MEMORANDUM DECISION

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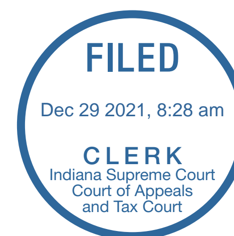

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IN THE COURT OF APPEALS OF INDIANA

Milton Vanderford,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

December 29, 2021

Court of Appeals Case No. 21A-CR-1701

Appeal from the Hamilton Superior Court

The Honorable William J. Hughes, Judge

Trial Court Cause No. 29D03-2004-CM-2329

Robb, Judge.

Case Summary and Issues

[1] Following a bench trial, Milton Vanderford was convicted of three counts of invasion of privacy, all Class A misdemeanors, and sentenced to 360 days on Count 1 and one year each on Counts 2 and 3. The sentences were ordered to be served consecutively, and all but 180 days was suspended to probation. Vanderford now appeals his convictions and sentence, raising two issues for our review: 1) whether the evidence was sufficient to support his convictions, and 2) whether his sentence is inappropriate in light of the nature of his offenses and his character. Concluding the evidence was sufficient and the sentence is not inappropriate, we affirm.

Facts and Procedural History

[2] Vanderford met a woman named Tracy in March 2018. They married in August 2018, but Tracy filed for dissolution just a few months later and their divorce was finalized in April 2019. Vanderford continued to live in Tracy's home until February 25, 2020, when he was served with an ex parte protective order sought by Tracy and granted against him.

[3] On March 1, 2020, Tracy received a phone call from the number 317-xxx-5889. The number was unknown to her, but she answered the phone because she has a business, and it could have been a potential client. Tracy asked who was calling and the caller said, "[Y]ou know who it is. It's . . . Jim Bob[.]" Transcript, Volume 2 at 8. Knowing Vanderford for two years and being

married to and/or living with him for well over a year, Tracy recognized the caller's voice as Vanderford's. Plus, "Jim Bob" was "something that he would frequently say as a funny name when he was calling." *Id.* Vanderford said he wanted to talk and asked her not to hang up, but she hung up the phone immediately. She received two or three more calls from the same number that day but did not answer. Tracy made a police report and the responding officer looked at her phone, seeing that she had received several calls from 317-xxx-5889 and that she had answered only the first one. They also looked up the incoming phone number, which returned to a nearby UPS store. The next day, there was a hearing on the protective order at which Vanderford was present, and the protective order was made permanent.

[4] On March 17, Tracy received a phone call from the number 812-xxx-9400. When she answered the phone, she again recognized Vanderford's voice on the other end of the line. He told her not to hang up, that he just wanted to talk to her, and then said, "I'm always two steps ahead of you." *Id.* at 10. Tracy said that phrase was "one of his little phrases, coin phrases he would commonly use." *Id.* Tracy told him he was not supposed to be calling her and hung up. She received three or four more calls from that number that day but did not answer. Tracy made a police report and looked up the phone number, which returned to a gas station in Brazil, Indiana. Tracy looked up the number because she was worried about her safety and was trying to pinpoint Vanderford's location.

[5] And on March 18, Tracy received another phone call from Vanderford, this time from a number in Tennessee. Again he said that he just wanted to talk to her and asked her not to hang up, and again she told him he was not supposed to be calling her, asked him to stop, and hung up. Tracy also made a police report about this call.

[6] The State charged Vanderford with three counts of invasion of privacy, one for each day he called Tracy, alleging that Vanderford had knowingly violated a protective order. At his bench trial, Vanderford stipulated that he had been served with the ex parte protective order on February 25, 2020, and that he was present in court on March 2, 2020, when the protective order was made permanent. He testified that he did not call or attempt to call Tracy on March 1, 17, or 18. The trial court found him guilty of all three counts of invasion of privacy, stating that "[i]n this kind of circumstance, the Court must determine which [witness] I will believe and which I will not believe, and I choose to believe the complaining witness." *Id.* at 37.

[7] The sentencing hearing was held immediately following the verdict. No presentence investigation report was prepared but Vanderford's criminal history was discussed at the trial and during the sentencing phase. Vanderford was convicted in 2002 of first degree armed robbery in Kentucky and was incarcerated until March 2018. *See id.* at 32-33. He also has a burglary conviction from the 1990s. *See id.* at 38. After leaving Tracy's house in February 2020, Vanderford lived in Elwood for a few months, then moved to Kentucky, and eventually returned to Indianapolis. After returning to Indiana,

he discovered there was a warrant for his arrest, and he turned himself in. Tracy gave a statement in which she said that when she met Vanderford, shortly after his release from prison in Kentucky, "he was supposedly reformed . . . but, I don't feel that at all." *Id.* at 41. She said Vanderford had tried to "manipulate, ruin my life, ruin my daughter's life[,]" and her daughter was in therapy because of it. *Id.* She requested Vanderford serve time in jail "to keep him from people that don't deserve to be treated the way he has treated me[.]" *Id.*

[8] The trial court did not make any findings of aggravators or mitigators, but did find that "there are three, separate, distinct incidences here and that this does not constitute a single crime spree. Therefore, [the sentences] can be served consecutively." *Id.* at 42. The trial court imposed the following sentence:

> [A]s to Count 1, . . . I sentence you to one year in the Hamilton County Jail, 180 days suspended, 180 days served. As to Count 2, I sentence you to 365 days in the Hamilton County Jail suspended to 365 days of probation. As to Count 3, I sentence you to . . . 365 days in the Hamilton County Jail, suspended to 365 days of probation. Probation will be served consecutively, and these sentences will be served each other consecutively.

Id. Vanderford now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

[9] Our standard of reviewing a sufficiency claim is well-settled: we do not reweigh the evidence or assess the credibility of the witnesses. *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012). Instead, we view the evidence – even if conflicting – and all reasonable inferences drawn from the evidence in the light most favorable to the conviction. *Id.* The evidence need not overcome every reasonable hypothesis of innocence. *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007). "[W]e will affirm the conviction unless no reasonable trier of fact could have found the elements of the crime beyond a reasonable doubt." *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011).

B. Evidence of Invasion of Privacy

[10] To obtain a conviction for invasion of privacy, a Class A misdemeanor, the State was required to prove that Vanderford knowingly or intentionally violated a protective order issued to prevent domestic or family violence or harassment. Ind. Code § 35-46-1-15.1(a)(1). The State and Vanderford stipulated to the existence of the protective order and to the fact that Vanderford had notice of the order. Vanderford acknowledges that Tracy identified him as the caller. He argues only that the State failed to provide evidence beyond Tracy's testimony

that he is the person who called her on March 1, 17, or 18 and the evidence was therefore insufficient to identify him beyond a reasonable doubt as the caller.[1]

[11] In *Knight v. State*, 42 N.E.3d 990 (Ind. Ct. App. 2015), the defendant was convicted of invasion of privacy for contacting his girlfriend by phone after she had obtained a protective order against him. A deputy, who approximately one month earlier had transported the defendant in her patrol car after serving him with the protective order, intercepted the call and testified that she recognized the person on the line as the defendant based on his voice and because he used a particular phrase that he had also used while in her car. We held this was sufficient evidence to prove the defendant's identity as the person who called, and any question about the deputy's ability to recognize the defendant's voice after a twenty-minute car ride was a matter of weight and credibility for the trier of fact to resolve. *Id.* at 994.

[12] The evidence in this case is similar to that in *Knight*. Tracy testified that she immediately recognized Vanderford's voice when she answered the phone on March 1, 17, and 18. She was involved with him for nearly two years and lived with him for most of that time; therefore, she was familiar with his voice. The

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[1] The majority of the cases cited by Vanderford in this argument concern the admissibility of telephone recordings to prove the content of a call. *See* Brief of the Appellant at 9-10. Those cases are not relevant to the consideration of whether evidence is sufficient to support a conviction, but we note that even in that context, "[s]ufficient identification may be derived from testimony by a witness familiar with the caller's voice and who recognizes it in the conversation, as well as an inference that the voice belongs to the individual based upon the circumstances and details included in the conversation." *State v. Motley*, 860 N.E.2d 1264, 1266 (Ind. Ct. App. 2007).

caller identified himself by a nickname Tracy knew Vanderford by and used a catch phrase Tracy knew Vanderford commonly used. Although Vanderford denied making the calls, the trial court specifically found Tracy's testimony to be the more credible. And although the additional evidence suggested by Vanderford – such as evidence of Vanderford's location on the dates and times of the phone calls to compare to the origins of the phone numbers – would have been probative, the absence of such evidence does not diminish or eliminate the probative value of Tracy's testimony. A conviction can be based on the uncorroborated testimony of one witness, "even when that witness is the victim." *Bailey*, 979 N.E.2d at 135. "[T]here is no rule requiring buttressing corroborative identification evidence and voice identification has been treated as independently sufficient." *Bane v. State*, 424 N.E.2d 1000, 1002 (Ind. 1981).

[13] Vanderford's argument is simply a request that we reweigh the evidence, which we will not do. *See Bailey*, 979 N.E.2d at 135. The evidence was sufficient to support Vanderford's convictions.

II. Sentence

A. Standard of Review

[14] Vanderford also argues that the trial court imposed an inappropriate sentence given the nature of the offense and his character. Indiana Appellate Rule 7(B) permits us to revise a sentence "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." Sentencing is "principally a

discretionary function" of the trial court to which we afford great deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character[.]" *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[15] The defendant carries the burden of persuading us that the sentence imposed by the trial court is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may look to any factors appearing in the record in making such a determination, *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017). The question under Rule 7(B) is "not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). "The principal role of appellate review should be to attempt to leaven the outliers, . . . not to achieve a perceived 'correct' result in each case." *Cardwell*, 895 N.E.2d at 1225.

B. Inappropriate Sentence

[16] Vanderford argues his sentence is inappropriate in light of the nature of his offenses and his character. The sentence for a Class A misdemeanor may not exceed one year. Ind. Code § 35-50-3-2. The trial court sentenced Vanderford to 360 days for Count 1 and one year each for Counts 2 and 3, ordered them to be served consecutively, but then suspended all but 180 days of the aggregate sentence to probation. *See Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010) (concluding that when reviewing a sentence for inappropriateness, we may

consider "all aspects of the penal consequences imposed by the trial judge[,]" including whether a portion of the sentence is ordered suspended).

[17] Vanderford maintains the nature of his offenses does not support the sentence because the calls were short, occurred over a very short period of time, and were not threatening. *See* Br. of Appellant at 13-14. Although Tracy only answered the phone the first time Vanderford called each day, she testified that after she hung up, he called back several times. She felt compelled to find out where the calls were originating from because she feared for her safety and wanted to know where Vanderford was. Nothing about the nature of the offense indicates the sentence is inappropriate.

[18] Vanderford also maintains his character does not support the sentence imposed because although he has a criminal history, it is not related to Tracy, there were no allegations that Vanderford ever tried to contact her again after March 18, and he turned himself in when he learned he had an outstanding warrant. Vanderford's criminal history is apparently brief, but he has been convicted of two serious crimes, including armed robbery. Even a minor criminal history reflects poorly on a defendant's character. *Reis*, 88 N.E.3d at1105. And although we commend Vanderford for turning himself in, that act alone does not, as he claims, "show[] that [he] has a respect for the court despite his past offenses[,]" Br. of Appellant at 14, nor does it reflect so favorably on his character as to overcome our deference to the trial court's sentencing decision, *see Stephenson*, 29 N.E.3d at 122. Vanderford's largely suspended sentence is not inappropriate.

Conclusion

[19] The evidence was sufficient to support Vanderford's convictions of invasion of privacy, and his sentence is not inappropriate in light of the nature of his offenses and his character. Vanderford's convictions and sentence are affirmed.

[20] Affirmed.

Riley, J., and Molter, J., concur.