

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT ALAN DUNHAM,

Defendant-Appellant.

UNPUBLISHED

October 11, 2005

No. 257548

Grand Traverse Circuit Court

LC No. 04-009423-FC

Before: O’Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (sexual penetration with a person under thirteen years of age), and two counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (sexual contact with a person under thirteen years of age). Defendant was sentenced to serve concurrent prison terms of 10 to 40 years for the CSC I conviction and 7 ½ to 15 years for each CSC II conviction. Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court erred in allowing a police detective to testify as an expert regarding whether it is unusual for victims of sexual abuse to continue to have postincident contact with their abusers. We disagree. We review for abuse of discretion a trial court’s determination regarding a witness’s expert qualifications and testimony. See *People v Peterson*, 450 Mich 349, 363 n 8, 379; 537 NW2d 857, amended 450 Mich 1212 (1995).

Defendant was accused of fondling and digitally penetrating a nine-year-old girl during a sleepover. While cross-examining the victim, defense counsel asked if she ever hugged defendant after the night of the abuse. The victim explained that she later saw defendant, but she denied hugging him. When the prosecution began laying a foundation for the qualification of a police detective as an expert to address the issue of post-abuse contact, defense counsel objected.

MRE 702 states,

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if

(1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The detective had been investigating abuse and sexual abuse cases for over 3 ½ years; he had conducted 350 to 450 abuse investigations; he had between 150 to 180 hours of training in interviewing suspects, witnesses, and victims; and he took various psychology courses during his undergraduate education. This evidence established the detective's knowledge, experience, and training to understand and conduct sexual abuse investigations, including the reactions of sexual abuse victims after the abuse. Furthermore, the relevant evidence assisted the trier of fact in determining a fact in issue, specifically whether the victim's later contact with defendant indicated that the abuse never occurred. *Peterson, supra* at 363. As our Supreme Court observed in *Peterson*, "An expert may testify regarding typical symptoms of child sexual abuse for the sole purpose of explaining a victim's specific behavior that might be incorrectly construed by the jury as inconsistent with that of an abuse victim *or* to rebut an attack on the victim's credibility." *Id.* at 373.

In this case, the detective limited his expert testimony to explaining that it is common for victims of sexual abuse to continue their ordinary relationship with an abuser. The detective's testimony shed light on any apparent inconsistency between the victim's testimony about her abuse and her testimony about her later, uneventful encounters with him. Because the jury could have misconstrued the later contact as indisputable evidence that the abuse never occurred, the admission of the evidence was not an abuse of discretion. *Id.*

Next, defendant argues that the probation agent who wrote the PSIR misquoted defendant's mother, who allegedly said that she and defendant's sister "were not surprised" by the charges because defendant "has always wanted to work closely with kids and they have told him in the past to keep his distance so nothing like this offense could happen." We review for abuse of discretion a sentencing court's response to a claim of PSIR inaccuracies. *People v Harrison*, 119 Mich App 491, 496; 326 NW2d 827 (1982). Contrary to defendant's suggestion, a sentencing court is not required to hold an evidentiary hearing when a factual challenge to a PSIR is raised. The court has wide latitude in responding to PSIR challenges, and it is a matter for the court's discretion to order further proofs. See *id.* Here, the court read the quotation in context and found that it awkwardly conveyed the mother's sentiment that if defendant remained around children long enough, a false accusation would eventually surface. The court attributed the quotation's negative connotation to the mother's ambiguous phrasing, but found no reason to doubt that the statement was accurately recorded given its gist. Therefore, the court's decision to deny defendant's correction was an appropriate exercise of its discretion.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ William B. Murphy