher stated that M.H., the mother of C.W. and wife of Noon, was reporting the sexual assault of C.W. by Noon, who was C.W.'s stepfather. During the call, M.H. can be heard stating that Noon was recently seen by M.H.'s father, T.H., under a blanket with C.W., and then later, in a separate incident, was found on top of C.W. while she was naked. M.H. can also be heard stating that C.W. had told her that Noon licked C.W. "down there" and on her "other

end." M.H. then states that she confronted Noon with the information and that he admitted to the sexual conduct with C.W.

C.W., the Victim

{¶ 6} The victim, C.W., who was eight years old at the time of trial, was the next to testify. She indicated that she used to call Noon, "Dad," and that they used to live together with her mother, siblings, and grandfather. Using an anatomical drawing, she identified her vaginal area, which she referred to as "private area." She testified that on one occasion, while she and Noon were in her mother's room, Noon had "put her side down and was licking [her] private area," when her grandfather, T.H., walked into the room and yelled at Noon. C.W. explained that during this encounter, Noon "had his pants down a little bit and his boxers on," and that she and Noon were under a blanket together. She also testified that Noon had put her up next to a mirror, showed her butt in the mirror, and said she looked gorgeous, and that when they "had the blanket on," his private area touched her private area.

{¶ 7} Asked on direct examination whether there was a time when something happened in the living room, C.W. testified that "every day" when her mother went to work, Noon would put her down and lick her private area, but that grandpa walked in on them in the living room only one time.

{¶ 8} C.W. stated that she reported to M.H. and her aunt, M.S., everything Noon did to her, including that Noon licked her butt. She also stated that Noon had asked her not to tell her mother, and that she refused to listen to him.

Deposition of T.H., the Victim's Grandfather

{¶ 9} On the second day of trial, a deposition taken from the victim's grandfather, T.H., was played for the jury. In the deposition, T.H. testified about two suspicious occurrences involving Noon and C.W. Regarding the first occurrence, T.H. testified that on or around June 12, 2023, he found Noon atop C.W. while C.W. was naked and lying on a couch in the living room. T.H. testified that Noon had either his penis or his scrotum out of his boxers, and that C.W.'s legs were open "like an "M."" T.H. testified that he informed C.W.'s mother about what he had seen, although at the time he had not been completely sure what was going on.

{¶ 10} As to the second incident, T.H. testified that he found C.W. and Noon together on a bed in the master bedroom, with C.W. naked and a blanket around Noon "like a cape" over his shoulders. T.H. explained that Noon was kneeling on the bed while being on top of C.W. and between her open legs.

Lori Blevins, SANE

{¶ 11} Lori Blevins, a sexual assault nurse examiner ("SANE") for St. Vincent's Mercy Hospital, was the next to testify at trial. She explained that it was her job to conduct a physical assessment of those who were sexually assaulted and to determine a timeframe of events and to collect any physical evidence from that timeframe for testing. Blevins testified that she interviewed the then six-year-old C.W. on June 20, 2023, at approximately 2:00 a.m., outside the presence of C.W.'s mother and aunt, who were also at the hospital.

{¶ 12} From her SANE report, Blevins read the following to the jury regarding her interview with C.W.'s mother, M.H.:

> [Forensic nurse examiner ("FNE")] [s]peaks with mother separate from patient. [M.H.], mother of patient, states, while I've been going to work this past week my dad, he lives with us, told me that he, my dad, opened the door to my bedroom and seen my husband, Travis, under the blanket with [C.W.]. A couple of days later my dad came out of his room and saw [C.W.] on the couch naked with her legs spread and my husband, Travis, in only his boxers. I've talked to [C.W.] alone about this. She, [C.W.], said he orally went down on her. While not in those exact words she, [C.W.], also told me that she had touched his, Travis', inappropriate. I've taught her that her vagina and penis are inappropriate areas. Mother tearful at times during the conversation with the FNE. FNE extends support to Mara and acknowledges that he, Travis, admitted to everything and I kicked him, Travis, out. He, Travis, was arrested and is in jail. FNE asked [M.H.] if she, FNE could speak with [C.W.] alone. [M.H.] agreed with request. Caregiver questionnaire given to mother at this time. [M.H.] escorted back to patient's room.

{¶ 13} In connection with her interview with C.W., Blevins read the following from the same SANE report:

> FNE – this is me talking, would you like to sit in the big chairs or the little chairs? [C.W.], little chairs. FNE, do you know why your mom brought you here today? [C.W.], because he was down there. Patient points between her legs. FNE asks, who is he? [C.W.], my dad. FNE, can you tell me more about that? [C.W.], well, first we were under a blanket, an Elsa blanket, and it got peed on and now it stinks. We were naked and I was rubbing on his area. FNE, what is his area? [C.W.]. his inappropriate. Patient points between legs. My sister told my grandpa that the door was shut and she couldn't get in my mom's room, and my grandpa said, what the hell is doing in there? And he, grandpa, opened the door. FNE, did your dad ask you to rub his area? [C.W.], I was mocking my mom. One time she didn't know I was awake. FNE says, has anything else ever happened with your dad? He has – [C.W.] said, he was down there. And patient sticks out her – sticks her tongue out, in my area, and points to her butt. Once he picked me – me up and put me on his inappropriate when it was – and then the patient makes a back and forth motion with her hands over her thighs. His pants were off a little bit.

…

> FNE, were you naked at this time? [C.W.], no, I had my underwear on. He said it was a secret. FNE, how did that make you feel? [C.W.] said sad. FNE said, it's okay if you feel sad, adults shouldn't ask kids to keep secrets. Do you have any questions for me, [C.W.]? [C.W.] says, do you think I can have a snack, and, do you have any Pepsi? FNE, I don't know if we have any Pepsi, but I can find you a snack and get you something to drink. [C.W.] said, can we go see mom now? Yes, we can. FNE escorts patient back to room. SAEK, which stands for sexual assault evidence kit, explained to mother and to patient with demonstration allowing patient to handle extra cotton-tipped swabs. Patient also given distraction toys and bubbles. Physical exam with SAK, which is also interchanged with sexual assault kit, completed. Dr. Garst present during genital exam. Patient tolerated procedure well.

{¶ 14} Following these interviews, Blevins collected DNA swabs from C.W.'s vulva, vulvar vestibule, mons pubis, perineum, and anus, and then submitted the swabs to the Ohio Bureau of Criminal Investigation ("BCI") crime lab.

Logan Schepeler, DNA Forensic Scientist

{¶ 15} Logan Schepeler, a DNA forensic scientist from BCI was next to testify. He testified that he conducted Y-STR DNA testing looking for male DNA from the swabs taken from C.W.'s body. That testing identified male Y-STR DNA on C.W.'s mons pubis, but not enough DNA to conduct a comparison to Noon's DNA profile.

M.H., the Victim's Mother

{¶ 16} The victim's mother, M.H., also testified. She explained that Noon was her husband and they had a child together, and that during the summer that Noon was sexually abusing C.W., M.H. worked at Meijer during the day while Noon watched their multiple children. She testified that her concerns began when her father, T.H., told her

about the first incident between Noon and C.W., and that when she confronted Noon about the first incident, he denied that it occurred. M.H. decided to ignore the situation until T.H. reported the second incident a few days later. At that point, M.H. questioned C.W. about the incidents and C.W. told her that Noon had asked her to touch his penis. C.W. further stated that "daddy licked her area down there" and then made a tongue movement indicating oral sex.

{¶ 17} M.H. confronted Noon again about C.W.'s statements, and he confirmed, "[Y]es, it happened once, but I'm telling you the truth about everything else." M.H. then ordered Noon out of the residence and called the police. At trial, M.H. was shown text messages that were exchanged between herself and Noon after she ordered him out. Those text messages read, in pertinent part:

> [M.H.]: why did [C.W.] say she kissed you down there if your ass didn't do anything though you know that's gross and bad
>
> [Noon]: She kept trying to and I kept saying no and I kept trying to push her back and when I was feeding the baby she ended up putting her face in my crotch and was making kissing noises and I pushed her back and told her no don't do that.
>
> …
>
> *Could you please tho keep this between us for right now I already hate myself for not having more control and forcefully telling her no and keep pushing her off of me.* But I'm telling you the truth about everything else by me telling her no and pushing her off and telling her don't do that after that because I knew it was wrong and I didn't want her doing it again and I didn't want to do that crap again because I knew it was really wrong…

(Emphasis added.)

Detective Matthew Robinson

{¶ 18} Lastly, BGPD Detective Matthew Robinson testified. He explained that he was the on-call detective for BGPD on the night M.H. placed the 911 call. That same night, Detective Robinson seized Noon's cellphone, located the above-quoted text conversation between Noon and M.H., and came to BGPD to interview Noon. The interview that followed was recorded with video and audio, and was played to the jury at trial.

{¶ 19} In the video, Noon reported that [C.W.] had been acting out recently and that he believed she had witnessed him and M.H. being intimate with each other. He stated that C.W. often walked around the apartment without clothes on, that she would attempt to get on top of him, and, on several occasions, tried to pull his pants down. He further stated that C.W. would put her hands down his pants and once touched his penis. Noon stated that he told C.W. that this behavior was inappropriate, and that he was constantly telling her she needed to put clothes on. He said he attempted to walk away from C.W. when she was being inappropriate but that sometimes it was difficult.

{¶ 20} When asked specifically about the allegation of oral sex, Noon told Detective Robinson that he sometimes gave C.W. raspberries on her stomach or her back and that she would squirm around and move, causing Noon to accidentally touch her vagina or her butt with his mouth. He initially denied using his tongue, but then said his tongue may have accidentally touched C.W.'s vagina. Noon eventually admitted that his lips touched C.W.'s vagina on two occasions within the previous two weeks, with the last

time being two days prior to his interview with Detective Robinson. He said the first time it happened, he did not mean to touch C.W.'s vagina and when he did, he pulled back immediately. He said that on this first occasion she was not wearing underwear.

{¶ 21} Regarding the second occurrence, Noon stated that approximately four days after the first occurrence, he was tickling C.W., when he got lost in the moment and ended up once again putting his mouth on her vagina. He said that on this second occasion, his tongue was out but he did not move it around, and that C.W.'s underwear was on. He stated that the situation lasted for a few seconds before he snapped out of it and realized what he was doing. Noon reported feeling shocked when this was occurring and not necessarily aroused. He denied having an erection during these encounters but stated that C.W. was moaning and "thrusting her hips" like she was enjoying it. He admitted that both times he had oral sex with C.W. he was "90 percent" not wanting to do it and "10 percent" wanting to do it.

"Consciousness of Guilt" Jury Instruction

{¶ 22} After the parties rested, the trial court, over objection by the defense, provided the following "consciousness of guilt" jury instruction:

> Testimony has been admitted indicating that the Defendant asked [M.H.] to keep this between us for right now. You are instructed that Defendant's request that [M.H.] keep this between us for right now, alone, does not raise a presumption of guilt, but it may tend to indicate the Defendant's consciousness or awareness of guilt. If you find that the facts do not support that the Defendant asked [M.H.] to keep this between us for right now, or if you find that some other motive prompted the Defendant's conduct, or if you are unable to decide what the defendant's motivation was, then you should not consider this evidence for any purpose. However, if you find that the facts support that the Defendant engaged in such conduct, and if

> you decide that the Defendant was motivated by a consciousness or an awareness of guilt, you may, but are not required to, consider that evidence in deciding whether the Defendant is guilty of the crimes charged.

{¶ 23} Following deliberations, the jury found Noon guilty on count two and acquitted him on count one. Noon was found to be a Tier III sex offender and was sentenced to life in prison with the possibility of parole after 15 years. This appeal followed.

Assignments of Error

{¶ 24} On appeal, Noon asserts the following assignments of error:

> I. The trial court erred by permitting the SANE to testify to statements by C.W. that were not for the purposes of medical diagnosis or treatment, in violation of the hearsay rule.
>
> II. The verdict for rape was unsupported by sufficient evidence and was therefore a violation of Due Process as guaranteed by the 5th and 14th Amendments to the U.S. Constitution and Article I, Section 16 of the Ohio Constitution; the conviction is also against the manifest weight of the evidence.
>
> III. The trial court abused its discretion by giving a "consciousness of guilt" jury instruction over objections of the defense.

Law and Analysis

Second Assignment of Error

{¶ 25} Noon's assignments of error are taken out of order for ease of analysis. We begin with his second assignment of error, which involves arguments related to the sufficiency of the evidence -- specifically that the trial court should have granted defense counsel's Crim.R. 29 motion -- as well as the manifest weight of the evidence.

{¶ 26} "The standard of review for a denial of a Crim.R. 29 motion is the same as the standard of review for sufficiency of the evidence." *State v. Jackson*, 2024-Ohio-2419, ¶ 51 (6th Dist.). When reviewing the sufficiency of the evidence, this "court views the evidence in the light most favorable to the prosecution and asks whether '"any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt."'" *State v. Brown*, 2025-Ohio-2804, ¶ 16, quoting *State v. Dean*, 2015-Ohio-4347, ¶ 150. "The appropriate standard of review for a sufficiency-of-the-evidence challenge is 'whether, if believed, the evidence can sustain the verdict as a matter of law.' When reviewing whether the State met its burden of production, 'an appellate court does not ask whether the evidence should be believed but, rather, whether the evidence, "if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt."'" (Citations omitted.) *Id*. at ¶ 17. A verdict should not be disturbed "unless we find that reasonable minds could not reach the conclusion reached by the trier of fact." *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001), citing *State v. Jenks,* 61 Ohio St.3d 259, 273 (1991).

{¶ 27} A manifest weight of the evidence challenge, on the other hand, looks to whether the State met its burden of persuasion. *State v. Reillo,* 2026-Ohio-2701, ¶ 24.

> Weight of the evidence concerns "the inclination of the *greater amount of credible evidence,* offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*."

(Emphasis in original.) *Id.* at ¶ 25, quoting *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 12, quoting *State v. Thompkins,* 78 Ohio St.3d 380, 387. "Accordingly, under a manifest-weight review, a court 'weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *Id.* at ¶ 26, quoting *State v. Brown,* 2025-Ohio-2804, ¶ 30. "[A]ppellate courts may 'vacate a jury's verdict and order a new trial "only in the exceptional case in which the evidence weighs heavily against the conviction."'" *Id.* at ¶ 27, quoting *Brown* at ¶ 31.

{¶ 28} "[I]n weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Id.* at ¶ 28, citing *Eastley* at ¶ 21. "If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment." *Id.,* citing *In re. Z.C.,* 2023-Ohio-4703, ¶ 14. An appellate court only disregards that presumption "when evidence contradicts a fact-finder's findings" or "when a witnesses' testimony is so inconsistent as to material facts, so impeached, or so fantastical as to make it patently unbelievable." *Id.* at ¶ 3. In those instances, the reviewing court sits at a "thirteenth juror who may disagree with the fact-finder's resolution of the *conflicting evidence*." (Emphasis in original.) *Id.* at ¶ 27, citing *State v. Martin,* 2022-Ohio-4175, ¶ 26.

{¶ 29} Noon's argument on appeal is essentially that the State did not prove that Noon engaged in sexual conduct with C.W. Noon posits that the State did not prove that sexual conduct occurred because there was a lack of physical evidence proving cunnilingus aside from the male Y-STR DNA on C.W.'s mons pubis from the rape kits. This argument ignores the abundant other testimony produced at trial and, therefore, fails.

{¶ 30} Noon was convicted of rape under R.C. 2907.02(A)(1)(b) and (B), which prohibits any person from "engag[ing] in sexual conduct with another when…[t]he other person is less than thirteen years of age[.]" Sexual conduct is defined in R.C. 2907.01(A), and includes "cunnilingus between persons." *Id.* Although there is no statutory definition of cunnilingus, the Ohio Jury Instructions define it as "a sexual act committed with the mouth and the female sex organ." 2 OJI-CR §507.02(A)(6). This instruction is used by Courts throughout Ohio. *See State v. Brummett*, 2025-Ohio-5307, ¶ 23 (4th Dist.); *In re J.N.*, 2024-Ohio-1727, ¶ 12 (12th Dist.); *State v. Al-Shami*, 2026-Ohio-453, ¶ 39 (8th Dist.). We note that penetration is not required to demonstrate cunnilingus. *State v. Lynch*, 2003-Ohio-2284, ¶ 86. That the victim in this case was six years old at the time the offense was committed is not challenged on appeal.

{¶ 31} Here, the State provided abundant evidence that Noon raped C.W. by performing cunnilingus on her vagina, not just on her mons pubis. Specifically, Noon himself admitted to Detective Robinson on different occasions that his mouth was on C.W.'s vagina, that his tongue was out while his mouth was on her vagina, that C.W. moaned and thrusted her hips while Noon was performing oral sex on her, and that he put

his mouth and lips on C.W.'s butt. Further, he admitted that he performed oral sex on C.W. during the weeks that were specified in the indictment.

{¶ 32} While Noon's admissions are alone sufficient to sustain a conviction under R.C. 2907.02(A)(1)(b), that is not the only evidence the State provided to the jury. There was testimony by T.H., who provided that on one occasion he walked in on Noon while Noon's penis or scrotum was out, with C.W. naked and in a compromised sexual position, and on another occasion he found Noon overtop of C.W. and between her open legs, again completely naked, with a blanket covering Noon's shoulders.

{¶ 33} The victim herself, after identifying her vagina as her private area on an anatomical drawing, testified that Noon had licked her "private area."

{¶ 34} Even ignoring the DNA evidence that was presented in this case, the State presented ample evidence that Noon performed cunnilingus on C.W. In addition, we do not find this to be the exceptional case where the evidence weighs heavily against the conviction. We do not find it significant under the circumstances of this case that C.W. may have overheard M.H. talking about the alleged incident to other family members, or that in using the term "private area," C.W. may have included in the reference the area of her mons pubis.

{¶ 35} Accordingly, Noon's second assignment of error is found not well-taken.

First Assignment of Error

{¶ 36} Noon argues in his first assignment of error that the trial court committed prejudicial error by allowing SANE Blevins to testify that C.W. felt "sad." As indicated

above, Blevins's job was to conduct a physical assessment of those who were sexually assaulted and to determine a timeframe of events and to collect any physical evidence from that timeframe for testing. C.W.'s statement that she felt sad came within the context of the following exchange:

> He has – [C.W.] said, he was down there. And patient sticks out her – sticks her tongue out, in my area, and points to her butt. Once he picked me – me up and put me on his inappropriate when it was – and then the patient makes a back and forth motion with her hands over her thighs. His pants were off a little bit.
>
> …
>
> FNE, were you naked at this time? [C.W.], no, I had my underwear on. He said it was a secret. FNE, how did that make you feel? [C.W.] said sad. FNE said, it's okay if you feel sad, adults shouldn't ask kids to keep secrets.

Noon argues that the statement was not admissible under Evid.R. 803(4). In response, the State argues that the statement was admissible under both Evid.R. 803(3) and 803(4).

{¶ 37} We review the admission of hearsay for abuse of discretion. *State v. Costilla*, 2024-Ohio-3221, ¶ 24 (6th Dist.), citing *State v. McKelton*, 2016-Ohio-5735, ¶ 97. "Abuse of discretion" connotes that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *State v. Alexander*, 2023-Ohio-2708, ¶ 81 (6th Dist.), citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 38} The trial court admitted C.W.'s statement under the hearsay exceptions outlined in Evid.R. 803(3) and Evid.R. 803(4), which provide in pertinent part:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> …

> (3) **Then existing, Mental, Emotional, or Physical Condition.** A statement of the declarants then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed….
>
> (4) **Statements for Purposes of Medical Diagnosis or Treatment.** Statements 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.

{¶ 39} We first consider whether C.W.'s statement was properly admitted under Evid.R. 803(3), as a statement of C.W.'s then existing state of sadness, and we conclude that it was not. Blevins's testimony reflected C.W.'s previous sad state of mind when she was asked to keep a secret, not her existing emotional condition at the time she talked with Blevins. *See State v. Bennett*, 2005-Ohio-1567, ¶ 58 (11th Dist.) (Detective's testimony that the defendant's ex-wife told him that she was afraid of the defendant was not admissible under the state of mind exception to the hearsay rule; the statement by the ex-wife reflected the ex-wife's fearful state of mind when she moved out, and not her existing mental or emotional condition at the time she talked with the detective.).

{¶ 40} We next consider whether C.W.'s statement was properly admitted under Evid.R. 803(4) as a statement made for purposes of medical diagnosis or treatment. Again, we conclude that it was not. Here, review of the exchange between Blevins and C.W. reveals that C.W. answered that she was sad in response to Blevins's question about how it had made C.W. feel to keep a secret. It was not, as the State suggests, made in answer to Blevin's probing of C.W.'s emotional response to Noon's sexual conduct.

Thus, C.W.'s statement that she was sad was clearly not made for purposes of medical diagnosis or treatment.

{¶ 41} We employ a harmless error analysis when analyzing the erroneous admission of evidence. *See State v. Kinney*, 2025-Ohio-1620, ¶ 50-51 (6th Dist.).

> The harmless error doctrine is governed by Crim.R. 52(A), which provides that '[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.' An error affects 'substantial rights' if it was prejudicial. *State v. Fisher,* 2003-Ohio-2761, ¶ 7, quoting *United States v. Olano,* 507 U.S. 725, 734 (1993). If an error does not affect a defendant's substantial rights, it is harmless and 'shall be disregarded.' Crim.R. 52(A). The State has the burden of proving that an error did not affect the defendant's substantial rights. *State v. Perry,* 2004-Ohio-297, ¶ 15.
>
> The Ohio Supreme Court utilizes a three-part analysis to determine whether the erroneous admission of evidence affected the defendant's substantial rights, requiring a new trial, or whether the admission of that evidence was harmless error under Crim.R. 52(A): (1) whether the defendant was prejudiced by the error, i.e., whether it had an impact on the verdict; (2) whether the error was not harmless beyond a reasonable doubt; and (3) whether, once the prejudicial evidence is excised, the remaining evidence establishes the defendant's guilt beyond a reasonable doubt. *State v. Harris,* 2015-Ohio-166, ¶ 37, citing *State v. Morris,* 2014-Ohio-5052, ¶ 22–29.

State v. Pritchard, 2026-Ohio-56, ¶ 52-53 (6th Dist.).

{¶ 42} Under the facts of this case, we conclude that excising the improperly admitted (and, frankly, irrelevant) statement that C.W. was sad because she was asked to keep her abuse a secret, the remaining evidence established Noon's guilt beyond a reasonable doubt. Although the jury may have felt sorry that C.W. was made to feel sad, the remaining evidence was so strong that we cannot conclude that the admission of C.W.'s statement impacted the verdict.

Third Assignment of Error

{¶ 43} Noon argues in his third assignment of error that the trial court abused its discretion in giving a "consciousness of guilt" jury instruction in connection with Noon's text messages to M.H. The text messages between Noon and M.H. provided:

> [M.H.]: why did [C.W.] say she kissed you down there if your ass didn't do anything though you know that's gross and bad
>
> [Noon]: She kept trying to and I kept saying no and I kept trying to push her back and when I was feeding the baby she ended up putting her face in my crotch and was making kissing noises and I pushed her back and told her no don't do that.
>
> …
>
> *Could you please tho keep this between us for right now I already hate myself for not having more control and forcefully telling her no and keep pushing her off of me.* But I'm telling you the truth about everything else by me telling her no and pushing her off and telling her don't do that after that because I knew it was wrong and I didn't want her doing it again and I didn't want to do that crap again because I knew it was really wrong…

(Emphasis added.)

{¶ 44} The consciousness of guilt instruction relating to the above-quoted text exchange was as follows:

> Testimony has been admitted indicating that the Defendant asked [M.H.] to keep this between us for right now. You are instructed that Defendant's request that [M.H.] keep this between us for right now, alone, does not raise a presumption of guilt, but it may tend to indicate the Defendant's consciousness or awareness of guilt. If you find that the facts do not support that the Defendant asked [M.H.] to keep this between us for right now, or if you find that some other motive prompted the Defendant's conduct, or if you are unable to decide what the defendant's motivation was, then you should not consider this evidence for any purpose. However, if you find that the facts support that the Defendant engaged in such conduct, and if you decide that the Defendant was motivated by a consciousness or an

awareness of guilt, you may, but are not required to, consider that evidence in deciding whether the Defendant is guilty of the crimes charged.

{¶ 45} "A trial court's decision to provide, or refusal to provide, a particular jury instruction is reviewed on appeal for abuse of discretion." *State v. Urbanek*, 2023-Ohio-2249, ¶ 61 (6th Dist.), citing *State v. Adams*, 2015-Ohio-3954, ¶ 240. (Additional citation omitted.) "'"It is to-day universally conceded that the fact of an accused's flight, escape from custody, resistance to arrest, concealment, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself."'" *State v. Williams,* 79 Ohio St.3d 1, 11 (1997), quoting *State v. Eaton*, 19 Ohio St.2d 145, 160 (1969), quoting 2 Wigmore on Evidence (3 Ed.), 111, Section 276. As related to the current case, "[a] defendant's statements, 'like other conduct following the completion of a crime, may be relevant evidence of consciousness of guilt.'" *State v. Cepec*, 2016-Ohio-8076, ¶ 115.

{¶ 46} "A jury instruction on awareness of guilt that '[is] neither arbitrary nor unreasonable, and [does] not create an improper mandatory presumption' is appropriate." *State v. Roberts*, 2023-Ohio-142, ¶ 93 (6th Dist.), quoting *State v. Taylor*, 78 Ohio St.3d 15, 27 (1997).

{¶ 47} The trial court's decision to include the instruction was not an abuse of discretion. Noon's attempt to conceal his conduct by begging his wife not to tell others about his unlawful sexual activity with C.W. is appropriately the subject of a consciousness of guilt instruction. We further find that the instruction given neither required the jury to make an inference of guilt from the text messages, nor required the

jury to give any weight to those messages. Noon's third assignment of error is therefore found not well-taken.

Conclusion

{¶ 48} The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Christine E. Mayle, J.	
	JUDGE
Gene A. Zmuda, J.	
	JUDGE
Myron C. Duhart, J.	
CONCUR.	JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.