

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ryan Gordon Tracy,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 9, 2021

Court of Appeals Case No.
20A-CR-2052

Appeal from the Shelby Superior
Court

The Honorable David N. Riggins,
Judge

Trial Court Cause No.
73D02-2001-F1-1

Altice, Judge.

Case Summary

[1] Following a jury trial, Ryan Tracy was convicted of three counts of child molesting as Level 1 felonies and one count of child molesting as a Level 4 felony. The trial court then sentenced Tracy to an aggregate term of forty years imprisonment. On appeal, Tracy presents two issues for our review:

1. Did the trial court abuse its discretion in allowing a nurse to testify as an expert witness?
2. Is Tracy's sentence inappropriate?

[2] We affirm.

Facts & Procedural History

[3] Tracy married A.T. (Mother) in 2014 and was a father-figure to her young daughter, N.T. (Child), who was born in August 2011.¹ The family lived in several houses before moving to Fairland in the fall of 2017. Tracy would watch Child unsupervised a couple times a week while Mother was at work. Tracy began molesting Child when she was about four years old and continued doing so until Child disclosed the abuse when she was eight years old. Child testified that Tracy would call her back to his room, have her take off all her clothes, and then have her get on the bed. Child described how Tracy would

¹ Although Tracy is not Child's biological father, Mother identified him as such on Child's birth certificate when Child was born.

touch her vagina with his hands and put his penis in her vagina. She also stated that on multiple occasions, Tracy would “push” his penis into her “butthole.” *Transcript Vol. 4* at 52. When Tracy put his penis in Child’s private areas, it hurt “[a] lot.” *Id.* at 53. Additionally, Tracy placed his penis in Child’s mouth and would ejaculate. During one encounter, Tracy used what Child referred to as “pliers” to “pinch[] [her] boobies.”² *Id.* at 60. Tracy told Child he would hurt her if she told anyone what had happened.

[4] Child first disclosed the abuse to her best friend, which led to a report being made to Child’s school in November 2019. When questioned during an investigation by the Department of Child Services, school officials, and local law enforcement, Child denied that Tracy had touched her inappropriately, explaining later that she was afraid he would hurt her. In January 2020, Child disclosed to her maternal grandmother that Tracy was sexually abusing her. Child’s grandmother informed Mother, who immediately confronted Tracy about the matter and then took Child to the Shelby County Sheriff’s Department. The Sheriff’s Department scheduled an interview for Child at Susie’s Place, a child advocacy center. The following day, Emily Perry, a social worker and forensic interviewer with Susie’s Place, interviewed Child, during which Child disclosed the sexual abuse.

² The pliers Child referred to were “nipple clamps.” *Transcript Vol. 3* at 79.

[5] After the interview, Mother took Child to Riley Children’s Hospital, where Sexual Assault Nurse Examiner (SANE) Kelsey Knight (Nurse Knight) performed a sexual assault examination. During the exam, Nurse Knight did not observe any vaginal, anal, or oral injuries on Child. Nurse Knight was not surprised by this because, based on her training and experience “over 97 percent of cases don’t have any injury no matter what happened.” *Transcript Vol. 3* at 213.

[6] Nurse Knight has both a bachelor’s degree and master’s degree in nursing. She worked as a nurse at St. Francis hospital for approximately two years before changing to Riley. While working at Riley, Nurse Knight enrolled in a pediatric nurse practitioner program, which she completed in August 2020. During this same time, she was selected for the SANE position. To become a SANE nurse, Knight worked with an experienced SANE nurse for several months and completed a forty-hour course that was “dedicated strictly to Sexual Assault Nursing.” *Id.* at 180. In her two years as a SANE nurse, she had performed eighteen to twenty “acute” sexual assault exams, which are conducted when a child arrives at the hospital within 72 hours of a sexual assault and had performed ten to eleven “medical screening” sexual assault exams, which are conducted when a child arrives at the hospital and more than seventy-two hours have passed since the incident. *Id.* at 181. This was Knight’s first time to testify at a trial.

[7] On January 24, 2020, the State charged Tracy with three counts of Level 1 felony child molesting (Counts I through III), one count of Level 4 felony child

molesting (Count IV), two counts of Level 3 felony vicarious sexual gratification (Counts V and VI), and two counts of Level 6 felony dissemination of matter harmful to minors (Counts VII and VIII). On September 14, 2020, Tracy filed a motion in limine addressing, in part, expert witnesses. Specifically, Tracy requested that the court prohibit Perry from testifying as an expert witness such that she not be allowed to “opine on any facet of the forensic medical exam at issue in this case, nor on forensic medical exams in general, *nor on the statistical presence or absence of medical evidence of trauma in such examinations.*” *Appellant’s Appendix Vol. II* at 55-56 (emphasis supplied). The trial court granted the motion in limine in this regard.

[8] A jury trial was held September 21-23, 2020. During the State’s case-in-chief, Tracy objected to parts of Nurse Knight’s testimony wherein she was asked by the State to give her opinion on the frequency of injury in sexual assault cases. The State argued that Nurse Knight was an expert and Tracy objected to such classification. The trial court ruled that Nurse Knight was an expert and she then testified that “it’s not common . . . to see injury” during a sexual assault examination. *Transcript Vol. 3* at 191.

[9] At the conclusion of the evidence, the jury found Tracy guilty of Counts I through IV and not guilty of Counts V through VIII. At an October 14, 2020, sentencing hearing, the trial court sentenced Tracy to forty years on each of the Level 1 felonies (Counts I, II, and III) and ten years on the Level 4 felony (Count IV), ordering the sentences to be served concurrently for an aggregate

sentence of forty years. Tracy now appeals. Additional information will be provided as necessary.

Discussion & Decision

1. Expert Witness

- [10] Tracy argues that the State failed to lay a proper foundation for the admission of Nurse Knight’s expert opinion regarding the frequency of injury in sexual assault cases. He asserts that Nurse Knight does not have the background or experience to render such an opinion.
- [11] The trial court is considered the gatekeeper for the admissibility of expert opinion evidence under Ind. Evidence Rule 702. *Doe v. Shults-Lewis Child & Family Servs., Inc.*, 718 N.E.2d 738, 750 (Ind. 1999). Thus, a trial court’s determination regarding the admissibility of expert testimony under Evid. R. 702 is a matter within its broad discretion and will be reversed only for abuse of that discretion. *TRW Vehicle Safety Sys., Inc. v. Moore*, 936 N.E.2d 201, 216 (Ind. 2010) (citations omitted). We presume that the trial court’s decision is correct, and the burden is on the party challenging the decision to persuade us that the trial court has abused its discretion. *Id.*
- [12] Evid. R.ule 702(a) allows a witness who is “qualified as an expert by knowledge, skill, experience, training, or education” to give opinions based on such knowledge, skill, experience, training, or education if such “will assist the trier of fact to understand the evidence or to determine a fact in issue.” Only one of those characteristics is necessary to qualify an individual as an expert.

Otte v. State, 967 N.E.2d 540, 547 (Ind. Ct. App. 2012), *trans. denied*. Whether a witness has “specialized knowledge” that is beyond that knowledge generally held by lay persons and that would be helpful to the jury is a matter entrusted to the trial court’s discretion. *Farrell v. State*, 884 N.E.2d 383, 398 (Ind. Ct. App. 2008), *trans. denied*.

[13] We have approved the use of SANEs as expert witnesses. See *Newbill v. State*, 884 N.E.2d 383, 398 (Ind. Ct. App. 2008) (finding that the trial court did not abuse its discretion by admitting the SANE’s expert testimony), *trans. denied*. Here, the State established that Nurse Knight had obtained both a bachelor’s and master’s degree in nursing. She also has seven years of experience as a nurse. In addition, Nurse Knight received forty hours of specialized training in sexual assault examinations, had worked with an experienced SANE nurse for several months, and had conducted and/or observed numerous sexual assault examinations. Although Knight may not have had as much experience as other SANE nurses, such does not establish that her testimony was inadmissible. Knight’s training and education qualified her as an expert with regard to sexual assault examinations, and, in particular, the frequency of injury in sexual assault cases. The trial court did not abuse its discretion in allowing Knight’s expert testimony as to the frequency of injury in sexual assault cases.

2. Inappropriate Sentence

[14] In accordance with Ind. Appellate Rule 7(B), we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense

and the character of the offender.” “The principal role of a Rule 7(B) review ‘should be to attempt to leaven the outliers ... but not to achieve a perceived “correct” result in each case.’” *Dilts v. State*, 80 N.E.3d 182, 188 (Ind. Ct. App. 2017) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)), *trans. denied*. “In conducting our review, we do not look to see whether the defendant’s sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is ‘inappropriate.’” *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*. Whether a sentence is inappropriate ultimately depends upon “the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Dilts*, 80 N.E.3d at 188-89.

[15] Tracy bears the burden of persuading us that his aggregate forty-year sentence is inappropriate in light of the nature of the offense and his character. *See id.* at 188. In arguing that his sentence is inappropriate, he directs us to *Serino v. State*, 798 N.E.2d 852 (Ind. 2003), wherein our Supreme Court, under facts similar to the instant case (i.e., one victim, multiple counts of molestation, and a lack of criminal history) reduced a child molester’s sentence from 385 years to 90 years. The Court noted that the sentence imposed by the trial court was “at the high end of the sentencing spectrum” and emphasized that there was “substantial uncontested testimony from numerous witnesses speaking to Serino’s positive character traits.” *Id.* at 858. Here, we note that Tracy received a sentence substantially less than the sentence imposed on Serino. In any event, we independently examine the nature of Tracy’s offense and his character under

App. R. 7(B) with substantial deference to the trial court's sentence. *Satterfield v. State*, 33 N.E.3d 344, 355 (Ind. 2015).

[16] We note that the “advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed.” *Connor v. State*, 58 N.E.3d 215, 220 (Ind. Ct. App. 2016). The sentencing range for a Level 1 felony child molesting is between twenty and fifty years, with an advisory sentence of thirty years. Ind. Code. § 35-50-2-4(c). The sentencing range for a Level 4 felony is between two and twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. The trial court found that an aggravated sentence was warranted but did not impose the maximum for any of Tracy's convictions. Given that Tracy has no criminal history, the trial court ordered that the sentences be served concurrently for an aggregate sentence of forty years on four Level 1 felonies and one Level 4 felony.

[17] We begin with the nature of the offense. The evidence showed that Tracy molested Child on multiple occasions beginning when she was just four years old and continuing until she was eight years old. Tracy subjected Child to vaginal and anal intercourse, as well as oral sex. Tracy was a father-figure to Child and clearly violated a position of trust. Tracy also threatened to harm Child if she told anyone. The repeated nature of his sexual abuse of Child over a period of years is particularly disturbing. Tracy has not convinced us that he should have received a lesser sentence in light of the nature of the offense.

[18] With regard to Tracy's character, we recognize that Tracy has no criminal history, that he was honorably discharged from the Navy, and that he has been involved with philanthropic organizations. However, his repeated acts of sexual abuse over a period of years against a child to whom he was a father-figure reflects poorly on his character. Even more telling is that the sexual abuse began when Child was as young as four years old and included vaginal, anal, and oral sex. Tracy further abused his position of trust by threatening to hurt Child if she told anyone about the abuse. Tracy's character is not deserving of a lesser sentence.

[19] Tracy's aggregate forty-year sentence for four counts of Level 1 felony child molesting and one count of Level 4 felony child molesting is not inappropriate.

[20] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.