COURT OF APPEALS
DECISION
DATED AND RELEASED

FEBRUARY 25, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1775-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

EUGENE HUNTINGTON,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Washburn County: WARREN WINTON, Judge. *Affirmed*.

Before LaRocque, Myse and Carlson, JJ.

PER CURIAM. Eugene Huntington appeals his conviction for three counts of first-degree sexual assault of a child, Jeri E., after a trial by jury. The jury found him not guilty of three other counts of first-degree child sexual assault. On appeal, Huntington argues that the trial court improperly admitted three pieces of evidence: (1) the trial court permitted Jeri E.'s mother, Jeri E.' s sister, and a police officer to testify to hearsay statements Jeri E. made two

weeks after the last incident; (2) an expert improperly expressed an opinion on Jeri E.'s truthfulness: and (3) the trial court improperly allowed a nurse to testify to double hearsay statements Jeri E. originally made to her mother and a counselor. We reject these arguments and therefore affirm Huntington's conviction.

We first uphold the trial court's excited utterance rulings. Excited utterances are exceptions to the hearsay rule. ***State v. Lindberg***, 175 Wis.2d 332, 341, 500, N.W.2d 322, 325 (Ct. App. 1993). The trial court's decision was discretionary. ***Id***. Jeri E. gave statements to her mother, her sister, and a police officer two weeks after the last incident. Each witness described the stress she was under when she made the statements. The mother stated that her daughter was hysterical, the sister stated that Jeri E. was crying, scared, and guilt-ridden, and the police officer stated that Jeri E. was crying and losing her composure. In addition, unlike the excited utterance disqualified in ***State v. Gerald L.C.***, 194 Wis.2d 548, 535 N.W.2d 777 (Ct. App. 1995), on which Huntington relies, Jeri E. was eleven, three years younger than the ***Gerald L.C.*** victim. ***Id***. at 558, 535 N.W.2d at 780. Under these circumstances, the trial court could rationally rule that Jeri E. remained under stress two weeks after the last incident. Moreover, Huntington partially opened the door for the statements by referring to Jeri E.'s "inconsistent statements" in his opening statement. *See* ***United States v. Knowles***, 66 F.3d 1146, 1161 (11th Cir. 1995); ***United States v. Kerr***, 981 F.2d 1050, 1052 (9th Cir. 1992). In sum, the trial court had substantial discretionary grounds to admit the evidence.

We next conclude that Dr. Carolyn Levitt's testimony did not violate the law laid down in ***State v. Haseltine***, 120 Wis.2d 92, 352 N.W.2d 673 (Ct. App. 1984). Under ***Haseltine***, experts may not testify to the truthfulness of a witness. ***Id***. at 95-96, 352 N.W.2d at 675-76. However, they may impart to the jury information concerning typical behavior of minor incest victims, such as recantations or reporting delays commonly caused by guilt, confusion, and reluctance to accuse a family member. ***Id***. at 96-97, 352 N.W.2d at 676. Here, the expert's answers complied with ***Haseltine*** principles. Levitt testified that Jeri E.'s testimony was typical of child sexual assault victims. She stated that Jeri E.'s reporting delay was consistent with reporting delays in other incest cases. She also stated that Jeri E.'s inability to remember exact times was consistent with memory problems she had observed in other incest cases. Read in context with the rest of her testimony, Levitt did not purport to express an opinion on Jeri E.'s truthfulness.

Finally, the trial court properly admitted the hearsay statements related by nurse Diane McCormick. McCormick recounted statements Jeri E. made to her mother and to a tribal counselor. This is a double hearsay issue, and each level must independently satisfy a hearsay exception. ***State v. Kreuser***, 91 Wis.2d 242, 249, 280 N.W.2d 270, 273 (1979). First, McCormick could relate the statements made to her by virtue of the medical diagnosis exception. *See* ***State v. Sorenson***, 152 Wis.2d 471, 492-93, 449 N.W.2d 280, 289 (Ct. App. 1989). She heard both statements in her capacity as nurse, and the facts of the incidents would have had relevance to her diagnosis. Second, Jeri E.'s mother and the counselor could relate Jeri E.'s statements under the excited utterance and the medical diagnosis exceptions respectively. Jeri E. spoke with her mother while excited, *see* ***Lindberg***, 175 Wis.2d at 341, 500 N.W.2d at 325, and spoke to the counselor as part of treatment related activities. *See* ***Sorenson***, 152 Wis.2d at 492-93, 449 N.W.2d at 289. In sum, the trial court properly exercised its evidentiary discretion.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.