MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jacob Allen Edwards,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 30, 2021

Court of Appeals Case No. 21A-CR-765

Appeal from the Jefferson Circuit Court

The Honorable Donald J. Mote, Judge

Trial Court Cause No. 39C01-2011-F3-1230

Crone, Judge.

Case Summary

[1] Following a jury trial, Jacob Allen Edwards was convicted of level 5 felony battery. He also admitted to being a habitual offender. The trial court sentenced him to an aggregate sentence of nine years. He now appeals, arguing that the trial court abused its discretion in admitting certain evidence during trial and that his sentence is inappropriate in light of the nature of the offense and his character. Finding no abuse of discretion and that he has not met his burden to show that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] Edwards and K.H. became involved in a sexual relationship in September 2020. K.H. was six months pregnant at the time. On October 29, 2020, Edwards stopped by K.H.'s apartment and asked her to drive him to a Tractor Supply store. K.H. agreed, and the two went to the store. When they returned to the parking lot of K.H.'s apartment, they saw that Edwards's girlfriend, Breanne Hensley, was driving by. Edwards told K.H. that Hensley did not know that he was with her, and he ducked down in the car so that Hensley would not see him. Hensley did see him and pulled her car up next to K.H.'s car and began arguing with Edwards. K.H. declared that she "didn't want to be a home wrecker" and asked Edwards, "Why didn't you tell me?" Tr. Vol. 2 at 58. K.H. reached in the backseat to get Edwards's purchases and asked him to get out of the car because she did not want to be involved in Edwards's and Hensley's argument. K.H. was then suddenly struck in the head and "blacked out." *Id.* After K.H. regained consciousness, a friend took her to the hospital. She

suffered numerous injuries, including a "completely swollen eye," a "slight concussion," and "multiple contusions, bruises on her face[.]" *Id.* at 61, 65.

[3] Madison Police Department Officer Joseph Gibson spoke to K.H. at the hospital, and she informed him that she had been beaten inside her vehicle at her apartment complex. Officer Gibson went to K.H.'s apartment complex to investigate. He observed blood spatter in K.H.'s vehicle and noticed that a nearby apartment had an active video surveillance camera. Officer Gibson spoke with resident Jasper Barkley and asked her if he could view the video surveillance from October 29. Barkley's video camera was located inside her apartment window approximately ten to fifteen feet from K.H.'s vehicle. After personally viewing the surveillance video, Officer Gibson made a copy of the video on his cell phone. Officer Gibson, along with Officer Cameron Blankenship, subsequently located Edwards and Hensley at Hensley's apartment. Officer Gibson observed that Edwards had "visible marks on his hands, … scratches, like he may have hit something." *Id.* at 71. Officer Blankenship's bodycam recorded Edwards stating that his fists "are bisexual" and that he "beat her brows off." State's Ex. 1.

[4] Detective Ricky Harris subsequently viewed the "video of a video" obtained by Officer Gibson, and, because the quality was not ideal, Detective Harris went to Barkley's apartment to obtain "a little better quality recording." Tr. Vol. 2 at 79. Detective Harris learned that Barkley had saved the surveillance video from the camera to an application on her cell phone. Detective Harris viewed the video on Barkley's phone and then had her email it to his police department email

account. The video depicts Edwards exiting K.H.'s vehicle and then punching into the vehicle toward her at least three times.

[5] The State charged Edwards with level 3 felony aggravated battery, level 5 felony battery on a pregnant woman, and class C misdemeanor possession of paraphernalia. The State later added a habitual offender charge and dismissed the level 3 felony and class C misdemeanor charges. A jury trial was held in March 2021. The video of Edwards punching K.H. was admitted into evidence over Edwards's objection. The jury found Edwards guilty of level 5 felony battery on a pregnant woman. Edwards subsequently admitted to being a habitual offender. Following a hearing, the trial court sentenced Edwards to four years for the level 5 felony and enhanced that sentence by five years based upon the habitual offender finding, for an aggregate sentence of nine years executed. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion in admitting the surveillance video at trial.

[6] Edwards first asserts that the trial court abused its discretion in admitting the surveillance video of the battery at trial. In general, a trial court has broad discretion in ruling on the admissibility of evidence, and we will disturb a trial court's evidentiary rulings only upon an abuse of discretion. *Speers v. State*, 999 N.E.2d 850, 852 (Ind. 2013), *cert. denied* (2014). An abuse of discretion occurs only where the court's decision is clearly against the logic and effect of the facts

and circumstances, or when the court misinterprets the law. *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015). We may affirm a trial court's evidentiary decision if it is sustainable on any basis in the record. *Barker v. State*, 695 N.E.2d 925, 930 (Ind. 1998).

[7] Edwards asserts that the identity of the individual who battered K.H. was a key issue in this case because K.H. did not see whether it was Edwards or Hensley who struck her, and the State could present no witnesses who saw the incident. Thus, to convict Edwards of the battery, the State primarily relied upon the surveillance video of the incident obtained from Barkley. Edwards claims that the State failed to present sufficient evidence to authenticate the video recording pursuant to the silent-witness theory, and therefore admission of the recording constituted an abuse of discretion. We disagree.

[8] Indiana Evidence Rule 901(a) provides that "[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Photographs and videos can be authenticated through either a witness's testimony or, in instances in which no witness observed what a photograph or video portrays, the silent-witness theory. *McFall v. State*, 71 N.E.3d 383, 388 (Ind. Ct. App. 2017) (citing 13 Robert L. Miller, Jr., *Indiana Practice Series: Evidence* § 901.209 (4th ed. 2016)). The silent-witness theory permits the admission of surveillance footage as substantive rather than merely demonstrative evidence. *Flowers v. State*, 154 N.E.3d 854, 868-69 (Ind. Ct. App. 2020) (citing *McCallister v. State*, 91 N.E.3d 554, 561 (Ind. 2018)).

[9] For evidence to be admitted pursuant to the silent-witness theory, there must be a strong showing of authenticity and competency. *Id*. Authenticating witnesses, however, are not required to testify that video footage is a true and accurate representation of a scene. *Id*. Rather, for a video or image to be admissible under the silent-witness theory, "there must be adequate proof of the reliability of the process that produced what the [video or image] intend[s] to depict, including proof that the evidence was not altered." *Stott v. State*, 174 N.E.3d 236, 246 (Ind. Ct. App. 2021). Our case law establishes that the evidence is generally admissible "when there is testimony from someone with knowledge on the security system that produced the video or image, on the integrity of the system's process, and on whether [the] video or image was altered." *Id*. (providing survey of Indiana caselaw applying silent-witness theory).

[10] Here, the State presented testimony from Barkley indicating where she obtained her video recording system, generally how the system worked, and that she exercised control over the recording process. Barkley testified that her video system was operating and recording on October 29, 2020, that she showed Officer Gibson the video from that day when he came to her apartment, and that she showed the same video to Detective Harris when he later visited her apartment. Barkley testified that she did not alter the video in any way before it was reviewed by either of the police officers. While Barkley was understandably not a technical expert on the integrity of the surveillance system's process, under the circumstances presented, we conclude that her testimony was sufficient to establish the video's authenticity and competency to support its

admission pursuant to the silent-witness theory.[1] The trial court did not abuse its discretion.

[11] In any event, even when a trial court abuses its discretion in admitting evidence, reversal is required only if the error prejudices the defendant's substantial rights. Ind. Trial Rule 61. In making this determination, we assess the probable impact the erroneously admitted evidence had upon the jury in reaching its verdict. *Stott*, 174 N.E.3d at 241. "If there is independent, overwhelming evidence of guilt, we may conclude that the jury did not rely on the improper evidence and any error was therefore harmless." *Id*.

[12] Here, had there been error in the admission of the video, it would have been harmless. It was undisputed that Edwards was with K.H. when she was beaten. When police went to find Edwards and discuss what had happened to K.H., Edwards readily admitted, "I beat her eyebrows off." State's Ex. 1. Additionally, Edwards had marks on his hands that were consistent with inflicting injuries to K.H.'s face. Finally, prior to the admission of the video recording, Officer Blankenship testified without objection that he had watched the video provided by Barkley and that he observed Edwards (and not Hensley)

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[1] When considering evidence admitted pursuant to the silent-witness theory, this Court has noted that if a foundational requirement is missing, then the surrounding circumstances that support the authenticity of the evidence can be used. *McFall*, 71 N.E.3d at 388 (quoting 13 Miller at § 901.209) ("Rule 901(b)(9) requires only that the process or system be described in such a way as to allow the trier of fact to find that it is more likely than not that the system produced an accurate result.")).

"throwing punches at [K.H.]" Tr. Vol. 2 at 40. Accordingly, the video identifying Edwards as the batterer was cumulative of other evidence already before the jury. We find no reversible error. *See Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017) (improper admission of evidence is harmless when erroneously admitted evidence is merely cumulative of other evidence before trier of fact), *trans. denied*.

Section 2 – Edwards has not met his burden to establish that his sentence is inappropriate.

[13] Edwards next asks that we reduce his nine-year aggregate sentence pursuant to Indiana Appellate Rule 7(B), which states that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "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). In conducting our review, our principal role is to leaven the outliers, focusing on the length of the sentence and how it is to be served. *Foutch v. State*, 53 N.E.3d 577, 580 (Ind. Ct. App. 2016).

[14] "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). Ultimately, 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." *Cardwell*, 895 N.E.2d at 1224. The appellant bears the burden of persuading this Court that his sentence meets the inappropriateness standard. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

[15] Regarding the nature of the offense, the advisory sentence is the starting point that the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The jury found Edwards guilty of a level 5 felony. The sentencing range for a level 5 felony is between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6. In addition, Edwards admitted to being a habitual offender, which carries with it a fixed term between two and six years for a person convicted of a level 5 felony. Ind. Code § 35-50-2-8(i)(2). Thus, the nine-year aggregate sentence imposed by the trial court was three years below the maximum allowable sentence.

[16] Edwards argues that the nature of his offense was not so egregious to have warranted an enhanced sentence. However, the record is clear that he violently battered a pregnant woman and then callously bragged about it to police. We are not persuaded that the nature of this offense warrants the reduction of a sentence that is well within the statutory bounds. Regardless, we need look no

further than Edwards's character to affirm the sentence imposed by the trial court. "The character of the offender is found in what we learn of the offender's life and conduct." *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). This assessment includes consideration of the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852 (Ind. Ct. App. 2013). The record reveals that, despite his young age of twenty-two, Edwards has a lengthy and troubling criminal history consisting of multiple misdemeanor domestic batteries, drug offenses, and multiple felonies. It is evident that prior attempts at leniency have wholly failed, as Edwards has had his probation revoked more than once, and he was on probation at the time he committed the current offense. Edwards clearly demonstrates a disdain for authority and the rule of law that reflects extremely negatively on his character.

[17] Although Edwards urges us to view his character in light of the drug addiction he has struggled with since age eleven, the trial court acknowledged Edwards's addiction history but assigned it little mitigating weight "in light of multiple prior efforts to intervene by the way of probation." Appealed Order at 3. Edwards has given us no reason to disagree with that assessment. In short, Edwards has not met his burden to establish that the nine-year sentence imposed by the trial court is inappropriate, as he has failed to present compelling evidence portraying in a positive light the nature of the offense and his character. Accordingly, we affirm.

[18] Affirmed.

Bailey, J., and Pyle, J., concur.