

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
April 4, 2023 Session

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Appellate Courts

STATE OF TENNESSEE v. ISAIAS RODRIGUEZ

**Appeal from the Circuit Court for Crockett County
No. 4903 Clayburn Peeples, Judge**

No. W2022-00894-CCA-R3-CD

The defendant, Isaias Rodriguez, was convicted of rape of a child, a Class A felony, and sentenced to forty years at 100% in the Department of Correction. On appeal, the defendant argues: (1) there was insufficient proof of the forensic interviewer’s years of experience as required by statute for admission of the victim’s forensic interview; (2) the trial court erred in failing to make specific findings regarding the qualifications of the child advocacy center as required by statute for admission of the victim’s forensic interview; and (3) the evidence is insufficient to sustain the defendant’s conviction without the improperly admitted forensic interview of the victim. After review, we affirm the trial court’s finding regarding the interviewer’s years of experience and determine the defendant has waived his issue regarding the qualifications of the child advocacy center. In addition, we determine that the evidence is sufficient to sustain the defendant’s conviction. Therefore, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J. ROSS DYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and JILL BARTEE AYERS, JJ., joined.

Kendall Stivers Jones, Assistant Public Defender, Tennessee Public Defenders Conference, Franklin, Tennessee (on appeal); Rachele Gibson, District Public Defender, and Jamie Kay Berkley and Matt Beaird, Assistant Public Defenders, Trenton, Tennessee (at trial), for the appellant, Isaias Rodriguez.

Herbert H. Slatery III, Attorney General and Reporter; Ronald L. Coleman, Assistant Attorney General; Frederick Hardy Agee, District Attorney General; and Scott G. Kirk and Jason Scott, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

Facts and Procedural History

The defendant was convicted of rape of a child based on evidence he forced his then eleven-year-old daughter to perform fellatio on him.¹ The convicting proof at trial came primarily by way of the victim's recorded forensic interview with Sydni Kirby at the Exchange Club – Carl Perkins Center for the Prevention of Child Abuse (“Carl Perkins Center”),² which the trial court determined met the criteria for admission under Tennessee Code Annotated section 24-7-123.

Pretrial Hearing

At a pretrial hearing regarding admission of the forensic interview, the State began by addressing the statutory criteria for admission. The trial court asked if there was any question about the interviewer meeting the qualifications and defense counsel responded, “I think we need to go through all of that for the record.” The trial court later asked defense counsel if she was “asking [the trial court] to pay particular attention to any part of it,” and defense counsel responded in the negative.

Ms. Kirby testified that she was employed by the Carl Perkins Center, “a non-profit center for the prevention and treatment of child abuse,” and that it was considered a child advocacy center. Ms. Kirby had held the position of forensic interviewer with the center since December 2015 and had conducted forensic interviews since January 2016. She had a Bachelor's Degree in Psychology from the University of Memphis and a Master's Degree in Social Work from the University of Tennessee qualifying her to become a forensic interviewer. Ms. Kirby agreed she had at least a minimum of forty hours of training in conducting forensic interviews and completed annual continuing education requirements. She worked under the supervision of another interviewer for sixty-seven hours prior to conducting interviews on her own and had course work, training, and experience in the area of child development. Ms. Kirby also participated in peer review and does not have a criminal record.

When questioned more extensively about her work history at the Carl Perkins Center, Ms. Kirby explained that she had been employed at the center since January 2010

¹ The defendant was also indicted for incest, but the State dismissed that charge before trial.

² The proper name for the center is Exchange Club – Carl Perkins Center for the Prevention of Child Abuse. See www.carlperkinscenter.org.

and that she worked in case management for the first year. She was the office manager from the beginning of 2011 until October 2013. Then, she worked as a family advocate from October 2013 until December 2015 when she became a forensic interviewer.

Ms. Kirby conducted her forensic interview of the victim on December 7, 2018, at the Carl Perkins Center. The Center made an audio-visual recording of the interview, and it was played for the trial court at the hearing. The victim was in the courtroom when the recording of her forensic interview was played, and she identified herself and Ms. Kirby as the individuals shown in the recording.

At the close of the proof, the defense challenged Ms. Kirby's experience as a forensic interviewer; specifically, that the statute required the interviewer to have three years' experience of which Ms. Kirby was shy by approximately one month at the time of the victim's interview. The trial court found that Ms. Kirby met the forensic interviewer qualifications because she had "frankly more than the equivalent of three years of full-time professional work in at least a combination of those services – Child Protective Services, Clinical Evaluation, Counseling, or Forensic Interviewing, or other comparable work with children."

The trial court also made the required statutory findings regarding the "particularized guarantees of trustworthiness" of the recording, the interview process, and the victim. The court concluded that the State had presented sufficient proof to establish that the forensic interview and recording met the qualifications of the statute for admission at trial.

Trial

At trial, Ms. Kirby detailed her qualifications and experience to the jury and testified about how her interview with the victim was conducted. Following Ms. Kirby's testimony, the recording of the victim's forensic interview was played for the jury. In the interview, the victim started by saying her mother kicked the defendant out of the house after one of the victim's brothers told their mother that the defendant had "put his thing" in the victim's mouth. The victim recounted that the defendant had woken her up one morning; he was naked and pointing down, while talking to someone on the phone. The victim told the defendant she was going to get her phone, but instead, she went into her brothers' room and hid in their closet. The defendant could not find the victim at first, but he eventually found her and pulled her out of the closet and her brothers' bedroom. The defendant, still naked, dragged the victim toward the bathroom. The victim tried to resist by holding onto a chair, but her hands slipped and she fell onto the bathroom floor. The defendant then sat on the victim's chest, covered her eyes with both hands, and put his penis in her mouth. The victim told the defendant to stop, and he told her to be quiet. The defendant eventually

got up and left the room. After the defendant left, the victim washed out her mouth and noticed that her mouth was bleeding and that she had a scratch inside her mouth. The victim returned to her brothers' bedroom and told them what had happened. The victim spit out something bad tasting from her mouth on the floor in her brothers' room. Later, the defendant came into the victim's brothers' room and apologized to the children. The defendant took the victim and her brothers to spend the day with different cousins. When the children's mother picked them up later that day, one of the victim's brothers told their mother about what had happened.

The victim subsequently testified at trial. The victim stated that she was born on October 16, 2007, and she identified the defendant in court as her father and the person she had talked about in her forensic interview.

Both of the victim's younger brothers, I.R. and M.R.,³ testified providing their perspectives of what took place on the morning in question. I.R. testified that he was awakened by the sound of the victim screaming in his bedroom and saw the defendant dragging the victim out of the room. The defendant was not wearing any clothes, which was unusual. I.R. left the bedroom and heard sounds of the victim screaming coming from the bathroom, but he got scared and returned to his bedroom. At some point, the victim came back into the bedroom, crying, and told her brothers that the defendant had "put his private part in her mouth." A short while later, the defendant came into the room and "started apologizing to all three of us."

M.R. similarly testified that he was awakened by the victim's loud screaming, although the victim was already in the bathroom when he woke up. A few minutes later, the victim came into the bedroom crying and upset, and she told her brothers that the defendant "had put [his] private stuff in her mouth."

The victim's mother testified as to how she learned of the rape and the actions she took in response. Captain Roy Mosier, an investigator with the Crockett County Sheriff's Department, testified concerning his department's investigation in the matter. Captain Mosier recalled "some mentioning of blood around [the victim's] mouth in some of the paperwork," but there were no photographs in the file.

Based on the proof presented, the jury found the defendant guilty of rape of a child. This timely appeal followed.

Analysis

³ It is the policy of this Court to refer to minors by initials only.

The defendant challenges the admission of the victim’s forensic interview on grounds that there was insufficient proof of the interviewer’s years of experience as required by statute, and the trial court did not make the required findings regarding the qualifications of the child advocacy center. The defendant extrapolates the evidence is insufficient to sustain his conviction without the improperly admitted forensic interview. The State responds that the trial court properly exercised its discretion in admitting the video of the interview. As we will address below, we conclude that the trial court did not err in finding that Ms. Kirby had the requisite years of experience required by the statute and that the defendant has waived his claim regarding the Carl Perkins Center’s qualification as a child advocacy center. We additionally determine the evidence is sufficient to sustain the defendant’s conviction.

Tennessee Code Annotated section 24-7-123 provides that a video recording in which a child under thirteen is interviewed by a forensic interviewer regarding sexual abuse is admissible as substantive evidence in a trial on the sexual abuse if the requirements of the statute are met. *Id.* § 24-7-123(a).⁴ The statute requires the State to make various showings regarding the qualifications of the interviewer and the nature of the recording, and it requires the child to authenticate the video and to be available for cross-examination. *Id.* § 24-7-123(b)(1), (3), (4), (5), (6). The trial court must also determine the recording “possess[es] particularized guarantees of trustworthiness.” *Id.* § 24-7-123(b)(2).

“Generally, questions concerning the admissibility of evidence rest within the sound discretion of the trial court, and this Court will not interfere with the exercise of that discretion in the absence of a clear showing of abuse appearing on the face of the record.” *State v. McCoy*, 459 S.W.3d 1, 8 (Tenn. 2014). However, our precedent indicates that de novo review applies when a trial court fails to make complete factual findings on the record as required by Tennessee Code Annotated section 24-7-123(d). *See State v. Bobby Lovin*, No. E2021-00705-CCA-R3-CD, 2022 WL 3078579, at *7-*8 (Tenn. Crim. App. Aug. 3, 2022); *State v. Justin Tyler*, No. W2015-00161-CCA-R3-CD, 2016 WL 1756419, at *6 (Tenn. Crim. App. Apr. 29, 2016).

The portion of the statute at issue in this appeal provides:

(3) The interview was conducted by a forensic interviewer who met the following qualifications at the time the video recording was made, as determined by the court:

⁴ During the pendency of this appeal, the legislature enacted some changes to this statute, but we will utilize the version in place at the time of the defendant’s trial.

(A) Was employed by a child advocacy center that meets the requirements of § 9-4-213(a) or (b) . . . ; [and]

.....

(C) Had experience equivalent to three (3) years of fulltime professional work in one (1) or a combination of the following areas:

- (i) Child protective services;
- (ii) Criminal justice;
- (iii) Clinical evaluation;
- (iv) Counseling; or
- (v) Forensic interviewing or other comparable work with children[.]

Tenn. Code Ann. § 24-7-123(b)(3)(A), (C).

Section 9-4-213, internally referenced in the statute, details the requirements a child advocacy center must demonstrate:

- (1) Is a nonprofit corporation which has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3);
- (2) Employs an executive director who is answerable to the board of directors and who is not the salaried employee of any governmental entity signing the memorandum of understanding and working protocol identified in subdivision (a)(3);
- (3) Has a signed memorandum of understanding and working protocol executed among:
 - (A) The department of children's services;
 - (B) All county and municipal law enforcement agencies within the geographical area served by the center;
 - (C) All district attorneys general offices within the geographical area served by the center; and
 - (D) Any other governmental entity which participates in child abuse investigations or offers services to child abuse victims within the geographical area served by the center;

(4) Facilitates the use of a multidisciplinary team (representing prosecution, law enforcement, mental health, medical, child protective and social services professionals and the juvenile court) which jointly:

- (A) Assess victims of child abuse and their families; and
- (B) Determine the need for services;

(5) Provides a facility that is child-focused, neutral, comfortable, private, and safe, where the multidisciplinary team can meet to coordinate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems;

(6) Provides for the provision of needed services, referral to such services, and case tracking;

(7) Has written policies and procedures consistent with the standards established by the National Children's Alliance; and

(8) Agrees to accurately collect and report key outcome data and information relative to each center's operations to the Tennessee chapter of children's advocacy centers, which is the statewide membership organization. The Tennessee chapter of children's advocacy centers shall compile and report such data annually to the chairs of the judiciary committee of the senate, civil justice committee of the house of representatives, health and welfare committee of the senate, and health committee of the house of representatives. The data and information collected pursuant to this subdivision (a)(8) shall include, at a minimum, the following:

- (A) Number and demographic profiles of cases served by age, gender, race, type of abuse, and treatment thereof, including mental health and medical services rendered;
- (B) Demographic profiles of perpetrators of abuse by age, gender, race, relationship to victim, and the outcome of any legal action taken against such perpetrators;
- (C) Nature of services and support provided by or through the center; and
- (D) Data and information relative to community investment in and community support of the center.

Id. § 9-4-213(a). Under subsection (b), new child advocacy centers need only show that they have a signed memorandum of understanding and working protocol with the entities listed in subsection (a)(3) and have applied for non-profit status. *Id.* § 9-4-213(b).

After the close of proof at the pretrial hearing, the defense challenged Ms. Kirby's experience as a forensic interviewer; specifically, that the statute required the interviewer to have three years' experience of which Ms. Kirby was about a month shy at the time of the victim's interview. In ruling on Ms. Kirby's qualifications, the trial court stated:

I think it's clear from her testimony that she has, in fact, had experience – frankly more than the equivalent of three years of full-time professional work in at least a combination of those services – Child Protective Services, Clinical Evaluation, Counseling, or Forensic Interviewing, or other comparable work with children.

At the hearing, Ms. Kirby testified that she had been employed at the Exchange Club – Carl Perkins Center for the Prevention of Child Abuse since January 2010 and worked in case management for the first year. She was the office manager from the beginning of 2011 until October 2013. Then, she worked as a family advocate from October 2013 until December 2015 when she became a forensic interviewer. She began conducting interviews in January 2016. Ms. Kirby's curriculum vitae specified that she had “[m]ore than 10 years of experience in social work positions with the Carl Perkins Center.”

Although Ms. Kirby did not provide details concerning the job descriptions in her various other roles, it is apparent she worked in some capacity in “comparable work with children” for the period of one month needed to bridge the gap to equate to three years. More specifically, Ms. Kirby worked as both a case manager and family advocate at the Carl Perkins Center in addition to her nearly three years as a forensic interviewer. Upon our review, we conclude the trial court did not err in finding Ms. Kirby had the requisite experience required by the statute.

Turning to the defendant's challenge concerning the child advocacy center, we agree that the record shows the trial court did not make specific findings regarding the Carl Perkins Center's qualification as a child advocacy center. However, it is certainly implicit in the trial court's other findings that it found the center qualified. For example, in order to find Ms. Kirby qualified as a forensic interviewer, the trial court had to find that she worked for an advocacy center which complied with the statutory guidelines. *See* Tenn. Code Ann. § 27-7-123(b)(3)(A).

Regardless, the defense never challenged the qualifications of the Carl Perkins Center or brought any deficiency to the trial court's attention. Ms. Kirby testified that the Carl Perkins Center was “a non-profit center for the prevention and treatment of child abuse” and that it was considered a child advocacy center. After the trial court went through the list of statutory requirements for admission of the forensic interview, the court asked defense counsel if she had any other reason, aside from her challenge to Ms. Kirby's

years of experience, that the recording should not be admitted, and defense counsel raised no issue. At no point did the defendant question whether the Carl Perkins Center qualified as a child advocacy center or object to the trial court's failure to make specific findings with regard to the center. Because the defendant failed to object, the issue is waived. *See* Tenn. R. App. P. 36(a) ("Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error."); Tenn. R. Evid. 103(a)(1) ("Error may not be predicated upon a ruling which admits . . . evidence unless a substantial right of the party is affected, and . . . a timely objection or motion to strike appears of record"). However, while we have concluded there is no error in this case, we caution the State and trial courts to scrupulously follow the parameters of the statute and make all the specific findings on the record to prevent reversal in other cases.

The defendant lastly contends there was insufficient evidence of sexual penetration without the video recording of the victim's forensic interview. However, having concluded the trial court properly admitted the forensic interview, there was sufficient evidence to support the jury's verdict. And, while "the testimony of a victim, by itself, is sufficient to support a conviction," *State v. Strickland*, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993), the victim's testimony was corroborated by the testimony of her brothers. Accordingly, we affirm the jury's verdict and the defendant's conviction.

Conclusion

Based upon the foregoing authorities and reasoning, the judgment of the trial court is affirmed.

J. ROSS DYER, JUDGE