MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael J. Nagy,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 13, 2023

Court of Appeals Case No. 22A-CR-2267

Appeal from the Elkhart Superior Court

The Honorable Kristine A. Osterday, Judge

Trial Court Cause No. 20D01-2201-F3-5

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Michael Nagy appeals his convictions for Level 3 felony rape and Level 3 felony criminal confinement and his sentence following a jury trial. Nagy presents three issues for our review:

> I. Whether the State presented sufficient evidence to support his rape conviction.
>
> II. Whether the State presented sufficient evidence to support his criminal confinement conviction.
>
> III. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] In June 2021, Nagy was living with his mother when he invited his friend J.P. to stay with them "for a couple days." Tr. Vol. 2, p. 105. J.P. was pregnant and homeless at the time. When J.P. arrived, Nagy took her downstairs to the basement. J.P. laid down on a bed and tried to sleep. J.P. had two cell phones with her—her phone and her fiancé's phone[1]—but Nagy took them from her and told her that she "didn't need" them. *Id.* at 115.

[4] J.P. was trying to kick a drug habit at the time, so she slept a lot for a few days. During the times she was awake, she and Nagy would talk, and she saw Nagy

[1] J.P.'s fiancé was in jail at that time.

using synthetic marijuana and methamphetamine. When J.P. needed to use the bathroom, which was upstairs, Nagy insisted on going with her. J.P. "wasn't allowed to walk [upstairs] alone." *Id.* at 118. Nagy went outside with J.P. when she wanted to smoke cigarettes. At one point, she walked towards the edge of the backyard and Nagy "got mad" and told her to stay close to him and the house. *Id.*

[5] On one occasion, J.P. was lying on the bed and Nagy tried to "flirt" with her. *Id.* at 120. J.P. did not respond in kind, but Nagy got "rough" with J.P. and "grabb[ed]" her and tried to kiss her. *Id.* at 121. J.P. "told him no" twice. *Id.* Nagy would not stop, so J.P. "just laid there" because she had "been in a situation [like] that before and [knew] how [much] worse it can get." *Id.* at 121-22. J.P. was afraid that Nagy would hit her, so she did not resist when he pulled off her pants, "used his knee to open [her] legs," and placed his penis in her vagina. *Id.* at 123. Nagy continued until he ejaculated inside of her. Nagy left the basement, and J.P. tried to sleep. She did not try to contact the police because she "didn't wanna [sic] have to go out and be in the street again." *Id.* at 124. In any event, J.P. still did not have a phone.

[6] Later, after J.P. woke up, Nagy was back in the basement, and he called J.P. by the name of the mother of his children. Nagy's voice sounded "angry" and "mean." *Id.* at 126. J.P. was scared. Nagy "dumped" J.P.'s purse. *Id.* at 127. When she tried to pick it up, he grabbed her by her hair. J.P. started fighting back, and Nagy punched her in her stomach and in her face and he placed her in a "chokehold." *Id.* While he had her in a chokehold, he told her to "go to

sleep" and J.P. thought she was going to die. *Id.* J.P. urinated on herself. J.P. then lost consciousness.

[7] When J.P. regained consciousness, Nagy was there. J.P. asked him whether she could go to the bathroom, and he took her upstairs. Nagy went into the bathroom and stood by the sink while J.P. used the toilet. Nagy then left the bathroom briefly, but he instructed J.P. to stay in the bathroom. J.P. took that opportunity to leave the bathroom. She ran to the kitchen and grabbed a sharp utensil. Nagy confronted her, but Nagy's mother entered the room. Nagy's mother told Nagy to give J.P. her cell phone, and he complied. J.P. then left Nagy's house and called 9-1-1.

[8] It was 12:45 a.m. on June 30 when deputies with the Elkhart County Sheriff's Department got the dispatch to meet J.P. at a laundromat. Deputy Trevor Grant was the first on the scene, and he saw bruising on J.P.'s face and red marks on her neck. J.P. was crying, coughing, and "seemed pretty emotional." *Id.* at 64. J.P. started to tell Deputy Grant what had happened, including that she had been strangled, and EMTs arrived and transported her to a nearby hospital. However, because J.P. had indicated that she had been sexually assaulted, Deputy Grant drove her to St. Joseph Regional Medical Center to undergo a forensic examination.[2] There, J.P. got into an argument with a nurse,

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[2] There was no one at the first hospital qualified to perform a forensic examination.

and J.P. "refused any further treatment." *Id.* at 71. Deputy Grant drove J.P. to a local women's shelter.

[9] The State charged Nagy with Level 3 felony rape, Level 3 felony criminal confinement, Level 5 felony battery, and Level 6 strangulation. The State also alleged that Nagy was a habitual offender. The State later amended the charging information to include a charge for Level 5 felony battery causing injury to a pregnant woman. A jury found Nagy guilty as charged and adjudicated him a habitual offender. The trial court entered judgment only on Level 3 felony rape and criminal confinement verdicts and the habitual offender adjudication and sentenced Nagy as follows: sixteen years for rape, enhanced by twenty years; and sixteen years for criminal confinement. The trial court ordered that the sentences be served consecutively, for an aggregate term of fifty-two years. This appeal ensued.

Discussion and Decision

Issue One: Sufficiency of the Evidence—Rape

[10] Nagy contends that the State did not present sufficient evidence to support his conviction for rape. Our standard of review is well settled.

> When an appeal raises "a sufficiency of evidence challenge, we do not reweigh the evidence or judge the credibility of the witnesses . . . ." We consider only the probative evidence and the reasonable inferences that support the verdict. "We will affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'"

Phipps v. State, 90 N.E.3d 1190, 1195 (Ind. 2018) (quoting *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011)).

[11] To prove that Nagy committed Level 3 felony rape, the State was required to show that Nagy knowingly or intentionally had sexual intercourse with J.P. when she was compelled by force or the imminent threat of force. Ind. Code § 35-42-4-1(a). Nagy's sole contention on appeal is that the evidence is insufficient to convict him of rape because J.P's testimony was incredibly dubious. Nagy is incorrect.

[12] As our Supreme Court has stated,

> [u]nder our "incredible dubiosity" rule, we will invade the jury's province for judging witness credibility only in exceptionally rare circumstances. The evidence supporting the conviction must have been offered by a sole witness; the witness's testimony must have been coerced, equivocal, and wholly uncorroborated; it must have been "inherently improbable" or of dubious credibility; and there must have been no circumstantial evidence of the defendant's guilt.

McCallister v. State, 91 N.E.3d 554, 559 (Ind. 2018). Our Supreme Court has also stated that the rule "'requires great ambiguity and inconsistency in the evidence'" and "'[t]he testimony must be so convoluted and/or contrary to human experience that no reasonable person could believe it.'" *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015) (quoting *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001)). "'[I]t is for the trier of fact to resolve conflicts in the evidence and

to decide which witnesses to believe or disbelieve.'" *Id.* at 755-56 (quoting *Murray v. State*, 761 N.E.2d 406, 409 (Ind. 2002)).

[13] Here, there were no contradictions in J.P.'s testimony. J.P. testified that Nagy got "rough" with her and "grabb[ed]" her and tried to kiss her. Tr. Vol. 2, p. 121. J.P. "told him no" twice. *Id.* Nagy would not stop, so J.P. "just laid there" because she had "been in a situation [like] that before and [knew] how [much] worse it can get." *Id.* at 121-22. J.P. was afraid that Nagy would hit her, so she did not resist when he pulled off her pants, "used his knee to open [her] legs," and placed his penis in her vagina. *Id.* at 123.

[14] Still, Nagy points out that J.P. did not report the rape during the 9-1-1 call, during medical examinations, or during interviews with law enforcement officers. And he argues that her silence with respect to the rape during those encounters, as well as her failure to scream or physically resist the rape, renders her trial testimony dubious. But the State is correct that "even if [a witness's] trial testimony is inconsistent with pre-trial statements, that does not necessarily make the testimony at trial incredibly dubious." *Moore v. State*, 27 N.E.3d 749, 758 (Ind. 2015). And the fact that J.P. did not scream or physically resist goes to the weight of the evidence. Because J.P.'s trial testimony was consistent and not "inherently improbable," we reject Nagy's contention that her testimony was incredibly dubious. *See McCallister*, 91 N.E.3d at 559. Nagy does not otherwise challenge the sufficiency of the evidence to support his rape conviction, and we affirm that conviction.

Issue Two: Sufficiency of the Evidence—Criminal Confinement

[15] Nagy next contends that the State did not present sufficient evidence to support his conviction for criminal confinement. In support, Nagy cites the evidence showing that J.P. was free to leave—and did leave[3]—his house. But Nagy's argument amounts to a request that we reweigh the evidence, which we will not do.

[16] To prove Level 3 felony criminal confinement, the State had to prove that Nagy knowingly or intentionally confined J.P. without J.P.'s consent and which resulted in serious bodily injury to J.P. At trial, J.P. testified that Nagy hit her and strangled her and she lost consciousness. After J.P. woke, she asked Nagy whether she could go to the bathroom. Nagy escorted her to the bathroom, and he stood by the sink while she was on the toilet. Nagy then left the bathroom, but he told her not to leave. J.P. took that opportunity to run to the kitchen, where she grabbed a sharp utensil. Nagy's mother then told J.P. to leave the house, and she did.

[17] Nagy's argument on appeal focuses on the evidence that J.P. was, at times during her days-long stay with Nagy, free to move about and to leave his house. But Nagy ignores the evidence that J.P. was confined against her will when he strangled her and when, immediately thereafter, he told her not to leave the

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[3] Nagy presented testimony that J.P. had left his home more than once during her stay with him and returned each time.

bathroom. The State presented sufficient evidence to support Nagy's criminal confinement conviction.

Issue Three: Sentence

[18] Finally, Nagy contends that his sentence is inappropriate in light of the nature of the offenses and his character. The trial court imposed the maximum sentence of sixteen years on each count, to be served consecutively. *See* I.C. § 35-50-2-5. In addition, the trial court enhanced Nagy's sentence for rape by twenty years for being a habitual offender. Thus, Nagy's aggregate sentence is fifty-two years.

[19] Under Indiana Appellate Rule 7(B), we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." Making this determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for "a rare and exceptional case." *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[20] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to "leaven the outliers," not to achieve what may be perceived as the "correct" result. *Id.* Thus, deference to the trial court's sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling

evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[21] Nagy acknowledges that the offenses are "reprehensible," but he asserts that the facts and circumstances are "typical" of those offenses. Appellant's Br. at 23-24. Thus, he argues that the trial court should have imposed the advisory sentences, rather than the maximum sentences, for both convictions. Nagy also acknowledges his "significant criminal history," which includes thirteen prior felony convictions, but he maintains that he is not "the worst of the worst" to support the maximum sentences imposed. *Id.* at 24.

[22] But Nagy has not presented compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—or showing substantial virtuous traits or persistent examples of positive attributes to show a good character. *See Stephenson*, 29 N.E.3d at 122. Indeed, the evidence shows that J.P. was pregnant and homeless and leaning on Nagy for help when he raped her and later brutally beat and strangled her. And it is notable that Nagy cannot direct us to *any* evidence of his good character. Nagy's fifty-two-year sentence is not inappropriate.

Conclusion

[23] For all these reasons, we affirm Nagy's convictions and sentence.

[24] Affirmed.

May, J., and Bradford, J., concur.