

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rodney G. Sanders,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 27, 2023

Court of Appeals Case No.
22A-CR-1657

Appeal from the Tippecanoe
Superior Court

The Honorable Steven P. Meyer,
Judge

Trial Court Cause No.
79D02-2003-F4-21

Crone, Judge.

Case Summary

- [1] Rodney G. Sanders appeals his conviction, following a jury trial, for level 4 felony unlawful possession of a firearm by a serious violent felon.¹ He contends that the trial court abused its discretion in determining that a Department of Natural Resources (DNR) officer could offer certain testimony as a skilled witness pursuant to Indiana Evidence Rule 701. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] In November 2018, Sanders was not permitted to possess a firearm due to a prior felony conviction. On November 20, 2018, Sanders was hunting on his daughter's property, which was next to property owned by Constance Brewer. At approximately 8:00 a.m., Brewer's neighbor called to tell her that she had heard a gunshot on Brewer's property and that there was a vehicle parked near Brewer's property line. Brewer called Lee Stanish, who was already nearby, to check her property. While still on the phone with Brewer, Stanish went to the area where the vehicle was parked. When he arrived, both Stanish and Brewer heard another gunshot. Stanish, who is a hunter and familiar with rifles, believed the gunshot sounded like it came from a high-powered rifle. Stanish took a picture of the license plate of the vehicle parked next to the entry gate of Brewer's property.

¹ Sanders was convicted of additional crimes, but he does not appeal those convictions.

[3] Minutes later, a man walked out of the woods down a trail leading to that vehicle. The man was dressed in camouflage and carrying a high-powered rifle. The man appeared startled to see Stanish. The man behaved awkwardly because he seemed to know that “[he] wasn’t supposed to be there.” Tr. Vol. 2 at 128. Stanish asked the man, “[D]id you shoot, or did you get one,” and the man answered affirmatively. *Id.* at 133. Stanish then left. The next morning, Stanish went hunting on Brewer’s property and saw evidence that a deer had been killed on the property. Specifically, Stanish saw blood, hair, tire tracks, and animal scuff marks, and he followed that evidence to the area where the deer likely died. Stanish called Brewer to tell her about what he had discovered.

[4] Brewer reported to the DNR that a hunter had been on her property without permission. DNR Officer Matt Tholen investigated. Officer Tholen obtained Sanders’s name and information after running a check on the license plate that Stanish had photographed on the vehicle that had been parked near the property. Officer Tholen also checked the DNR database to see if Sanders had reported within the required forty-eight hours that he had harvested a deer in the area, and he had not. Officer Tholen met with Sanders on December 1, 2018. Sanders admitted that he “shot a deer” and had tracked it onto Brewer’s property. *Id.* at 78. Sanders stated that after retrieving the deer, he took it to a friend’s house. Officer Tholen went to that house and found the area where Sanders had gone to “gut his deer and cut it up.” *Id.* at 80. Under the carport, Officer Tholen found the deer’s guts, entrails, ribcage, and head. Officer Tholen returned to Sanders’s home to speak with him. Sanders again admitted that he

had been on Brewer's property and that he had shot a deer, but he claimed that he shot the deer with a bow and arrow. Sanders showed Officer Tholen his bow and arrows, but none of the arrows had traces of blood.

- [5] The State subsequently charged Sanders with level 4 felony unlawful possession of a firearm by a serious violent felon, class B misdemeanor failure to take deer to checking station, and hunting without wearing hunter orange when required, a class D infraction. A jury trial was held in January 2022. During trial, Officer Tholen was permitted, over Sanders's objection, to give an opinion, based upon his observation of the deer's remains, that Sanders shot the deer with a gun as opposed to a bow and arrow. Specifically, the trial court determined that Officer Tholen was qualified to do so as a skilled witness. The jury found Sanders guilty as charged. The trial court sentenced him to concurrent fully suspended sentences of five years for the level 4 felony and 180 days for the class B misdemeanor. Sanders was fined \$975 for the infraction. This appeal ensued.

Discussion and Decision

- [6] Sanders challenges the trial court's admission of evidence. "Our standard of review for the admissibility of evidence is well established." *Housand v. State*, 162 N.E.3d 508, 513 (Ind. Ct. App. 2020) (quoting *Whiteside v. State*, 853 N.E.2d 1021, 1025 (Ind. Ct. App. 2006)), *trans. denied* (2021). "The admission or exclusion of evidence lies within the sound discretion of the trial court and is afforded great deference on appeal." *Id.* "We will reverse the trial court's ruling

on the admissibility of evidence only for an abuse of discretion.” *Id.* “An abuse of discretion occurs where the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it.” *Id.*

[7] Here, the sole issue presented for our review is whether the trial court abused its discretion in determining that Officer Tholen could give opinion testimony as a skilled witness pursuant to Indiana Evidence Rule 701. Evidence Rule 701 provides that if a witness is not testifying as an expert, “testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness’s perception; and (b) helpful to a clear understanding of the witness’s testimony or to a determination of a fact in issue.” Our supreme court has held that Rule 701 “encompasses persons whom the courts have labeled ‘skilled witnesses.’” *A.J.R. v. State*, 3 N.E.3d 1000, 1003 (Ind. Ct. App. 2014) (quoting *Kubsch v. State*, 784 N.E.2d 905, 922 (Ind. 2003)).

A skilled witness is a person who possesses specialized knowledge short of that necessary to be declared an expert under Indiana Evidence Rule 702 but beyond that possessed by an ordinary juror. Skilled witnesses not only can testify about their observations, they can also testify to opinions or inferences that are based solely on facts within their own personal knowledge.

Id. (citations and quotation marks omitted). A skilled witness’s specialized knowledge allows that “witness to perceive more information from the same set of facts and circumstances than an unskilled witness would.” *Satterfield v. State*, 33 N.E.3d 344, 353 (Ind. 2015). The witness’s testimony “is helpful because it involves conclusions that escape the average observer.” *Id.* Skilled witness

testimony generally needs only rise to “a relatively low bar” in order to be admissible. *Wilburn v. State*, 177 N.E.3d 805, 811 (Ind. Ct. App. 2021).

[8] Officer Tholen testified that he had been employed with the DNR for eighteen years. He stated that he has been required to determine if a deer was killed with a bow and arrow or a rifle on numerous occasions by observing the animal’s remains. He further stated that he had more than twenty-five years of personal experience as a hunter using both a bow and arrow and a rifle. Based upon this testimony, the trial court permitted Officer Tholen to give his opinion based upon his observations that the deer in question had been shot by a rifle rather than a bow and arrow.² We disagree with Sanders’s assertion that Officer Tholen’s testimony “required scientific expertise in ballistics, biology, and medical causation.” Appellant’s Br. at 11. Rather, his testimony was rationally based on his perception, and it was helpful to a determination of a fact in issue. To the extent that Sanders claims that Officer Tholen made conclusions without analyzing certain variables that Sanders deems important, any such weakness in the analysis underlying Officer Tholen’s opinion goes to the weight of the evidence and not its admissibility. *See Turner v. State*, 953 N.E.2d 1039, 1050-51 (Ind. 2011) (noting that cross-examination is the opportunity to expose

² Specifically, the trial court stated,

[T]he Court is satisfied that based upon this officer’s professional work and observations, and what he does on a day-to-day basis with regarding deer and other animals through the DNR, and also he’s also testified about his personal experience by hunting with guns and also with bows and arrows. And so I think based upon the totality of his testimony, the Court will allow his testimony as a skilled witness.

Tr. Vol. 2 at 99.

such weakness). The trial court did not abuse its discretion in admitting the evidence.

[9] Affirmed.

Robb, J., and Kenworthy, J., concur.