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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45587
Plaintiff-Respondent,)	
)	BOISE COUNTY NO. CR 2016-932
v.)	
)	
JORGE E. RODRIQUEZ,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BOISE**

**HONORABLE RENAE HOFF
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Jorge E. Rodriquez appeals from his judgment of conviction for domestic battery with traumatic injury in the presence of a child. The district court abused its discretion by allowing Mr. Rodriquez's mother-in-law to testify, over his hearsay objection, that her daughter told her that Mr. Rodriquez had hit her. This Court should vacate Mr. Rodriquez's conviction and remand this case for a new trial.

Statement of Facts and Course of Proceedings

The State charged Mr. Rodriquez with domestic battery with traumatic injury in the presence of a child after his wife, Autumn Rodriquez,¹ reported that he had hit her in the face and legs while she was nursing their daughter on April 17, 2016, leaving her with a broken nose and bruises on her legs and face. (R., pp.20–22, 40–42, 46–47; Tr. Vol. I, p.122, L.17–p.123, L.16, p.125, L.12–p.126, L.7.) Mr. Rodriquez pled not guilty and took the case to trial.²

By the time the case went to trial, Autumn no longer maintained that Mr. Rodriquez had hit her as she had originally explained.³ (*See generally* Tr. Vol. I,⁴ p.109, L.15–p.148, L.16.) Instead, Autumn said that she had made up that story because she was mad at Mr. Rodriquez, who she believed was having an affair. (Tr. Vol. I, p.114, Ls.20–23, p.119, Ls.1–12, p.120,

¹ For clarity's sake, this brief will refer to Autumn by her first name.

² The first trial in this cases ended in a hung jury. (R., p.104.)

³ Autumn testified consistently with her original story at the preliminary hearing in this case, though she testified at trial that she did so only because of threats made by the prosecutor. (*See* Tr. Vol. I, p.126, L.16–p.128, L.7, p.136, L.11–p.137, L.25.)

⁴ Citations to "Tr. Vol. I." refer to the transcript of the first day of trial, held on July 27, 2018, and use the page number of the electronic document (which correspond to the page numbers that are printed on the upper right-hand corner of each page, not the page numbers printed on the bottom middle of each page). Citations to "Tr. Vol. II" refer to the second day of trial, held on July 28, 2017.

Ls.5–21, p.121, Ls.17–22, p.124, L.25–p.125, L.11; Def. Ex. A (copies of messages between Mr. Rodriguez’s sister and his ex-girlfriend, which Mr. Rodriguez’s sister forwarded to Autumn).) What really happened is Autumn wanted to see text messages between Mr. Rodriguez and his ex-girlfriend, the two struggled over the phone, and the phone accidentally hit her in the face. (Tr. Vol. I, p.111, L.6–p.112, L.1, p.114, L.18–p.115, L.3, p.134, Ls.5–13, p.138, L.12–p.140, L.25.) The bruises on her legs were from her job as a cashier at Costco in Boise. (Tr. Vol. I, p.135, Ls.6–p.24.) Thus, the question for the jury to decide was essentially which version of Autumn’s story was true.

 After Autumn testified that she had lied about Mr. Rodriguez hitting her, the State called Officer Cameron, a domestic violence officer for the Boise Police Department. (Tr. Vol. I, p.149, L.5–p.150, L.9.) Officer Cameron had no knowledge about the facts of this case, but testified as an expert regarding domestic violence, including why a domestic violence victim might not report a crime, might recant, or might minimize the abuser’s conduct. (Tr. Vol. I, p.158, L.10–p.168, L.19.)

 The State also relied heavily on the testimony of witnesses who interacted with Autumn after the alleged altercation. Two of Autumn’s coworkers at Costco testified that they noticed Autumn had makeup covering bruising on her face when she came into work on April 20, and one said that she was “solemn” and “quiet.” (Tr. Vol. I, p.181, L.1–p.184, L.9, p.188, L.8–p.191, L.17.) So they brought Autumn into the store manager’s office where she cried, called the care line available to employees, and then left work early. (Tr. Vol. I, p.182, L.9–p.183, L.22, p.191, L.18–p.194, L.7.) One of the coworkers then followed Autumn to pick up her daughter at daycare. (Tr. Vol. I, p.194, L.14–195, L.9.)

After picking up her daughter, Autumn drove to her parent's house in Burley. (Tr. Vol. I, p.117, L.23–p.118, L.7, p.120, Ls.4–6.) Autumn tried calling her parents to let them know she was coming, and only was able to reach her father. (Tr. Vol. I, p.216, Ls.2–15, p.227, Ls.17–21.) He described her as “very frightened” on the phone. (Tr. Vol. I, p.216, Ls.2–15.) Autumn's parents testified that, when Autumn got there, she was shaking, upset, fearful, and had been crying. (Tr. Vol. I, p.219, Ls.10–19, p.228, Ls.19–22.) Autumn's mother, who happens to be a registered nurse, looked Autumn over and noticed a handful of injuries. (Tr. Vol. I, p.229, Ls.5–21.) She then testified, over defense counsel's objection, that Autumn told her that her husband had caused the injuries. (Tr. Vol. I, p.230, Ls.9–21.) Officer Barnes responded to the home that night, spoke to Autumn, took photos, and referred the case to the Boise County Sheriff's Department. (Tr. Vol. I, p.199, L.17–p.206, L.14; State's Exs. 7–9.)

The next day, Autumn went to Dr. Petersen's office where her aunt worked as the doctor's assistant. (Tr. Vol. II, p.12, L.20–p.13, L.2.) Autumn wrote “My spouse hit me at home,” on the intake form, told her aunt that Mr. Rodriguez had hit her while she was nursing their daughter, and told Dr. Petersen that her husband had hit her. (Tr. Vol. II, p.13, L.19–p.14, L.6, p.24, L.25–p.25, L.22; State's Ex. 10.) According to Dr. Petersen, Autumn had a broken nose. (Tr. Vol. II, p.25, L.23–p.28, L.3; *see also* State's Ex. 11 (x-rays).)

The jury found Mr. Rodriguez guilty (R., p.408), and the court sentenced him to a total of eighteen years, with eight years fixed (R., pp.448–51). Mr. Rodriguez timely appealed. (R., pp.457–63.)

ISSUE

Did the district court abuse its discretion by allowing Autumn's mother to offer hearsay testimony that Autumn told her that Mr. Rodriguez hit her?

ARGUMENT

The District Court Abused Its Discretion By Allowing Autumn's Mother To Offer Hearsay Testimony That Autumn Told Her That Mr. Rodriguez Hit Her

“Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” I.R.E. 801(c). Hearsay is generally inadmissible, unless an exception applies. I.R.E. 802. One such exception is a statement that “(A) is made for—and is reasonably pertinent to—medical diagnosis or treatment; and (B) describes medical history; past or present symptoms or sensations; or their source.” I.R.E. 803(4). That exception “is premised on the assumption that such statements are generally trustworthy because the declarant is motivated by a desire to receive proper medical treatment and will therefore be truthful in giving pertinent information to the physician.” *State v. Nelson*, 131 Idaho 210, 216 (Ct. App. 1998). When determining whether the exception applies, the court should “consider any factors which bear upon the likelihood that the [declarant] made the statement for this purpose, including evidence indicating whether the [declarant] understood the need to speak truthfully to the physician and factors that otherwise indicate the reliability of the statements.” *State v. Kay*, 129 Idaho 507, 518 (Ct. App. 1996) (discussing the requisite analysis regarding a statement made by a young child).

This Court reviews the district court’s decision to admit or exclude evidence for an abuse of discretion. *State v. Joy*, 155 Idaho 1, 6 (2013). A district court acts within its discretion if it (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reached its decision by an exercise of reason. *Id.*

Autumn’s mother, Katheryn Hines, testified about what happened when Autumn got to her parent’s home on April 20.

Q. What did she physically look like? Take your time.

A. I know I'm a nurse, but it's real different when it's your own. She had two black eyes. I immediately put my hands up to her head. She had lumps on her head. She had—

[DEFENSE COUNSEL]: Objection. May we approach?

THE COURT: Um-hmm.

(Sidebar.)

BY [THE PROSECUTOR]:

Q. Continue on with your examination of your daughter.

A. She had lumps on her head. She had hair that had been pulled out on top of her head. She had bruises on her wrists. She had a shoe-print bruise on the inside of one of her legs. She had multiple bruises on another leg.

And she said, "I think my nose"—

Q. At this point, we're just going to—

A. Okay.

Q. You're an RN; correct?

A. Correct.

Q. At this point—I know it's your own daughter—did you feel that you were acting as a RN or her mother.

A. Both. It's my obligation, as a registered nurse, to report anything that I think is a danger to another person. I would lose my license if I didn't.

Q. How did she say she obtained these injuries?

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: I'll allow it, without hearsay.

[THE PROSECUTOR]:

Q. How did she say she obtained these injuries?

A. She said that her husband had done it.

Q. Would you say again that a little clearer. I'm sorry.

A. She said her husband Jorge had done it.

Q. Had done one of these injuries? Or . . .

A. No, everything.

(Tr. Vol I, p.229, L.5–p.230, L.21.)

The district court abused its discretion by allowing Ms. Hines to testify that Autumn had told her that Mr. Rodriguez hit her because it did not act consistently with Idaho Rules of Evidence 801, 802, and 803. Ms. Hines' testimony was hearsay because it introduced Autumn's out-of-court statement to prove the truth of the matter asserted, namely that Mr. Rodriguez had hit Autumn. *See* I.R.E. 801(c). Although the court admitted the statement under the exception for statements made for purposes of medical diagnosis or treatment, that exception does not

apply here. *See* I.R.E. 803(4). In particular, the State did not show that Autumn made the statement for purposes of medical diagnosis or treatment, but instead mistakenly focused on the intent of Autumn’s mother to try to establish that she was in essence conducting a medical examination when Autumn made the statement. Because Ms. Hines’ subjective intent is irrelevant, and the totality of the circumstances indicates that Autumn made that statement because she was upset and not so that her mother could diagnose or treat her, the exception does not apply. The court should have excluded that testimony. *See* I.R.E. 802.

The hearsay exception for statements made for medical diagnosis or treatment does not apply to Ms. Hines’ testimony because Autumn’s statement was not “made for” medical diagnosis or treatment. *See* I.R.E. 803(4)(A). Autumn testified that she went to her parents’ house in Burley four days after the alleged incident “Because I was upset with my husband because we had been fighting, and I thought for sure he was cheating on me. I just wanted to get away from him.” (Tr. Vol. I, p.118, Ls.3–5; *see also* Tr. Vol. I, p.217, Ls.7–19 (Autumn’s father testifying that Autumn asked to stay with her parents).) Further, Autumn testified that she told her mother that Mr. Rodriguez had hit her “because I was upset,” that she was upset because she thought Mr. Rodriguez was cheating on her, and that she lied to her mother when she said Mr. Rodriguez hit her. (Tr. Vol. I, p.111, L.6–p.115, L.13, p.117, L.23–p.118, L.7, p.120, L.4–p.121, L.25, p.129, L.23–p.130, L.1.) There is simply no evidence that Autumn was “motivated by a desire to receive proper medical treatment” when she told her mother that Mr. Rodriguez hit her, and thus we cannot assume that Autumn’s statement was trustworthy. *Nelson*, 131 Idaho at 216. Thus, the hearsay exception for statements made for medical diagnosis or treatment does not apply here.

The State’s post-hoc attempt to shoehorn what was clearly a statement made by a

distraught daughter to her mother into the hearsay exception for statements made for medical diagnosis or treatment missed the mark. (See Tr. Vol. I, p.221, L.18, p.229, L.15, p.235, L.1, p.237, L.7, p.242, L.5) (the prosecutor repeatedly using the term “exam” and examination” to describe the way that Ms. Hines reacted when seeing her daughter’s injuries).) The relevant inquiry is not Ms. Hines’ intent when hearing the statement, but rather Autumn’s purpose when making it. See I.R.E 803(4); *Nelson*, 131 Idaho at 216. Therefore, it is irrelevant that Ms. Hines happened to be a registered nurse, and that she felt like she was acting both as a nurse and a mother at the time because she is a mandatory reporter. (Tr. Vol. I, p.229, L.25–p.230, L.8.) It is equally irrelevant that Autumn’s father testified that his wife “checked Autumn over,” and answered affirmatively when asked whether that was “akin to a medical examination.” (Tr. Vol. I, p.221, Ls.15–19.) To be sure, Ms. Hines acted as any mother—nurse or not—would have under the circumstances, neither of Autumn’s parents testified that Ms. Hines actually diagnosed or treated Autumn (*see generally* Tr. Vol. I, p.213, L.1–p.242, L.17; *see* Tr. Vol. I, p.239, Ls.23–24) (Ms. Hines responding to defense counsel’s question about Autumn’s injuries to her nose being very apparent by saying, “Because I’m not an orthopedist, I can’t say without x-rays.”)), and Autumn went to Dr. Petersen’s office the next day, where he diagnosed her with a broken nose (Tr. Vol. II, p.25, L.5–p.28, L.25).

Because Autumn did not tell her mother that Mr. Rodriguez had hit her so that her mother could diagnose or treat her, no exception to the hearsay rule applies and the court abused its discretion by admitting Ms. Hines’ testimony.

CONCLUSION

Mr. Rodriguez respectfully asks that this Court vacate his conviction and remand this case to the district court for a new trial.

DATED this 13th day of November, 2018.

/s/ Maya P. Waldron
MAYA P. WALDRON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
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MPW/eas