RENDERED: NOVEMBER 6, 2026; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2024-CA-1461-MR

PLACIDO PEREZ-HERNANDEZ — APPELLANT

v.

APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE JOE W. HENDRICKS, JR., JUDGE
ACTION NO. 22-CR-00232

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, ECKERLE, AND KAREM, JUDGES.

ECKERLE, JUDGE: Appellant, Placido Perez-Hernandez ("Perez"), seeks the reversal of his conviction for first-degree sexual abuse upon which the Logan Circuit Court sentenced him to the jury-recommended maximum of ten years in prison. Perez claims that the testimony of a social worker constituted improper bolstering of the alleged victim's credibility, which evidence he complains was

unduly prejudicial, thereby denying him due process. However, Perez concedes that he did not preserve this argument for appeal and therefore seeks our review for palpable error alone. After a thorough review of the record, the arguments of counsel, and relevant case law, we affirm his conviction.

I. Factual and Procedural Background

On June 24, 2022, the Logan County Grand Jury indicted Perez for a series of sexual offenses that he allegedly committed against his daughter ("KPM"), who was under 12-years old at the time. The charges consisted of first-degree sexual abuse, first-degree rape, first-degree sodomy, and incest, with each count charged as a continuing course of conduct. Record ("R.") at 1-2. A jury tried Perez from February 5 through 8, 2024. Perez's defense at trial was one of innocence, claiming that KPM had fabricated the allegations against him. In searching for palpable error, we have examined the testimony of each of the Commonwealth's witnesses instead of confining ourselves to the testimony Perez seeks to challenge on appeal. The testimony and evidence presented at trial revealed the following pertinent facts.

Between October 1, 2021, and May 1, 2022, Perez, his partner, Catalina Martinez ("Martinez"), and their three children were residing in Russellville, Kentucky in a three-bedroom home along with another family. Perez, Martinez, KPM, and their younger son and daughter all slept in one large bedroom.

The families shared common areas, including a living room, playroom, and kitchen. The adult members of the household were also co-workers.

At trial, KPM testified that Perez's abuse began with an incident in October of 2021, when she was playing with her mother and siblings in the playroom of the home. KPM left to retrieve her telephone charger from the family's shared bedroom. As she entered the darkened bedroom, she passed by her parents' bed where Perez was sleeping. According to KPM, Perez uttered "Catalina," the first name of Martinez, KPM's mother, then grabbed KPM by her waist, reached under her clothes, and touched her breasts and vagina. KPM pulled away within seconds, returning to the playroom and looking scared before telling Martinez that Perez had touched her. Martinez hugged her daughter, reassured her, and advised the girl to tell her if the abuse reoccurred. KPM testified that Perez later apologized to her, saying he had mistaken KPM for Martinez and blaming the darkened room. Martinez's testimony corroborated KPM's account of this incident, including Perez's apology. Martinez also testified that she did not contact the authorities, having reasoned that Perez had "made a mistake and [she] didn't think it was necessary because it was not on purpose." Video Record ("V.R."), 2/5/24 at 3:23:15-38.

Despite assurances from her parents, KPM testified that Perez continued to abuse her sexually with escalating and alarming severity over a period

of approximately six months. She described a specific incident that occurred within a few weeks after the first. One morning, after Martinez left for work, Perez crawled into KPM's bed, laid on top of her, removed her shorts and underwear, and touched her breasts, buttocks, and vagina with his hands and his "private parts." V.R., 2/5/24 at 1:50:35-1:52:25. When asked whether Perez inserted his penis into her vagina, KPM responded that he "tr[ied] to go inside but not deep inside." *Id.* at 1:52:54. KPM also testified that Perez put his penis between her buttocks with no penetration. KPM recounted other incidents of abuse of the same or similar nature occurring in the bedroom, playroom, or kitchen. According to KPM, Perez would touch his penis to her vagina, which had been uncomfortable but not painful.

KPM testified that after months of abuse, she "couldn't keep it a secret" any longer and, on May 3, 2022, told her mother. V.R., 2/5/24 at 2:15-16. Later that evening, KPM posted to her friend group on Snapchat a photograph of her ceiling and the following statement: "Y'all I finally told my mom about my dad touching me." *Id.* at 2:16:57, 2:18:11. A long-time family friend, Katie Fernandez ("Fernandez"), saw the post, took a screenshot, and showed it to her own mother, who was also a close friend of Martinez. Fernandez testified that she and her mother told Martinez, who became visibly upset and confused. Fernandez suggested that they approach the principal at KPM's school, with whom Fernandez

was acquainted. On the following day, May 4, 2022, Martinez, Fernandez, and Fernandez's mother all met with the school principal. After meeting with the adults, the school principal called KPM to her office, where KPM described Perez's alleged sexual abuse. School officials immediately reported the allegations to the Kentucky Cabinet for Health and Family Services ("CHFS").

Amber Nash ("Nash"), a social worker with CHFS, was the first person to respond to the report of abuse. Nash testified that she had ten years of experience with CHFS and had investigated more than 100 cases of child sexual abuse. She explained that mandatory reporters, including school officials, must contact CHFS's centralized intake upon suspicion of abuse. She also described CHFS's standard procedure for investigating those claims. Regarding the report made by KPM's school, Nash testified that she responded within one hour of receiving the report from centralized intake. She traveled to the family's residence, accompanied by Detective Laura Casey ("Casey") of the Logan County Sheriff's Office. Nash spoke independently to KPM, Martinez, and Perez. Due to the serious nature of the complaint, Nash implemented a protection plan, and Perez agreed to leave the home. Nash testified that there had been prior reports of risk of harm or neglect and physical abuse involving the family. In light of these past and current allegations, Nash secured an immediate appointment for a forensic interview and medical examination of KPM at the Barren River Area Child

Advocacy Center ("CAC") in Bowling Green. Nash and Casey then transported KPM to CAC, where professionals conducted the interview and medical exam.

KPM and Martinez both testified that, despite agreeing to leave the home, Perez telephoned Martinez after the forensic interview and spoke to KPM, warning her "not to tell lies" and instructing her to tell authorities a different story to get him "out of here." V.R., 2/5/24 at 4:16-23; 2/6/24 at 9:14-15. KPM testified that Perez insinuated that harmful results would ensue from his arrest because of the loss of his financial support for the family, reminding KPM that Martinez needed to stay home and care for her brother, who has autism.

On May 6, 2022, Perez turned himself in to the authorities at the Logan County Sheriff's Office. Later that same day, Martinez brought KPM to the Sheriff's Office. Nash later testified at trial that she and Casey met with KPM. According to Nash, KPM told them that the allegations were a "misunderstanding" but did not "stick to that story for very long." V.R., 2/6/24 at 9:46:01-16. Nash averred that she could "tell by [KPM's] demeanor that she wasn't being truthful" when recanting her original account of the abuse. V.R., 2/6/24 at 9:46:20-31. Further, Nash described KPM's demeanor as follows:

> What seemed to me, um, it was like she was trying to think in her head of what to say, but then as soon as we told her you're not in trouble, like, this is all going to be okay. We're going to help you guys through this. You could just tell that it was just like a relief, and she then told us that it wasn't, you know, that what she originally

told us was true and that she was told to change her story. *Id.* at 9:46:36-9:47:00. Nash also testified that she spoke to Martinez and told her that the medical examination of KPM showed "abnormal findings" and "that we believed [KPM's original account] of what was being said." *Id.* at 9:47:40-9:49:08. Finally, Nash testified that CHFS had substantiated the report of sexual abuse based on KPM's statements, the forensic interview, and the results of the medical examination. However, she explained that substantiating a report of abuse is unrelated to any criminal charges or determinations of probable cause. Perez did not object to any portion of Nash's testimony.

Next, the Commonwealth called expert witnesses from CAC. McCall Allen, the forensic interviewer, testified that KPM self-reported allegations of rape, sodomy, and sexual abuse. Dr. Joseph Allen,[1] a private family practitioner and contractor with CAC, conducted KPM's medical exam and testified that he observed a "cleft or notch in the hymen," which he concluded was "highly suggestive of physical abuse." V.R., 2/6/24 at 2:21:45-50, 2:23:15-20. However, on cross-examination, the defense offered published, gynecological findings contradicting the results of KPM's medical examination. *Id.* at 2:33-2:34.

The Commonwealth also called other investigative witnesses with Logan County law enforcement. Casey testified that she had reviewed material

[1] McCall Allen and Dr. Joseph Allen testified that they are married to each other.

downloaded from KPM's cell phone and found no evidence that someone had influenced KPM to fabricate allegations against her father. Casey also obtained recorded jail telephone calls in Spanish language between Perez and Martinez. Casey turned the calls over to a Logan County dispatcher, who was a native Spanish-speaker. The dispatcher interpreted Perez as stating, "don't fuck me over" and, in reference to KPM, "for her to say, for her to take off that big charge." V.R., 2/6/24 at 1:34:07-30, 1:40:40-45. At the conclusion of its proof, the Commonwealth moved to dismiss the charge of first-degree sodomy, which the Trial Court granted.

The defense cross-examined KPM, who testified that she used her cellular telephone to chat with friends over social media but denied Perez's claims in defense that someone online had influenced her to make a false report about him. While KPM testified that she had observed Perez verbally abuse and hit her mother, she did not link these past incidents to the sexual abuse that Perez had perpetrated against her. The defense called the other members of the household, who testified that they had not witnessed Perez sexually abuse KPM but had observed Perez verbally and physically abuse both Martinez and KPM. The defense's Spanish-language translator testified and disputed the dispatcher's translation of some of Perez's statements.

After the close of all the evidence, the jury acquitted Perez of rape and

incest and found him guilty of first-degree sexual abuse in a continuing course of conduct. R. at 103-17. On April 28, 2024, the Trial Court issued the final judgment and sentenced Perez to the jury-recommended maximum of ten-years' imprisonment. R. at 124-27.

On appeal, Perez claims that Nash's testimony improperly bolstered KPM's account of the abuse and was both irrelevant and unduly prejudicial. He reaffirms his defense that KPM fabricated the allegations in retaliation for his domestic abuse or at the suggestion of an anonymous person. He argues that Nash's testimony effectively swayed the jury to find him guilty of sexual abuse, notwithstanding that it had disbelieved KPM and returned a verdict of not guilty on the charges of rape and incest. Perez concedes his failure to preserve this alleged error but requests palpable-error review pursuant to Kentucky Rule of Criminal Procedure ("RCr") 10.26.

The Commonwealth disputes that Nash improperly bolstered KPM's testimony. It argues that Perez emphasizes isolated statements made by Nash and taken out of context in what the Commonwealth characterizes "as an explanation of the sequence of events involved in KPM's recantation and the continuation of the investigation." Appellee's Brief at 10. While it concedes that "different terminology" from Nash would have been preferable, it contends that Perez was not prejudiced. *Id.* The Commonwealth asserts that, even if Nash's testimony

were improper, the jury's verdict acquitting Perez of two of the charges logically defeats his claim that the admission of such testimony resulted in palpable or reversible error.

II. Standard of Review

Pursuant to RCr 10.26, we review unpreserved objections for palpable error. In *Peterson v. Commonwealth*, we explained the standard for palpable error as follows:

> An error is said to be palpable if it is "easily perceptible, plain, obvious and readily noticeable." *Sigrist v. Commonwealth*, 660 S.W.3d 636, 641 (Ky. App. 2022) (citation omitted). Even then, reversal is warranted only "if a manifest injustice has resulted from the error, which requires a showing of the probability of a different result or error so fundamental as to threaten a defendant's entitlement to due process of law." *Jones* [*v. Commonwealth*, 382 S.W.3d 22, 29 (Ky. 2011)] . . . . "Manifest injustice is found if the error seriously affected the fairness, integrity, or public reputation of the proceeding." *Id.*

708 S.W.3d 435, 443 (Ky. App. 2025). "In other words, a palpable error occurs where 'the defect in the proceeding was shocking or jurisprudentially intolerable.'" *Brown v. Commonwealth*, 718 S.W.3d 776, 791 (Ky. 2025) (quoting *Martin v. Commonwealth*, 207 S.W.3d 1, 4 (Ky. 2006), *as modified* (May 23, 2006)).

III. Analysis

A. Improper Bolstering

Turning to the merits, we evaluate Nash's testimony for evidentiary error. "Generally, a witness may not vouch for the truthfulness of another witness." *Stringer v. Commonwealth*, 956 S.W.2d 883, 888 (Ky. 1997); *see also Stephens v. Commonwealth*, 680 S.W.3d 887, 900 (Ky. 2023). Our Supreme Court has explained this exclusionary evidentiary rule as follows:

> In the context of child sex abuse cases, this Court has repeatedly held that no expert, including a medical doctor, can vouch for the truth of the victim's out-of-court statements. *See Hall v. Commonwealth*, 862 S.W.2d 321, 322–23 (Ky. 1993) (collecting cases); *Bell*, 245 S.W.3d at 744–45. Indeed, this rule applies even when a witness indirectly vouches for the truth of the victim's statement.

Hoff v. Commonwealth, 394 S.W.3d 368, 376 (Ky. 2011) (citing *Bell v. Commonwealth*, 245 S.W.3d 738, 744-45 (Ky. 2008), *overruled on other grounds by Harp v. Commonwealth*, 266 S.W.3d 813 (Ky. 2008)).

For example, the Supreme Court has opined that a social worker impermissibly bolstered a child's statement when she testified "that [the] child sounded 'spontaneous' and 'unrehearsed' in describing sexual abuse." *Hoff*, 394 S.W.3d at 376 (quoting *Bell*, 245 S.W.3d at 744). Although the social worker "did not literally say that she believed the child to be truthful, her opinion about the child's truthfulness was implicit in her statements, and so her testimony was

impermissible bolstering." *Id.* Similarly, in *Stringer*, the Supreme Court explained that a psychological counselor improperly bolstered a child victim's credibility by testifying that the child's consistent responses regarding sexual abuse led him to believe that she had not been coached. 956 S.W.2d at 888. And our Supreme Court has reiterated that this rule against improperly bolstering the credibility of a victim's statements "amounted to blackletter law more than thirty years ago[,]" and yet the issue persists. *Boggs v. Commonwealth*, 718 S.W.3d 651, 661 (Ky. 2025) (citing *Hall v. Commonwealth*, 862 S.W.2d 321, 322 (Ky. 1993)).

In *Boggs*, the Supreme Court's majority concluded that a forensic interviewer's statement that she had found no indicators of coaching constituted improper bolstering of the credibility of the child victims and, thus, was irrelevant and inadmissible. 718 S.W.3d at 662. The Supreme Court emphasized that such bolstering or vouching testimony is improper because it invades the unique province of the jury to determine a witness's credibility. *Id.* at 666. Even the Commonwealth's legitimate interest in rebutting a claim of fabrication does not justify having another witness improperly vouch for the victim; to wit, "it cannot be done by lay witnesses, not by ostensible professionals, and certainly not by experts purporting to speak definitively on whether another person is being truthful." *Id.* at 664. "The victim's credibility must stand or fall on his or her own merits as the jury sees fit to determine." *Id.* at 666 (citing *McDaniel v.*

Commonwealth, 415 S.W.3d 643, 654 (Ky. 2013)). This fundamental principle applies to the extent that even the victim is not allowed to bolster her own testimony unless and until her credibility has been attacked. *Tackett v. Commonwealth*, 445 S.W.3d 20, 33 (Ky. 2014); *cf. Riggle v. Commonwealth*, 686 S.W.3d 105, 115 (Ky. 2023) (holding that admission of prior consistent statement of sexual abuse was not improper bolstering because it "went to rehabilitate [the victim's] credibility after multiple insinuations from defense counsel that [the victim] had fabricated her testimony").

Turning to the matter *sub judice*, we observe that Nash's testimony related primarily to her role as the initial investigator. She explained the genesis of the report of sexual abuse through intake, the investigation of the report pursuant to standard procedures, and the culminating referral to CAC. The Commonwealth then offered Nash's account of KPM's second interview in order to rebut preemptively the argument that KPM had fabricated and then had recanted her allegation – before returning to her original allegations. In response to Perez's appeal, the Commonwealth asserts that "Nash was the reason that KPM's recantation unraveled in a matter of minutes" and that she "was merely explaining the order of events surrounding KPM's recantation." Appellee's Brief at 10.

We are not convinced by the Commonwealth's characterization of Nash's testimony. While the Commonwealth may have been singularly motivated

to rebut Perez's defense of fabrication, Nash's testimony went far beyond rebuttal. Rather, she unmistakably communicated her belief that KPM had been truthful in her original allegations of sexual abuse but was not truthful when she later said there had been a misunderstanding. And Nash buttressed her implications as to KPM's truthfulness even more directly by testifying that she told Martinez that the medical examination had revealed abnormal findings and that, based on those findings, she *believed* what KPM had first reported. Despite the Commonwealth's proffered, legitimate motives, Nash's testimony nonetheless constituted an obvious and improper attempt to bolster KPM's credibility, which was required to be strictly "within the unique province of the jury" to evaluate. *McDaniel*, 415 S.W.3d at 654.

Moreover, Nash's testimony was irrelevant, cumulative, and failed to contribute substantially to the determination of whether KPM's ephemeral recantation made her allegations of sexual abuse more or less true. *Boggs*, 718 S.W.3d at 666. Rather, Nash improperly bolstered KPM's testimony concerning the pressure exerted upon her to recant and her own affirmation of her original account of Perez's abuse. Therefore, the portions of Nash's testimony vouching for KPM's credibility constituted improper bolstering, and its admission was erroneous.

B. Palpable Error

Next, we must consider whether that error was palpable, *i.e.*, whether Nash's improper bolstering "is one of those rare cases in which an unpreserved error rises to the level of 'manifest injustice.'" *Hoff*, 394 S.W.3d at 378 (quoting RCr 10.26). Perez claims that the charge of first-degree sexual abuse for which he was convicted rested "entirely on KPM's testimony" and thus solely upon the jury's determination of her credibility. Appellant's Opening Brief at 18. He asserts that, because the jury acquitted him on the charges of rape and incest, for which it apparently found insufficient evidence, Nash's improper bolstering of KPM's account of the sexual abuse must have "had the effect of substantially swaying the verdict." *Id.*

As the Kentucky Supreme Court held in *Boggs*, "improperly bolstering a witness is not a structural error." *Boggs*, 718 S.W.3d at 664.

> A non-constitutional evidentiary error may be deemed harmless if the reviewing court can say with fair assurance that the judgment was not substantially swayed by the error.

Id. (quoting *Colvard v. Commonwealth*, 309 S.W.3d 239, 249 (Ky. 2010)). Put another way, "when reviewing for manifest injustice, the court must discern whether there is a substantial possibility that, but for the error, the verdict would have been different or whether the error resulted in a fundamentally unfair trial. Otherwise, the unpreserved error will be held non-prejudicial." *King v.*

Commonwealth, 472 S.W.3d 523, 532 (Ky. 2015); *see also Martin*, 207 S.W.3d at 3 (opining that proponent of palpable error must show "probability of a different result or error so fundamental as to threaten [his] entitlement to due process of law").

In analyzing Perez's interpretation of the verdict, we are unpersuaded that, because the jury acquitted him of rape and incest, it necessarily follows that the jury disbelieved KPM. Rather, the jury's decision to convict Perez only on the count of first-degree sexual abuse at least equally indicates that it properly weighed the evidence offered by all the witnesses, including KPM and the Commonwealth's investigative and expert witnesses, and determined their persuasiveness and credibility. For example, KPM testified with specificity and, when questioned by the prosecution and defense, she remained resolute regarding the manner, degree, and frequency that Perez had abused her. She also properly corroborated her own contemporaneous and spontaneous disclosure of Perez's abuse via her Snapchat post and related his attempts to pressure her to withhold, minimize, and recant her account of the abuse. Additionally, Martinez corroborated KPM's initial disclosure that Perez had sexually abused her in the family bedroom, along with Perez's admission to his unlawful conduct, albeit attempting to justify his sexual actions as a mistake of identity.

Turning to whether Nash's otherwise inadmissible testimony

substantially swayed the jury, we evaluate the "necessary degree of prejudice associated with the unpreserved question in the context of the whole case." *Martin*, 207 S.W.3d at 3. As we discussed *supra*, the Commonwealth offered Nash's testimony in an inartful attempt to rebut the defense's theory that KPM had been induced by some other party to fabricate her allegations or that she did so out of spite. We reemphasize that even a legitimate motive to rehabilitate a witness's credibility does not justify the introduction of improper bolstering. However, we recognize that, independent of Nash's testimony, the jury had the opportunity to consider Perez's fabrication defense as well as the Commonwealth's contradictory evidence. Pointedly, Perez's own recorded jail calls clearly evidenced his attempts to pressure both Martinez and KPM to recant or minimize the accusations against him. Thus, in rejecting the defense's fabrication theory, it is evident that the jury once again exercised its duty "to evaluate the credibility of [the] witnesses and lend to that evaluation the relative weight they deem[ed] fit." *McDaniel*, 415 S.W.3d at 654 (citation omitted).

Within the context of the case as a whole, we are not persuaded that there is a "substantial possibility" that the jury's verdict would have been any different without Nash's improper testimony. *Martin*, 207 S.W.3d at 3. We also find that, while it should not have been allowed, the bolstering did not prejudice Perez to such a shocking or intolerable degree as to result in manifest injustice.

Therefore, we find that the admission of Nash's bolstering of KPM's testimony did not result in palpable error warranting reversal.

IV. Conclusion

For the foregoing reasons, we affirm the judgment of the Logan Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Molly Mattingly
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Russell Coleman
Attorney General of Kentucky

Matthew R. Krygiel
Assistant Attorney General
Frankfort, Kentucky