

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Luis Sanchez Hernandez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 26, 2023

Court of Appeals Case No.
22A-CR-3069

Appeal from the Marion Superior
Court

The Honorable Jennifer P.
Harrison, Judge

Trial Court Cause No.
49D20-2012-F1-37587

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Luis Sanchez Hernandez was convicted in Marion Superior Court of three counts of Class A felony child molesting, three counts of Level 1 felony child molesting, and three counts of Class C felony child molesting. Hernandez appeals and raises two issues for our review, which we restate as:

I. Whether the trial court abused its discretion when it allowed the detective to testify concerning the effects of trauma on a child's memory; and,

II. Whether the trial court abused its discretion when it would not permit the detective to testify concerning injuries that might result from anal penetration.

[2] Concluding that Hernandez has not established any reversible error, we affirm his convictions.

Facts and Procedural History

[3] In 2011, twenty-three-year-old Hernandez and his uncle moved to Indianapolis. Their extended family allowed them to live in the family's three-bedroom home, which was occupied by approximately twelve to fifteen other people. Three young girls lived in the home: sisters L.G. and Y.G. and their cousin M.G. When Hernandez moved into the home, M.G. was approximately nine years old, L.G. was approximately six years old, and Y.G. was approximately four years old.

[4] Hernandez molested the three girls repeatedly between 2011 and 2014. He forced Y.G. to submit to vaginal and anal intercourse and forced her to perform oral sex on him. He fondled L.G.'s and M.G.'s genitals and made them touch his genitals. He also forced the two girls to sit on his lap and suck on his neck.

He threatened the girls that he would hurt their families if they told anyone about the molestation, and he also hit them. The incidents occurred in the home's garage and living room. Hernandez also took Y.G. to a park and molested her in her mother's vehicle.

[5] The molestation stopped after Hernandez moved out of the home in November 2014. L.G. and Y.G. did not disclose the molestations until 2020. After her cousins' disclosures, M.G. also told her parents that Hernandez had molested her.

[6] As a result of the girls' disclosures, the State charged Hernandez as follows:

Count I: On or about or between November 26, 2013 and June 30, 2014, Luis Sanchez Hernandez, a person of at least twenty-one (21) years of age, did perform or submit to sexual intercourse or deviate sexual conduct with [Y.G.], a child under the age of fourteen years;

Count II: On or about or between July 1, 2014 and November 25, 2014, Luis Sanchez Hernandez, a person of at least twenty-one (21) years of age, did perform sexual intercourse with [Y.G.], a child under the age of fourteen years;

Count III: On or about or between November 26, 2013 and June 30, 2014, Luis Sanchez Hernandez, a person of at least twenty-one (21) years of age, did perform or submit to deviate sexual conduct with [Y.G.], a child under the age of fourteen years;

Count IV: On or about or between July 1, 2014 and November 25, 2014, Luis Sanchez Hernandez, a person of at least twenty-one (21) years of age, did perform or submit to other sexual conduct as defined in [Indiana Code Section 35-31.5-2-221.5](#) with [Y.G.], a child under the age of fourteen years (14);

Count V: On or about or between November 6, 2014 and November 25, 2015, Luis Sanchez Hernandez, a person of at least twenty-one (21) years of age, did perform or submit to sexual intercourse with [Y.G.], a child under the age of fourteen years (14);

Count VI: On or about or between November 26, 2012 and November 25, 2013, Luis Sanchez Hernandez did perform or submit to fondling or touching with [Y.G.], a child under the age of fourteen years, with the intent to arouse or satisfy the sexual desires of the child or defendant;

Count VII: On or about or between March 8, 2012 and March 7, 2014, Luis Sanchez Hernandez did perform or submit to fondling or touching with [L.G.], a child under the age of fourteen years with the intent to arouse or satisfy the sexual desires of the child or defendant;

Count VIII: On or about or between July 1, 2010 and December 3, 2011, Luis Sanchez Hernandez, a person of at least twenty-one (21) years of age, did perform or submit to deviate sexual conduct with [M.G.], a child under the age of fourteen years;

Count IX: On or about or between July 1, 2010 and December 3, 2011, Luis Sanchez Hernandez did perform or submit to fondling or touching with [M.G.], a child under the age of fourteen years with the intent to arouse or satisfy the sexual desires of the child or defendant[.]

Appellant's App. Vol. 2, pp. 90-91.

- [7] Hernandez's jury trial commenced on October 31, 2022. L.G., Y.G. and M.G. all testified at trial and described the repeated molestations, the threats that Hernandez had made, and the physical violence that he had inflicted on the girls. Indianapolis Metropolitan Police Detective Alisha Bernhardt testified concerning her investigation of the case. Hernandez objected to the detective's

testimony describing the psychological effect of trauma on a child victim's disclosure of molestation and memory of the offense. Tr. Vol. 3, pp. 65-68. The trial court overruled the objection. On cross-examination, Hernandez attempted to elicit testimony from the detective concerning physical injury that might occur to a child's anus after penetration. *Id.* at 78. The State objected and the trial court cautioned defense counsel not to create a false impression of medical facts. *Id.* Counsel was permitted to rephrase the question and the detective testified that she had never observed an anal injury after a delayed disclosure. *Id.* Hernandez claimed that the girls' delayed disclosures were not credible because there was no evidence that they had suffered any physical injury or pain and that his opportunities to commit the alleged offenses would have been limited given the number of residents of the small three-bedroom home the extended family lived in.

[8] The jury found Hernandez guilty as charged. The trial court entered judgment of conviction against Hernandez for three counts of Class A felony child molesting, three counts of Level 1 felony child molesting, and three counts of Class C felony child molesting. The court ordered Hernandez to serve thirty-five years for each Class A felony conviction and each Level 1 felony conviction and five years for each Class C felony conviction. The court directed the sentences imposed for the offenses against each victim to be served concurrent with each other. But the court ordered Hernandez's sentences imposed for Count I (against victim Y.G.), Count VII (against victim L.G.), and Count VIII (against victim M.G.) to be served consecutive to each other. Therefore, the

trial court ordered Hernandez to serve an aggregate executed sentence of seventy-five years in the Department of Correction.

[9] Hernandez now appeals.

Standard of Review

[10] Hernandez raises two issues challenging the trial court’s evidentiary decisions. “The trial court has broad discretion to rule on the admissibility of evidence.” *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). We review its rulings “for abuse of that discretion and reverse only when admission is clearly against the logic and effect of the facts and circumstances and the error affects a party’s substantial rights.” *Clark v. State*, 994 N.E.2d 252, 259 (Ind. 2013).

The Detective’s Testimony Concerning the Impact of Trauma

[11] During the State’s direct examination of Detective Bernhardt, the State asked, “[h]ow, if at all, does trauma impact the brain, based on your training, and experience, and what you have seen investigating these cases?” Tr. Vol. 3, pp. 65-66. Hernandez objected and argued that the State had not laid an adequate foundation for such testimony. *Id.* at 66. The State then questioned the detective about her training as a forensic interviewer and a symposium she had attended concerning the subject, which was taught by child psychologists. Hernandez continued to object to the line of questioning and argued that the detective lacked the necessary training and experience to testify concerning the psychological impact of trauma. *Id.* at 68.

[12] The trial court allowed the detective to answer the State's question after the State assured the court it was only asking the detective to explain that trauma can impact a child's recall and memory. *Id.* Thereafter, the following exchange occurred:

State: How does trauma affect the brain based on your training and experience?

Detective: I'll speak for my training and experience especially with these cases. Um, a lot of times when I speak to children, um timelines are off, kids can't remember exact dates. Um, certain details don't always come out. There's actually from my experience with Child First there's different disclosure time like-okay. So, kids will be in denial. They will have tentative disclosures. They'll have active disclosures, um, and then they have a recantation phase and there's also a reaffirming phase. So, there's different phases of disclosure, and when they're in those different phases, that can - it can affect how they talk or what they talk about. Um, trauma, I mean I even had a child come in one time that didn't remember their birthday because one of the incidents happened around their birthday and they were trying to forget that incident. It makes them not remember things sometimes. Trauma can make them just want to forget it all.

State: So fair to say trauma can actually affect how memories are imprinted?

Detective: Correct.

State: Um, and not every child goes through those phases and made [sic] that way, correct?

Detective: Correct.

Id. at 69. The detective also testified that she had training as a forensic interviewer about the “process of disclosure.” *Id.* at 70. The detective described the process of disclosure as follows:

Detective: Sometimes there’s forced disclosure . . . say one child is an active disclosure and they’re ready to talk about it. They’ll come talk about it, but they’ll also talk about another child who was a victim. Then we go interview that child and they’re not an active disclosure. They’re in denial. They’re in that phase of where we’re trying to force them to talk, and so they’re just in that denial phase and they just will shut down because they’re not ready. So, it depends on where the child is in that, I guess, I don’t want to say continuum because it’s not really a continuum, but where they are in their process of disclosure.

State: So fair to say sometimes memories have been repressed, correct?

Detective: Yes.

State: Sometimes it’s too painful and the child’s not ready to talk about it?

Detective: Correct.

State: Um, sometimes it’s too painful to disclose the entirety of the molestation.

Detective: Correct.

Id.

[13] Hernandez argues that the trial court improperly admitted that testimony because the detective was not a medical doctor or psychiatrist, and, thus, she did not meet the requirements to qualify as an expert on the topic pursuant to

Indiana Rule of Evidence 703. In support his argument, Hernandez directs our attention to *Fleener v. State*, 656 N.E.2d 1140 (Ind. 1995).

[14] In *Fleener*, our supreme court held that the trial court abused its discretion when it admitted a psychotherapist’s testimony describing characteristics common to children who have been sexually abused such as change in sleep patterns, “clingy” behavior, increased expressions of aggressiveness, sexual play, and stomach problems.¹ *Id.* at 1141. The psychotherapist, who had counseled the victim, testified that the victim in the case displayed many of the behaviors she had described. *Id.* The defendant argued that the psychotherapist’s testimony was inadmissible under Indiana Evidence Rule 702(b) because the State had not established that the testimony was based on reliable scientific principles. *Id.* After observing that the testimony was offered as proof that the victim had suffered abuse, our supreme court concluded:

Because expert scientific testimony is permitted “only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable,” Ind. Evidence Rule 702(b), and because no foundational showing of reliability was made here, it was error to permit further testimony of this nature following the objection, particularly in light of the questionable reliability of child sexual abuse syndrome evidence for purposes of proving abuse.

¹ In *Steward v. State*, 652 N.E.2d 490 (1995), which was handed down shortly before the court’s opinion in *Fleener*, our supreme court held that evidence of child sexual abuse syndrome was inadmissible to prove, either directly or by implication, that child abuse had occurred. *Id.* at 499. However, the court also held that the evidence might be admissible to rebut an attack on the child’s credibility. *Id.*

Id. (citing *Steward v. State*, 652 N.E.2d 490, 492-93, 498-99 (Ind. 1995)).

However, the court also concluded that admission of the evidence was harmless because the State had presented significant independent evidence of the defendant's guilt. *Id.* at 1142. The victim described the defendant's multiple acts of molestation, her brother testified that he observed one of the offenses, and the victim's grandmother and pediatrician observed physical injury to the victim's genitals. *Id.*

[15] The psychotherapist's testimony in *Fleener* relied on a scientific theory whose reliability had not been established under [Evidence Rule 702\(b\)](#), and the State used the testimony to prove that Fleener had committed the alleged acts of molestation. *Id.* at 1140-41. In this case, the State used Detective Bernhardt's testimony to explain the victims' delayed disclosures of the molestations and the effect the passage of time and trauma had on the victims' abilities to recall specifics of the molestations. And, the State did not proffer Detective Bernhardt as an expert witness, but argued that she qualified as a "skilled witness" under [Evidence Rule 701](#). Moreover, as will be discussed in further detail below, Detective Bernhardt's testimony concerning delayed disclosure of molestation was not based on scientific principles but her training and personal observations during her forensic interviews with the victims in this case and other molestation victims she has interviewed.

[16] The admissibility of "skilled witness" testimony is addressed in [Evidence Rule 701](#), which provides:

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.

[17] “The requirement that the opinion be ‘rationally based’ on perception simply means that the opinion must be one that a reasonable person could normally form from the perceived facts, which are facts received directly through any of the [witness’s own] senses.” *Satterfield v. State*, 33 N.E.3d 344, 352 (Ind. 2015) (citations omitted). In *Satterfield*, our supreme court explained the difference between a skilled and lay witness.

Neither has the “scientific, technical, or other specialized knowledge” of experts, *Evid. R. 702(a)*, and both ordinary lay and skilled witnesses testify from their perceptions alone, not necessarily established scientific principles, *Id.* Skilled witnesses, though, possess knowledge beyond that of the average juror. *Kubsch [v. State]*, 784 N.E.2d [905,] 922 [Ind. 2003]. This additional knowledge allows a skilled witness to perceive more information from the same set of facts and circumstances than an unskilled witness would. All opinion testimony is helpful, “giv[ing] substance to facts, which [are] difficult to articulate.” *McCutchan [v. Blanck]*, 846 N.E.2d [256,] 262 [Ind. Ct. App. 2006]. But skilled witness testimony is helpful because it involves conclusions that escape the average observer.

33 N.E.3d at 352-53.

[18] We agree with the State that Detective Bernhardt qualified as a skilled witness. As a trained forensic interviewer, who has investigated 300 to 350 cases

involving child abuse as the lead detective, Detective Bernhardt possesses knowledge beyond that of an average juror regarding a child's disclosure of child molestation. *See Jones v. State*, 957 N.E.2d 1033, 1041 (Ind. Ct. App. 2011) (stating that “[p]olice officers may give skilled witness testimony based on their observations and experience”); *see also Hape v. State*, 903 N.E.2d 977, 992 (Ind. Ct. App. 2009) (concluding that a state trooper with eight years of experience who had investigated 250 to 300 methamphetamine cases qualified as a skilled witness to testify regarding the amount of methamphetamine a user typically ingests to get high, how much methamphetamine is typically possessed by users and dealers, and how it is packaged for sale), *trans. denied*.

[19] The detective's testimony was based on her personal experience from conducting hundreds of child abuse investigations, and she explained that the majority of the cases she investigates involved delayed disclosure. Tr. p. 65. Her testimony was helpful in generally explaining to the jury that it is not uncommon for children to delay disclosure and be unable to recall specific details and dates of molestations. Detective Bernhardt did not testify why or how trauma causes a child to forget details and dates, and such testimony or evidence could only be presented by an expert witness in the field of neurology or psychology. The detective's testimony here was appropriately limited to her own observations resulting from investigations of hundreds of child abuse cases. For these reasons, we conclude that the trial court did not abuse its discretion when it admitted Detective Bernhardt's testimony.

Evidence Concerning Possible Physical Injury

[20] Hernandez also claims that the trial court abused its discretion when it sustained the State's objection to a question concerning possible injury to a victim's anus. Y.G. testified that Hernandez penetrated her anus with his penis. Tr. Vol. 2, p. 143. During direct examination, the State asked Detective Bernhardt about physical injuries to child victims of molestation. The detective stated that even when the disclosure is immediate, "[w]e don't normally see physical injuries on children." Tr. Vol. 3, p. 71. The detective further explained that because "the vagina stretches" in most cases there is no observable physical injury. *Id.* at 71-72.

[21] On cross-examination, the detective also testified that the anus stretches. *Id.* at 77. Hernandez then asked whether the anus "is more likely to tear." *Id.* The State objected and argued that Hernandez was trying to elicit testimony that only a medical expert could provide. *Id.* Hernandez responded that he was only "asking as to her observations as to what she has seen." *Id.* The court allowed Hernandez to rephrase his question but to "be careful . . . because you can't create a false impression in medical things you all hear in these cases[.]" *Id.* at 78. Hernandez then asked, "based on your training and experience in these cases, there is more likely - you see more injuries where there's an accusation of anal penetration." *Id.* After the court overruled the State's objection to that question, Detective Bernhardt replied, "if you're talking about [] a disclosure that came right away where I have [] had a couple of anal injuries, but delayed disclosures I don't think I've ever [] seen an anal injury." *Id.*

[22] Hernandez did not argue that the court “improperly limited the scope of” his cross-examination at trial. Appellant’s Br. at 25. Therefore, his claim is waived. See *Casady v. State*, 934 N.E.2d 1181, 1191 (Ind. Ct. App. 2010). Consequently, to prevail on appeal, Hernandez must establish that fundamental error occurred.

An error is fundamental, and thus reviewable on appeal, if it “made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.”

Durden v. State, 99 N.E.3d 645, 652 (Ind. 2018) (emphasis added, citations omitted).

[23] The right to cross-examination is guaranteed by the Sixth Amendment, but that right is not absolute. *Watson v. State*, 134 N.E.3d 1038, 1044 (Ind. Ct. App. 2019), *trans. denied*. The Sixth Amendment requires that the defendant is given an opportunity for effective cross-examination but not for “cross-examination that is effective in whatever way, and whatever extent, that a defendant might wish.” *Id.* Trial judges have “wide latitude to impose reasonable limits” on a cross-examination “based on concerns about, among other things, interrogation that is repetitive or only marginally relevant.” *Id.* (citing *Thornton v. State*, 712 N.E.2d 960, 963 (Ind. 1999)); see also *Washington*, 840 N.E.2d at 886 (stating that “[t]rial judges retain wide latitude to impose reasonable limits on the right to cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant”).

[24] Hernandez argues that the question, i.e. “whether the anus was more likely to tear than the vagina, . . . was critical because Y.G. testified that Hernandez would ‘put his penis inside of my butt. . . .’” Appellant’s Br. at 26 (quoting Tr. Vol. 2, p. 143). Hernandez claims that he “was attempting to extract exculpatory evidence to help disprove” Y.G.’s accusation that the molestation occurred several times over a period of two years. *Id.* And he maintains that the fact that Y.G. did not complain of pain and did not suffer injury to her anus undermines her credibility. *Id.*

[25] However, Detective Bernhardt was permitted to testify to her personal experience and her observations during child abuse investigations. And Hernandez did not inquire whether Detective Bernhardt had any specialized training that would permit her to testify generally concerning injuries to an anus after penetration by a penis. In addition, and more important to the fundamental error analysis, Hernandez was permitted to elicit testimony from other witnesses that established that Y.G. did not complain of pain and her parents did not observe any injury. For these reasons, Hernandez cannot establish that the trial court’s decision to limit his cross-examination of Detective Bernhardt to her own personal observations made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process. Therefore, Hernandez has not shown that the alleged

error in the court's decision to limit his cross-examination constituted fundamental error.²

Conclusion

[26] Hernandez has not established that the trial court committed reversible error when it rendered the evidentiary decisions that he challenges in this appeal.

[27] Affirmed.

Vaidik, J., and Pyle, J., concur.

² We do not decide in this appeal whether the trial court abused its discretion when it limited Hernandez's cross-examination of Detective Bernhardt.