

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1650-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

T.R.K.,

Defendant-Appellant.

Argued June 7, 2023 – Decided July 12, 2023

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 16-06-1323.

Peter T. Blum, Assistant Deputy Public Defender, argued the case on behalf of appellant (Joseph E. Krakora, Public Defender, attorney; Peter T. Blum, of counsel and on the briefs).

Shiraz Deen, Assistant Prosecutor, argued the cause for respondent (Bradley D. Billhimer, Ocean County Prosecutor, attorney; Samuel Marzarella, Chief Appellate Attorney, of counsel; Shiraz Deen, on the brief).

PER CURIAM

Defendant T.R.K. appeals from the November 19, 2020 judgment of conviction entered by the Law Division after a jury convicted him of two counts arising from his repeated sexual assault of the five-year-old daughter of his girlfriend.¹ We affirm.

I.

When defendant was nineteen, he sexually assaulted his seven-year-old sister. As a result of a conviction arising from that conduct, defendant served a sentence at the Adult Diagnostic and Treatment Center (ADTC) in Avenel. After his release, defendant was required to register as a sex offender pursuant to Megan's Law.

In 2015, when defendant was forty-four, he failed to comply with Megan's Law registration requirements. At the time, defendant was living with his girlfriend, M.B., and her daughter, R.B. In light of defendant's failure to register, Division of Child Protection and Permanency (DCPP) caseworker Daniel Transue was sent to the home to conduct a safety assessment of the child. Transue was given no information with respect to the details of defendant's prior

¹ We use initials to protect the identity of the victim of defendant's sexual assaults. R. 1:38-3(c)(9).

offense. He was accompanied by a police officer whose body camera recorded the events at the home.

At approximately 6:50 p.m., Transue sat at the dining room table with R.B. Her mother left the room, telling the child she would be nearby. Defendant was outside on the porch. The officer's body camera recorded Transue's conversation with R.B. After a brief discussion about R.B.'s age, her pet, and fairy wings she was wearing, Transue asked R.B. if anyone ever hits or hurts her. R.B. stated that the brother of a child with whom she attends school hit her.

Transue then asked R.B., "does mommy and daddy ever hit or hurt each other?" R.B. responded that her mother "don't like tickles." The following exchange ensued (the officer's radio intermittently transmitted communications that rendered some of R.B.'s responses inaudible on the body camera recording).

Transue is identified as D.T.:

D.T.: Mommy don't like tickles?

R.B.: Yeah, me yeah I don't like tickles.

D.T.: Who tickles you?

R.B.: Dad.² I don't like tickles. Me I like tickles on the neck.

² Although defendant is not R.B.'s father, she referred to him as "dad" and "daddy" when interviewed by Transue and later by a detective.

D.T.: Where is (sic) daddy tickle you at?

R.B.: Sometimes at . . . (inaudible)

D.T.: He tickles you on the neck?

R.B.: Yeah, sometimes.

D.T.: Does, does he tickle you? Where else does he tickle you?

R.B.: Here, right here, right here and I don't like it. And, and, and.

At this point in the interview, the officer's body camera was aimed above R.B.'s head. She cannot be seen on the recording as she says "[h]ere, right here, right here and I don't like it." At an evidentiary hearing, Transue testified that R.B. pointed "down low" as she gave that answer. At trial, Transue testified that R.B. pointed "to her private areas" as she gave that answer. The conversation continued:

D.T.: Where else does he tickle you at?

R.B.: My nose, my eyes . . . (inaudible).

D.T.: He tickles you on your eyes?

R.B.: Yeah, sometimes, my . . .

D.T.: Does he ever tickle you any place else?

R.B.: In the back.

D.T.: In the back? Does he ever tickle you on the front by your privates?

R.B.: Just my, just my nose.

D.T.: Just your nose, does he ever. Does he ever tickle you up here or where you go potty or anything like that?

R.B.: No.

D.T.: No.

R.B.: Just tickles my butt.

D.T.: Who tickles your butt?

R.B.: My dad and sometimes him bounce on him, takes his pants off them from him, butt in my butt then he [inaudible] softly.

D.T.: Wait, what does daddy do?

R.B.: Takes his pants off.

D.T.: He takes his pants off?

R.B.: Yeah and put butt in my butt.

D.T.: He puts his butt in your butt?

R.B.: Mm-hmm.

D.T.: Oh, that's not good.

R.B.: Yeah.

D.T.: Where is mommy when this happens?

R.B.: Mm, well is sometimes home, sometimes home in the, the bubble of the shower.

D.T.: Uh-huh.

R.B.: And one time I didn't wash myself.

D.T.: It's how does daddy put his butt on your butt? Do you have clothes on when daddy does that?

R.B.: (Inaudible) and he takes his pants off for that.

D.T.: Daddy asks you to take your pants off?

R.B.: Mm-hmm.

D.T.: Does a . . . what?

R.B.: (Giggling) He did this.

D.T.: (Inaudible).

R.B.: He did this.³

D.T.: He did that, really?

R.B.: Yeah.

D.T.: Mm, what a, does daddy, do you ever see daddy without his clothes on?

R.B.: What?

³ R.B. cannot be seen on the bodycam recording the two times she says "[h]e did this." It cannot be determined from the record how she gestured, if at all, when making these statements.

D.T.: Do you ever see daddy without his clothes on?

R.B.: Mm, doesn't him saw anymore.

D.T.: Do you ever see him when he doesn't have any pants on or anything like that?

R.B.: Well his clothes, my, him for him don't have any pants on last night, then I close my door and my dad get change that means.

D.T.: Mm-hmm. Let me ask you again you said that daddy tickles your butt, how is (sic) daddy tickle your butt?

R.B.: This.

D.T.: Does he tickle your butt, do you have your clothes on or you have clothes off? You have your clothes off?

R.B.: Mm-hmm.

D.T.: Does daddy ever, what do you call where you go pee-pee, what do you call that?

R.B.: I call that kuka, pee-pee.

D.T.: And has daddy ever? Has daddy ever?

R.B.: Tickle me out of his pee?

D.T.: In your pee-pee.

R.B.: Yeah.

D.T.: Daddy tickles you on your pee-pee?

R.B.: Yeah and he just tickles me where I poo.

Transue's interview of the child lasted approximately eight minutes. Because of R.B.'s disclosures, Transue contacted the county prosecutor's office. At the direction of detective Lindsay Woodfield, Transue transported M.B., and with M.B.'s consent, R.B., to the prosecutor's office to permit Woodfield to interview the child.

During the interview, which began at about 8:45 p.m. and was video recorded, R.B. identified various body parts on anatomical drawings of female and male persons. R.B. described both the female and male genitals as "kuka," the female and male breasts as "boobies" and the female and male buttocks as "butt." R.B.'s first disclosure was in the following exchange with Woodfield, identified as L.W.:

L.W.: Has anybody ever touched you on your kuka or your boobies and you did not like it?

R.B. No one did.

L.W.: No one did.

R.B.: No, when I kiss my mom and hug her, but Daddy just did something and I don't want, no.

L.W.: What did he do?

R.B.: He did, he take my pants off and his pants off and put his butt and his kuka in my butt and kuka. That's not really good.

R.B. told the detective that the incidents happened in her bedroom and her mother's bedroom. She stated that her pants were off at the time and that she could feel defendant's kuka and butt and they were soft. R.B. stated that defendant told her that he "liked her kuka" and asked her to touch her kuka and his kuka. R.B. also said that when defendant changed her for bedtime, he put his kuka in her kuka and that she could feel it "in the body." When asked if anything came out of defendant's kuka, R.B. said she could feel it was "wet" like water and that she thought he got his kuka wet in the shower. She said that her mother never did those things to her and that she never told anyone about the incidents because she believed they were secret.

R.B. also made the following disclosure during the interview:

L.W.: Hey, I have a question. Did Daddy ever touch any part of his body in front of you?

R.B.: No, never. He just touch his kuka and my kuka. He (inaudible) like this, his, him kuka and my kuka stuck together, that means soft, and he rub my kuka and his kuka, then it stops.

L.W.: Okay. So he rubs your kuka and his kuka?

R.B.: Yeah, him, him kuka and my kuka are stuck together, I mean it's soft.

When asked how many times defendant put his kuka on hers, R.B. responded, "ten." The detective asked R.B. to enact what she described defendant doing to her with anatomically correct dolls. R.B. pressed the genitals of the dolls together, asked the detective to help remove the pants and underwear from the dolls, and then continued to press the dolls' genitals together. She also placed the male doll's hands on the genitals of both dolls.

Woodfield also interviewed defendant, who drove himself to the prosecutor's office, that evening. Prior to the interview he waited in an unlocked room and was free to leave. Woodfield began the interview at about 9:26 p.m. by informing defendant that he was not under arrest. After offering him a drink, Woodfield read defendant his Miranda warnings as a precaution.⁴ Defendant executed a Miranda rights waiver form.⁵

After obtaining defendant's Miranda waiver, Woodfield informed him that R.B. had made allegations that he was "sexually assaulting her" and that she claimed he put his penis on her vagina. Defendant initially denied the claims.

⁴ Miranda v. Arizona, 384 U.S. 436 (1966).

⁵ Woodfield did not ask defendant to describe his educational background. Our review of the video recording of the interview revealed that defendant understands and speaks English and is reasonably articulate.

He then attempted to minimize the sexual contact he had with R.B., claiming the child unexpectedly jumped on him while he was masturbating while unclothed and sat on his lap. Woodfield expressed doubt about the veracity of defendant's admissions, suggesting he was telling half-truths.

Ultimately, defendant admitted that he allowed R.B., who was unclothed, to sit on his lap while he was unclothed and erect on two or three occasions. He admitted that his bare, erect penis went between R.B.'s unclothed legs and rubbed on her unclothed vagina, and that he has "always had a thing about skin on skin." He denied having penetrated the child. T.R.K. also admitted that on another occasion he rubbed medicated lotion on R.B.'s vagina for several minutes longer than necessary and, while doing this, was sexually aroused by the age difference between him and the child and by R.B.'s vagina.

We recount the detective's questioning of defendant in some detail given T.R.K.'s claims that his will was overridden by what he describes as the detective's misleading statements, his state of exhaustion, and the conditions of the interview. After a short discussion of defendant's prior sexual assault of his sister and his denial of having assaulted R.B., the following exchange took place:

L.W.: Ok. So I think maybe that . . . there's more to, there's more to this thing than you're giving me. I

mean . . . I think maybe that you need more help than you've gotten . . . in the past regarding things like this. 'Cause she is um, she's making some claims that you um basically are sexually assaulting her.

T.R.K.: Hmm. I have not touched her any sexual assaulting way.

L.W.: Ok.

T.R.K.: I, I, I hmm . . . I, I, I wouldn't.

L.W.: She's not saying you, she's not saying you hurt her, she's actually asking for you. She's actually . . . loves being around you, wants to be around you. Doesn't think that you hurt her in any way

. . . .

L.W.: . . . So . . . I guess my whole thing is like, I want to clear this up for you. Like I want, I don't want . . . you know this to hang over your head or be another situation for you.

T.R.K.: Neither do I because I've obviously been out for twenty years.

L.W.: Yeah and . .

T.R.K.: I've, I've . . .

L.W.: I don't want to ruin that for you.

T.R.K.: I've kept this clean, I've kept myself out of trouble.

L.W.: And I don't, here's what, listen to me, I don't

T.R.K.: For twenty years.

L.W.: and you've been awesome for twenty years and you've been clear like you said for twenty years and I don't want to ruin that for you, I want to keep it as best as I

. . . .

L.W.: [M]y concern is [R.B.] and what she's saying and I also don't want to see you back in the situation you were in 20 years ago.

T.R.K.: I don't either.

. . . .

T.R.K.: Where I was, trust me and what we're going um . . . going the same direction you are I don't know.

L.W.: What do you mean where you were?

T.R.K.: I was in Avenel.

L.W.: No, I know.

T.R.K.: Every other kind of . . .

L.W.: . . . And I don't really wanna . . . continue to have a back and forth with you but I know at some point something happened between the two of you that we need to talk about, that we need to understand so we're not back in the same situation we were years ago. . . . And I want to help you and I want to get you the help that you need and the counseling 'cause I know that when people commit the crimes that you did commit, it

doesn't just go away, forever and ever and ever you need help.

T.R.K.: That's from being . . .

L.W.: It's like an alcoholic . . .

T.R.K.: That's from being [inaudible].

L.W.: Listen to me, listen to me, it's like an alcoholic, it's like a heroin addict, over and over and over they need help. So, no one's mad at you, I'm not mad at you. I know something happened, I want to get you help, I want to get you the counseling, I want you to get the repetitive help that you need 'cause I know you need it and I can't do that until you tell me what happened between you and her. 'Cause something happened and I don't . . . uh here's the deal, I'm being a hundred percent honest with you, the only way I can help you, is if you help me. And I'm not looking to throw you down the river, sell you down the river, throw you, hurt your life. I want you to be in her life, I want you to be in [M.B.'s] life and I can't help you unless you help me.

T.R.K.: Well.

L.W.: . . . I know that you need more help and you're going to need help to the day you die and that's something that you have to admit. I have my own problems I need help with 'til the day that I die.

. . . .

L.W.: . . . And I want . . . there's a difference between what you're doing with her than (sic) the guy I talk[ed] to two days ago whose putting kids in the trunk of his car and driving off with them and holding them

down in the woods and hurting them and sexually assaulting them and raping them. This is not what I'm talking about. These are two completely different things. This a monster and this is a guy that needs help because he has . . . a uh I don't even know what the word is, but you need help. This guy has a sickness and can't be helped; he's snatching kids, holding, raping them in the woods, kidnappin' um. That's something I have no tolerance for when I talk to (sic). People like you, these are mistakes and we need to work through them and you need help, because you've been so good for how long? . . . And that's the difference, and that's why I'm here to help you figure out what direction we need to go. . . .⁶

. . . .

L.W.: I want you to tell me the truth, dude.

T.R.K.: I want to, I want to sit there and say it right, ok, this way I don't have to tell, tell [M.B.], I don't want to sit there and take three hours to explain a five second sentence.

L.W.: Neither do I. And I don't want to sit here for three hours with you trying to ask you to tell me the truth about something that we both know already happened. The sooner we tell the truth, the sooner we can move on and figure out where we need to go meaning, how I can get you help, how we can get her help, if she needs it.

. . . .

⁶ Woodfield later admitted she fabricated the story about the kidnapping and rape of children in the woods.

L.W.: . . . But you're also not giving me really what happened and I know you know and I don't want to do this ten-hour conversation with you.

T.R.K.: I don't want to, to have a ten-hour conversation either, it's just like I'm f—ing exhausted, excuse my language.

L.W.: No, you've, I'm f—ing exhausted too, dude.

T.R.K.: I've been up since . . .

L.W.: I've been working since 7:00.

T.R.K.: I've been up since 3:30 this morning.

L.W.: Well, you, you got me beat.

T.R.K.: Driving a tractor trailer.

. . . .

L.W.: I want you to tell me the truth and trust me that I'm here for, I know this is the strangest thing you could ever hear, I'm actually on your side. I, actually I'm on your side.

At this point in the interview, T.R.K. admitted that "once or twice" while he was masturbating in his bedroom a partially undressed R.B. ran in, jumped on the bed, pulled off a blanket covering T.R.K.'s erect penis and sat on him. The detective told T.R.K. that she did not believe his account of what transpired between him and the child. The following exchange ensued:

T.R.K.: I just want to get this over with.

L.W.: But I want, but we're not going to get it over with if you keep just telling me that, that story

.....

.....

L.W.: [B]ut at the end of the day you know as well as I do, what happened. And we can sit here until we're both blue in the face, until we both want to just go to bed.

T.R.K.: I'm already past that, to be totally honest.

L.W.: I know. I . . . I feel for you. I really do. I really do feel for you. But I, as much as I . . . as I want to believe what you're saying, I can't dude, I just can't. And you know why I can't. You know, you know that's not true. And you know there's, that, that may be true but there's also something deeper. And honestly, I . . . I, honestly think that you are attracted to her and I don't think that's a big deal, I think you're also attracted to [M.B.]. I think you want to have sex with [M.B.], I think you want to be with [M.B.] and I want you to be with [M.B.]. And I want you to still be in [R.B.'s] life, I want you to raise her and be her father, 'cause her biological father is nowhere to be found. But knowing you and talking to you and spending just this little time with you, I know you're attracted to [R.B.]. And I know that um something happened between you and [R.B.], and I know you regret it, and I know that it'll never happen again.

.....

L.W.: . . . I have your back, I want to help you get to, get, get the help you need. But again, we're,

we're not; we're really kind of dancing around the truth here.

. . . .

T.R.K.: I know what I'm going to say is going to come off wrong but, even if I were to sit there and say yes something did happen or I say no something didn't happen, ok. I'm already screwed because she's . . . I'm lost with her anyway.

L.W.: What do you mean you lost with who, [R.B.]?

T.R.K.: [M.B.]

L.W.: Oh no you're not. You're not lost with her. You know what she said to me, I just want to know what happened so we could figure it out. What if it happened, alright, we'll get him help. If it didn't happen, okay then [R.B.] needs help. That were her words to me. And she said that she has been with; you have been together five years?

T.R.K.: [Nods head yes].

L.W.: Totally in love with you, totally doesn't want to lose you and wants, and asked me, looked at me and said, please help us. And if he needs help, he needs help. So whatever you're thinking and worried about what's going on with [M.B.], that's not true. As tough as she may seem, she loves you. And she's going to back you no matter what. Especially when she knows her daughter is fine and I told her, her daughter is fine.

So don't worry about [M.B.] You need to worry about yourself right now.⁷

....

T.R.K.: I know if I don't say anything I'm just gonna sit here for hours and hours and hours. And we're both gonna get tired and kind of what the hell's gonna be said after that.

L.W.: Why don't you just tell me what happened so we don't have to sit here for hours.

T.R.K.: I'm scared of the results.

L.W.: I know you're scared of the results but you know what, you can be the man that you are and the man that you've been and the man that you're going to be for [M.B.] and for [R.B.], and you can tell me what happened so I can help you and I can get you what you need and we can make sure this doesn't happen again or we can sit here in silence, and you cannot be a man. You're a man, you've owned up to it in the past, so you're going to own up to it again and we're going to figure it out. . . . I promise you that, I know, listen I, I'm telling you the minute you can get it out and tell me what happened, we're going to move forward, and we're going to figure it out what it is . . . why this is happening, why you did this.

⁷ The detective fabricated her conversation with M.B., who expressed anger toward defendant when informed of R.B.'s disclosures.

T.R.K. again claimed that any contact between his erect penis and the child's vagina was accidental. The detective told T.R.K. that she did not believe his account and urged him to be truthful about his conduct with R.B.:

L.W.: . . . We've been in here too long and we've had too long of a conversation and we have a mutual, we have mutual respect for one another and I'm here to help you, I want you to help me, let's all help [R.B.] and let's be done with this. So tell me what happened So the bottom line is, you had a lapse in judgement, you made a mistake . . . and it is what it is. And now we got to, now we got to talk about it and we got to move forward. But be a man.

T.R.K.: Now where's (inaudible) wind up with me.

L.W.: What? I don't know. I can't make that decision 'cause I don't have those powers or that authority but I do know one thing, I can tell whoever it is that I need to, that you're honest and that you weren't messing with me the whole interview.

. . . .

L.W.: Why are you only giving me half-truths? Why you only, tell me why you're doing that?

T.R.K.: I'm scared to go back to jail.

L.W.: Ok, your fear to go back to jail.

T.R.K.: I'm scared of losing [M.B.], even though she says, she's standing behind me.

T.R.K. then made the admissions described above. Woodfield arrested defendant after the interview, which lasted a little more than an hour.

At DCPD's request, Dr. Gladibel Medina, a pediatrician with a subspecialty in child abuse pediatrics, interviewed R.B. about a month after her initial disclosures. During the interview, R.B. told Dr. Medina that T.R.K. touched an area of her body no one is supposed to touch and that he was "not her favorite human." Using anatomically correct dolls, R.B. demonstrated that defendant vaginally penetrated her with his penis and touched her vagina with his hand. Because M.B. told the doctor that R.B. was traumatized by a physical examination after her disclosures, Dr. Medina did not conduct a physical examination of R.B. The doctor's interview of the child was not recorded.

A grand jury subsequently indicted defendant, charging him with: (1) first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1); (2) second-degree sexual assault, N.J.S.A. 2C:14-2(b); and (3) second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a).

Prior to trial, the State moved pursuant to N.J.R.E. 803(c)(27), the tender-years exception to hearsay, to admit R.B.'s statements to Transue, Woodfield, and Dr. Medina. Defendant opposed the motion.

Defendant also moved for a hearing pursuant to State v. Michaels, 136 N.J. 299 (1994), to bar R.B.'s out-of-court statements to Transue and Woodfield, as well as R.B.'s in-court testimony. He argued that R.B. made her allegations in response to overly suggestive interview techniques which rendered them untrustworthy. In support of his Michaels motion, defendant requested to introduce expert testimony of Dr. Jemour Maddux, a licensed psychologist. An affidavit submitted by Dr. Maddux identified what he believed to be interview questions and techniques used by Transue and Woodfield that undermined the trustworthiness of R.B.'s responses. He concluded, however, that he could not opine with respect to whether R.B.'s disclosures were accurate.

The trial court held a hearing on the motions, at which Transue, Woodfield, and Dr. Medina testified. Before the court issued its opinion, defendant moved to have Dr. Maddux testify as an expert in opposition to the State's N.J.R.E. 803(c)(27) motion. He argued that this testimony would assist the court in deciding whether R.B.'s out-of-court statements were spontaneous and trustworthy.

The trial court subsequently issued an oral opinion on the motions. The court concluded that the expert testimony of Dr. Maddux was not necessary for it to decide the State's N.J.R.E. 803(c)(27) motion. The court found that Dr.

Maddux's report "discusses interviewing techniques generally, then categorizes the questions utilized by . . . Transue and . . . Woodfield. Nothing within the report touches on the factors related to trustworthiness that this [c]ourt must consider in reaching an 803(c)(27) determination."

The court found that Transue's eight-minute interview with R.B. satisfied every factor of trustworthiness militating toward admission of the child's statements to him. The court noted that "[t]he spontaneity of R.B.'s disclosure cannot be disputed" and found that Transue's questions did not suggest answers. The court also observed that R.B. corrected Transue several times when he posed obviously incorrect suggestions to her, such as expressing doubt that she did not have a driver's license. In addition, the court found R.B. had no difficulty distinguishing between fantasy and reality, having explained to Transue that she could not fly with the fairy wings she was wearing. Finally, the court noted the absence of any suggestion in the record that R.B. had a motive to fabricate allegations against defendant.

The court made similar findings with respect to R.B.'s statements to Woodfield. The court found that although Woodfield posed some leading questions, she did so when R.B. had gone off on a tangent. In addition, the court noted that none of the detective's questions suggested answers. The court found

that R.B. was consistent in her descriptions of the abuse, used age-appropriate terminology, and spoke with Woodfield shortly after her initial disclosures with little time to fabricate accusations against T.R.K. Finally, the court found that there was "no question" that R.B.'s statements to Dr. Medina were trustworthy. The court, therefore, granted the State's N.J.R.E. 803(c)(27) motion.

With respect to defendant's Michaels motion, the court found that defendant failed to meet his initial burden of showing some evidence that R.B.'s statements were the product of suggestive or coercive interview techniques. The court noted that it reviewed the video recordings of R.B.'s interviews and evaluated how the interviewers acted, heard the questions they posed, and watched R.B.'s responses. The court, finding that Dr. Maddux's testimony was not necessary for it to make a determination with respect to defendant's initial showing, concluded that the interviews of R.B. suffered from none of the inappropriate interviewing techniques present in Michaels. It, therefore, denied defendant's motion for a taint hearing.

Defendant also moved under Miranda to suppress the incriminating statements he made to Woodfield, arguing they were not voluntary because of the conditions of the interrogation, his exhaustion, and the detective's repetitive questioning and deceptions. In addition, he argued that he did not knowingly

and intelligently waive his Miranda rights because it is evident from statements that he made during the interview that he did not understand that he could stop the interrogation at any time.

After a hearing, the trial court issued an oral opinion denying the motion. The court found that defendant was not in custody when he was questioned by Woodfield. The court noted that defendant drove himself to the prosecutor's office, was not handcuffed or arrested, was not forced to relinquish his car keys or possessions, was not told he could not leave, and was placed in a room with an unlocked door with no officer standing inside or outside the room before the interview. Thus, the court found, no reasonable person in defendant's position would have felt they were in custody. As a result, the court concluded that Miranda did not apply to Woodfield's interrogation of defendant, warranting denial of defendant's motion to suppress under Miranda.

The court also found that even if defendant were considered to have been in custody, Woodfield obtained a valid waiver of his Miranda rights. The court noted that Woodfield read both the Miranda warnings and the waiver form aloud to defendant. T.R.K. asked no questions and acknowledged that he understood his rights. He signed the wavier before questioning began.

The court also rejected defendant's argument that his statements were the product of his overborne will and a denial of due process. The court found that although Woodfield repeatedly stated that her aim was to get defendant the help that he needed, she never said or implied that the help would be in lieu of defendant facing criminal charges for his conduct. The court found that Woodfield's statements that she did not want to "sell [defendant] down the river" and that she was "on his side" were not the equivalent of assurances that he would not face criminal consequences for sexually assaulting R.B. The court noted that defendant had served a sentence at ADTC, where sex offender treatment is provided to inmates. He was, therefore, aware that help for sexual offending behavior was available in prison.

Finally, the court found that in the final fifteen to twenty minutes of the interview, Woodfield dispelled any notion that defendant would avoid criminal charges for his conduct, when she informed him that she lacked the authority to determine whether charges would be brought. Defendant then acknowledged that he was telling half-truths because he was afraid to go to jail. He was, therefore, aware that his statements could lead to criminal charges and imprisonment. Woodfield did not dispel defendant's fear. The court also found

that defendant exhibited at least average intelligence during the interview, did not show signs of exhaustion, and was familiar with the criminal justice system.

The court distinguished the then-recent opinion in State v. L.H., 239 N.J. 22 (2019), in which the Court found that the defendant's statements during a custodial interrogation were not voluntary. The trial court noted that in L.H. the detectives interrogating the defendant made: (1) representations that directly conflicted with the Miranda warnings; (2) promises of leniency by offering counseling as a substitute for incarceration; and (3) statements minimizing the seriousness of the defendant's criminal acts. The court found that Woodfield: (1) never told T.R.K. that his statements would not be used against him in a criminal proceeding and did not, therefore, directly contradict the Miranda warnings; (2) did not tell defendant he would receive counseling as a substitute for incarceration; and (3) did not minimize T.R.K.'s conduct to the point of rendering his admissions involuntary.

Defendant subsequently moved to have Dr. Maddux testify as an expert at trial. The court denied the motion, concluding that the question of R.B.'s credibility is not beyond the ken of the jurors, negating the need for expert testimony, and that the proposed testimony had the potential to be confusing, given the court's decisions with respect to the admissibility of R.B.'s disclosures.

The court noted that defendant could, during cross-examination, highlight the interview techniques used by Transue, Woodfield, and Dr. Medina. In addition, the court found that Dr. Maddux's expert testimony was inadmissible because the opinion he expressed in his affidavit was inconclusive and unreliable. The court noted that while Dr. Maddux stated that he observed several interview techniques used with R.B. that might render her disclosures unreliable, he could not determine whether those techniques actually had an effect on the reliability of her answers. Moreover, the court found, Dr. Maddux did not express his opinion within a reasonable degree of scientific or psychological certainty.

At trial, the principal evidence was the four out-of-court statements presented at the hearings: (1) the bodycam video recording of Transue's interview of R.B.; (2) the video recording of Woodfield's interview of R.B.; (3) the video recording of defendant's interrogation by Woodfield; and (4) Dr. Medina's testimony recounting her interview of R.B. In addition, R.B., then nine years old, testified. She referred to defendant by spelling out his first name each time she mentioned him. She testified that she did not remember and did not want to talk about what defendant did to her. She testified, however, that the thing she did not want to talk about happened "a lot" and made her feel "uncomfortable," "sad," and "angry."

At the jury charge conference, defendant's counsel requested an instruction "[t]hat an investigatory interview of a young child can be coercive or suggestive and thus shape the child's responses." The requested instruction also stated that the jurors had to "consider the circumstances under which the disclosure was made," as well as several factors "related to child interviewing techniques," including whether: (1) questions "are leading or non-leading;" (2) the interviewer was a "trusted authority figure;" (3) a question was "incessantly repeated," thus suggesting that the child's initial answer was "wrong or displeasing;" (4) the interviewer explicitly vilified the suspect; and (5) the interviewer believed the suspect's guilt, which belief can be "subtly communicated" to the child. The court declined the request, reasoning that its prior finding that the interviews of R.B. were not suggestive or coercive rendered the proposed instructions inapplicable.

The jury deadlocked on the first-degree aggravated sexual assault, and convicted defendant of the other two charges. The court sentenced defendant to a nine-year term of incarceration, with an eighty-five-percent period of parole ineligibility, for second-degree sexual assault and a concurrent nine-year term of imprisonment for second-degree endangering the welfare of a child.⁸

⁸ The State elected not to pursue a retrial of the deadlocked count.

This appeal follows. Defendant raises the following arguments.

POINT I

[T.R.K.'S] STATEMENT SHOULD HAVE BEEN SUPPRESSED AS INVOLUNTARY BECAUSE IT WAS INDUCED BY THE DETECTIVE'S FALSE PROMISES OF LENIENCY, INCLUDING "I'M ACTUALLY ON YOUR SIDE," "I WANT TO GET YOU HELP," "I'M NOT LOOKING TO THROW YOU DOWN THE RIVER," AND "I WANT TO CLEAR THIS UP FOR YOU." U.S. CONST. AMEND. XIV; N.J. CONST. ART. I, PARA. 1.

POINT II

THE TRIAL COURT ERRONEOUSLY PRECLUDED – AT BOTH THE TENDER-YEARS HEARING AND TRIAL – EXPERT TESTIMONY EXPLAINING HOW THE STATEMENTS OF THE FIVE-YEAR-OLD COMPLAINANT WERE THE PRODUCT OF SUGGESTIVE INTERVIEWS. U.S. CONST. AMEND VI, XIV; N.J. CONST. ART. 1, PARA. 1, 10.

POINT III

THE TRIAL COURT ERRED IN REJECTING THE DEFENSE'S PROPOSED INSTRUCTION DIRECTING THE JURORS TO EVALUATE THE RELIABILITY OF COMPLAINANT'S STATEMENTS AND PROVIDING FACTORS. U.S. CONST. AMEND. XIV; N.J. CONST. ART. 1, PARA. 1.

II.

A.

We begin with defendant's argument that the trial court erred when it found he made a knowing, intelligent, and voluntary waiver of his Miranda rights and voluntarily made incriminating statements to Woodfield. "An appellate court reviewing a motion to suppress evidence in a criminal case must uphold the factual findings underlying the trial court's decision, provided that those findings are 'supported by sufficient credible evidence in the record.'" State v. Boone, 232 N.J. 417, 425-26 (2017) (quoting State v. Scriven, 226 N.J. 20, 40 (2016)). Findings of fact are overturned "only if they are so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). However, we owe no deference to conclusions of law made by the trial court, which we review de novo. Boone, 232 N.J. at 426.

"The right against self-incrimination is guaranteed by the Fifth Amendment to the United States Constitution and this state's common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." State v. S.S., 229 N.J. 360, 381-82 (2017) (quoting State v. Nyhammer, 197 N.J. 383, 399 (2009)). "Our law maintains 'an unyielding commitment to ensure the

proper admissibility of confessions." State v. Sims, 250 N.J. 189, 211 (2022) (quoting State v. Vincenty, 237 N.J. 122, 132 (2019)).

"[A] knowing, intelligent, and voluntary waiver" of Miranda rights "is determined by the totality of the circumstances surrounding the custodial interrogation based on the fact-based assessments of the trial court." State v. A.M., 237 N.J. 384, 398 (2019); see also State v. Presha, 163 N.J. 304, 313 (2000). When making this analysis, courts consider the defendant's age, education, and intelligence, whether they were advised of their constitutional rights, the length of the detention, whether the interrogation was repeated and prolonged, and whether physical punishment or mental exhaustion were involved. Nyhammer, 197 N.J. at 402. Because New Jersey provides greater protections than afforded under federal law, Vincenty, 237 N.J. at 132, "our review of police-obtained statements is 'searching and critical' to ensure protection of a defendant's constitutional rights." State v. Burney, 471 N.J. Super. 297, 314 (App. Div. 2022) (quoting State v. Patton, 362 N.J. Super. 16, 43 (App. Div. 2003)). "[F]or the statement to be admissible, the court must find it was voluntary beyond a reasonable doubt." Id. at 315.

"Beyond the issue of waiver, there are separate due process concerns related to the voluntariness of a confession. Due process requires the State to

'prove beyond a reasonable doubt that a defendant's confession . . . was not made because the defendant's will was overborne.'" State v. O.D.A.-C., 250 N.J. 408, 420 (2022) (quoting L.H., 239 N.J. at 42). We evaluate voluntariness using the totality-of-the-circumstances test. Ibid.

Defendant's primary argument is that his confession was involuntary because of Woodfield's repeated assurances that her purpose in having defendant admit his sexual assaults on R.B. was to assist him in obtaining counseling. He argues that Woodfield, in effect, assured him that he would not face incarceration if he admitted sexually assaulting R.B. and minimized the severity of his conduct. Finally, T.R.K. argues that he was physically exhausted during the interview, which undermined his will. The trial court did not find these arguments persuasive. After a careful review of the record, including the video recording of the interrogation, neither do we.

"Unlike the use of physical coercion, . . . use of a psychologically-oriented technique during questioning is not inherently coercive." State v. Galloway, 133 N.J. 631, 654 (1993). "Because a suspect will have a 'natural reluctance' to furnish details implicating himself in a crime, an interrogating officer may attempt 'to dissipate this reluctance and persuade the [suspect] to talk.'" L.H., 239 N.J. at 43-44 (alteration in original) (quoting State v. Miller, 76 N.J. 392,

403 (1978)). One permissible way is by "[a]ppealing to [the suspect's] sense of decency and urging [them] to tell the truth for [their] own sake" Miller, 76 N.J. at 405.

In addition, our jurisprudence gives officers leeway to tell some lies during an interrogation. L.H., 239 N.J. at 44. Certain lies, however, have the "capacity to overbear a suspect's will and to render a confession involuntary and inadmissible." Ibid. A police officer cannot directly or by implication tell a suspect their statements will not be used against them because to do so is in clear contravention of Miranda warnings. See State in re A.S., 203 N.J. 131, 151 (2010) (holding that "[a] police officer cannot directly contradict, out of one side of his mouth, the Miranda warnings just given out of the other") (quoting State v. Pillar, 359 N.J. Super. 249, 268 (App. Div. 2003)); see also State v. Puryear, 441 N.J. Super. 280, 298 (App. Div. 2015) (holding the interrogator's representation to the defendant was impermissible where the interrogator said defendant "could not hurt himself and could only help himself by providing a statement" because it "contradicted a key Miranda warning").

Other impermissible lies are false promises of leniency that, under the totality of the circumstances, have the capacity to overbear a suspect's will. See State v. Hreha, 217 N.J. 368, 376-77, 383 (2014) (holding a promise of leniency

was impermissible where officers told suspect he would avoid "traditional criminal prosecution" and receive "a slap on the wrist" if he confessed). A "free and voluntary confession" is not one extracted by "threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." Brady v. United States, 397 U.S. 742, 753 (1970) (quoting Bram v. United States, 168 U.S. 532, 542-43 (1897)).

We are satisfied that the trial court did not err when it denied defendant's motion to suppress the statements he made to the detective. We agree with the trial court that the detective's focus on obtaining counseling for defendant to address his sex offender recidivism was insufficiently coercive to overcome his will. Defendant, having previously served a term of incarceration at ADTC, was aware of the continuing need for sex offenders to address their behavior through counseling. He conceded as much during his interrogation. He was also aware from his prior incarceration at ADTC that receipt of such help was not mutually exclusive with a prison term.

We acknowledge that the facts in L.H., on which defendant primarily relies, have a surface similarity to those presently before the court. Woodfield, like the detectives in L.H., repeatedly assured defendant that her goal was to obtain the help that he needed to address his criminal behavior. She also

minimized the severity of defendant's conduct and suggested that she wanted him to remain in M.B.'s life and to raise R.B., comments akin to those made in L.H. Those similarities, however, are insufficient to overcome a critical factual distinction that renders L.H. inapplicable here.

The defendant in L.H. was in custody during his interrogation. The trial court, on the other hand, found that T.R.K. was not in custody when questioned by Woodfield. The record supports the trial court's finding. "[T]he protections provided by Miranda are only invoked when a person is both in custody and subjected to police interrogation." State v. Hubbard, 222 N.J. 249, 266 (2015). "Miranda turns on the potentially inquisitorial nature of police questioning and the inherent psychological pressure on a suspect in custody." State v. P.Z., 152 N.J. 86, 102 (1997). "Miranda warnings are not required 'simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.'" Hubbard, 222 N.J. at 266 (quoting California v. Beheler, 463 U.S. 1121, 1125 (1983)).

In addition, unlike the detectives in L.H., Woodfield never suggested that the counseling T.R.K. needed would be provided in lieu of incarceration for his criminal behavior. The Court described the facts before it in L.H.:

[T]he detectives repeatedly told defendant that they would get him help in the form of counseling and

coupled those representations with the assurance that if he told the truth he would not go to jail. Here are but a few examples:

[Detective Fano]: [W]e're gonna help you out. You need some counseling. You need some more counseling.

[Detective Krentz]: And we're willing to get you the help that you need.

....

[Defendant]: Am I going to jail tonight? Is this going to be my last meal or something like that?

[Detective Krentz]: No, no, not at all.

....

[Defendant]: The help I need is not sending me to jail is it?

[Detective Krentz]: Not at all. Nobody gets rehabilitated in jail.

[Detective Fano]: Yeah, I agree.

[239 N.J. at 48.]

The Court agreed that "the officers' false promises of no incarceration directly negated the Miranda warnings and induced defendant to confess." Id. at 49.

Woodfield made no such promises to T.R.K.

In fact, during the interview, T.R.K. brought up his prior incarceration at ADTC and stated that he was not sure he and Woodfield were "going in the same direction." Later in the interview, T.R.K. expressed his fear of returning to jail if he was truthful about his sexual assaults of R.B. Woodfield did not negate that fear with a promise that he would not return to prison.

In addition, there is sufficient support in the record for the trial court's findings that defendant showed no signs of exhaustion during the interview, was familiar with the criminal investigatory process from his prior conviction, and demonstrated at least average intelligence. We see nothing in the record suggesting T.R.K.'s will was overborne or that, under the totality of the circumstances, his confession was the subject of a coercive interrogation.

B.

We turn to defendant's argument that the trial court erred when it denied his request to have Dr. Maddux testify at the hearing on the State's motion to admit R.B.'s out-of-court statements, in support of defendant's Michaels motion, and at trial. We find sufficient support in the record for the trial court's decisions.

We review a trial court's evidentiary rulings with deference. State v. Hyman, 451 N.J. Super. 429, 441 (App. Div. 2017). "[T]he decision to admit or

exclude evidence is one firmly entrusted to the trial court's discretion." Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010). An abuse of discretion is found only when the court has made "a clear error of judgment." State v. Koedatich, 112 N.J. 225, 313 (1988). The court's evidentiary decision should be sustained unless it resulted in a "manifest denial of justice." State v. Perry, 225 N.J. 222, 233 (2016) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)).

In addition, a determination on the admissibility of expert testimony is committed to the sound discretion of the trial court. Townsend v. Pierre, 221 N.J. 36, 52 (2015). A trial court's grant or denial of a motion to preclude expert testimony is entitled to deference on appellate review. Ibid. "[W]e apply [a] deferential approach to a trial court's decision to admit expert testimony, reviewing it against an abuse of discretion standard." Id. at 53 (second alteration in original) (quoting Pomerantz Paper Corp. v. New Cmty. Corp. 207 N.J. 344, 371-72 (2011)).

Generally, the admission of expert testimony is governed by N.J.R.E. 702, which provides:

[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or

education may testify thereto in the form of an opinion or otherwise.

Admissibility of expert testimony turns on three basic requirements:

(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony.

[Agha v. Feiner, 198 N.J. 50, 62 (2009) (quoting State v. Kelly, 97 N.J. 178, 208 (1984)).]

With respect to N.J.R.E. 803(c)(27), "[h]earsay' means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted."

N.J.R.E. 801(c). Hearsay is not admissible unless subject to a specific exception. N.J.R.E. 802.

N.J.R.E. 803(c)(27) provides an exception to the exclusion of hearsay statements by a child relating to a sexual offense. The rule provides that

[a] statement made by a child under the age of 12 relating to sexual misconduct committed with or against that child is admissible in a criminal . . . case if (a) the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at such time as to provide the adverse party with a fair opportunity to prepare to meet it; (b) the court finds, in a hearing conducted pursuant to Rule 104(a), that on the basis of the time,

content and circumstances of the statement there is a probability that the statement is trustworthy; and (c) either (i) the child testifies at the proceeding, or (ii) the child is unavailable as a witness and there is offered admissible evidence corroborating the act of sexual abuse; provided that no child whose statement is to be offered in evidence pursuant to this rule shall be disqualified to be a witness in such proceeding by virtue of the requirements of Rule 601.

[N.J.R.E. 803(c)(27).]

"[I]n making the determination whether a statement offered under the Rule is trustworthy, the trial court should evaluate the 'totality of the circumstances' surrounding the statement." State v. Burr, 392 N.J. Super. 538, 569 (App. Div. 2007) (quoting State v. Roman, 248 N.J. Super. 144, 152 (App. Div. 1991)), aff'd as modified on other grounds, 195 N.J. 119 (2008). Factors for the court to consider "include whether the statement was made spontaneously, whether the account is repeated with consistency, the mental state of the declarant, the use of terminology unexpected of a child of similar age, lack of a motive to fabricate, use of interrogation, and manipulation by adults." Id. at 570. "This list is non-exhaustive, and courts are afforded considerable leeway in their evaluation of appropriate factors." Ibid. Similar factors are considered at a Michaels taint hearing. See State v. D.G., 157 N.J. 112, 130-34 (1999) (applying

Michaels principles to assessing the reliability of a videotaped statement for admission under N.J.R.E. 803(c)(27)).

In State v. Krivacska, 341 N.J. Super. 1 (App. Div. 2001), we explained the holding in Michaels:

The focus of that decision was the manner in which the prosecution conducted its investigatory interviews with a group of nursery school students who had allegedly been sexually abused by their teacher. We need not describe the circumstances of the investigation in detail. It suffices to note that the children had been interviewed in the presence of one another, they had been cajoled and coerced into making bizarre allegations concerning the teacher's activities, and otherwise had been coerced in repeated interviews into giving incriminating accounts of the teacher's behavior. Against that background, our Supreme Court observed, "[t]he question of whether the interviews of the child victims of alleged sexual-abuse were unduly suggestive and coercive requires a highly reasoned inquiry into the totality of circumstances surrounding these interviews."

[Id. at 25 (quoting Michaels, 136 N.J. at 306).]

"Synthesizing principles enunciated in scholarly commentary, the Court noted the 'variety of factors bear[ing] on the kinds of interrogation that can affect the reliability of a child's statements concerning sexual abuse.'" Ibid. (alteration in original) (citations omitted).

Among the factors cited as having the potential to undermine the neutrality of an interview and create

undue suggestiveness were "a lack of investigatory independence, the pursuit by an interviewer of a preconceived notion of what has happened to the child, the use of leading questions, and a lack of control for outside influence on the child's statements, such as previously conversations with parents or peers."

[Id. at 25-26 (quoting Michaels, 136 N.J. at 309).]

"The Court added that '[t]he use of incessantly repeated questions . . . adds a manipulative element to an interview,' and '[t]he explicit vilification or criticism of the person charged with wrongdoing is [a] factor that can induce a child to believe abuse has occurred.'" Id. at 26 (quoting Michaels, 136 N.J. at 310).

"[T]he Court stated that the interviewer must: (1) 'remain open, neutral and objective,' (2) 'avoid asking leading questions,' (3) 'never threaten a child or force a reluctant child to talk,' and (4) 'refrain from telling a child what others, especially other children, have reported.'" Ibid. (quoting Michaels, 136 N.J. at 311 (internal quotations omitted)). "Finding that 'the use of coercive or highly suggestive interrogation techniques can create a significant risk that the interrogation itself will distort the child's recollection of events, thereby undermining the reliability of the statements and subsequent testimony concerning such events,' the Court adopted the following rules." Ibid. (quoting Michaels, 136 N.J. at 312).

A defendant is entitled to a "pretrial taint" hearing once he makes a showing of "some evidence" that the victim's statements were the product of suggestive or coercive interview techniques. Once a defendant establishes that sufficient evidence of unreliability exists, the burden shifts to the State to prove the reliability of the proffered statements and testimony by clear and convincing evidence. The ultimate determination to be made is whether, despite the presence of some suggestive or coercive interview techniques, when considering the totality of the circumstances surrounding the interview, the statements or testimony retain a degree of reliability sufficient to outweigh the effects of the improper interview techniques. The State and defense are entitled to call expert witnesses to offer testimony with regard to the suggestive capacity of the suspect investigative procedures. However, the relevance of expert opinion focusing on the propriety of the interrogation should not extend to or encompass the ultimate issue of credibility of an individual child witness.

[Id. at 26-27 (citing Michaels, 136 N.J. at 320-22).]

We have carefully considered the record and find no basis on which to disturb the trial court's conclusion that it could determine the admissibility of R.B.'s out-of-court statements without expert testimony. The trial court reviewed the video recordings of R.B.'s statements to Transue and Woodfield and found no convincing evidence of any of the factors set forth in Burr that might suggest an absence of trustworthiness. The court concluded that it did not need expert testimony to make findings regarding the spontaneity and

consistency of R.B.'s disclosures, the child's mental state, use of age-appropriate terminology, and lack of motivation to fabricate allegations against defendant. Nor, the court found, was it beyond its ken to evaluate the interrogation techniques of Transue and Woodfield, or whether they manipulated R.B. into making false accusations. Nor do we find a basis to reverse the trial court's determination that the testimony of Dr. Maddux would be helpful to the court in determining the admissibility of R.B.'s statements to Dr. Medina, given that the proposed expert did not identify any questions posed by Dr. Medina to the child.

We reach the same conclusion with respect to the trial court's finding that defendant failed to make an initial showing of some evidence that R.B.'s disclosures were unreliable, which would have triggered a Michaels taint hearing at which T.R.K. could introduce expert testimony. The trial court reviewed recordings of the interviews of R.B. by Transue and Woodfield. It found that an expert's testimony was not necessary to determine if defendant made an initial showing that the child was subjected to leading questions, threats, coercion, or highly suggestive interrogation techniques. Those factors could easily be determined by the court's review of the recordings. Dr. Medina's interview of the child was not recorded and the physician did not retain notes of the questions posed to the child. The court determined it was capable of

deciding whether Dr. Medina coerced the child into making false allegations against defendant by reviewing Dr. Medina's testimony at the evidentiary hearing.

We also find no basis to disturb the trial court's denial of defendant's motion to have Dr. Maddux testify at trial. Given that the court had already determined that R.B.'s out-of-court disclosures were sufficiently trustworthy to be admitted as evidence and that defendant did not establish entitlement to a Michaels taint hearing, it was within the trial court's discretion to determine that Dr. Maddux's testimony would not be helpful to the jury, and had the potential to create confusion, when the jury determined R.B.'s credibility.

C.

"Accurate and understandable jury instructions in criminal cases are essential to a defendant's right to a fair trial." State v. Concepcion, 111 N.J. 373, 379 (1988). The instructions must plainly spell out how the jury should apply the law to the facts of the case. Id. at 379.

"[W]e must read the charge as a whole." State v. Townsend, 186 N.J. 473, 499 (2006). "[T]he prejudicial effect of an omitted instruction must be evaluated in light of the totality of the circumstances including all the instructions to the jury, [and] the arguments of counsel." Ibid. (alteration in original) (quoting

State v. Marshall, 123 N.J. 1, 145 (1991)). A defendant is entitled to a charge that is "accurate and that does not, on the whole, contain prejudicial error." State v. Labruzzo, 114 N.J. 187, 204 (1989). "The test to be applied . . . is whether the charge as a whole is misleading, or sets forth accurately and fairly the controlling principles of law." State v. Baum, 224 N.J. 147, 159 (2016) (quoting State v. Jackmon, 305 N.J. Super. 274, 299 (App. Div. 1997)).

The trial court rejected defendant's attempt to depart from the model jury charge to add language reflective of the holding in Michaels. The court concluded that in light of its finding that defendant did not establish entitlement to a Michaels taint hearing, and given its determination that R.B.'s out-of-court disclosures were admissible, the requested instructions were inappropriate and potentially confusing. The jury was given the standard instructions on evaluating witness credibility.

Our review of the record reveals no basis on which to reverse the trial court. Defendant had the opportunity to cross-examine the witnesses who interviewed R.B. and to point out what he believed to be questions that may have solicited false allegations against defendant. The jury had the opportunity to review the video recordings of R.B.'s disclosures and to assess her credibility. Notably, the jury deadlocked on the most serious charge against T.R.K.,

suggesting a careful consideration of the strength of the evidence produced by the State.

To the extent we have not addressed any of defendant's remaining arguments, we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION