

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jacob A. Sheckells,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 28, 2023

Court of Appeals Case No.
22A-CR-2010

Appeal from the Crawford Circuit
Court

The Honorable H. Lloyd Whitis,
Judge

Trial Court Cause No.
13C01-2110-F4-12

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

- [1] Jacob Sheckells appeals his convictions and corresponding sentence for one count of sexual misconduct with a minor, as a Level 4 felony,¹ and one count of sexual misconduct with a minor, as a Level 5 felony.² We affirm.

Issues

- [2] Sheckells raises two issues for our review:
1. Whether the trial court abused its discretion when it admitted certain evidence.
 2. Whether the imposition of consecutive sentences was inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

- [3] On October 1, 2021, fifteen-year-old K.T. went to spend the night at the home of Mary and Dwayne Sheckells, her great aunt and great uncle. Also at the house that night were Mary and Dwayne’s son, Sheckells; G.M.; H.B.; and K.P. When K.T. first arrived, everyone was in the living room “just sitting around and talking.” Tr. Vol. 2 at 216. At some point, K.T., G.M., H.B., and K.P. all went to K.P.’s room to “hang[] out[.]” *Id.* at 217. K.P. and H.B. were

¹ Ind. Code § 35-42-4-9(a)(1) (2022).

² I.C. § 34-42-4-9(b)(1).

on K.P.'s bed while K.T. and G.M. were on a mattress that had been placed on the floor. Sometime between 11:00 p.m. and 12:00 a.m., the four girls fell asleep on their respective beds.

[4] A while later, K.T. woke up because she “felt something rubbing” her “inner thigh.” *Id.* at 220. When she first opened her eyes, all K.T. could see was “a bigger shadow figure” over her. *Id.* at 221. As her eyes adjusted, she was able to see that the figure was Sheckells. Once she woke up, Sheckells “moved his hand real fast” and left the bedroom. K.T. was “scared he would come back in there,” so she closed her eyes and pretended to fall back asleep. *Id.*

[5] Less than two minutes later, Sheckells reentered the bedroom, and “started rubbing on [her] leg again.” *Id.* at 222. He then “twisted” her legs open, “stuck his hand down [her] pants” into her underwear, inserted his fingers into her vagina, and started “fingering” her. *Id.* at 222, 224. Sheckells then “grabbed” K.T.’s breast under her shirt with his other hand. *Id.* at 222. At one point, Sheckells moved his hand from her breast to her stomach and “pushed down,” which “hurt [K.T.] so bad.” *Id.* at 224-25. After approximately fifteen minutes, Sheckells “just got up and . . . walked out.” *Id.* at 226.

[6] After Sheckells left, K.T. woke up G.M. and told her what had happened. G.M. contacted her brother and her aunt to come pick them up. G.M. then woke up H.B., and the three left with G.M.’s aunt and went to G.M.’s grandmother’s house for the remainder of the night. The next morning, K.T. called her grandmother, Mary Small, with whom K.T. resided. When Small

picked K.T. up, K.T. told her what had happened. Small then called the police and took K.T. for a forensic interview.

[7] The State charged Sheckells with one count of sexual misconduct with a minor, as a Level 4 felony, and one count of sexual misconduct with a minor, as a Level 5 felony. The court held a three-day jury trial beginning on June 13, 2022. During the trial, the State presented the testimony of Elizabeth Stinson, the forensic interviewer who had interviewed K.T. The State asked Stinson if she had “observe[d] anything in that interview that would be of importance to know for the jury.” *Id.* at 208. Stinson responded that K.T. “did have signs of reliability[.]” *Id.* Sheckells objected on the ground that the testimony was improper vouching testimony under Indiana Evidence Rule 704(b). The court overruled the objection and allowed Stinson to continue. Stinson then testified that the signs of reliability K.T. had demonstrated included “[g]esturing,” which is when a child will show her what “the perpetrator was doing.” *Id.* Stinson continued that, when K.T. was describing the offense, “she was actually grabbing and squeezing and then moving her fingers . . . as she was describing how she was being touched.” *Id.* at 209.

[8] The State also called K.T. as a witness, and K.T. testified about the offenses. In addition, the State presented the testimony of Small, G.M., H.B. and an officer with the Indiana State police. At the conclusion of the trial, the jury found Sheckells guilty as charged. During a sentencing hearing, the court identified as aggravating factors that “the harm, injury, loss, or damage suffered by the victim of these offenses was significant and greater than the elements necessary

to prove the commission of the offenses,” that Sheckells has a “history of criminal behavior,” and that he had recently violated the conditions of his parole. Tr. Vol. 3 at 172. The court then identified as mitigating the fact that Sheckells had suffered a traumatic brain injury. The court found that the aggravators outweighed the mitigators and sentenced Sheckells to eight years executed at the Department of Correction for the Level 4 felony and to four years for the Level 5 felony, with two years executed and two years suspended. The court then ordered the sentences to run consecutively, for an aggregate sentence of twelve years, with ten years executed and two years suspended. This appeal ensued.

Discussion and Decision

Issue One: Admission of Evidence

[9] Sheckells first contends that the trial court abused its discretion when it admitted certain evidence. As our Supreme Court has stated:

Generally, a trial court’s ruling on the admission of evidence is accorded “a great deal of deference” on appeal. *Tynes v. State*, 650 N.E.2d 685, 687 (Ind. 1995). “Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion” and only reverse “if a ruling is ‘clearly against the logic and effect of the facts and circumstances and the error affects a party’s substantial rights.’” *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014) (quoting *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013)).

Hall v. State, 36 N.E.3d 459, 466 (Ind. 2015).

[10] Sheckells specifically contends that the trial court abused its discretion when it admitted Stinson’s testimony about K.T.’s forensic interview because that testimony amounted to improper vouching testimony. Indiana Evidence Rule 704(b) provides that a witness “may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions.” Such testimony is generally forbidden because it “is considered an invasion of the province of the jurors in determining what weight they should place upon a witness’s testimony.” *Alvarez-Madrigal v. State*, 71 N.E.3d 887, 892 (Ind. Ct. App. 2017).

[11] On appeal, Sheckells asserts that Stinson’s testimony violated Indiana Evidence Rule 704(b) because it constituted “flagrant vouching testimony.” Appellant’s Br. at 15. The State does not dispute that the testimony was improper. Rather, the State “acknowledges that Stinson’s testimony in this case was analogous to” testimony that this Court has previously found to be erroneous. Appellee’s Br. at 12 (citing *Norris v. State*, 53 N.E.3d 512, 524 (Ind. Ct. App. 2016)). However, the State contends that “any error in this case was harmless.” *Id.*

[12] It is well settled “that a claim of error in the admission or exclusion of evidence will not prevail on appeal ‘unless a substantial right of the party is affected.’” *Troutner v. State*, 951 N.E.2d 603, 612 (Ind. Ct. App. 2011) (quoting *Pruitt v. State*, 834 N.E.2d 90, 117 (Ind. 2005)), *trans. denied*. That is, even if the trial court errs in admitting or excluding evidence, this Court will not reverse the defendant’s conviction if the error is harmless. *Caesar v. State*, 139 N.E.3d 289, 292 (Ind. Ct. App. 2020). We “consider the likely impact of the improperly

admitted or excluded evidence on a reasonable, average jury in light of all the evidence in the case.” *Hayko v. State*, 211 N.E.3d 483, 492 (Ind. 2023).

“Ultimately, the error’s probable impact is sufficiently minor when—considering the entire record—our confidence in the outcome is not undermined.” *Id.*

[13] Sheckells contends that the error in the admission of Stinson’s testimony was not harmless because “this case came down entirely to K.T.’s credibility.” Appellant’s Br. at 16. And he asserts that “there can be no doubt that the error in allowing a forensic interviewer to comment directly on K.T.’s veracity substantially affected the jury’s deliberations.” *Id.* We cannot agree.

[14] Here, during the trial, K.T. testified at length and in detail about the offenses, including that Sheckells had “twist[ed]” his fingers while they were in her vagina. Tr. Vol. 2 at 225. And K.T.’s testimony never wavered. In addition, and contrary to Sheckells’ assertions on appeal, other witnesses provided testimony to corroborate K.T.’s testimony.³ In particular, Small testified that, when she picked K.T. up on the morning of October 2, K.T. “told [her] what [had] happened.” Tr. Vol. 2 at 188. Then, based on K.T.’s disclosure, Small testified that she called the police and took K.T. for a forensic interview. In addition, G.M. testified that, when K.T. woke her up overnight that night, K.T.

³ As such, Sheckell’s reliance on *Hamilton v. State*, 43 N.E.3d 628 (Ind. Ct. App. 2015), is misplaced. In *Hamilton*, this Court held that improper vouching testimony was not harmless error where there “was no corroborating evidence of Hamilton’s guilt apart for the testimony” of the victims. *Id.* at 634.

was “upset.” Tr. Vol. 3 at 18. She further testified that K.T. “kept looking back and forth” between the doors, that she “had a scared look in her eyes,” and that she was “shaking.” *Id.* She also testified that she “could tell that something had happened” to K.T. because K.T. had “changed” and would “stare off blankly” and not talk “as much as her normal self would.” *Id.* at 22. And H.B. testified that K.T. was “scared and said that something [had] happened.” *Id.* at 33.

[15] We acknowledge that there were no other eyewitnesses to the offense. However, considering the entire record, we can say with confidence that the probable impact of Stinson’s brief testimony that K.T. had shown signs of reliability during her forensic interview was sufficiently minor so as to not affect Sheckells’ substantial rights. Accordingly, we conclude that any error in the court’s admission of that testimony was harmless. We therefore affirm Sheckells’ convictions.

Issue Two: Appropriateness of Sentence

[16] Next, Sheckells contends that his sentence is inappropriate in light of the nature of the offenses and his character. Indiana Appellate Rule 7(B) provides that “[t]he Court 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.” This Court has recently held that “[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the

crime committed.” *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017).

And the Indiana Supreme Court has recently explained that:

The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived “correct” result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007).

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

- [17] Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court’s judgment “should receive considerable deference.” *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate at the end of the day turns on “our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case.” *Id.* at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court “prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant’s character (such as substantial virtuous traits or persistent examples of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[18] The sentencing range for a Level 4 felony is two years to twelve years, with an advisory sentence of six years. *See* Ind. Code § 35-50-2-5.5. And the sentencing range for a Level 5 felony is one year to six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). At a sentencing hearing, the court identified as aggravating that the harm, injury, loss, or damage suffered by K.T. was “significant” and greater than the elements necessary to prove the commission of the offenses; that Sheckells has a “history of criminal behavior”; and that he had recently violated his parole. Tr. Vol. 2 at 172. The court identified as mitigating Sheckells’ traumatic brain injury. The court then found that the aggravators outweighed the mitigators and sentenced Sheckells to consecutive terms of eight years fully executed on the Level 4 felony and to four years on the Level 5 felony, with two years executed and two years suspended.

[19] On appeal, Sheckells does not challenge the length of either sentence. However, he contends that the imposition of consecutive sentences was inappropriate in light of the nature of the offense and his character.⁴ Specifically, Sheckells contends that his sentence is inappropriate in light of the nature of the offenses because the effects of the offenses on K.T. “are not more severe or grievous than is already inherent in all child sex cases.” Appellant’s

⁴ The State contends that Sheckells has waived this issue for our review because he did not argue that the imposition of consecutive sentences was an abuse of discretion. *See* Appellee’s Br. at 23. However, we agree with Sheckells that our appellate courts have reviewed and revised consecutive sentences under Appellate Rule 7(B). *See, e.g., Laster v. State*, 918 N.E.2d 428, 436 (Ind. Ct. App. 2009) (revising consecutive sentences to concurrent sentences under Appellate Rule 7(B)); *Serino v. State*, 798 N.E.2d 852, 858 (Ind. 2003) (same). As such, we will consider Sheckell’s argument.

Br. at 23. He also contends that he “did not commit this offense with any violence and did not threaten K.T. in any way.” *Id.* And he contends that his consecutive sentences are inappropriate in light of his character because he completed several programs while incarcerated and because his traumatic brain injury resulted in “difficulty understanding” or remembering things. *Id.* at 22.

[20] However, Sheckells has not met his burden on appeal to demonstrate that his sentence is inappropriate. Sheckells entered the room of K.T.—who was a fifteen-year-old family member of his—and rubbed her inner thigh while she slept. When K.T. woke up, Sheckells quickly left but returned less than two minutes later. Sheckells then proceeded to insert his fingers into K.T.’s vagina and rub her breast. At some point, he also held her down by placing a hand on her stomach, which caused her pain. And he committed the offenses with three other young girls in the room.

[21] Further, K.T. testified at the sentencing hearing that Sheckells had caused her “pain” and had “stolen” part of herself. Tr. at 155. She also testified that it was the “worst nightmare of her life” and that she had “lost” friends and family because of it. *Id.* And she stated that she was now “scared” to sleep at other people’s houses. *Id.* at 156. Stated differently, Sheckells used force and caused pain to a young relative of his in order to fondle her breast and digitally penetrate her vagina, which caused her long-lasting trauma. Sheckells has not presented any evidence to show any restraint or regard on his part. He has therefore not presented compelling evidence portraying the nature of the offenses in a positive light. *See Stephenson*, 29 N.E.3d at 122.

[22] As for his character, Sheckells has a criminal history that includes one prior misdemeanor in Indiana as well as a prior felony conviction for drug trafficking in another state. And he has previously violated the conditions of his parole. Further, he sexually assaulted his young family member while she was staying at his house, which reflects poorly on his character. Sheckells has not presented compelling evidence of substantial virtuous traits or persistent examples of good character. We therefore cannot say that the imposition of consecutive sentences is inappropriate in light of his character.

[23] Still, Sheckells maintains that the consecutive sentences are inappropriate because there was only one victim and because the two counts “occurred simultaneously.” *Id.* at 26. Accordingly, he asks this Court to order his sentences to be served concurrently instead of consecutively. To support his argument, Sheckells relies in part on *Laster v. State*, 918 N.E.2d 428, 436 (Ind. Ct. App. 2009), and *Serino v. State*, 798 N.E.2d 852, 858 (Ind. 2003). However, we find both cases to be distinguishable. In *Laster*, this Court specifically relied on the fact that Laster did not have a criminal history and that he had steady employment “together with the fact that there was one victim and no uncharged sexual misconduct” when it concluded that consecutive sentences were inappropriate. 918 N.E.2d at 436. But, as discussed above, Sheckells has a criminal history that includes a major felony for drug trafficking and a violation of his parole, and he is currently unemployed. And in *Serino*, our Supreme Court revised consecutive sentences to concurrent terms after it noted that “numerous” witnesses, including “the complaining witness and his

mother,” had spoken to Serino’s “positive character traits,” 798 N.E.2d at 858. And the Court stated that the “victim’s own mother was not opposed to a lesser sentence.” *Id.* Neither of those conditions is present here.

[24] It was Sheckells’ burden to persuade us that his consecutive sentences were inappropriate. But Sheckells has not met his burden. Accordingly, we conclude that Sheckells’ consecutive sentences are not inappropriate in light of the nature of the offenses or his character. We affirm his sentence.

Conclusion

[25] Any error in the court’s admission of Stinson’s testimony was harmless in light of all of the evidence before the jury. And the imposition of consecutive sentences was not inappropriate in light of the nature of the offenses and Sheckells’ character. We therefore affirm the trial court.

[26] Affirmed.

Tavitas, J., and Kenworthy, J., concur.