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STATE OF NEBRASKA, APPELLEE, V. JORGE VIGIL, APPELLANT.

810 N.W.2d 687

Filed January 27, 2012. No. S-11-434.

1. **Rules of Evidence.** In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make such discretion a factor in determining admissibility.
2. **Rules of Evidence: Appeal and Error.** Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, the admissibility of evidence is reviewed for an abuse of discretion.
3. **Rules of Evidence: Hearsay: Appeal and Error.** Apart from rulings under the residual hearsay exception, an appellate court will review for clear error the factual findings underpinning a trial court's hearsay ruling and review de novo the court's ultimate determination whether the court admitted evidence over a hearsay objection or excluded evidence on hearsay grounds.
4. **Rules of Evidence: Hearsay.** Neb. Evid. R. 803(3), Neb. Rev. Stat. § 27-803(3) (Reissue 2008), is based on the notion that a person seeking medical attention will give a truthful account of the history and current status of his or her condition in order to ensure proper treatment.
5. ____: ____. Under the federal and Nebraska rules of evidence, statements admissible under the medical diagnosis and treatment exception are not restricted to statements made by the patient, and the statements need not be made to a physician.
6. **Rules of Evidence: Hearsay: Sexual Assault: Minors.** Statements made by a child victim of sexual abuse to a forensic interviewer in a medical setting may be admissible under Neb. Evid. R. 803(3), Neb. Rev. Stat. § 27-803(3) (Reissue 2008), even though the interview has the partial purpose of assisting law enforcement's investigation of the crimes.
7. **Rules of Evidence: Hearsay.** Statements gathered strictly for investigatory purposes do not fall under Neb. Evid. R. 803(3), Neb. Rev. Stat. § 27-803(3) (Reissue 2008).
8. **Rules of Evidence: Hearsay: Proof.** Statements having a dual medical and investigatory purpose are admissible under Neb. Evid. R. 803(3), Neb. Rev. Stat. § 27-803(3) (Reissue 2008), only if the proponent of the statements demonstrates that (1) the declarant's purpose in making the statements was to assist in the provision of medical diagnosis or treatment and (2) the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional.
9. **Rules of Evidence: Hearsay: Appeal and Error.** Whether a statement was both taken and given in contemplation of medical diagnosis or treatment is a factual finding made by the trial court in determining the admissibility of the evidence under Neb. Evid. R. 803(3), Neb. Rev. Stat. § 27-803(3) (Reissue 2008), and an appellate court reviews that determination for clear error.

10. **Rules of Evidence: Hearsay.** The appropriate state of mind of the declarant under Neb. Evid. R. 803(3), Neb. Rev. Stat. § 27-803(3) (Reissue 2008), may be reasonably inferred from the surrounding circumstances.

Appeal from the District Court for Madison County: ROBERT B. ENSZ, Judge. Affirmed.

Jennifer A. Birmingham, Chief Deputy Madison County Public Defender, and Melissa A. Wentling for appellant.

Jon Bruning, Attorney General, and George R. Love for appellee.

CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ., and MOORE, Judge.

MCCORMACK, J.

NATURE OF CASE

The issue in this case is whether statements of a child sexual assault victim to a forensic interviewer working for the child advocacy department of a hospital are admissible under the Nebraska Evidence Rules hearsay exception for "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment."[1] The interview, which was reported to the supervising physician for diagnostic and treatment purposes, was also shared with law enforcement so that the child victim could be spared the trauma of multiple interviews. The appellant, Jorge Vigil, argues that because some time had passed since the sexual assaults and the victim did not see the physician that day, the primary purpose of the interview was for law enforcement purposes and it should not fall under rule 803(3). Vigil asserts that he was clearly prejudiced by the trial court's failure to grant his motion in limine to exclude the interview from trial.

[1] Neb. Evid. R. 803(3), Neb. Rev. Stat. § 27-803(3) (Reissue 2008).

BACKGROUND

Vigil was charged with two counts of sexual assault of a child in the first degree. The victim, D.S., was his stepdaughter. Prior to the trial, Vigil filed a motion in limine seeking to exclude a video-recorded interview of D.S. on the ground that it was inadmissible hearsay. The trial court denied the motion. At trial, Vigil renewed his hearsay objection to the evidence. The trial court overruled the objection and allowed the interview into evidence. The court found that the interview fell under rule 803(3), the medical purpose exception to the hearsay rule.[2]

The interview in question was conducted on September 15, 2010. In the early morning hours of that same day, D.S. had told her mother that Vigil had repeatedly forced her to perform oral sex on him over the course of the previous 2 years. D.S. was 12 years old at the time she reported the abuse. The sexual abuse began when she was 10 years old.

D.S.' mother testified that she drove D.S. to the local sheriff's office to report the abuse the same day D.S. reported it. An investigator at the sheriff's office, Michael Bowersox, was their principal contact. Bowersox testified that both D.S. and her mother were crying and visibly upset. After a short conversation, Bowersox ascertained that D.S. had possibly been sexually abused and advised D.S.' mother to take D.S. immediately to the Northeast Nebraska Child Advocacy Center (CAC) located in a local hospital.

Bowersox explained that it was the policy of the sheriff's office to send children who allege sexual abuse to the CAC to make sure they are medically screened and receive proper followup care. He believed that D.S. needed such medical services. Bowersox also explained that the CAC provides a "one-stop shop," because the CAC usually allowed law enforcement to observe the forensic interview conducted at the hospital before the medical examination. Bowersox explained that this relationship between the CAC and law enforcement was devised to protect the child victim from having to repeat the telling of harmful events to multiple interviewers.

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[2] *Id.*

Bowersox told D.S.' mother that, at the hospital, D.S. would be interviewed by a forensic interviewer and that a doctor or nurse would conduct a medical examination. The mother testified that Bowersox explained to her the process they would go through at the CAC and what medical procedures would be performed. She was aware that law enforcement would likely be able to view the interview.

The mother testified that when she took D.S. to the hospital, the only thing on her mind was whether "my daughter was okay." The mother testified that she was concerned about possible medical issues stemming from the abuse. Particularly, she was worried that D.S. might have contracted herpes from Vigil. The mother noted that D.S. had been "complaining a lot" about being "sick in her throat" over the course of 2010. The mother testified that she was also concerned about her daughter's mental health, especially after "hold[ing] whatever feelings she were [sic] having for two years."

On the way to the hospital, the mother explained to D.S. what would occur upon their admission to the hospital. She told D.S. that she would be subjected to a physical examination. In particular, the mother told D.S. that she would probably "have something that we adults call Pap smear." D.S. understood this was a medical procedure. D.S. had seen doctors before, but had not yet had a gynecological examination.

The mother also told D.S. she would be interviewed at the hospital. The mother testified that she explained to D.S. the purposes of the interview. She did not "exactly" tell D.S. that the interview might serve a law enforcement purpose. Rather, she told D.S. that the interview "was a process we had to go through to clarify everything that has been happening the past two years."

D.S. testified that she understood she was going to a hospital and that she was expecting to see a doctor and have a physical examination on that day. D.S. testified that she was worried "something might be wrong" with her. D.S. elaborated she had been told that Vigil had "a sickness." She testified, "[H]e had it and he made me do things I didn't want to and I was afraid I had gotten it." D.S. described that Vigil did not use a condom

during the assaults. D.S. testified that she later learned the "sickness" was herpes.

D.S. testified that she and her mother entered the hospital through the front entrance. D.S. was then signed in as a patient of the hospital. D.S. was sitting next to her mother when she signed the patient service agreement. D.S. and her mother were also given a patient service brochure. After that, D.S. was taken into an interview room. D.S. was reasonably familiar with medical examinations and procedures, and she testified that she believed "it was very important to tell the whole truth" when talking to the people at the hospital.

Kelli Lowe, a forensic interviewer for the CAC, conducted the interview of D.S. Lowe testified that the CAC is a department of the hospital. Lowe's educational background is in counseling and social sciences. She also has training through the National Children's Advocacy Center in how to interview child sexual assault victims and how to assist a physician with assault examination kits. Lowe stated that she typically assists the physician when a physical examination is conducted at the CAC.

Lowe testified that her role as a forensic interviewer is to gather information from the patient to determine possible abuse or traumatic injury. If the treating physician is there, he or she will observe the interview through closed-caption television in another room. If the treating physician is not present, it is Lowe's job to summarize the interview for the physician "so they don't have to retake that history." Lowe testified that the treating physician utilizes the forensic interview in determining the proper treatment and therapy for the patient.

Lowe explained that patients are generally referred to the CAC by the hospital's emergency department, the Department of Health and Human Services, or law enforcement. With the patient's permission, law enforcement, members of the county attorney's office, and members of the Department of Health and Human Services are allowed to observe the forensic interview through closed-caption television in another room. However, Lowe testified that the purpose of the interviews was not to aid and assist law enforcement. Her job is "simply . . . to gather

the information for all, for everyone involved so that the child only has to go through it one time."

Lowe testified that her interview of D.S. was for the purpose of determining a medical or psychological diagnosis and a recommended treatment plan. Lowe explained that the details of the sexual abuse are a necessary part of medical diagnosis and treatment. In particular, such details are relevant to therapy, possible sexually transmitted diseases, and safety plans.

The DVD of the interview shows that Lowe introduced herself to D.S. as a person whose job it is to "talk to people" and "find out what is going on." Lowe proceeded to ask D.S. open-ended questions about the abuse, and D.S. described the sexual assaults in detail. In summary, D.S. reported that Vigil forced D.S. to perform oral sex on him 10 to 20 times over a period of 2 years. He also made her watch pornography.

Representatives of the local sheriff's office and the Department of Health and Human Services observed the interview and were given copies of the recorded interview and report. The physician was not present for the interview, but Lowe gave the physician a summary of the interview before D.S. was discharged from the hospital on September 15, 2010. Based on Lowe's summary of the interview, the physician directed the discharge instructions, which recommended therapy and a physical examination. The mother ultimately decided to postpone the physical examination until September 24, at which time a thorough physical examination was conducted. No evidence of sexual abuse or other physical injury or disease was detected during the examination. D.S. attended therapy as directed by the treating physician's original discharge instructions.

After a trial in which the State presented the testimony of D.S., her mother, Bowersox, Lowe, and others, the jury found Vigil guilty of both counts of sexual assault. Vigil was sentenced to 20 to 30 years' imprisonment on each count, to be served consecutively. Vigil appeals the convictions.

ASSIGNMENTS OF ERROR

Vigil assigns that the trial court erred in overruling his motion in limine and in allowing Lowe's testimony and evidence of the

CAC interview to be heard by the jury, because that testimony and evidence are inadmissible hearsay for which there are no exceptions.

STANDARD OF REVIEW

[1,2] In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make such discretion a factor in determining admissibility.[3] Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, the admissibility of evidence is reviewed for an abuse of discretion.[4]

[3] Apart from rulings under the residual hearsay exception, we will review for clear error the factual findings underpinning a trial court's hearsay ruling and review de novo the court's ultimate determination whether the court admitted evidence over a hearsay objection or excluded evidence on hearsay grounds.[5]

ANALYSIS

[4] Rule 803(3) provides that the hearsay rule does not exclude "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment." Rule 803(3) is based on the notion that a person seeking medical attention will give a truthful account of the history and current status of his or her condition in order to ensure proper treatment.[6] In order for statements to be admissible under rule 803(3), the party seeking to introduce the evidence must demonstrate

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[3] *In re Interest of B.R. et al.*, 270 Neb. 685, 708 N.W.2d 586 (2005).

[4] *Id.*

[5] *State v. McCave*, 282 Neb. 500, 805 N.W.2d 290 (2011).

[6] See, *State v. Beeder*, 270 Neb. 799, 707 N.W.2d 790 (2006), *disapproved on other grounds, State v. McCulloch*, 274 Neb. 636, 742 N.W.2d 727 (2007); *State v. Hardin*, 212 Neb. 774, 326 N.W.2d 38 (1982).

(1) that the circumstances under which the statements were made were such that the declarant's purpose in making the statements was to assist in the provision of medical diagnosis or treatment and (2) that the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional.[7]

[5] Although the heart of the rule 803(3) exception lies in statements made by a patient to a treating physician, the exception casts its net wider than the patient-physician relationship.[8] Under the federal and Nebraska rules of evidence, statements admissible under the medical diagnosis and treatment exception are not restricted to statements made by the patient, and the statements need not be made to a physician.[9] Thus, in addition to statements made to physicians, we have held that a child's statements to a therapist describing sexual abuse were admissible under rule 803(3).[10] We have also held that statements by a child's foster mother to a therapist, reporting unusual sexual behavior by a child and her suspicions of sexual abuse, were admissible under rule 803(3).[11]

While we have not had occasion to address additional reporting scenarios, other jurisdictions have held that medical purpose statements can be made to various other recipients, including social workers and forensic interviewers.[12] In such instances, courts sometimes look to whether the recipient is a

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[7] See, *In re Interest of B.R. et al., supra* note 3; *State v. Vaught*, 268 Neb. 316, 682 N.W.2d 284 (2004). See, also, e.g., *State v. Edward Charles L.*, 183 W. Va. 641, 398 S.E.2d 123 (1990); *In re Paternity of H.R.M.*, 864 N.E.2d 442 (Ind. App. 2007); *State v. Williams*, 137 Wash. App. 736, 154 P.3d 322 (2007); *People v Hackney*, 183 Mich. App. 516, 455 N.W.2d 358 (1990); *Begley v. State*, 483 So. 2d 70 (Fla. App. 1986).

[8] *In re Interest of B.R. et al., supra* note 3.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] See, generally, 38 A.L.R.5th 433 (1996).

member of a medical diagnostic team[13] or is part of the "chain of medical care."[14]

And, while we have never specifically addressed the question of mixed medical and investigatory purposes, other courts agree that the purpose of the statement need not be solely for the purpose of medical diagnosis or treatment in order to fall under rule 803(3).[15] Rather, a statement is generally considered admissible under the medical purpose hearsay exception if gathered for dual medical and investigatory purposes.[16]

It has been held that even the declarant's knowledge that law enforcement is observing or listening to the statements does not necessarily preclude admissibility of a statement as being for a medical purpose.[17] Further, the "predominant purpose" of the statement is not the real question in determining admissibility.[18] The fundamental inquiry is whether the statement, despite its dual purpose, was made in legitimate and reasonable contemplation of medical diagnosis or treatment. For, "[i]f the challenged statement has some value in diagnosis or treatment, the patient would still have the requisite motive for providing the type of 'sincere and reliable' information that is important to that diagnosis and treatment."[19]

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[13] See *State v. Salazar*, 504 N.W.2d 774 (Minn. 1993).

[14] *State v. Donald M.*, 113 Conn. App. 63, 71, 966 A.2d 266, 271 (2009).

[15] See, *State v. Payne*, 225 W. Va. 602, 694 S.E.2d 935 (2010); *State v. White*, 145 N.H. 544, 765 A.2d 156 (2000), *vacated on other grounds sub nom. White v. Coplan*, 399 F.3d 18 (1st Cir. 2005); *State v. Janda*, 397 N.W.2d 59 (N.D. 1986); *State v. Hebert*, 480 A.2d 742 (Me. 1984); *State v. Donald M., supra* note 14; *State v. Williams, supra* note 7; *Webster v. State*, 151 Md. App. 527, 827 A.2d 910 (2003); *State v. Isenberg*, 148 N.C. App. 29, 557 S.E.2d 568 (2001); *People v Van Tassel (On Rem)*, 197 Mich. App. 653, 496 N.W.2d 388 (1992); *In re Lucas*, 94 N.C. App. 442, 380 S.E.2d 563 (1989).

[16] See *id.* Compare *State v. Stafford*, 317 N.C. 568, 346 S.E.2d 463 (1986).

[17] See *State v. Miller*, 121 Conn. App. 775, 998 A.2d 170 (2010).

[18] See *Webster v. State, supra* note 15, 151 Md. App. at 545, 827 A.2d at 920.

[19] *Id.* at 545-46, 827 A.2d at 920.

Under this reasoning, several courts have specifically found admissible statements by child sexual assault victims to forensic interviewers working for hospital child advocacy centers.[20] In *State v. Donald M.*,[21] the police arranged for a 10-year-old girl to go to a child advocacy center located in a local hospital. At the center, the girl was interviewed by a child interview specialist who did not have medical training. However, the interviewer, who had degrees in social work and psychology, stated that the purpose of the interview was to assess the victim for psychological and physical needs stemming from the abuse. While the child recalled little about the interview or its purpose, a social worker testified that she had explained to the victim that she was going to talk to the interviewer to make sure she was safe, help her deal with what she went through, and decide whether a doctor needed to examine her. The interview ultimately did not result in a medical examination, because the victim did not express any medical needs, but the victim and her family were referred for therapy. The court upheld the trial court's admission of the videotaped interview, because the statements were made, at least in part, for purposes of medical diagnosis or treatment.[22]

Similarly, in *State v. Richardson*,[23] the mother of two young victims of sexual abuse took them to a child medical evaluation program at a hospital upon the suggestion of the sheriff's department. The mother understood that the program coordinators would be able to conduct a more thorough examination of the children than the one conducted at the emergency room a month earlier. At the hospital, a mental health consultant conducted videotaped interviews of the children in order to assist the supervising physician in a subsequent examination of the

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[20] *State v. Payne, supra* note 15; *Branch v. State*, 998 So. 2d 411 (Miss. 2008); *State v. Lukacs*, 188 Ohio App. 3d 597, 936 N.E.2d 506 (2010); *State v. Donald M., supra* note 14; *State v. Williams, supra* note 7; *Webster v. State, supra* note 15; *State v. Waddell*, 130 N.C. App. 488, 504 S.E.2d 84 (1998); *State v. Richardson*, 112 N.C. App. 58, 434 S.E.2d 657 (1993).

[21] *State v. Donald M., supra* note 14.

[22] *Id.* See, also, *State v. Miller, supra* note 17.

[23] *State v. Richardson, supra* note 20.

children. The court upheld the trial court's admission of the videotapes under the hearsay exception for medical diagnosis or treatment.

[6] We agree that statements made by a child victim of sexual abuse to a forensic interviewer in a medical setting may be admissible under rule 803(3) even though the interview has the partial purpose of assisting law enforcement's investigation of the crimes. In fact, we note that Neb. Rev. Stat. § 28-711 (Reissue 2008) places a legal obligation on medical professionals to report any evidence of child abuse or neglect to law enforcement and, further, that law enforcement plays a vital role in keeping the child safe from further physical and psychological harm.

[7,8] But statements gathered strictly for investigatory purposes do not fall under rule 803(3).[24] Statements having a dual purpose are admissible under rule 803(3) only if the proponent of the statements demonstrates that (1) the declarant's purpose in making the statements was to assist in the provision of medical diagnosis or treatment and (2) the statements were of a nature reasonably pertinent to medical diagnosis or treatment by a medical professional.[25]

[9] Whether a statement was both taken and given in contemplation of medical diagnosis or treatment is a factual finding made by the trial court in determining the admissibility of the evidence under rule 803(3), and we review that determination for clear error.[26]

[10] We said in *State v. Vaught*[27] that the appropriate state of mind of the declarant may be reasonably inferred from the surrounding circumstances. In this case, the circumstantial

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[24] See *State v. Payne, supra* note 15. Compare *State v. Stafford, supra* note 16.

[25] See, *In re Interest of B.R. et al., supra* note 3; *State v. Vaught, supra* note 7. See, also, e.g., *State v. Edward Charles L., supra* note 7; *In re Paternity of H.R.M., supra* note 7; *State v. Williams, supra* note 7; *People v Hackney, supra* note 7; *Begley v. State, supra* note 7.

[26] See, *State v. McCave, supra* note 4; *Webster v. State, supra* note 15.

[27] *State v. Vaught, supra* note 7. See, also, e.g., *Webster v. State, supra* note 15; *State v. Alvarez*, 110 Or. App. 230, 822 P.2d 1207 (1991).

evidence and D.S.' testimony indicate that D.S. believed, at the time of the interview, she was going to be subjected to a physical examination at the hospital. As the mother was going to the hospital, her principal concern was with D.S.' physical and psychological well-being, and it appears that this was communicated to D.S. D.S. observed that she was checked in as a patient of the hospital before proceeding to the interview. D.S. testified that she was particularly concerned that she might have contracted a sexually transmitted disease from the sexual contacts. The trial court thus did not clearly err in determining that D.S. had a legitimate medical purpose and a motivation to be truthful during the interview in her descriptions of the sexual contacts.

We also conclude that the trial court did not clearly err in finding that the statements were pertinent to medical diagnosis or treatment. We have said that description of medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, are reasonably pertinent to diagnosis.[28] We reject Vigil's contention that D.S.' statements do not fall under rule 803(3) because she did not complain of physical symptoms at the time of the interview or because the alleged abuse did not occur shortly before the interview. There were reasonable concerns that D.S. might have contracted a sexually transmitted disease. D.S. was taken to the hospital the day she told her mother of the abuse, and her admission to the CAC on September 15, 2010, was the first opportunity for an evaluation of the possible medical consequences of the multiple sexual contacts with Vigil. A sexual assault victim may have injuries or may have contracted a sexually transmitted disease even though the victim feels no pain and bears no external signs of injury.[29]

Moreover, there were concerns about D.S.' psychological health. Details of the abuse are relevant to psychological implications regardless of whether any physical injury occurred. As

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[28] *State v. Roenfeldt*, 241 Neb. 30, 486 N.W.2d 197 (1992).

[29] See *Webster v. State, supra* note 15.

recognized in *In re Interest of B.R. et al.*,[30] evaluation of the need for psychological treatment is a fundamental component of sexual assault cases and, thus, a component of medical diagnosis and treatment in such cases. Where an individual is alleged to be the victim of sexual assault, statements reasonably pertinent to medical diagnosis and treatment of both physical and psychological trauma are admissible under rule 803(3).[31] Insofar as *State v. White*[32] holds otherwise, we overrule that case.

While statements relating to fault are generally not admissible under rule 803(3), when a child is sexually abused, and especially when the child has a familial relationship with the child's abuser, the identity of the perpetrator is reasonably pertinent to diagnosis and treatment, because the victim cannot be effectively treated if sent right back into the abuser's clutches.[33] In this case, the evidence was that Vigil was going to return home in approximately 1 week, after having served jail time for driving with a suspended license.

The frequency and nature of the sexual contacts with Vigil were part of D.S.' medical history. Lowe indicated that information was necessary for determining medical or psychological diagnosis, and for a recommended treatment and safety plan. Lowe testified that, as was her regular practice, she conveyed a summary of the interview to the treating physician, who relied

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[30] *In re Interest of B.R. et al., supra* note 3.

[31] See *State v. Grant*, 776 N.W.2d 209 (N.D. 2009). See, also, e.g., *U.S. v. Gabe*, 237 F.3d 954 (8th Cir. 2001); *U.S. v. Cherry*, 938 F.2d 748 (7th Cir. 1991); *Ex parte C.L.Y.*, 928 So. 2d 1069 (Ala. 2005); *Hawkins v. State*, 348 Ark. 384, 72 S.W.3d 493 (2002); *Oldman v. State*, 998 P.2d 957 (Wyo. 2000); *State v. Stinnett*, 958 S.W.2d 329 (Tenn. 1997); *Jones v. State*, 606 So. 2d 1051 (Miss. 1992); *State v. Robinson*, 153 Ariz. 191, 735 P.2d 801 (1987); *State v. Sheppard*, 164 Ohio App. 3d 372, 842 N.E.2d 561 (2005).

[32] *State v. White*, 2 Neb. App. 106, 507 N.W.2d 654 (1993).

[33] *State v. Beeder, supra* note 6. See, also, e.g., *United States v. Iron Shell*, 633 F.2d 77 (8th Cir. 1980); *State v. Bullock*, 320 N.C. 780, 360 S.E.2d 689 (1987); *Goldade v. State*, 674 P.2d 721 (Wyo. 1983); *State v. Vosika*, 83 Or. App. 298, 731 P.2d 449 (1987); *Stallnacker v. State*, 19 Ark. App. 9, 715 S.W.2d 883 (1986).

upon that information in formulating D.S.' discharge instructions. The discharge instructions included a therapy referral and recommended that a physical examination be conducted. The trial court did not err in finding that the interview of D.S. was reasonably pertinent to medical diagnosis and treatment.

The only issue in this appeal was whether the trial court properly admitted D.S.' interview over Vigil's hearsay objection. We determine that the trial court did not err in finding that the elements of the medical purpose exception found in rule 803(3) were met. Therefore, Vigil's assignment of error lacks merit and we affirm the convictions and sentences imposed below.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

AFFIRMED.

HEAVICAN, C.J., WRIGHT, and GERRARD, JJ., not participating.