COURT OF APPEALS
DECISION
DATED AND RELEASED

July 11, 1996

NOTICE

No. 94-2134-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JEFFREY L. POSTHUMA,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Dodge County: DANIEL W. KLOSSNER, Judge. *Affirmed*.

Before Eich, C.J., Sundby and Vergeront, JJ.

SUNDBY, J. The defendant-appellant was found guilty by a jury of five counts of first-degree sexual assault of his daughter. Judgment was entered on the verdict March 19, 1993. In an order entered July 18, 1994, the trial court denied defendant's motion for postconviction relief. Defendant filed his notice of appeal August 8, 1994, from the "judgment" entered July 18, 1994, in the circuit court for Dodge County. He did not file a notice of appeal from

the judgment entered March 19, 1993. We conclude, however, that his appeal from the order denying his motion for postconviction relief properly brings before us the judgment of conviction.

Defendant attacks the fairness of his trial and the excessiveness of his sentence. He argues that he was denied a fair trial because the jury heard improper expert testimony based on the Child Sexual Abuse Accommodation Syndrome vouching for his daughter's credibility. We affirm.

I.

IMPROPER EXPERT TESTIMONY

Defendant claims that the State's expert witnesses "steer[ed] their testimony to the ultimate conclusion that sexual assaults definitely had occurred." He contends that ***State v. Jensen***, 147 Wis.2d 240, 432 N.W.2d 913 (1988), precludes the use of expert testimony for that purpose. The trial was punctuated by repeated argument as to whether testimony of several of the State's witnesses was improper under ***Jensen***. Counsel for the parties and the trial court demonstrated that they were thoroughly familiar with ***Jensen's*** principles.

(a) *The law according to* ***Jensen***.

In ***Jensen***, an eleven-year-old girl alleged that her stepfather sexually assaulted her. Defense counsel established that the child delayed telling some family members about the alleged assault and told others nothing at all. Her grandmother and family friends testified that the child denied that anything had happened and did not appear to be traumatized. ***Id***. at 243-44, 432 N.W.2d at 914-15. The child's school guidance counselor testified that his attention was drawn to the child's "acting out" behavior in school. ***Id***. at 244, 432 N.W.2d at 915. He confronted her with his suspicion that she had been sexually abused. The child "slumped back in her chair and responded, `How did you know?'" ***Id***. at 245, 432 N.W.2d at 915.

Over defendant's objection, the guidance counselor testified as an expert that the child's behavior was consistent with the behavior of child sexual abuse victims. The defendant objected only to the question: "In your opinion ... are the kinds of acting out behavior that the teachers described to you that they were seeing in L_____ consistent with children who were victims of sexual abuse?" ***Id***. at 249, 432 N.W.2d at 917. He argued that the guidance counselor's affirmative answer was "tantamount to an expert opinion that the assault actually occurred," and "that the complainant was telling the truth about the assault." ***Id***. We concluded that this testimony was inadmissible because "an opinion that the complainant was sexually assaulted or is telling the truth is impermissible." ***Id***.

The supreme court concluded, however, that the guidance counselor's description of the child's behavior and his opinion that her behavior was consistent with the behavior of children who have been sexually abused were relevant to explain why he questioned the child and to rebut defendant's claim that the child fabricated the sexual assault charge. ***Id***. at 250, 432 N.W.2d at 917-18.

(b) *Applicability of* ***Jensen***.

Defendant argues that ***Jensen*** is inapposite because he did not attack his daughter's credibility; in fact, in his opening statement, defense counsel expressly informed the jury that defendant had no explanation for his daughter's physical condition as testified to by Dr. Patricia Staats. She testified that the child's vaginal hymen was almost completely obliterated, her vaginal opening was approximately double the normal size for a pre-puberty child, and there was an asymmetric tear up the side of the vagina next to the urethra.

Defendant reads ***Jensen*** too narrowly. Evidence that behavior of an allegedly sexually abused child was consistent with the behavior of sexually abused children generally is not admissible solely to rebut defendant's allegation of fabrication. The ***Jensen*** court noted that it had held in ***State v. Robinson***, 146 Wis.2d 315, 431 N.W.2d 165 (1988), that "an expert may testify about his or her observations regarding the behavior of sexual assault victims when his testimony helps the jury understand a complainant's reactive behavior.... [A]n expert opinion is useful for disabusing the jury of common

misconceptions about the behavior of sexual assault victims." ***Jensen***, 147 Wis.2d at 251, 432 N.W.2d at 918. What is impermissible is expert witness testimony which "convey[s] to the jury [the expert's] own beliefs as to the veracity of the complainant with respect to the assault." ***Id***. at 256-57, 432 N.W.2d at 920 (citing ***State v. Romero***, 147 Wis.2d 264, 432 N.W.2d 899 (1988)).

The ***Jensen*** court concluded:

> We conclude that an expert witness may be asked to describe the behavior of the complainant and then to describe that of victims of the same type of crime, if the testimony helps the jury understand a complainant's reactive behavior. *See* ***State v. Robinson***, 146 Wis.2d 315, 431 N.W.2d 165 (1988). We further conclude that the circuit court may allow an expert witness to give an opinion about the consistency of a complainant's behavior with the behavior of victims of the same type of crime only if the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. Section 907.02, STATS.

147 Wis.2d at 257, 432 N.W.2d at 920.

We conclude that ***Jensen*** permits an expert witness to compare the behavior of an alleged child victim of a sexual assault with the behavior of child victims of sexual assault generally even if defendant does not claim that the child fabricated her charges.

(c) *Trial court's limitation of testimony.*

1. *The social worker.*

The trial court acted promptly to confine expert testimony as to the alleged victim's behavior within the boundaries laid out in ***Jensen***. Defendant first attacks the testimony of Dodge County Social Worker Kay

Kamphus. The assistant district attorney asked Kamphus whether the alleged victim was responsive when she interviewed her. Kamphus answered:

> I would say she was very responsive. She knew the answer. She was very quick at telling us the answers to the question. If she didn't know something, she simply said I don't know. She didn't try to make something up ....

Defense counsel objected to this characterization and the trial court sustained the objection, without argument. The trial court told the jury: "It's stricken. She can't tell whether or not the child made something up." The assistant district attorney agreed and stated that she was "just about to stop her." She clarified Kamphus's characterization by asking her the following question: "Basically in response to my question, you're saying that she was responsive to the question. If she didn't know the answer, she said she didn't know?" Kamphus responded: "That's correct." We assume that when the trial court strikes testimony, the jury disregards that testimony in its deliberations. *See* ***State v. Pitsch***, 124 Wis.2d 628, 644 n.8, 369 N.W.2d 711, 720 (1985). We therefore reject defendant's claim that he was prejudiced by this volunteered opinion of the social worker.

The assistant district attorney also asked Kamphus the following question which elicited an immediate objection from defense counsel: "Ms. Kamphus, you have had experience interviewing children of sexual abuse. Can you tell the jury how common it is for them to disclose abuse gradually as opposed to telling it all at one s[i]tting?" The trial court overruled defense counsel's objection. Argument ensued out of the presence of the jury. After hearing argument and studying ***Jensen***, the trial court ruled:

> In looking at the case law and reading ***State v. Jensen***, I'm of the opinion that ***Jensen*** doesn't stand for the proposition that the investigating individual may not state that, for instance, the question as we have in this case: Is it unusual for someone to report these type of situations a number of times as opposed to all at once?

The court, however, instructed counsel:

> We've got to be careful. We must be very careful about how we ask the question and where the answer goes. Because if we have an expert get on the stand here and say this is consistent with what sexual assault victims go through and, therefore, a sexual assault occurred here, we are going to have a mistrial.

We conclude that the trial court correctly expressed the law as stated in ***Jensen***.

When the jury returned, the assistant district attorney's question was read and Kamphus answered: "It's very common." Kamphus's testimony did not go beyond the bounds of ***Jensen***.

2. *Dr. Staats.*

Defendant also attacks the testimony of Dr. Staats on ***Jensen*** grounds. Dr. Staats conducted a full physical examination of the alleged victim. She was asked the following question and gave the following answer:

> QNow, Doctor, based on your exam, what was your overall impression of this ... exam?
>
> AThat it was very significantly abnormal, that there were several signs of traumatic sexual abuse.

Defense counsel objected: "I have to object and move to strike the conclusion regarding sexual abuse. I believe the doctor can testify with respect to penetration, but I don't think there's a foundation certainly with respect to the other comment." The court responded: "It's stricken. She's allowed to testify concerning the results of her examination." Counsel then moved for a mistrial. The jury was excused and defense counsel argued:

> ... [T]he jury is now sitting there with this opinion from this one hundred percent credible witness that I'm not even disputing, and now this. It puts us in an awfully untenable position and certainly gives the jury this opinion from ... the worst possible source.

The court denied defendant's motion for a mistrial, explaining that it did not believe there had been serious prejudice because Dr. Staats's examination revealed that there had been repeated vaginal penetration. The court said that the situation might be different if Dr. Staats's examination showed nothing abnormal but she then testified that the alleged victim had been sexually abused. The assistant district attorney argued, correctly, we believe, that this was not a case in which misconduct by the prosecutor had elicited from a witness a "surprise" inadmissible opinion. She argued that this testimony "came in passing."

The court asked the witness to retake the witness stand out of the jury's presence. The court then instructed Dr. Staats that the ultimate conclusion that the vaginal penetration was the result of sexual abuse was for the jury to decide. The assistant district attorney explained that she intended to ask Dr. Staats in the presence of the jury whether her findings were consistent with repeated penetration. Dr. Staats stated that her answer would be "Yes." The assistant district attorney then asked Dr. Staats if her findings were consistent with penile penetration, and she responded that her findings would be consistent with penile penetration. The prosecutor also asked Dr. Staats whether her findings were consistent with anything other than penetration, to which the witness responded, "No." The trial court ruled that these questions were permissible.

Upon their return, the court instructed the jury:

> Ladies and gentlemen, during the course of any trial the Court orders certain testimony to be stricken. When I strike testimony, you are to disregard that testimony and not use it in any way, shape or form during your deliberation. I am striking a portion of the doctor's testimony as it results to the ultimate conclusion of sexual abuse. That is your decision to make after

> you've heard all of the evidence. It is not the doctor's opinion concerning whether or not it occurred. You folks must decide whether or not it occurred after listening to all of the evidence, and you are to disregard the comments concerning sexual abuse.
>
> Do you understand that? Raise your hand if you don't. Disregard means like a blackboard, wipe it off....

The assistant district attorney then asked Dr. Staats whether her findings were consistent with repeated penetration and whether they were consistent with anything other than penetration. Dr. Staats testified that her findings were consistent with repeated penetration and not consistent with anything other than penetration. On cross-examination, however, Dr. Staats testified that her findings were consistent with penetration by an object other than a penis.

Defendant complains that the trial court denied his request that a curative instruction as to Dr. Staats's testimony be given at the close of trial. We conclude that such an instruction was unnecessary in view of the fact that the trial court struck Dr. Staats's volunteered testimony and carefully explained to the jury why the court had stricken that testimony and emphasized that the jury should disregard that testimony in reaching the ultimate conclusion whether the alleged victim had been sexually abused. We therefore reject defendant's claim that he was denied a fair trial because of Dr. Staats's volunteered opinion that her findings were consistent with sexual abuse.

3. *Dr. Serlin.*

Finally, defendant attacks the testimony of Dr. Erica Serlin, a clinical psychologist, who had special expertise in working with child sexual abuse victims. Dr. Serlin testified at length, without objection, as to behavior exhibited by sexually abused children and their failure to disclose sexual abuse, especially the gradual disclosure of sexual abuse. In the wrap-up of her testimony, the assistant district attorney asked Dr. Serlin the following question: "Doctor, this piecemeal disclosure that you have described, how common is that?" Dr. Serlin answered: "Extremely common." She then testified:

> One of the experts a decade ago wrote a report called the Child Sexual Abuse Accommodation Syndrome ..., who described exactly that, and said that's generally what we see. Obviously there are exceptions, but many, many, many kids report that way. It's not uncommon.

Thus, Dr. Serlin did not adopt the Child Sexual Abuse Accommodation Syndrome; she merely gave an example of a name another expert had given an abused child's behavior. Her testimony was completely consistent with the expert testimony approved in ***Jensen***. Therefore, defendant's attack on the Syndrome as "highly speculative" and "not scientifically reliable" does not affect the validity or weight of Dr. Serlin's testimony. She testified from her own experience with child sexual abuse victims since 1983.

Further, the defendant had a full and fair opportunity to test before the jury the relevance and weight of this evidence. Defense counsel cross-examined Dr. Serlin extensively and was able to establish that a child victim may be aware that she has been sexually abused but confused as to who was the abuser. However, Dr. Serlin testified that those cases "are extremely rare and unusual." Defense counsel sought to establish that there was reasonable doubt as to whether the sexual abuser was her father or someone else, perhaps her mother's boyfriend. Of course, it was for the jury to decide whether the evidence, including the alleged victim's, pointed to her father as the abuser. On this question, the jury was presented with overwhelming evidence that the alleged victim's father had subjected her to a course of sexual abuse from the time she was seven years old. Whether to believe that evidence was for the jury. *See* ***State v. Poellinger***, 153 Wis.2d 493, 503, 451 N.W.2d 752, 756 (1990).

II.

HARMLESS ERROR

If we accepted defendant's argument that the testimony of the State's expert witnesses was admitted in error, our confidence in the outcome of the trial would not be shaken. *See* ***State v. Myren***, 133 Wis.2d 430, 442, 395 N.W.2d 818, 824 (Ct. App. 1986).

The ultimate question in any criminal trial is whether the defendant received a fair trial. *See* ***State v. Turner***, 186 Wis.2d 277, 284, 521 N.W.2d 148, 151 (Ct. App. 1994). We therefore review the evidence of defendant's guilt which the jury heard.

The State presented the testimony of the alleged victim's mother; the alleged victim and her sister; the alleged victim's family physician, Stanley Cupery, M.D.; psychiatrist Andrew Kessler, M.D., who treated the alleged victim at Parkway Hospital, a psychiatric hospital; Kay Kamphus, the Dodge County Social Worker; Dr. Staats, the pediatrician who performed the physical examination of the alleged victim; Erica Serlin, M.D., the clinical psychologist who did not examine the alleged victim but testified as an expert witness as to the behavior of child abuse victims; Sionag Black, M.D., who was the alleged victim's treating therapist for almost a year; and Detective Gerald Beier of the Dodge County Sheriff's Department who was the investigating officer.

(a) *Testimony of child's mother.*

The child's mother began to testify that about three years prior to trial her two daughters, including the alleged victim, reported their father had engaged in inappropriate sexual behavior in front of them. Defense counsel objected. She therefore limited her testimony to the girls' report that their father was taking showers with them. She testified that at first the father denied such conduct but finally admitted it was true but told her it wouldn't happen again. She further testified that before visitation, her daughter would cry, get sick or hide in her room. She testified that the situation had gotten "a lot worse" over the last four years. She described many problems with her daughter's health but that their family doctor, Dr. Cupery, could find no physical basis for her daughter's complaints. The first time she learned of any possible abuse was when her daughter was interviewed by the social worker and Detective Beier. Her daughter was hospitalized in March 1992 at Parkway Hospital where she made further revelations of sexual abuse. Since visitation ceased, her daughter's health had been a lot better. She testified that her daughter was totally different; she was happy and outgoing. On cross-examination, the mother testified that she had stated to a doctor that defendant had not made sexual advances to the children.

The alleged victim's mother further testified that her daughter usually confided in her but did not tell her about her father's sexual abuse because she was afraid that he would hurt her and her mother.

Defense counsel established that a boyfriend was living with the mother on the dates of the alleged sexual abuse.

The mother further testified that her daughter made her allegations as to her father's sexual abuse first to Dr. Black, then to the social worker and Detective Beier. On redirect examination, the mother testified that in February 1991, she had told another doctor that she was not aware of any sexual advances defendant made to the children. Finally, the mother testified that her daughter reported an incident of sexual abuse by her father that occurred when she entered second grade.

(b) *Testimony of alleged victim.*

The alleged victim testified that her father began to abuse her when she was seven years old. He would take her to the basement of his home and have sexual contact with her on a pool table. She described incidents in which defendant would get into bed with her and her sister and have sexual contact with her. She explained that she revealed this abuse at Parkway Hospital because she felt safer there. She described that on the dates charged, January 17, 18, and 19, 1992, her father had touched her private parts while they were watching television and he took her to the basement where he had sexual intercourse with her.

(c) *Testimony of sister.*

The alleged victim's sister was thirteen years of age at the time of trial. She corroborated that on the Friday evening of one of the charged offenses, her father got into bed with her and her sister. Her father left the room with her sister in the middle of the night. She corroborated her mother's testimony that before visitation weekends, her sister would complain that she didn't feel well and she would cry and hide.

(d) *Testimony of treating physician.*

Dr. Cupery testified that in his treatment of the alleged victim, she exhibited symptoms that were inconsistent with his physical findings. Because of this behavior, he referred the alleged victim to a pediatric specialist. He also referred her to Dr. Black. In his report of April 15, 1992, he stated that as the result of a rather extensive evaluation of the alleged victim, there was no organic pathology found and several physicians concurred that the alleged victim's symptoms were stress related.

(e) *Testimony of specialists.*

Dr. Kessler testified that he admitted the alleged victim to Parkway Hospital in March 1992 because she was suicidal. Upon admission, he found her "a frightened, overwhelmed, very anxious, visibly tremulous child who was guarded, antsy." While she was at Parkway, he was her treating physician. As her admission in the hospital progressed, she elaborated on the degree and duration of her father's sexual abuse. She did not want to leave the hospital because she was afraid her father would harm her.

Dr. Black testified that he began to treat the alleged victim February 24, 1992. He testified that she trembled when she talked about her father. He talked with her after she had been interviewed by the social worker and the detective. She was very frightened that her father would hurt her because of what she had revealed.

In a treatment session on June 11, 1992, the alleged victim reported that she remembered that her father would put his "private spot" in hers, and would move up and down and that it hurt. She related flashbacks of traumatic events involving her abuse, accompanied by very strong emotions.

When Dr. Black met with the child on August 6, 1992, he asked why she had not told him previously about the extent of her father's sexual abuse. He testified that she was originally afraid because her father was in the waiting room but that it was easier to talk when she was placed in a group with other children. He testified without objection that it was very common for children to disclose sexual abuse "piecemeal or gradually." He expressed his

opinion as to why sexually abused children behaved in this way. He elaborated that it was quite common for smaller children to delay reporting sexual abuse. He reported the results of his conversations with the alleged victim to the social worker and recommended that the child be given a pelvic exam.

(f) *Testimony of social worker and detective.*

The testimony of the social worker and the detective who investigated the allegations of sexual abuse was largely duplicative of the testimony we have summarized. However, Detective Beier testified that the defendant asked Beier what a person should do if charges of incest were true, and when Beier expressed his opinion that the person should get medical help, defendant stated that maybe he should see a psychiatrist.

III.

THE DEFENSE

(a) *Sufficiency of the evidence.*

In his opening statement to the jury, defense counsel admitted that the defendant had no explanation for the alleged victim's abnormal physical condition. The defendant attempted to show through the testimony of his mother and his present wife that the reason for the alleged victim's reluctance to visit her father had nothing to do with him but with his then wife. However, that testimony did not explain the penile penetration to which the alleged victim had been subjected.

Defendant also attempted to establish an alibi for the evening of Saturday, January 18, 1992, through the testimony of a friend of the defendant's and a neighbor. However, that testimony did not tend to rebut the testimony of the alleged victim and her sister that at sometime during the night the defendant had gotten into bed with them and had taken the alleged victim out of the bedroom.

The defendant called a Parkway Hospital nurse, apparently in an attempt to show that the alleged victim made her revelations at the hospital after visits from her mother. However, the nurse testified that the alleged victim had told her after she made her revelations that she felt safe and wasn't thinking about suicide anymore. Also, the nurse's notes showed that the alleged victim stated that she told the social worker and the detective "everything her father made her do."

(b) *Other trial errors.*

The defendant presents two additional alleged trial court errors. First, he argues that the trial court erred in denying his motion for an independent psychological examination of the alleged victim. Second, he alleges that he was denied the effective assistance of trial counsel.

1. *Independent psychological examination*.

Subsequent to defendant's trial, we decided ***State v. Maday***, 179 Wis.2d 346, 507 N.W.2d 365 (Ct. App. 1993), in which we held that where a child had been examined by the State's expert witnesses to prepare to testify whether the child fit the pattern of sexually abused children, fundamental fairness required that the defendant be given the opportunity to make an independent psychological evaluation of the child. ***Maday*** is inapposite for several reasons. First, defendant sought to examine the alleged victim to assess her competency and credibility. The unfairness which we found in ***Maday*** was that the State's expert witnesses had been allowed to examine the allegedly abused child to explain her behavior in delaying the reporting of the alleged sexual abuse. We held that elemental fairness required that the defendant be allowed to make a psychological examination of the child to rebut the State's expert evidence. ***Id***. at 357, 507 N.W.2d at 371. That situation is not presented in this case. Second, the testimony of the State's witnesses in this case that it was not uncommon for a child of tender years to fail to report or delay reporting sexual abuse was not derived from psychological examinations or evaluations of the alleged victim but from the personal experience of the witnesses with other sexually abused children. The defendant was free to introduce countervailing expert testimony without examining the alleged victim.

2. *Ineffective assistance of counsel.*

The defendant alleges that his trial counsel did not provide him with effective assistance. He claims that the trial counsel failed to file briefs or memoranda supporting his various motions; that he failed to present expert testimony in support of his motion for an independent psychological examination that the child had a histrionic personality disorder; that he failed to request a theory-of-defense instruction; that he failed to file *in limine* motions to exclude or limit the testimony of the State's experts on ***Jensen*** grounds; and that he failed to adequately voir dire the jurors as to child sexual abuse, credibility as to sexual matters, and fantasizing as to such matters.

The test to determine whether counsel's assistance was ineffective is well known. In ***State v. Pitsch***, the Wisconsin Supreme Court adopted the analysis of the United States Supreme Court in ***Strickland v. Washington***, 466 U.S. 668 (1984). We may reject a claim that counsel was ineffective if we conclude that the defendant was not prejudiced by counsel's alleged deficient representation. *See* ***id***. The ultimate question is whether defendant received a fair trial. We have reviewed the entire record and conclude that this case was fairly prosecuted by the State, well-defended by defendant's counsel, and the trial was conducted knowledgeably and even-handedly by the trial court. Defendant's claims as to ineffective assistance are largely a rehash of claimed trial errors which we have already addressed. In sum, our confidence in the result of the trial is not undermined by trial counsel's representation of the defendant. *See* ***Pitsch***, 124 Wis.2d at 641-42, 369 N.W.2d at 718-19.

IV.

ERRONEOUS EXERCISE OF SENTENCING DISCRETION

Finally, defendant claims that the trial court erroneously exercised its sentencing discretion when it overemphasized defendant's lack of remorse and his refusal to admit guilt. Defendant correctly states the standard of review of a sentence. *See* ***State v. Larsen***, 141 Wis.2d 412, 426-27, 415 N.W.2d 535, 541 (Ct. App. 1987). The sentencing court must not give too much weight to one sentencing factor in the face of contravening considerations. ***Id***. at 428, 415 N.W.2d at 542.

The record of the sentencing hearing does not support defendant's argument that the trial court imposed a harsher sentence on him because he refused to admit his guilt. In fact, the record demonstrates that the trial court was quite sensitive to what it called the "Catch-22" situation in which a trial court is placed when balancing the presumption of innocence against a defendant's need to rehabilitate himself or herself by first admitting guilt. At the sentencing hearing, the trial court said:

> You got a defendant who says, "Judge, I have been wrongfully convicted. I did not do this." And then the system is saying, "But if you don't admit that you did it, you're going to stay locked up longer and you're not going to get the treatment and you're not a good candidate for treatment," and that's the Catch-22.
>
> And if you think that that's easy to deal with, it is not. If [the defendant] would have come in here and said, "Judge, I did it. I apologize. It was wrong," and then the District Attorney and all of the experts and the defense counsel would've come in here and said, "Judge, this is a good candidate for outside of incarceration treatment."

The trial court did comment on the weight of the evidence. The court stated: "I can assure all of you beyond a shadow, that this child was sexually assaulted. The physical evidence is overwhelming." It is appropriate at the time of sentencing for the sentencing judge to comment on the weight of the evidence. *See* ***Larsen***, 141 Wis.2d at 426, 415 N.W.2d at 541. The trial court also commented on defendant's inculpatory admissions to the investigating officer. The court found defendant's protestations of innocence unbelievably inconsistent with these statements.

The court also considered defendant's past crime-free life and the fact that he had been a hard-working, good provider. The court heard testimony from defendant's wife and his mother and father. The court also considered letters from the alleged victim and her sister and some nineteen letters from other persons. The court also considered the effect upon defendant's prior family and his present family if he were incarcerated and

unable to provide an income for himself and his families. It considered the economic cost to society of incarcerating the defendant. The court considered defendant's plea that he wished to be able to support his family. He stated that he still had his job if he were free to work.

The court stated he had listened to the testimony of the alleged victim and found her a credible witness.

The court said that it took all of these things into consideration and had not chosen the easy route. The court relied on the presentence investigation report. The court stated:

> Of all of the presentence reports I've ever received, this is one of the most intensive, most well-written, most thoughtful, and [the agent] made a couple of comments which probably affect[] me more from his standpoint than any other.
>
> ... This is from page 23. "[The defendant] has now assumed a victim stance. He attempts to convince others that he is absolutely innocent, that he would never commit such crimes and that the jury's decision is a terrible miscarriage of justice."

The court then said:

> I have listened to the evidence in this case; I've listened to the jury's decision; I've listened to the arguments of counsel.

On the basis of these considerations, the court sentenced defendant to five years' imprisonment on each of the six counts, to be served consecutively. The court then stated:

> The decision is based on the recommendations. And [the agent] says, "Sentencing as recommended would

> provide a range of parole eligibility from seven and a half to twenty years. The longer [the defendant] refuses to accept responsibility for his behavior, the longer the prison term he is likely to serve. Without successful completion of intensive sex offender treatment, he will continue to be viewed as an unacceptable risk." I agree.

The transcript of the sentencing hearing does not support defendant's argument that the trial court unduly concentrated on defendant's failure to admit his guilt. Certainly that was a factor considered by the trial court. But we read the trial court's sentencing decision more as an admonition to the defendant that the longer he refused to acknowledge his responsibility the less likely it would be that he would be rehabilitated. We conclude that the trial court properly exercised its sentencing discretion.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.