MEMORANDUM DECISION

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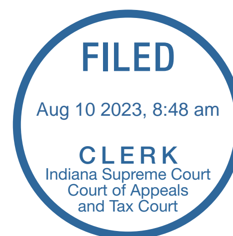

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IN THE COURT OF APPEALS OF INDIANA

George Voll,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff

August 10, 2023

Court of Appeals Case No. 22A-CR-2083

Appeal from the Harrison Superior Court

The Honorable Joseph L. Claypool, Judge

Trial Court Cause No. 31D01-1906-F1-529

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

[1] George Voll molested his daughter for a period spanning at least five years beginning when she was around 10 years old. After his misconduct was revealed, Voll confessed to police and was subsequently convicted of six counts of Level 1 felony child molesting. On appeal, Voll alleges his confession was involuntary, and that his trial was tainted by improper jury instructions. He also asks this court to reduce his 90-year sentence. Finding no error in Voll's convictions and that his sentence is not inappropriate, we affirm the trial court.

Facts

[2] Voll and his wife have two children, including a daughter, S.V., who was born in 2005. Voll and S.V. were always particularly close. One night, when S.V. was about 10 years old and Voll's wife was out of town, S.V. became frightened and went to Voll's room to sleep. During the night, S.V. woke up to Voll's penis in her mouth. Similar acts would continue for the next several years, including at least two instances of oral sex, around a dozen times of Voll touching S.V.'s vagina and massaging her clitoris, and regular touching of her breasts.

[3] Police learned of Voll's misconduct after S.V. reported it to a friend in 2019. Detective Shane Mason attended a forensic interview with S.V. and determined that he needed to interview Voll. Voll agreed to be interviewed but did not have transportation to the police station. So Detective Mason offered to give Voll a ride. Detective Mason arrived to pick up Voll around 7:00 p.m. wearing regular

clothes and driving a black unmarked truck. Voll sat in the front passenger seat and was not placed in any restraints.

[4] Voll and Detective Mason maintained light conversation about shared interests and hobbies during the approximately 15-minute drive to the police station. When they arrived, Detective Mason placed Voll in an interview room, where the two finished their casual conversation. Before talk shifted to Voll's alleged molesting of S.V., Detective Mason advised Voll of his *Miranda* rights. The remainder of their conversation lasted for several hours, during which Voll confessed to the reported allegations.

[5] Detective Mason arrested Voll after the interview, and the State charged Voll with seven counts each of Level 1 felony child molesting and Level 4 felony incest, as well as one count of Level 4 felony sexual misconduct with a minor.[1] Before his trial, Voll moved to suppress his interview statements to Detective Mason, claiming he did not voluntarily waive his right to remain silent. The trial court denied Voll's motion.

[6] At trial, over Voll's objection, the trial court admitted into evidence a video recording of Voll's confession to Detective Mason. Additionally, S.V. testified that Voll, among other things, would place his hand on her vagina and rub it. The State later proposed an instruction about penetration of the vaginal canal,

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[1] Before Voll's trial, the State dismissed one count each of child molestation and incest, along with the singular count for sexual misconduct with a minor.

based on a recent Indiana Court of Appeals decision. Over Voll's general objection, the court issued the instruction.

[7] The jury found Voll guilty of six counts each of Level 1 felony child molesting and Level 4 felony incest, and the trial court entered judgments of conviction on all twelve counts. The court, however, later vacated Voll's six incest convictions on double jeopardy grounds. For Voll's remaining child molesting convictions, the trial court levied an aggregate sentence of 90-years imprisonment.

Discussion and Decision

I. Admissibility of Voll's Confession

[8] Voll challenges the admissibility of his confession, claiming it was induced by Detective Mason's promises of leniency and therefore involuntary. "When a defendant challenges the admissibility of his confession, the State must prove beyond a reasonable doubt that the confession was given voluntarily." *Henry v. State*, 738 N.E.2d 663, 664 (Ind. 2000). "A confession is voluntary if, in light of the totality of the circumstances, the confession is the product of a rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will." *Scalissi v. State,* 759 N.E.2d 618, 621 (Ind. 2001). "The critical inquiry is whether the defendant's statements were induced by violence, threats, promises, or other improper influence." *Id.* at 622.

[9] Like other evidentiary issues, we review a trial court's decision to admit a confession for an abuse of discretion. *Id.* at 619. The trial court's decision will

be reversed "only when admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Id.* at 422. We do not reweigh the evidence in conducting this review and will affirm the trial court's decision on any reasonable basis found in the record. *Id.*

[10] We find sufficient evidence in the record confirming that the State adequately proved the confession's voluntariness. Voll alleges the following statements by Detective Mason coerced his confession:

> Okay, I'm going to remind you that . . . we're going to get this behind us. That honesty is the best policy, okay? If we need to get everything out on the table to be completely honest and then we can work through this and get this behind us. Okay? So, I do just ask that you be completely honest and let me know everything that actually did happen, okay? Because that's the only way that we'll be able to get through this. Put this behind you. And I know you want to, okay? So, complete honesty, okay?
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> ***
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> You being honest is going to go a long way. Sitting here talking with me being honest, I'll—I'll be able to put in my report and pass on to the prosecutor that you were being honest, and that you wanted to tell the truth, and you wanted to get this behind you.

Supp. Tr. Vol. II, pp. 13-16.

[11] Voll contends that these statements blunted his freewill and "extracted" his confession. Appellant's Br., p. 13. Courts have consistently held that interrogators who make direct promises of either leniency or other benefits undermine the voluntariness of a confession. *See, e.g.*, *Fields v. State*, 679 N.E.2d

1315, 1320 (Ind. 1997). But at no point did Detective Mason tell Voll that he would receive leniency for his honesty. Detective Mason merely remarked that if Voll were honest, the information would be passed along to the prosecutor. In fact, Detective Mason directly stated to Voll—"Obviously, there is going to be consequences for this type of behavior." *Id.* at 41-42. Detective Mason's statements cannot reasonably be construed as undermining the voluntariness of Voll's confession.

[12] Nor, as Voll alleges, do we find any evidence that Detective Mason had an "undeviating intent" to extract a confession. In making this argument, Voll relies on *A.A. v. State*, 706 N.E.2d 259, 264 (Ind. Ct. App. 1999). In *A.A.*, a juvenile suspected of committing delinquent acts disclosed during a police interview that he was a victim of child molesting. *Id.* The juvenile later confessed to the alleged delinquent acts after the interviewing detective gave the juvenile an "ultimatum" that he must confess for his claims of molestation to be taken seriously. *Id.* In finding the juvenile's confession was not voluntary, this Court observed that the detective showed an "undeviating intent" to obtain the juvenile's confession by requiring him to "barter a confession in one case in exchange for prosecution of another case." *Id.* Those are not the facts here. Detective Mason never made any direct promises of leniency or other offers. His statements—at most—constituted vague statements about the benefits of cooperation. *Fields*, 679 N.E.2d at 1320 ("Promises of leniency render a statement involuntary, but vague statements that the defendant benefits by cooperating and telling the real story do not constitute sufficient promises.").

[13] Accordingly, we find sufficient evidence in the record supporting the voluntariness of Voll's confession.

II. Jury Instructions[2]

[14] Voll next alleges that Final Jury Instruction 37 constituted prejudicial error as an incorrect statement of law that confused the jury.

[15] The Indiana Constitution "protects the province of the jury in criminal trials . . . 'to determine the law and the facts.'" *Keller v. State*, 47 N.E.3d 1205, 1208 (Ind. 2016) (quoting Ind. Const. art. 1, § 19). To that end, trial courts possess "broad discretion as to how to instruct the jury, and we generally review that discretion only for abuse." *Kane v. State*, 976 N.E.2d 1228, 1231 (Ind. 2012). But where, as here, the appellant alleges "that the instruction was an incorrect statement of the law[,] we review the trial court's interpretation of that law de novo." *Id.*

[16] The challenged instruction read:

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[2] As a preliminary matter, the State argues that Voll waived any argument against the jury instructions by failing to raise a specific objection at his trial. Criminal Rule 8(B) states:

> The court shall indicate on all instructions, in advance of the argument, those that are to be given and those refused. After the court has indicated the instructions to be given, each party shall have a reasonable opportunity to examine such instructions and to state his specific objection to each, out of the presence of the jury and before argument, or specific written objections to each instruction may be submitted to the court before argument. *No error with respect to the giving of instructions shall be available as a cause for new trial or on appeal, except upon the specific objections made as above required*.

(emphasis added). At trial, Voll's objections to the challenged jury instruction amounted to stating, "I'm going to object for the record, your Honor . . . ." Tr. Vol. II, p. 106. We agree with the State that this does not amount to a specific objection. Nonetheless, we exercise our discretion to address the merits of Voll's claim.

> Penetration of the vaginal canal is not required to prove child molesting. It is physically impossible to touch any part of the vagina without first having penetrated the vulva or external genitalia. A finger is considered an object for purposes of the child molest statute. Whether penetration occurred is a question of fact to be determined by the jury.

Tr. Vol. III, p. 146.

[17] Both parties agree that this instruction tracked language used in a recent opinion by this Court, *Hale v. State*, 128 N.E.3d 459, 463 (Ind. Ct. App. 2019). Basing jury instructions on the verbatim language in appellate decisions is discouraged. *Batchelor v. State*, 119 N.E.3d 550, 563 (Ind. 2019). This is particularly so when the challenged instruction stems from a case involving appellate review of the sufficiency of the evidence. *Id.* In such a situation, the challenged instruction "will 'rarely, if ever' be an appropriate basis for a jury instruction" because appellate review of the sufficiency of the evidence "is fundamentally different." *Keller*, 47 N.E.3d at 1208 (quoting *Garfield v. State*, 74 Ind. 60, 64 (1881)).

[18] But assuming arguendo that the instruction was given in error, reversal is not required. "[W]e will reverse a conviction only if the appellant demonstrates that the instruction error prejudices his substantial rights." *Treadway v. State*, 924 N.E.2d 621, 636 (Ind. 2010); *see also* Ind. Appellate Rule 66(A). We find no such prejudice here.

[19] To convict Voll under Indiana Code § 35-31.5-2-222.5(2), the State needed to present evidence that he penetrated or engaged in "other sexual conduct"

involving a "sex organ." Notwithstanding any error with the challenged instruction, the trial court issued a separate instruction informing the jury about its role in determining this charge. Tr. Vol. III, pp. 142-43.

[20] On top of that, Voll's conviction "was clearly sustained by the evidence and the jury could not have properly found otherwise." *Batchelor*, 119 N.E.3d at 562 (internal quotation omitted). The jury heard Voll confess to the allegations in his own words and heard extensive testimony from the victim as well. This evidence was more than sufficient for the jury to have found Voll's crimes proven beyond a reasonable doubt. *Id.* Thus, the overlapping instructions, combined with the sizeable evidence of Voll's guilt, rendered any alleged error from the challenged instruction harmless.

III. Sentence Revision

[21] Lastly, Voll contends that his 90-year sentence is inappropriate and asks us to revise it under Indiana Appellate Rule 7(b).

[22] Appellate Rule 7(B) gives this court the authority to revise a sentence "if, after due consideration of the trial's court decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "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). Our principal role in appellate sentence review is to "leaven the outliers" rather than "achiev[ing] a perceived 'correct' result in each case." *Cardwell v. State*, 895

N.E.2d 1219, 1225 (Ind. 2008). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Id.* at 1222.

[23] The sentencing range for a Level 1 felony child molesting offense is between 20 and 50 years with an advisory sentence of 30 years. Ind. Code § 35-50-2-4(a). The trial court sentenced Voll to 30 years each on six counts of Level 1 felonies child molesting. The court also ordered that Voll serve half of his sentences consecutively and half of his sentences concurrently, for an aggregate sentence of 90 years.

[24] The nature of Voll's offenses weighs strongly against revision. There is no doubt that "crimes against children are particularly contemptible." *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). This is especially true here, where Voll held a position of trust and responsibility over the victim—his daughter. *Id.* Voll's crimes also occurred over several years. *See Monroe v. State*, 886 N.E.2d 578, 580 (Ind. 2008).

[25] And Voll's character offers little reason for sentence revision. Although he has no prior criminal history, Voll is facing an invasion of privacy charge for allegedly violating a no-contact order with S.V. That allegation undercuts his lack of criminal history. *See Chastain v. State*, 165 N.E.3d 589, 601 (Ind. Ct. App. 2021) ("allegation[s] of misconduct" served to "moderate the weight afforded to [a defendant's] lack of criminal history").

[26] Even so, Voll points to a litany of cases he says hold that defendants who commit several acts of molestation against a single victim should not receive consecutive sentences. Voll fails to note the strong counterbalance to his claim. For example, in *Faith v. State*, our Supreme Court held that there is no prohibition on the imposition of consecutive *advisory* sentences when the defendant committed multiple acts of molestation against a single victim. 131 N.E.3d 158 (Ind. 2019) (per curiam). By contrast, the Court has found consecutive *enhanced* sentences inappropriate in one-victim, multiple acts cases. *Id.* (citing *Monroe*, 886 N.E.2d at 580-81; *Harris v. State*, 897 N.E.2d 927, 930 (Ind. 2008)). As Voll's sentence is comprised entirely of advisory sentences, he falls squarely within the terms of *Faith*.

[27] To be sure, "[w]hether the [crimes] involve one or multiple victims is highly relevant to the decision to impose consecutive sentences . . . ." *Pierce*, 949 N.E.2d at 352 (quoting *Cardwell*, 895 N.E.2d at 1225). And in the same vein, a defendant who violated a "position of trust with a child victim" through repeated molestations may likely qualify for an enhanced sentence, but this does not "necessarily justif[y]" imposing consecutive sentences. *Pierce*, 949 N.E.2d at 352 (collecting cases revising consecutive child molestation sentences to run concurrently where there is only one victim).

[28] But with that said, Voll has not met his burden of demonstrating his sentence was inappropriate. Voll committed many acts of molestation, over several years, against his daughter over whom he held a position of authority. This behavior led to six Level 1 felony convictions, for which Voll received three

consecutive and three concurrent advisory sentences. We find nothing inappropriate in his aggregate 90-year sentence under these facts. *See Cardwell*, 895 N.E.2d at 1225 ("appellate review [of criminal sentences] should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count").

Conclusion

[29] Finding neither reversible error in Voll's convictions nor that his sentence is inappropriate, we affirm.

Bailey, J., and Brown, J., concur.