

Circuit Court for Carroll County
Case No. C-06-CR-19-000444

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 922

September Term, 2020

JAY ELINE

v.

STATE OF MARYLAND

Reed,
Beachley,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 10, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury, in the Circuit Court for Carroll County, convicted Jay Eline (“Appellant”) of second-degree assault, second-degree rape, third-degree sex offense, and sex abuse of a minor. The court sentenced Appellant to a total term of 55 years’ imprisonment, with all but 40 years suspended. In this appeal, Appellant presents a single question for our review:

- I. Did the trial court err in admitting the victim’s out-of-court statements pursuant to the “tender years” hearsay exception set forth in Section 11-304 of the Criminal Procedure Article of the Maryland Code?

For reasons to follow, we hold that the trial court did not err. We therefore affirm the judgments of the circuit court.

BACKGROUND

In 2019, Appellant lived in a trailer on property owned by a friend, R.B. R.B. lived in a separate trailer on the property with his girlfriend, M.M. Appellant frequently spent time with M.M.’s family, including her daughter, A.W., and A.W.’s six-year-old daughter, A.M., who lived with A.W. in a nearby residence. On several occasions, A.M. visited with Appellant in his trailer, where the two would watch movies, eat pizza, and play games. During some of those visits, Appellant engaged in inappropriate sexual conduct with A.M. A.M. later reported the incidents to her teacher, who contacted the Carroll County Department of Social Services (“Department”).

A.M.’s First Statement (Audio Recorded)

Following the report, Kara Finamore, a social worker with the Department, went to A.M.’s school and interviewed A.M. Also present during the interview was Detective Jill Moore of the Carroll County Sheriff’s Office.

During that interview, which was audio recorded, A.M. stated that, on multiple occasions, while she and Appellant were alone in Appellant’s trailer, Appellant asked her to touch his “part where he pees out of.” A.M. stated that this happened “two or three or four days.” A.M. stated that, on one occasion, she was laying in Appellant’s bed watching a movie and having pizza. A.M. stated that Appellant got undressed and asked her to “touch that part.” A.M. stated that she “only touched it for a little while” and her hands were “so tired.” A.M. stated that Appellant’s “thingy was growing bigger and bigger” and that “it exploded pee out of there.” A.M. stated that Appellant also pulled down her underwear and “licked the pee.” A.M. stated that this happened “four or five or six times.”

A.M.’s Second Statement (Audio and Video Recorded)

Later that same day, A.M. went to the Department’s main office, where Ms. Finamore conducted a second interview, which was audio and video recorded. During that interview, A.M. stated that her mother did not “like” her. When Ms. Finamore asked whether “something happen[ed],” A.M. stated that she and her mother talked “in the car” and that her mother was “disappointed.” A.M. explained that her mother was disappointed because A.M. “wasn’t supposed to tell anybody” about “what Mr. Jay did.”

Ms. Finamore then asked A.M. about their prior interview. A.M. repeated that Appellant had asked her to touch his “private part” and that he had tried to force her to “rub it.” When asked whether “it happen[ed]” or whether “there was ever a time that [she] did rub it,” A.M. responded that “it didn’t happen” and that she had “never rubbed it.” A.M. then stated that Appellant had licked her “butt.” A.M. also stated that Appellant licked her

“pee.” When asked if she remembered telling Ms. Finamore that she had touched Appellant’s “pee” with her hand, A.M. stated, “I haven’t told you that.”

At that point, Ms. Finamore asked if A.M. was upset about what her mom had said. Ms. Finamore then reassured A.M. that her mother knew she was there and that her mother was comfortable with her talking about Appellant. Shortly thereafter, A.M. stated that Appellant had showed her his “private part” and that it “shot out a lot of pee” onto her face. When asked about the time her “hand got really tired,” A.M. stated that she had been rubbing the “part” where “the pee comes out of.” A.M. stated that this happened “more than one time.”

State’s Motion to Introduce A.M.’s Recorded Statements Pursuant to CP § 11-304

Ultimately, Appellant was arrested and charged with various sexual offenses. Prior to trial, the State filed a motion to introduce A.M.’s recorded statements pursuant to § 11-304 of the Criminal Procedure (“CP”) Article of the Maryland Code. Under that statute, a court may admit into evidence in a criminal proceeding an out-of-court statement made by a child victim to a social worker (or other enumerated professional) if the child is under 13 years old and is the alleged victim of certain enumerated sexual offenses. Md. Code, Crim. Proc. § 11-304(b) and (c). Before such a statement may be admitted, however, the court must hold a hearing to determine whether the statement has “particularized guarantees of trustworthiness.” Md. Code, Crim. Proc. § 11-304(e) and (f). In making that determination, the court must conduct an examination of the child, unless the child is deceased or reasonably unavailable, or unless the court finds that an audio or visual

recording of the statement renders an examination unnecessary. Md. Code, Crim. Proc. § 11-304(g). In addition, when determining whether the child victim’s statement has “particularized guarantees of trustworthiness,” the court must consider:

- (i) the child victim’s personal knowledge of the event;
- (ii) the certainty that the statement was made;
- (iii) any apparent motive to fabricate or exhibit partiality by the child victim, including interest, bias, corruption, or coercion;
- (iv) whether the statement was spontaneous or directly responsive to questions;
- (v) the timing of the statement;
- (vi) whether the child victim’s young age makes it unlikely that the child victim fabricated the statement that represents a graphic, detailed account beyond the child victim’s expected knowledge and experience;
- (vii) the appropriateness of the terminology of the statement to the child victim’s age;
- (viii) the nature and duration of the abuse or neglect;
- (ix) the inner consistency and coherence of the statement;
- (x) whether the child victim was suffering pain or distress when making the statement;
- (xi) whether extrinsic evidence exists to show the defendant or child respondent had an opportunity to commit the act complained of in the child victim’s statement;
- (xii) whether the statement was suggested by the use of leading questions;
and
- (xiii) the credibility of the person testifying about the statement.

Md. Code, § 11-304(e)(2).

After Appellant filed a response in opposition to the State’s motion, the trial court held a hearing. As part of that hearing, the court conducted an in-camera interview with A.M., who was seven years old at the time. The prosecutor and defense counsel were present during the in-camera interview and were permitted to ask questions.

In-Camera Interview

During the in-camera interview, the trial court, the prosecutor, and defense counsel asked A.M. various questions regarding her recorded statements. At the beginning of the interview, the prosecutor asked A.M. about “the golden rule” and her statements regarding Appellant:

[STATE]: So do you know why were are here?

[A.M.]: To talk about Mr. Jay.

[STATE]: Okay. Do you remember talking to a police officer about Mr. Jay?

[A.M.]: Um-hum.

[STATE]: Okay. Did we talk about the golden rule, you and I?

[A.M.] Yes.

[STATE]: -- we talk about. What’s the golden rule?

[A.M.]: Never lie.

* * *

[STATE]: Okay. What does it mean to tell the truth?

[A.M.]: That means don’t tell a lie.

[STATE]: And what is a lie?

[A.M.]: A lie –

[STATE]: Tell me about that.

[A.M.]: A lie is something that didn't actually happen.

* * *

[STATE]: ... So, you remember what you talked to the police officer about?

[A.M.]: Mr. Jay.

[STATE]: Okay. And did you follow the golden rule when you talked to the police officer?

[A.M.]: Yes.

[STATE]: Okay. (Indiscernible).

[A.M.]: And guess what?

[STATE]: What?

[A.M.]: Mr. Jay wanted me to touch his private part and I didn't want to, but he had something around it which makes – and when I was feeling – like, his private part, and he –

[DEFENSE]: All right. Well, [A.M.], if you would, listen to [the prosecutor's] questions. *** And try to just answer those, if you would. All right?

[A.M.]: Okay.

Later, defense counsel asked A.M. if, on the day of the interviews, she was “feeling sick in any way.” A.M. responded that she was “scared” because “there were cameras” and that she was afraid “that the person would watch.” The trial court then asked A.M. if

she followed “the golden rule the whole time” despite her fear of the cameras, and A.M. responded in the affirmative.

Defense counsel also asked A.M. if, during the recorded interviews, Ms. Kinamore asked a question that A.M. “didn’t really know the answer to ... but gave some answer, anyhow.” A.M. responded that Ms. Kinamore “did give [her] some questions” but she “just don’t remember what [Ms. Kinamore] said.” Defense counsel later posed a similar question, asking A.M. whether she gave an answer to a question that she “really didn’t know the answer to.” After A.M. responded in the affirmative, the trial court asked A.M. why she gave an answer if she was unsure. A.M. responded that she could not remember.

Trial Court’s Findings

Following its in-camera interview with A.M., the trial court conducted a hearing in open court, during which the court heard arguments from the parties and made factual findings as to the admissibility of A.M.’s recorded statements. At the outset of the hearing, the court addressed its in-camera interview with A.M. The court noted that, although A.M. had stated during her second recorded interview that she “was scared because cameras would be there,” she nevertheless appeared to understand the difference between the truth and a lie. The court also highlighted A.M.’s “confusion” when she was asked by defense counsel whether she may have answered some of Ms. Kinamore’s questions despite not actually knowing the answer. The court remarked that A.M.’s confusion may have been due to “the nature of the questioning.” The court concluded that, despite her confusion as to defense counsel’s line of questioning, A.M. “responded that she understood that telling

the truth was important, and therefore, responded to counsels’ questions as well as the court’s questions appropriately during the [in-camera] interview.”

The court then heard from defense counsel, who went through each of the statutory factors, arguing that certain factors, most notably the inner consistency and coherence of A.M.’s recorded statements, weighed heavily against admission. Defense counsel emphasized A.M.’s failure to give appropriate responses when she did not know the answer to certain questions and her fear at being recorded. Defense counsel argued that those two factors suggested “some inconsistency and some lack of coherence” and diminished the credibility of the statements. The State responded that a careful consideration of all the relevant factors supported a finding that A.M.’s recorded statements had the requisite guarantees of trustworthiness.

In the end, the trial court ruled that A.M.’s two recorded statements had sufficient guarantees of trustworthiness and thus were admissible at trial. In so doing, the court reviewed all of the statutory factors and made specific findings as to each factor:

Having had full opportunity to review [A.M.’s] oral and video recordings, coupled with observation over this afternoon, it is clear to me that she does demonstrate that she has personal knowledge of the events in question. Her description of the alleged abuse, in both the audio recording as well as what she said this afternoon and in the video recording – although the video recording, I will say, it was a little bit more of a, around the barn for her to get to describe it.

And I think that is explainable by the fact that she indicated her mother had indicated her disapproval, and she was concerned about that. After it was revealed to her that her mother was aware of it, and it was okay for her to tell information, she began further consistent descriptions of the alleged abuse. So, I am satisfied that she has personal knowledge of the events.

As far as the certainty that the statement was made, I don't think we have to address that. ... We have two specific audio and video recordings regarding the statement.

As far as an apparent motive to fabricate or exhibit partiality by [A.M.], including interest, bias, corruption, or coercion, I find no evidence of any apparent motive ... to fabricate or exhibit partiality. At the time she was being interviewed, she was six years of age. I didn't see anything in the interview technique, what she said, or in my observation of her today that would suggest any motive to fabricate.

The next factor, as far as whether the statement was spontaneous or directly responsive to questions. It was both. She responded to questions appropriately, was able to give clear details about the alleged abuse. This afternoon's statement was spontaneous, as far as the description of the alleged abuse that she has described. So, I think that her statement was reliable from that perspective as well.

The timing of the statement ... was made reasonably, ... shortly after one of the two alleged dates in question. Specifically, she was interviewed on ... May 14th, and the event of abuse had occurred, I believe, less than one month before that.

* * *

The next factor is whether the child victim's young age makes it unlikely the child victim fabricated the statement that represents a graphic, detailed account beyond the child victim's expected knowledge and experience. As I referenced, she is six years old. What she described in her testimony ... clearly suggests that she is describing sexual activity that is well beyond the age that the Court would expect a typical six-year-old would have knowledge of, as far as the actions that were described.

So, I think that that is a substantial factor in the Court's mind, as far as its reliability or whether it [has] sufficient evidence of reliability, as required by the statute. ... I think that that, the facts of what she described, in the Court's assessment lends particular guarantees of trustworthiness.

The appropriateness of the terminology of that statement to the child victim's age. Again, she used language to describe body parts and the like consistent with her age of six, and she also described her reaction to things

that were occurring that you would think would be consistent with a six-year-old as well.

As far as the nature and duration of the abuse or neglect, there were two specific incidents that were revealed. Again, it was not a longstanding ... course of conduct, but certainly she was able to give details, as far as when things occurred. And again, those details were brought up suitably, promptly, within, as far as when her disclosure occurred, followed when the interviews took place. And I think that that factor is consistent as well.

The inner consistency and coherence of her statement. The video statement she did, as I indicated, sort of went around the barn a little bit, but I think it is explainable based upon the fact that she was concerned about her mother, or whatever her mother's disapproval was, as she described.

Upon being reassured that that was okay, her description of the events from the video became far more consistent with what she had disclosed initially earlier in the day, apparently before she had any discussion with her mother about the event. And I think that is consistent between the two of them.

And the next factor is whether the child victim is suffering any pain or distress when making the statement. There is certainly no indication she was suffering pain or distress. She was concerned about the fact that there might be cameras, because she said she didn't like them. At one point during the video, she was even pointed out to where the two cameras were located in the room and she seemed to be surprised by that, but I don't think that there is anything that would indicate pain or distress such that the statement that she gave would not have any inherent guarantees of trustworthiness.

I have no evidence before me, as far as extrinsic evidence, existing to show the Defendant had opportunity to commit the act complained of in the child victim's statement. I understand only that what [A.M.] said, is that apparently Mr. Eline resides in a trailer that is apparently on or near the property where [A.M.] lives. And that would be consistent to show that ... at least, he is close by. I don't know that this factor is necessarily one that is a driving factor in the determination here.

Whether the statement was suggested by use of leading questions. ... I did not see any inappropriate use of leading questions during the audio or the video interviews of [A.M.]. So ... that is not a concern to me.

And finally, the last factor, as far as credibility of the person testifying. I have nothing here today to suggest any lack of credibility, based upon what is before the Court. Taking into consideration all of those factors, having reviewed both the audio and video recordings, and having had opportunity to observe [A.M.] here this afternoon.

And again, I don't know that the Court needed to conduct the in-camera interview with [A.M.] this afternoon, but I do think it was helpful, particularly since I had ... first-hand experience with her, coupled with the fact that during the interview, in addition to confirming she knows the difference between a lie and telling the truth, and understands the golden rule, she saw fit in the middle of the interview to blurt out and describe some of the alleged abuse, consistent with what she had described almost, by my math, nine months ago, is significant to the Court.

But taking into consideration all those factors, under the totality of what is before me here today, I am satisfied that there are sufficient guarantees of trustworthiness of both the audio and the video recordings, that I am satisfied that they are both properly admissible, as an exception to the hearsay rule, in accordance with the procedure authorized by § 11-304 of the Criminal Procedure Article.

Trial

At trial, A.M. testified to the incidents involving Appellant. Following that testimony, the State played, over objection, both of A.M.'s recorded statements. Appellant was ultimately convicted. This timely appeal followed.

DISCUSSION

Appellant contends that the trial court erred in admitting A.M.'s recorded statements pursuant to CP § 11-304. Specifically, Appellant argues that the court erred in finding that the statements possessed "particularized guarantees of trustworthiness." The State counters that the court carefully considered all the relevant factors and properly found that A.M.'s statements had particularized guarantees of trustworthiness. For reasons to follow, we hold that the court did not err.

As discussed, before a child victim’s out-of-court statement can be admitted pursuant to CP § 11-304, the trial court must make a finding that the statement has particularized guarantees of trustworthiness. Md. Code, Crim. Proc. § 11-304(e) and (f). “In that regard, the court must determine whether the totality of the circumstances that surround the making of the statement ... render the declarant particularly worthy of belief, *i.e.*, whether the child was likely to be telling the truth when making the statements.” *In re J.J.*, 231 Md. App. 304, 328 (2016) (citations and quotations omitted), *aff’d* 456 Md. 428 (2017). In making that determination, the court must consider the 13 factors set forth in CP § 11-304(e) and then “make a finding on the record as to the specific guarantees of trustworthiness that are in the statement[.]” Md. Code, Crim. Proc. § 11-304(f); *see also* Md. Code, Crim. Proc. § 11-304(e). “In reviewing the [trial] court’s findings of fact pursuant to the statute, we apply the ‘clearly erroneous’ standard of review.” *In re: J.J.*, 231 Md. App. at 329. “A decision is not clearly erroneous if the record shows that there is legally sufficient evidence to support it.” *In re J.J.*, 456 Md. 428, 452 (2017) (citations and quotations omitted).

A.

Appellant first argues that the trial court’s finding as to the statements’ trustworthiness was erroneous because A.M.’s in-camera interview “demonstrated that she did not appreciate the difference between the truth and a lie.” Appellant contends that the court’s contrary finding – that A.M. did appreciate the difference between the truth and a

lie – was clearly erroneous because A.M.’s in-camera interview “included multiple instances in which [she] failed to appreciate the difference between the truth and a lie.”

The State argues, and we agree, that Appellant’s claim is unpreserved. At the hearing on the State’s motion, Appellant raised a host of specific objections and arguments, none of which included the argument that A.M. could not tell the difference between a truth and a lie. As such, that claim is not preserved for our review. *See Paige v. State*, 226 Md. App. 93, 122 (2015) (“[I]t is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal.”) (*quoting Klauenberg v. State*, 355 Md. 528, 541 (1999)).

Nevertheless, the trial court did not err in finding that A.M. appreciated the difference between the truth and a lie. In claiming that the court erred, Appellant relies almost exclusively on the following exchange, which occurred during the court’s in-camera interview:

THE COURT: [A.M.], you just showed me your shoes. If I were to tell you that your shoes did not have stars on them, would I be telling the truth or would I be lying?

[A.M.]: You’re telling the truth.

THE COURT: Okay. I’d be telling the truth if I said you did not have stars on your shoes? Look – your shoes now, look at your shoes.

[A.M.]: No.

THE COURT: Okay. So, if I told you that your stars – that your shoes did not have stars on them, is that the truth or is that a lie?

[A.M.]: Lie.

THE COURT: Okay. And if I were to tell you that Mr. Lee over here was wearing a polka dot tie, would I be telling the truth or a lie?

[A.M.]: A lie.

THE COURT: Okay. And if I were to tell you that Ms. Amy is wearing a pink shirt, would I be telling you the truth or a lie?

[A.M.] The truth.

THE COURT: Okay, all right. Thank you. Those are the questions I had.

We see little, if anything, in that exchange to indicate that A.M. was unable to differentiate between the truth and a lie. Although it appears that A.M. may have incorrectly answered the court's initial question, she appears to have answered the question to the court's satisfaction when asked about her shoes the second time. It also appears that she answered the remaining questions to the court's satisfaction.

Regardless, there were multiple instances during the in-camera interview in which A.M. clearly demonstrated that she understood the difference between a truth and a lie. The trial court's finding in that regard was therefore not clearly erroneous.

Appellant also highlights the exchange between A.M. and defense counsel in which A.M. stated that she may have answered some of Ms. Finamore's questions even though she did not know the actual answers. Appellant claims that the exchange "represents another form of failing to tell the truth."

We remain unpersuaded. The trial court expressly addressed that issue and found that A.M.'s confusion was likely due to the nature of defense counsel's questioning. The

court then concluded that A.M. had otherwise “responded that she understood that telling the truth was important” and “responded to counsels’ questions as well as the court’s questions appropriately.” Those findings were supported by the evidence and were not clearly erroneous.

B.

Appellant next argues that the court failed to properly address A.M.’s comments regarding her fear of being video recorded during the second interview. Appellant argues that A.M.’s comments “could certainly indicate that A.M. was concerned about being recorded because she was not telling the truth and/or was giving answers she believed her interviewer wanted to hear rather than answer the questions truthfully.”

Appellant’s claim is without merit and is not supported by the record. A.M. stated that she was concerned about the cameras because she did not want someone to watch the recording. There is nothing in the record to suggest that A.M. was afraid because she had been lying or responding to questions to which she did not know the answers. Moreover, the court expressly addressed A.M.’s fear and found that, based on A.M.’s behavior during the video recording, there was “certainly no indication she was suffering pain or distress ... such that the statement that she gave would not have any inherent guarantees of trustworthiness.” Thus, the court did consider the effect A.M.’s fear had on the trustworthiness of her statements, and the court’s findings in that regard were not clearly erroneous.

C.

Finally, Appellant argues that, “with respect to the inner consistency and coherence of A.M.’s statements, the [trial] court’s finding was also clearly erroneous because the court excused inconsistencies in A.M.’s [two] statements by determining that they were caused solely by A.M.’s concern that her mother did not want her to talk about the alleged abuse.” Appellant argues that the court’s finding was not supported by the record.

We disagree. To begin with, the court did not “excuse” the inconsistencies in A.M.’s statements, nor did the court state that those inconsistencies were caused “solely” by A.M.’s concerns regarding her mother. Rather, in making its findings as to the inner consistency and coherence of A.M.’s statements, the court simply remarked that A.M. was not as forthcoming in her second interview when compared to the first interview. The court then found that A.M.’s lack of candor was “explainable” given her concerns about her mother, who had allegedly been disappointed that A.M. had reported the incidents involving Appellant. The court further noted that, once A.M. was reassured that her mother was comfortable with her talking about the incidents, A.M. “became far more consistent with what she had disclosed initially earlier in the day, apparently before she had any discussion with her mother about the event.” Those findings were supported by the evidence and thus were not clearly erroneous.

To be sure, A.M. did make some statements during her second interview that were inconsistent with some of the statements she made during her first interview. But, as the State correctly notes, A.M.’s statements did not need to be devoid of any inconsistencies in order for the statements to be admissible. That is, the court was not required to consider

each of the inconsistencies as part of its analysis. Rather, the court needed to consider the inner consistency and coherence of A.M.’s statements and then determine, based on the totality of the circumstances, whether A.M.’s statements had particularized guarantees of trustworthiness. That is precisely what the court did.

Importantly, the court, in addition to considering the inner consistency and coherence of A.M.’s statements, painstakingly reviewed and made specific findings about the other 12 factors before reaching its determination that A.M.’s statements had particularized guarantees of trustworthiness. Specifically, the court found that A.M. had personal knowledge of the events in question, that there was no question as to whether the statements had been made, and that there was no evidence to suggest that A.M. had a motive to fabricate or exhibit partiality. The court also found that A.M.’s statements were spontaneous and directly responsive to questions, that the timing of the statements was reasonable, and that A.M.’s explicit description of the sexual activity went well beyond her age and made it unlikely that she fabricated the statements. The court found that A.M. used age-appropriate terminology, that A.M.’s description of the incidents was consistent with the alleged nature and duration of the abuse, and that there was no indication that A.M. was suffering pain or distress when the statements were made. Finally, the court found that A.M.’s statements were consistent in establishing Appellant was “close by” when the incidents occurred, that there was no inappropriate use of leading questions during the interviews, and that A.M. appeared to be credible. Given those findings, which

Appellant does not dispute, we cannot say that the court clearly erred in determining that A.M.’s statements had particularized guarantees of trustworthiness.

In sum, the record makes plain that the trial court carefully considered all the requisite statutory factors and made specific findings of fact that were supported by the evidence. The court then weighed those factors and properly determined that A.M.’s statements had particularized guarantees of trustworthiness. Accordingly, the court did not err in admitting the statements.

**JUDGMENTS OF THE CIRCUIT COURT
FOR CARROLL COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**