

24CA0069 Peo in Interest of SH-S 09-03-2026

COLORADO COURT OF APPEALS

Court of Appeals No. 24CA0069
City and County of Denver Juvenile Court No. 22JD262
Honorable Laurie Clark, Judge

The People of the State of Colorado,

Petitioner-Appellee,

In the Interest of S.H-S.,

Juvenile-Appellant.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE TAUBMAN*
Sullivan and Meirink, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced September 3, 2026

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art.
VI, § 5(3), and § 24-51-1105, C.R.S. 2026.

¶ 1 Defendant, S.H.-S., a juvenile, appeals his adjudication as delinquent after a jury found him guilty of sexual assault on a child and unlawful sexual contact. We reverse and remand for further proceedings.

I. Background

¶ 2 The prosecution charged S.H.-S. with sexual assault on a child and unlawful sexual contact based on allegations made by his cousin, Y.M. The incident allegedly occurred when Y.M. was five or six years old and S.H.-S. was fifteen or sixteen years old. Y.M. alleged that S.H.-S. took her into his parents' kitchen, pulled down both of their pants, and had Y.M. sit on his lap. Y.M. disclosed the incident to her mother three years later, before completing a forensic interview.

¶ 3 At trial, the prosecution presented testimony from an expert in forensic interviewing that, among other things, children are more likely to be honest in forensic interviews if they promise to be truthful beforehand. It also presented evidence from a child sex assault expert that most child sex abuse victims delay making their disclosures. In addition, it introduced testimony that Y.M.'s case

had been reviewed and approved by the district attorney's office before an arrest warrant was issued.

¶ 4 The jury adjudicated S.H.-S. delinquent, and the trial court sentenced him to two years of supervised probation.

¶ 5 S.H.-S. appeals, arguing that the trial court erred by allowing improper bolstering testimony from the prosecution's forensic interviewing expert suggesting that Y.M. had told the truth in making her allegations. He further contends the trial court abused its discretion in allowing testimony that most child sex assault victims delay reporting, as well as testimony that the case underwent a screening process. Finally, he argues that cumulative error warrants a new trial. We agree that the testimony suggesting that Y.M. was more likely to tell the truth because she promised to do so requires reversal.

II. Applicable Law and Standard of Review

¶ 6 "In Colorado, neither lay nor expert witnesses may give opinion testimony that another witness was telling the truth on a specific occasion." *People v. Wittrein*, 221 P.3d 1076, 1081 (Colo. 2009); *see also People v. Baker*, 2021 CO 29, ¶ 2, 485 P.3d 1100, 1102 (such testimony invades the jury's credibility determinations).

Improper truthfulness testimony is especially problematic in child sex assault cases, where the outcome often turns on whether the jury believes the child's testimony. *Venalonzo v. People*, 2017 CO 9, ¶¶ 32-33, 388 P.3d 868, 877-78 (therefore, both direct and indirect implications of a child's truthfulness are prohibited).

¶ 7 CRE 608(a) permits opinion testimony supporting a witness's credibility after his or her truthful character has been attacked. *People v. Snook*, 745 P.2d 647, 648 (Colo. 1987).

¶ 8 We review a trial court's evidentiary decisions for an abuse of discretion. *Venalonzo*, ¶ 15, 388 P.3d at 873. A trial court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair. *Id.* When an error is preserved by objection, we review for harmless error, reversing only if the error substantially influenced the verdict or affected the fairness of the trial proceedings. *Id.* at ¶ 48, 388 P.3d at 880.

III. Discussion

¶ 9 S.H.-S. argues that the expert's testimony that children are more likely to tell the truth when they promise to do so improperly bolstered Y.M.'s credibility — in the recording of her forensic

interview played for the jury, Y.M. made such a promise before detailing her allegations. We agree.

A. The Testimony Was Improper

¶ 10 The jury viewed a recording of Y.M.’s interview, in which Y.M. promised to be truthful. Viewing the interviewing expert’s testimony alongside this evidence, we conclude the expert’s testimony that “[t]he research does state when eliciting a promise from a child, it increases their truthfulness of their statements” implied that Y.M. was truthful when she made her allegations.¹

¶ 11 Indeed, this testimony neither provided necessary context for Y.M.’s interview nor served any other purpose than to bolster Y.M.’s credibility. *See Venalanzo*, ¶ 36, 388 P.3d at 878 (testimony comparing child victims’ behavior to that of other child sex assault victims was improper bolstering); *see also Snook*, 745 P.2d at 649 (testimony that children do not fabricate stories of sexual abuse without it having happened to them was improper because “the jury’s only conceivable use of such testimony would be as support for the complainant’s truthful character”). As in most cases

¹ We note that the record does not indicate how those research studies determined when a child was telling the truth.

involving delayed reporting, Y.M.’s credibility was “the focal issue in the case.” *Venalonzo*, ¶ 33, 388 P.3d at 878 (quoting *Snook*, 745 P.2d at 649) (explaining this is when improper bolstering testimony is most problematic). We therefore conclude that the trial court abused its discretion by admitting it.

¶ 12 The Attorney General argues that the interviewing expert’s testimony was nevertheless admissible under CRE 608(b) because the defense attacked Y.M.’s credibility. However, “[m]erely questioning a witness’s credibility does not necessarily constitute an attack on that witness’s overall character for truthfulness.” *People v. Serra*, 2015 COA 130, ¶ 65, 361 P.3d 1122, 1135. Instead, to warrant bolstering testimony, an attack on credibility must attack the witness’s “propensity to tell the truth in all the varying situations of life.” *Id.* at ¶ 66, 361 P.3d at 1135 (quoting *State v. Colon*, 284 P.3d 589, 594 (Or. Ct. App. 2012)).

¶ 13 Here, defense counsel pointed to inconsistencies in Y.M.’s account in closing argument and while cross-examining Y.M. and her mother. However, the defense never suggested that Y.M. was an untruthful person. Under these circumstances, we conclude the challenged testimony was improper. *See Snook*, 745 P.2d at 649

(reaching the same conclusion where there was no “direct[] attack[]” on the victim’s character). Accordingly, the court erred by admitting it.

B. Reversal is Required

¶ 14 We further conclude that the trial court’s error requires reversal. The Attorney General argues otherwise because the jury received a curative instruction and was able to evaluate Y.M.’s credibility firsthand, while the expert’s testimony was brief and not addressed in closing argument, and the case was not close. We are not persuaded.

¶ 15 First, the limiting instruction received by the jury did not cure the improper testimony. The instruction provided:

On at least one occasion, the Court overruled an objection to bolstering. It is improper for any witness to testify to whether another witness was telling the truth on a specific occasion because it is solely the jury’s responsibility to determine whether a particular witness’s testimony or statement is truthful. This rule applies to both direct and indirect implications of a witness’s truthfulness.

¶ 16 By referencing the court’s decision to *overrule* S.H.-S.’s objection to bolstering testimony, the instruction suggested that the

interviewing expert's testimony was not, in fact, improper. In other words, the jury could have reasonably inferred from the language of the instruction that it did not apply to the testimony the court had (improperly) ruled admissible. That there were also other instances of alleged bolstering made it further unclear whether the court's instruction applied to the interviewing expert's testimony.

¶ 17 Moreover, unlike in *People v. Gillispie*, on which the Attorney General relies, the instruction in this case did not tell the jury to disregard the improper testimony. *See* 767 P.2d 778, 780-81 (Colo. App. 1988) (improper bolstering testimony was harmless in part because, unlike here, it was struck from the record and the jury was instructed not to consider it). Therefore, while we presume that jurors follow the court's instructions, *see People v. Snelling*, 2022 COA 116M, ¶ 22, 523 P.3d 477, 484, we conclude the instruction in this case did not have a curative effect.

¶ 18 Second, the jury's ability to evaluate Y.M.'s credibility firsthand does not undo the prejudicial effect of the improper testimony. The cases relied upon by the Attorney General are inapposite. As discussed, in *Gillispie*, the court found harmless error based on "the circumstances of the case *together with the*

curative instruction,” which — unlike here — “withdrew the improper testimony from the jury’s consideration.” 767 P.2d at 780-81 (emphasis added). By contrast, here, the instruction suggested that the improper testimony did not fall within its purview. The other cases the Attorney General cites are also distinguishable, as most involved lay witnesses and all applied plain error review. *See Hagos v. People*, 2012 CO 63, ¶ 14, 288 P.3d 116, 120 (plain error must impair the reliability of the judgment of conviction to a greater degree than under harmless error to warrant reversal).

¶ 19 Third, even though the interviewing expert’s testimony at issue was brief and not addressed in closing argument, we disagree with the Attorney General that it was harmless in view of the record as a whole. As discussed, in sex assault cases, “courts must be particularly mindful of testimony that a child victim is telling the truth.” *Venalonzo*, ¶ 33, 388 P.3d at 878. While the expert’s testimony was brief, so was the trial. Notwithstanding that Y.M.’s testimony was consistent with her interview and corroborated in part by her mother, the case hinged entirely on her credibility, as these types of cases often do. *See id.* (in these instances, “the case

turns on whether the fact-finder finds the alleged victim credible”). Indeed, the Attorney General doesn’t point to any physical evidence or other eyewitness testimony in arguing that the court’s error was harmless. *See James v. People*, 2018 CO 72, ¶ 18, 426 P.3d 336, 340 (the government bears the burden of showing harmlessness for preserved errors).

¶ 20 In this context, we cannot say that the expert’s improper testimony did not substantially influence the jury’s conclusion. Accordingly, S.H.-S.’s adjudication and sentence must be reversed.

IV. Remaining Issues

¶ 21 Finally, because it is likely to arise on remand, we address S.H.-S.’s argument that the court also erred by admitting testimony, through the prosecution’s child sex assault expert, that a “majority of” or “most” children delay disclosing sexual abuse.² Regarding this testimony, we discern no error.

¶ 22 S.H.-S. relies on *People v. Marx*, 2019 COA 138, ¶ 17, 467 P.3d 1196, 1202, in which a division of this court concluded that

² Because we are reversing, we do not address S.H.-S.’s challenge to testimony that the case underwent a screening process because it was brief and is not likely to arise on remand. Also, because we are reversing, we need not address his claim of cumulative error.

testimony that a small percentage of children and teenagers make false allegations of sexual assault constituted improper bolstering. We conclude that *Marx* is distinguishable.

¶ 23 In *Marx*, the expert’s testimony served no purpose other than to suggest that the victim was telling the truth. *Id.* By contrast, here, the child sex assault expert’s testimony served the proper purpose of explaining why Y.M. may have delayed reporting. It is therefore admissible under CRE 702 because it aided the jury in understanding the evidence and in determining a fact at issue in the case. *See People v. Relaford*, 2016 COA 99, ¶ 30, 409 P.3d 490, 496 (expert testimony may properly help the jury understand typical reactions in children subjected to sexual abuse “that might, under other circumstances, be considered bizarre” (quoting *People v. Morrison*, 985 P.2d 1, 5-6 (Colo. App. 1999))).

¶ 24 Indeed, the *Marx* division itself observed that the expert in that case “*could have* explained the typical demeanor and behavioral traits of a sexually abused child or teenager, which would have allowed the jury to gain a better understanding of the accuser’s actions.” *Marx*, ¶ 18, 467 P.3d at 1202 (emphasis added). That is what the child sex assault expert did in this case. Her testimony

that the majority of, or most, victims of child sex assault delay reporting helped the jury to understand why Y.M. may have done so. Accordingly, we conclude the trial court did not abuse its discretion by admitting this evidence.

V. Disposition

¶ 25 The judgment is reversed, and the case is remanded for a new trial.

JUDGE SULLIVAN and JUDGE MEIRINK concur.