MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

James D. Crum
Coots, Henke & Wheeler, P.C.
Carmel, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

William B. Harris,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 3, 2023

Court of Appeals Case No. 22A-CR-1451

Appeal from the Hamilton Superior Court

The Honorable Jonathan M. Brown, Judge

Trial Court Cause No. 29D02-2011-F1-7120

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] William B. Harris appeals his convictions for two Level 1 felony offenses of child molesting and two Level 4 offenses of sexual misconduct with a minor. Harris raises a single issue for our review, namely, whether the trial court erred when it tried him *in absentia*. We affirm.

Facts and Procedural History

[2] Sometime in 2014, Harris moved in with his girlfriend, T.P., and his girlfriend's daughter, nine-year-old M.P. A few years later, the three moved to a new home together in Hamilton County.

[3] When M.P. was twelve years old, Harris began to "grope" her chest and her buttocks daily. Tr. Vol. 3, p. 140. M.P. told him to stop, but he did not, and she was too "scared" to tell anyone about it. *Id.* at 141. Soon thereafter, when he was alone at the house with M.P., Harris forced himself onto her, removed her pants, and inserted his penis into her vagina. Harris told M.P. to not tell anyone and that there "would be consequences for your actions if you do," including that he would "kill [her] horse if [she] said anything." *Id.* at 143.

[4] Harris raped M.P. on numerous occasions over the next several years. He forced M.P. to engage in anal and oral intercourse. Shortly after M.P. turned fourteen years old, she became pregnant with and gave birth to Harris's child. Harris continued to assault M.P. during her pregnancy and after the child's birth. His assaults were "almost a daily thing." *Id.* at 153.

[5] After M.P. gave birth, the Indiana Department of Child Services ("DCS") received a report that Harris might be the child's father. However, when DCS

officials interviewed M.P., she was "scared," and she denied that Harris was the father. *Id.* at 154.

[6] Around August 2020, M.P. tried to be friends with another girl at school. When Harris found out, he "smashed" her phone because he did not want M.P. to "hav[e] friends" or to "talk[] to . . . anybody." *Id.* at 156. After he smashed her phone, Harris "smacked" M.P. *Id.* at 157. M.P. later recalled "black[ing] out and . . . swinging" at him in response. *Id.* M.P.'s mother then came into the room, and M.P. told her of Harris's abuse and that the child needed to have a DNA test. M.P. and her mother left the home and called the police. A later DNA test confirmed Harris's paternity of the child.

[7] The State charged Harris with two Level 1 felony offenses of child molesting and two Level 4 offenses of sexual misconduct with a minor. On April 5, 2022, the trial court held a final pretrial conference. Harris appeared at that conference in person and by counsel. The court informed Harris that it was setting his jury trial for April 12, 2022, at 8:30 in the morning.

[8] Harris failed to appear at his trial. At the beginning of the trial, the court inquired with Harris's counsel as to Harris's presence, and his counsel stated that he had not been able to reach Harris since the final pretrial conference, including the morning of trial. Officers with the Tipton Police Department further informed the court that Harris did not appear to be at his residence. Harris's counsel then moved for a continuance. The court denied that motion and tried Harris *in absentia*.

[9] After hearing the State's evidence, including M.P.'s testimony and the DNA results, the jury found Harris guilty as charged. Two weeks later, Harris appeared before the court on a bench warrant and stated that he had missed his trial because he had "had a mental breakdown," had attempted suicide, and had "woke up two weeks later in a hospital." Tr. Vol. 4, p. 79. However, a woman Harris was living with during the time of his trial, Rebecca Moss, testified that she woke Harris up each morning of his trial and told him "[y]ou've got to go," but Harris simply refused to go. *Id.* at 97. Harris moved to have the jury's verdict set aside and to have a new trial date set, which request the court denied. The court entered its judgment of conviction and sentenced Harris to an aggregate term of sixty-eight years in the Department of Correction. This appeal ensued.

Discussion and Decision

[10] On appeal, Harris asserts that the trial court abused its discretion when it tried him *in absentia*. The United States and Indiana Constitutions afford defendants in a criminal proceeding the right to be present at their trial. U.S. Const. amend. VI; Ind. Const. art. 1, § 13. A criminal defendant may be tried *in absentia*, however, if the trial court determines that the defendant knowingly and voluntarily waived that right. *Jackson v. State*, 868 N.E.2d 494, 498 (Ind. 2007).

[11] As our Supreme Court has made clear:

> When a defendant fails to appear for trial and fails to notify the trial court or provide it with an explanation of his absence, the trial court may conclude the defendant's absence is knowing and

> voluntary and proceed with trial when there is evidence that the defendant knew of his scheduled trial date.

Id. "The best evidence that a defendant knowingly and voluntarily waived his or her right to be present at trial is the 'defendant's presence in court on the day the matter is set for trial.'" *Lampkins v. State*, 682 N.E.2d 1268, 1273 (Ind. 1997) (quoting *Fennell v. State*, 492 N.E.2d 297, 299 (Ind. 1986)), *modified on reh'g*, 685 N.E.2d 698.

[12] Harris was present in court at the final pretrial conference on April 5, 2022, at which the court set Harris's jury trial for April 12. Nonetheless, Harris did not appear for his trial, nor did he contact his attorney or the court to explain his absence. Following his trial *in absentia* and his subsequent arrest, Harris claimed that he did not appear for his jury trial because he had had a mental breakdown and had attempted suicide. But his assertions were contradicted by Moss's testimony, who was living with Harris at the time of his jury trial and informed the court that she had told him each morning of his trial that he needed to go. In other words, the record supports the trial court's conclusion that Harris was aware of the date of his jury trial but chose not to attend, and, therefore, he knowingly and voluntarily waived his right to be present at his trial.

[13] Still, Harris asserts that his waiver was not knowing and voluntary because, at the final pretrial conference, the trial court did not advise him of the perils of failing to be present at his own trial, including that the trial might be held in his absence. But Harris does not cite any authority for the proposition that trial courts are obliged to advise a defendant of the consequences of not appearing

for his own trial, nor for the apparent proposition that he is entitled to assume that he can delay his trial by simply not showing up for it. *See* Ind. Appellate Rule 46(A)(8)(a); *see also Jackson*, 868 N.E.2d at 497 ("defendant cannot be permitted to manipulate the system simply by refusing to show up for trial").

[14] And we agree with the State that "[i]t would be unnecessary to require such advisements" anyway as "the purpose and character of a trial is already made known to defendants through the initial hearing advisements," namely, the right to compel a trial, the right to hold the State to its burden of proof, the right to compel witnesses to appear and to confront them, and the right to not testify, all of which Harris was informed of at his initial hearing. Appellee's Br. at 13-14; *see* Appellant's Supp. App. Vol 2, p. 9. We conclude that, Harris having been informed of those trial rights along with the date of his trial, his decision to not appear was made knowingly and voluntarily. Accordingly, we affirm Harris's convictions.

[15] Affirmed.

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