MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jason M. Hankins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 31, 2023

Court of Appeals Case No. 22A-CR-2846

Appeal from the Jackson Circuit Court

The Honorable Richard W. Poynter, Judge

Trial Court Cause No. 36C01-2003-F1-3

Memorandum Decision by Judge Tavitas
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

[1] Jason Hankins appeals his conviction for child molesting, a Level 1 felony. Hankins argues that the trial court committed fundamental error by admitting grooming evidence. Hankins also argues that the State failed to provide sufficient evidence to establish beyond a reasonable doubt that any child molesting occurred when M.H. was below the age of fourteen. We conclude that the grooming evidence was admissible under Indiana Evidence Rule 404(b) and that the State presented sufficient evidence to sustain Hankins's conviction for child molesting. Accordingly, we affirm.

Issues

[2] Hankins raises two issues on appeal, which we revise and restate as:

I. Whether the trial court committed fundamental error by admitting grooming evidence under Indiana Evidence Rule 404(b).

II. Whether the State presented sufficient evidence to sustain Hankins's conviction for child molesting, a Level 1 felony.

Facts

[3] Hankins and Samantha Lederman ("Lederman") were married and had a daughter, M.H., born in January 2004. Hankins and Lederman divorced when M.H. was approximately six years old. As part of the dissolution agreement, M.H. lived with Lederman but spent every other weekend and some holidays with Hankins.

[4] From the age of five or six until she was a teenager, M.H. recalled having "bathroom incidents" with Hankins. Tr. Vol II. p. 183. M.H. described these "bathroom incidents" as the "[m]any times" that Hankins would enter the bathroom while she was showering. *Id.* at 184. M.H. would announce that she was going to the bathroom to take a shower, and Hankins "would walk in, say that he was going to use the bathroom and then just sit in there while [she] was taking a shower." *Id.*. M.H. would ask Hankins to leave the bathroom, but he refused and would "often" try to talk to her about masturbation while she showered. *Id.* M.H. described these conversations with her father as being "very uncomfortable." *Id.* at 186. During these incidents, while M.H. was in the shower, Hankins never pulled back the shower curtain; however, Hankins did see M.H. naked sometimes when M.H. would exit the shower. Hankins also told M.H. that he had "something for [her] if [she] ever wanted to masturbate." *Id.* at 182.

[5] When M.H. was thirteen, she visited Hankins's house in Seymour where he lived with his wife, Shawna Hankins; Shawna's daughter, K.H.; and Hankins's son, C.H. Tommy Darlage, a friend of Hankins, would also stay with the family. Hankins and Shawna slept in a loft bedroom located upstairs, while M.H. slept in a bedroom downstairs.

[6] Also beginning at the age of thirteen, Hankins said "multiple times" to M.H. that, "in order for her to be more comfortable with [herself,] [she] needed to become more comfortable with him . . . ," so she should remove her clothes before going to bed. *Id.* at 187. M.H. testified that, although she would

normally wear T-shirts and sweatpants to bed, Hankins would request that M.H. not wear a bra to bed. Hankins eventually asked M.H. to remove her underwear whenever she stayed over. This happened "[a]lmost every time [M.H.] went to sleep there." *Id*. at 190. After requesting M.H. to remove her clothing, Hankins would remain in M.H.'s bedroom while she undressed. Each time, M.H. told Hankins that she did not want to wear less clothing, but Hankins repeatedly responded "that [she] needed to take it off in order to be more comfortable[,] and then he started getting very angry." *Id*. at 189.

[7] Hankins also told M.H. that she "needed to cuddle with him." *Id*. at 193. Hankins would lay in bed with M.H. in her room and "would tell [her] that [she] needed to take [her] clothes off to be more comfortable." *Id.* at 191. Hankins would "tell [M.H.] to lay against his side . . . which progressed into more of a spooning position that led [Hankins's] hands to go in places, which then progressed to more." *Id.* at 194. M.H. testified that Hankins's hands would touch over the top of her clothes on her chest, near her pelvic area, and beneath her clothes. Hankins put his fingers "in and out" of M.H.'s vagina, as well as around the outer portion of M.H.'s vagina. *Id.* at 196. While doing this, Hankins "didn't really say a whole lot. He would just tell [M.H.] not to tell anyone." *Id.*

[8] On the night that Hankins had sexual intercourse with M.H., he talked to her about "being comfortable" with herself and then instructed her to take her clothes off. *Id.* at 197. Hankins asked M.H. to lay on the bed on her stomach, removed his sweatpants, got into the bed, and penetrated M.H.'s vagina with

his penis. Hankins told M.H. that "[the sex] was a part of getting closer [to him]." *Id.* at 201. M.H. "was terrified" and did not tell anyone what happened at the time. *Id*.

[9] M.H. last saw Hankins around her fifteenth birthday in 2019. At this point, M.H.'s visits with Hankins ended due to an unrelated issue. In December 2019, M.H. was on a trip to Michigan with Lederman, and Lederman noted that M.H.'s "demeanor was completely different." *Id*. at 151. "[M.H.] was visibly [shaken], her hands were trembling, she was crying, inconsolable, not her normal self." *Id*. at 152. M.H. then disclosed to her mother Hankins's inappropriate behavior and sexual abuse over the last several years.

[10] Lederman sent M.H. to see a counselor in Columbus. After M.H. spoke to the counselor, the counselor contacted the Indiana Department of Child Services. On January 21, 2020, M.H. was interviewed by Forensic Interviewer Kelli Hunckler at Susie's Place Child Advocacy Center in Bloomington. M.H. later spoke with Captain Troy Munson of the Seymour Police Department about Hankins's sexual abuse.

[11] On March 31, 2020, the State charged Hankins with Count I, child molesting, a Level 1 felony; Count II incest, a Level 4 felony; and Count III sexual misconduct with a minor, a Level 4 felony. On August 17, 2022, the State amended the charges to include "sexual intercourse" in accordance with the statutory language for all offenses charged.

[12] On September 6, 2020, at jury trial, M.H. testified that "everything that [Hankins] did to her sexually occurred aged fifteen or younger." *Id*. at 203. M.H. recalled that the cuddling progressed within four months to sexual intercourse. M.H. was unclear as to when the sexual intercourse occurred. During her deposition, M.H. said the intercourse occurred when she was "about fourteen (14), fifteen (15) maybe, but it's in that time frame." *Id*. at 220. M.H. later testified that she was "leaning more towards fifteen (15) but [she] could be mistaken." *Id.* at 221.

[13] On September 6, 2020, the jury found Hankins guilty on all counts. On November 2, 2022, the trial court sentenced Hankins as follows: Count I, thirty-eight years at the Indiana Department of Corrections ("DOC"), Count II, ten years in the DOC, and Count III, ten years in the DOC. Count I and II to be served concurrently, and consecutively to Count III. Hankins now appeals.

Discussion and Decision

I. Admission of Grooming Evidence

[14] Hankins argues that the trial court committed fundamental error in the admission of grooming evidence under Indiana Rule of Evidence 404(b), thereby depriving him of a fair trial. We disagree.

[15] In general, trial courts have wide discretion with respect to the admission of evidence, and our role is to review the trial court's determination for an abuse of that discretion. *Combs v. State*, 168 N.E.3d 985, 990 (Ind. 2021), *cert. denied*, 142 S. Ct. 1125 (2022); *see also Nicholson v. State*, 963 N.E.2d 1096, 1099 (Ind.

2012). We will reverse only if a ruling is "clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Carpenter v. State*, 18 N.E.3d 998, 1001 (Ind. 2014).

[16] Hankins failed to object to the presentation of grooming evidence at trial; therefore, he must establish that the trial court committed fundamental error by admitting the grooming evidence presented by the State. *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). A claim that has been waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred. *See, e.g.*, *Trice v. State*, 766 N.E.2d 1180, 1182 (Ind. 2002). "[A]n error is fundamental if it made a fair trial impossible or was a 'clearly blatant violation[ ] of basic and elementary principles of due process' that presented 'an undeniable and substantial potential for harm.'" *Miller v. State*, 188 N.E.3d 871, 874 (Ind. 2022) (quoting *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009)). "The fundamental error doctrine serves, in extraordinary circumstances, to permit appellate consideration of a claim of trial error even though there has been a failure to make a proper contemporaneous objection during the course of a trial." *Hardley v. State*, 905 N.E.2d 399, 402 (Ind. 2009).

[17] Indiana Evidence Rule 404(b) provides, in relevant part:

> (1) *Prohibited Uses.* 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.

> (2) *Permitted Uses; Notice in a Criminal Case.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. . . .

[18] "When a trial court assesses the admissibility of 404(b) evidence, it must '(1) determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than [a] propensity to commit the charged act and (2) balance the probative value of the evidence against its prejudicial effect pursuant to Rule 403.'" *Nicholson v. State*, 963 N.E.2d 1096, 1100 (Ind. 2012) (quoting *Ortiz v. State,* 716 N.E.2d 345, 350 (Ind. 1999)).

[19] Pursuant to Evidence Rule 403, "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Under Rule 403, we have emphasized that "[even though] all relevant evidence is prejudicial in some sense, the question is not whether the evidence is prejudicial, but whether the evidence is unfairly prejudicial." *Ward v. State*, 138 N.E.3d 268, 273 (Ind. Ct. App. 2019) (citing *Wages v. State*, 863 N.E.2d 408, 412 (Ind. Ct. App. 2007), *trans. denied*).

[20] We conclude that the grooming evidence was admissible under Rule 404(b) to show the preparation and planning of Hankins's sexual offenses and that the evidence was not unfairly prejudicial under Rule 403. Grooming is defined as "the process of cultivating trust with a victim and gradually introducing sexual

behaviors until reaching the point where it is possible to perpetrate a sex crime against the victim." *Mise v. State*, 142 N.E.3d 1079, 1087 (Ind. Ct. App. 2020) (citing *Piercefield v. State*, 877 N.E.2d 1213, 1216 n.1 (Ind. Ct. App. 2007)). In cases involving child molesting, we have held that evidence which shows a defendant's preparation and planning, which includes grooming, is relevant and admissible under Rule 404(b). *See Mise,* 142 N.E.3d 1079, 1087 (defendant repeatedly telling victim to put her fingers into her vagina to check for fleas after giving the dog a bath was evidence of defendant's grooming of victim to "get her comfortable with having her vagina touched.").

[21] Here, the State presented evidence that detailed a range of inappropriate and sexual behaviors that Hankins engaged in with M.H. from the time she was five or six years old until she was fifteen years old. The evidence included sitting in the bathroom while M.H. showered, talking to M.H. about masturbation, instructing M.H. to remove her clothes, and cuddling with M.H. in inappropriate positions. Hankins also consistently explained to M.H. that removing her clothes and cuddling with him was a way to be more comfortable with herself and with him. During their time cuddling, Hankins digitally penetrated M.H. and later had sexual intercourse with M.H.

[22] This grooming evidence was not used for the purpose of showing a propensity to commit child molesting; rather, the evidence clearly showed Hankins's preparation and planning of the sexual crimes committed. Hankins cultivated trust with M.H. and, over several years, introduced sexual behaviors to her, which eventually led to the offenses of child molesting, incest, and sexual

misconduct with a minor. The fact that Hankins told M.H. after having sexual intercourse that having sex was "part of getting closer," emphasizes that his previous actions were forms of grooming, culminating in sexual intercourse. Tr. Vol. II p. 201.

[23] Further, the admission of the grooming evidence was not unfairly prejudicial to Hankins under Rule 403. We have previously held that grooming behaviors that do not constitute a criminal act are less prejudicial than evidence of past criminal sexual activity. *Piercefield*, 877 N.E.2d at 1216. Hankins's behavior of entering the bathroom while M.H. showered, talking to her about masturbation, and asking her to remove her clothing was not, in and of itself, criminal; therefore, the evidence did not carry a significant danger of unfair prejudice. *See Remy v. State*, 17 N.E.3d 396, 401 (Ind. Ct. App. 2014) (where we held that evidence that the defendant showed the victim pornographic material was overtly sexual and "potentially evidence of uncharged criminal conduct" therefore, carried "a significant danger of unfair prejudice"), *trans. denied*.[1] Rather, this evidence has substantive probative value, as it establishes Hankins's planning and preparation leading up to the sexual offenses committed. Any prejudicial impact from this evidence does not significantly outweigh its probative value. For these reasons, we conclude that the trial court

[1] Under Indiana Code § 35-42-4-4, possession of child pornography is a criminal act.

did not commit error, much less fundamental error, by admitting evidence of Hankins's extensive grooming behaviors.

II. Sufficiency of the Evidence for Count I

[24] Hankins also challenges the sufficiency of the evidence to support his conviction for child molesting, a Level 1 felony. Hankins argues that, based on the "testimony of M.H., no reasonable jury could conclude that any conduct sufficient to prove Count I, child molesting as a Level 1 felony, occurred *prior to* the time that [M.H.] was fourteen."[2] Appellant's Br. p. 11 (emphasis in original).

[25] Sufficiency of evidence claims, "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). "When there are conflicts in the evidence, the jury must resolve them." *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263.

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[2] Hankins's does not challenge sufficiency of the evidence pertaining to the sexual misconduct conviction or the incest conviction.

We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[26] The State alleged in Count I that Hankins "did perform or submit to other sexual conduct as defined in Indiana Code Section 35-31.5-2-221.5 with [M.H.], a child under the age of fourteen years (14)[.]" Appellant's App. Vol. II p. 77. This tracks the language of Indiana Code Section 35-42-4-3, which provides: "A person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits child molesting . . . ." The offense is a Level 1 felony if it "is committed by a person at least twenty-one (21) years of age." Ind. Code § 35-42-4-3(a)(1).

[27] Other sexual conduct "means an act involving: (1) a sex organ of one (1) person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object." Ind. Code § 35-31.5-2-221.5. Our Court has previously established that "a finger is an object for [the] purposes of the child molesting statute." *Seal v. State*, 105 N.E.3d 201, 209 (Ind. Ct. App. 2018). Furthermore, "[o]ur Supreme Court has made clear that 'proof of the slightest penetration of the sex organ, including penetration of the external genitalia, is sufficient to demonstrate a person performed other sexual misconduct with a

child.'" *Sorgdrager v. State*, 208 N.E.3d 646, 650 (Ind. Ct. App. 2023) (quoting *Boggs v. State*, 104 N.E.3d 1287, 1289 (Ind. 2018)). "[A]ny penetration is enough", and the victim need not provide a 'detailed anatomical description of penetration.' *Id*. (quoting *Spurlock v. State*, 675 N.E.2d 312 (Ind. 1996), *opinion on reh'g* (May 2, 1997)).

[28] Our Supreme Court has also "concluded that time is not of the essence in the crime of child molesting." *See generally Barger v. State*, 587 N.E.2d 1304, 1307 (Ind. 1992). This is because it is "difficult for children to remember specific dates, particularly when the incident is not immediately reported as is often the situation in child molesting cases. *Id*. "The exact date becomes important only in limited circumstances, including the case where the victim's age at the time of the offense falls at or near the dividing line between classes of felonies." *Id*. The issue here is whether Hankins's digital penetration of M.H. occurred before her fourteenth birthday. Hankins argues that M.H.'s testimony was insufficient to establish that the child molesting occurred prior to the time she turned fourteen.

[29] Hankins argues that no reasonable jury could have concluded that any conduct sufficient to prove Count I occurred prior to the time she was fourteen based on M.H.'s testimony. Hankins further argues that the State failed to establish any accuracy about when digital penetration occurred or if it occurred more than once. Appellant's Br. p. 12.

[30] M.H. testified that, from the age of thirteen onwards, Hankins put his fingers "in and out" of M.H.'s vagina and around the outer portion of M.H.'s vagina. Tr. Vol. II p. 196. M.H. also clearly testified that Hankins's sexual behaviors towards M.H. progressed over several years and culminated in sexual intercourse. M.H. testified that she last saw Hankins around her fifteenth birthday, and she was unsure of the exact timing of the sexual intercourse or the digital penetration. Given her description of the timing, we find that the jury could infer that digital penetration occurred before M.H. turned fourteen.

[31] Hankins's challenge regarding the child molesting conviction is merely a request to reweigh the evidence and judge the credibility of M.H.'s testimony, which we will not do. *Powell*, 151 N.E.3d at 262 (citing *Perry*, 638 N.E.2d at 1242). Under our standard of review, "the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton*, 167 N.E.3d at 801 (quoting *Drane*, 867 N.E.2d at 146-47). It is not our role to "disturb a verdict if the jury could reasonably infer that the defendant is guilty beyond a reasonable doubt from the circumstantial evidence presented." *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995). For these reasons, we conclude that there was sufficient evidence for the jury to find beyond a reasonable doubt that Hankins committed other sexual conduct with M.H. before she turned fourteen.

Conclusion

[32] We conclude that the trial court did not commit fundamental error when it admitted Hankins's grooming behaviors. We also conclude that the State

presented sufficient evidence from which a reasonable jury could find beyond a reasonable doubt that Hankins committed child molesting, a Level 1 felony. Accordingly, we affirm.

[33] Affirmed.

Bailey, J., and Kenworthy, J., concur.