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Indiana Supreme Court
Court of Appeals
and Tax Court

IN THE

Court of Appeals of Indiana

Justin Marquardt,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 3, 2026

Court of Appeals Case No.
25A-CR-3073

Appeal from the
Hendricks Superior Court

The Honorable
Stephenie LeMay-Luken, Judge

Trial Court Cause No.
32D05-2411-F1-12

Opinion by Senior Judge Najam
Judges May and Scheele concur.

Najam, Senior Judge.

Statement of the Case

[1] Justin Marquardt appeals his convictions of Level 4 felony child molesting, Level 4 felony incest, and Level 5 felony attempted obstruction of justice. Marquardt also appeals the twenty-eight-year sentence the trial court imposed for those convictions.

[2] On appeal, Marquardt challenges the sufficiency of the evidence for all three convictions, raises a double jeopardy claim, and asks the Court to revise his sentence under Indiana Appellate Rule 7(B). Concluding that Marquardt has failed to demonstrate reversible error and that his sentence does not require revision, we affirm.

Issues

[3] Marquardt raises three issues, which we restate as:

> I. Whether there is sufficient evidence to sustain his convictions.
>
> II. Whether his convictions for child molesting and incest violate double jeopardy.
>
> III. Whether his sentence is inappropriate and requires revision.

Facts and Procedural History

[4] Marquardt began a relationship with Adult Witness 1[1] when he was eighteen and she was thirteen. They married when Adult Witness 1 turned eighteen, and they had two daughters, Child Victim and Child Witness 1.

[5] Child Victim and Child Witness 1 lived with Marquardt and Adult Witness 1 in half of a duplex in Marion County. Adult Witness 2 owned the duplex and lived in the other half. Marquardt and Adult Witness 1 argued frequently, and he threatened her with violence. In addition, Marquardt took charge of discipline, frequently spanking Child Victim and Child Witness 1 with a wooden paddle. Child Witness 1 later explained, "[t]here was a lot of hitting used as discipline." Tr. Vol. 2, p. 174.

[6] On one occasion, Marquardt struck Adult Witness 1 during an argument. She said she was going to call the police, and he began to strangle her. They struggled and fell to the floor, where Adult Witness 1 hit her head and began to black out. Child Victim witnessed Marquardt's attack on Adult Witness 1 and

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[1] We identify the names of the victim and the witnesses in compliance with the Indiana General Assembly's newly-enacted standards in Indiana Code sections 35-32-4-1 to -4 (2026). In keeping with other authorities and longstanding practice, Indiana Code section 35-32-4-2 (2026) requires courts to redact the names of child victims and child witnesses in criminal cases. *See, e.g.*, Indiana Rule on Access to Court Records 5(C)(2) (requiring parties to exclude from public access the names of child witnesses in cases involving sex offenses). But subsection (2) of Indiana Code section 35-32-4-2 further requires courts to redact the name of any other person "if the reference to the name could be used to identify a child whose name is required to be redacted[.]" I.C. § 35-32-4-2(2). When courts redact names in compliance with Indiana Code section 35-32-4-2, they are required to use "a descriptive anonymous designator" rather than initials or "references to familial relationships[.]" Ind. Code § 35-32-4-3 (2025).

feared for her life. She ran to Adult Witness 2's side of the duplex and asked him to help Adult Witness 1.

[7] Adult Witness 2 and Child Victim returned to the other side of the duplex, where they found Marquardt sitting on Adult Witness 1's chest, choking her. Marquardt got up and walked away when Adult Witness 2 entered the room. No one called 911 or law enforcement, and Adult Witness 1 did not otherwise seek treatment. Child Victim and Child Witness 1 were "traumatized[]" by the incident. *Id.* at 215. Child Victim later stated that she still had nightmares about the incident over a decade later.

[8] When Child Victim was around eight years old, the family moved into a home in Hendricks County. At that time, Adult Witness 1 worked in a nursing home five to six days per week, with long shifts and a one-hour commute. Child Victim and Child Witness 1 often did not see Adult Witness 1 for several days, and Marquardt was alone with them in the evenings.

[9] When Child Victim was between the ages of nine and twelve, Marquardt began brushing up against her body, touching her breasts and her rear. This escalated to Marquardt asking her to participate in sexual activity when Adult Witness 1 was not home. He asked Child Victim whether she wanted to "engage." *Id.* at 141-42. If she said yes, Marquardt sent Child Witness 1 downstairs to watch cartoons, with instructions not to come upstairs until he allowed it, while he took Child Victim to his bedroom.

[10] Child Victim felt compelled to comply with Marquardt's requests for sexual activity because when she declined, Marquardt became "more angry and physical" with her, Child Witness 1, and Adult Witness 1. *Id.* at 144. When she agreed, Marquardt screamed at them less often and was less likely to use corporal punishment on Child Victim and Child Witness 1.

[11] After Marquardt and Child Victim entered his bedroom, he undressed her and had her get on the bed. He always inserted his penis in her vagina, using a Trojan brand condom each time. Child Victim recalled bleeding from her vagina after the first few incidents of vaginal intercourse. She also recalled watching Marquardt dispose of the condoms in a trash can in the bathroom. Marquardt also occasionally touched Child Victim's breasts or performed oral sex on her. This pattern of abuse occurred over a period of roughly two to three months, and Child Victim believed it happened six to ten times in total.

[12] On several occasions, Marquardt told Child Victim, "it's just two people enjoying themselves." *Id.* at 148. But he also told her not to tell anyone, especially Adult Witness 1. Child Victim initially did not tell anyone about Marquardt's sexual abuse, but she began to have thoughts of suicide. In subsequent years she made several attempts.

[13] In 2020, Child Victim was in middle school and had a boyfriend, whom we refer to as "Boyfriend." On April 2 of that year, she texted him to say that Marquardt "plays around and touches those areas sometimes," that it made her uncomfortable, and that she was "afraid he'll get mad if I say no to him." Tr.

Vol. 4, p. 3. Boyfriend asked directly whether Marquardt touched her in inappropriate ways, and Child Victim responded, "Yes[,] I hate it[.]" *Id.* at 4. She identified the areas he touched as her "[c]rotch, breasts, butt, basically everywhere." *Id.* at 5. She repeatedly begged Boyfriend not to tell anyone, explaining that she wanted Marquardt to go, but her "family would never survive" if she reported it. *Id.* at 6.

[14] Boyfriend told his mother about Child Victim's text messages, which led to a Department of Child Services ("DCS") investigation and report. A DCS employee contacted Adult Witness 1, who took Child Victim to a child advocacy center for an interview. During the interview, Child Victim did not disclose Marquardt's molestations. She later explained that she had denied any sexual abuse out of fear that she would be "punished and/or, like, killed." Tr. Vol. 2, p. 156. Child Victim was also afraid that Adult Witness 1 would not be able to sustain the household without Marquardt's income. No charges were filed. But when Adult Witness 1 first told Marquardt about the allegations, he seemed panicked.

[15] Later, Marquardt, Adult Witness 1, Child Victim, and Child Witness 1 moved to Ohio for Marquardt's job. Adult Witness 1, Child Victim, and Child Witness 1 eventually returned to Indiana.

[16] In 2024, Child Victim and Adult Witness 1 went to a store. Adult Witness 1 recognized the cashier because she had dated Marquardt. The cashier advised Adult Witness 1 to get tested for HIV, disclosing that she was HIV-positive.

Child Victim was visibly frightened by that information. Later that day, Child Victim told Adult Witness 1 that Marquardt had sexually abused her. Adult Witness 1 contacted DCS and took Child Victim to the child advocacy center for a second interview. This time, Child Victim told the interviewer about the abuse. She no longer feared retribution because Marquardt was living in another state.

[17] An investigation followed, and Marquardt was arrested. After he bonded out of jail, he called Adult Witness 2. Marquardt said that the allegations amounted to "a death sentence." *Id.* at 225. Marquardt asked Adult Witness 2 to speak with Adult Witness 1, but he refused. Next, Marquardt asked Adult Witness 2 to speak with Child Victim to "make her understand how serious this is." *Id.* He replied that Child Victim understood how serious the situation was. Marquardt asked him to "get her to recant." *Id.* Adult Witness 2 refused, saying that Marquardt's request "sound[ed] like witness tampering[.]" *Id.* Adult Witness 2 told Child Victim about the conversation in Adult Witness 1's presence, and Adult Witness 1 told a detective what she had heard.

[18] The State ultimately charged Marquardt with two counts of Level 1 felony child molesting, one count of Level 4 felony child molesting, one count of Level 4 felony incest, and one count of Level 5 felony attempted obstruction of justice. The jury could not reach a verdict on the Level 1 felonies but found him guilty of the other three charges. The State dismissed the Level 1 felony charges, and the trial court imposed an aggregate sentence of twenty-eight years on the three convictions. This appeal followed.

Discussion and Decision

I. Sufficiency of the Evidence

[19] Marquardt claims that the State did not submit sufficient evidence to sustain any of his convictions. When reviewing the sufficiency of the evidence, we apply "a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* "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." *Id.* at 263.

A. Child Molesting

[20] To obtain a conviction of Level 4 felony child molesting as charged, the State was required to prove beyond a reasonable doubt that Marquardt (1) performed or submitted to fondling or touching (2) with Child Victim, a child under fourteen years of age (3) with the intent to arouse or satisfy his or Child Victim's sexual desires. Ind. Code § 35-42-4-3(b) (2014); Appellant's App. Vol. II, p. 26.

[21] Marquardt claims that Child Victim's testimony was the key evidence that supported this conviction. He notes that she denied any abuse during an interview at the child advocacy center in 2020, but she disclosed abuse by Marquardt during an interview in 2024. Marquardt asks the Court to disregard

her statements under the doctrine of incredible dubiosity. Under this doctrine, we can impinge upon a fact-finder's responsibility to judge the credibility of the witnesses in limited circumstances, when three requirements are met. *Nielson v. State*, 267 N.E.3d 1126, 1133 (Ind. Ct. App. 2025) (quoting *Hampton v. State*, 921 N.E.2d 27, 29 (Ind. Ct. App. 2010), *trans. denied*). First, there must be "a single eyewitness" to the criminal act or acts. *Moore v. State*, 27 N.E.3d 749, 755 (Ind. 2015). Second, that witness's testimony must be inherently contradictory, equivocal in nature, or the result of coercion. *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1994). Third, there must also be "'a complete lack of circumstantial evidence of the appellant's guilt.'" *Moore*, 27 N.E.3d at 755 (quoting *Tillman*, 642 N.E.2d at 223).

[22] In the current case, there is circumstantial evidence to support Child Victim's testimony. The jury saw Child Victim's 2020 contemporaneous text messages to Boyfriend, in which she disclosed that Marquardt had touched her "[c]rotch, breasts, butt, basically everywhere." Tr. Vol. 4, p. 5. In addition, Child Witness 1 told the jury that when Adult Witness 1 was not home, Marquardt would order her to stay downstairs and watch television while he and Child Victim were upstairs. Child Witness 1 thus corroborated Child Victim's testimony.

[23] Even if we were to disregard the text messages and corroborating testimony, Child Victim's testimony was not inherently contradictory or equivocal. She explained that she had denied any sexual abuse during her first visit to the child advocacy center because she was afraid of Marquardt hurting or killing her, and

she was also afraid that she would become destitute. Once Marquardt was living in another state, away from Adult Witness 1, Child Victim, and Child Witness 1, Child Victim believed that she could disclose the abuse without fear of retribution.

[24] Marquardt notes that in 2020, Adult Witness 1 did not believe that Marquardt had sexually abused Child Victim. He also points to gaps in Child Victim's memory about each incident of abuse. These points were for the jury to consider and weigh when assessing Child Victim's credibility and did not render her testimony inherently improbable. We reject Marquardt's claim of incredible dubiosity. *See Nielson*, 267 N.E.3d at 1133 (determining that Nielson's claim of incredible dubiosity was without merit in child molesting prosecution; victim's testimony was not inherently contradictory, equivocal, or the result of coercion).

B. Incest

[25] To obtain a conviction of Level 4 felony incest as charged, the State was required to prove beyond a reasonable doubt that Marquardt (1) being at least eighteen years of age (2) engaged in sexual intercourse or other sexual conduct with Child Victim (3) knowing (4) that the Child Victim was his child and less than sixteen years of age. Ind. Code § 35-46-1-3 (2014); Appellant's App. Vol. II, p. 66.

[26] Marquardt argues that the jury's guilty verdict on incest is "legally insufficient" because jurors were unable to reach a verdict on the Level 1 felony child

molesting counts. Appellant's Br. p. 18. He argues that the incest charge, like the Level 1 felony child molestation charges, requires proof of some form of penetration, and the jury must have concluded that Marquardt never penetrated Child Victim.

[27] Marquardt failed to cite to any cases to support this argument, so it is waived. *Casady v. State*, 934 N.E.2d 1181, 1191 (Ind. Ct. App. 2010) (determining appellant waived claim by failing to provide citations to case law), *trans. denied*. Waiver notwithstanding, it is well established that a jury's failure to reach a verdict on a charge amounts to a "nonevent" from which no factual conclusions may be drawn about the jury's other verdicts. *Yeager v. U.S.*, 557 U.S. 110, 121 (2009). As the United States Supreme Court has stated, "A host of reasons—sharp disagreement, confusion about the issues, exhaustion after a long trial, to name but a few—could work alone or in tandem to cause a jury to hang." *Id.* "[C]onjecture about possible reasons for a jury's failure to reach a decision should play no part in assessing the legal consequences of a unanimous verdict that the jurors did return." *Id.* at 122; *see also Williams v. State*, 160 N.E.3d 563, 577 (Ind. Ct. App. 2020) ("Indiana courts do not attempt to ascribe meaning to verdicts, or the lack thereof, in the manner suggested by Williams."), *trans. denied*. We reject Marquardt's attempt to interpret the reasons behind the jury's failure to return a verdict on the Level 1 felony charges.

C. Attempted Obstruction of Justice

[28] To obtain a conviction of Level 5 felony attempted obstruction of justice as charged, the State was required to prove beyond a reasonable doubt that

Marquardt (1) knowingly or intentionally (2) attempted (3) to unlawfully influence or persuade Child Victim (4) to give false or misleading testimony during a hearing or false or misleading statements to a court or police officer. Ind. Code §§ 35-44.1-2-2 (2023), 35-41-5-1 (2014); Appellant's App. Vol. II, p. 81. The State further alleged that Marquardt attempted to commit the offense by knowingly or intentionally requesting that a third party contact Child Victim to request that she recant her statement, and the request was a substantial step toward commission of the offense. Appellant's App. Vol. II, p. 81.

[29] In the charging information, the State cited to two subsections of Indiana Code section 35-44.1-2-2: subsections (a)(1)(A) and (b)(3). Subsection (a)(1)(A) provides as follows:

> (a) A person who:
>
> (1) knowingly or intentionally induces, by threat, coercion, false statement, or offer of goods, services, or anything of value, a witness or informant in a legal proceeding or an administrative or criminal investigation to:
>
> (A) withhold or unreasonably delay in producing any testimony, information, document, or thing that the witness or informant is legally required to produce;
>
> * * * * *
>
> commits obstruction of justice, a Level 6 felony, except as provided in subsection (b).

[30] Subsection (b) provides as follows:

> Except as provided in subsection (e), the offense is a Level 5 felony if, during the investigation or pendency of a domestic violence or child abuse case under subsection (c), a person knowingly or intentionally:
>
> (1) offers, gives, or promises any benefit to;
>
> (2) communicates a threat as defined by IC 35-45-2-1(c) to; or
>
> (3) intimidates, unlawfully influences, or unlawfully persuades;
>
> any witness to abstain from attending or giving testimony, or to give a false or materially misleading statement, at any hearing, trial, deposition, probation, or other criminal proceeding or from giving testimony or other statements, including giving a false or materially misleading statement, to a court or law enforcement officer under IC 35-31.5-2-185.

[31] Marquardt argues that the State had to prove the elements of both subsections (a)(1)(A) and (b)(3) to obtain a conviction against him. We disagree. "The goal of statutory construction is to determine, give effect to, and implement the intent of the legislature." *Sales v. State*, 723 N.E.2d 416, 420 (Ind. 2000). "When the statutory language is clear and unambiguous, we give effect to its plain and ordinary meaning." *Pierce v. State*, 29 N.E.3d 1258, 1265 (Ind. 2015). We examine the statute as a whole. *Sales*, 723 N.E.2d at 420. Statutory construction presents a question of law, which we review de novo. *Suggs v. State*, 51 N.E.3d 1190, 1193 (Ind. 2016).

[32] The plain language of Indiana Code section 35-44.1-2-2 demonstrates that subsections (a) and (b) describe separate levels of the offense of obstruction of

justice, each with different elements. In that respect, Indiana Code section 35-44.1-2-2 is similar to the statute that governs the offense of child molesting, Indiana Code section 35-42-4-3. Subsection (a) of Indiana Code section 35-42-4-3 defines Level 3 felony child molesting as follows: "A person who, with a child under fourteen (14) years of age, knowingly or intentionally performs or submits to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) commits child molesting, a Level 3 felony." I.C. § 35-42-4-3(a) (2025). Subsection (b) of the same statute defines Level 4 felony child molesting with different elements of proof, as follows:

> A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Level 4 felony.

Id. The State does not need to prove all of the elements of subsections (a) and (b) to obtain a conviction for child molesting because they are separate offenses. Similarly, we conclude that in this case, the State did not need to prove the elements of both subsections (a) and (b) to obtain a conviction for attempted obstruction of justice.[2] *See, e.g., Fowler v. State*, 279 N.E.3d 384, 392-93 (Ind. Ct.

[2] We find additional support for our conclusion in the history of Indiana Code section 35-44.1-2-2. In 2017, the General Assembly added subsection (b) to Indiana Code section 35-44.1-2-2. 2017 Ind. Acts 3397. Prior to 2022, subsection (b) of the statute began: "Except as provided in subsection (e), the offense *described in subsection (a)* is a Level 5 felony if . . . ." I.C. § 35-44.1-2-2(b) (2021) (emphasis added). The italicized language tied together the elements of subsections (a) and (b). But in 2022, the General Assembly amended subsection (b) of Indiana Code section 35-44.1-2-2 to eliminate the phrase "described in subsection (a)[.]"

App. 2026) (affirming conviction for Level 5 felony attempted obstruction of justice; Court considered only elements of subsection (b)).

[33] Returning to Marquardt's challenge to the sufficiency of the evidence, the charge arose from Marquardt's phone call to Adult Witness 2, in which Marquardt asked him to convince Child Victim to recant. Marquardt argues that he did not suggest any coercion during the call, and as a result, the evidence is insufficient. Coercion is not an element of Level 5 felony obstruction of justice. I.C. § 35-44.1-2-2(b). Instead, the State alleged that Marquardt, via Adult Witness 2, attempted to "unlawfully influence and/or unlawfully persuade" Child Victim to recant. Appellant's App. Vol. II, p. 81.

[34] The General Assembly has not defined the phrases "unlawfully influence" or "unlawfully persuade." The parties have not directed us to any cases applying those phrases in the context of obstruction of justice, and we have not found any. The phrases "unlawfully influence" and "unlawfully persuade" must mean something different than merely offering a benefit to a victim, or threatening or intimidating a victim, because otherwise those phrases would be merely duplicative of the other portions of subsection (b). "[W]e will avoid an interpretation that renders any part of the statute meaningless or superfluous." *Zanders v. State*, 800 N.E.2d 942, 945 (Ind. Ct. App. 2003).

2022 Ind. Acts 24. As a result, subsections (a) and (b) are now separate subsections, each with their own mental culpability requirements and separate definitions of the types of acts that qualify as obstruction.

[35] "Influence" is defined in its verb form as "to affect or alter by indirect or intangible means." Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/influence (last visited Aug. 25, 2026). "Persuade" is defined as "to move by argument, entreaty, or expostulation to a belief, position, or course of action." Merriam-Webster Online Dictionary, www.merriam-webster.com/dictionary/persuade (last visited Aug. 25, 2026).

[36] Applying these terms to Marquardt's case, we find persuasive guidance in *Scott v. State*, 139 N.E.3d 1148 (Ind. Ct. App. 2020), even though *Scott* deals with an obstruction of justice charge under subsection (a) of Indiana Code section 35-44.1-2-2. In *Scott*, the State charged Scott with several offenses arising out of battering his domestic partner. Scott repeatedly called the victim from jail, first asking her to recant her accusation, and then asking her to stop cooperating with the police and prosecutors. He reminded the victim that she was working long hours and taking care of two children all by herself, and he could not help her with the children unless the case was dismissed. The victim stopped talking with police and prosecutors.

[37] The State charged Scott with Level 5 felony obstruction of justice, and the jury determined Scott was guilty of that offense. On appeal, Scott argued that the evidence was insufficient. This Court disagreed, noting that the State had to prove that Scott imposed "some form of pressure or influence exerted on the will or choice of another." *Scott*, 139 N.E.3d at 1156. We further noted that the State must prove that a victim's failure to comply has a consequence, meaning "a certain result or outcome[,]" not necessarily negative. *Id.* at 1158.

This Court determined that Scott's statement that he would be in jail and unable to help the victim with the children unless she got the charges dismissed, stated a cognizable consequence.

[38] In the current case, Marquardt stressed to Adult Witness 2 that the charges against him amounted to "a death sentence" and that Child Victim needed to "understand how serious this is." Tr. Vol. 2, p. 225. Marquardt then asked Adult Witness 2 to get Child Victim "to recant." *Id*. Marquardt's statements are not equivalent to a threat of physical harm or intimidation. Even so, Marquardt was attempting to unfairly place a burden on Child Victim, namely, that if Child Victim did not recant her true statements and falsely tell the officers and the prosecutors that sexual abuse did not occur, she would be responsible for him dying in prison. This attempt to burden Child Victim's conscience is similar to the defendant's act in *Scott*: that is, exerting influence on another's will or choices, with a consequence for failure to comply. We conclude the State's evidence meets the requirements for unlawful influence or unlawful persuasion. There is sufficient evidence to support Marquardt's conviction for Level 5 felony attempted obstruction of justice under Indiana Code section 35-44.1-2-2(b)(3).

II. Double Jeopardy

[39] Marquardt argues that his convictions for child molestation and incest violate double jeopardy. He is raising a type of "substantive double jeopardy" claim, in which a defendant alleges that a single criminal act or transaction has violated

multiple statutes with common elements.[3] *Powell*, 151 N.E.3d at 263 (citing *Wadle v. State*, 151 N.E.3d 227, 247 (Ind. 2020)). A double jeopardy claim presents questions of law, which we review de novo. *A.W. v. State*, 229 N.E.3d 1060, 1064 (Ind. 2024).

[40] We apply a three-step test to resolve Marquardt's double jeopardy claim. First, we examine the statutory language of the offenses because, "if the language of either statute clearly permits multiple punishment, either expressly or by unmistakable implication, the court's inquiry comes to an end and there is no violation of substantive double jeopardy." *Wadle*, 151 N.E.3d at 248 (footnote omitted).

[41] Neither Indiana Code section 35-42-4-3, which governs the offense of child molesting, nor Indiana Code section 35-46-1-3, which governs the offense of incest, clearly permits multiple punishments. Consequently, we move to the next step of the analysis.

[42] "If the statutory language does not clearly permit multiple punishments, 'a court must then apply our included offense statutes to determine statutory intent.'" *A.W.*, 229 N.E.3d at 1066 (quoting *Wadle*, 151 N.E.3d at 248). "If

[3] A second type of substantive double jeopardy claim involves "'a single criminal act or transaction [that] violates a single statute and results in multiple injuries.'" *Moyers v. State*, 277 N.E.3d 33, 38 (Ind. 2026) (quoting *Powell*, 151 N.E.3d at 263).

neither offense is an included offense of the other (either inherently or as charged), there is no violation of double jeopardy." *Wadle*, 151 N.E.3d at 248.

[43] The General Assembly has defined an included offense as follows:

> "Included offense" means an offense that:
>
> (1) is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;
>
> (2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or
>
> (3) differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission.

Ind. Code § 35-31.5-2-168 (2012). An offense is inherently included in another offense if the offense fits "within one of those enumerated subsections." *A.W.*, 229 N.E.3d at 1067.

[44] In the current case, the offenses of Level 4 felony child molesting and Level 4 felony incest are not established by proof of the same material elements. Level 4 felony child molesting requires proof of an intent to arouse or satisfy sexual desires, while Level 4 felony incest requires proof that the victim is biologically related to the defendant. I.C. §§ 35-42-4-3 (child molesting); 35-46-1-3 (incest). They are not inherently included offenses for purposes of Indiana Code section 35-31.5-2-168(1). *See Carranza v. State*, 184 N.E.3d 712, 716 (Ind. Ct. App.

2022) (concluding that two counts of child molesting were not inherently included in one another; the counts arose from different subsections of statute, with different material elements).

[45] In addition, neither of the charges qualifies under Indiana Code section 35-31.5-2-168(2) because neither charge involves an attempt offense. Finally, the statutes governing the offenses differ greatly, involving more than a less serious harm or risk of harm, or lesser culpability and, as such, do not qualify as the same offense under Indiana Code section 35-31.5-2-168(3). As a result, neither of the offenses is inherently included in the other for purposes of Indiana Code section 35-31.5-2-168.

[46] Having determined the charges are not inherently included in one another by statute, we must determine whether they could be included as charged. "[W]hen assessing whether an offense is factually included, a court may examine only the facts as presented on the face of the charging instrument." *A.W.*, 229 N.E.3d at 1067. Where ambiguities exist in a charging instrument about whether one offense is factually included in another, courts must construe those ambiguities in the defendant's favor, and thus find a presumptive double jeopardy violation at step two of the *Wadle* analysis, as modified in *A.W.* *Id.* at 1069.

[47] In Marquardt's case, the State alleged in the charging instrument that he committed Level 4 child molesting by "perform[ing] or submit[ting] to fondling with [Child Victim], a child under the age of fourteen years with the intent to

arouse or satisfy the sexual desires of [Child Victim] or [Marquardt]." Appellant's App. Vol. II, p. 26. And the State alleged that Marquardt committed incest by "engag[ing] in sexual intercourse and/or other sexual conduct with another person knowing that said other person is related to [Marquardt] biologically as a child and the other person was less than 16 years of age." *Id.* at 66.

[48] As we discussed above, "other sexual conduct" is defined as "an act involving . . . a sex organ of one (1) person and the mouth or anus of another person . . . or . . . the penetration of the sex organ or anus of a person by an object." I.C. § 35-31.5-2-221.5 (2014). But the General Assembly has not defined "fondling" for purposes of the offense of child molestation. In the charging information, the State did not describe the alleged conduct that constituted "other sexual conduct" or "fondling." As a result, there is an ambiguity as to whether one of the charges could be factually included in the other, and there is a presumptive double jeopardy violation. *See Rafiq v. State*, 271 N.E.3d 1178, 1183 (Ind. Ct. App. 2025) (determining presumptive double jeopardy violation existed for one count of Level 1 felony child molesting and one count of Level 4 felony child molesting; use of terms "other sexual conduct" and "fondling or touching" gave rise to ambiguity), *trans. denied*.

[49] Having found a presumptive double jeopardy violation, we turn to the third step of the *Wadle* analysis. At this step, a court may consider the underlying facts of the case, "as presented in the charging information and adduced at trial." *Wadle*, 151 N.E.3d at 249. "[I]f the facts show only a single continuous

crime, and one statutory offense is included in the other, then the prosecutor may charge these offenses only as alternative (rather than as cumulative) sanctions." *Id.* However, the State may rebut the presumptive double jeopardy violation. *A.W.*, 229 N.E.3d at 1069.

[50] Marquardt argues that because the jury failed to reach a verdict on the two counts of Level 1 felony child molesting, we must infer that jurors used "the same unit of conduct" to prove both the child molestation and incest Level 4 felony charges. Appellant's Br. p. 20. As noted above, we may not draw factual inferences from a non-verdict. *Yeager*, 557 U.S. at 120-22 (stating that the jury's inability to reach a verdict is a nonevent; a jury speaks only through its verdict, and there is no way to decipher what a hung count represents).

[51] In any event, the evidence introduced at trial demonstrates separate offenses rather than a single continuous crime. Marquardt brushed up against, or fondled, Child Victim's breasts and rear over her clothes on several occasions. And Child Victim disclosed to Boyfriend that Marquardt touched her "[c]rotch, breasts, butt, basically everywhere." Tr. Vol. 4, p. 5. Marquardt also occasionally touched Child Victim's bare breasts before requiring her to submit to vaginal intercourse and, occasionally, oral sex. This is evidence of several separate offenses.

[52] In addition, during the State's closing argument, while discussing the child molestation charge the prosecutor urged the jury to consider the evidence of Marquardt brushing up against Child Victim's breasts and rear, and touching

her breasts during intercourse, as evidence that supported that offense. But during the discussion of the Level 4 felony incest charge, the prosecutor pointed the jury to evidence that Marquardt had vaginal intercourse with Child Victim and performed oral sex on her. Tr. Vol. 3, p. 21. Thus, each charged offense was directed at different misconduct and constituted distinct violations of the governing statutes. The State has rebutted the presumptive double jeopardy violation, and Marquardt cannot prevail on his double jeopardy claim. *See Rafiq*, 271 N.E.3d at 1183-84 (concluding that Rafiq's double jeopardy claim failed at step three of *Wadle* analysis; evidence submitted at trial showed two child molesting charges were supported by independent evidence and were separate acts).

[53] We conclude both that: (1) we may not draw factual inferences from a non-verdict; and (2) Marquardt cannot prevail under the *Wadle* analysis because the State demonstrated that his convictions for child molestation and incest are based on separate facts.

III. Appropriateness of Sentence

[54] Marquardt argues that his twenty-eight-year sentence should be reduced because of his character and because the jury did not return a verdict on the most severe allegations. Article 7, section 6 of the Indiana Constitution authorizes the Court to review and revise sentences. Indiana Appellate Rule 7(B) implements this authority, stating that we may revise a sentence "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."

[55] When a defendant raises a claim under Rule 7(B), "[w]e generally defer to the trial court's decision, and our goal is to determine whether the defendant's sentence is inappropriate, not whether some other sentence would be more appropriate." *Tillett v. State*, 278 N.E.3d 359, 366 (Ind. 2026). We "attempt to leaven the outliers." *Chambers v. State*, 989 N.E.2d 1257, 1259 (Ind. 2013). Further, we exercise our authority to revise sentences only in "exceptional cases." *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020).

[56] The burden is on the defendant to persuade the Court that the sentence is inappropriate. *Jordan v. State*, 244 N.E.3d 445, 462 (Ind. Ct. App. 2024). When determining whether a defendant has met the burden of proof, "we may look to any factors appearing in the record[.]" *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017).

[57] The advisory sentence is the starting point the Legislature selected as appropriate for the crime committed. *Tillett*, 278 N.E.3d at 366. At the time Marquardt committed his offenses, the advisory sentence for a Level 4 felony was six years, with a maximum sentence of twelve years and a minimum sentence of two years. Ind. Code § 35-50-2-5.5 (2014). And the advisory sentence for a Level 5 felony was three years, with a maximum sentence of six years and a minimum sentence of one year. Ind. Code § 35-50-2-6(b) (2014).

[58] The trial court sentenced Marquardt to maximum twelve-year sentences for each Level 4 felony and a slightly enhanced sentence of four years for the Level 5 felony. The court ordered the sentences served consecutively, for a total sentence of twenty-eight years.

[59] "Our analysis of the 'nature of the offense' requires us to look at the nature, extent, heinousness, and brutality of the offense." *Dean v. State*, 222 N.E.3d 976, 990 (Ind. Ct. App. 2023), *trans. denied*. Over a span of several months, Marquardt repeatedly groped Child Victim (child molesting) and repeatedly required her to submit to oral sex and vaginal intercourse (incest). Child Victim explained that she did not feel free to decline because of Marquardt's long history of domestic violence and the likelihood that he would be more violent with her, Adult Witness 1, and Child Witness 1 upon being rejected.

[60] Marquardt had ample opportunity to reconsider and end his abusive conduct, but he chose to continue. He abused his position of trust with respect to Child Victim. In addition, Child Victim was between nine and twelve years old when the abuse started, which is younger than the age limit set by statute, and she had less capacity to defend herself.

[61] The harm to Child Victim was far beyond what is contemplated by the statutes governing child molesting and incest. Marquardt tried to convince Child Victim that his sexual abuse of her was normal, but she knew better and became severely depressed. She made multiple suicide attempts in the years following the molestations, beginning before the age of ten. She kept silent out of fear of

physical violence from Marquardt and the impoverishment of her family. At the time of the sentencing hearing, Child Victim was on antidepressants and experienced night terrors. Adult Witness 1 reported to the court that Child Victim does not trust adults because she tried to seek help before and did not get it, resulting in her being unable to make emotional connections with others. In a victim impact statement, Child Victim reported that Marquardt's abuse has resulted in her having difficulty: (1) being comfortable around men; and (2) expressing her negative emotions to others.

[62] Regarding the obstruction of justice offense, it reflects poorly on Marquardt that he approached and urged Adult Witness 2, with whom Child Victim appears to have had a positive relationship, to use that relationship to induce Child Victim to recant her disclosure of sexual abuse. Also, he committed this offense the same day that he posted bond and was released from jail, demonstrating that criminal charges did not deter him from committing additional misconduct.

[63] Turning to the character of the offender, our analysis "involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse." *Dean*, 222 N.E.3d at 990-91. Marquardt was forty years old at sentencing. He has no prior adult criminal history but was adjudicated a delinquent child in five cases, including for an act of battery (level unspecified). Further, his lack of a formal adult criminal history is undercut by his multiple instances of abusing Child Victim, as well as his physical abuse of Adult Witness 1, Child Victim, and Child Witness 1.

[64] Marquardt has a steady employment history, and during sentencing he offered letters of support from fellow church members. But we cannot conclude that these positive aspects of his character outweigh the terrible nature of his offenses. He has failed to demonstrate that his sentence is an outlier in need of revision.

Conclusion

[65] For the reasons stated above, we affirm the judgment of the trial court.

[66] Affirmed.

May, J., and Scheele, J., concur.

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