

Case Summary

Michael Hunter appeals his convictions and thirty-year sentence for Class B felony burglary and Class B felony robbery. We affirm.

Issues

Hunter raises two issues, which we restate as:

- I. whether the trial court properly refused to admit into evidence a statement made by the victim after the crime; and
- II. whether his sentence is inappropriate.

Facts

On July 20, 2008, Ana Sanchez-Perez was at her home in Indianapolis with her two young children when Hunter broke into the house by cutting a screen and climbing through an open window. Armed with a gun, Hunter took money from Sanchez-Perez. Hunter also picked up a check written to another man and set it down.

Sanchez-Perez immediately reported the incident to police. Sanchez-Perez also claimed that Hunter sexually assaulted her. During a medical examination, Sanchez-Perez informed hospital personnel that she had only recently had sexual intercourse with her husband. A DNA test, however, revealed that she also recently had sexual intercourse with someone other than her husband or Hunter.

On August 14, 2008, the State charged Hunter with Class A felony rape, two counts of Class A felony criminal deviate conduct, Class B felony burglary, Class B felony robbery, Class D felony residential entry, and Class D felony theft. A jury found Hunter guilty of the burglary, robbery, residential entry, and theft charges. The trial court

entered convictions on the burglary and robbery convictions and sentenced Hunter to fifteen years on each count. The trial court ordered the sentences to be served consecutively for a total sentence of thirty years. Hunter now appeals.

Analysis

I. Exclusion of Evidence

Hunter argues that the trial court abused its discretion when it excluded evidence of Sanchez-Perez telling hospital personnel that she had only had consensual sex with her husband when in fact she had had sexual intercourse with another man as well. Hunter sought to introduce Sanchez-Perez's statement to hospital personnel and the conflicting DNA results to challenge her credibility.

Even if we were to agree with Hunter that the trial court should have admitted this evidence, any error in the exclusion of the evidence was harmless. “[E]rrors in the admission or exclusion of evidence are to be disregarded as harmless unless the errors affect the substantial rights of the party.” Wilson v. State, 770 N.E.2d 799, 802 (Ind. 2002) (citing Ind. Trial Rule 61). “An error will be deemed harmless if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties.” Farmer v. State, 908 N.E.2d 1192, 1199 (Ind. Ct. App. 2009).

Hunter was not convicted of the rape or criminal deviate conduct allegations. Further, whether Sanchez-Perez lied about consensual sexual intercourse with someone other than her husband is far removed in scope from the burglary and robbery allegations. Thus, Sanchez-Perez's statement about her sexual activity is not compellingly relevant as

it relates to the burglary and robbery convictions. Most importantly, Sanchez-Perez's testimony about the burglary and robbery was corroborated by DNA evidence showing that Hunter had spit outside the window he used to get into the house, and his fingerprints were found on the check inside the house. In light of this evidence, the exclusion of Sanchez-Perez's statement to hospital personnel did not impact Hunter's substantial rights. Any error in the exclusion of Sanchez-Perez's statement to hospital personnel was harmless.

II. Appropriateness of Sentence

Hunter also argues that his thirty-year sentence is inappropriate in light of the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id. Hunter has not met this burden.

As for the nature of the offense, Hunter entered a bedroom window while Sanchez-Perez was home with her two young children. In fact, it was Sanchez-Perez's children who alerted her that Hunter was in the house. Hunter then stole money from her at gunpoint. The nature of the offense does not warrant the reduction of Hunter's sentence.

As for his character, Hunter's criminal history includes juvenile adjudications, three convictions for Class A misdemeanor driving while suspended, and a conviction for Class D felony theft. At the time of sentencing, Hunter had also recently been convicted of two counts of Class B felony burglary and had other charges pending. This criminal history demonstrates that Hunter was not able to lead a law abiding life. As for his dependent children, although the trial court recognized that his incarceration would be a hardship on them, it does not appear that he was employed at the time he committed this crime. In that sense, we are not convinced that any hardship on his children warrants a reduction of his sentence.

Conclusion

Any error in the exclusion of Sanchez-Perez's statement to hospital personnel was harmless. Hunter has not established that his thirty-year-sentence is inappropriate. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.