DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIAN K. JOHNSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2024-0982

September 25, 2026

Appeal from the Circuit Court for Sarasota County; Dana Moss, Judge.

Michael Ufferman and Laurel Cornell Niles of Michael Ufferman Law Firm, P.A., Tallahassee, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Allison C. Heim, Assistant Attorney General, Tampa, for Appellee.

ATKINSON, Judge.

Brian K. Johnson challenges his convictions and sentences for sexual battery against K.M. in violation of section 794.011(8)(b), Florida Statutes (2013). We hold that the trial court abused its discretion by limiting the cross-examination of K.M. regarding her allegation during a November 2013 Department of Children and Families (DCF) investigation that her stepfather had sexually abused her when in the same interview she had denied sexual abuse by Mr. Johnson and that this error was not harmless. Accordingly, we reverse Mr. Johnson's convictions and

sentences as to counts two and four, and we remand for a new trial on these counts only.

Background

In 2024, Mr. Johnson was charged with five counts of sexual battery against a person between the ages of twelve and eighteen while he was in a position of familial or custodial authority. *See* § 794.011(8)(b). The victim in each count was his stepniece, K.M., a female born in 1997. Each count was alleged to have occurred on or about March 1, 2013, through November 30, 2013. Of the five counts of sexual battery with which he was charged, the jury found Mr. Johnson guilty of counts two and four; he was found not guilty of the three remaining counts. On the verdict form, count two was described as occurring by the "side of house" and count four was described as occurring at a "house under construction."[1] He was sentenced to twenty years' imprisonment, to be followed by ten years of sex offender probation.

Prior to trial, the State filed a motion in limine seeking in relevant part to exclude any reference to K.M.'s sexual activity. Defense counsel argued that statements alleging sexual abuse by K.M.'s stepfather that were made by K.M. herself during a 2013 DCF investigation should be a permissible topic of cross-examination because those statements were both relevant to K.M.'s initial denial of abuse by Mr. Johnson and further relevant to the issue of her credibility. During its investigation, DCF had interviewed K.M. on November 13, 2013, and in that interview, K.M. had

[1] On the verdict form, the counts were described as "penis/female genitals – bedroom" (count one), "penis/female genitals – side of house" (count two), "penis/female genitals – woods" (count three), "penis/female genitals – house under construction" (count four), and "mouth/female genitals" (count five).

denied that she was having sex with Mr. Johnson. Then, on November 20, 2013, the Child Protection Team (CPT) interviewed K.M. as part of the DCF investigation, and K.M. again denied that she was having sex with Mr. Johnson but alleged that she *had* experienced sexually inappropriate touching by her *stepfather*. It was not until 2020 that K.M. told an investigator that Mr. Johnson had sexually abused her in 2013. The State argued that "[w]hether [K.M.] said she was abused by her stepfather [was] not relevant to whether [Mr. Johnson] abused her." Agreeing with the State, the trial court ruled, "I don't find it's relevant with regard to his charges, but I do believe the door can be opened for it to come in" for impeachment.

At trial, K.M. testified on direct examination that she was having sex with Mr. Johnson "from about July 2013 up until around November 2013." She testified that in November 2013 she told a friend at school about her relationship with Mr. Johnson, prompting that friend to "report what was going on to DCF." She admitted that she did not disclose that she was having a sexual relationship with Mr. Johnson when she was interviewed as a part of the DCF investigation in November 2013.

Then, during cross-examination, K.M. was asked about the November 2013 interviews and again testified that during those interviews she had denied having sex with Mr. Johnson. A bench conference ensued, during which defense counsel sought to impeach K.M. with her statements during the DCF investigation in which she "den[ied] the abuse by [Mr. Johnson], [and] she instead deflected and said, 'No. But my stepdad's doing stuff to me and my mother, and I don't want to go home. I want to go to Grandmother's house.' " The court ruled that defense counsel could not "get into actually what was the

abuse," but that it would be "fair game to say, 'So even though there were allegations of abuse in your biological home, you were still willing to go over?' "

Cross-examination continued, during which the jury heard K.M. testify affirmatively that during the November 2013 interviews she was "making allegations of abuse against [her] mother" and "making allegations of abuse against [her] . . . stepfather." The jury did not hear that the allegations of abuse by K.M.'s stepfather were sexual in nature. K.M. testified that she was living with her mother and stepfather when DCF interviewed her in November 2013 and that it was "as a result of the November 13th and later November 20th" interviews that K.M. asked to be moved into her grandmother's house where Mr. Johnson also lived. She testified that "no sexual activity occurred" while she was placed in her grandmother's house in November 2013.

Defense counsel was later permitted to proffer testimony from K.M. that during the November 2013 interviews in which she had denied abuse by Mr. Johnson, she had told the DCF interviewer that her stepfather was "inappropriately" massaging her and became erect:

> [Defense counsel:] Do you now remember that during the interview in the DCF Child Protection Center interviews of November 2013, that you allege that your father was massaging you inappropriately and got an erection?
>
> [K.M.:] He was cracking my back, yes.
>
> [Defense counsel:] And you told them that he -- well, you told them he was massaging you and got an erection. That's what you told them, correct?
>
> [K.M.:] I told them that he was cracking my back because that's what he was doing.
>
> [Defense counsel:] All right. And you also further told them that as -- in part, because of that, . . . that you didn't feel safe going home?

[K.M.:] Yes.

Discussion

"The purpose of cross-examination includes the attempt '(1) to weaken, test, or demonstrate the impossibility of the testimony of the witness on direct examination and, (2) to impeach the credibility of the witness.' " *Perez v. State*, 949 So. 2d 363, 365 (Fla. 2d DCA 2007) (quoting *Steinhorst v. State*, 412 So. 2d 332, 337 (Fla. 1982)). A trial court's limitation of cross-examination is reviewed for an abuse of discretion. *Lydecker v. State*, 390 So. 3d 688, 692 (Fla. 2d DCA 2024) (citing *McDuffie v. State*, 970 So. 2d 312, 324 (Fla. 2007)). "A trial court's discretion in this area, however, is constrained by the rules of evidence and by recognition of a criminal defendant's Sixth Amendment rights." *McDuffie*, 970 So. 2d at 324 (citation omitted) (citing *Johnston v. State*, 863 So. 2d 271, 278 (Fla. 2003)).

Here, Mr. Johnson sought to introduce evidence of K.M.'s prior statement in November 2013 that she was not having sex with Mr. Johnson but that she *was* being *sexually* abused by her *stepfather*. This testimony was relevant evidence tending to *disprove* a material fact at issue—whether K.M. was sexually battered by Mr. Johnson—and was directly relevant to the theory of the defense that K.M.'s allegations against Mr. Johnson were fabricated. Elicitation on cross-examination of the nature of the abuse allegedly perpetrated by her stepfather—that it was sexual in nature—would demonstrate K.M.'s willingness to divulge purportedly sexual abuse in 2013 during a DCF investigation at a time when she declined to divulge alleged sexual abuse by her stepuncle during that same investigation. This could suggest to the jury that the abuse by Mr. Johnson did not occur but was later fabricated by K.M. Her delay in reporting the alleged abuse perpetrated by Mr. Johnson

could not as easily be attributed to a general reticence or inability to come forward with accusations of sexual abuse—as opposed to a *post hoc* decision to falsely accuse her stepuncle—if it were known that she denied abuse by Mr. Johson during the same time period when she was accusing her stepfather of similar crimes. The sexual nature of the abuse of which she accused her stepfather during the 2013 investigation was necessary to adequately draw a comparison with the alleged sexual abuse of which she failed to accuse Mr. Johnson during that same investigation. Thus, the excluded testimony was relevant to the issue of Mr. Johnson's guilt because the jury could infer from it that K.M.'s later accusation that Mr. Johnson had sexually abused her was fabricated. *See* § 90.401, Fla. Stat. (2024) ("Relevant evidence is evidence tending to prove or disprove a material fact."); § 90.402 ("All relevant evidence is admissible, except as provided by law."); *cf. Lydecker*, 390 So. 3d at 693 ("The trial court erroneously excluded G.G.'s CPT testimony regarding the July 2019 interview on the basis that it was barred by the rape shield statute. . . . The evidence that G.G. had previously disclosed two other incidents of sexual misconduct and did not disclose any allegations against Mr. Lydecker at that time and that the prior disclosure caused a falling out between the two families is relevant to show G.G. had a potential motive, bias, or interest in falsely accusing Mr. Lydecker of sexual battery." (citing *Alvarado-Contreras v. State*, 305 So. 3d 842, 845 (Fla. 2d DCA 2020))).

It was therefore error for the trial court to limit Mr. Johnson's cross-examination to preclude such testimony. *See Karls v. State*, 412 So. 3d 137, 138 (Fla. 2d DCA 2025) ("Florida law is clear that 'where evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission.' " (quoting

Mateo v. State, 932 So. 2d 376, 379 (Fla. 2d DCA 2006))); *Bertram v. State*, 637 So. 2d 258, 260 (Fla. 2d DCA 1994) ("It is error for a trial court to prohibit cross-examination when the facts sought to be elicitated are 'germane to that witness' testimony and plausibly relevant to the theory of defense.' " (quoting *Pace v. State*, 596 So. 2d 1034, 1035 (Fla. 1992))); *cf. Thorne v. State*, 271 So. 3d 177, 184 (Fla. 1st DCA 2019) ("Here, the proffered evidence tended to prove the victim's motivation to fabricate her allegations, if the jury believed the victim did not accuse the defendant in the initial interview because the sexual activity did not occur. By excluding this evidence, the trial court prevented Appellant from 'presenting a full and fair defense.' This was error." (citation omitted) (quoting *Lewis v. State*, 591 So. 2d 922, 925 (Fla. 1991))).

The record does not support that the error was harmless beyond a reasonable doubt. *See Gosciminski v. State*, 132 So. 3d 678, 706 (Fla. 2013) ("Errors in limiting or restricting the scope of cross-examination are subject to harmless error analysis." (first citing *Lukehart v. State,* 776 So. 2d 906, 920 (Fla. 2000); and then citing *Kramer v. State,* 619 So. 2d 274, 276 (Fla. 1993))); *State v. DiGuilio*, 491 So. 2d 1129, 1138 (Fla. 1986) ("The harmless error test . . . places the burden on the state, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." (citing *Chapman v. California*, 386 U.S. 18, 24 (1967))). The State relies on *Thorne* in support of its argument of harmless error, contending that here, as in *Thorne*, Mr. Johnson was not found guilty solely based on the victim's testimony. *See Thorne*, 271 So. 3d at 186–87. In addition to K.M.'s testimony, the State points to the following evidence that was provided to support a finding of Mr. Johnson's guilt:

one of K.M.'s friends to whom K.M. had disclosed her sexual relationship with Mr. Johnson in 2013—before the November 2013 interviews—testified at trial that K.M. had informed the friend "[t]hat her uncle was having sex with her," and that K.M. "said that she was scared and didn't know how to bring it up without maybe getting in trouble"; another witness testified that "one time" she saw Mr. Johnson holding K.M. around the waist from behind in a manner that made the witness "uncomfortable"; and Mr. Johnson's wife (with whom Mr. Johnson was undergoing a "[c]ontentious" divorce) testified that Mr. Johnson admitted to having sex with K.M. around the side of the house where he lived with K.M.'s grandmother and in "a new construction home that was being built that was a few blocks or around the corner from his mom's house where he was living."[2] The State also presented *Williams* rule testimony from Mr. Johnson's daughter of instances when he touched her in a way that made her "feel uncomfortable."[3] The State further contends that, as in *Thorne*, having K.M. testify as to her stepfather's sexual abuse would have merely garnered sympathy for her as a victim. *See Thorne*, 271 So. 3d at 186 ("And had Appellant cross examined the victim about the people who had sexually molested her, there is a reasonable possibility the answer could have engendered empathy from the jury for the victim, thereby increasing her credibility.").

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[2] It was the "side of the house" incident (count two) and the "new construction home" incident (count four) of which Mr. Johnson was ultimately convicted.

[3] At trial, Mr. Johnson's daughter described Mr. Johnson touching her breast under her clothes while hugging her, smacking her butt, and attempting to use his foot to pull down the bottom of her swimsuit in the pool. Nonetheless, aside from those instances, she testified to having "a relatively good relationship with [her] father."

The State's reliance on *Thorne* is unpersuasive. In *Thorne*, "extensive inculpatory evidence" was presented that "bolstered [the victim's] credibility," including *Williams* rule witnesses who testified to having sexual relationships with the defendant while the witnesses were teenagers, a controlled call containing the defendant's effective admission to the crime, and testimony of evidence tampering, all of which "supported the State's theory that the victim's testimony was not fabricated." *Id.* at 186–87. The evidence against Mr. Johnson in this case was qualitatively and quantitatively different. There was no effective admission by Mr. Johnson that he committed the charged offenses, nor was the *Williams* rule testimony from Mr. Johnson's daughter anywhere near as "devastating" as the testimony provided in *Thorne*. *See id.* at 186. In this case of *he said, she said*, Mr. Johnson's guilt hinged almost entirely upon whether the jury believed K.M.'s allegations or Mr. Johnson's testimony that he "[n]ever, never, never" had sex with his stepniece. Her credibility and the believability of her account of abuse that she did not report until well after the alleged fact was therefore of considerable importance. Indeed, that the jury declined to find Mr. Johnson guilty of three of the charged offenses suggests the possibility that the jury was dubious of some of K.M.'s claims of sexual abuse by Mr. Johnson.

While the State's conjecture that K.M.'s allegations of sexual abuse by her stepfather might garner sympathy for her as a victim cannot be discounted out of hand, it is also possible that the jury may have found K.M.'s allegations of sexual abuse by her stepfather and simultaneous denial of sexual abuse by Mr. Johnson to indicate that the later allegations against Mr. Johnson had been fabricated. *See Bertram*, 637 So. 2d at 260 (holding that the trial court erred in limiting the cross-

examination of the defendant's mother because "cross-examining the mother about prior altercations between [the defendant] and his father was certainly germane to the mother's testimony and relevant to the defense theory that these charges were fabricated"); *see also McDuffie*, 970 So. 2d at 324 ("The right of a criminal defendant to cross-examine adverse witnesses is derived from the Sixth Amendment and due process right to confront one's accusers. One accused of crime therefore has an absolute right to full and fair cross-examination." (quoting *Steinhorst*, 412 So. 2d at 337)).

It is noteworthy that the jury heard from K.M.'s grandmother that after K.M. was placed with her grandmother following the November 2013 DCF investigation, K.M. told her grandmother that she had lied about having sex with Mr. Johnson because "she was going out with a boy and they had a fight, and so she made up something about having sex with [Mr. Johnson]." If the jury had also heard that K.M. denied sexual abuse by Mr. Johnson in November 2013 while at the same time claiming to be abused by her stepfather, a reasonable jury could have concluded that, as argued by the defense at trial, the two charges upon which Mr. Johnson was convicted were fabricated. *See Lydecker*, 390 So. 3d at 693–94 ("The jury should have been allowed to consider that G.G. previously disclosed that two other men had abused her, that she did not mention Mr. Lydecker's alleged abuse at that time, and that the falling out between the families was caused by G.G.'s initial disclosure—all of which a reasonable jury could have found to indicate that G.G. may have fabricated the allegations against Mr. Lydecker. By excluding this evidence, the trial court prevented Mr. Lydecker from 'presenting a full and fair defense' as guaranteed by the constitution." (quoting *Lewis*, 591 So. 2d at 925)). Accordingly, the State cannot establish that the court's

error in precluding cross-examination as to the specific allegations of abuse by K.M.'s stepfather during the November 2013 DCF investigation was harmless beyond a reasonable doubt. *See DiGuilio*, 491 So. 2d at 1135 (citing *Chapman*, 386 U.S. at 24); *Lydecker*, 390 So. 3d at 693–94 (quoting *Lewis*, 591 So. 2d at 925); *Hawn v. State*, 300 So. 3d 238, 243 (Fla. 4th DCA 2020) ("We also reject the State's argument that any error was harmless. . . . Although Defendant was able to call into question the Victim's credibility during trial and in closing argument, the Victim was the only witness to Defendant's alleged actions. Therefore, 'the jury's assessment of her credibility was critical.' " (quoting *Davis v. State*, 756 So. 2d 205, 208 (Fla. 4th DCA 2000))); *Woods v. State*, 92 So. 3d 890, 892 (Fla. 4th DCA 2012) ("The State's case against the defendant hinged primarily on the victim's credibility and the prior statement was central to the defendant's defense at trial. Thus, the erroneous exclusion of this statement was not harmless." (citing *DiGuilio*, 491 So. 2d at 1135)); *Docekal v. State*, 929 So. 2d 1139, 1143 (Fla. 5th DCA 2006) (holding in a sexual battery case that "[t]he victim's credibility was critically important in this 'classic swearing match,' and the trial court's failure to permit Docekal's cross-examination cannot be considered harmless beyond a reasonable doubt" (first citing *DiGuilio,* 491 So. 2d 1129; and then citing *Davis v. State,* 527 So. 2d 962, 963 (Fla. 5th DCA 1988))).

Conclusion

As the trial court erred in limiting Mr. Johnson's cross-examination of K.M. and this error was not harmless beyond a reasonable doubt, we reverse Mr. Johnson's convictions and sentences and remand for a new trial on counts two and four.

Reversed in part; remanded.

MORRIS and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.