MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lyda Annmarie Bullard,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 26, 2022

Court of Appeals Case No. 22A-CR-87

Appeal from the Shelby Superior Court

The Honorable R. Kent Apsley, Judge

Trial Court Cause No. 73D01-2009-F4-9

Crone, Judge.

Case Summary

[1] Lyda Annmarie Bullard appeals her convictions for level 4 felony sexual misconduct with a minor and class A misdemeanor invasion of privacy. She challenges the admission of certain evidence, the sufficiency of the evidence, and the appropriateness of her sentence. Finding no reversible error, we affirm.

Facts and Procedural History

[2] The facts most favorable to Bullard's convictions show that during 2019 and 2020, teenaged S.B. resided with his father, Christopher Baldwin, in St. Paul, Indiana. Bullard lived with her young son, C., right next door. S.B. "hung out" at Bullard's residence, a "chill spot" where he would visit with C. and other friends who had struggles with their families. Tr. Vol. 2 at 27-28.

[3] By April 2020, Baldwin's daily work schedule kept him away from his residence from approximately 5:30 am through 6:00 pm. Due to his father's schedule as well as Covid school closures, fifteen-year-old S.B. was on his own for long periods. He spent vast amounts of time at the home of thirty-one-year-old Bullard. The two began a relationship involving kissing and eventually frequent sexual intercourse. Bullard knew S.B.'s age. S.B. kept the relationship

secret from his parents – sneaking out of his residence at night to see Bullard, setting an alarm, and then surreptitiously returning to his room before his father left for work.

[4] On June 16, 2020, Baldwin realized that S.B. had been hiding his whereabouts. Baldwin confiscated S.B.'s cell phone and found disturbing photos and messages that made him suspicious about the nature of the relationship between S.B. and neighbor Bullard. Although both his son and Bullard denied any improper activity, Baldwin forbid S.B. from contact with Bullard, and then shared his concerns with S.B.'s mother, Carrie Richmond. Alarmed, Richmond quickly arrived on the scene, confronted Bullard with accusations, and had a friend videotape the encounter. When asked if she had had sex with S.B., Bullard responded that everyone has done bad things, it was a mistake, she could not change the past, and she was sorry. Tr. Vol. 1 at 208-09.

[5] Within the next two days, Richmond reported Bullard's activities to a police detective, who advised her to apply for a restraining order. The application was granted, and a two-year protective order prohibiting Bullard from having contact with S.B. was entered and served by June 19, 2020. S.B.'s parents sent him away to live with a relative. Yet, more than once thereafter, Bullard met up with S.B. Tr. Vol. 2 at 48. One night in early July 2020, Bullard brought along W.D., a friend of S.B. During the drive to pick up S.B., Bullard informed W.D. that she planned to have sex with S.B. that night. Tr. Vol. 1 at 245-46. Indeed, once Bullard and W.D. picked up S.B., the three traveled to a local park, W.D. was asked to wait outside the vehicle in a restroom for roughly twenty minutes,

and then he was permitted back into the vehicle. Later, S.B. messaged Bullard, stating that he loved her and was pleased they could be together that night. Bullard reciprocated the message of love but also instructed S.B. to "[d]elete everything, including the history, please." *Id*. at 160. On a different occasion, Bullard brought C. when she met up with S.B.

[6] Though originally charged with five counts, Bullard was ultimately tried for two: sexual misconduct with a minor occurring between April and June 2020 and invasion of privacy occurring in July 2020. Following a two-day trial in November 2021, a jury found Bullard guilty on both charges. The trial court sentenced her to six years of incarceration with three executed and three suspended for the felony, plus one year of incarceration for the misdemeanor, to be served concurrently.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion in admitting evidence of sexual misconduct or instructing the jury.

[7] Bullard contends that the trial court abused its discretion by admitting evidence of an uncharged sexual act over her objection. Citing Indiana Evidence Rule 404(b), she argues that the admission of evidence that she and S.B. had sexual intercourse in a park in July 2020 created a substantial risk of conviction of sexual misconduct with a minor based predominantly on the forbidden inference from the uncharged act. Further, she faults the trial court for not giving a limiting instruction to clarify that the sex-in-the-park evidence could

only be properly considered to support the invasion of privacy charge rather than to prove the sexual misconduct with a minor charge. She also challenges the State's instruction regarding time frame.

[8] We afford wide discretion to the trial court in ruling on the admissibility and relevancy of evidence. *Beasley v. State*, 46 N.E.3d 1232, 1235 (Ind. 2016). Our review is thus limited to determining whether the court abused that discretion. *Id*. An abuse of discretion occurs when the decision is "clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Clark v. State*, 994 N.E.2d 252, 260 (Ind. 2013). "We consider only evidence that is either favorable to the ruling or unrefuted and favorable to the defendant." *Pierce v. State*, 29 N.E.3d 1258, 1264 (Ind. 2015). We will affirm the trial court's decision regarding admission of evidence "if it is sustainable on any basis in the record." *Barker v. State*, 695 N.E.2d 925, 930 (Ind. 1998).

[9] When W.D. first testified that he had to "get out of the car. So they could have sex," Bullard objected, arguing the testimony was speculative. Tr. Vol. 1 at 245. The trial court stated it would sustain the objection, strike the witness's answer, and admonish the jury to disregard it. *Id*. The State immediately followed up, asking W.D. why he exited the car that night. He replied: "So they could – have sex. 'Cause she told me." *Id.* at 245-46. W.D. testified that Bullard told him, "I'm fuckin' S.B. tonight." *Id*. at 246. While defense counsel made no objection to that particular testimony, Bullard did object on 404(b) grounds

later during the trial when S.B. testified that he and Bullard had sex in the park in July.

[10] The State briefly argues that even if S.B.'s testimony regarding sex in the park was improper, evidence of the encounter had already been introduced through W.D. *See Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012) ("Any error in the admission of evidence is not prejudicial, and [is] therefore harmless, if the same or similar evidence has been admitted without objection or contradiction."). However, S.B.'s first-person, detailed testimony about the sexual encounter makes us reluctant to easily dismiss this as merely cumulative evidence. Additionally, given that the sex-in-the-park evidence arose during direct examination of State's witnesses, this hardly seems like a case where the defense could be characterized as having "opened the door." *Cf. Ludack v. State*, 967 N.E.2d 41, 45 (Ind. Ct. App. 2012) ("otherwise inadmissible evidence may become admissible where the defendant 'opens the door' to questioning on that evidence."), *trans. denied*.[1] Accordingly, we review the substance of the 404(b) argument.

[1] As for Bullard's contention that the State failed to alert the defense prior to trial that evidence of sex in the park would be introduced, the trial court noted that advocates do not always know what their witnesses are going to say during live testimony. From our vantage point, we cannot second-guess the trial judge's determination that the State was surprised by the sex-in-the-park testimony. Rule 404(b)(2)(A) states that upon a criminal defendant's request, if the prosecutor intends to introduce 404(b) crimes, wrongs, or other acts for other purposes, the prosecutor must provide reasonable notice of a general nature. Such notice should occur before trial, or for good cause, during trial. Ind. Evidence Rule 404(b)(2)(B). We caution the State to avoid such surprises in the future.

[11] Relevant evidence is any evidence that "has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." Ind. Evidence Rule 401. Relevant evidence is generally admissible unless the rules or other laws provide otherwise. Ind. Evidence Rule 402. Indiana Evidence Rule 404(b)(1) provides, "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." This restriction prevents the jury from making the forbidden inference that a criminal defendant's other wrongful conduct suggests present guilt. *Fairbanks v. State*, 119 N.E.3d 564, 568 (Ind. 2019), *cert. denied*. However, evidence of uncharged misconduct may be admissible for other purposes, such as proof of "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Ind. Evidence Rule 404(b)(2). Evidence that would otherwise be excluded by Evidence Rule 404(b) is admissible if the court determines that: (1) the evidence is relevant to a matter at issue other than the defendant's propensity to commit the charged act; (2) there is sufficient proof that the defendant in fact committed the act; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Camm v. State*, 908 N.E.2d 215, 223 (Ind. 2009); *see also* Evidence Rule 403.

[12] The charging instrument alleged that Bullard committed invasion of privacy "on or about July 2020." Appellant's App. Vol. 2 at 28. The State introduced evidence that after the protective order was issued, Bullard and S.B. had in-

person contact on three separate occasions plus several electronic communications. The fact that Bullard had *any* contact with S.B. once the protective order was in effect was relevant and highly probative as to whether Bullard committed invasion of privacy. The jury heard that during one of several post-protective order contacts, Bullard had sex with S.B. While the sexual activity might have explained a possible motive for violating the protective order, the admission of the evidence did not unfairly prejudice Bullard as to the invasion of privacy count. We cannot say that the trial court abused its discretion by admitting the sex-in-the-park evidence as it relates to the misdemeanor invasion of privacy.

[13] The charging instrument alleged that on or between April 2020 and June 2020, Bullard committed sexual misconduct with a minor. Appellant's App. Vol. 2 at 27-28. Per relevant statute, the State had to prove that Bullard was over age twenty-one when she knowingly or intentionally performed or submitted to sexual intercourse or other sexual conduct with S.B. when he was less than sixteen years of age. Ind. Code § 35-42-4-9(a)(1). S.B. was born on July 13, 2004. While the exact date of the sex-in-the-park incident was not completely clear, S.B. unequivocally stated that the last time he "physically met" Bullard in person, he was fifteen years old. Thus, to the extent the jury might have considered the sex-in-the-park evidence to support their finding that Bullard was guilty of sexual misconduct with a minor between April and June, the error is harmless given that the sex in the park occurred prior to S.B.'s sixteenth birthday. Moreover, as we detail in the following section, sufficient other

evidence was presented to support the jury's guilty verdict on this count. *See Barger v. State*, 587 N.E.2d 1304, 1307 (Ind. 1992) (holding that in most circumstances, time is not of the essence in the crime of child molesting). We cannot say the sex-in-the-park evidence impacted Bullard's substantial rights.[2]

[14] In a related argument, Bullard takes issue with one of the court's final jury instructions. Over Bullard's objection, the court instructed that the State "is not required to prove that the crime charged was committed during a particular time period alleged in the charging information." Appellant's App. Vol. 2 at 85 (Final Instruction 13).[3]

[15] Instructing a jury is a matter within the sound discretion of the trial court. *McCowan v. State*, 27 N.E.3d 760, 763 (Ind. 2015). In reviewing whether an abuse of that discretion occurred, "[w]e determine whether the instruction states the law correctly, whether it is supported by record evidence, and whether its substance is covered by other instructions." *Pattison v. State*, 54 N.E.3d 361, 365 (Ind. 2016). Final Instruction 13 is a proper statement of the law. *See Love v.*

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[2] We distinguish *Ware v. State*, 816 N.E.2d 1167 (Ind. Ct. App. 2004) (affirming convictions where defendant did not demonstrate substantial likelihood that improperly admitted evidence contributed to verdict given limiting instruction and other evidence demonstrating an ongoing sexual relationship), and *Greenboam v. State*, 766 N.E.2d 1247 (Ind. Ct. App. 2002) (only evidence of defendant's molestation during relevant time frame was from victim), *trans. denied*. Here, the State presented significant additional evidence beyond the sex-in-the-park evidence to support the sexual misconduct charge. Further, Bullard did not request a limiting admonition during trial. She eventually proposed an instruction that attempted to address 404(b) issues, which the court did not give. In denying her proposed instruction, the court explained that it was not a pattern instruction, that he had not been asked to give any admonishments, and that he believed it could be confusing. Bullard does not challenge the court's decision not to accept her proposed instruction. Appellant's Br. at 13 & n.3.

[3] The State did not directly respond to this argument.

State, 761 N.E.2d 806, 809 (Ind. 2002) (noting that when time is not of the essence, State may prove commission at any time within statutory period of limitations). Had the State introduced any evidence of misconduct between Bullard and S.B. that occurred *after* S.B.'s sixteenth birthday, Final Instruction 13 would not have been proper. The State did not, thus this was not one of the limited instances where such an instruction could have misled the jury regarding the law. The substance of Final Instruction 13 was not covered by other instructions. Bullard has demonstrated no abuse of discretion in the trial court's decision to give Final Instruction 13.

Section 2 – The State presented sufficient evidence to support the conviction for sexual misconduct with a minor.

[16] Relying upon the incredible dubiosity rule, Bullard challenges the sufficiency of the evidence supporting her sexual misconduct conviction. She points out discrepancies in S.B.'s testimony and asserts that S.B. was coerced by his mother. In essence, Bullard does not dispute that she and S.B. dated, but she does not believe the State proved they had sex.

[17] In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Anderson v. State*, 37 N.E.3d 972, 973 (Ind. Ct. App. 2015), *trans. denied.* We respect the jury's exclusive province to weigh conflicting evidence, and we consider only the evidence most favorable to its verdict. *Id*. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). We must affirm if the evidence and the reasonable inferences drawn

therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Anderson*, 37 N.E.3d at 974.

[18] Under the incredible dubiosity rule, a court will impinge upon a jury's duty to judge witness credibility where (1) a sole witness presents (2) inherently contradictory testimony that is equivocal or the result of coercion and (3) there is a complete lack of circumstantial evidence of the defendant's guilt. *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015). Incredible dubiosity sets a difficult standard, one that requires great ambiguity and inconsistency in the evidence. *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001). Testimony must be "so convoluted and/or contrary to human experience that no reasonable person could believe it." *See id*.

[19] The jury heard that originally teenager S.B. was reluctant to tell his parents about his involvement with Bullard and that he did not initially wish to report the improper activities to police. The jury also heard that S.B.'s pretrial statements regarding sex with Bullard differed from his testimony at trial. However, at trial, S.B. was clear in stating that he and Bullard had had sex approximately fifty to sixty times starting in April 2020, occurring every other day or so, and including a couple instances of oral sex. He did not waver regarding the fact that he was fifteen during the sexual activity. The jury also

heard about suggestive messages and photos sent by Bullard.[4] The jury saw video of Bullard's body language when confronted by S.B.'s mom, who provided context due to the video's poor sound quality. The jury heard W.D.'s testimony that Bullard and S.B. were dating, holding hands, kissing, and sleeping together. S.B.'s dad testified about how he realized his son would be gone in the middle of the night and in the mornings. The jurors also heard the theory that S.B. was not a victim, and they were reminded that a thirty-one-year-old dating a fifteen-year-old without sexual relations is not a crime.

[20] Any potential uncertainty regarding S.B.'s pretrial statement versus his trial testimony was put squarely before the jury. The jury had the ability to perform its role as trier of fact to determine the extent to which any uncertainty affected the integrity of S.B. as a witness. In addition, as outlined above, the jurors were presented with significant circumstantial evidence. As such, this was not a situation that would warrant application of the incredible dubiosity rule. *See Murray v. State*, 761 N.E.2d 406, 408 (Ind. 2002) (concluding incredible dubiosity rule inapplicable even though witness's testimony was inconsistent with pretrial statements and at odds with testimony of corroborating witnesses). The State presented sufficient evidence to prove beyond a reasonable doubt that Bullard knowingly or intentionally performed and/or submitted to sexual intercourse and/or other sexual conduct with fifteen-year-old S.B. *See also*

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[4] S.B. had a folder on his phone titled, "My Love," which contained, among others, a photo of Bullard's breast and hip with a superimposed message: "You suuuure you want this for the rest of your life???" Ex. Vol. 1 at 19; Tr. Vol. 1 at 145-46.

Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000) (noting a victim's testimony, even if uncorroborated, is ordinarily sufficient to sustain a conviction for child molesting).

Section 3 – Bullard's sentence was not inappropriate.

[21] Bullard maintains that her sentence was inappropriate. Pursuant to Indiana Appellate Rule 7(B), we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Bullard has the burden to show that her sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218. Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders her sentence inappropriate. *Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016).

[22] As we review a sentence, our main role is to leaven the outliers rather than necessarily achieve the perceived correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We look to ensure the sentence was not inappropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Aside from the length of a sentence, we also focus on where a sentence will be served. *See Livingston v. State*, 113 N.E.3d 611, 613 (Ind. 2018). "[S]entencing is principally

a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). In assessing the nature of the offenses and the character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013).

[23] Turning first to the nature of the offenses, we note that the advisory sentence "is the starting point the Legislature selected as appropriate for the crime committed." *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). The advisory sentence for a level 4 felony is six years, with a range of two through twelve years. Ind. Code § 35-50-2-5.5. Here, the trial court sentenced Bullard to six years, with three years to be served at the Department of Correction and three years suspended. Bullard does not challenge the concurrent one-year sentence she received for the misdemeanor.

[24] Bullard asserts that there was nothing particularly egregious or harmful about her offense, noting that she did not threaten or coerce S.B. but instead opened her home to him and shared an emotional dating relationship with him. The trial court disagreed with Bullard's benign characterization of her offense. The judge was astounded at how Bullard created the "cool house" with S.B., "hangin' out" with Bullard's son and other friends, playing video games, and

helping with odd jobs, but then progressed quickly to having sex with fifteen-year-old S.B. Tr. Vol. 2 at 152-53. Further, it was not just a one-time mistake but "numerous times with frequency and regularity and, and repeatedly." *Id*. at 153. The judge lamented how Bullard's ongoing failure to be the adult in the room had warped S.B.'s perspective regarding what normal adult relationships should be. The judge viewed the likelihood of reoccurrence as high given the numerous instances of sex as well as Bullard contacting S.B. despite S.B.'s parents' requests and in violation of a protective order.

[25] Regarding her character, Bullard contends that she has been mostly law abiding, has a dependent son, and would respond positively to short-term imprisonment. While Bullard does have a son (who was friends with S.B.), she also has a prior criminal history, having pled guilty to operating a vehicle while intoxicated endangering a person in 2017. Appellant's App. Vol. 2 at 109. She violated probation and had her probation terminated unsuccessfully. *Id*.; Tr. Vol. 2 at 154. For two years thereafter, she smoked methamphetamine almost daily. Appellant's App. Vol. 2 at 111. In the present case, neither parental entreaties nor a protective order deterred Bullard from seeing fifteen-year-old S.B., with whom she had sex fifty to sixty times.

[26] We agree with the trial court's assessment of the nature of Bullard's offense and her character. Bullard has not presented compelling evidence to demonstrate that her six-year sentence, with only half of that time to be served in the DOC, was inappropriate for her conviction of level 4 sexual misconduct with a minor. Accordingly, we affirm her sentence.

[27] Affirmed.

Vaidik, J., and Altice, J., concur.