## MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

Bradley Woods,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff*

November 15, 2023

Court of Appeals Case No. 22A-CR-2980

Appeal from the Pike Circuit Court

The Honorable Jeffrey L. Biesterveld, Judge

Trial Court Cause No. 63C01-2111-F2-280

**Memorandum Decision by Judge May**
Chief Judge Altice and Judge Foley concur.

**May, Judge.**

[1] Bradley Woods appeals following his convictions of Level 2 felony burglary[1] and Level 5 felony battery.[2] Woods raises three issues for our review, which we reorder, revise, and restate as:

> 1. Whether the trial court abused its discretion when it allowed a paramedic to testify that the victim's injuries were consistent with being hit with a baseball bat;
>
> 2. Whether the State presented sufficient evidence to sustain Woods's convictions; and
>
> 3. Whether the trial court abused its discretion at sentencing when it did not find any mitigating factors.

We affirm.

# Facts and Procedural History

[2] In 2021, Dennis Clark lived in Winslow, Indiana, and he was friends with D.P. ("Husband") and K.P. ("Wife"). Husband and Clark worked on cars together, and Husband, Wife, and Clark occasionally smoked methamphetamine together. Husband and Wife lived near Clark's house, and Husband introduced Clark to Woods, who is Husband's second cousin. Husband and Wife fought

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[1] Ind. Code § 35-43-2-1(3).

[2] Ind. Code § 35-42-2-1(g).

frequently, and during their fights, Wife routinely went to Clark's house "to keep [Husband] from beating on her." (Tr. Vol. II at 89.)

[3] During the early morning hours of November 2, 2021, Clark agreed to let Wife stay at his house while she and Husband were fighting. That evening Clark left his house to purchase cigarettes, and he ran into Husband. Clark told Husband: "I'm done dealing with you and [Wife's] drama. I'm washing my hands of you. I hate to say it but I've got to turn my back on you. . . . I don't want to see you anymore." (*Id*. at 109.)

[4] Around 3:00 a.m. on November 3, 2021, Husband and Woods went to Clark's house. As soon as Clark opened the door, Husband stuck his foot inside the doorway and demanded to see Wife. Clark told Husband that Wife was no longer at his house, and he directed Husband to leave. Husband then "kept inching his way inside the house as [Clark] kept trying to close the door." (*Id*. at 111.) Husband grabbed Clark's jacket, and the two began pushing and shoving each other. During the scuffle, Clark grabbed a rifle he kept in his hallway and tried to chamber a round. After Husband saw the gun, he started to try to wrestle it away from Clark.

[5] At some point, Clark heard Husband yell: "Bradley, he's got a gun." (*Id*. at 117.) Husband yelled that three or four times "as loud as he could." (*Id*.) Woods then entered Clark's house carrying an aluminum baseball bat. Woods

accused Clark of calling him a derogatory term,[3] and Clark explained: "I called you that because that's what you are." (*Id*. at 120.) Woods then swung the baseball bat at Clark's head in "a chopping motion . . . like you'd play the game whack a mole." (*Id*. at 122.)

[6] Clark fell to the floor and temporarily lost consciousness. When Clark regained consciousness, Woods was no longer inside the house, but Husband remained. Clark and Husband continued to fight. During the altercation, Husband threw a potted plant at Clark and the clay pot hit Clark on the left side of his forehead. Husband also kicked Clark in the head below Clark's right eye. Husband temporarily left Clark's house, and Clark crawled to his bathroom and called 911. While Clark was on the phone with 911, Husband kicked down Clark's front door, but Husband fled from Clark's house when he realized Clark was on the phone with a 911 dispatcher.

[7] Deputy Bryce Manning of the Pike County Sheriff's Department responded to the 911 dispatch and spoke with Clark. Deputy Manning also examined the scene and took photographs of the house and Clark's injuries. Amy Kaho, a Pike County EMS paramedic, arrived on the scene and treated Clark for his injuries. Clark's injuries included a two-and-a-half-inch laceration on the top, right side of his head. After examining the scene, Deputy Manning went to the

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[3] The derogatory term was a reference to one of Woods's prior convictions, and no witness recited the term in front of the jury. *See* Ind. Evid. R. 404(b) (generally prohibiting evidence of crimes, wrongs, or other acts).

residences of both Husband and Woods to interview them. However, neither individual was home.

[8] The State charged Woods with Level 2 felony burglary, Level 3 felony burglary,[4] and Level 5 felony battery. The trial court held a jury trial beginning on August 30, 2022. Paramedic Kaho testified she had been a paramedic since 2008 and she was called to Clark's residence to treat a reported victim of blunt force trauma. The State asked Paramedic Kaho: "The wound to the top, to the right of [Clark's] head, was it consistent with being hit in the head with a ball bat?" (*Id*. at 81.) Woods objected on the basis that the question called for speculation, and the following exchange occurred:

> [State:] Not from this witness, Your Honor. When she's seen this hundreds of times.
>
> [Woods:] Judge, there's been no preliminary . . . basis to establish that she's examined ball bat injuries. . . . just that she's examined people in accidents and so forth. But there's no specificity. I think that's more of a forensic issue.
>
> [State:] I didn't ask if she was a hundred percent sure. I asked if it was consistent with blunt force trauma from being struck with a ball bat.
>
> [Court:] I'll overrule the objection. I believe that she'd at least be a skilled witness.

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[4] Ind. Code § 35-43-2-1(2).

(*Id*. at 81-82.) Paramedic Kaho then answered: "Yeah, It's – yes." (*Id*. at 82.) On cross-examination Woods asked:

> [Woods:] So you have no way of telling the jury what happened to cause the injury on the top of his head?
>
> [Paramedic Kaho:] No.
>
> [Woods:] You were just there to respond to an emergency and to treat the patient?
>
> [Paramedic Kaho:] Yes.

(*Id*. at 83.) Husband testified that he fought Clark in self-defense, and he denied that Woods participated in the fight at all. The jury returned guilty verdicts on all three counts. To avoid any double jeopardy concerns, the trial court entered judgments of conviction on only the Level 2 felony burglary and the Level 5 felony battery.

[9] The trial court held Woods's sentencing hearing on September 27, 2022. During the sentencing hearing, Woods noted he graduated high school in 1998 and attended special education classes throughout his schooling. Woods also argued he was polite throughout the proceedings and during his presentence investigation interview with the probation department. Woods asked the trial court to sentence him to the minimum term of ten years with five years of his sentence to be served on community corrections. The State argued Woods should receive a twenty-year sentence. The State pointed to Woods's lengthy

criminal history and described the injuries Clark suffered during the burglary. In pronouncing sentence, the trial court stated:

> In sentencing the defendant, the Court has considered aggravating and mitigating factors. The Court finds that the harm, injury or damage suffered by the victim of the offense was significant and greater than the necessary elements to prove the commission of the offense. The Court also finds that the defendant has a significant prior criminal history, both uh, felony and juvenile record. And that the imposition of a reduced sentence or a sentence uh, suspension would depreciate the seriousness of the offense. The Court by way of mitigating factors finds that uh, finds no mitigating factors. The Court finds that the aggravating factors in this case substantially outweigh the mitigating factors.

(Tr. Vol. III at 23.) The trial court then sentenced Woods to a term of twenty years for Level 2 felony burglary and a term of four years for Level 5 felony battery by means of a deadly weapon. The trial court ordered Woods to serve the two sentences concurrently, for an aggregate term of twenty years.

# Discussion and Decision

## 1. Admission of Evidence

[10] Woods asserts the trial court erred in overruling his objection to the State's question posed to Paramedic Kaho: "The wound to the top, to the right of [Clark's] head, was it consistent with being hit in the head with a ball bat?" (Tr. Vol. II at 81.) We generally leave the admission of evidence at trial to the discretion of the trial court, and we review such decisions for an abuse of

discretion. *Higgason v. State*, 210 N.E.3d 868, 880 (Ind. Ct. App. 2023), *trans. denied*. An abuse of discretion occurs "when admission is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights." *Id.* An error that does not affect the substantial rights of a party is harmless, and we will disregard it. *Id.* "In determining whether an evidentiary ruling has affected an appellant's substantial rights, we assess the probable impact of the evidence on the jury." *Id.*

[11] Woods contends Paramedic Kaho was not qualified under Indiana Evidence Rule 702 to offer an expert opinion. However, Woods's objection before the trial court was that the State's question called for speculation. "A party may not add to or change his grounds for objections in the reviewing court. Any ground not raised at trial is not available on appeal." *Treadway v. State*, 924 N.E.2d 621, 631 (Ind. 2010) (internal citation and quotation marks omitted). Thus, Woods's argument that Paramedic Kaho was not qualified to give an expert opinion is waived because he failed to raise it before the trial court. *See, e.g.*, *Boatner v. State*, 934 N.E.2d 184, 187-88 (Ind. Ct. App. 2010) (holding defendant's Sixth Amendment confrontation clause claim was waived when the defendant solely objected on hearsay grounds at trial).

[12] Waiver notwithstanding, Evidence Rule 701 allows a lay witness to offer opinion testimony if that testimony is: "(a) rationally based on the witness's perception; and (b) helpful to a clear understanding of the witness's testimony or to a determination of a fact in issue." Even if a witness does not qualify as an expert, the witness may still be considered a skilled witness if the person

possesses "knowledge beyond that of the average juror" and is able "to perceive more information from the same set of facts and circumstances than an unskilled witness would." *Satterfield v. State*, 33 N.E.3d 344, 353 (Ind. 2015).

[13] Here, Paramedic Kaho trained at Vincennes University to become a paramedic. She had been a paramedic since 2008 and observed many blunt force trauma injuries during her career. She treated Clark, and she was qualified to testify regarding the injuries she observed in treating him. Both Deputy Manning and Paramedic Kaho testified that when they examined Clark, they noticed a blunt force trauma injury on the top of his head. The pictures of Clark taken at the scene also demonstrate he was bleeding heavily from a laceration on the top of his head. Regarding the cause of the injury, it is common sense that being hit on the top of the head with a baseball bat will result in a blunt force trauma injury, and on cross-examination, Paramedic Kaho acknowledged she did not know what exactly caused the injury. Therefore, Paramedic Kaho was qualified to answer the State's question, and her answer did not affect Clark's substantial rights because Woods' cross-examination of Paramedic Kaho clarified any possible confusion that could have resulted from her answer. *See, e.g.*, *Alvarez-Madrigal v. State*, 71 N.E.3d 887, 893 (Ind. Ct. App. 2017) (holding trial court did not abuse its discretion when it admitted pediatrician's testimony, and even if admission of the testimony was error, it did not affect the defendant's substantial rights), *trans. denied*.

## 2. Sufficiency of the Evidence

[14] Woods also argues the State failed to present sufficient evidence to support his convictions of Level 2 felony burglary and Level 5 felony battery. We apply a well-settled standard of review when evaluating challenges to the sufficiency of the evidence to support a conviction:

> When reviewing sufficiency of the evidence, we neither reweigh evidence nor assess the credibility of the witnesses. Rather, we look to the evidence most favorable to the judgment, and the reasonable inferences therefrom, and determine whether substantial evidence of probative value supports each element of the crime. If a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt, then we must affirm.

*Vasquez v. State*, 174 N.E.3d 623, 628 (Ind. Ct. App. 2021) (internal citations omitted), *trans. denied*.

[15] "In general, the uncorroborated testimony of the victim is sufficient to sustain a conviction." *Smith v. State*, 163 N.E.3d 925, 929 (Ind. Ct. App. 2021). Here, Clark testified Husband pushed his way into Clark's house, and then Husband and Clark began wrestling with each other. When Husband called for Woods's assistance, Woods entered the house armed with a baseball bat and hit Clark over the head with the bat. Woods notes that Clark's testimony conflicted with Husband's testimony, but it was the jury's duty to assess the credibility of both Clark and Husband and resolve any discrepancies. We will not reweigh the

evidence on appeal.[5] *Lott v. State*, 690 N.E.2d 204, 208 (Ind. 1997) ("This Court, however, does not resolve conflicts in the evidence or reweigh the evidence. It is the jury's responsibility to resolve such conflicts.") (internal citation omitted).

[16] A person commits burglary if the person "breaks and enters the building or structure of another person, with intent to commit a felony or theft in it," and the offense is a Level 2 felony if it is "committed while armed[.]" Ind. Code § 35-43-2-1(3). "Using even the slightest force to gain unauthorized entry satisfies the breaking element of the crime." *Davis v. State*, 770 N.E.2d 319, 322 (Ind. 2002), *reh'g denied*. Moreover, "an accomplice is criminally responsible for all acts committed by a confederate which are a probable and natural consequence of the common plan[.]" *Vance v. State*, 620 N.E.2d 687, 690 (Ind. 1993). Thus, Clark's testimony provided sufficient evidence for the jury to conclude Woods committed burglary when he followed Husband into the house while wielding a baseball bat with the intent to batter Clark. *See*, *e.g.*, *Burns v. State*, 91 N.E.3d

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[5] Woods also states that "[t]he facts of this case may conform to the difficult standard of an 'incredible dubiosity' analysis." (Appellee's Br. at 24.) "Under the incredible dubiosity rule, a reviewing court will impinge on the jury's responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Denning v. State*, 991 N.E.2d 160, 163 (Ind. Ct. App. 2013). We apply the rule in "cases where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant's guilt." *Id.* at 163-64. Here, Clark's testimony was not inherently contradictory nor was it equivocal or the result of coercion. Moreover, Clark identified Woods as one of his attackers to Deputy Manning, and the photographs of Clark's wounds and the damaged property within his house supported Clark's account that he was injured during a fight in his house. Therefore, the incredible dubiosity rule is not applicable. *See*, *e.g.*, *Baxter v. State*, 132 N.E.3d 1, 5 (Ind. Ct. App. 2019) (holding the incredible dubiosity rule did not invalidate the victim's testimony because it was not inherently contradictory and it was corroborated by other witness testimony).

635, 641 (Ind. Ct. App. 2018) (holding sufficient evidence supported defendant's burglary while armed with a deadly weapon conviction when the victims testified that the defendant broke into their house while armed with a firearm and demanded money).

[17] Likewise, a person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, and the offense is a Level 5 felony if it is committed with a deadly weapon. Ind. Code § 35-42-2-1(g). Clark testified he was "absolutely positive" Woods was the one who hit him over the head with the baseball bat. (Tr. Vol. II at 118-19.) In addition, the assailant's reference to a derogatory term associated with Woods is further evidence that Woods was the one who committed the battery. Therefore, the State presented sufficient evidence Woods committed battery with a deadly weapon. *See*, *e.g.*, *Phelps v. State*, 669 N.E.2d 1062, 1064 (Ind. Ct. App. 1996) (holding sufficient evidence supported the defendant's battery with a deadly weapon conviction when the victim's friend testified the defendant hit the victim with brass knuckles).

## 3. Sentencing

[18] Finally, Woods asserts the trial court abused its discretion at sentencing by failing to account for mitigating factors in its sentencing statement. We review a trial court's sentencing decision using a well-settled standard of review:

> Sentencing decisions rest within the sound discretion of the trial court. So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. An abuse of

> discretion will be found where the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. A trial court may abuse its discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that improper as a matter of law.

*Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019) (internal citations omitted).

[19] Woods contends the trial court erroneously omitted four mitigating factors from its sentencing statement:

> 1. He graduated from high school in 1998, attending special education courses. This indicates that he is not as astute as the average person academically;
>
> 2. He was employed at the time of his arrest;
>
> 3. Abused substances since age 15, with never any counseling or treatment;
>
> 4. He has been courteous and cooperative throughout all the proceedings, including the trial and Pre-Sentence interviews.

(Appellant's Br. at 35-36) (internal citations to record omitted). Woods also asserts that his aggregate twenty-year sentence "will result in an undue hardship for Woods." (*Id*. at 38.)

[20] "If the defendant does not advance a factor to be mitigating at sentencing, this Court will presume that the factor is not significant and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal." *Spears v. State*, 735 N.E.2d 1161, 1167 (Ind. 2000). Here, Woods did not advance his issues with substance abuse, his employment history, or his age as mitigating factors at sentencing, and therefore, he may not argue on appeal that the trial court erred by not listing those items as mitigators. *See*, *e.g.*, *Skeens v. State*, 191 N.E.3d 916, 923 (Ind. Ct. App. 2022) (holding purported mitigating factors were not properly before appellate court because they were not offered as mitigating factors before the trial court).

[21] In addition, the "trial court is not required to find the presence of mitigating factors or to give the same weight or credit to mitigating evidence as does the defendant nor is it obligated to accept the defendant's assertions as to what constitutes a mitigating circumstance." *Allen v. State*, 722 N.E.2d 1246, 1252 (Ind. Ct. App. 2000) (internal quotation marks and citation omitted). The trial court also is not "obligated to explain why it did not find a factor to be significantly mitigating." *Williams v. State*, 997 N.E.2d 1154, 1163-64 (Ind. Ct. App. 2013). "An allegation that a trial court abused its discretion by failing to identify or find a mitigating factor requires the defendant on appeal to establish that the mitigating evidence is significant and clearly supported by the record." *Healey v. State*, 969 N.E.2d 607, 616 (Ind. Ct. App. 2012), *trans. denied*.

[22] Here, Woods advanced two purported mitigating factors before the trial court: (1) that he was enrolled in special education classes in school and (2) that he

was courteous and polite throughout the trial court proceedings. Woods argued that he is not "as astute as the average person academically" because he attended special education classes. (Tr. Vol. III at 20.) He also asserted that his behavior in court was indicative of "his typical demeanor." (*Id*.) However, we do not see these circumstances as significant or clearly mitigating. Even people of below average intelligence are expected to recognize that breaking into a person's home and hitting the person over the head with a baseball bat is wrong. In addition, we expect litigants to be courteous and cooperative throughout court proceedings. Thus, we cannot say the trial court abused its discretion when it did not include the factors in its sentencing statement. *See*, *e.g.*, *Patterson v. State*, 909 N.E.2d 1058, 1062 (Ind. Ct. App. 2009) (holding defendant did not establish trial court overlooked significant mitigators).

[23] Moreover, even if a trial court fails to acknowledge a significant, proposed mitigating factor at sentencing, we will not remand for resentencing if we are confident the trial court would have imposed the same sentence had it properly considered the factor. *McElfresh v. State*, 51 N.E.3d 103, 112 (Ind. 2016). Woods's criminal history includes past felony convictions of sexual misconduct with a minor, intimidation, possession of methamphetamine, and unlawful possession of a syringe, as well as ten misdemeanor convictions. This aggravating factor alone is sufficient to support Woods's sentence. *See*, *e.g.*, *Kayser v. State*, 131 N.E.3d 717, 723 (Ind. Ct. App. 2019) (holding trial court did not abuse its discretion in imposing an enhanced sentence given the defendant's criminal history).

## Conclusion

[24] The trial court did not abuse its discretion when it admitted Paramedic Kaho's testimony that Woods's injury to the top of his head was consistent with being hit with a baseball bat. The State also presented sufficient evidence to sustain Woods's convictions, and the trial court did not abuse its discretion at sentencing. We accordingly affirm the trial court.

[25] Affirmed.

Altice, C.J., and Foley, J., concur.