MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Brandon Lee Bottom,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 13, 2021

Court of Appeals Case No. 20A-CR-2105

Appeal from the LaPorte Superior Court

The Honorable Michael S. Bergerson, Judge

Trial Court Cause No. 46D01-1902-F1-158

Friedlander, Senior Judge.

[1] Appellant Brandon Bottom appeals his convictions of aggravated battery resulting in the death of a child under fourteen, a Level 1 felony,[1] and conspiracy to commit murder, a Level 2 felony,[2] asserting that the trial court erred by failing to approve funds for a defense expert and that the evidence was not sufficient to support his convictions. Concluding the trial court acted within its discretion in denying the request for funds and there was sufficient evidence to sustain Bottom's convictions, we affirm.

[2] The facts most favorable to the judgment follow. C.B. was the two-month-old son of Bottom and his wife, Kiersten Wilson. Bottom, Wilson, C.B., and Kali, the couple's seven-year-old daughter, lived together in an apartment in Michigan City. Brayden Anderson, Wilson's eleven-year-old brother, sometimes stayed with them in order to ride the bus to school with Kali. In February 2019, Wilson worked at Walmart and Bottom, who was unemployed, cared for C.B.

[3] On February 1, Wilson left for work. Brayden and Kali got ready and left for school, but, after leaving the apartment, Brayden realized he had forgotten his homework. He went back to the apartment, and when he entered, he saw Bottom holding C.B. and shaking him. Brayden retrieved his homework and

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[1] Ind. Code § 35-42-2-1.5 (2014).

[2] Ind. Code §§ 35-41-5-2 (2014), 35-42-1-1 (2018).

left the apartment. As Brayden went down the stairs outside the apartment, he heard C.B. crying.

[4] That afternoon, Bottom went to the apartment complex office to use the phone, but the office was closed for lunch. Bottom encountered the maintenance supervisor outside and asked to use his phone to call Wilson, stating there was something wrong with the baby. Bottom told Wilson that C.B. was not eating but responded in the affirmative when Wilson asked if C.B. was "acting normal" and still going to the bathroom. Tr. Vol. II, p. 143. During his phone call with Wilson, Bottom "made it seem like everything was okay" and that the problem was only that C.B. would not eat. *Id.* Because it did not appear to be an emergency, Wilson told Bottom she would finish what she was doing and be home as soon as she could. Bottom ended the call with Wilson and then talked to the maintenance supervisor for a few minutes before declining the supervisor's offer to call an ambulance and going back to his apartment.

[5] When Wilson returned home approximately forty-five minutes later, Bottom was playing a video game, and C.B. was in his rocker. Wilson attempted to ask Bottom what happened and what was wrong, but he responded, "I don't know." *Id.* at 145. Wilson picked C.B. up and immediately knew something was wrong; C.B.'s eyes were closed, he was making no noise, and he felt cold. Wilson put C.B. in his car seat and took him to the hospital. Wilson pulled into the parking lot and told Bottom to take C.B. in "so they could help him." *Id.* at 148. After parking the car, Wilson walked into the hospital to find Bottom "just standing there at the desk like nothing was going on." *Id.* Wilson

removed C.B. from his car seat and "started screaming to help my baby, that there was something wrong, he wasn't breathing." *Id.*

[6] C.B. was intubated and flown to Comer Children's Hospital at the University of Chicago because he was critically ill and required a hospital with a pediatric intensive care unit and pediatric neurosurgery. Once there, C.B. was evaluated by Dr. Jill Glick, a professor of pediatrics and a practicing pediatrician with a board certification in child abuse pediatrics. Her evaluation revealed that C.B.'s mental status was significantly depressed, his heart rate was unstable, and his neurologic exam was poor. In addition, a CT scan showed significant brain trauma. An examination by an ophthalmologist at Comer Hospital also showed extensive hemorrhaging in C.B.'s left eye. At trial, Dr. Glick testified that these injuries, combined with a lack of skull fracture, are consistent with child abuse from violent shaking. She explained that these kinds of injuries are caused by extreme force, such as that involved in a high-speed car accident, and that the average person would immediately recognize this amount of force as abuse because it is not within the normal range of caretaking.

[7] Captain Patrick Cicero, Chief of Detectives of the LaPorte County Sheriff's Office, talked to Wilson and Bottom at the local hospital before C.B. was transferred. At trial, he testified that Wilson had been crying and was anxious and emotional and that Bottom was unemotional and very quiet. Both Wilson and Bottom denied dropping C.B. or hitting his head, and they indicated they were the only two that had been caring for C.B.

[8] After several days of care at Comer Hospital, it was apparent C.B. was not going to survive his injuries. Wilson agreed to donate C.B.'s organs, and he was removed from life support and died on February 5.

[9] On February 7, Dr. Adrienne Segovia, Cook County Assistant Medical Examiner, performed an autopsy on C.B. She found internal evidence of injuries including swelling of the brain, hemorrhaging in the brain, and numerous healing rib fractures. Dr. Segovia determined that the cause of death was closed head injuries and blunt force trauma and that the manner of death was homicide, meaning C.B.'s injuries were not accidental.

[10] The State initially charged Bottom with Count I aggravated battery resulting in the death of a child under 14, a Level 1 felony; Count II neglect of a dependent resulting in the death of a child under 14, a Level 1 felony;[3] and Count III battery resulting in the death of a child under 14, a Level 2 felony.[4]

[11] In November, Detective James Lear of the LaPorte County Sheriff's Office was informed that an inmate at the jail wanted to speak with police. Detective Lear spoke with Charles Austin who had been housed in the same cell block with Bottom. Austin informed the detective that Bottom was attempting to have Wilson killed and gave him notes allegedly written by Bottom. A handwriting sample was obtained from Bottom and was submitted with the handwritten

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[3] Ind. Code § 35-46-1-4 (2018).

[4] Ind. Code § 35-42-2-1 (2018).

notes to the state crime lab for comparison. It was determined to be highly probable that Bottom wrote the notes. Based upon this information, the State filed an additional charge against Bottom: Count IV conspiracy to commit murder, a Level 2 felony.

[12] Subsequently, officers spoke with Rodney Wood in June 2020, who had also been housed in the same cell block as Bottom. At trial, he testified that Bottom had told him he was mad because he thought Wilson was cheating on him, and he shook C.B. when he would not eat.

[13] In August 2020, a jury found Bottom guilty of all four counts. At sentencing, the court merged Counts II and III into Count I and entered judgment of conviction on both Counts I and IV. The court then sentenced Bottom to an aggregate sentence of sixty years. Bottom now appeals.

1. Funds to Hire Expert

[14] In May 2019, Bottom requested the trial court to authorize the expenditure of public funds for an expert witness. Following a hearing on May 31, the court agreed to allow Bottom to submit ex parte applications for expert and investigative assistance and instructed that estimates of the experts' fees be included.

[15] The following month, Bottom filed an ex parte motion for an order authorizing his counsel to retain at public expense the services of Chris Van Ee, Ph.D., a biomedical and mechanical engineer, and included Dr. Van Ee's curriculum vitae, hourly rate, and anticipated number of hours needed for consultation.

On June 19, the court had an ex parte meeting with defense counsel regarding the motion. On July 8, the court issued a confidential order denying the motion and stating in part that, at the June 19 meeting, "[c]ounsel for Defendant indicated that he would attempt to secure the information desired by the Court and the Court took the matter under advisement pending receipt of said information. . . . To date, the Court has not been provided any additional information with respect to the proposed biomedical/biomechanical expert." Appellant's App. Vol. 2, p. 90.

[16] Bottom contends the trial court abused its discretion in denying his motion for funds to hire an expert at public expense because an expert was necessary to ensure an adequate defense. The appointment of experts for indigent defendants is left to the trial court's sound discretion, which includes whether the requested service would be needless, wasteful, or extravagant. *McConniel v. State*, 974 N.E.2d 543 (Ind. Ct. App. 2012), *trans. denied*. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Gober v. State*, 163 N.E.3d 347 (Ind. Ct. App. 2021), *trans. denied*. A defendant requesting the appointment of an expert at public expense bears the burden of demonstrating the need for the appointment. *Beauchamp v. State*, 788 N.E.2d 881 (Ind. Ct. App. 2003).

[17] The central inquiries in deciding whether to provide an indigent defendant with expert services at public expense are whether the services are necessary to assure an adequate defense and whether the defendant specifies precisely how

he would benefit from the requested expert services. *Scott v. State*, 593 N.E.2d 198 (Ind. 1992). Although not an exhaustive list, the following considerations bear on these fact-sensitive inquiries:

> (1) whether the proposed expert's services concern an issue which is generally regarded to be within the common experience of the average person or one for which expert opinion would be necessary; (2) whether the requested services could be performed by counsel; (3) whether the proposed expert could demonstrate that which the defendant desires from the expert; (4) whether the purpose for the expert appears to be exploratory only; (5) whether the expert services will go toward answering a substantial question or simply an ancillary one; (6) the seriousness of the charge(s) and the severity of the possible penalty; (7) the complexity of the case; (8) whether the State is relying upon an expert and expending substantial resources on the case; (9) whether a defendant with monetary resources would choose to hire such an expert; (10) the cost of the expert services; (11) the timeliness of the defendant's request; (12) whether the defendant's request is made in good faith; (13) whether the expert's testimony would be admissible at trial; and (14) whether there is cumulative evidence of the defendant's guilt.

Id. at 200-01.

[18] At the May 31 hearing, the trial court asked defense counsel to speak to whether he possesses the ability and skills necessary to cross-examine experts called by the State or could be prepared to do so by studying published writings; whether the purpose of the expert is exploratory only; and whether the nature of the expert testimony involves precise physical measurements and/or chemical testing, the results of which are not subject to dispute. While defense counsel responded that he lacked the expertise to properly cross-examine the State's

witnesses on the cause and manner of death of a two-month-old and indicated that had he been retained by the client he would hire an expert to assist him, he also acknowledged that he did not know if the State would have experts on this subject beyond treating physicians. The court suggested depositions of the treating physicians before public funds were expended for an expert and stated, "I guess I'm not satisfied that uh, at this point whether or not the purpose of requesting money for an expert is more exploratory." Tr. Vol. II, p. 6. Demonstrating the requisite candor with the tribunal, counsel acknowledged that the purpose of a defense expert was both exploratory and investigatory but argued "that's what we do as defenders uh, in order to defend our client." *Id.* at 8.

[19] From the information before us, it appears that several factors favored allowing Bottom to hire an expert: the services would most likely concern an issue outside of the common experience of the average person; Bottom was facing a Level 1 felony; and counsel alleged he would hire such an expert if his client had monetary resources. *Id.* at 6. There was no discussion concerning the reasonableness of the expert's fees, the timeliness or good faith of Bottom's request, or the admissibility of the expert's testimony at trial.

[20] Although there were factors weighing toward the appointment of an expert, they were offset by other factors. The trial court believed defense counsel should first review the medical records and depose the treating physicians to be able to determine whether an expert was actually needed or whether counsel could proficiently cross-examine the State's witnesses. There was no evidence

specifying precisely how Bottom would benefit from the requested services and no evidence the proposed expert would demonstrate an opinion contrary to that of the State's witnesses. A defendant is not entitled to "any and all experts" he "believes might be helpful." *Griffith v. State*, 59 N.E.3d 947, 956 (Ind. 2016). Indeed, as we have previously remarked, "[w]hile expert testimony is surely helpful in many cases, it will be *truly necessary* in far fewer instances." *Reed v. State*, 687 N.E.2d 209, 213 (Ind. Ct. App. 1997) (emphasis added).

[21] In addition, the appointment of an expert is not necessary when the purpose of the expert appears to be exploratory only. *Scott*, 593 N.E.2d 198. Here, it was acknowledged that the purpose of the proposed expert was exploratory.

[22] Further, the trial court apparently did not believe the case was factually complex. *See* Tr. Vol. II, p. 8. And, although the State apparently planned to call C.B.'s treating physicians, there was no evidence it was calling additional experts or expending substantial resources in that regard.

[23] Finally, if there is cumulative evidence of a defendant's guilt, the need to attack one aspect of that evidence with an expert's services is diminished. *Scott*, 593 N.E.2d 198. Evidence of Bottom's guilt consisted of Brayden's testimony that he saw Bottom shaking C.B. on February 1; Wilson and Bottom both told police that they were the only two that had been caring for C.B.; they both denied dropping C.B. or hitting his head; they both indicated that Bottom had been caring for C.B. while Wilson worked; and inmates Wood and Austin testified that Bottom told them he shook C.B. and killed him. In light of these

factors, we conclude the trial court did not abuse its discretion in denying Bottom's request to hire an expert witness at public expense.

2. Sufficiency of the Evidence

[24] Next, Bottom argues the evidence is insufficient to sustain his convictions. When we review a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *Sandleben v. State*, 29 N.E.3d 126 (Ind. Ct. App. 2015), *trans. denied*. Instead, we consider only the evidence most favorable to the verdict and any reasonable inferences drawn therefrom. *Id.* If there is substantial evidence of probative value from which a reasonable fact-finder could have found the defendant guilty beyond a reasonable doubt, the verdict will not be disturbed. *Labarr v. State*, 36 N.E.3d 501 (Ind. Ct. App. 2015).

[25] In order to obtain a conviction for aggravated battery resulting in the death of a child under fourteen in this case, the State must have proved beyond a reasonable doubt that (1) Bottom (2) who is at least eighteen years of age (3) knowingly or intentionally (3) inflicted injury (4) on C.B. (5) that resulted in the death of C.B. (6) who is less than fourteen years of age. *See* Appellant's App. Vol. 2, p. 167; *see also* Ind. Code § 35-42-2-1.5. Bottom challenges the State's evidence that he is the person who caused C.B.'s death; specifically, he questions the credibility of Brayden, Wood, and Austin.

[26] At trial, Brayden testified that, on the morning of February 1, Bottom was gaming and then feeding the baby. Brayden explained that after leaving for school, he had to return to the apartment:

> A.[Brayden] [W]e were walking, um, down the stairs and we got halfway there, and I, um – I forgot my homework. So I walked back upstairs and opened up the door, and [Bottom] was holding the baby, shaking him.
>
> Q.[State] Can you describe what you mean? How was he holding him?
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> A. He was holding him like this (demonstrating).
>
> Q. Okay. And just for the record, Judge, he's holding both hands out in the front of him, with [his] thumbs closer to him, and his fingers out in front, as if he's holding an –
>
> A. His –
>
> Q. -- object.
>
> A. His, his fingers were on his back. His thumbs were on his stomach.

Tr. Vol. II, pp. 97-98. The State then had Brayden demonstrate with a doll the manner in which Bottom shook C.B. Bottom claims that Brayden was not credible because he did not tell anyone what he saw until after C.B. died.

[27] Bottom also contends that Wood was not credible due to his criminal history and the lack of corroborating evidence for his testimony that Bottom was angry because he had learned via Facebook that Wilson was cheating on him. Similarly, Bottom asserts that Austin was not credible due to his prior membership in the Aryan Brotherhood, his inability to identify Bottom at trial, and the lack of corroborating evidence for his testimony that Bottom had

discovered through Facebook that Wilson was cheating on him and that he had stayed up all night drinking and hurt C.B. the night before these events.

[28] The jury is the judge of the credibility of the witnesses, and a result of this function is that it is free to believe whomever it wishes. *Klaff v. State*, 884 N.E.2d 272 (Ind. Ct. App. 2008). At the time of this incident, Brayden was an eleven-year-old boy, and he testified on cross-examination that he did not tell anyone because he "didn't know that that was gonna lead to that." Tr. Vol. II, p. 109. In addition, the jury was informed of Wood's criminal history and Austin's membership. Moreover, Bottom cross-examined all three of these witnesses and questioned their credibility. The jury heard this evidence, made credibility determinations, weighed that evidence with all the other evidence, and found Bottom guilty of aggravated battery resulting in the death of a child under fourteen. His argument on appeal is simply an invitation for us to invade the exclusive province of the jury and reassess witness credibility, and we cannot accept. *See Brasher v. State*, 746 N.E.2d 71 (Ind. 2001) (it is within jury's province to judge credibility of witnesses).

[29] Moreover, in addition to the testimony of Brayden, Wood, and Austin, the evidence showed that Wilson and Bottom both told police that they were the only two that had been caring for C.B., that neither of them had dropped C.B. or hit his head, and that Bottom had been caring for C.B. while Wilson worked.

[30] Finally, Bottom alleges the State's evidence was insufficient to convict him of conspiracy to commit murder, arguing again that Austin is not credible. In

order to obtain a conviction for the offense in this case, the State must have proved beyond a reasonable doubt that (1) Bottom (2) knowingly or intentionally (3) agreed with Austin (4) to commit murder and (5) performed an overt act in furtherance of the agreement. *See* Appellant's App. Vol. 2, p. 168; *see also* Ind. Code §§ 35-41-5-2; 35-42-1-1.

[31] At trial, Austin testified that he was in jail with Bottom and that Bottom asked him to kill Wilson for $7,000. Bottom gave Austin a letter to give to Bottom's mother directing her to pay Austin, and he also gave Austin a note with information identifying Wilson, including her address, her place of employment, the hours she worked, the type of vehicle she drove, and her physical description. The crime lab analyzed the notes and a handwriting sample from Bottom and determined it was highly probable that Bottom wrote the notes.

[32] To his previous reasons for questioning Austin's veracity, Bottom adds the fact that Detective Lear did not receive a response when he posed as Austin and wrote a letter to Bottom, informing Bottom he was out of jail and asking "what to do next." Tr. Vol. III, p. 119. The jury observed Austin's testimony, including his cross-examination during which he was questioned extensively concerning his membership in the Brotherhood, and it made its credibility determinations. Given that it is solely the jury's role to evaluate the credibility of the witnesses, *King v. State*, 153 N.E.3d 324 (Ind. Ct. App. 2020), *trans. denied*, we cannot and will not disturb the jury's assessment. *Sandleben*, 29 N.E.3d 126.

[33] Based on the foregoing, we conclude the trial court acted within its discretion in denying Bottom's request for public funds to hire an expert and the State presented evidence sufficient to support Bottom's convictions.

[34] Judgment affirmed.

Riley, J., and Weissmann, J., concur.