

No. 1-10-1379

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 21158
)	
BRYAN DEAN,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in sentencing defendant to 25 years' imprisonment for aggravated battery of a child. His proven lies to a treating physician regarding causing the victim's severe injuries were relevant to his rehabilitative potential. The court's statement to the effect that the victim would not progress developmentally beyond his age of two years at the time of the offense was a reasonable inference from the trial evidence.
- ¶ 2 Following a bench trial, defendant Bryan Dean was convicted of aggravated battery of a child and sentenced to 25 years' imprisonment. On appeal, defendant contends that his sentence

is erroneous where the court misstated certain evidence in aggravation and improperly used his decision not to incriminate himself during the sentencing hearing as an aggravating factor.

¶ 3 Defendant was charged with attempted first degree murder, aggravated battery of a child, and aggravated battery against Morris Humphrey, alleged to be under 13 years' old at the time of the alleged attack on or about October 19, 2008, by allegedly striking him about the head.

¶ 4 At trial, Damita Humphrey testified that, as of the summer of 2008, her two-year-old son Morris Humphrey was generally healthy and had never had a seizure. Defendant was her boyfriend and lived with Damita and Morris. While defendant was supposed to take care of Morris while Damita was at work, she did not discipline Morris by hitting him and did not give defendant permission to do so. She trusted defendant to take care of Morris, who he treated as his own son, and she had never seen defendant injure Morris.

¶ 5 On October 19, 2008, Morris took a nap in the middle of the day. That evening, while Damita was washing dishes and laundry between about 7 and 8 p.m., she heard a yelp "like a puppy would make." She went to see what caused it and saw defendant and Morris leaving Damita's bedroom. Defendant told Damita that it was "nothing," and as Morris seemed "fine," she thought little of it. Defendant put Morris to bed at about 8 p.m., and when Damita checked on Morris soon after, he nodded his head to her but did not speak. Shortly thereafter, defendant sent Damita out to buy him a cigar; upon returning about five to ten minutes later, she used her computer. At about 10:40 p.m., she heard "whimpering" from Morris' room, but when she went to investigate, defendant got there first and went in, telling her that "I will take care of it" so that she did not go in.

¶ 6 About an hour later, Damita heard more whimpering from Morris' room and went in. His body was stiff, his eyes were unfocused, and he was unresponsive. Damita told defendant to call "911" but he did not, instead telling her that she was panicking and assuring her that Morris

would "be okay." Damita phoned a hospital and was told that they could not give her more information without bringing Morris to the hospital. She brought Morris to a hospital by car, and his symptoms persisted during the trip. When she was taking Morris out of the car at the hospital, she accidentally bumped the top of his head against the top of the car door. She told emergency room personnel, and later police, that she hit Morris' head. Morris was later sent from that hospital to Children's Memorial Hospital, where Dr. Mary Pierce discussed Morris' injuries with Damita and defendant. Dr. Pierce told them that Morris had massive brain damage and broken vertebrae as well as an older arm fracture. When Dr. Pierce mentioned Morris' arm, defendant raised his hand and said something, but Damita could not recall what he said. Since October 2008, Morris was placed into his father's custody, though Damita had no further contact with defendant. Damita denied shaking Morris or "slam[ming]" his head against a hard object on the day in question.

¶ 7 On cross-examination, Damita was uncertain whether Morris was in the habit of taking naps during the day, as she was rarely at home during the day. Though she saw Morris daily, she was unaware that he had a broken arm, as Morris had never told her that he injured it. She did not recall telling Dr. Pierce that Morris does not usually nap but took a three-hour nap on the day in question, nor that Morris was normally energetic but was lethargic that day.

¶ 8 Dr. Mary Pierce testified that she examined Morris at Children's Memorial Hospital on October 20, 2008. He came to that hospital in critical condition, in a medically-induced coma because he had been having seizures and a breathing tube could not be introduced while he was having seizures and resisting treatment. Morris had a bruise on his left cheek and injury to his neck, but because of his breathing tube and neck brace Dr. Pierce could not do a more thorough visual examination.

¶ 9 X-rays and CAT and MRI scans revealed that Morris had bilateral subdural hematomas, or blood on both sides of his brain. The hematoma on the front of his head indicated severe or traumatic injury, which "takes so much more force than just a little conk" to the head. Instead, such an injury is caused by "horrific rotational forces" such as a "shake or whip or lash." Dr. Pierce ruled out that such injuries could be caused by being bumped against a car door or by Morris himself. Morris also had an "unusual" hematoma on the back of his head, indicating that the top or back of his head was "slammed into something." The hematomas on the front and back of Morris' head were two separate injuries "caused from two very different biomechanical forces." Morris would have died from these injuries without "aggressive" medical treatment. Moreover, Morris could not have suffered such injuries earlier in the day with these symptoms manifesting in the evening; that is, Morris would not have been able to walk with such severe injuries, so that the trauma had to have occurred after Damita saw him walk to his bedroom.

¶ 10 Both of Morris' eyes contained multiple hemorrhages arising from "severe rotational injuries" and rendering Morris temporarily blind. When Morris was more stable, his spine was scanned, revealing that two of his vertebrae had been "crushed." Dr. Pierce explained that this is an unusual injury in a child because their bones are more flexible than those of adults and because the force to cause such an injury usually arises from being flung from a vehicle or falling from a great height such as three stories. It could also arise from a person using "a child as a ram-rod and slam[ming] them into a wall or door" or by forcefully tossing a child. An X-ray also showed that Morris had a partially-healed fracture of his left humerus or upper-arm bone, indicating an injury at least a week old. Such an injury would be "very painful" to a child of Morris' age and the injury should have been apparent.

¶ 11 When Dr. Pierce met with defendant and Damita on October 20th, defendant "was very clear" that Morris suffered no trauma in the preceding three days. In the two days following that

meeting, neither defendant nor Damita offered an explanation of Morris' injuries. Dr. Pierce met with them again on the 22nd, after the test results had made clear to her that Morris "did not have any form of accidental trauma" but instead had suffered "severe physical assault." As Dr. Pierce explained her findings, Damita seemed "shocked" as if she was realizing the full extent of Morris' injuries for the first time, while defendant was "very nervous" but also "very attentive." On cross-examination, Dr. Pierce recalled that Damita gave differing accounts of the events on the evening of the 19th. She initially stated that Morris walked alone to his bedroom after 10:30 p.m. but later stated that Morris and defendant walked to Morris' bedroom before 8 p.m. Damita also told Dr. Pierce that she had left the home twice: to buy cigars for defendant but also for about 15 minutes to attend to the laundry. She told Dr. Pierce that Morris was "pouty" on the day in question, rather than "playful" as usual, and that his three-hour nap that day was unusual.

¶ 12 When Dr. Pierce told them about Morris' broken arm, defendant became upset and admitted that "I did it," telling Dr. Pierce that "he took full responsibility for all [Morris'] injuries" so that Damita would not lose custody of Morris. Defendant stated that, on the evening in question when he told Morris to go to bed but Morris instead went to the bedroom of Damita and defendant, he became angry, grabbed Morris' arm, and lifted him off the floor by the arm. However, this explanation was not consistent with the week or more of healing to Morris' arm fracture. Defendant also gave an explanation for the head injuries: when he checked on Morris in bed, he found that Morris was having seizures and, in carrying Morris to the living room, may have struck Morris' head against a wall. However, Dr. Pierce explained that this, as with Damita striking Morris' head against the car, would not cause the head injuries Morris suffered.

¶ 13 When Dr. Pierce last saw Morris, he "was not doing anything normally," including that he could not see, move, or react "in a purposeful way." When asked what the long-term effects of Morris' brain injuries would be, Dr. Pierce explained that, while he can "re-learn with a lot of

attention" to "re-train his brain to do things," it would be "impossible" for him to "have the potential that [he] had before the trauma occurred." Because the most critical period in a child's brain development "was exactly at the age that Morris was when this happened, *** he could potentially mentally be arrested at this age." In summary, Dr. Pierce stated that:

"Him being very young, the exciting news is that new medical therapies are coming along. I just want to throw this optimism out there. I really believe [in] the human ability to adapt. But, unfortunately, if you look at the likelihood or probability is that he's lost all kinds of function and he may – actually, it may be very hard for him developmentally language-wise to progress beyond the age of a three- or four-year-old. But I hope that I am completely wrong."

¶ 14 Morris Humphrey, Sr. (Humphrey), father of the minor victim Morris, testified that he had sole custody of Morris at the time of trial. He was not informed of Morris' injuries on October 19-20, 2008, until three days later. Morris was at Children's Memorial Hospital for a month and then a rehabilitation center (center) until January 2009. When Morris arrived at the center, he was blind, unable to walk or speak, and was being fed by tube. Morris was still receiving physical, speech, and occupational therapy as of the time of trial. Though he was four years' old as of trial, Morris had the speech ability of a two-year-old. His vision, specifically his depth perception, was also still affected. Morris was in special-needs day care while Humphrey works and, upon reaching school age, would be placed in a special education program.

¶ 15 The parties stipulated that a police detective would testify that Damita told her that she "accidentally bumped the victim's head on the car door while transporting him to" the hospital.

¶ 16 Following closing arguments, the court found defendant not guilty of attempted murder and guilty of the remaining charges. Defendant's post-trial motion was denied.

¶ 17 The presentence investigation report (PSI) showed that defendant's criminal record consisted of a 2005 conviction for possession of cannabis, punished by two years' probation terminated early as unsatisfactory. Defendant described a good relationship with his family, including both of his parents, and denied being abused or neglected in childhood. He admitted to light alcohol use and daily marijuana use, and he denied alcohol abuse problems or any physical or mental health issues. He received his general equivalency degree and was employed before the instant arrest.

¶ 18 At the sentencing hearing in February 2010, the State added to the felony cannabis conviction in the PSI defendant's misdemeanor convictions for driving under the influence of alcohol and retail theft. The court accepted victim impact statements from Damita and Humphrey. Humphrey's statement was (in relevant part) that Morris was still receiving frequent therapy as well as psychological counseling, was in special education preschool, and had "regressed to the skills and mindset of a two-year-old toddler" though he was over four years old.

¶ 19 Police sergeant Carlo Viscioni testified that, when he was a juvenile officer and defendant was a minor, he responded to about 30 calls to defendant's home, including truancy and curfew issues as well as a battery arrest of defendant. Defendant was often "angry and upset, sometimes enraged" during these calls, he would sometimes not answer background questions such as his name or birthdate, and he was resistant to Sergeant Viscioni's counsel that defendant obey his parents. However, he was not uncooperative during all the calls, and he would be more polite when Sergeant Viscioni would encounter him outside of such calls. Police detective Dan Murphy testified that he responded to a domestic battery report at defendant's

home in July 2000 and was told by defendant's mother that he struck her. Defendant was arrested for domestic battery but later released without formal charges.

¶ 20 Maria Dean, defendant's mother, testified that he was a "loving child, very respectful, very kind." Maria saw defendant with Morris; Morris "loved [defendant] so much" and defendant "shows so much love for the child." On cross-examination, Maria admitted that the police were called to an incident in her home in 2000 and that defendant was angry and had a temper but denied that he was "a violent boy."

¶ 21 Cynthia Dean, defendant's sister, testified that defendant helped her care for her child when she was raising the child alone, that he has "always been around kids" and she never saw him injure any child nor did any child report that he had. Cynthia opined that defendant did not commit the instant offense and that Morris "was kind of slow" even before the day in question.

¶ 22 Defendant offered into evidence that, while in jail, he had received his GED and was taking a class from Set Free Prison Ministry.

¶ 23 Defendant addressed the court, stating that he loved Morris "like a son" and apologizing "for the pain and troubles that [Morris] has had to go through." He was taking bible classes while in jail and had received his GED, and he planned to take college courses and learn a trade.

¶ 24 Following arguments in aggravation and mitigation, the court sentenced defendant to 25 years' imprisonment for aggravated battery of a child, with all remaining charges merged.

¶ 25 In his motion to reconsider his sentence, defendant argued that his sentence was excessive in light of his history and circumstances and in light of the available sentencing alternatives. At the motion hearing, the court stated that, "for all practical purposes, this child is dead. He is dead and you killed him. The information at trial was that he will forever be two years old. *** His body may have grown, but he will still be two with no prognosis, at least [by]

the testimony at trial, of getting past four years old." The court also stated that it "did not and would not punish you with respect to your statements," and:

"While the court would have been inclined to a lower sentence, the defendant never admitted to doing this dastardly act. He apologized. He was sorry this happened or that he went through the things that he did. But he never admitted or owned up to being a culprit who committed this act of forcibly slamming this child into the wall head first causing permanent brain damage and damage to his spine. He didn't admit to that. I am not going to punish him for *** not admitting to it. But I am ultimately not going to give a reduced sentence because he didn't admit[] it."

The court denied the motion to reconsider, and this appeal timely followed.

¶ 26 On appeal, defendant contends that his sentence is erroneous where the court misstated certain evidence in aggravation – that the court had "an erroneous understanding of Morris' prognosis, which led [the court] to speculate that Morris' worst possible prognosis was a future certainty" – and improperly used his decision not to incriminate himself during the sentencing hearing as an aggravating factor.

¶ 27 A person commits aggravated battery of a child when he intentionally or knowingly without legal justification "causes great bodily harm or permanent disability or disfigurement to any child under the age of 13 years." 720 ILCS 5/12-4.3(a) (West 2008). Aggravated battery of a child is a Class X felony punishable by 6 to 30 years' imprisonment. 720 ILCS 5/12-4.3(b); 730 ILCS 5/5-8-1(a)(3) (West 2008).

¶ 28 A sentence within the statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from the spirit and purpose of the law or

is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 29 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Alexander*, 239 Ill. 2d at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Alexander*, 239 Ill. 2d at 213. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Perkins*, 408 Ill. App. 3d at 763. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214; *People v. Flores*, 404 Ill. App. 3d 155, 158-59 (2010).

¶ 30 Here, we find no error in the court's statement that it was "not going to give a reduced sentence" because defendant did not admit to causing Morris' severe injuries. While a trial court should not automatically and arbitrarily consider a defendant's insistence on his innocence as an aggravating factor, a continued insistence on innocence and related lack of remorse can be relevant to defendant's rehabilitative potential, as it may convey to the court a strong message that the defendant is an unmitigated liar and presents an ongoing threat to society. *Perkins*, 408

Ill. App. 3d at 763. Notably, the court made this statement in the context of a motion to reconsider defendant's sentence; that is, the court was explaining why defendant was not entitled to a reduced sentence as he was requesting. Moreover, the trial evidence showed that defendant lied regarding the very issue of causing Morris' injuries. Defendant told Dr. Pierce that he broke Morris' arm on the evening in question and then bumped Morris' head as he carried him, but Dr. Pierce explained that neither "explanation" was consistent with the nature or severity of Morris' injuries. In short, defendant told Dr. Pierce that he was taking full responsibility for Morris' injuries and then did nothing of the kind. Thus, defendant did not merely fail to admit the full extent of his offense at sentencing but was shown at trial to have been an unmitigated liar.

¶ 31 As to the court's statement that Morris' development would not progress beyond that of a four-year-old, we find that not to be speculative as defendant contends but instead an eminently reasonable inference from the evidence. Defendant emphasizes that Dr. Pierce testified that "the exciting news is that new medical therapies are coming along. I just want to throw this optimism out there. I really believe [in] the human ability to adapt." But she also testified that the probability was that Morris would not "progress beyond the age of a three- or four-year-old" in mental development. Notably, Dr. Pierce concluded on this point that she "hope[d] that I am completely wrong." The gist of Dr. Pierce's prognosis for Morris was that he would be severely developmentally disabled, with progress being a slim possibility offered more out of hope than the present state of medical ability. The trial court was not required to elevate that possibility over the well-explained probability, and the court's conclusion that defendant "for all practical purposes" killed Morris by virtually stopping his mental development is a hyperbolic expression of a reasonable conclusion.

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¶ 32 Taking the record as a whole, we conclude that the court did not abuse its discretion in imposing a sentence of 25 years' imprisonment, several years less than the maximum sentence, for defendant's heinous offense. Accordingly, the judgment of the circuit court is affirmed.

¶ 33 Affirmed.