MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Juan Manuel Correa, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 26, 2023

Court of Appeals Case No. 23A-CR-229

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause No. 79D01-2109-F4-37

Memorandum Decision by Judge Tavitas
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

[1] Juan Correa was convicted of unlawful possession of a firearm by a serious violent felon and was sentenced to ten years in the Department of Correction ("DOC") with two years suspended to probation. Correa appeals and argues: (1) his statements to law enforcement regarding his possession of a gun were inadmissible because he was not advised of his *Miranda*[1] rights; (2) the State presented insufficient evidence to support his conviction; and (3) his sentence is inappropriate. We find Correa's arguments without merit and, accordingly, affirm.

Issues

[2] Correa raises three issues, which we restate as:

I. Whether Correa's statements to law enforcement regarding his possession of a gun were inadmissible because Correa was not advised of his *Miranda* rights.

II. Whether the State presented sufficient evidence to support Correa's conviction.

III. Whether Correa's sentence is inappropriate.

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

Facts

[3] On August 11, 2021, William Dingess was driving a semi-truck from Indianapolis to a Meijer located in Lafayette. At approximately 1:30 a.m., as Dingess was slowing the trailer down on an exit ramp, Correa entered the cabin from the passenger side. Correa looked nervous and said that "someone was after him . . . ." Tr. Vol. II p. 85. Dingess texted the person he planned to meet at the Meijer and told the person to contact the police, and Dingess continued driving.

[4] When Dingess arrived at the Meijer, law enforcement was already on the scene. Dingess opened the passenger side door, and Correa immediately placed his hands up. Lafayette Police Department Officer Matthew Wozniak instructed Correa to "come on down." State's Ex. 1 at 3:29. As Correa stepped out of the cabin, an item fell from where he was seated. The following exchange then took place:

> Correa: I think it's going down my pant leg.
>
> Officer Wozniak: What?
>
> Correa: I think it's going down my pant leg.
>
> Officer Wozniak: Huh?
>
> Correa: I think it's going down my pant leg.
>
> Officer Wozniak: What?
>
> Correa: The gun.

Officer Wozniak: The what?

Correa: The gun.

Officer Wozniak: You have a gun?

Correa: Yeah. [Inaudible].

Officer Wozniak: Detain him.

Id. at 3:34-3:50.

[5] Law enforcement searched Correa's person but did not find a gun. Law enforcement then obtained Dingess's consent to search the cabin of the semi-truck and found a twenty-two caliber handgun on the left side of the gear shift between the two seats. Correa later told the officers that he found the gun "in a ditch." *Id*. at 11:51-12:10. DNA testing of the handgun was inconclusive.

[6] At the time these events took place, Correa was in community corrections and serving a thirty-one-year sentence for burglary, a Class B felony, and intimidation by drawing or using a deadly weapon, a Class C felony, which included a gang enhancement, in Cause No. 79D01-1103-FB-8 ("Cause No. 11-3-FB8"). The State charged Correa with unlawful possession of a firearm by a serious violent felon, a Level 4 felony.[2]

[2] The State also charged Correa with carrying a handgun without a license, a Class A misdemeanor; escape, a Level 6 felony; and carrying a handgun without a license, a Level 5 felony, all of which the State later moved to dismiss.

[7] The trial court held a jury trial in December 2022. The parties stipulated that, based on Correa's criminal history, Correa was a "serious violent felon" as defined by Indiana Code Section 35-47-4-5. Officer Wozniak testified regarding Correa's statement that he had a gun, and the State admitted the body camera footage of this interaction with "no objection" from Correa. Tr. Vol. II p. 91. Dingess testified that he neither owns nor carries a gun, nor does he allow other people to ride with him in his semi-truck.

[8] Correa testified in his own defense and denied possessing the gun. According to Correa, he was under the influence of methamphetamine at the time the alleged offense took place.

[9] The jury found Correa guilty of unlawful possession of a firearm by a serious violent felon, and the trial court entered judgment of conviction thereon. The trial court held a sentencing hearing on January 6, 2023. The trial court found as aggravators Correa's criminal history and the fact that Correa violated the conditions of his community corrections placement and probation in Cause No. 11-3-FB8. The trial court found no mitigators and sentenced Correa to ten years in the DOC, with two years suspended to probation. Correa now appeals.

Discussion and Decision

I. Admission of Evidence—Fundamental Error

[10] Correa first argues that the trial court erred by admitting the body camera footage, which contains Correa's statements to law enforcement that he had a gun. We are not persuaded.

A. Waiver

[11] As a threshold matter, we reject the State's argument that Correa waived his challenge to the admission of the body camera footage by stating that he did not object to the admission of the footage at trial. Our Supreme Court has held that, where a party does not merely fail to object to the challenged evidence, but affirmatively states that he or she has "no objection" to the admission of the evidence, appellate review of the evidentiary challenge might be foreclosed. *Halliburton v. State*, 1 N.E.3d 670, 678-79 (Ind. 2013). For example, in *Halliburton*, the defendant appealed the admission of gruesome photographs at trial. Our Supreme Court held that appellate review was unavailable because the defendant "did not simply 'fail'" to object to the photographs but "expressly said 'no objection' or 'I have no objection.'" *Id*. The Court stated, "'[t]he appellant cannot on the one hand state at trial that he has no objection to the admission of evidence and thereafter in this Court claim such admission to be erroneous.'" *Id*. at 679 (quoting *Harrison v. State*, 258 Ind. 359, 281 N.E.2d 98, 100 (1972)).

[12] The State argues that Correa's challenge to the admission of the body camera footage is waived because, as in *Halliburton*, Correa did not merely fail to object to the admission of the body camera footage but affirmatively stated that he had "no objection" to it. Tr. Vol. II p. 91. Correa, however, argues that *Halliburton* is not controlling here because, unlike in *Halliburton*, Correa raises a constitutional challenge to the admission of the body camera footage.

[13] Our Courts have occasionally held that a defendant waives appellate review of constitutional issues when the defendant invites the error. *See Bush v. State*, 208 N.E.3d 605, 611 (Ind. Ct. App. 2023) (citing *Batchelor v. State*, 119 N.E.3d 550, 556 (Ind. 2019)) (defendant waived double jeopardy challenge by requesting jury instruction that "invited the jury to consider the same evidence" present in prior, acquitted offense). The State, however, does not argue that the doctrine of invited error applies here, and we "'indulge every reasonable presumption against waiver" of "fundamental constitutional rights." *Cheesman v. State*, 100 N.E.3d 263, 269 (Ind. Ct. App. 2018) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)), *trans. denied*. Accordingly, we do not find that Correa has waived his challenge to the trial court's admission of the body camera footage.

B. Miranda Warnings

[14] Turning to the merits of Correa's challenge, Correa recognizes that he did not object to the admission of the body camera footage and that we, therefore, only review his challenge for fundamental error. *See Stephenson v. State*, 29 N.E.3d 111, 118 (Ind. 2015) (holding when the challenging party fails to timely object to the admission of evidence at trial, challenges to the evidence on appeal are

"procedurally foreclose[d]" unless the challenging party demonstrates that the "admission constitutes fundamental error"). "An error is fundamental, and thus reviewable despite failure to object, if it made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm." *Alexander v. State*, 197 N.E.3d 367, 370 (Ind. Ct. App. 2022) (quoting *Young v. State*, 30 N.E.3d 719, 726 (Ind. 2015)).

[15] Correa argues that his statements regarding his possession of a gun are inadmissible because he was not advised of his *Miranda* rights. Pursuant to the United States Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), "'a person questioned by law enforcement officers after being taken into custody or otherwise deprived of his freedom of action in any significant way must first be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.'" *State v. Brown*, 70 N.E.3d 331, 335 (Ind. 2017) (quoting *Stansbury v. California*, 511 U.S. 318, 322, 114 S. Ct. 1526 (1994)) (internal quotation marks omitted). Thus, "[t]he trigger to require the announcement of *Miranda* rights is custodial interrogation." *Id*.

[16] A person is in "custody" when "there has been a 'formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" *Id*. (quoting *Stansbury*, 511 U.S. at 322). As for what constitutes "interrogation," our Supreme Court has explained:

> "[I]nterrogation" refers to either express questioning or its functional equivalent. The Court has defined the functional equivalent of express questioning as any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. Such reasonable likelihood of eliciting an incriminating response must be determined from the suspect's perspective, rather than the intent of the police, because *Miranda* protections are intended as a layer of protection for the suspect against coercive police practices, without regard to objective proof of the underlying intent of the police.

Hartman v. State, 988 N.E.2d 785, 788 (Ind. 2013) (internal citations omitted). On the other hand, "[v]olunteered statements do not amount to interrogation." *White v. State*, 772 N.E.2d 408, 412 (Ind. 2022).

[17] Here, we need not decide whether Correa was in custody because we conclude that he was not interrogated. Correa's first statement that something was "going down [his] pant leg" was voluntary. State's Ex. 1 3:34-3:50; *see White*, 772 N.E.2d at 412 (holding "utterance not made in response to any questioning, words or actions on the part of the police" was voluntary and admissible). After Officer Wozniak asked what Correa was referring to, Correa responded, "[t]he gun." State's Ex. 1 3:34-3:50. Though answered in response to Officer Wozniak's questioning, Correa's statement that he had a gun was voluntary because the officer's questioning was not likely to elicit an incriminating response. Law enforcement was contacted after Correa entered Dingess's semi-truck cabin without Dingess's permission. There was no suggestion that Correa was armed. Moreover, Correa initiated the

conversation, and Officer Wozniak simply asked Correa to clarify Correa's voluntary statements. Accordingly, because Correa was not interrogated, the absence of *Miranda* warnings does not render his statements inadmissible, and the trial court did not commit fundamental error by admitting those statements.

II. Sufficiency of the Evidence

[18] Correa next argues that the State presented insufficient evidence to support his conviction. We are not persuaded.

[19] 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. 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)).

[20] Correa was convicted of unlawful possession of a firearm by a serious violent felon. Pursuant to Indiana Code Section 35-47-4-5(a), "'serious violent felon' means a person who has been convicted of committing a serious violent felony" enumerated in subsection (b). "A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Level 4 felony." *Id*. § 35-47-4-5(c). Correa challenges the possession element of the offense.

[21] Possession can be either actual or constructive. *See, e.g.*, *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). "'For the State to prove constructive possession, it must prove the defendant had the intent and capability to maintain dominion and control over the contraband.'" *Woodward v. State*, 187 N.E.3d 311, 319 (Ind. Ct. App. 2022) (quoting *Parks v. State*, 113 N.E.3d 269, 273 (Ind. Ct. App. 2018)), *trans. denied*; *accord Lampkins v. State*, 682 N.E.2d 1268, 1275 (Ind. 1997).

[22] To prove capability, the State must demonstrate that the defendant is able to reduce the contraband to the defendant's personal possession. *See B.R. v. State*, 162 N.E.3d 1173, 1177 (Ind. Ct. App. 2021) (citing *Goliday v. State*, 708 N.E.2d 4, 6 (Ind. 1999)). Meanwhile, to prove intent to maintain dominion and control over the contraband, "'there must be additional circumstances supporting the inference of intent.'" *Woodward*, 187 N.E.3d at 319 (quoting *Parks*, 113 N.E.3d at 273).

> Proof of dominion and control, and therefore knowledge, of contraband has been found through a variety of means: (1) incriminating statements by the defendant, (2) attempted flight or

> furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant. When constructive possession is alleged, the State must demonstrate the defendant's knowledge of the contraband.

Id. (quoting *Parks*, 113 N.E.3d at 273) (internal citations omitted).

[23] Here, Correa voluntarily told law enforcement that he had a gun. Law enforcement located a gun in the cabin of the semi-truck, where Correa had been just moments before. Dingess denied ownership of the gun. This evidence is sufficient to prove that Correa had constructive possession of the gun. Correa's argument is merely a request to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. The State, thus, presented sufficient evidence to support Correa's conviction.

III. Inappropriate Sentence

[24] Correa next argues that his sentence is inappropriate. We are not persuaded.

[25] The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense

and the character of the offender."[3] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[26] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id*. "Whether a sentence should be deemed inappropriate '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.'" *Id*. (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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

[3] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[27] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Correa was convicted of unlawful possession of a firearm by a serious violent felon, a Level 4 felony. Level 4 felonies carry a sentencing range of two to twelve years, with the advisory sentence set at six years. Ind. Code § 35-50-2-5.5. Correa was sentenced to ten years in the DOC with two years suspended to probation.

[28] Our analysis of the "nature of the offense" requires us to look at the nature, extent, heinousness, and brutality of the offense. *See Brown v. State*, 10 N.E.3d 1, 5 (Ind. 2014). Correa argues that his sentence is inappropriate in light of the nature of the offense because his offense was "not more egregious than the typical offense" and because "[t]here were no injuries to property, no injuries to person, and Correa was cooperative with law enforcement during the entirety of their interaction." Appellant's Br. p. 12. Correa, however, sneaked into Dingess's semi-truck cabin on the highway in the middle of the night with a handgun while under the influence of methamphetamine. His actions could have endangered Dingess and other drivers that night. We cannot say that Correa's sentence is inappropriate in light of the nature of the offense.

[29] Turning to the character of the offender, our analysis involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse. *See Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain*, 148 N.E.3d at 985. The significance of a criminal history in assessing a defendant's character and an appropriate sentence vary based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense. *Pierce v. State*, 949 N.E.2d 349, 352-53 (Ind. 2011); *see also Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[30] Correa argues that his sentence is inappropriate in light of his character because he demonstrated remorse by admitting that his behavior was "'[r]eal dumb, stupid.'" Appellant's Br. p. 13 (quoting Appellant's App. Vol. II p. 107). Correa made this statement during his pre-sentence investigation interview; however, Correa never expressed remorse at the sentencing hearing. Moreover, in the same interview, when asked why he decided to commit the instant offense, Correa replied that he "never decided." Appellant's App. Vol. II p. 107. This hardly suggests that Correa is remorseful for his actions.

[31] Additionally, Correa has a lengthy criminal history. He has several juvenile delinquency adjudications and modifications and several felony convictions. He was serving a thirty-one-year sentence for burglary, a Class B felony, and

intimidation by drawing or using a deadly weapon, a Class C felony, which included a gang enhancement, when he committed the instant offense. We cannot say that Correa's sentence is inappropriate in light of his character.

[32] Lastly, Correa argues that the probation department's "less severe recommendation" of eight years with two years suspended to probation warrants a reduced sentence. Appellant's Br. p. 13. The sentence recommended by the probation department, however, need only be "considered" by the trial court. Ind. Code § 35-38-1-8(a). Moreover, the purpose of our review under Indiana Appellate Rule 7(B) "is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate." *Sorgdrager v. State*, 208 N.E.3d 646, 654 (Ind. Ct. App. 2023) (citing *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012)), *trans. denied*. We are not persuaded that Correa's sentence is inappropriate, and accordingly, we affirm.

Conclusion

[33] Correa's statements to the officers were admissible, and sufficient evidence supports his conviction. Additionally, Correa's sentence is not inappropriate. Accordingly, we affirm.

[34] Affirmed.

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