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IN THE COURT OF APPEALS OF INDIANA

JESSE J. DIXON,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 35A05-1003-CR-822
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Thomas M. Hakes, Judge
Cause No. 35C01-1006-FA-00137

December 21, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jesse J. Dixon ("Dixon") was convicted in Huntington Circuit Court of two counts of Class A felony child molesting and one count of Class C felony child molesting. Dixon was sentenced to an aggregate term of fifty-three years, with seven years suspended to probation. Dixon appeals and raises two issues, which we restate as:

> I. Whether the trial court abused its discretion in concluding that a videotaped statement made by the victim was admissible under the protected person statute; and
>
> II. Whether Dixon's sentence is inappropriate.

We affirm.

Facts and Procedural History

From November of 2007 through March or April of 2008, Dixon lived in a home on Washington Street in Huntington, Indiana with his wife C.D. and C.D.'s four children, including five-year-old S.N.E. and nine-year-old S.D.E. During this time, on one occasion while C.D. and S.D.E. were at the store and the other children were in the living room playing games, Dixon and S.N.E. were alone together in Dixon's bedroom. Dixon removed his and S.N.E.'s clothing and had vaginal and anal intercourse with S.N.E. Afterward, Dixon threatened S.N.E. and told her that she would get into trouble if she told her mother.

On another occasion, Dixon told S.D.E. that she could come into his bedroom to play on the computer. When S.D.E. entered the bedroom, Dixon told her to sit on the bed and he got a container of sexual lubricant out of his nightstand. Dixon then pulled down his pants and underwear, sat down on the bed, and squirted some of the lubricant into

S.D.E.'s hand. Dixon then grabbed S.D.E.'s hand, put it on his penis, and moved it up and down. When Dixon moved his hand away after a couple of minutes, S.D.E. was able to pull her hand away. Dixon then tried to touch S.D.E.'s "private part," but she pushed his arm away. Tr. p. 589. At that point, Dixon became angry and told S.D.E. that he would hurt her and her family if she told her mother about the incident. C.D. and her children moved out of the Washington Street home when C.D. and Dixon separated in March or April of 2008.

Neither girl told anyone about Dixon's abuse until approximately two years later, after C.D. and her children had moved in with C.D.'s boyfriend, Johnny Carter ("Carter"). On the evening of May 19, 2010, C.D. held a family meeting with her children and Carter, during which she discussed "good touch, bad touch" and told her children that they should come to her if anyone ever tried to touch them. Id. at 338. During the meeting, S.N.E. became very upset and started "bawling." Id. at 339. When C.D. asked S.N.E. what was wrong, S.N.E. responded that she needed to talk to her privately, so C.D. took S.N.E. into the kitchen. Once there, S.N.E. told C.D. that Dixon had "touched" her "in her front and her back." Id. at 40. When C.D. and S.N.E. finished talking, C.D. told Carter what S.N.E. had told her, and Carter immediately called the police. S.D.E. apparently overheard Carter's telephone conversation and began crying and screaming "no, no, no, not my little sister too." Id. at 341.

The next morning, C.D. brought S.N.E. and S.D.E. to McKenzie's Hope, a child advocacy center, where Karena Hernandez ("Hernandez"), a department of child services

caseworker, conducted separate, videotaped interviews of the girls. Based on disclosures made by S.N.E. and S.D.E., the State charged Dixon with two counts of Class A felony child molesting relating to S.N.E. and one count of Class C felony child molesting relating to S.D.E. Prior to trial, the State filed a motion to admit S.N.E.'s videotaped statement under the protected person statute. The trial court held hearings on the motion on November 8 and 15, 2010. Thereafter, on November 18, 2010, the trial court entered an order finding that S.N.E. was unavailable to testify and that the videotaped statement was admissible under the protected person statute. A three-day jury trial commenced on February 1, 2011, at which S.N.E.'s videotaped statement was admitted into evidence and S.D.E. testified for the State.[1]

At the conclusion of the trial, the jury found Dixon guilty as charged. For the Class A felony convictions, the trial court sentenced Dixon to concurrent terms of forty-six years with five years suspended to probation. For the Class C felony conviction, the trial court sentenced Dixon to seven years with two years suspended to probation, to run consecutive to his Class A felony convictions. Accordingly, Dixon received an aggregate sentence of fifty-three years, with forty-six years executed and seven years suspended to probation. Dixon now appeals.

I. Protected Person Statute

On appeal, Dixon claims that the trial court abused its discretion in admitting into evidence the videotape of S.N.E.'s interview with Hernandez. The decision to admit

[1] Dixon's first trial, which commenced on December 7, 2010, resulted in a mistrial due to a hung jury.

evidence is within the sound discretion of the trial court and is afforded great deference on appeal. Taylor v. State, 841 N.E.2d 631, 634 (Ind. Ct. App. 2006) (citing Carpenter v. State, 786 N.E.2d 696, 702 (Ind. 2003)). A trial court abuses its discretion where its decision is clearly against the logic and effect of the facts and circumstances before it or it misinterprets the law. Id. However, because the protected person statute "impinges upon the ordinary evidentiary regime[,]" a trial court's responsibilities thereunder carry with them "'a special level of judicial responsibility.'" Carpenter, 786 N.E.2d at 703 (quoting Cox v. State, 706 N.E.2d 547, 551 (Ind. 1997)); accord Taylor, 841 N.E.2d at 634.

Indiana Code section 35-37-4-6 (2004), also known as the "protected person statute" or the "child hearsay statute," provides a list of certain conditions under which evidence that would otherwise be inadmissible will be allowed in cases involving certain crimes against "protected persons." J.A. v. State, 904 N.E.2d 250, 255 (Ind. Ct. App. 2009), trans. denied. Among the crimes to which the protected person statute applies are sex crimes under Indiana Code chapter 35-42-4, which includes child molesting under Indiana Code section 35-42-4-3 (2004). J.A., 904 N.E.2d at 255 n.4 (citing I.C. § 35-37-4-6(a)(1)). A "protected person" is defined to include "a child who is less than fourteen (14) years of age." Id. (citing I.C. § 35-37-4-6(c)(1)).

The protected person statute provides that a statement or videotape that: (1) is made by a person who at the time of trial is a protected person; (2) concerns an act that is a material element of a listed group of offenses that includes child molesting, that was

allegedly committed against the person; and (3) is not otherwise admissible into evidence, is admissible into evidence in a criminal action for a listed group of offenses that includes child molesting, if the requirements of subsection (e) are met. Id. (citing I.C. § 35-37-4-6(d)).

Subsection (e) of the protected person statute, which is at issue here, provides:

> A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:
> (1) The court finds, in a hearing . . . that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.
> (2) The protected person:
> (A) testifies at the trial; or
> (B) is found by the court to be unavailable as a witness for one (1) of the following reasons:
> (i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate. . . .

I.C. § 35-37-4-6(e).[2]

Here, the trial court found that S.N.E. was a protected person within the meaning of the statute and that she was unavailable to testify because doing so in Dixon's physical presence would cause S.N.E. "to suffer serious emotional distress such that [S.N.E.]

[2] Subsection (f) of the protected person statute provides that "[i]f a protected person is unavailable to testify at the trial for a reason listed in subsection (e)(2)(B), a statement or videotape may be admitted in evidence under this section only if the protected person was available for cross-examination: (1) at the hearing described in subsection (e)(1); or (2) when the statement or videotape was made." Here, Dixon stipulated that S.N.E. was available for cross-examination at the hearing, but he agreed to conduct his cross-examination by way of a deposition. Dixon raises no argument on appeal concerning S.N.E.'s availability for cross-examination.

could not reasonably communicate." Appellant's App. pp. 88-89. On appeal, Dixon does not dispute S.N.E.'s status as a protected person or her unavailability to testify. Rather, Dixon argues that the trial court abused its discretion in concluding that the time, content, and circumstances of the videotaped statement provided sufficient indications of reliability to support its admission at trial.

Factors to be considered by the trial court in determining the reliability of a statement under the protected person statute include: the time and circumstances of the statement, whether there was a significant opportunity for coaching, the nature of the questioning, whether there was a motive to fabricate, use of age-appropriate terminology, spontaneity, and repetition. Taylor, 841 N.E.2d at 635. Additionally, "[l]engthy and stressful interviews or examinations preceding the statement may cast doubt on the reliability of the statement or videotape sufficient to preclude its admission." Pierce v. State, 677 N.E.2d 39, 44 (Ind. 1997). There are undoubtedly many other relevant factors to consider in individual cases. Id.

Dixon's principal contention on appeal is that S.N.E.'s videotaped statement lacks sufficient indications of reliability because at least two years passed between the molestation and the making of S.N.E.'s videotaped statement. We acknowledge the concern expressed in Pierce that the passage of time between an alleged molestation and a child's statement "tends to diminish spontaneity and increase the likelihood of suggestion." Id. at 45. The cases Dixon cites on appeal all undeniably support the conclusion that a long delay between the alleged molestation and the child's statement

weighs against a finding of reliability under the protected person statute. See Carpenter, 786 N.E.2d at 703; Pierce, 677 N.E.2d at 45, Nunley v. State, 916 N.E.2d 712, 717 (Ind. Ct. App. 2009).

Although the delay in each of those cases was significantly shorter than that at issue here,[3] the holdings in those cases were not premised solely on such delay. See Carpenter, 786 N.E.2d at 704 (finding statements unreliable not only because of delay, but also because "the statements themselves were not sufficiently close in time to each other to prevent implantation or cleansing, and [the child] was unable to distinguish between truth and falsehood"); Pierce, 677 N.E.2d at 45 (suggesting, but not deciding, that videotaped statement might be unreliable due not only to delay, but also because interview took place after the victim went through a "potentially disorienting physical examination at a doctor's office[,]" and child's mother was present during interview and suggested several answers and asked leading questions); Nunley, 916 N.E.2d at 718 (finding videotaped statement unreliable based not only on delay between molestation and statement, but also because statement was not made until approximately one year after child's initial disclosure to her mother and because statement contained additional allegations not made in victim's initial disclosure).

[3] In Pierce, the victim's videotaped statement was made on the same day as the molestation, but "several hours" later. 677 N.E.2d at 45. In Carpenter, there was "no evidence at all as to when the alleged molestation occurred[,]" but the charging information alleged that the molestation occurred at some point within the six weeks preceding the child's statements. 786 N.E.2d at 703. In Nunley, the child's videotaped statement was made "a little over a year after [the child] was molested." 916 N.E.2d at 715. Here, the molestation took place some time between November 2007 and April 2008, and S.N.E.'s videotaped statement was not made until May 20, 2010. Thus, the statement was made between two and two-and-one-half years after the alleged molestation.

We agree with Dixon that the passage of time between the offense and S.N.E.'s statement weighs against a finding of reliability in this case. However, we believe that the impact of the delay is diminished where, as here, it is alleged that the perpetrator used threats to maintain the protected person's silence. In any event, such delay is only one factor to be considered and is not necessarily dispositive. See Mishler v. State, 894 N.E.2d 1095, 1101 (Ind. Ct. App. 2008); Taylor, 841 N.E.2d at 636. Accordingly, we now turn our attention to the consideration of the other relevant factors bearing on the reliability of S.N.E.'s statement.

We first note that S.N.E.'s initial disclosure about the molestation was made to her mother, C.D. C.D. was having a discussion with her children about "good touch, bad touch," during which she told her children that they should come to her if anyone ever tried to touch them. Tr. p. 338. At the time that C.D. initiated the conversation, she did not suspect that any of her children had been molested, and she had not mentioned Dixon. During the discussion, S.N.E. started "bawling" and asked to speak to her mother privately. Id. at 339. When C.D. and S.N.E. were alone, S.N.E. told her mother that Dixon had touched her "in her front and her back." Tr. p. 40. C.D. did not ask for additional details at that point, and S.N.E. did not elaborate. Thus, although S.N.E.'s statement to her mother was not admitted at trial, we note that her initial disclosure was spontaneous. See M.T. v. State, 787 N.E.2d 509, 512 (Ind. Ct. App. 2003) (finding that child's statement was spontaneous when made in response to mother's statement that child could tell her if someone touches her vaginal area).

In her videotaped interview, S.N.E. stated that Dixon had touched her "butt" and her "pee pee" with his "pee pee." Tr. p. 451. When asked to elaborate, S.N.E. stated that at some point when she lived with Dixon, while C.D. and S.D.E. were at the store and the other children were in the living room playing games, Dixon and S.N.E. were alone together in Dixon and C.D.'s bedroom and Dixon took off his and S.N.E.'s clothes. Hernandez asked what happened next, and S.N.E. responded by writing out the word "S-E-K-S." Tr. p. 450. When Hernandez asked what that meant, S.N.E. responded that it is "gross" and "nasty" and indicated that Dixon had used his "pee pee" to do sex to her "pee pee." Id. at 452, 454. S.N.E. later clarified that Dixon used his "pee pee" to touch her "pee pee" on the "[i]nside . . . [w]here the baby will come out." Tr. pp. 471-72. S.N.E. also stated that Dixon put his "pee pee" inside her "butt" and "moved it back and [forth,]" and that it hurt and "felt nasty." Id. at 456-59. While these statements were not truly spontaneous in the sense that they were elicited as part of an interview directed toward discovering evidence of molestation, they were substantially consistent with, though more detailed than, S.N.E.'s prior, spontaneous statement to her mother. Cf. Nunley, 916 N.E.2d at 718 (videotaped statement found unreliable in part because it contained "entirely new allegations" not made in victim's initial disclosure).[4]

[4] On appeal, Dixon alleges that S.N.E.'s statement is less reliable because she has refused to talk about the abuse during subsequent therapy sessions. However, Marla McQuinn, S.N.E.'s therapist, testified at the child hearsay hearing that S.N.E. was very shy and that she would become anxious when she was asked about the abuse. McQuinn also testified that S.N.E. had only been to seven therapy sessions with her, and that it often takes children six to eight sessions to build trust with a therapist, and that it can take up to a year for a child to feel comfortable talking about abuse. In light of this testimony, we do not find S.N.E.'s reluctance to discuss the abuse in her therapy sessions to be particularly probative of the reliability of her videotaped statement.

With regard to the opportunity for coaching, we first note that the opportunity arises after the victim's initial disclosure. Id. Here, S.N.E. first disclosed the abuse to her mother some time after 6:00 p.m. on May 19, 2010, and C.D. picked S.N.E. up from school the next morning to bring her to McKenzie's Hope for the interview. Thus, less than twenty-four hours elapsed between S.N.E.'s initial disclosure and her videotaped interview, and S.N.E. presumably spent a large portion of that time sleeping. S.N.E. also spent a portion of this time at school, outside of her family's presence. We therefore conclude that there was not a significant opportunity for coaching in this case. See M.T., 787 N.E.2d at 513 (finding videotaped statement admissible under protected person statute where two days passed between child's initial disclosure and interview). Moreover, C.D. testified at the child hearsay hearing, so Dixon had the opportunity to cross-examine her concerning the possibility of coaching. See Pierce, 677 N.E.2d at 45 (finding child's statement to her mother reliable in part because mother was available for cross-examination regarding "the potential for any implantation or cleansing of [the child's] story"). C.D. testified at the child hearsay hearing that she did not discuss the details of the molestation with S.N.E. prior to the interview.

With regard to the nature of the questioning, we note that the interview was conducted by a trained professional outside the presence of S.N.E.'s family, prior to S.N.E.'s physical examination. See Pierce, 677 N.E.2d at 45 (suggesting that videotaped statement might be unreliable where child's mother was present during interview and suggested several answers and asked leading questions, and because interview took place

after child went through "a potentially disorienting physical examination"); M.T., 787 N.E.2d at 512 (finding videotaped statement reliable in part because only the child and the interviewer were present during the interview). Dixon has identified a single leading question Hernandez asked early in the interview.[5] Specifically, after S.N.E. had identified the "private parts" on a diagram of a boy and girl, Hernandez asked S.N.E. if anyone had "ever done a touch on any of [her] private parts[.]" Tr. pp. 441-42. Although this was technically a leading question, it did not suggest to S.N.E. that *Dixon* had touched S.N.E.

Dixon does not direct our attention to any other leading questions, but we nevertheless note that when S.N.E. became reluctant to discuss the allegations, Hernandez specifically asked S.N.E. whether Dixon had touched her private parts. Tr. pp. 442. 443. However, Hernandez asked these questions only after S.N.E. indicated that she was there to discuss something that had happened with Dixon. Hernandez used a very limited number of leading questions geared toward getting S.N.E. to open up about the abuse, and S.N.E. went on to give a detailed account of the molestation, using age-appropriate language. Moreover, Hernandez stressed to S.N.E. the importance of telling the truth during the interview, and S.N.E.'s statement was consistent with her previous disclosure to her mother. Under these facts and circumstances, we cannot conclude that

[5] Dixon also notes that on three occasions during the interview, Hernandez asked S.N.E. to tell her what she had told her mother. Tr. pp. 438, 442, 443. Dixon asserts that these requests constituted leading questions, but we cannot agree. These requests did not in any way suggest the answer Hernandez desired, they did not embody any assertion of material fact, and they could not be answered with a simple "yes" or "no." See Vance v. State, 860 N.E.2d 617, 619 (Ind. Ct. App. 2007) (noting that a leading question suggests to the witness the answer desired, indicates a fact to the witness that the questioner desires to have confirmed, or embodies a material fact and can be answered with a simple yes or no).

the Hernandez's minimal use of leading questions weighs heavily against a finding of reliability.

Dixon also alleges that S.N.E. had a motive to fabricate her allegations against him. Dixon claims that C.D. and Dixon had a "rough relationship" and that S.N.E. had at some point been a witness to Dixon "pulling a knife on C.D." Appellant's Br. at 11. According to Dixon, "[s]eeing her mother's rough relationship with Dixon and her anger towards and fear of him provided a strong motive to fabricate in this instance." Id. at 11-12. We cannot agree. Evidence presented at trial established that S.N.E. had no contact with Dixon for two years prior to her disclosure, and nothing had happened during those two years to cause S.N.E. to be upset or angry with Dixon. Dixon offers no explanation for why S.N.E. would wait two years after her last contact with Dixon to fabricate her allegations. We therefore cannot conclude that S.N.E. had an appreciable motive to fabricate the allegations.

Dixon also suggests that S.N.E. was given gifts and rewards for making statements against Dixon, but this claim is unsupported by the record. Specifically, he asserts that S.N.E. was given a teddy bear when she was interviewed by a police officer on the night she made her initial disclosure. Our review of the record reveals that although Officer Edward Wilcoxson ("Officer Wilcoxson") of the Huntington Police Department came to S.N.E.'s home on the night she made her initial disclosure in response to Carter's 911 call, Officer Wilcoxson did not interview S.N.E. on that night or on any subsequent date. Rather, he simply introduced himself and asked S.N.E. and S.D.E. their ages and where

they went to school. After speaking with C.D. and Carter, Officer Wilcoxson left, but he returned approximately an hour later to drop off stuffed animals for the girls because he believes that children who have "gone through something traumatic . . . need something to comfort them." Tr. p. 391. There is absolutely no evidence in the record that Officer Wilcoxson gave S.N.E. the stuffed animal as a reward or inducement for S.N.E. to make statements against Dixon.

Dixon also makes reference to a "police badge" that S.N.E. received from the prosecuting attorney and notes that S.N.E. asked for a "prize" multiple times during her deposition. Appellant's Br. at 11. However, Dixon has not identified when or why S.N.E. received the badge, and he therefore cannot tie it to any statement made against Dixon, much less the videotaped statement at issue here. Additionally, when the prosecutor asked S.N.E. during her deposition what the badge meant, she responded "[a]lways tell the truth." Appellant's App. p. 337. And while we note that S.N.E. did repeatedly ask for a prize during her deposition, she did not state that she had ever received any prizes in connection with this case. In fact, S.N.E. did not mention ever having received a prize, except from her aunt on her birthday. Id. at 325. And much of S.N.E.'s persistence in asking for a prize may be attributable to Dixon's attorney's initial response that he would "try to arrange something." Id. at 312.

Dixon also claims, without citation to the record, that at "several" points during the interview, S.N.E. "asked if she could draw a picture and was told she could not until she finished the interview." Appellant's Br. at 11. We note that Hernandez told S.N.E.

that she would have to wait until the end of the interview if she wanted to draw pictures "for fun," but Hernandez was simply attempting to keep seven-year-old S.N.E.'s attention focused on the purpose of the interview, and S.N.E. was not particularly troubled by this response. Tr. p. 447. Dixon also appears to suggest that S.N.E. wanted to end the interview, but was told that she would not be able to leave until Hernandez "heard what she wanted about the bad touches." Appellant's Br. at 11. At one point during the interview, after S.N.E. had already indicated that Dixon had used his "pee pee" to touch her "pee pee" and her "butt," S.N.E. asked "[w]hen are we gonna go?" Hernandez responded that she would take S.N.E. back out to her mother after she found out about the touches. Tr. p. 452. However, S.N.E. never asked if she could leave or to end the interview. Additionally, the entire interview only lasted about forty-five minutes, and although S.N.E. was somewhat reluctant to talk about the abuse, she did not appear to be emotional or excessively nervous.

We also note the existence of additional factors bearing on the reliability of S.N.E.'s videotaped statement. S.N.E. was seven years old at the time of her videotaped statement, significantly older than the three-year-old witnesses in Pierce and Carpenter. See Surber v. State, 884 N.E.2d 856, 863 (Ind. Ct. App. 2008), trans. denied (finding statements reliable in part because child was five years old at the time they were made). Also, unlike the witnesses in Pierce and Carpenter, S.N.E. was not determined to be incompetent to testify. See Carpenter, 786 N.E.2d at 704 (noting that "there is a degree of logical inconsistency in deeming reliable the statements of a person who cannot

distinguish truth from falsehood"). S.N.E.'s age at the time of the criminal acts and at the time of her disclosure, the threats of harm made by Dixon against her, the spontaneity of her disclosure in response to her mother's good touch, bad touch discussion, and the fact that the video recording at issue was made within twenty-four hours of the disclosure all support the trial court's finding of reliability under Indiana Code section 35-37-4-6(e)(1). For all of these reasons, we cannot conclude that the trial court abused its discretion in determining that S.N.E.'s videotaped statement bore sufficient indicia of reliability to be admissible under the protected persons statute.

II. Sentencing

Next, Dixon argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. Alvies v. State, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009) (citing Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218). This appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that a 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." Anglemyer, 868 N.E.2d at 491. However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due

consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007).

Dixon committed two counts of Class A felony child molesting, for which the sentence range is twenty to fifty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4 (2004). For his Class A felony convictions, Dixon was sentenced to concurrent terms of forty-six years with five years suspended to probation. Dixon also committed Class C felony child molesting, for which the sentence range is two to eight years, with an advisory sentence of four years. Ind. Code § 35-50-2-6 (2004). For his Class C felony conviction, Dixon was sentenced to a term of seven years with two years suspended to probation. The trial court ordered the Class A felony sentences, which related to acts committed against S.N.E., to run consecutive to the Class C felony sentence, which related to acts committed against S.D.E. Thus, Dixon received an aggregate sentence of fifty-three years, with forty-six years executed and seven years suspended to probation.

On appeal, Dixon argues that his sentence is inappropriate and asks this court to revise his sentence on each count to the advisory sentence and order the sentences on all three counts to be served concurrently. In support of his argument that concurrent, advisory sentences are appropriate in this case, Dixon cites several cases that are factually inapposite in that they involved a single victim of child molestation. See Rivers v. State,

915 N.E.2d 141, 143-44 (Ind. 2009) (consecutive, advisory sentences revised to be served concurrently where three acts of molestation were committed against a single victim); Monroe v. State, 886 N.E.2d 578, 580-81 (Ind. 2008) (revising consecutive, below-presumptive sentences to concurrent, maximum sentences where "the five counts of child molestation were identical and involved the same child"); Buchanan v. State, 767 N.E.2d 967, 974 (Ind. 2002) (reducing a fifty-year maximum sentence for Class A felony child molesting to an enhanced sentence of forty years where the defendant committed one act of molestation against a single victim); Laster v. State, 918 N.E.2d 428, 434-35 (Ind. Ct. App. 2009) (revising consecutive advisory sentences to concurrent enhanced sentences where the defendant committed multiple acts of molestation against one child). But here, Dixon molested both S.N.E. and S.D.E. As a general matter, the existence of multiple victims may justify the imposition of enhanced and consecutive sentences. See Sanchez v. State, 938 N.E.2d 720, 723 (Ind. 2010); Tyler v. State, 908 N.E.2d 463, 468 (Ind. 2009); Granger v. State, 946 N.E.2d 1209, 1221 (Ind. Ct. App. 2011).

Nevertheless, Indiana courts have occasionally revised sentences for child molestation even where there were multiple victims when other evidence in the record supported revision. See Sanchez, 938 N.E.2d at 723 (revising defendant's consecutive, enhanced sentences to be served concurrently where the defendant molested two young victims, but the molestations were isolated incidents and defendant had limited criminal history unrelated to the molestations and did not physically harm victims); Granger, 946 N.E.2d at 1221 (reducing defendant's executed sixty-year sentence for molesting two

victims to fifty years executed with ten years suspended in light of defendant's "lack of prior criminal record, generally good conduct in the community separate from the offenses for which she was convicted, and lack of substantial physical harm to her victims"). However, based on our review of the record, we are unconvinced that revision is warranted here.

Considering the nature of the offense, we note that Dixon engaged in vaginal and anal intercourse with S.N.E., his five-year-old stepdaughter, and that he forced S.D.E., his nine-year-old stepdaughter, to masturbate him. He molested each girl on a single occasion, and there is no evidence that Dixon caused substantial physical harm to either of the victims. However, S.N.E. stated that Dixon's molestation caused her physical pain. Moreover, Dixon abused a position of significant trust as the girls' stepfather. Dixon had been a friend of the girls' biological father, who died prior to C.D.'s marriage to Dixon. After his marriage to C.D., Dixon became a father figure to the girls and they called him "dad." Tr. p. 728. The record also reveals that Dixon threatened the girls with physical violence to keep them from telling anyone about the molestation. Specifically, S.N.E. stated that she did not tell anyone about what Dixon did to her because Dixon "would smack [her] and hit [her] and [she] would get in trouble by him if [she] told [her] mom." Id. at 468. S.D.E. testified that Dixon became angry with her when she resisted his attempt to touch her "private part" and that he told her that he would hurt her and her family if she told her mother about the incident. Id. at 589-90.

Turning now to our evaluation of Dixon's character, we note that Dixon maintained steady employment with the same company for approximately seven years prior to his arrest. However, we also note that Dixon's adult criminal history includes convictions for disorderly conduct, criminal mischief, operating a vehicle without financial responsibility, and operating a vehicle without a license. Additionally, in 2009, Dixon was charged with possession of marijuana and possession of paraphernalia, but he apparently entered into and successfully completed a pretrial diversion agreement. We further note that Dixon's probation on the disorderly conduct conviction was revoked.

Although Dixon's adult criminal history is unrelated to the present crimes and consists of relatively minor offenses, we are particularly troubled by Dixon's history of juvenile delinquency, which includes two separate adjudications for child molesting. After his second juvenile adjudication for child molesting, Dixon was ordered into a residential placement at White's Residential and Family Services in Wabash, Indiana, where he remained for over a year and received sex offender counseling. Dixon received additional sex offender counseling upon his release from White's. However, Dixon's current convictions establish that these previous attempts at rehabilitation were unsuccessful and that Dixon is a dangerous, recidivist child molester.

In light of Dixon's multiple victims, their young ages, his violation of a position of trust, his threats to his victims, his adult criminal history, his history of juvenile delinquency which includes two separate adjudications for child molesting, and the apparent failure of previous attempts at rehabilitation, we cannot conclude that the trial

court's imposition of consecutive, enhanced sentences was inappropriate. Dixon's fifty-three-year aggregate sentence, with forty-six years executed and seven years suspended to probation, is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The trial court did not abuse its discretion in ruling that S.N.E.'s videotaped statement was admissible under the protected person statute. Dixon's fifty-three-year aggregate sentence, with forty-six years executed and seven years suspended to probation, is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAILEY, J., and CRONE, J., concur.