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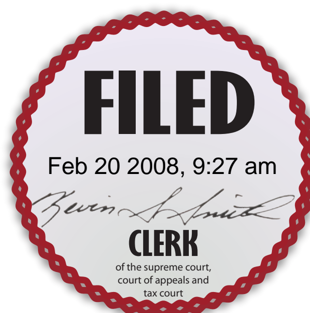

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IN THE COURT OF APPEALS OF INDIANA

LESLIE JEROME JOHNSON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

No. 82A01-0705-CR-249

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable J. Douglas Knight, Judge
Cause No. 82D02-0604-FA-328

February 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Leslie Jerome Johnson appeals his conviction for Class A felony Child Molesting. Johnson contends that the trial court abused its discretion by admitting DNA evidence when the State failed to present a sufficient chain of custody and that his sentence is inappropriate. Concluding that the chain of custody was not broken and that his seventy-year sentence is not inappropriate, we affirm the judgment of the trial court.

Facts and Procedural History

In 2005, Johnson began dating Darhonda Dulin. While dating Dulin, Johnson spent time with Dulin's son, R.C., and daughter, C.C. Soon thereafter, Johnson moved in with Dulin. Johnson began standing in C.C.'s bedroom doorway and looking at her while she slept. Johnson eventually began entering C.C.'s bedroom, touching her legs and stomach, and demanding sex from her in exchange for favors. C.C. estimated that Johnson had sex with her at least ten times. At the time, C.C. was twelve years old.

In April 2006, C.C., who had begun menstruating at age ten, missed her period. When Johnson became aware of this, he had her take a home pregnancy test, which indicated that she was pregnant. Johnson asked C.C. to lie to Dulin and not disclose that he had impregnated her. C.C. refused to lie to her mother but did not tell her that she was pregnant. Around this same time, Dulin became aware that C.C. was not menstruating and took her to a physician to be examined. A blood test and ultrasound confirmed that C.C. was five months pregnant. When Dulin asked C.C. to identify the father of the baby, she said that she did not remember. However, when Dulin asked whether Johnson

had ever touched her, C.C. started crying and admitted that Johnson had been having sex with her. On August 23, 2006, C.C. gave birth to T.C.

Dulin filed a report with the Evansville Police Department, and an investigation ensued. Although Johnson initially denied having any sexual contact with C.C., he eventually admitted in a taped interview that he had one sexual encounter with her. During the investigation, Val Miller-Fehd, a DNA technician, took DNA samples from Johnson, C.C., and T.C. to determine whether Johnson was T.C.'s father. After taking the DNA samples, Miller-Fehd placed the samples into two sealed envelopes, initialed the envelopes, and then placed them into a FedEx drop box for delivery to Strand Analytical Laboratories.

Once the DNA samples arrived at Strand, Cindy Lange, the accessioner, entered all of the data pertaining to the samples into a computer system and then placed the samples into a locked DNA storage room. Brian Rose, a DNA technician, retrieved the DNA samples from the storage box and inspected the seal of the envelopes to make sure that they were sealed in accordance with Strand's quality assurance protocol.[1] Rose then performed certain DNA extractions and amplifications and sent the samples to two doctors who later confirmed that the DNA testing indicated a probability of 3.8 billion to one that Johnson is T.C.'s father as compared to an untested, unrelated person.

The State charged Johnson with Count I, Child Molesting as a Class A felony,[2] and Count II, Child Molesting as a Class C felony.[3] The State later added a habitual

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[1] According to protocol, if DNA samples arrived in envelopes that were not sealed or appeared as though they had been tampered with, another sample was collected to ensure the integrity of the process.

[2] Ind. Code § 35-42-4-3(a)(1).

offender charge. Following a March 2007 jury trial on Count I,[4] Johnson was convicted as charged and pled guilty to the habitual offender charge. Following a sentencing hearing, the trial court identified the following aggravators: (1) Johnson's role as a custodian and authority figure with respect to C.C. and his betrayal of that role; (2) his encouragement that C.C. lie to Dulin about her pregnancy; (3) his criminal history, including twelve previous felonies; and (4) his failure to take responsibility for his actions. The trial court identified the following mitigators: (1) Johnson's past military service and indication that he was honorably discharged; (2) the fact he has an Associate's Degree in Robotics Engineering from IUPUI; (3) the fact he has been diagnosed with Post-Traumatic Stress Disorder and Attention Deficit Disorder; and (4) his admission that he is a habitual offender. Finding that the aggravators outweighed the mitigators, the trial court sentenced Johnson to forty years on Count I, enhanced by thirty years for being a habitual offender, for an aggregate term of seventy years. Johnson now appeals.

Discussion and Decision

Johnson raises two issues on appeal: (1) whether the trial court abused its discretion by admitting the DNA evidence when the State failed to present a sufficient chain of custody and (2) whether his sentence is inappropriate.

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[3] I.C. § 35-42-4-3(b).

[4] It is unclear from the record what happened to Count II, but we do know that it was not submitted to the jury.

I. Chain of Custody

Johnson contends that the trial court abused its discretion by admitting the DNA evidence when the State failed to present a sufficient chain of custody. Specifically, Johnson contends that the fact that Lange—the accessioner—did not testify to her handling of the DNA samples constitutes a break in the chain of custody because "the [S]tate offered absolutely no records or other proper evidence to establish the chain of custody from the time it left the hands of DNA collector Miller-Fehd in Evansville until it was removed from locked storage in Indianapolis by DNA technician Rose." Appellant's Br. p. 11. We disagree.

Our standard of review of a trial court's findings as to the admissibility of evidence is for an abuse of discretion. *Ground v. State*, 702 N.E.2d 728, 730 (Ind. Ct. App. 1998). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Rolland v. State*, 851 N.E.2d 1042, 1045 (Ind. Ct. App. 2006).

> The State bears a higher burden to establish the chain of custody of "fungible" evidence, such as blood and hair samples, whose appearance is indistinguishable to the naked eye. To establish a proper chain of custody, the State must give reasonable assurances that the evidence remained in an undisturbed condition. However, the State need not establish a perfect chain of custody, and once the State "strongly suggests" the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to admissibility. Moreover, there is a presumption of regularity in the handling of evidence by officers, and there is a presumption that officers exercise due care in handling their duties. To mount a successful challenge to the chain of custody, one must present evidence that does more than raise a mere possibility that the evidence may have been tampered with.

Troxell v. State, 778 N.E.2d 811, 814 (Ind. 2002) (citations omitted).

Here, after taking the DNA samples from Johnson, C.C., and T.C., Miller-Fehd sealed the samples in two sealed envelopes, initialed the envelopes, and shipped the samples to a DNA laboratory for further testing. Once the DNA samples arrived at the laboratory, Lange entered all of the data pertaining to the samples into a computer system and then put the samples into a locked DNA storage room. When Rose retrieved the DNA samples from the storage box, they remained in the same two sealed and initialed envelopes in which they were shipped. Thus, the DNA samples remained in the same two sealed and initialed envelopes from the time they were taken to the time they were tested, and nothing in the record suggests any notion of impropriety in the handling of these samples. Therefore, a reasonable assurance exists that the evidence remained in an undisturbed condition and the chain of custody was not broken. The trial court did not abuse its discretion.

II. Inappropriate Sentence

Johnson also contends that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides: "The 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." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005), *trans. denied*, *cert. denied*. The burden is on the defendant to persuade us that his

sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Johnson's sentence is inappropriate.

The nature of Johnson's offense is egregious. Johnson had unprotected sex with a twelve-year-old child at least ten times, leading her to become pregnant and give birth to T.C. Furthermore, as C.C's mother's live-in boyfriend, Johnson was an authority figure to her and betrayed that role. He told C.C. to lie to her mother and not disclose that he had impregnated her. As to Johnson's character, he has a criminal history consisting of eleven prior felony convictions including two counts of theft, seven counts of forgery, and two counts of burglary, spanning sixteen years. Moreover, he continues to fail to take responsibility for his despicable behavior. At his sentencing hearing he deflected responsibility onto the victim: "It didn't happen the way everybody said it happened. . . . If she don't get her way, she will destroy anybody in her path to get what she wants. . . . She, she, she devious." Sent. Tr. p. 501. We therefore cannot say that his sentence is inappropriate.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.