MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Daniel Weinley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 17, 2022

Court of Appeals Case No. 21A-CR-2162

Appeal from the Huntington Circuit Court

The Honorable Davin G. Smith, Judge

Trial Court Cause No. 35C01-2103-F1-000088

May, Judge.

[1] Daniel Weinley appeals his conviction of Level 1 felony child molesting[1] and the forty-year sentence imposed therefor. Weinley raises three issues on appeal, which we restate as:

> I. Whether the trial court abused its discretion when it admitted into evidence the confession Weinley argues he gave involuntarily;
>
> II. Whether the evidence was sufficient to support Weinley's conviction; and
>
> III. Whether Weinley's sentence is inappropriate.

We affirm.

Facts and Procedural History

[2] Between November 2017 and December 2018, H.E. lived with her aunt ("Aunt"), Aunt's husband Weinley, and their four children. During this time, H.E. was six and seven years old. While living in the house with them, H.E. slept in a bed with her two female cousins. At bedtime, Aunt would tuck the girls into bed, and then Weinley would sometimes enter the room later to check on them. On two or three nights, Weinley put his hand inside H.E.'s clothing and touched inside her female sex organ, which was uncomfortable for her.

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[1] Ind. Code § 35-42-4-3(a).

[3] In April 2020, H.E. told her father ("Father") that Weinley had touched her inappropriately. Father told H.E.'s mother ("Mother"), who contacted the Department of Child Services ("DCS"). DCS arranged a forensic interview of H.E. at a child advocacy center. Police then interviewed Weinley, who admitted he had touched H.E. on two nights in a row when she was seven years old.

[4] The State charged Weinley with Level 1 felony child molesting and Level 4 felony child molesting.[2] The court held a bench trial, during which Weinley challenged the voluntariness of his confession. The court admitted the confession over Weinley's objection and found Weinley guilty of both charges. The court merged the Level 4 felony into the Level 1 felony. Following a sentencing hearing, the court imposed a forty-year sentence, with eight years suspended to probation.

Discussion and Decision

I. Admission of Evidence

[5] Weinley first asserts the trial court abused its discretion when it admitted his confession into evidence. Trial courts have discretion regarding the admission of evidence, and we review their decisions only for an abuse of discretion. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). We reverse "only if the trial court's

[2] Ind. Code § 35-42-4-3(b).

ruling was clearly against the logic and effect of the facts and circumstances before it and errors affect a party's substantial rights." *Id*.

[6] Weinley asserts the trial court should not have admitted his confession because it was involuntarily given. "The Fourteenth Amendment forbids the use of involuntary confessions" because confessions obtained by coercion are more likely to be unreliable and because the government ought not be allowed to "wring[] a confession out of an accused against his will." *Bond v. State*, 9 N.E.3d 134, 137 (Ind. 2014) (quoting *Jackson v. Denno*, 378 U.S. 368, 385-86, 84 S. Ct. 1774 (1964)).

> When a defendant challenges the voluntariness of his or her confession under the U.S. Constitution, the State must prove the statement was voluntarily given by a preponderance of the evidence. We examine the totality of the circumstances as presented by the record, and are guided by several factors including police coercion; the length, location, and continuity of the interrogation; and the defendant's maturity, education, physical condition, and mental health. The critical inquiry is whether the defendant's statements were induced by violence, threats, promises or other improper influence.

Bond, 9 N.E.3d at 137 (internal quotation marks and citations omitted). We review the constitutionality of the confession de novo. *Keith v. State*, 127 N.E.3d 1221, 1232 (Ind. Ct. App. 2019).

[7] Weinley took the stand at trial and testified he had taken fentanyl on the morning of his police interview. On appeal, he claims he was "blindsided" by the detectives' questioning, (Appellant's Br. at 19), and "he was mentally

abused, berated and not allowed to give 'his truth' and properly deny the allegations. Weinley ultimately told the Detectives what they wanted to hear so that the interrogation would end and Weinley could leave the abuse." (*Id*.) The video recording of the interrogation simply does not support Weinley's assertions.

[8] If Weinley had ingested fentanyl, it had not made him so intoxicated that he could not function. Weinley claimed he arrived to speak to the detectives following a job interview at which he was offered a job, and he was not too intoxicated to remember those events or to have performed well enough in the interview to be offered a job. At no point during the interrogation was Weinley slurring words, falling asleep, or unable to comprehend what was being discussed. Under these circumstances, voluntary intoxication "goes merely to the weight to be given to the confession, not to its admissibility." *Keith*, 127 N.E.3d at 1232. Furthermore, the trial court was not required to believe Weinley's testimony about having taken fentanyl. *See Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004) ("factfinders are not required to believe a witness's testimony even when it is uncontradicted").

[9] While Weinley may have been surprised by the questions about H.E., we doubt a person can be "blindsided" when he has been interviewed by DCS about these same allegations. Moreover, detectives read Weinley's *Miranda*[3] rights to him,

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966), *reh'g denied*.

he read the waiver aloud, and he signed the waiver form, so he had been informed that he could stop the interview at any time if he wanted a lawyer. Although Weinley did not finish high school, he had earned his General Education Diploma and this was not Weinley's first interaction with police or the justice system. While the detectives were insistent that H.E.'s story was true and they pushed Weinley to tell the truth, they were not violent toward Weinley and they did not threaten violence against Weinley.

[10] Weinley was in the interview room less than one hour, and the case involving H.E. was discussed less than thirty minutes, with some of that discussion occurring after his confession. Weinley arrived of his own free will, the detectives were not between Weinley and the door during the interview, and he left freely at the end. Under the totality of the circumstances, the State demonstrated by a preponderance of the evidence that Weinley's confession was voluntary, and the trial court did not abuse its discretion in admitting that evidence. *See*, *e.g.*, *Keith*, 127 N.E.3d at 1233 (recording of interview did not support defendant's assertion that confession was involuntary due to voluntary intoxication, and therefore trial court did not abuse its discretion).

II. Sufficiency of Evidence

[11] Weinley next asserts the State did not present sufficient evidence to support his conviction. Claims of insufficient evidence

> warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable

> inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

[12] Weinley was convicted of Level 1 felony child molesting, which required the State to prove Weinley, when at least twenty-one years old, knowingly penetrated the female sex organ of H.E. with his finger, when she was under fourteen years old. (*See* Appellant's App. at 41.) *And see* Ind. Code § 35-42-4-3(a)(1) (defining crime). Weinley argues H.E.'s testimony is insufficient to support his conviction because it was incredibly dubious.

[13] Indiana's "'incredible dubiosity' rule" permits us to invade the fact-finder's "province for judging witness credibility only in exceptionally rare circumstances." *McCallister v. State*, 91 N.E.3d 554, 559 (Ind. 2018). Those rare circumstances exist if a sole witness gives testimony that was "coerced, equivocal, and wholly uncorroborated" and was "'inherently improbable' or of dubious credibility; and there must have been no circumstantial evidence of the defendant's guilt." *Id.*

[14] H.E.'s testimony does not meet this standard. First, because Weinley's confession was admitted into evidence, H.E. was not the only witness who testified to the events at issue. Second, unfortunately, it is not outside the realm of possibility that an adult would touch a child inappropriately when that child was asleep in the adult's house. Third, Aunt provided corroborating

circumstantial evidence when she testified that Weinley would sometimes enter the room where the girls were sleeping to check on them after the girls had gone to bed. Given these facts, we cannot impinge on the fact-finder's ability to assess the credibility of the witnesses and weigh the evidence. *See*, *e.g.*, *id*. (incredible dubiosity rule did not apply where testimony was not from sole witness, testimony was not improbable or unimaginable, and circumstantial evidence supported verdict). Sufficient evidence supported Weinley's conviction. *See*, *e.g.*, *Young v. State*, 973 N.E.2d 1225, 1227 (Ind. Ct. App. 2012) (testimony of child victim, which was not incredibly dubious, was sufficient to support conviction of child molesting), *reh'g denied*, *trans. denied*.

III. Inappropriateness of Sentence

[15] Finally, Weinley argues his sentence is inappropriate. Our standard of review regarding claims of inappropriate sentence is well-settled:

> Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*. We consider both the total number of years of a

sentence and the way the sentence is to be served in assessing its appropriateness. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[16] "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, "we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). A person over twenty-one years of age who commits "other sexual conduct (as defined in IC 35-31.5-2-221.5)" with a child less than twelve years of age, Ind. Code § 35-31.5-2-72(1), "shall be imprisoned for a fixed term between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years." Ind. Code § 35-50-2-4(c). The trial court imposed a forty-year sentence, which is midway between the advisory sentence and the maximum sentence, and the court suspended eight of those forty years to probation.

[17] The trial court found aggravators in Weinley's position of trust with H.E. and H.E.'s "tender age." (Appellant's App. at 29.) Weinley acknowledges those two aggravators exists, and he acknowledges "this type of offense is egregious and offensive due to the nature of the forced sexual contact upon a child." (Br. of Appellant at 25.) He argues, however, that the nature of his particular offense – which did not involve complete penetration of the vagina by his finger, sexual intercourse, or oral sex, and which did not result in any physical

injury to H.E. – was not sufficiently egregious to justify a sentence above the advisory. Given that he violated his position of trust as the uncle of a seven-year-old who was living in his house, we see nothing inappropriate about the length of his sentence.

[18] When considering a defendant's character, one relevant fact is the defendant's criminal history. *Belcher v. State*, 138 N.E.3d 318, 329 (Ind. Ct. App. 2019), *trans. denied*. "The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Id.* (quoting *Maffett v. State*, 113 N.E.3d 278, 286 (Ind. Ct. App. 2018)). Prior to this case, Weinley had two juvenile adjudications for acts that would be Class A misdemeanor battery resulting in bodily injury; the court placed him on probation, and when Weinley violated probation by using marijuana and leaving home without permission, the court placed him on house arrest. In 2016, Weinley was convicted of misdemeanor operating a vehicle while intoxicated, felony resisting law enforcement, and misdemeanor possession of marijuana. The court permitted Weinley to enter a deferred sentencing program for the possession crime, but Weinley was removed from the program after testing positive for drugs. In 2019, Weinley was convicted of misdemeanor invasion of privacy for violating a protective order. In 2020, Weinley committed misdemeanor driving while suspended. Finally, during these child molesting proceedings, Weinley was also charged with Level 5 felony battery with bodily injury of a child under age fourteen.

[19] While Weinley may not have committed the hypothetically worst-imaginable act of Level 1 felony child molesting, we cannot say that a forty-year sentence, with eight years suspended to probation, is inappropriate for a man with a criminal history of personal violence who committed Level 1 felony child molesting against his seven-year-old niece when she was living in his house and sleeping in the same bed as his own daughters. *See*, *e.g.*, *McCain v. State*, 88 N.E.3d 1066, 1067 (Ind. 2018) (finding forty-year sentence not inappropriate for mother with no criminal history who placed her mouth on the penis of her one-year-old son).

Conclusion

[20] The trial court did not abuse its discretion when it admitted Weinley's confession into evidence. H.E.'s testimony cannot be considered incredibly dubious and it supports Weinley's conviction. Finally, we cannot say Weinley's sentence is inappropriate. Accordingly, we affirm.

[21] Affirmed.

Brown, J., and Pyle, J., concur.