

**RECORD IMPOUNDED**

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parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3415-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HENRY W. GRANDERSON, a/k/a  
MUHAMMAD BILAH,

Defendant-Appellant.

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Submitted December 19, 2017 – Decided January 25, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Hudson County, Indictment No.  
14-01-0154.

Joseph E. Krakora, Public Defender, attorney  
for appellant (John Douard, Assistant Deputy  
Public Defender, of counsel and on the brief).

Christopher S. Porrino, Attorney General,  
attorney for respondent (Sarah C. Hunt, Deputy  
Attorney General, of counsel and on the  
brief).

PER CURIAM

Defendant Henry Granderson appeals from his conviction for  
sexual assault, aggravated sexual assault, and endangering the

welfare of a child. Defendant also appeals his sentence. We affirm.

Sally<sup>1</sup> was seven years old when she began taking music lessons with defendant at his home studio. Sally's mom, Diane, would occasionally leave Sally with defendant to run errands during Sally's lesson. According to Sally, during her third music lesson, defendant started "hugging [her] and trying to pick [her] up. And then he put his hands under [her] pants, and through [her] underwear, . . . started touching her butt." Defendant instructed Sally not to tell anyone about his behavior, including Sally's mother.

Defendant continued his sexual assaults on Sally weekly for the next two years. During the trial, Sally recounted instances of defendant's abuse, including defendant instructing Sally to squeeze his penis, putting his mouth on Sally's "private," licking "her private part," and inserting his finger and penis into Sally's "butt and . . . private part."

On January 5, 2013, Diane took Sally and Sally's younger sister to defendant's home for Sally's music lesson. Diane returned to defendant's home about twenty-five minutes later. When Diane returned, she noticed Sally was not in the studio where

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<sup>1</sup> We use pseudonyms to protect the privacy interests of the victim and her family. R. 1:38-3(d)(10).

defendant conducted his music lessons. Nor did Diane hear music being played in defendant's home. When Diane left defendant's house with her children, she discovered that defendant gave Sally two dollars and a violin. Diane was uncomfortable with the gifts given by defendant to Sally. Diane then asked Sally "if anything happened." Sally told her mother that defendant sexually abused her.

The same day, Diane took Sally to the emergency room at a local hospital, and then to another hospital where Sally could be examined by a sexual assault nurse examiner. On January 6, 2013, at 12:10 a.m., Nurse Bonnie C. Rogers performed a pediatric assault examination. Nurse Rogers collected Sally's clothing, which Sally had not changed since she left defendant's home, and had them tested for biological fluids. The nurse also took "a buccal swab, a[n] oral swab, a vaginal swab, and an . . . external vaginal swab."

The laboratory results from "inside the crotch area of [Sally's] underwear" and the external genital swab detected amylase, which occurs "in very high concentrations in saliva." Sally's underwear also revealed "a Y-STR DNA profile," which did not exclude defendant "as a possible contributor."

On January 6, 2013, Detective Paola Bolivar, a Special Victims Unit (SVU) detective, interviewed Sally regarding the sexual

assault. The detective employed the RATAC method (rapport, anatomy identification, touch inquiry, abuse scenario, and closure) during the interview. According to the detective, the RATAC method "allow[s] the victim to provide a narrative [of the abuse] in a non-leading way." In the recorded interview,<sup>2</sup> the detective used anatomically detailed male and female dolls and diagrams to "assess [Sally's] knowledge of the different body parts and also to gain a common language between [Sally] and [herself]." Detective Bolivar also used the dolls to help Sally explain portions of her narrative that she was unable to express with specificity through her choice of words.

Prior to trial, the prosecutor requested permission to introduce statements that Sally made to her mother and Detective Bolivar related to the sexual assaults. After a Rule 104 hearing, the motion judge barred the prosecution's use of Sally's statements to her mother as unreliable. The motion judge permitted the prosecution to use Sally's statements to Detective Bolivar conditioned on Sally testifying, "in order to satisfy Crawford v. Washington, [541] U.S. 36 (2004)."

The trial commenced in September 2015. On September 25, 2015, defendant was convicted by a jury of two counts of first-

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<sup>2</sup> The recorded interview was played at trial as part of the State's case.

degree aggravated sexual assault, N.J.S.A. 2C:14-2(a); two counts of second-degree sexual assault, N.J.S.A. 2C:14-2(b); and two counts of second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). The judge sentenced defendant to an aggregate thirty-four-year prison term, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

On appeal, defendant raises the following arguments:

POINT I

THE JUDGE ERRED IN GRANTING THE STATE'S MOTION TO ADMIT [SALLY'S] DISCLOSURE OF SEXUAL ABUSE DURING HER INTERVIEW WITH BOLIVAR, BECAUSE BOLIVAR UTILIZED THE HIGHLY SUGGESTIVE TECHNIQUE OF DEMONSTRATING ABUSE WITH ANATOMICALLY ACCURATE PICTURES AND DOLLS.

POINT II

THE IMPOSITION OF TWO CONSECUTIVE SENTENCES[, ] EACH ABOVE THE MIDPOINT OF THE FIRST-DEGREE RANGE, WITH AN [EIGHTY FIVE PERCENT] PERIOD OF PAROLE INELIGIBILITY, WAS EXCESSIVE AND BASED ON AN ARBITRARY DIVISION OF THE OFFENSES IN THE INDICTMENT.

We review the trial court's evidentiary rulings for an abuse of discretion. State v. Harris, 209 N.J. 431, 439 (2012). "Considerable latitude is afforded a trial court in determining whether to admit evidence . . . ." State v. Feaster, 156 N.J. 1, 82. A trial court's discretionary decision to admit or exclude relevant evidence is reversible only if "the trial court palpably abused its discretion, that is, that its finding was so wide of

the mark that a manifest denial of justice resulted." State v. Carter, 91 N.J. 86, 106 (1982).

Defendant argues that Sally's statements to Detective Bolivar fail to satisfy the requirements of N.J.R.E. 803(c)(27) because the statements were unreliable. N.J.R.E. 803(c)(27), known as the "tender years exception," provides:

A statement by a child under the age of [twelve] relating to sexual misconduct committed with or against that child is admissible in a criminal . . . proceeding if[:] (a) the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement at such time as to provide the adverse party with a fair opportunity to prepare to meet it; (b) the court finds, in a hearing conducted pursuant to [N.J.R.E.] 104(a), that on the basis of the time, content and circumstances of the statement there is a probability that the statement is trustworthy; and (c) either (i) the child testifies at the proceeding, or (ii) the child is unavailable as a witness and there is offered admissible evidence corroborating the act of sexual abuse; provided that no child whose statement is to be offered in evidence pursuant to this rule shall be disqualified to be a witness in such proceeding by virtue of the requirements of [N.J.R.E.] 601.

To be admissible under the tender years exception, a child's "statement 'must possess indicia of reliability by virtue of its inherent trustworthiness, not by reference to other evidence at trial.'" State v. Roman, 248 N.J. Super. 144, 152-53 (App. Div. 1991) (quoting Idaho v. Wright, 497 U.S. 805, 822 (1990)). "[I]n

making the determination whether a statement offered under the Rule is trustworthy, the trial court should evaluate the 'totality of the circumstances' surrounding the statement." State v. Burr, 392 N.J. Super. 538, 569 (App. Div. 2007) (quoting Roman, 248 N.J. Super. at 152). The following factors are applied in determining whether a child's statement is trustworthy: "whether the statement was made spontaneously, whether the account is repeated with consistency, the mental state of the declarant, the use of terminology unexpected of a child of similar age, lack of a motive to fabricate, use of interrogation, and manipulation by adults." Id. at 570.

The judge who conducted the Rule 104 hearing addressed each of these factors and found:

Detective Bolivar is an experienced SVU detective, trained in forensic interviewing. [Sally's] statement primarily was the result of non-leading, non-suggestive questioning in which [Sally] volunteered the details surrounding the alleged sexual assaults. . . . [Sally's mental state at the time of the interview] was verbal, well-spoken, responsive and bright. In addition, [Sally] used age-appropriate terminology in her responses to Detective Bolivar's age-appropriate forensic interviewing techniques.

After reviewing the record, we find that the judge did not abuse her discretion in determining that Sally's statements satisfied the requirements of N.J.R.E. 803(c)(27) and that the

prosecution could use Sally's statement conditioned upon Sally testifying at trial.

On appeal, defendant argues that Detective Bolivar's use of anatomically detailed diagrams and dolls was "particularly suggestive," and this "technique . . . has been criticized for triggering[] not the child's veridical memories, but her imagination."<sup>3</sup> Defendant contends that the use of such dolls is improperly suggestive and has been so declared in other states, including California. In support of defendant's effort to change the law in this State, defendant relies on an article finding the use of anatomically detailed dolls to be "controversial" and "not generally accepted in the scientific community." Hollida Wakefield & Ralph Underwager, The Use of Anatomically Detailed Dolls in Forensic Interviews, 16 ISSUES IN CHILD ABUSE ACCUSATIONS 4 (2006), <http://www.ipt-forensics.com/library/jmcraig2.htm>.

There is no evidence in the record to support defendant's claim that Detective Bolivar's use of anatomically correct dolls was overly suggestive. Defendant failed to present expert testimony during the Rule 104 hearing or at trial explaining the controversy in the relevant scientific community concerning the

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<sup>3</sup> Defendant never claimed that the use of anatomically correct dolls and diagrams rendered Sally's testimony untrustworthy during the Rule 104 hearing or at trial.



use of such dolls. Thus, the prosecutor was deprived of an opportunity to present countervailing scientific evidence on the issue. Nor did the motion judge have an opportunity to rule on defendant's challenge to Sally's statements based upon the use of anatomically correct dolls.

Defendant acknowledges that New Jersey courts have not explicitly denounced the use of anatomically correct dolls. However, he argues that another panel of this court expressed disapproval of the use of anatomically correct dolls during interviews with children alleging sexual abuse. See State v. Michaels, 264 N.J. Super. 579, 621-24 (App. Div. 1993), aff'd, 36 N.J. 299 (1994).

Defendant's reliance on Michaels is misplaced. Unlike the interview in Michaels, Detective Bolivar did not show the anatomically detailed dolls to Sally until Sally recounted defendant's sexual abuse. The record reveals that Sally merely used the dolls to illustrate parts of her narrative that she could not explain in words. Detective Bolivar explicitly told Sally that the dolls were not for play, but rather to help her understand Sally's description of her interaction with defendant.<sup>4</sup>

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<sup>4</sup> The following exchange between Sally and Detective Bolivar highlights how the dolls were used during the interview:

We find that the record, including the detective's videotaped interview with Sally, supports the pretrial judge's assessment as to the reliability and trustworthiness of Sally's statements. Based on sufficient, credible evidence in the record, we agree with the pretrial judge that Sally's statements were admissible.

We next review whether defendant's sentence was excessive and based upon an arbitrary division of the offenses. We "review sentencing determinations in accordance with a deferential standard . . . [and] must not substitute [our] judgment for that of the sentencing court." State v. Fuentes, 217 N.J. 57, 70 (2014).

In this case, the sentencing judge found aggravating factor two was applicable as the "gravity of harm inflicted [on the young victim] is beyond comprehension." The judge also found aggravating factor three was applicable as defendant had a prior conviction for child abuse for which he was imprisoned. Similarly, the judge applied aggravating factor six in reviewing defendant's prior

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[SALLY]: Like, he – he told me to . . . . I can't explain it.

DETECTIVE BOLIVAR: Okay, I have some dolls here that they work with me and they help me understand when I'm talking to kids. . . . They're not for play. So they're just [going to] help me understand what you're talking about. Okay?

record. The judge also applied aggravating factor nine finding that imprisonment would deter defendant from victimizing young girls in the future. The sentencing judge, who was also the trial judge, found no mitigating factors applicable in defendant's case and noted defendant's "complete lack of remorse."

Defendant asserts the trial judge erred by: (1) finding aggravating factors two and six applicable; and (2) imposing consecutive prison terms without adequate justification.

We reject each of defendant's sentencing arguments. There was ample evidence in the record, the presentence report, and the victim impact statement to support each of the aggravating factors found by the sentencing judge. We find the record contains credible evidence as to the judge's findings on the aggravating factors. See State v. Mahoney, 444 N.J. Super. 253, 260 (App. Div. 2016) ("[T]he finding of any factor must be supported by competent, credible evidence in the record." (quoting State v. Case, 220 N.J. 49, 64 (2014))).


Defendant also argues that the sentencing judge inadequately explained his reasons for imposing consecutive terms for the two aggravated sexual assault convictions requiring a remand for resentencing. We find that the sentencing judge properly applied the criteria established in State v. Yarbough, 100 N.J. 627, 643-44 (1985), "in deciding whether to impose consecutive or concurrent

sentences." State v. Miller, 108 N.J. 112, 121 (1987). "[I]n determining whether the terms should be concurrent or consecutive, the focus of the court should be on the fairness of the overall sentence." State v. Sutton, 132 N.J. 471, 485 (1993).

In this case, the sentencing judge provided reasons for his decision to impose consecutive sentences. The judge stated that "the reasons for the consecutive sentence is because there . . . were countless numbers of incidents of sexual penetration on a [child] . . . . According to her own testimony over the course of a year . . . . She[] basically said it happened every time she went for a lesson. So, thus there are no free crimes." We discern no abuse of discretion in the sentencing judge's determination that defendant's abuse of Sally was not one continuous crime, but was a crime each week that he assaulted her despite Sally's inability to recollect the specific dates of each assault. Thus, the judge properly found that defendant's crimes justified consecutive sentences. The judge's reasons for imposing defendant's sentence are supported by competent, credible evidence in the record.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION