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IN THE COURT OF APPEALS OF INDIANA

Ricardo Hernandez Vasquez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 30, 2021

Court of Appeals Case No. 20A-CR-2344

Appeal from the Marshall Superior Court

The Honorable Robert O. Bowen, Judge

Trial Court Cause No. 50D01-1906-F1-3

May, Judge.

[1] Ricardo Hernandez Vasquez appeals following his 300-year aggregate sentence for convictions[1] of three counts of Class A felony child molesting,[2] one count of Class C felony child molesting,[3] four counts of Level 1 felony child molesting,[4] and two counts of Level 3 felony child molesting.[5] Vasquez presents four issues for our review:

> 1. Whether the State presented sufficient evidence to support Vasquez's conviction of the second count of Level 3 felony child molesting;
>
> 2. Whether the trial court erred by denying Vasquez's motion to sever the counts involving one victim from those involving the second victim;
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> 3. Whether the trial court abused its discretion by allowing the State to present closing argument regarding an appellate standard of review; and
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> 4. Whether Vasquez's 300-year sentence is inappropriate in light of the nature of his offenses and his character.

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[1] After the return of guilty findings by the jury, Vasquez admitted he was a repeat sexual offender. *See* Ind. Code § 35-50-2-14 (defining repeat sexual offender).

[2] Ind. Code § 35-42-4-3(a)(1) (2012).

[3] Ind. Code § 35-42-4-3(b) (2012).

[4] Ind. Code §§ 35-42-4-3(a) & 35-42-4-3(a)(1) (2014).

[5] Ind. Code § 35-42-4-3(a) (2014).

We reverse in part, affirm in part, and remand for entry of a new sentencing order.

Facts and Procedural History

[2] Vasquez began living with his girlfriend, J.D., and her daughter, K.D., in 2009 or 2010. When Vasquez met J.D., he was living under a fake name, Rick Bane, and he did not share his true identity with J.D. during their nine-year relationship. At the time Vasquez moved in with J.D., K.D. was five or six years old, and he became a father-figure in her life.

[3] When K.D. was eight or nine, Vasquez began subtly bringing up sex in conversations. Then one day, when K.D. was home alone with Vasquez, he asked if she would like to perform oral sex on him. K.D. asked him how it would taste, and he said "salty" (Tr. Vol. 3 at 29), so K.D. performed oral sex on him until Vasquez ejaculated in her mouth. Thereafter, Vasquez had K.D. perform oral sex on him once a day while she was eight and nine years old, but the frequency increased as she got older – sometimes occurring as often as four times a day.

[4] Within a few months of the first oral sex encounter, Vasquez began having anal sex with K.D., and later, he also began having vaginal sex with K.D. The abuse continued until 2019, and toward the end, vaginal sex was the most frequent form of abuse. During those years, Vasquez also fondled K.D.'s breasts, touched her vagina with his hands, and performed oral sex on her.

Vasquez did not ever use a condom when he abused K.D., even after she began having her period, and he set up a barter system whereby K.D. was required to perform sexual acts to go out with friends or watch television. K.D. did not tell anyone what was happening during those years because she was afraid of Vasquez and because she was afraid that her mother, who was happy in the relationship with Vasquez, would not believe K.D. was being abused.

[5] K.D. had a female cousin, M.D., who would visit in the summers and stay for a few weeks at a time at J.D.'s house. M.D. was approximately two years younger than K.D. While staying at J.D.'s house, M.D. would sleep in K.D.'s room with K.D. and K.D.'s younger sister, A.D.[6] In the summer of 2018, M.D. went to J.D.'s house to stay for a month. One night during that month, when M.D. was watching a movie with K.D. and Vasquez on Vasquez's bed, Vasquez began touching M.D.'s shoulders in a way that made her very uncomfortable. That night, when she was asleep in K.D.'s room, M.D. woke as her shorts were being pulled down and then Vasquez began putting his tongue in M.D.'s vagina. She could see that it was Vasquez because of the nightlight that was on in the room. M.D. was scared, and when she moved, Vasquez got up and left the room. The next morning, in the kitchen, Vasquez told M.D. "not to tell anyone or something would happen." (*Id.* at 12.) M.D.

[6] The younger sister was born of the relationship between Vasquez and J.D.

did not tell anyone about the encounter, but she left J.D.'s house that day to go to her father's house.

[6] In May 2019, when M.D.'s mother informed M.D. that she would be going back to stay at J.D.'s house during the summer, M.D. became so upset that she began throwing and hitting things. (*Id.* at 13.) After M.D. informed her mother what had happened, her mother called the police and M.D. was interviewed at the CASIE Center[7] in South Bend.

[7] After M.D. gave her report at the CASIE Center, K.D. was taken to the CASIE Center for an interview. At this first interview, K.D. denied ever being abused by Vasquez. After the interview, K.D. went for an extended stay with her father in Chicago to confirm that she could move to her father's house. When K.D. returned from Chicago, J.D. picked her up at the train station. In the car, J.D. asked K.D. whether she was being abused by Vasquez, and K.D. admitted she was and began crying very hard. K.D. had chosen to be honest, in part, because she thought she was pregnant with Vasquez's child. J.D. contacted the police, and K.D. was interviewed a second time at the CASIE Center. This time she reported what had happened.

[8] For incidents involving K.D., the State charged Vasquez with eight crimes: three counts of Class A felony child molesting; one count of Class C felony

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[7] The CASIE Center is a child advocacy center where forensic interviews of children are conducted. CASIE stands for "Child Abuse Services and Investigation and Education." (Tr. Vol. 3 at 106.)

child molesting; three counts of Level 1 felony child molesting; and one count of Level 3 felony child molesting. For incidents involving M.D., the State charged Vasquez with two crimes: Level 1 felony child molesting and Level 3 felony child molesting. The State also alleged Vasquez was a repeat sexual offender. Vasquez filed a motion to sever the crimes involving K.D. from those involving M.D. After a hearing, the trial court denied the motion to sever. The court held a jury trial, after which the jury found Vazquez guilty of the ten crimes charged. Vasquez then admitted he is a repeat sexual offender.

[9] Following a sentencing hearing, the court found zero mitigators and eight aggravators: (1) Vasquez violated a position of trust; (2) the offenses would have a long-term impact on the victims; (3) the acts were not isolated incidents; (4) the victims were under twelve years old; (5) Vasquez had a high risk to reoffend; (6) Vasquez is a danger to the public if he is not incarcerated; (7) Vasquez violated probation on a prior child molesting conviction by committing these crimes; and (8) Vasquez showed no remorse. The court found the aggravators outweighed the mitigators such that aggravated and consecutive sentences were appropriate. The court imposed forty years for each of the three Class A felony convictions, and it added ten years to the first count based on Vasquez being a repeat sexual offender. The court imposed six years for the one Class C felony conviction, thirty-five years each for the four Level 1 felony convictions, and twelve years for each of the two Level 3 felony convictions. The aggregate sentence imposed was 300 years.

Discussion and Decision

1. Sufficiency of Evidence

[10] Vasquez challenges one of his ten convictions as being unsupported by sufficient evidence. When reviewing sufficiency of the evidence, we neither reweigh evidence nor assess the credibility of the witnesses. *Walker v. State*, 998 N.E.2d 724, 726 (Ind. 2013). Rather, we look to the evidence most favorable to the judgment, and the reasonable inferences therefrom, and determine whether substantial evidence of probative value supports each element of the crime. *Id*. If a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt, then we must affirm. *Id*.

[11] Specifically, Vasquez challenges the count of Level 3 felony child molestation that involved M.D. That charge alleged Vasquez "knowingly or intentionally perform[ed] other sexual conduct, defined in Ind. Code § 35-31.5-2-221.5, with M.D., a child under the age of fourteen years, to wit-touched M.D.'s vagina with his hand." (App. Vol. 2 at 25.) Vasquez argues the record contains no evidence that Vasquez touched M.D.'s vagina with his hand. The State concedes that no such evidence exists in the record. Accordingly, we reverse Vasquez's conviction of the count of Level 3 felony child molestation that involved M.D. *See*, *e.g.*, *Silvers v. State*, 114 N.E.3d 931, 937 (Ind. Ct. App. 2018) (reversing possession of cocaine conviction when State conceded record contained no evidence of a required element).

2. Severance of Charges

[12] Vasquez next alleges the trial court erred by refusing to sever the eight counts involving K.D. from the two counts involving M.D. The statute defining when charges should be severed provides:

> Whenever two (2) or more offenses have been joined for trial in the same indictment or information solely on the ground that they are of the same or similar character, the defendant shall have a right to a severance of the offenses. In all other cases the court, upon motion of the defendant or the prosecutor, shall grant a severance of offenses whenever the court determines that severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense considering:
>
> (1) The number of offenses charged;
>
> (2) The complexity of the evidence to be offered; and
>
> (3) Whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

Ind. Code § 35-34-1-11(a).

[13] At trial, Vasquez argued the offenses were joined only because they were of the same or similar character, and he asserted he would be prejudiced by the joinder because the testimony of each victim would bolster the credibility of the other victim. The trial court denied Vasquez's motion. On appeal, Vasquez separates his two assertions into separate arguments – first, that the court erred by denying his motion based on the charges being joined solely because they

were of the same or similar character; and second, that the court abused its discretion in denying his motion because "severance was appropriate to promote a fair determination of the defendant's guilt or innocence." (Appellant's Br. at 13.) We address each separately.

A. Severance as a Right

[14] Vasquez argues he was entitled to severance as a right because the charges were joined only because they were of similar character.

> The degree of deference owed to a trial court's ruling on a motion for severance depends on the basis of joinder. Where the offenses have been joined solely because they are of the same or similar character, a defendant is entitled to severance as a matter of right. Ind. Code § 35-34-1-11(a) (2008). The trial court thus has no discretion to deny such a motion, and we will review its decision de novo.

Pierce v. State, 29 N.E.3d 1258, 1264 (Ind. 2015).

[15] In *Pierce*, wherein a grandfather who had molested several granddaughters wanted severance of the charges as to each child, our Indiana Supreme Court began by noting the State may join offenses in one charging instrument if the offenses: "(1) are of the same or similar character, even if not part of a single scheme or plan; or (2) are based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan." *Id*. at 1265 (quoting Ind. Code § 35-34-1-9(a) (2008)). Our Indiana Supreme Court then compared that statutory language to the language in Indiana Code section 35-34-1-11, which provides a right to severance of offenses if they have been joined

"solely on the ground that they are of the same or similar character," and held severance of right under Section 11(a) is available for offenses joined under subsection 9(a)(1), but not for those joined under subsection 9(a)(2). *Id.*

[16] Our Indiana Supreme Court further explained:

> Subsection (9)(a)(1) refers to the nature of the charged offenses; subsection (9)(a)(2) refers to the operative facts underlying those charges. These two subsections are not coextensive: offenses that are of the same or similar character may be premised on totally unrelated circumstances and evidence. For example, although a defendant may be charged with multiple burglaries (the same statutory offense), if the burglaries are factually distinct in terms of their timing, victims, method of entry, transport vehicle, and types of items taken, they fit squarely under subsection (9)(a)(1) but not (9)(a)(2), and severance is available as a matter of right. In some instances, of course, crimes that are of the same or similar character may also be based on a series of connected acts.
>
> To determine whether offenses warrant joinder under subsection (9)(a)(2), we ask whether the operative facts establish a pattern of activity beyond mere satisfaction of the statutory elements. It is well-settled that a common *modus operandi* and motive can sufficiently link crimes committed on different victims. . . .
>
> Offenses can also be linked by a defendant's efforts to take advantage of his special relationship with the victims. . . .
>
> A common relationship between the defendant and the victims may even result in an interconnected police investigation into the crimes, producing overlapping evidence. . . .

Id. at 1265-66 (internal citations omitted) (italics in original) (ellipses added). The Indiana Supreme Court then applied those legal principles to Pierce's charges:

> We find the incidents here share much more [in common] than their criminal category. Pierce wasn't charged with four unconnected child molestations; they were connected by his victims, his method, and his motive. . . . Pierce exploited his position of a trusted grandfather or great uncle by molesting young female family members in his care. The investigation into allegations made by K.P. in her interview led police to identify additional victims. Indeed, much of the evidence overlaps . . . . And Pierce's method was consistent. . . . Regarding his motive . . . Pierce's activity toward all four girls was driven by his aim to fulfill his sexual desires.

Id. at 1266-67 (ellipses added).

[17] The trial court denied Vasquez's request for severance after determining the charges are of the same or similar character but were also joined because: "[t]he alleged acts occurred at the same residence or location" (App. Vol. 2 at 91); "[t]he Defendant was identified by the same alias in each offense" (*id*.); "[t]he reporting of one of the alleged acts led to the reporting of the other alleged acts committed against a different victim" (*id*.); and "[t]he facts of each crime can be distinguished and distilled appropriately by the jury." (*Id*.) Reviewing the record de novo, we cannot find error in the court's decision to deny Vasquez's motion. Like *Pierce*, Vasquez exploited his position as a trusted member of J.D.'s household to sexually abuse young female family members who stayed in the house, which actions resulted in overlapping investigations. Thus, the

charges were not just of the same or similar character under subsection 9(a)(1) but were also a series of acts connected as part of a single scheme under subsection 9(a)(2), and the trial court therefore properly denied Vasquez's motion for separation as of right under Indiana Code section 35-34-1-11. *See Pierce*, 29 N.E.3d at 1267 ("We decline to require separate trials as of right where the defendant committed the same crime in substantially the same way, against similar victims.").

B. Discretionary Severance

[18] Vasquez also argues the court abused its discretion by denying his motion for a severance based on the jury's ability to make "a fair determination of [his] guilt or innocence" if the charges were joined. (*See* Appellant's Br. at 14 (quoting Ind. Code § 35-34-1-11(a)).) When charges "have been joined because the defendant's underlying acts are connected together, we review the trial court's decision for an abuse of discretion." *Pierce*, 29 N.E.3d at 1264. Pursuant to the statute, the trial court

> shall grant a severance of offenses whenever the court determines that severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each offense considering:
>
> (1) the number of offenses charged;
>
> (2) the complexity of the evidence to be offered; and
>
> (3) whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense.

Ind. Code § 35-34-1-11(a).

[19] Vasquez argues it is impossible for a jury to fairly determine his guilt or innocence when the charges are tried together because the "evidence of M.D.'s alleged abuse becomes evidence that K.D. is telling the truth, and vice versa." (Appellant's Reply Br. at 5.) In support of his position, Vasquez cites a 2013 dissent from the denial of transfer in which Justice Rucker proposed that a defendant should be entitled to severance under Indiana Code section 35-34-1-11(a) unless the State could demonstrate that, if the charges were severed, the testimony of all victims would be admissible under Evidence Rule 404(b)[8] in all trials. *Wells v. State*, 983 N.E.2d 132, 139-40 (Ind. 2013) (Rucker, J., dissenting from denial of transfer).

[20] However, neither this court nor our Indiana Supreme Court has ever adopted the analysis advanced by Justice Rucker in *Wells*. Accordingly, we will base our decision on the precedent we have interpreting how we should review the trial court's discretionary decision under Indiana Code section 35-34-1-11(a). We have, for example, held a trial court did not abuse its discretion by denying severance when there were few victims and the evidence as to each victim was easily distinguishable. *Philson v. State*, 899 N.E.2d 14, 17-18 (Ind. Ct. App.

[8] Evidence Rule 404(b)(1) prohibits the admission of evidence of other crimes or acts "to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Evidence of other crimes or acts can be admissible, however, for other purposes, such as "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Evid. R. 404(b)(2).

2008), *trans. denied*. *See also Piercefield v. State*, 877 N.E.2d 1213, 1218 (Ind. Ct. App. 2007) (affirming discretionary denial of severance where "the evidence was not complex and consisted primarily of the children's testimony"), *trans. denied*.

[21] Here, although there were ten charges, eight of them involved K.D. and only two of them involved M.D. The evidence regarding crimes against M.D. was straightforward, as there was only one incident, which made the evidence as to each victim easily distinguishable. We accordingly hold the trial court did not abuse its discretion in denying Vasquez's motion for discretionary severance. *See id*. (affirming denial of discretionary severance).

3. Closing Argument

[22] Vasquez next asserts the trial court abused its discretion by permitting the prosecutor to argue an appellate standard of review to the jury in closing argument.[9] The transcript reveals the following:

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[9] Vasquez initially presents the issue as a matter of the trial court abusing its discretion, but then Vasquez argues the prosecutor committed misconduct by making the argument to the jury. (*Compare* Appellant's Br. at 4 *with id*. at 18 (stating standard of review for prosecutorial misconduct).) However, as we have previously noted, we "do not see how the prosecutor's statement may be described as misconduct when the trial court granted the prosecutor permission to make the statement." *Evans v. State*, 855 N.E.2d 378, 384 (Ind. Ct. App. 2006), *trans denied*. "Rather, the proper context in which to frame the issue would be in terms of trial court error: namely, that the trial court erred in allowing the prosecutor to make the statement." *Id*. Although Vasquez has waived his argument that the trial court abused its discretion by failing to present the standard of review and to develop a cogent argument around that theory, *see Tate v. State*, 161 N.E.3d 1225, 1230-1235 (Ind. 2021) (holding numerous arguments were waived because of inadequate development), the caselaw Vasquez cites is the caselaw necessary to determine whether the trial court abused its discretion by permitting the prosecutor's argument, and we therefore address his argument, waiver notwithstanding. *See*, *e.g.*, *id*. at 1233 (explaining why Tate's argument would have failed "even had he developed it").

[Prosecutor]: Cases and cases and cases. This Defendant appeals and the Court of Appeals says, Crabtree, who is the Defendant, acknowledges that convictions for child molesting may be sustained on the uncorroborated testimony of –

[Defense Counsel]: Your Honor, may I object, please.

(Sidebar begins at 9:35 a.m.)

[Defense Counsel]: This uncorroborated testimony of the victim has the standard for appeal, is used to give instructions about that, that have been disproved; so I'm objecting to her using that particular thing for this appellate standard.

[Prosecutor]: It's actual case law. You cannot give instructions, that's true.

[Defense Counsel]: Yeah.

[Prosecutor]: They used to give instructions. But it's valid case law and it's argument.

[Defense Counsel]: I don't think you should give any argument, either.

THE COURT: I'll let you argue.

[Prosecutor]: Thank you.

[Defense Counsel]: Okay.

(Sidebar ends at 9:35 a.m.)

[Prosecutor]: Indiana Courts have recognized that these statutes and that situations of which these cases were brought, are typically delayed disclosure, child witnesses, testimony-only cases. Think about that. Because if it's done on an infant, you're not going to get an infant to come in here and talk about it. So the uncorroborated testimony of the victim is sufficient.

This is another case. "Uncorroborated testimony of the child victim, is sufficient to support a conviction of child molesting." The Courts understand the circumstances under which these cases are revealed. Just like this one. Something has to happen to trigger a disclosure, an investigation is made, and what do you end up with? A child who says they're a victim. And the Courts say, that is enough. We get it. And all of these cases go to support the premise, that the uncorroborated testimony of a child victim, is sufficient to sustain a conviction for child molesting. The only way the child molester continues to operate on a victim, is to make them keep their mouth shut. Do it in private. Never have a witness. Being in the power position. Maintain that power position. And he did that for a lot of years. And he kept it up for a lot of years, under the name Rick Bane. But he's not Rick Bane. And now we know his real name, and not only do we know his real name and his date of birth, we also know he's a child molester and he preyed on the kids that lived and came to that house.

Ladies and gentlemen, the State of Indiana has met its burden. It's presented to you the testimony of the two victims in this case. The police officer, the mothers of both of those victims, and the women from the CASIE Center that interviewed them. And the State's going to be asking that you go back and you find the Defendant guilty as charged.

Thank you.

(Tr. Vol. 3 at 147-9.)

[23] Nearly twenty years ago, our Indiana Supreme Court held a trial court erred if it instructed a jury that "[a] conviction may be based solely on the uncorroborated testimony of the alleged victim if such testimony establishes each element of any crime charged beyond a reasonable doubt." *Ludy v. State*, 784 N.E.2d 459, 460 (Ind. 2003). The Court noted the instruction was "problematic for at least three reasons." *Id.* at 461. "First, it unfairly focuses the jury's attention on and highlights a single witness's testimony. Second, it presents a concept used in appellate review that is irrelevant to a jury's function as fact-finder. Third, by using the technical term 'uncorroborated,' the instruction may mislead or confuse the jury." *Id.*

[24] Then, in *Weis v. State*, 825 N.E.2d 896 (Ind. Ct. App. 2005), a defendant argued the prosecutor's repeated argument that the jury could convict the defendant based only on the victim's testimony "left the jury with precisely the same impact as would a jury instruction." *Id.* at 904 (quoting Weis' brief). We noted that an argument on a point of law is not necessarily improper just because an instruction on that point of law is improper, and we held the State's argument that the jury could convict if it found the victim's testimony believable was "an appropriate characterization of the evidence." *Id.*

[25] Vasquez argues the prosecutor's argument in this case was more egregious than the argument in *Weis*, in that the prosecutor referenced not the testimony of K.D. or M.D., which was approved in *Weis*, but rather the appellate standard,

which had been disapproved in *Ludy*. Vasquez asserts the prosecutor's argument created "the real risk of confusing the jury into thinking they do not have the ability to question K.D.'s or M.D.'s credibility and reject it." (Appellant's Br. at 20.) While this is a close call, we agree with Vasquez that permitting this argument to continue was improper. The prosecutor's argument repeatedly used the term "uncorroborated" (Tr. Vol. 3 at 147-9), which *Ludy* had held may confuse or mislead the jury. 784 N.E.2d at 461. Moreover, the argument focused the jury away from how the evidence met the elements required for conviction and toward the appellate standard, which *Ludy* made clear "is irrelevant to a jury's function as fact-finder." *Id*.

[26] Nevertheless, we decline to hold the improper argument created reversible error herein. The trial court's preliminary instructions told the jury:

> You are the exclusive judges of the evidence, the credibility of the witnesses, and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe the manner and conduct of the witness while testifying, any interest, bias, or prejudice the witness may have, any relationship with other witnesses or interested parties, and the reasonableness of the testimony of the witness and considered in the light of all of the evidence of this case. You should attempt to fit the evidence to the presumption that the Defendant is innocent, and the theory that every witness is telling the truth. You should not disregard the testimony of any witness without a reason and without careful consideration. If you find conflicting testimony, you must determine which of the witnesses you will believe and which of them you will disbelieve. In weighing the testimony to determine what or whom you will believe, you should use your own knowledge, experience, and

common sense gained from day-to-day living. The number of witnesses who testified to a particular [fact, or] the quantity of evidence on a particular point, need not control your determination of the truth. You should give the greatest weight to the evidence which convinces you most strongly of its truthfulness.

This is a criminal case, and the Indiana Constitution makes you the judges of both the law and the facts. Though this means you are to determine the law for yourself, it does not mean that you have the right to make, repeal, disregard, or ignore the law as it exists. The instructions of the Court are the best source for the law that applies to this case.

. . . Nothing that I say during the trial is intended as any suggestion of what facts or what verdict you should find. Each of you as jurors must determine the facts and the verdict.

* * * * *

The trial in this case will proceed as follows: First, the attorneys will have an opportunity to make opening statements. These statements are not evidence. It should be considered only as a preview of what the attorneys expect the evidence will be. Following the opening statements, witnesses will be called to testify. They will be placed under oath and questioned by the attorneys. Documents and other tangible exhibits may also be received as evidence. If any exhibit is given to you to examine, you should examine it carefully, individually, and without comment. When the evidence is completed, the attorneys will make final statements. These final statements are not evidence but are given to assist you in evaluating the evidence. The attorneys are also permitted to argue, to characterize the evidence, and to attempt to persuade you to a particular verdict. You may accept or reject those final arguments as you see fit.

> Finally, just before you retire to consider your verdict, I will give you further instructions on the law which applies to this case.

(Tr. Vol. 2 at 224-27.) After closing arguments, the trial court repeated many of those same instructions and also informed the jury:

> The unsworn statements or comments of counsel[,] on either side of the case, should not be considered as evidence in the case. It is your duty to determine the facts from the testimony and evidence admitted by the Court, and given in your presence, and you should disregard any and all information that you may derive from any other source.

(Tr. Vol. 3 at 164-65.) In light of the court's instructions, which made clear to the jury that the court's instructions were its best source for controlling law and that counsels' arguments were not evidence, we hold the inappropriate argument permitted by the trial court did not create reversible error. *See*, *e.g.*, *Steinberg v. State*, 941 N.E.2d 515, 531 (Ind. Ct. App. 2011) (holding improper argument was harmless error where trial court's final instructions informed jury that it was the judge of the law and the facts, that counsel's arguments could be rejected, and that the court's instructions were the best source for the relevant law), *trans. denied*.

4. Inappropriateness of Sentence

[27] Finally, Vasquez challenges his 300-year sentence as inappropriate. We modify a sentence only when we find "the sentence is inappropriate in light of the nature of the offense and the character of the offender." Appellate Rule 7(B). Our aim when conducting this review is to "'leaven the outliers.'" *Wilson v.*

State, 157 N.E.3d 1163, 1181 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)), *reh'g denied*. We are not concerned with reaching the "correct sentence" in a particular case. *Id*. (quoting *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014)). Whether a sentence will be declared inappropriate is based 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*, 895 N.E.2d at 1224. We focus our review on the aggregate sentence. *Id*. at 1225. As we reversed one of Vasquez's convictions of Level 3 felony child molesting, we review the inappropriateness of his remaining sentence, which is 288 years.

[28] Vasquez stands convicted of nine counts of child molesting. He committed eight of those against his girlfriend's daughter, K.D., over a span of six years when she was between the ages of eight and fourteen and while he was living in the house as a father-figure. To control K.D., Vazquez created a system whereby K.D. had to perform sexual acts in order to watch television or spend time with her friends. The ninth act was committed against K.D.'s cousin, M.D., who was spending the night in K.D.'s room when M.D. was twelve years old. He told both girls not to tell anyone what had happened. Such crimes shock the conscience and merit lengthy sentences.

[29] Nor does Vasquez's character suggest his sentence is inappropriate. Vasquez used an alias to hide his identity during the entirety of his nine-year relationship with J.D. While Vasquez would occasionally do odd jobs for cash, he remained unemployed to hide from authorities. The State of Georgia had an

active arrest warrant out for Vasquez because he fled the state while on probation for a conviction of felony child molesting. As a condition of his Georgia probation, Vasquez was not to have unsupervised contact with any child under the age of fifteen. In light of Vasquez's character and offense, we decline his request that we reduce his sentence as inappropriate. *See*, *e.g.*, *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019) (declining to find inappropriate a 570-year aggregate sentence for multiple counts of child molesting), *trans. denied*.

Conclusion

[30] The trial court neither erred as a matter of law nor abused its discretion when it denied Vasquez's motion for severance, nor did the court abuse its discretion when it allowed the prosecutor to construe the evidence in light of legal precedent. However, we must reverse Vasquez's conviction of Level 3 felony child molesting as to M.D., as there was no evidence in the record to support that conviction. Vasquez's sentence is thus reduced to 288 years, and we affirm that sentence as not being inappropriate for Vasquez's offense and character. Accordingly, we affirm in part, reverse in part, and remand for entry of a new abstract of judgment.

[31] Affirmed in part, reversed in part, and remanded.

Bailey, J., and Robb, J., concur.