MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jason Terrell McBride,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 28, 2023

Court of Appeals Case No. 22A-CR-2700

Appeal from the Marion Superior Court

The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No. 49D30-2010-F4-32449

Memorandum Decision by Judge Crone
Judge Brown and Senior Judge Robb concur.

Crone, Judge.

Case Summary

[1] Jason Terrell McBride appeals his convictions and sentence for level 3 felony rape and level 4 felony sexual misconduct with a minor. He asserts that his convictions are unsupported by sufficient evidence and that his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

Facts and Procedural History

[2] In 2012, McBride became romantically involved with Amanda McBride, who had two children, a son, M., and a daughter, W.R. In 2013, McBride and Amanda got married. Although McBride became part of W.R.'s life when she was six years old, he did not interact with her very much.

[3] In 2017, Amanda and McBride temporarily separated, and Amanda and her children moved into their own apartment in Marion County. Amanda was diagnosed with myotonic dystrophy and began receiving disability. She had a difficult time doing physical activities, including being intimate.

[4] In 2019, Amanda asked McBride to move back in with her and the children, and he did. Initially, neither W.R. nor M. was happy about it. In 2020, when W.R. was fourteen years old, her relationship with McBride grew closer. McBride was actively involved in W.R.'s modeling career, bought her clothes and treats, and always asked her to accompany him wherever he went. W.R. felt that she and McBride grew "a thousand percent" closer, and she began to look on him as the father figure that she "had wanted [her] whole childhood." Tr. Vol. 2 at 182. W.R. asked McBride if he would adopt her because she

wanted to be with him even if the relationship between him and Amanda ended. W.R. thought he was "the best dad in the world." *Id*. at 193. McBride did not treat M. the same way he treated W.R. Although M. was a student athlete, McBride did not take an active part in any of M.'s school-related activities.

[5] In August 2020, M. broke his femur and tore his ACL playing football. Due to his serious injuries, Amanda had to dedicate much of her time to taking care of him. W.R. also had to help care for M. The family's sleeping arrangements changed. Amanda began sleeping on one end of their sectional couch, while M. slept on the other end. Home life became "extremely stressful" and hectic. *Id*. at 194.

[6] In September 2020, W.R. attempted suicide by overdosing on her medications for anxiety and depression. W.R. "went to the hospital that night" and was released around three or four in the morning. *Id*. at 130. Amanda wanted to watch over W.R., so she put an air mattress in the living room for W.R. to sleep on. One night a day or two later, W.R. was sleeping in "boxers" and a t-shirt or sports bra. *Id*. at 198-99. She woke up and felt McBride moving her "panties to the side." *Id*. at 198. W.R. had been sleeping on her back, and she realized that McBride was lying with his head on her lap. W.R. could feel his fingers "moving on top of [her] girlie area," which is the term W.R. used to refer to her vagina. *Id*. at 200. McBride inserted his finger "past the lips" of her "girlie part or vagina." *Id*. at 200-01. McBride moved off the mattress to the floor next to it.

Because of W.R.'s recent overdose, she had difficulty processing exactly what happened. She decided not to discuss the incident with McBride or her mother.

[7] On October 19, 2020, the children were on fall break. Amanda, McBride, and the children stayed up watching movies and playing games until three or four in the morning. Afterwards, Amanda and M. went to sleep on the couch, W.R. went to sleep in her bedroom, and McBride went to sleep in his and Amanda's bedroom. W.R. later woke up with McBride on top of her. Her boxers had been pushed aside, and she felt McBride "pressing" his penis against her vagina and "trying to insert" it. *Id.* at 212-13. McBride left the room, and W.R. locked the door. She felt "confused and lost." *Id.* at 214.

[8] On October 20, around 12:23 p.m., W.R. sent Amanda a text message that read, "Mommy, I need to go now somewhere just not here." *Id.* at 135. She also sent M. a text asking him to wake their mother up. W.R. went to the living room to talk to Amanda, who noticed that W.R. was shaking and "her eyes were … bulged out of her head." *Id.* at 134. W.R. kept telling Amanda to be quiet, so they went outside the apartment, and W.R. told her what had just happened. Amanda went to confront McBride, who was sitting on the bed in their bedroom wearing sweatpants and wrapped in a blanket. She asked him what was going on and why W.R. would say something like that. McBride kept his head down and responded, "She's lying." *Id.* at 138. Amanda asked to smell his fingers, and they were damp and smelled of soap. McBride claimed that he had purchased a game from Game Stop that morning and had gone into W.R.'s bedroom to give it to her. However, Amanda checked the hood of his car, and

it was cold, and McBride, who always kept his receipts, did not have a receipt for the game. At first, Amanda felt like finding her gun and killing McBride. She asked him where the gun was, and he told her that it was in the car. However, the car was locked, and she did not have the keys, so she called 911.

[9] When the police arrived, McBride was fully dressed and was standing in the master bathroom in front of the sink. Police observed that the front of McBride's pants was wet. Officers transported McBride to the police department for questioning. Officers instructed W.R. to keep on the same boxers that she had been sleeping in, so she pulled on a pair of shorts over the boxers. An officer took W.R. and Amanda to speak to Indianapolis Metropolitan Police Department Detective Daniel Henson. Afterward, they were transported to a hospital. During the drive, W.R. was hysterical and did not stop crying.

[10] At the hospital, forensic nurse Latanya Malone conducted a sexual assault examination on W.R., who was reluctant, not very talkative, and kept her head down. Malone observed a pinpoint of redness between the labia minora near the vaginal opening, which was not something she had found with other adolescents. According to Malone, it could have been a result of injury or irritation, but it fell short of being considered medical trauma. Malone took oral swabs, labial swabs, and vaginal canal swabs and collected W.R.'s boxers for testing. DNA testing indicated the presence of male DNA inside W.R.'s vaginal canal, but it was not of sufficient quality for comparison with another DNA

sample. No DNA was found on W.R.'s external vaginal area. Male DNA from two indistinguishable sources was found in W.R.'s boxers.

[11] When Amanda and W.R. returned home, W.R. started throwing her belongings out of her room and into the hallway. A few days later, Amanda and W.R. had a conversation during which Amanda learned about incidents that happened before October 20. During the conversation, W.R. was shaking and started crying. Amanda immediately notified Detective Henson, who interviewed W.R. a second time. Amanda and the children moved to Florida to be near family because W.R. did not want to stay in Indiana.

[12] The State charged McBride with three counts of level 4 felony sexual misconduct with a minor (Counts 1-3) and two counts of level 3 felony rape (Counts 4-5). At trial, after the State's case-in-chief, the prosecutor moved to dismiss Count 3. McBride moved for judgment on the evidence on Counts 1 and 4. In response, the prosecutor moved to dismiss Count 1. The trial court dismissed Counts 1 and 3 and denied McBride's motion for judgment on the evidence on Count 4. McBride rested his case without presenting any evidence. The jury found McBride guilty of Count 2, level 4 felony sexual misconduct with a minor, and Count 4, level 3 felony rape. The jury found McBride not guilty of Count 5. The trial court sentenced McBride to consecutive terms of nine years for rape and six years for sexual misconduct with a minor, with eleven years executed and four years suspended to probation. This appeal ensued.

Discussion and Decision

Section 1 – McBride's convictions are supported by sufficient evidence.

[13] McBride challenges the sufficiency of the evidence supporting his convictions. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). It is "not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). "We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt." *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009).

[14] To convict McBride of level 4 felony sexual misconduct with a minor, the State was required to prove beyond a reasonable doubt that he, a person at least twenty-one years of age, knowingly or intentionally performed or submitted to other sexual conduct as defined by Indiana Code Section 35-31.5-2-221.5 with W.R., a child less than sixteen years of age. Ind. Code § 35-42-4-9(a). In relevant part, other sexual conduct means an act involving "the penetration of the sex organ or anus of a person by an object." Ind. Code § 35-31.5-2-221.5. To convict McBride of level 3 felony rape, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally had sexual intercourse with W.R. when she was unaware that sexual intercourse was occurring. Ind.

Code § 35-42-4-1(a)(2). Sexual intercourse is "an act that includes any penetration of the female sex organ by the male sex organ." Ind. Code § 35-31.5-2-302. McBride contends that neither conviction was supported by sufficient evidence of penetration.

[15] We begin with McBride's conviction for sexual misconduct with a minor. Our supreme court has held 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 [conduct] with a child." *Boggs v. State*, 104 N.E.3d 1287, 1289 (Ind. 2018). During W.R.'s testimony at trial, the prosecutor asked her to demonstrate where McBride put his fingers by using a Kleenex box. The prosecutor told her that the outside of the box was the outside of her vagina and indicated where the "lips" of her vagina were and where "inside the canal" would be in reference to the box. Tr. Vol. 2 at 200. Based on these instructions, W.R. used her fingers to show that McBride inserted his fingers "past the lips." *Id*. at 201. "The testimony of a sole child witness is sufficient to sustain a conviction for molestation." *Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012). Accordingly, the evidence is sufficient to sustain McBride's conviction for sexual misconduct with a minor.

[16] As for the rape conviction, "the statute defining sexual intercourse does not require that the vagina be penetrated, only that the female sex organ be penetrated." *Mastin v. State*, 966 N.E.2d 197, 202 (Ind. Ct. App. 2012), *trans. denied*. "Penetration of the external genitalia, or vulva, is sufficient to support an unlawful sexual intercourse conviction." *Id*. W.R. testified that McBride was on

top of her, her boxers had been pushed aside, and she felt him "pressing" his penis against her vagina and trying to insert it. Tr. Vol. 2 at 211-13. McBride asserts that there was insufficient evidence of penetration because the State failed to ask W.R. about her knowledge of sexual organs or what "pressing" meant or how she knew "it" was a penis. Appellant's Br. at 12, 16.

[17] At trial, W.R. specifically testified that the part of McBride's body that he was attempting to insert into her vagina was "the male part" that "pee comes out of." Tr. Vol. 2 at 212. W.R. then demonstrated with the Kleenex box that his penis was pressing on her vagina. Also, the evidence showed the presence of male DNA inside her vaginal canal. McBride concedes that male DNA was found inside of W.R.'s vagina but argues there was no evidence directly connecting that DNA to him. W.R.'s testimony that he was pressing his penis on her vagina and trying to insert it connects the male DNA to McBride. And the night prior to the incident, W.R. spent the night in her living room with her family watching movies and playing video games. Therefore, the evidence supports a logical inference that McBride was the male DNA contributor. The cases relied on by McBride are clearly distinguishable. *See Spurlock v. State*, 675 N.E.2d 312, 315 (Ind. 1996) (finding insufficient evidence to support rape conviction where victim testified that Spurlock "tried" to have intercourse with her but explicitly said that she did not know whether penetration had occurred and demonstrated only a generalized understanding of what vagina meant and there was no physical evidence that penetration of even external genitalia had occurred), *on reh'g* (1997); *Adcock v. State*, 22 N.E.3d 720, 728-29 (Ind. Ct. App.

2014) (concluding that appellate counsel provided ineffective assistance by failing to challenge sufficiency of evidence supporting rape conviction where twenty-year-old victim testified that when she was fifteen, Adcock "rubbed" his penis against her vagina but prosecutor did not ask her whether it penetrated any part of her genitalia, and victim had testified that Adcock had digitally penetrated her external genitalia but not her vagina, demonstrating her capability of describing such penetration if it had occurred, and there was no medical or physical evidence of penetration); *Chew v. State*, 486 N.E.2d 516, 518 (Ind. 1985) (evidence insufficient to support rape conviction where victim testified that Chew "made love to [her] from the back" but said she did not understand what was meant by vaginal intercourse or vaginal sex and could not describe the alleged "intercourse" but had provided specific description to support criminal deviate conduct charge). We conclude that McBride's rape conviction is supported by sufficient evidence.[1]

Section 2 – McBride has failed to carry his burden to show that his sentence is inappropriate.

[18] McBride asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence

[1] McBride also argues that the trial court erred by denying his motion for judgment on the evidence on the rape charge. "A motion for judgment on the evidence challenges the legal sufficiency of the evidence." *Romero v. State*, 124 N.E.3d 1287, 1290 (Ind. Ct. App. 2019) (quoting *Farmers Elevator Co. of Oakville v. Hamilton*, 926 N.E.2d 68, 75 (Ind. Ct. App. 2010), *trans. denied*). Because we conclude that there is sufficient evidence to support McBride's rape conviction, we need not address that argument.

is inappropriate in light of the nature of the offense and the character of the offender." McBride has the burden to show that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218.

[19] When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "Such deference 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 character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). As we assess the nature of the offenses and the character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013).

[20] Turning first to the nature of the offenses, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). The advisory sentence for a level 3 felony is nine years, with a fixed term between

three and sixteen years. Ind. Code § 35-50-2-5. The advisory sentence for a level 4 felony is six years, with a fixed term between two and twelve years. Ind. Code § 35-50-2-5.5. The trial court imposed the advisory sentence for both offenses but ordered them to be served consecutively. McBride contends that the evidence does not show that his crimes were any more egregious than other crimes of their type.

[21] The record shows that McBride was in a position of care, custody, and control of W.R. Indeed, W.R. thought of him as "the best dad in the world." Tr. Vol. 2 at 193. We also note that W.R. was in a vulnerable state given that her brother had just been seriously injured, she had to help care for him, most of her mother's attention was diverted to caring for him, and she had recently overdosed on her medications. In addition, as the State points out, there is evidence that McBride's relationship with W.R. involved grooming. When W.R. was a young child, McBride gave her very little attention. However, when W.R. turned fourteen, he started buying her things and spending time with her, and their relationship improved "a thousand percent." *Id.* at 182. We also observe that McBride perpetrated multiple crimes against W.R., which supports the imposition of consecutive sentences. *See Mefford v. State*, 983 N.E.2d 232, 238 (Ind. Ct. App. 2013) ("It is a well[-]established principle that the fact of multiple crimes or victims constitutes a valid aggravating circumstance that a trial court may consider in imposing consecutive or enhanced sentences.") (quoting *O'Connell v. State*, 742 N.E.2d 943, 952 (Ind. 2001)). We are unconvinced that the nature of his offenses warrants a reduction of his sentence.

[22] In reviewing McBride's character, we engage in a broad consideration of his qualities. *Elliott v. State*, 152 N.E.3d 27, 40 (Ind. Ct. App. 2020), *trans. denied*. An offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). As discussed above, W.R. was in a vulnerable condition, and McBride was well aware of that. The commission of his crimes in the face of W.R.'s vulnerability reflects poorly on his character, as does the evidence of grooming. We conclude that McBride has failed to carry his burden to show that his sentence is inappropriate in light of the nature of the offenses and his character.

[23] Based on the foregoing, we affirm McBride's convictions and sentence.

[24] Affirmed.

Brown, J., and Robb, Sr.J., concur.