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SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION, CRIMINAL PART
INDICTMENT 25-09-902-I
PROSECUTOR'S FILE MER-25-1708

STATE OF NEW JERSEY,

Plaintiff,

v.

I.G.,

Defendant.

Decided: March 18, 2026

LAURA KOTARBA, ESQ., assistant prosecutor (Office of the Mercer County Prosecutor), attorney for State of New Jersey.

MICHAEL DONAHER, ESQ., assistant deputy public defender (Office of the Public Defender), attorney for I.G..

OSTRER, J.A.D. (retired and temporarily assigned on recall):

The State moves to introduce as “fresh complaint” evidence then-ten-year-old S.W.’s (“Sohail”)¹ report that his mother’s boyfriend, defendant I.G., sexually assaulted him.

¹ The court uses pseudonyms for ease of reading and to protect confidentiality.

The court denies the motion. Sohail's June 3, 2025, complaint to his mother and grandmother was far from fresh. The complaint followed the alleged assault by roughly five years. Defendant had not lived in the same household as Sohail for roughly four years. The State has not plausibly explained the child's delay. Nor has the State established that the child made the statement voluntarily and spontaneously, even under the relaxed requirements applied to children. Finally, admitting his complaint made so long after the alleged assault would not achieve the purpose of the fresh complaint doctrine.

I.

Fresh complaint evidence is admissible under a common law exception to the hearsay rule. See State v. R.K., 220 N.J. 444, 455 (2015) (stating that the fresh complaint doctrine "allows the admission of evidence of a victim's complaint of sexual abuse, otherwise inadmissible as hearsay"). As the proponent of such evidence, the State bears the burden to show that it meets the exception's requisites. See State v. Buda, 195 N.J. 278, 312 (2008) (Albin, J., dissenting) (stating "[t]he burden of persuasion rests with the proponent of hearsay evidence to show that it falls within an exception to the hearsay rule"). The standard of proof is preponderance of the evidence. See State v. Stubbs, 433 N.J. Super. 273, 286 (App. Div. 2013) (applying adoptive admission hearsay exception); State v. James, 346 N.J. Super. 441, 457 (App. Div. 2002) (applying co-conspirator hearsay exception).

The court heard testimony on January 27, 2026, from Sohail’s mother, D.W. (“Denise”), and his grandmother, J.W. (“Jennifer”).² The court also admitted into evidence their prior statements to detectives. See Exh. D-1 Evid. (Interview of Jennifer W., Dec. 12, 2025); Exh. D-2 Evid. (Interview of Denise W., June 6, 2025).³

The witnesses did not intend to deceive, but their recollections differed. Their testimony also conflicted with their prior statements. Generally, the court places great weight on Denise’s prior statement. She gave it just three days after the events in question. The court concludes that her recollections then were likely clearer than when she testified. Jennifer gave her statement six months after Sohail’s report and testified two months after that. Also, Jennifer appeared emotionally upset during her testimony because of a recent death in her family.

The court is also mindful of Chief Justice Vanderbilt’s observation long ago: “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself.” In re Estate of Perrone, 5 N.J. 514, 522 (1950). The court may reject testimony that “contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion.” Ibid. The court does so here and makes the following findings.

² The court will use Denise’s and Jennifer’s first names for convenience and because they share a surname. The court intends no disrespect in doing so.

³ In its opposition brief, defendant referred at length to a recorded interview of Sohail. But the interview was not introduced at the hearing. Therefore, the court does not rely on it.

Defendant and Denise lived together “on and off” on C. Avenue⁴ in Trenton between 2018 and 2020. Exh. D-2 at 4. Their household included Sohail and three children the couple had during that time. Ibid. Sohail was born February 21, 2015. Id. at 2. His father is incarcerated. Id. at 4. Defendant and Denise had a daughter on July 24, 2019, and twins on July 28, 2020.

In 2021, Denise separated from defendant and moved to a different residence on N. Avenue with the children. Id. at 8. By that time, she “completely left him alone,” as defendant had a child with another woman. Id. at 9. She would take their daughter and twins to him if they wanted to see their father. Ibid. “He was never coming around.” Ibid.

After the move, Denise noticed that Sohail was not properly wiping himself after toileting. He was “afraid to wipe his butt.” Id. at 7. He also was urinating in bed. Id. at 8. His poor hygiene meant he often smelled bad. Ibid. Denise had to monitor his showers, to make sure he washed around his anus and buttocks. Exh. D-2 at 8.

Jennifer confirmed that Sohail’s problematic hygiene had persisted for years. Exh. D-1 at 3. He did not wipe himself and soiled his clothes. Id. at 6. He was bullied at school and wrote notes about suicide. Id. at 8.

⁴ The court uses initials for streets to protect confidentiality.

Sohail's persistently poor hygiene led to his disclosure on June 3, 2025. Denise noticed that Sohail smelled of feces when she picked him up from school. "So, I'm like Sohail why you stink, you gotta get in the shower." Exh. D-2 at 10. Sohail denied that he smelled bad. Ibid. Jennifer then arrived at the home and pressed Sohail to explain why he did not wipe properly and walked around smelling badly. Id. at 11.

Denise and Jennifer both recalled that Sohail explained he did not wipe himself so he would not have to worry about someone touching him. Exh. D-1 at 4; Exh. D-2 at 12. And he alleged that defendant had touched him. Exh. D-1 at 5; Exh. D-2 at 12. But the two women differed about what prompted Sohail's explanation and his accusation.

Denise recalled that her mother was "pressuring" Sohail, id. at 10, and got "mad" and asked Sohail if he had been touched. Exh. D-2 at 11.

So, she like, Sohail, have you been touched? So, he like no. So she like you do you like walking around, smelling like shit, you know. Now she mad. Because he just keeps saying, I don't know, I don't know. So, she like, um, have you been touched? So, she like no, he like no.

[Ibid.].

Jennifer then got Denise's brother, F.H. ("Faisal") to join the conversation. Ibid. He asked Sohail what was wrong, and Sohail said nothing. After Jennifer

asked Sohail, “do you like smelling like that,” he disclosed “[Y]eah, I’d rather smell, like, like, somebody won’t touch me.” Id. at 12.

Denise recalled that Jennifer asked Sohail if defendant touched him, referring to defendant by his street name. Exh. D-2 at 12 (“first my mom said, did [street name] touch you?”). At first, Sohail denied that defendant had, although, according to Denise, he paused and seemed scared at the mention of defendant’s name. Id. at 12. Upon further questioning, Sohail claimed defendant had touched him. Id. (“And he said, yes, he touched me. Now he’s crying.”).

At the hearing, Denise said her mother was listing names of possible perpetrators – persons older than Sohail with whom he had contact – and when she got to defendant’s name, Sohail froze.. When asked to describe Jennifer’s demeanor while speaking to Sohail, Denise replied, “I wanna say angry.”

However, at the hearing, Jennifer denied that she pressured Sohail. She recalled that Sohail volunteered his explanation for not wiping before any mention of inappropriate touching. Exh. D-1 at 4. Jennifer also said she asked him who touched him. She denied suggesting defendant. “I never said no name.” Id. at 5. She repeated that denial at the hearing. She also denied being angry, and instead explained her reaction as concern for her young grandson. She said Sohail got very upset and said defendant had touched him. Exh. D-1 at 5.

The court finds Denise’s version more likely true than Jennifer’s. In addition to the reasons already stated, two other factors favor the conclusion that Jennifer was “mad” or “angry,” and suggestively asked Sohail if someone had touched him and then, once he agreed, asked him if defendant committed the assault. First, Jennifer may have understood that Sohail’s credibility might be undermined if his allegations were elicited by suggestive or pressured questioning.

Second, Jennifer had previously suspected that someone had inappropriately touched Sohail. See Id. at 4 (“I knew something happened to him my grandson, but I didn’t know what. I didn’t know if he was going gay . . . or the next thing it can be is did somebody touch him.”). Denise testified that Jennifer and she asked Sohail multiple times in the past why he was not wiping and if anyone had touched him. She testified that he used to say “no,” or “I don’t know.” It would be understandable if Jennifer disclosed her long-held suspicions in questioning her grandson, prompting his disclosure. And it would be understandable if her frustration and concern reflected an attitude that Denise described as “mad” and “angry.”

Sohail alleged that defendant had inserted his fingers into Sohail’s anus when they were both lying on the living room couch in the C. Avenue home. Exh. D-1 at 6-7, 15-17.⁵ His mother was asleep in another room. Id. at 15. The only other

⁵ Another daughter of Jennifer joined the interview midway. She had accompanied Denise and Sohail to the police station and recounted aspects of Sohail’s accusations, which Jennifer confirmed.

person in the house was his little sister. The twins were not born yet. Id. at 17. Sohail said he was assaulted only once. Id. at 14. According to Jennifer, Sohail delayed reporting for five years. Exh. D-1 at 7 (“He held it for five years.”) According to Denise, Sohail said he was about five or six years old when defendant assaulted him. Exh. D-2 at 12.

Denise said that Sohail previously considered defendant a father figure. Id. at 6. She testified that they were once close; defendant bought Sohail clothes, took him to and from school, and cut his hair. Sohail used to call him “Pop.” But, from 2021 on, his attitude changed. In her statement to detectives, she said that for “a couple years” Sohail had “hate[d] him to the core.” Id. at 6. She testified that Sohail would give defendant “attitude” and walk away from him or argue with him. Nonetheless, Sohail sometimes joined his half-siblings when they visited defendant at his house.

Both Denise and Jennifer testified that Sohail said he delayed disclosing the assault because he did not want to get defendant in trouble. Denise also testified that Sohail told her he was afraid of defendant.

II.

The fresh complaint doctrine allows “evidence of a victim's complaint of sexual abuse . . . to negate the inference that the victim's initial silence or delay indicates that the charge is fabricated.” R.K., 220 N.J. at 455; see also State v. Hill,

121 N.J. 150, 163 (1990) (noting that "fresh-complaint evidence serves a narrow purpose . . . [to] allow[] the State to negate the inference that the victim was not sexually assaulted because of her silence").⁶ Consistent with that limited purpose, "the fresh complaint testimony is not to be used 'to corroborate the victim's allegations concerning the crime.'" R.K., 220 N.J. at 456 (quoting State v. Bethune, 121 N.J. 137, 146 (1990)). A jury may not consider fresh-complaint testimony as substantive evidence of guilt or to bolster the victim's credibility; the testimony's limited purpose is to confirm a complaint that was made. Ibid. Also, given the testimony's "narrow purpose of negating inferences that the victim had failed to complain," a trial court must "assess . . . whether repeated testimony of the victim's complaint is irrelevant or prejudicial to the defendant." Hill, 121 N.J. at 169.

“[T]o qualify as fresh complaint, the victim's statements to someone she would ordinarily turn to for support must have been made within a reasonable time after the alleged assault and must have been spontaneous and voluntary.” Id. at 163. There is no question that Sohail made his complaint to persons he would turn to for support – his mother and grandmother. But the State has failed to show that Sohail

⁶ The Court in State v. P.H., 178 N.J. 378 (2004) noted that the fresh complaint doctrine inference has been criticized “for fostering a paradox: by adding credence to the testimony of victims who promptly report an assault, it equates promptness with veracity and reinforces the myth that victims who do not make a timely complaint are fabricating their allegations.”

complained within a reasonable time and his complaint was spontaneous and voluntary.

A.

Our courts have relaxed the "reasonable time" requirement for child complainants "in light of the reluctance of children to report a sexual assault and their limited understanding of what was done to them." State v. W.B., 205 N.J. 588, 618 (2011) (quoting P.H., 178 N.J. at 393). "Flexible application of the doctrine" is necessary because "children are especially vulnerable to being cajoled or coerced by their abusers into remaining silent; they may be too frightened or embarrassed to reveal the abuse." State v. Pillar, 359 N.J. Super. 249, 281-82 (App. Div. 2003). So, fresh complaint evidence may be admitted despite delays if the perpetrator threatened or intimidated the victim into silence and the victim complained within a reasonable time after the threats or intimidation ceased. See State v. L.P., 352 N.J. Super. 369, 384 (App. Div. 2002) (statements were made within a reasonable time after the "continuing aura of intimidation" lifted); State v. Hummel, 132 N.J. Super. 412, 423 (App. Div. 1975) (delay was reasonable because victims' disclosures were made within weeks of leaving defendant's sphere of intimidation).

In L.P., the victim was the defendant's adopted daughter. 352 N.J. Super. at 374. They lived in the same house. Ibid. The defendant threatened to kill her if she reported him. Ibid. He struck her when she resisted his repeated sexual assaults

over a three-year-period. Ibid. After she was moved to a foster home (for unrelated reasons), the defendant regularly visited to see his natural daughter and at least once visited the victim. Ibid. The natural daughter also physically abused the victim. Ibid. Four months after she moved to a second foster home and was “freed from the aura of intimidation” she disclosed. Ibid. The court held the complaint was made within a reasonable time. Ibid.

The two victims in Hummel lived for three years in a foster home operated by the defendant and his wife. 132 N.J. Super. at 418. The defendant sexually assaulted them repeatedly. The defendant told both victims they would be put away in a shelter if they told. Id. at 419, 420. The victims confided in each other while they lived in the defendant’s household. One victim complained to an adult about the assaults roughly a month after she was placed in her sister’s home. Id. at 418. The other victim complained to her aunt about the defendant several weeks after she moved to her aunt’s home. Id. at 419. The court held it was reasonable for “a 15-year-old girl, abused and threatened for some three years” would “require several weeks to overcome her residual fears.” Id. at 423.

Even under a relaxed “reasonable time” standard, a “child’s disclosure [may be] delayed sufficiently that there is no fresh complaint.” P.H., 178 N.J. at 393 That is true here. Sohail complained in June 2025, roughly five to six years after the alleged assault. He said it happened sometime between the birth of his older-half-

sister in July 2019 and the birth of his twin-half-siblings in July 2020. That extensive delay puts this case beyond the outer limit of what our courts have deemed a “reasonable time.”

Although Sohail reportedly said he was afraid of defendant, there is no proof defendant threatened Sohail with death or banishment from the home, as the defendants did in L.P. and Hummel. Nor is there evidence that defendant physically assaulted Sohail to keep him silent. Also, defendant was out of the home in 2021. Although Sohail may have accompanied Denise and his half-siblings on parenting time visits with defendant, the record does not clearly reflect how much time passed between Sohail’s interactions with defendant. Furthermore, Denise testified that Sohail gave defendant “an attitude,” and he would walk away from defendant or argue with him. Those actions tend to show Sohail was not fearful of defendant.

The State conceivably may present evidence at trial to explain why a child may delay reporting an assault. See State v. J.L.G., 234 N.J. 265, 272 (2018) (holding that expert testimony about delayed disclosure of sexual assault by children may be admitted if it satisfies the applicable evidence rule, although Child Sexual Abuse Accommodation Syndrome expert testimony generally lacks reliability). But the purpose of fresh complaint testimony is to convince the jury that the alleged victim did not delay but complained within a reasonable time. The State’s proofs fall short.

B.

The State also failed to demonstrate that Sohail’s complaint had the “requisite spontaneity and voluntariness to qualify under the fresh-complaint rule.” Hill, 121 N.J. at 152. “Courts have allowed fresh complaints made in response to general non-coercive questioning.” Id. at 167. And, as with the “reasonable time” element of the doctrine, “courts have shown more latitude” in applying the “spontaneous and voluntary” element when young children are involved. Ibid.

Nonetheless, “statements that are procured by pointed, inquisitive, coercive interrogation lack the degree of voluntariness necessary to qualify under the fresh-complaint rule.” Ibid. Put another way, “statements, even those of children, made directly in response to coercive questioning are inadmissible under the fresh-complaint rule, because coercive interrogation robs those statements of the self-motivation necessary to qualify as fresh complaint.” Bethune, 121 N.J. at 145.

The court considers several factors in deciding if a statement is sufficiently spontaneous and voluntary:

the age of the victim; the circumstances under which the interrogation takes place; the victim's relationship with the interrogator, i.e., relative, friend, professional counselor, or authoritarian figure; who initiated the discussion; the type of questions asked – whether they are leading and their specificity regarding the alleged abuser and the acts alleged.

[Hill, 121 N.J. at 168].

Applying those factors here, the court does not conclude that Sohail's complaints to his mother and grandmother were spontaneous and voluntary. Sohail was just ten years old, young enough to be swayed by adults. Jennifer and Denise had long been frustrated by Sohail's habitually poor hygiene. On the afternoon of June 3, 2025, their frustration was in full display, even if well-intentioned. He was interrogated by three adults – his mother, grandmother, and uncle. Their combined presence put Sohail on the spot. They used coarse language when they asked why Sohail did not properly wipe himself. They told him he smelled. The questioners were impatient. They put him on the defensive. As noted, the court is convinced that Jennifer appeared “angry” and “mad” – to use Denise's words – and was “pressuring” Sohail.

The court is also convinced that Jennifer asked Sohail if he was touched; Sohail did not volunteer that he was. And Jennifer asked Sohail if defendant was the one who touched him. Sohail did not volunteer his name. Such leading questions undermine the spontaneity and voluntariness of Sohail's complaint.

In sum, under the circumstances, Sohail's complaint does not satisfy the spontaneous and voluntary element of the fresh complaint doctrine.

C.

The issue before the court is whether evidence of Sohail's statements to his mother and grandmother is admissible under the fresh complaint doctrine. The State

has not demonstrated that the statements were made within a reasonable time after the alleged assaults, or that the statements were sufficiently spontaneous and voluntary. Therefore, the court denies the State's application