MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

William Scott Miles,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 26, 2023

Court of Appeals Case No. 22A-CR-2318

Appeal from the Hendricks Superior Court

The Honorable Mark A. Smith, Judge

Trial Court Cause No. 32D04-1805-FA-3

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

[1] William Scott Miles was convicted of Class A felony child molesting and Class B felony sexual misconduct with a minor for engaging in sexual acts with his stepdaughter when she was thirteen and fourteen years old. The trial court sentenced him to forty years. Miles now appeals, arguing the trial court erred in admitting evidence that he started molesting his stepdaughter when she was younger and that his forty-year sentence is inappropriate. We affirm.

Facts and Procedural History

[2] K.M. was born on September 17, 1999. K.M.'s mother and Miles started dating when K.M. was six years old and later married. K.M., her mother, and Miles lived in Indianapolis. Miles had a son, Z.M., with whom he exercised parenting time every other weekend. Miles was a truck driver and frequently traveled out of state. When K.M. was a senior in high school, she reported to a school-resource officer that Miles had molested her.

[3] In the spring of 2018, the State charged Miles in two counties, Marion County and Hendricks County (this case). Specifically, in March 2018 the State charged Miles in Marion County with Class A felony child molesting (September 17, 2010, to September 16, 2013), Class B felony sexual misconduct with a minor (September 17, 2013, to June 30, 2014), and Level 4 felony sexual misconduct with a minor (July 1, 2014, to September 16, 2014) for incidents that occurred

at the family's home. Miles was convicted and sentenced to thirty-five years. Miles appealed, arguing the trial court erred in admitting some evidence, and we affirmed. *See Miles v. State*, No. 22A-CR-78, 2022 WL 2912024 (Ind. Ct. App. July 25, 2022).

[4] In this case, in May 2018 the State charged Miles in Hendricks County with Class A felony child molesting and Class B felony sexual misconduct with a minor for incidents that occurred at a rest area in Lizton. The child-molesting charge alleged that between July 1 and September 16, 2013, Miles, who was at least twenty-one years old, performed or submitted to "deviate sexual conduct"[1] with K.M., who was thirteen. The sexual-misconduct charge alleged that between September 17 and December 31, 2013, Miles, who was at least twenty-one, performed or submitted to "deviate sexual conduct" with K.M., who was fourteen.

[5] Miles filed a motion in limine seeking to exclude, among other things, "any uncharged conduct" that he had engaged in with K.M. Appellant's App. Vol. II p. 90. The State filed a notice of intent to offer 404(b) evidence, specifically, evidence that Miles started molesting K.M. when she was ten or eleven years old. *Id.* at 105, 125. The trial court ruled the State could offer such evidence.

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[1] At the time of the offenses, the child-molesting statute used the term "deviate sexual conduct," which was defined as "an act involving: (1) a sex organ of one (1) person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object." Ind. Code § 35-41-1-9 (now repealed). The current child-molesting statute uses the term "other sexual conduct," which is defined the same as "deviate sexual conduct." *See* I.C. § 35-31.5-2-221.5.

[6] A bench trial was held in June 2022. K.M., who was twenty-two, testified over the defense's objection that Miles started touching her inappropriately when she was "ten or eleven" and accompanied him on his out-of-state truck trips. Tr. p. 92. K.M. said that Miles "touch[ed]" her vagina with his hand and made her "touch" his penis with her hand. *Id.* at 93-94. As for the incidents charged here, K.M. testified that when she "was thirteen," she went with Miles to pick up Z.M. in his personal car. *Id.* at 95. K.M. said that Miles stopped at a rest area in Lizton, pulled down his pants, and grabbed her "by [her] head in the middle of [her] neck" and put her mouth on his penis "until he cummed." *Id.* at 95-96. K.M. identified the rest area by photos. *See* Exs. 1-5. K.M. said it happened more than once at the rest area. When the State asked K.M. if she was "**also** thirteen" during "the **other** times," she said she "may have turned fourteen." Tr. p. 97 (emphases added).

[7] K.M. also testified that when she was a freshman in high school, she told her mother some of the things that Miles had done to her. According to K.M., her mother talked to Miles and then they talked as a group. Based on the conversations, K.M. didn't feel like she should make a report.

[8] Misty Caldwell, Z.M.'s mother, testified that K.M. often came with Miles to pick up Z.M. for Miles's weekend parenting time. She recalled one time in 2013 when Miles and K.M. were "disheveled" and "hurried" when they arrived. *Id.* at 143. Caldwell noticed that Miles's pants were unzipped and K.M. didn't hug or talk to her like normal. Caldwell thought to herself that "something was off." *Id.*

[9] The trial court found Miles guilty as charged and explained the basis for its decision:

> [T]here was testimony specifically by Misty Caldwell about observing the incident where the child was disheveled and the Defendant was disheveled and observing the Defendant's pants unzipped at the time. I found that to be compelling circumstantial evidence in support of the State's case here. I really didn't get any evidence to show bias, prejudice, or reason why that testimony should not be believed. . . . I also had the opportunity while [K.M.] testified to specifically watch and observe her demeanor while testifying. Body language and demeanor is obviously very important. And while she testified I found her to be consistent with my expectations for a victim of sexual trauma. There was nothing during her testimony to suggest that she had rehearsed or that she was lying.

Id. at 202-03.

[10] At the sentencing hearing, the trial court found two aggravators: (1) Miles was a father figure to K.M. and abused his position of trust and (2) when K.M. was a freshman in high school and discussed the allegations with her mother and Miles, she felt pressured not to report Miles. The court found one mitigator: Miles did not have a criminal history. The court rejected as a mitigator that Miles had some health issues because those issues had not stopped him from working. The court sentenced Miles to advisory terms of thirty years for the Class A felony and ten years for the Class B felony. The court ordered the sentences to be served consecutive to each other but concurrent to Miles's thirty-five-year sentence in Marion County.

[11] Miles now appeals.

Discussion and Decision

I. Indiana Evidence Rule 404(b)

[12] Miles contends the trial court erred in admitting evidence that he started molesting K.M. when she was younger under Indiana Evidence Rule 404(b). A trial court has broad discretion in ruling on the admissibility of evidence, and we will disturb its ruling only for an abuse of that discretion. *Thompson v. State*, 15 N.E.3d 1097, 1101 (Ind. Ct. App. 2014), *reh'g denied.*

[13] Evidence Rule 404(b)(1) provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." However, the evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Ind. Evidence Rule 404(b)(2).

[14] The State argues the trial court properly admitted the evidence for proving preparation or plan. In support, the State relies on *Mise v. State*, 142 N.E.3d 1079 (Ind. Ct. App. 2020), *trans. denied*. There, the defendant dated E.R.'s mother. When E.R. was eleven or twelve, she gave Mise's dog a bath because it had fleas. After the bath, Mise told E.R. he needed to check her vagina to see if she had fleas. Mise had E.R. take off her clothes, squat, stick her finger in her vagina, pull it out, and check for fleas. Shortly thereafter, E.R. gave the dog

another bath, and Mise had E.R. perform the same flea-checking routine. On a different occasion, Mise inserted his finger in E.R.'s vagina. The State charged Mise with Class A felony child molesting for inserting his finger in E.R.'s vagina (the other incidents were not charged). Mise was found guilty and appealed, arguing the trial court erred in admitting evidence of the flea-checking incidents because they were "uncharged." *Id.* at 1085.

[15] On appeal, this Court explained that Evidence Rule 404(b) does not bar evidence of repeated incidents of sex offenses that occur during the charged time frame where such evidence is "direct evidence" of guilt of the charged offenses and "not evidence of other crimes or wrongs." *Id.* at 1086. But when the evidence sought to be admitted is not "direct evidence" of guilt of the charged offenses, it must be relevant for a purpose other than propensity to be admissible under Rule 404(b). *Id.* Applying this rule to the facts of the case, we found that although the flea-checking incidents were not direct evidence of the Class A felony child-molesting charge, the evidence was admissible for another purpose, that is, preparation or planning:

> We have previously explained that evidence of a defendant's preparation and planning, which includes "grooming"—or "the process of cultivating trust with a victim and gradually introducing sexual behaviors until reaching the point where it is possible to perpetrate a sex crime against the victim" is relevant and establishes a valid basis for the admission of evidence under Rule 404(b). Here, the testimony regarding the flea checks was relevant to a matter other than his propensity to commit the charged offense. [I]t was relevant to show Mise's grooming of [E.R.] to get her comfortable with having her vagina touched. As

> the State pointed out during its closing argument, Mise had prepared E.R. for the inappropriate touching when he had instructed her to touch her vagina to check for fleas.

Id. (cleaned up); *see also Piercefield v. State*, 877 N.E.2d 1213, 1215, 1216 (Ind. Ct. App. 2007) (finding that evidence that the defendant had his stepchildren massage his "feet, back, and buttocks" was admissible to show his "grooming of the children to familiarize them with touching and create more physical relationship with them"), *trans. denied*.

[16] *Mise* applies here.[2] The evidence that Miles touched K.M.'s vagina with his hand and had K.M. touch his penis with her hand during the out-of-state truck trips is not direct evidence of the Class A felony or Class B felony charges, which required "deviate sexual conduct."[3] Rather, this evidence shows that Miles initially began his inappropriate behavior with K.M. by taking her on overnight trips with him. Miles engaged in this behavior with K.M. when he was alone with her to groom her to engage in even more explicit sexual acts

[2] Miles acknowledges *Mise* in his reply brief but doesn't distinguish it from this case. *See* Appellant's Reply Br. p. 4. Miles cites *Stettler v. State*, 70 N.E.3d 874 (Ind. Ct. App. 2017), *trans. denied*, but that case does not address grooming.

[3] K.M. testified that Miles "touch[ed]" her vagina previously but did not elaborate. "Deviate sexual conduct" requires "penetration" of the sex organ.

later. The trial court did not err in admitting evidence that Miles started molesting K.M. when she was ten or eleven.[4]

[17] But even if the trial court had erred in admitting the evidence, the error would have been harmless. An error in the admission of evidence does not require reversal "unless it prejudices the defendant's substantial rights." *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). "To determine whether an evidentiary error was prejudicial, we assess the probable impact the evidence had upon the [factfinder] in light of all of the other evidence that was properly presented." *Id.* "If we are satisfied the conviction is supported by independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict, the error is harmless." *Id.*

[18] We do not believe the challenged evidence contributed to the verdict because there is substantial independent evidence of Miles's guilt. K.M. testified that the molestations supporting the charges in this case occurred at the rest area in Lizton in 2013 on their way to pick up Z.M. K.M. was able to identify the rest area by photos. K.M. said she was thirteen for one of the incidents and possibly fourteen for the other.[5] Caldwell testified that when Miles and K.M. arrived to

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[4] Even if evidence is relevant for a purpose other than propensity, it still can't be admitted if the probative value is substantially outweighed by the danger of unfair prejudice under Evidence Rule 403. *See Mise v. State*, 142 N.E.3d 1079, 1086 (Ind. Ct. App. 2020), *trans. denied*. Miles does not make such an argument on appeal.

[5] Miles argues the evidence is insufficient to prove that K.M. was thirteen—and not fourteen—when the incident supporting the Class A felony charge occurred. As detailed in the facts above, K.M. testified that she "was thirteen" for at least one of the incidents and "may" have been fourteen for the other. Tr. pp. 95, 97. The evidence is sufficient to prove that K.M. was thirteen during one of the incidents.

pick up Z.M. one time in 2013, they were "disheveled" and Miles's pants were unzipped. In finding Miles guilty, the trial court found K.M. to be credible and that Caldwell's testimony provided "compelling" circumstantial evidence. So even if the trial court had erred in admitting the evidence, the error would have been harmless.

II. Sentence

[19] Miles contends his forty-year sentence is inappropriate and asks us to order the sentences to run concurrently, for a total sentence of thirty years. Indiana Appellate Rule 7(B) provides that an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[20] The sentencing range for a Class A felony is twenty to fifty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4(a). The sentencing range for a Class B felony is six to twenty years, with an advisory sentence of ten years. I.C. § 35-50-2-5. The trial court imposed the advisory term for each count but ordered them to be served consecutively, for a total sentence of forty years. Miles, however, faced a sentence of up to seventy years.

[21] As for Miles's character, we acknowledge that he did not have a criminal history (other than the Marion County convictions that covered a similar time period as this case) and had been gainfully employed as a truck driver. But the nature of the offenses supports consecutive sentences. Miles molested his stepdaughter, who considered him a father figure, on multiple occasions and encouraged her not to report him. Miles has failed to persuade us that his forty-year sentence is inappropriate.

[22] Affirmed.

Tavitas, J., and Foley, J., concur.