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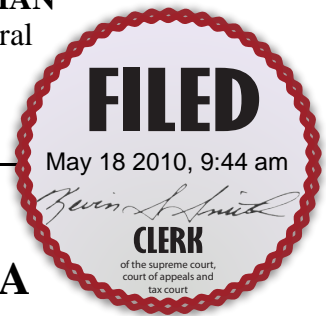
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**IN THE
COURT OF APPEALS OF INDIANA**

MINDY WARTHAN,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 79A02-0905-CR-454

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Randy J. Williams, Judge
Cause No. 79D01-0804-FB-15

May 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Mindy Warthan appeals her convictions for Aggravated Battery, as a Class B felony; Leaving the Scene of an Accident Resulting in Injury, as a Class D felony; and Neglect of a Dependent, as a Class D felony, following a jury trial, and she appeals the sentences imposed. Warthan presents two issues for review:

1. Whether the trial court abused its discretion when it admitted the expert testimony of Officer Mark Roberts as a crash reconstructionist.
2. Whether Warthan's aggregate sentence is inappropriate in light of the nature of the offenses and her character.

Warthan contends that Officer Roberts was not qualified to testify as an expert witness on crash reconstruction and that her aggregate sentence of sixteen years is inappropriate. We conclude that the trial court did not abuse its discretion under Evidence Rule 702 when it allowed Officer Roberts to testify as an expert witness and, further, that Warthan's sixteen-year sentence for three felonies is not inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

In February 2008, Warthan was in a sexual relationship with Anthony Donaldson. At some point Warthan became concerned that Donaldson was also having a sexual relationship with another woman, Erin Hutchens. In March, the two women argued at a barbecue. Approximately two weeks later, on April 7, Hutchens and her roommate had a party at their apartment in Lafayette. Alcohol was served at the party, and Donaldson attended. After the party, at approximately five in the morning on April 8, Hutchens went to the home of Patricia Phillips, a neighbor across the street, to get away from

Donaldson. Hutchens stayed with Phillips for a few minutes while Hutchens' roommate convinced Donaldson to leave. When Donaldson agreed to leave, Hutchens returned to her own home.

Shortly after Hutchens crossed the street to return home, Warthan pulled up in a red Buick. Her eight-month-old child was in the car with her. Warthan, sitting in the car, argued with Donaldson, who was outside Hutchens' apartment. Hutchens was standing facing her apartment building, Warthan then drove up over the curb, across the sidewalk, and hit Hutchens, pinning her against the building. Warthan then backed up, rolled down the window, and asked Donaldson to leave with her. Donaldson ran toward Hutchens, and Warthan drove away. The grill from her car remained on the ground at the impact site.

As a result of the impact, the parties stipulated that Hutchens sustained

a shattered pelvis [that required] metal implants to keep the pelvis intact and attached to the rest of her body, a fractured hip in four places on both sides of [her] body, a broken back with five fractured vertebra[ae,] and a twelve-inch laceration on her back that went from her flesh [sic] to her spine in which she developed the infection [MRSA¹].

Transcript at 118.

Shortly after the incident, Officer Jeffrey Sutton located Warthan's vehicle and followed it to a residence. Officer Sutton examined the outside of the vehicle and saw that it had been damaged and was missing a front grill. When he asked Warthan about the damage on the front of her car, she said that the car had no grill when she purchased it a year earlier. The officer also asked Warthan why she was driving in her pajamas with

¹ Although misspelled in the transcript, given the nature of the wound and the context here we presume the parties were referring to methicillin resistant Staphylococcus aureus, commonly referred to as MRSA.

her small child at that time of morning, and Warthan replied that she had driven to her sister's after receiving threatening phone calls. After speaking with officers at the scene of the accident, Officer Sutton arrested Warthan. Warthan then began crying. She said that she had not meant to hit Hutchens and that Hutchens had jumped in front of her car. In a subsequent statement to police, Warthan said that she had thought her vehicle was in reverse when she hit Hutchens.

The State charged Warthan with aggravated battery, as a Class B felony; battery with a deadly weapon, as a Class C felony; battery resulting in serious bodily injury, as a Class C felony; criminal recklessness, as a Class C felony; leaving the scene of an accident resulting in injury or death, as a Class D felony; and neglect of a dependent, as a Class D felony. A jury trial was held on March 10-12, 2009. At the close of trial, the jury returned verdicts finding Warthan guilty on all counts. Warthan filed a motion to correct error, alleging in part error regarding the admission of expert testimony by Officer Roberts. The trial court denied the motion. The court then set the matter for hearing and, following a hearing on April 13, again denied the motion.²

The court held a sentencing hearing on April 27. The court considered testimony offered on behalf of Warthan and a sentencing memorandum previously tendered by the State as well as heard argument regarding sentencing. The court found as mitigators that Warthan "has strong family support" and suffers from mental health issues. Appellant's App. at 16. The court found as an aggravator Warthan's criminal history, which includes

² The parties do not explain or seem to understand why the court initially denied the motion to correct error then scheduled the same for a hearing. However, the reason for those actions is not material to the resolution of the issues on appeal.

a 2000 conviction for consumption of alcohol by a minor, as a misdemeanor; a 2004 conviction for battery, as a Class A misdemeanor;³ a 2004 arrest and diversion for failure to stop after an accident; and 2006 convictions for maintaining a common nuisance, as a Class A misdemeanor, and criminal mischief, as a Class B misdemeanor. The court also found as aggravators that one of the victims, the child who had been in the car with Warthan, was less than twelve years of age and that the other victim, Hutchens, had requested aggravation of the sentence. The court sentenced Warthan to sixteen years for aggravated battery, two years for leaving the scene of an accident, and two years for neglect of a dependent. The court ordered the sentences to run concurrently for an aggregate sentence of sixteen years. Warthan now appeals.

DISCUSSION AND DECISION

Issue One: Expert Testimony

Warthan first contends that the trial court abused its discretion by allowing Officer Roberts to testify as an expert witness regarding crash reconstruction.⁴ Indiana Evidence Rule 702 provides that a witness may be qualified as an expert by virtue of “knowledge, skill, experience, training, or education.” Only one characteristic is necessary to qualify an individual as an expert. Creasy v. Rusk, 730 N.E.2d 659, 669 (Ind. 2000). Therefore,

³ At sentencing the trial court stated its concern that this conviction, based on Warthan’s repeatedly kicking and punching a pregnant woman, also “started with a car” and “started out with an ex or boyfriend, male friend, in a car trying to run another car off the road.” Transcript at 639. The court also noted that this conviction was less than four years before the events underlying the convictions in the present case.

⁴ The State argues briefly that Warthan waived this issue for failure to make a timely objection at trial. Our review of the transcript shows that, following the State’s tender of the witness as an expert, Warthan’s counsel asked a couple of preliminary questions and then stated, “I’m going to leave it to the court. I don’t know if there was sufficient foundation.” Transcript at 9. Counsel’s statement was not a direct and articulate declaration of an objection. Nevertheless, the trial court responded on the merits and we will review the issue raised on the merits.

an affiant may qualify as an expert on the basis of education or training alone. See id. It is within the trial court's sound discretion to decide whether a person qualifies as an expert witness and we will reverse only upon a showing that the trial court abused its discretion. Id.

Warthan concedes that Officer Roberts received training at the Institute of Police and Technical Management as a crash reconstructionist. Indeed, Officer Roberts was certified as a crash reconstructionist. He had attended a six-week course on crash reconstruction at ITTN, a school in northern Florida, that teaches that field to law enforcement officers throughout the country, as well as instruction during meetings of the Northwestern Indiana Crash Reconstruction Group. And he “teach[es] crash reconstruction” and other courses at the Indiana Law Enforcement Academy. Transcript at 339. The evidence shows that Officer Roberts had special knowledge, training, or education in crash reconstruction.

Still, Warthan contends that Officer Roberts was not qualified to testify as an expert on crash reconstruction. In particular, she points out that he did not belong to any professional organization regarding crash investigation or reconstruction, had no higher education or degree in the field, had only conducted one prior accident reconstruction on his own, was not published, and had not previously testified as an expert witness. But, again, a witness may be qualified as an expert if he meets only one of the characteristics defining an expert under Rule 702. Creasy, 730 N.E.2d at 669. Officer Roberts had participated in a six-week course and additional training on crash reconstruction and was certified as a crash reconstructionist. On these facts, and without more, we cannot say

that the trial court abused its discretion when it recognized Officer Roberts as an expert witness on crash reconstruction.⁵

Issue Two: Appellate Rule 7(B)

Warthan also contends that her sentences are inappropriate in light of the nature of the offenses and her character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration original).

Warthan’s sentence is not inappropriate in light of the nature of the offenses. With her eight-month-old child in the car, Warthan drove to Hutchens’ apartment, argued with Donaldson, and then drove, without veering, up over the curb, across the lawn, and into

⁵ Warthan also directs us to evidence from lay witnesses that she contends contradicts Officer Roberts’ expert testimony regarding the accident. As argued in her brief, such is merely a request that we reweigh the evidence, which we cannot do. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003).

Hutchens, pinning her against the building and causing her serious injuries. Hutchens suffered a shattered pelvis that required metal implants to keep the pelvis intact and attached to her body, a fractured hip in four places on both sides of her body, five fractured vertebrae, and a twelve-inch laceration on her back. Transcript at 118. And she was later treated for a MRSA infection in that laceration. Id.

The motivation for Warthan's conduct was apparently jealousy over the victim's alleged relationship with Donaldson. Warthan then left the scene. When questioned by officers at her sister's home a short time later, Warthan lied about the cause of her car's damage and where she had driven from. The trial court imposed a sentence six years over the advisory but four years short of the maximum for the Class B felony of aggravated battery and sentences six months over the advisory and one year shy of the maximum for the Class D felonies.⁶ And, in Warthan's favor, the court ordered her to serve the sentences concurrently. In light of the viciousness of the crime against Hutchens, the seriousness of Hutchens' injuries, Warthan's utter irresponsibility in perpetrating the acts while her baby was in the car, and the fact that the sentences fall rather short of the maximum possible sentences, we cannot say that the aggregate sentence is inappropriate in light of the nature of the offenses.

Warthan also argues that her sentences are inappropriate in light of her character. In support, she states that her criminal history consists of only misdemeanors, her prior

⁶ Indiana Code Section 35-50-2-5 provides in relevant part that "[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. . . ." And Indiana Code Section 35-50-2-7 provides in relevant part that "[a] person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. . . ."

offenses of misdemeanor alcohol consumption and possession of drugs do not bear directly on the instant offenses, and the “record fails to reflect that the child [Warthan’s child] was harmed in any fashion.” Appellant’s Brief at 17. She also points to testimony at sentencing showing that she is a good mother, suffers from mental illness, has an education, and is a hard worker and business owner. Nevertheless, as pointed out by the trial court at sentencing, Warthan’s prior convictions show that she has prior offenses involving assaults on women over a man as well as prior offenses involving automobiles (a battery conviction and a failure to stop after an accident charge in 2004). We cannot say that Warthan’s sentence over the advisory but well short of the maximum is inappropriate in light of her character.

Affirmed.

VAIDIK, J., and BROWN, J., concur.