FILED BY CLERK
OCT 14 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2008-0194
	)	2 CA-CR 2008-0195
Appellee,	)	(Consolidated)
	)	DEPARTMENT B
v.	)	
	)	MEMORANDUM DECISION
CHARLES SCOTT TAYLOR,	)	Not for Publication
	)	Rule 111, Rules of
Appellant.	)	the Supreme Court
	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause Nos. CR-200701800 and CR-200800485 (Consolidated)

Honorable Stephen F. McCarville, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Jonathan Bass
Tucson
Attorneys for Appellee

Harriette P. Levitt
Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 After a jury trial, appellant Charles Taylor was convicted of several charges arising from his sexual abuse of his stepdaughter and subsequent attempts to dissuade his wife and the victim from testifying about the abuse. On appeal he maintains the trial court erred in admitting certain expert testimony and in imposing an enhanced sentence under former A.R.S. § 13-604.01, now numbered as § 13-705. *See* 2007 Ariz. Sess. Laws, ch. 248, § 2. Finding no reversible error, we affirm.

Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the verdicts. *See State v. Tucker*, 205 Ariz. 157, n.1, 68 P.3d 110, 113 n.1 (2003). In October 2007, Taylor was lying with his then thirteen-year-old stepdaughter A. on a twin bed, under a blanket, watching a movie. He touched A.'s vagina, unzipped his shorts, and penetrated her vagina with his penis. His wife, A.'s mother, came into the room, pulled off the blanket, and saw that Taylor's pants were unzipped. She called police and Taylor was arrested.

¶3 The state charged Taylor with sexual conduct with a minor under fifteen years of age, sexual abuse of a minor under fifteen, and molestation of a child under fifteen, alleging all the offenses were dangerous crimes against children in the first degree. While in jail on those charges, Taylor contacted his wife numerous times, attempting to convince her and A. not to testify against him. The state then charged him with two counts of witness tampering. Those charges were later consolidated with the others and, after a jury trial,

Taylor was convicted of all counts. The trial court imposed a combination of aggravated and presumptive, concurrent and consecutive prison terms, totaling fifty-two years. This appeal followed.

Discussion

¶4 Taylor first contends the trial court "committed reversible error in allowing the state to offer expert testimony when the witness did not provide any testimony necessary to the jury's understanding of the evidence."[1] According to Taylor, "the expert . . . did nothing other than bolster the credibility of the complaining witnesses and usurp the jury's fact-finding role." "We review the trial court's ruling on expert testimony for a clear abuse of discretion." *State v. Hyde*, 186 Ariz. 252, 276, 921 P.2d 655, 679 (1996).

¶5 Rule 702, Ariz. R. Evid., allows testimony by "a witness qualified as an expert" when "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." To be admissible, "expert testimony must (1) come from a qualified expert, (2) be reliable, (3) aid the triers of fact in evaluating and understanding matters not within their common experience, and (4) have probative value that outweighs its prejudicial effect." *State v. Moran*, 151 Ariz. 378, 380-81, 728 P.2d 248, 250-51 (1986).

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[1]We note that Taylor has failed to provide citations to the record to specify the expert testimony to which he objects. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi). Indeed, he did not even name the expert in his opening brief, doing so only in his reply brief.

¶6 Here, the trial court allowed the state to introduce the testimony of Wendy Dutton, "a forensic interviewer at the Child Abuse Assessment Center at St. Joseph's Hospital in Phoenix." Dutton testified generally about the behavior of child victims of sexual abuse. Taylor contends that, in the context of the case, Dutton's testimony failed to aid the jurors in "understanding matters not within their common experience." *Id.* Specifically, he argues that because the victim's testimony at trial was "consistent with her previous accusations," the jury could assess her credibility "without the need for an expert." We disagree.

¶7 As our supreme court has stated:

> We cannot assume that the average juror is familiar with the behavioral characteristics of victims of child molesting. Knowledge of such characteristics may well aid the jury in weighing the testimony of the alleged child victim. Children who have been the victims of sexual abuse or molestation may exhibit behavioral patterns (*e.g.* recantation, conflicting versions of events, confusion or inarticulate descriptions) which jurors might attribute to inaccuracy or prevarication, but which may be merely the result of immaturity, psychological stress, societal pressures or similar factors as well as of their interaction.

State v. Lindsey, 149 Ariz. 472, 473-74, 720 P.2d 73, 74-75 (1986). Dutton's testimony addressed behavioral traits of alleged child victims other than a tendency to tell conflicting versions of events, including, *inter alia*, that they typically do not fight back and that they commonly cannot "recollect specific details . . . about [the] abuse." Thus, her testimony could aid the jury in weighing A.'s testimony even though she had not made inconsistent accusations. *See id.*

¶8 Taylor also maintains he did not "question[] A[.]'s behavior as it relates to credibility" and that Dutton's testimony about the behavior of children abused by family members therefore was not relevant. But, in closing argument, defense counsel told the jurors they would have to "decide how credible the witnesses are, how believable their testimony is, how much weight to give to what you heard." She then pointed out that A. had "read a lot of her answers from previous statements" and that after initially testifying that she "didn't remember seeing anything" she would take a break "come[] back and, oh, yes, she did see something." Taylor's counsel told the jurors they should "decide how truthful is this, how much does she remember and what weight to give it." She went on to ask how A. could have seen anything if she and Taylor were under a blanket and to question why a younger child who had also been in the room had not heard anything. Thus, Taylor did question A.'s credibility and, at least implicitly, argued that some of her behavior, such as being uncertain of what she had seen and remaining quiet during the assault, suggested her allegations were not true.

¶9 In his reply brief Taylor also claims "Dutton is not a qualified expert" and argues "[s]he is obviously prepared to testify that any set of circumstances may be indicative of victimization." But, he conceded at trial she was a qualified expert. And Division One of this court previously has ruled a trial court did not abuse its discretion in finding Dutton qualified as an expert on the basis of testimony about her credentials nearly identical to the testimony she provided in this case. *See State v. Curry*, 187 Ariz. 623, 628-29, 931 P.2d

1133, 1138-39 (App. 1996). Any bias she may have demonstrated goes to her credibility, which was an issue for the jury, and does not relate to her qualification as an expert witness. *See State v. Allen*, 27 Ariz. App. 577, 582, 557 P.2d 176, 181 (1976) ("[E]xpert opinion evidence may be rebutted by showing . . . the interest or bias of the expert . . . ."), *quoting Mims v. United States*, 375 F.2d 135, 143-44 (5th Cir. 1967).

¶10 Lastly, Taylor also claims he was sentenced illegally. He maintains the jury did not find his offenses to be dangerous crimes against children and that the trial court therefore improperly sentenced him under the former A.R.S. § 13-604.01. As the state points out, however, Taylor did not object to his sentences on this basis below and the argument is therefore forfeited absent fundamental error. *See State v. Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d 601, 607 (2005). Aside from offering citations to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296 (2004), and an appellate opinion that was ordered depublished by *State v. Castaneda*, 210 Ariz. 483, 113 P.3d 1240 (2005), Taylor has failed to develop and support his argument on appeal that the lack of an interrogatory rendered his sentences illegal. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi). The argument is therefore waived. *See State v. Cons*, 208 Ariz. 409, ¶ 18, 94 P.3d 609, 616 (App. 2004).

¶11 Even assuming Taylor's assertion in his opening brief that this was an "illegal[] sentence[]" implicitly raised the contention that fundamental, prejudicial error occurred here, *see State v. Hollenback*, 212 Ariz. 12, ¶ 12, 126 P.3d 159, 163 (App. 2005), we reject that contention on its merits. In *State v. Miranda-Cabrera*, 209 Ariz. 220, ¶¶ 25, 27, 28-29, 99

P.3d 35, 41-42 (App. 2004), we held a jury need not make specific findings that an offense is a "dangerous crime[] against children" when "the jury verdict reflect[s], or the defendant admit[s], facts sufficient to justify his sentencing under the enhanced sentencing range for dangerous crimes against children."

¶12 Here, the verdicts themselves exposed Taylor to the enhanced sentencing ranges provided by the former § 13-604.01. All of the enumerated sexual offenses in Taylor's indictment in CR-200701800 were dangerous crimes against children when committed against victims under fifteen years of age and, as such, were punishable pursuant to former § 13-604.01. *See* 1997 Ariz. Sess. Laws, ch. 217, § 1 (former A.R.S. § 13-1405(B), sexual conduct with minor under fifteen); 1993 Ariz. Sess. Laws, ch. 255, § 29 (former A.R.S. § 13-1410, child molestation); 1993 Ariz. Sess. Laws, ch. 255, § 24 (former A.R.S. § 13-1404(B), sexual abuse of minor under fifteen). Moreover, each count of his indictment cited the former § 13-604.01 and alleged the offense was "a Dangerous Crime Against Children . . . in the first degree." In addition, each count of the indictment named the child whom Taylor victimized, specifically alleging she was "a person under the age of fifteen . . . years." Accordingly, in finding the elements of the charged sexual offenses beyond a reasonable doubt, the jury implicitly found beyond a reasonable doubt that each offense was a dangerous crime against children pursuant to the former § 13-604.01. *See* 2007 Ariz. Sess. Laws, ch. 248, § 2. No special verdict form was required in this case for Taylor's sentences to be enhanced under this statute. Therefore, because his sentences were

aggravated properly within the correct statutory ranges, we find Taylor was not subjected to an illegal sentence.

Disposition

¶13 Taylor's convictions and sentences are affirmed.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

_____
J. WILLIAM BRAMMER, JR., Judge

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GARYE L. VÁSQUEZ, Judge