MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Hector Joel Rosales Miralda,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

June 4, 2024

Court of Appeals Case No.
23A-CR-1665

Appeal from the Kosciusko Superior Court

The Honorable Karin A. McGrath, Judge

Trial Court Cause No.
43D01-2206-F3-509

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] Following a jury trial, Hector Joel Rosales Miralda ("Miralda") was found guilty of rape[1] as a Level 3 felony and intimidation[2] as a Level 6 felony. The trial court sentenced Miralda to fourteen years for the rape conviction and two years for the intimidation conviction to be served consecutively, resulting in an aggregate sentence of sixteen years fully executed in the Indiana Department of Correction ("the DOC"). Miralda appeals and raises the following restated issues for our review:

I. Whether the trial court abused its discretion when it admitted: (A) certain testimony regarding the victim's demeanor; and (B) DNA evidence;

II. Whether the trial court abused its discretion when it instructed the jury on voluntary intoxication; and

III. Whether Miralda's sentence is inappropriate in light of the nature of his offense and his character.

[2] We affirm.

Facts and Procedural History

[3] In June of 2022, A.A. was residing in Wismon Urbina's ("Urbina") house, a male relative on her mother's side ("the House"). Elizier Natanael Aleman

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[1] Ind. Code § 35-42-4-1(a).

[2] I.C. § 35-45-2-1(a)(4), (b)(1)(A).

Rosales ("Aleman Rosales") and Eduar Javier Almendarez also lived in the House. A.A. occupied the only downstairs bedroom in the House. Miralda was a cousin to Urbina and Aleman Rosales, and a frequent visitor at the House. Miralda sometimes stayed at the House, and when he did so, he slept on either the sofa located in the downstairs living room or the sofa located downstairs under the stairs. Miralda and A.A. were acquaintances, and at that time, A.A. had a boyfriend.

[4] On June 25, 2022, around 5:00 p.m., Miralda began drinking beer and tequila. By 12:00 a.m. or 1:00 a.m., Miralda was drunk when he arrived at the House. A.A. was asleep in her bedroom but woke up to use the restroom located outside of her bedroom. When A.A. returned to her bedroom, she found Miralda inside the bedroom. A.A. asked what Miralda was doing in her bedroom, and he told her that he "had a lot of problems and he needed to talk to somebody[,] and he didn't have anybody to talk to." Tr. Vol. 2 p. 136. A.A. told Miralda that it was "late already" and suggested they "talk tomorrow." *Id.* Miralda told A.A., "[J]ust give me a hug and I will go." *Id.* When A.A. hugged Miralda, she noticed that "he smelled like alcohol and pot." *Id.* After the hug, A.A. sat on the edge of her bed and told Miralda to leave. Miralda refused and insisted that he wanted to talk to somebody. A.A. again told Miralda to leave and that they would talk again tomorrow. A.A. then got up from her bed, and Miralda grabbed her, threw her on the bed, and got on top of her. A.A. yelled, and Miralda grabbed her neck, causing A.A. to have trouble breathing. Miralda then told A.A. that he was going to "asphyxiate" her if she

screamed and that "nobody is going to know about it." *Id.* at 137. Miralda then removed A.A.'s pants and began subjecting A.A. to sexual intercourse. After Miralda finished, he told A.A. that they were going to have oral sex. A.A. complied and performed fellatio on Miralda. At some point, Miralda began coughing and let go of A.A. Subsequently, Miralda threw up on the floor at the edge of the bed. A.A. then grabbed her phone and told Miralda to leave or else she would call the police. Shortly thereafter, Miralda left A.A.'s bedroom.

[5] A.A. then called her boyfriend and told him that Miralda raped her. A.A.'s boyfriend called the police. When the police arrived, they found vomit on the floor in A.A.'s bedroom. A.A. agreed to undergo a sexual assault examination at the Fort Wayne Sexual Assault Center ("the SA Center"). A DNA sample was collected during the examination and later transported to the Indiana State Police Lab ("ISP Lab") for testing. While driving down Winona Avenue near South Wood street in Warsaw, Indiana, the police located Miralda walking and asked Miralda if he was willing to come to the Warsaw Police Department to answer some questions. Miralda agreed, and subsequently, the police took him into custody and interviewed him. Miralda told the police that he "was very drunk and had [consumed] a lot of beer and also [took] shots of tequila." Ex. Vol. 4 p. 56. Miralda later told the police that he "drank about 10 Coronas[,]" Hennesy, and tequila. *Id.* at 47, 93–94. When asked if that was a lot of alcohol for him, Miralda replied, "Yes." *Id.* at 93. Miralda initially denied having any memory of a sexual encounter with A.A. but later admitted that the two of

them had sexual intercourse "but only for a little bit because [he] was very drunk." *Id.* at 46, 65.

[6] Detective Ryan Coble ("Detective Coble") applied for a search warrant for Miralda's DNA which was later granted. Miralda's DNA was obtained via two sterile swabs that were used to rub the inside of Miralda's cheeks—one swab for each cheek. The swabs were packaged and subsequently sent to the ISP Lab for testing.

[7] The State charged Miralda with: Count I, rape as a Level 3 felony; Count II, rape as a Level 3 felony; Count III, strangulation as a Level 6 felony; Count IV, intimidation as a Level 6 felony; and Count V, battery as a Level 6 felony. On May 16, 2023, a jury trial was held.

[8] One of the witnesses was Christian Serrano Perez, who was A.A.'s boyfriend at the time of the crime, but was no longer in a romantic relationship with A.A. ("Perez"). He testified that the two of them broke up because A.A. "no longer want[ed] to be with anyone anymore" after she was raped. Tr. Vol. 2 p. 161. When asked if he noticed a difference in A.A. from before the crime occurred to after the crime occurred, Perez answered in the affirmative. Miralda objected to Perez's testimony on relevancy grounds. The State countered, stating that:

> . . . [T]he temperament of a person involved in this type of an offense I think is relevan[t]. The test for relevance is any tendency to make a fact more or less likely. How someone's acting before the incident again versus after has relevance to answer that question.

Id. at 162. The trial court overruled Miralda's objection and allowed the testimony. Perez testified that before A.A. was raped, "she was very trusting, very open." *Id.* However, after she was raped, Perez testified that he "saw her with fear, not very trusting anymore." *Id.*

[9] A.A.'s mother also testified and answered in the affirmative when asked if she observed a change in A.A. from before the crime occurred to after the crime occurred. Miralda again objected on relevancy grounds. The trial court overruled the objection and allowed the testimony. A.A.'s mother testified that before the rape, A.A.

> . . . was a young woman who was always happy, very kind, talkative. Would spend a lot of time talking to [her mother]. And so, after the incident, she had a very different behavior. She would spend a lot of time locked in her room, crying a lot, she would not want to come out.

Id. at 168.

[10] Detective Coble testified regarding the steps he took after he received the 911 call at 3:00 a.m. on June 26, 2022. Detective Coble testified that once he got confirmation that A.A. was "willing to go to the [the SA Center]" for the sexual assault examination, he transported A.A. there, and the trained staff conducted a sexual assault examination, involving a sexual assault kit that "was collected during that time." *Id.* at 180–81. Detective Coble further testified that his department had to wait until the SA Center called to let them know that the process was complete. Once completed, Detective Coble testified that Sergent

Jeffrey Ticknor ("Sergent Ticknor") went to the clinic to retrieve the sexual assault kit and subsequently brought it into the ISP Lab for testing. Because the ISP Lab prefers to have samples collected if there is a known offender listed on the police report, Detective Coble testified that he applied for a search warrant for Miralda's DNA which was subsequently granted. Pursuant to the search warrant, Detective Coble testified that he obtained Miralda's DNA via buccal swabs which were then packaged and later taken to the ISP Lab for testing by Sergent Ticknor.

[11] Christopher Thatch ("Thatch"), a forensic scientist for the ISP Lab, testified regarding the process for handling DNA samples once an item arrives at the ISP Lab. When the State asked if Thatch completed the certificate of analysis regarding the DNA results in this case, Miralda objected, claiming that the State had not "established a chain of custody for any of these items to go from where they [were] collected . . . to [Thatch]." *Id.* at 211. The trial court allowed the State to lay a foundation for the evidence, and when the State moved to admit the chain of custody report identified as Exhibit 22, Miralda again objected and asked to voir dire Thatch. Thatch testified that a chain of custody report is generated by the ISP Lab's information management system so that "as an item is passed from one individual to another[,] the bar code on the item is scanned and the date and time is registered in the system[,] and it keeps track of it[.]" *Id.* at 214. For chain of custody purposes, Thatch testified that he determined where each item was based upon the specific time the item's bar code was scanned. Thatch further testified that he did not personally know

the individuals named in the chain of custody report. Miralda maintained his objection that the State failed to establish a sufficient chain of custody for the DNA samples of both A.A. and Miralda from the time they were collected to the time they were delivered to the ISP Lab and that the chain of custody report was insufficient to supply the chain of custody within the ISP Lab. The trial court overruled the objection and admitted the chain of custody report into evidence.

[12] A.A. also testified at trial, and she stated that Miralda "appear[ed] the same way" on the night that he raped her as he did when she observed him "drinking and using drugs" about a week prior. *Id.* at 140. A.A. further testified that she noticed that Miralda "smelled like alcohol and pot" when she hugged him. *Id.* at 136. A.A. testified that she did everything that Miralda forced her to do because she feared that Miralda "would kill [her.]" *Id.* at 139. Since Miralda raped her, A.A. testified that she no longer wanted to be in a relationship with anyone, nor be hugged or kissed, because those forms of intimacy were all "gross" to her. *Id.* at 143.

[13] Miralda testified that he consumed "beer and also tequila" and was "too drunk" by the time he got into the House. Tr. Vol. 3 pp. 25, 27. Miralda further testified that he "tried to have sex with [A.A.,] but [he] was drunk and [he] couldn't." *Id.* at 27. Miralda also testified that when A.A. told him "no[,]" he told A.A. to let him finish. *Id.*

[14] At the close of trial, the State tendered a voluntary intoxication jury instruction, and Miralda objected to the instruction, asserting that the instruction was "superfluous" and had the "possibility of distracting [the jury] from the defenses that are actually being raised[.]" Tr. Vol. 3 p. 53. The trial court gave the instruction over Miralda's objection, instructing the jury as follows:

> It is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the intoxication resulted from the introduction of a substance into his body:
>
> (1) without his consent; or
>
> (2) when he did not know that the substance might cause intoxication.

Appellant's App. Vol. II p. 92.

[15] The jury found Miralda guilty of Count I, rape as a Level 3 felony, and Count IV, intimidation as a Level 6 felony. Miralda was acquitted on the remaining counts. The presentence investigation report revealed that, shortly after Miralda turned eighteen, he pleaded guilty to Class C misdemeanor operating a vehicle without a license. About five months later, Miralda was charged with Class C misdemeanor minor in possession of alcohol. While that case was pending, Miralda committed the instant offenses. The trial court sentenced Miralda to fourteen years for the rape conviction and two years for the intimidation conviction to be served consecutively, resulting in an aggregate sentence of sixteen years fully executed in the DOC. Miralda now appeals.

Discussion and Decision

I. Admission of Evidence

[16] We review challenges to the admission of evidence for an abuse of the trial court's discretion. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018). We will reverse only where the trial court's evidentiary decision is clearly against the logic and effect of the facts and circumstances. *Id.*

A. Testimony about A.A.'s Demeanor

[17] Miralda claims that the trial court abused its discretion when it admitted testimony about changes in A.A.'s demeanor and behavior after Miralda raped her. During the jury trial, Miralda objected to this testimony on relevancy grounds under Indiana Evidence Rule 401. However, on appeal, Miralda does not present any argument regarding the relevancy of the evidence. Rather, Miralda argues that "the testimony should not have been allowed" pursuant to Indiana Rules of Evidence 403, 701, and 704, and that the testimony elicited from Perez and A.A.'s mother amounted to inadmissible vouching testimony. Appellant's Br. p. 11.

[18] "It is well settled that Indiana's appellate courts look with disfavor upon issues that are raised by a party for the first time on appeal . . . without first raising the issue at the first opportunity in the trial court." *Byrd v. State*, 592 N.E.2d 690, 691 (Ind. 1992). To preserve error for appellate review, a party generally must timely object. *Stephenson v. State*, 29 N.E.3d 111, 118 (Ind. 2015). The specific objection relied upon on appeal must have been stated in the trial court as a

basis for the objection. *McBride v. State*, 992 N.E.2d 912, 918 (Ind. Ct. App. 2013). Because Miralda advances his Indiana Rules of Evidence 403, 701, and 704 arguments for the first time on appeal, his arguments are waived. *See Shorter v. State*, 144 N.E.3d 829, 841 (Ind. Ct. App. 2020) (holding that arguments defendant did not raise before the trial court were waived on appeal), *trans. denied*. There is a limited exception to waiver where the alleged error is fundamental. *A.V. v. State*, 228 N.E.3d 504, 508–09 (Ind. Ct. App. 2024). However, this exception is unavailable to Miralda, who declined to assert fundamental error on appeal. *See id.* (finding no fundamental error where the defendant did "not argue that the trial was biased or that he was otherwise denied a fair trial").

B. Chain of Custody

[19] Miralda next contends that the trial court abused its discretion when it admitted the DNA evidence over his objection. Specifically, Miralda asserts that the DNA evidence should have been excluded because the State failed to establish a proper chain of custody of the DNA samples from both A.A. and Miralda.

[20] In general, an exhibit is admissible "if the evidence regarding its chain of custody strongly suggests the exact whereabouts of the evidence at all times." *Culver v. State*, 727 N.E.2d 1062, 1067 (Ind. 2000). For fungible evidence—evidence indistinguishable to the naked eye, such as blood, hair, or drugs,—the State bears a higher burden in establishing the chain of custody. *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002). The State must give "reasonable assurances that the property passed through various hands in an undisturbed condition."

Culver, 727 N.E.2d at 1067. The State need not establish a perfect chain of custody, and any gaps in the chain impact the weight, rather than the admissibility, of the evidence. *Id.* Moreover, there is a presumption of regularity in the handling of exhibits by public officers. *Id.* Thus, merely raising the possibility of tampering is insufficient to make a successful challenge to the chain of custody. *Troxell*, 778 N.E.2d at 814.

[21] Miralda argues that the trial court abused its discretion in admitting the results of Thatch's DNA analysis because the State did not provide a sufficient chain of custody for the DNA evidence. Miralda argues that there was no evidence "either via affidavit or in person testimony, as to the chain of custody from the moment the samples were allegedly taken from A.A. or [Miralda] up until the time that Thatch analyzed them." Appellant's Br. p. 16. Miralda further asserts that Thatch "did not even testify that the evidence was in the possession of those persons named in the chain of custody report, or exclusively in their possession[,]" but instead "could only testify that this was the chain of custody report that he presumed was accurate with no firsthand knowledge." *Id.* at 16–17. Therefore, Miralda contends that the "chain of custody was insufficient to the point of nonexistence." *Id.* at 17. We disagree.

[22] First, we note that the State was not compelled to call everyone named in the chain of custody report. *See Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 311 (2009) (noting that the State's obligation to establish the chain of custody "does not mean that everyone who laid hands on the evidence must be called."). Next, the record discloses ample evidence regarding the chain of custody. That

is, Detective Coble and Thatch testified regarding the protocols for handling evidence resulting from sexual assault which was followed once A.A. consented to the sexual assault examination. Detective Coble testified that he transported A.A. to the SA Center so that the trained staff could conduct the sexual assault examination and collect DNA samples from A.A. After the SA Center completed the process, Detective Coble testified that the department received a phone call, and Sergent Ticknor went to the SA Center to retrieve the sexual assault kit and subsequently brought it into the ISP Lab for testing. Because the ISP Lab prefers to have samples collected if there is a known offender listed on the police report, Detective Coble testified that he applied for a search warrant for Miralda's DNA, which was subsequently granted. Detective Coble then collected buccal swabs from Miralda, which were packaged and subsequently taken to the ISP Lab for testing by Sergent Ticknor.

[23] Once an item is sent to the ISP Lab for testing, Thatch testified that a bar code—unique to each item—is generated. Thatch further testified that a chain of custody report is then generated by the ISP Lab's information management system which keeps track of each item as it is passed from one individual to the next every time that the bar code is scanned. Each time the bar code is scanned, Thatch testified that the date and the time of the scan is registered in the system and shows on the chain of custody report. Therefore, although Thatch does not personally know the individuals named in the chain of custody report, Thatch testified that—for chain of custody purposes—he determined

where each item was based upon the specific date and time the item's bar code was scanned.

[24] All in all, due to the presumption of regularity in the handling of exhibits by public officers and the detailed testimony regarding the protocol both the police and Thatch followed in this case, we conclude that the State established an adequate chain of custody for the DNA evidence. *See Vaughn v. State*, 13 N.E.3d 873, 883 (Ind. Ct. App. 2014) (concluding that the State established a sufficient chain of custody when it presented testimony describing how the public officers handled the evidence and offered an exhibit that contained information regarding when the evidence was moved one place to the next). Therefore, the DNA evidence was properly admitted.

II. Voluntary Intoxication Instruction

[25] Miralda claims that the trial court improperly instructed the jury on voluntary intoxication. The purpose of a jury instruction is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict. *Dill v. State*, 741 N.E.2d 1230, 1232 (Ind. 2001). "The manner of instructing a jury lies largely within the discretion of the trial court." *Henson v. State*, 786 N.E.2d 274, 277 (Ind. 2003). We will not reverse a trial court's ruling on a tendered instruction unless the instruction misstates the law or otherwise misleads the jury. *Yates v. Hites*, 102 N.E.3d 901, 906 (Ind. Ct. App. 2018).

> In reviewing a trial court's decision to give or refuse a tendered instruction, we consider: (1) whether the instruction correctly states the law; (2) whether there is evidence in the record to support giving the instruction; and (3) whether the substance of the tendered instruction is covered by the other instructions that are given. To determine whether sufficient evidence exists to support an instruction, we will only look to that evidence most favorable to the appellee and any reasonable inferences to be drawn therefrom.

Id. (internal citation omitted). It is proper for the trial court to instruct the jury on voluntary intoxication instruction "where the evidence of intoxication, if believed, is such that it could create a reasonable doubt in the mind of a rational trier of fact that the accused entertained the requisite specific intent." *Phillips v. State*, 22 N.E.3d 749, 762 (Ind. Ct. App. 2014).

[26] In challenging the voluntary intoxication instruction, Miralda only claims that the tendered instruction was not supported by any evidence in the record. Specifically, Miralda asserts that the tendered instruction was not relevant to any of the issues that the jury needed to decide. We disagree.

[27] There was extensive evidence presented regarding Miralda's voluntary consumption of alcohol, which resulted in his intoxication, the night that he raped A.A. Furthermore, some of the evidence, if believed, "could create a reasonable doubt in the minds of the jury about the requisite specific intent." *Id*. The evidence revealed that Miralda was extremely intoxicated the night that he raped A.A., and the only reason he stopped his sexual assault of A.A. was because he vomited on the floor. During his interview with the police,

Miralda admitted that he was very drunk because he drank a lot of beer—"about 10 Coronas"—, drank some Hennesy, and took shots of tequila the night he raped A.A. Ex. Vol. 4 p. 93. Miralda answered in the affirmative when asked if that was a lot of alcohol for him. During her direct examination, A.A. testified that Miralda "smelled like alcohol and pot" when she hugged him. Tr. Vol. 2 p. 136. About a week before Miralda raped A.A., A.A. observed Miralda's appearance when he "had been drinking and using drugs." *Id.* at 140. A.A. testified that Miralda "appear[ed] the same way" on the night he raped her as he had the week before. *Id.* Miralda testified that he consumed "beer and also tequila" and was drunk by the time he got to the House. Tr. Vol. 3 p. 25. Miralda further testified that he "tried to have sex with [A.A.,] but [he]was drunk and [he] couldn't." *Id.* at 27. Miralda also testified that when A.A. told him "no[,]" he told A.A. to let him finish. *Id.* Miralda's direct examination referred to him being drunk several times.

[28] Based on the evidence presented at trial—some of which suggested that Miralda's actions and inactions were the result of his intoxication—there was sufficient evidence for the trial court to give the voluntary intoxication instruction. *See Phillips*, 22 N.E.3d at 762 (concluding that the voluntary intoxication instruction was not improper where there was evidence presented indicating that the defendant admitted that he passed out after ingesting two illegal substances which could have "create[d] a reasonable doubt in the minds of the jury about the requisite specific intent" if believed). The trial court did not abuse its discretion.

III. Inappropriate Sentence

[29] Miralda alleges his sentence is inappropriate. The Indiana Constitution authorizes appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). "That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court's decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender." *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[30] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[31] When considering the nature of the offense under Appellate Rule 7(B), we remain mindful that the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Indiana Code section 35-50-2-5(b) provides:

"[A] person who commits a Level 3 felony . . . shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being nine (9) years." Indiana Code section 35-50-2-7(b) provides: "[A] person who commits a Level 6 felony . . . shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year." Here, the trial court imposed an aggregate term of sixteen years, consisting of fourteen years for the Level 3 felony rape and a consecutive sentence of two years for the Level 6 felony intimidation.

[32] "The nature of the offense is found in the details and circumstances of the offenses and the defendant's participation therein." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Here, the nature of the offense is that Miralda asked A.A. for emotional support in the middle of the night while he was intoxicated. He then threatened and choked A.A., subjecting her to sexual intercourse and ordering her to perform fellatio. Fearing that Miralda would kill her, A.A. did everything that he forced her to do. Miralda did not stop sexually assaulting A.A. until he began coughing out of nowhere and vomited. A.A. found her phone and told Miralda that she was going to call the police if he did not leave her bedroom. It was only then that Miralda left A.A.'s bedroom.

[33] Regarding his criminal conduct, Miralda directs us to evidence that he was younger than A.A. and not in a position of authority. Yet, this evidence is far from the sort of compelling evidence that warrants disturbing the sentence imposed by the trial court. Miralda's criminal conduct had a tremendous effect

on A.A. so much that the people closest to A.A. noticed a change in her behavior after Miralda raped her. Perez testified that A.A. was very trusting and very open before she was raped. A.A.'s mother also testified that A.A. was always happy, kind, talkative, and would spend a lot of time talking to her before Miralda raped her. After Miralda raped her, A.A. was not very trusting anymore, and she spent a lot of time locked in her room, crying, and not wanting to come out. A.A. testified that she broke up with Perez because she no longer wanted to be in a relationship with anybody and that she did not want anybody to hug her nor kiss her because it was all gross to her. Miralda has failed to portray the nature of his offense in a positive light, "such as accompanied by restraint, regard, and lack of brutality" and we discern nothing about the nature of his offense that warrants revising his sentence. *Stephenson*, 29 N.E.3d at 122.

[34] "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The significance of the criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Even a minor criminal record reflects poorly on a defendant's character. *Reis v. State*, 88 N.E.3d 1099, 1105 (Ind. Ct. App. 2017).

[35] Miralda claims that based upon the imposition of aggravated sentences "one might assume that [Miralda] has a lengthy criminal history" when his only prior conviction was for a Class A misdemeanor operating without a license. Appellant Br. p. 21. However, we note that Miralda committed the Class A

misdemeanor offense six days after he became a legal adult. Six months later, Miralda was on pre-trial release for a Class C misdemeanor possession of alcohol charge. While on pre-trial release for that offense, Miralda committed the instant offenses. Moreover, throughout the proceedings, Miralda admitted to consuming alcohol as a minor which is a violation of the law. Although Miralda's criminal history is not extensive, Miralda nevertheless was convicted of two offenses, which reflects poorly on his character. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (concluding that the defendant's criminal history—although not extensive—was still a poor reflection on his character). Consequently, Miralda has not met his burden of identifying "substantial virtuous traits or persistent examples of good character" supporting his assertion that his sentence is inappropriate based on his character. *Stephenson*, 29 N.E.3d at 122.

Conclusion

[36] Based on the foregoing, Miralda waived his Indiana Rules of Evidence 403, 701, and 704 arguments on appeal. Furthermore, the trial court did not abuse its discretion when it admitted the DNA evidence and when it instructed the jury on voluntary intoxication. Miralda's sentence is not inappropriate in light of the nature of his offenses and his character.

[37] Affirmed.

Pyle, J., Tavitas, J., concur.

ATTORNEY FOR APPELLANT

Jay A. Rigdon
Rockhill Pinnick LLP
Warsaw, Indiana

ATTORNEYS FOR APPELLEE

Theodore A. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Deputy Attorney General
Indianapolis, Indiana