

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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David J. Avalle,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 4, 2022

Court of Appeals Case No.  
21A-CR-1518

Appeal from the Cass Superior  
Court

The Honorable Lisa L. Swaim,  
Judge

Trial Court Cause No.  
09D02-2102-F1-1

**Bailey, Judge.**

## Case Summary

- [1] David J. Avalle (“Avalle”) appeals the trial court order revoking his bond. He raises only one issue which we restate as whether the trial court abused its discretion by revoking his bond without sufficient supporting evidence.
- [2] We affirm.

## Facts and Procedural History

- [3] In February of 2021, the State charged Avalle with five counts of child molesting, as Level 1 felonies,<sup>1</sup> one count of attempted child molesting, as a Level 1 felony,<sup>2</sup> and child exploitation, as a Level 4 felony.<sup>3</sup> The charges related to allegations that Avalle had sexual intercourse and engaged in other sexual conduct with his girlfriend’s then-eleven-year-old daughter, B.H. Avalle was arrested on June 18, 2021, and placed in the Cass County Jail. The State filed a motion for greater than the standard bond because Avalle made statements indicating that, if he bonded out of jail, he would harm himself or flee the jurisdiction. The trial court set Avalle’s bond at \$100,000 cash-only and also issued a no-contact order as a condition of his bond. The no-contact order required that Avalle have no contact with B.H.

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<sup>1</sup> Ind. Code § 35-42-4-3(a)(1).

<sup>2</sup> I.C. § 35-41-5-1.

<sup>3</sup> I.C. § 35-42-4-4(c)(1)(F).

[4] Avalle subsequently filed a motion to reduce his bond and, after a hearing on March 8, the trial court issued an order denying Avalle's request and sua sponte increasing his bond to \$150,000 cash-only because Avalle was "a substantial risk of flight and to [the] victim and community safety." App. at 54. Avalle subsequently successfully appealed the bond order, and this Court ordered the trial court to set the bond at \$150,000 cash or surety. The trial court complied with that order and also ordered that Avalle was not to have contact with B.H. as a condition of his pretrial release. On May 27, 2021, Avalle posted bond and was released from the Cass County Jail.

[5] On June 21, 2021, the State filed a motion to revoke Avalle's bond. The trial court conducted a hearing on that motion on June 29. At the hearing, two Cass County Sheriff's Department officers testified. Major Kevin Pruitt ("Pruitt") testified that B.H.'s mother ("Mother") "contacted" him on June 16 and reported that she had searched B.H.'s cellular telephone and found messages and images that she believed were from Avalle to B.H. Tr. at 6. Mother and B.H. came to the Sheriff's Department and gave face-to-face interviews with Pruitt on June 18.

[6] Mother reported that, in her search of B.H.'s cell phone, Mother found messages sent to B.H. from the accounts "penelopephil0" (with the personal name "Penelope phil") and "philluvsumost" on the social media application TikTok. Ex.s 1, 3. The "philluvsumost" account followed only one other account and was only followed by one account. Ex. 3. Mother provided Pruitt with screenshots of the twelve communications "Penelope phil" sent to B.H.

via TikTok. At trial, those screen shots were admitted into evidence, without objection, as Exhibits 1 through 12.

[7] Mother and B.H. informed Pruitt that “Penelope” is what Avalor called B.H.’s vagina, and “Phil” is what Avalor called his penis. Tr. at 8, 10. One of the messages from “Penelope phil” called B.H. “Punky.” Ex. 12. B.H. informed Pruitt that Avalor is the only person who calls her “Punky.” Tr. at 9. In addition, Pruitt had also seen letters Avalor wrote to B.H. from jail; in those letters Avalor refers to B.H. as “Punky.” *Id.*

[8] “Penelope phil” sent twelve videos or memes to B.H., including the following text:

“It’s hard to wait for something you know might not happen but it’s even harder to give up when you know its everything u want” Ex. 4.

“I only want three things right now. To see you, hug you, and kiss you.” Ex. 5.

“you [sic] never leave my mind. You’re the last person I think about before going to bed, you’re the first name I look for on my phone every morning....” Ex. 6.

“I want you[.]” Ex. 7.

“I would do anything for you. go [sic] anywhere with you. iwould [sic] run away with you....” Ex. 8.

[9] B.H. informed Pruitt that the communications from Penelope phil had been during the two weeks that preceded her interview on June 18, 2021. The dates on the messages indicated that many of them were sent in the days leading up to June 16, 2021, when Mother took screenshots of the messages.

[10] On June 18, 2021, Pruitt and other officers arrested Avalue outside Avalue's home. When Pruitt and another officer approached Avalue to arrest him, Avalue reached towards his back right pocket where his cell phone was located. The officers recovered Avalue's cell phone from his pocket. Detective Joseph Nies ("Nies"), who also testified at the bond revocation hearing, performed a cell phone extraction on the phone recovered from Avalue's pocket and recovered from that phone the e-mail account "philluvsumost@gmail.com." Tr. at 25. The e-mail account had received two customer service emails from TikTok that contained authorization codes. The browser history on the cell phone showed searches from June 16, 2021, regarding how to delete information from TikTok and how to tell if a court has issued a warrant on someone.

[11] Following the June 29, 2021, hearing on the State's motion to revoke Avalue's bond, the trial court granted the motion. In so doing, the trial court stated in relevant part:

I'm finding by clear and convincing evidence and, frankly, even, even more than clear and convincing evidence, that the Defendant, in fact, violated one of very few conditions [the no contact order] that I gave him on the current release Order.... Based on everything that I've heard, I believe that he did in fact violate that condition of release and I do not have any basis for a belief that he will not do it again.

Tr. at 37. At the conclusion of the hearing, the trial court set a follow-up hearing for August 20, 2021, to allow the State to present evidence from a then-pending request for production from TikTok to determine “if there is any information that comes in that indicates that, in fact, the Defendant did not contact this victim.” *Id.* at 38. At Avalor’s request, the follow-up hearing was continued and has not yet occurred. This appeal ensued.

## Discussion and Decision

[12] Avalor challenges the trial court’s order revoking his bond. We review a bond revocation for an abuse of discretion. *E.g.*, *Wertz v. State*, 771 N.E.2d 677, 680 (Ind. Ct. App. 2002). An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances. *E.g.*, *Hall v. State*, 166 N.E.3d 406, 412 (Ind. Ct. App. 2021). In determining whether the trial court has abused its discretion, we will not judge witness credibility or reweigh the evidence, and we consider any conflicting evidence in favor of the trial court’s ruling. *Id.*

[13] A trial court may revoke a defendant’s bail bond when the State produces clear and convincing evidence that, while admitted to bail, the defendant “violated any condition of [his] current release order.” I.C. § 35-33-8-5(d)(1)(C). Moreover, the legislature has expressly provided that, “in reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause.” I.C. § 35-33-8-5(a).

[14] The State presented clear and convincing evidence that Avalle violated a condition of his release on bond by contacting B.H. via TikTok. The testimony of officers Pruitt and Nies and the State's exhibits—all admitted without objection—show the following. The police found a cell phone in Avalle's pocket that he reached for as he was being arrested. A data search of that cell phone revealed that it was connected to the email address philluvsumost@gmail.com, which had two emails from TikTok for account verification. B.H.'s personal TikTok account was followed and messaged by a TikTok account named "philluvsumost," which was the same spelling as the email address. Tr. at 25; Ex. 2. This account only followed, and was only followed by, B.H.'s TikTok account. B.H. was also contacted by the account "penelopephil0." Exs. 1, 4. Messages sent from these accounts to B.H. included content that was "generally speaking about love," such as hearts and running away together. Tr. at 3; Exs. 4-12. The name "Penelope phil" coincides with nicknames Avalle has used for his and B.H.'s genitals. Tr. at 9-10. One of the messages called B.H. "Punky," a nickname Avalle used to refer to B.H. in letters he wrote to her from jail and which B.H. confirmed was a nickname only Avalle used for her. *Id.* An extraction of data from Avalle's cell phone revealed that Avalle had, on June 16, 2021, conducted internet searches for how to delete information from a TikTok account and how to know if a court had issued a warrant. This was all clear and convincing evidence that Avalle

violated a bond condition by contacting B.H.<sup>4</sup> Avalor's insistence to the contrary is simply a request that we reweigh evidence and judge witness credibility, which we may not do. *See, e.g., Hall*, 166 N.E.3d at 412.

[15] Avalor maintains that the trial court erred to the extent it relied upon Pruitt's testimony about his interviews with Mother and B.H. Avalor notes that Mother's and B.H.'s statements are hearsay, and he contends there was no indication the hearsay was credible or reliable per Indiana Code Section 35-33-8-5. We disagree. Mother and B.H. delivered their statements directly to Pruitt in a face-to-face interview. This Court has concluded in the context of testimony about out-of-court statements of informants that such statements are credible where they are delivered in person to law enforcement officers, as the officers can then judge the informant's credibility first-hand and obtain enough information to hold the informant responsible for false informing, if necessary. *See Robinson v. State*, 888 N.E.2d 1267, 1271 (Ind. Ct. App. 2008), *trans. denied*; *Washburn v. State*, 868 N.E.2d 594, 600 (Ind. Ct. App. 2007), *trans. denied*. Moreover, Mother's and B.H.'s statements were corroborated by the other evidence discussed above, such as Avalor's cell phone data. The trial court acted within its discretion to the extent it determined the hearsay evidence was

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<sup>4</sup> The fact that the trial court set another hearing to review additional information from TikTok if it became available says nothing about whether the State presented clear and convincing evidence of Avalor's violation of a bond condition at the June 29 hearing. Avalor's contention to the contrary is not well-taken.



credible; it is not for this court to make such a determination, as Avalor requests. *See, e.g., Hall*, 166 N.E.3d at 412.

[16] The trial court did not abuse its discretion when it revoked Avalor's bond, as there was sufficient evidence to support the revocation.

[17] Affirmed.

Mathias, J., and Altice, J., concur.