MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
Indianapolis, Indiana

Ellen H. Meilaender
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Teddy Albert Allman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 28, 2023

Court of Appeals Case No. 23A-CR-75

Appeal from the Bartholomew Circuit Court

The Honorable Kelly S. Benjamin, Judge

Trial Court Cause No. 03C01-1809-F1-5125

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

May, Judge.

[1] Teddy Albert Allman appeals following his convictions of Level 1 felony rape,[1] Level 3 felony criminal confinement,[2] and Level 5 felony intimidation.[3] He presents four issues for our review, which we revise and restate as:

1. Whether the trial court properly denied Allman's motion to dismiss following the impoundment and loss of his vehicle;

2. Whether the trial court properly prohibited Allman from using the victim's twenty-five-year-old conviction of fraud to impeach the victim;

3. Whether the victim's testimony was incredibly dubious; and

4. Whether Allman's aggregate thirty-five-year sentence is inappropriate in light of the nature of his offenses and his character.

We affirm.

Facts and Procedural History

[2] T.A. lived in a trailer in Elizabethtown, Indiana, and she had a protective order against Allman, her estranged husband. Shortly before dawn on September 10, 2018, T.A. was awakened by the sound of Allman kicking in the front door of T.A.'s trailer. Allman then "bum-rushed" her while carrying a knife. (Tr. Vol.

---

[1] Ind. Code § 35-42-4-1(b) (2014).

[2] Ind. Code § 35-42-3-3(b)(2) (2014).

[3] Ind. Code § 35-45-2-1(b)(2) (2014).

IV at 218.) T.A. kept a knife of her own near the couch where she slept. She picked up her knife, but Allman kicked her in the chin, and she dropped it. Allman was wearing a ski mask, but T.A. could still identify him based on his voice and his mannerisms. Allman threatened to kill T.A., T.A.'s children, and her grandchildren. Allman then covered T.A.'s mouth with duct tape and put zip ties on T.A.'s wrists and ankles. He also used his cell phone to record three short videos of T.A. while she was bound. Allman removed the zip ties and duct tape and demanded sex from T.A. He then forced himself onto T.A. and his partially erect penis penetrated T.A.'s vagina. Afterward, Allman ordered T.A. to take a shower. T.A. took a shower, but she was careful not to clean herself below the waist too thoroughly. Allman told T.A. that he wanted her to meet him at a nearby post office so that they could go to the courthouse together and have T.A. request that the protective order be rescinded. Allman then left the trailer. Instead of going to the post office, T.A. went to her neighbor's trailer and called 911. Deputy Jeff Tindell of the Barthlomew County Sheriff's Office ("BCSO") and EMTs arrived shortly after T.A. called them. Deputy Tindell spoke with T.A. and learned Allman was likely in the post office's parking lot waiting for T.A.

[3] The EMTs transported T.A. to the hospital. Nurse Joanna Hanes examined T.A. at the hospital. Nurse Hanes documented that T.A. had bruising and swelling on the left side of her forehead, cuts around her lips, bite marks on her hand, and bruising on both legs. T.A. also had a cut on her tongue, and she reported that she bit her own tongue when Allman kicked her in the chin.

Nurse Hanes also noted linear marks on T.A.'s wrists indicating that they had been bound. Nurse Hanes used swabs to collect DNA from T.A.'s vagina, and a forensic biologist with the Indiana State Police later found Allman's DNA was present in that sample.

[4] Several BCSO deputies went to the post office parking lot in search of Allman, and they found him sitting in the driver's seat of his vehicle. The deputies commanded Allman to exit his vehicle, and when he got out of the car, he had a knife in a sheath attached to his hip and scratches on his face. The deputies handcuffed Allman and confiscated the knife. Allman told Detective Jason Williams of the BCSO that he had never been to T.A.'s residence.

[5] The deputies transported Allman to BCSO's headquarters and had Pro-Tow Towing ("Pro-Tow") tow Allman's vehicle to BCSO's garage. The deputies obtained a search warrant and searched Allman's vehicle at the BCSO garage. During this search, the deputies found zip ties, a roll of duct tape, and Allman's cell phone. The videos Allman took of T.A. during the incident were found on his cell phone. After the deputies completed their search of the vehicle pursuant to the search warrant, they released the vehicle to Pro-Tow to take to the company's tow yard. The deputies did not perform an inventory search of Allman's vehicle or document all the contents of Allman's vehicle before releasing it to Pro-Tow. At the tow yard, Bruce Russell, a part-owner of Pro-Tow, completed an Impound Lot Vehicle Inventory form. He listed the contents of the vehicle: "Misc tools, clothes, dishes, blankets, power tools, a bunch of trash in front." (Tr. Vol. VI at 24.)

[6] Detective Williams met Allman at BCSO's headquarters and interviewed him. Allman admitted he had lived in his car since T.A. obtained the protective order against him. He also acknowledged using methamphetamine. He told Detective Williams that he met T.A. around 5:00 a.m. that morning at a Circle K gas station and T.A. invited him to her trailer. He then gave inconsistent answers regarding whether sexual activity occurred in the trailer and whether he placed restraints on T.A. that morning. Allman also said unidentified persons were threatening him and that was why he restrained T.A. Detective Williams later obtained the security footage from Circle K for that morning and the footage did not show that Allman's vehicle was in the parking lot that morning. On September 14, 2018, the State charged Allman with Level 1 felony rape, Level 3 felony criminal confinement, and Level 5 felony intimidation.

[7] On December 18, 2020, Allman filed a motion to compel that sought an order from the trial court directing the State to find Allman's seized vehicle and produce it for inspection. BCSO Detective William Kinman attempted to find the vehicle. He learned Pro-Tow had ceased business operations in August 2020 and sold its inventory to a scrap yard. Bonita Russell, a former part-owner of Pro-Tow, told Detective Kinman that she thought Allman's son had tried to redeem the vehicle before Pro-Tow went out of business, but Pro-Tow did not release the vehicle to Allman's son because he was not the vehicle's registered owner. Detective Kinman went to the scrap yard, but it did not have any records related to Allman's vehicle. The Indiana Bureau of Motor Vehicles's

database also did not show that any owner after Allman had registered the vehicle. The State filed a response to Allman's motion to compel on January 15, 2021, explaining that it could not locate Allman's vehicle.

[8] On March 19, 2021, Allman filed a motion to dismiss due to destruction of evidence. He asserted the seized vehicle "was effectively serving as his residence" and "that at the time of his arrest, [Allman] had documentary evidence in said vehicle that he believes to be pertinent to his defense." (App. Vol. III at 56.) Allman asserted he was entitled to dismissal of the criminal charges against him because the State failed to securely hold his vehicle. On March 23, 2021, the trial court issued an order directing Allman "to specifically state what 'documentary evidence' he is referring to and how he believes such 'documentary evidence' on the loss of the car, relate to the Rape, Criminal Confinement in the victim's home, or Intimidation charges or how it may play a significant role in the defendant's defense." (*Id*. at 70.) Allman filed his response to the trial court's order on April 2, 2021. In his response, Allman asserted:

> Due to the lapse of time, it is difficult for Defendant to particularly recall exactly what documentary evidence was present in his car at the time it was seized. Defendant will attempt to recall this information to the best of his recollection and will be prepared to present sworn testimony in that regard at the hearing on his Motion to Dismiss.

(*Id*. at 83.)

[9] The trial court held hearings on the motion to dismiss on January 6, 2022, and February 17, 2022. Allman testified during the hearing that there were containers inside his seized car that contained a document giving him power of attorney over T.A., various contracts between Allman and T.A., and compromising pictures of T.A. He asserted the documents could not be replaced and their loss prejudiced his defense because he intended to use the documents to demonstrate a possible motive for T.A. to falsely accuse him of rape. On April 11, 2022, the trial court issued an order denying Allman's motion to dismiss. The trial court found that, while the BCSO was negligent in releasing Allman's vehicle to the tow company without first conducting an inventory search, there was no evidence the BCSO acted in bad faith. The trial court also found that the allegedly lost evidence was not potentially useful to Allman's defense.

[10] On October 19, 2022, Allman filed a notice pursuant to Trial Rule 609(b) of his intent to use T.A.'s conviction of welfare fraud to impeach her during Allman's jury trial.[4] The trial court addressed Allman's motion during a hearing on October 24, 2022. Allman argued that even though the conviction was from 1997, he should be allowed to question T.A. about it at trial because of "the importance of the defendant's testimony and centrality of the credibility issue[.]" (Tr. Vol. III at 78.) The State objected to Allman's motion and noted the welfare fraud conviction occurred over eighteen years before the State

[4] The Commonwealth of Kentucky charged T.A. with welfare fraud in 1996, and she was convicted in 1997.

charged Allman in the instant case. The trial court denied Allman's motion. The trial court noted the conviction occurred over twenty years before the date of the hearing and T.A. had not been convicted of any similar offenses since 1997.

[11] Allman's jury trial began on November 29, 2022. During the trial, Allman renewed his motion to dismiss, and the trial court denied his renewed motion. He also objected to the trial court's decision not to allow him to impeach T.A. with her 1997 welfare fraud conviction, and the trial court overruled his objection. At the conclusion of the trial, the jury found Allman guilty on all three counts.

[12] The trial court then held Allman's sentencing hearing on December 21, 2022. Allman testified regarding his criminal history. Allman acknowledged that he was convicted of sodomy in Kentucky in 2004 and that the victim of that offense was T.A.'s daughter, who was less than twelve years old at the time. In the pre-sentence investigation report ("PSI"), Allman claimed "he was high/passed out on drugs when he woke up to the younger daughter on top of him performing a sex act." (App. Vol. VI at 33.) Allman also acknowledged a past conviction in Florida of third-degree felony grand theft auto, a Level 6 felony conviction of failure to register as a sex offender,[5] and multiple misdemeanor convictions. In addition, Allman testified that he repeatedly

[5] Ind. Code § 11-8-8-17(a)(5) (2018).

failed to abide by the terms of his probation, which resulted in multiple probation revocations. He blamed his criminal history on drug abuse and unresolved mental health issues. The State noted that, in addition to Allman's lengthy criminal history, four different women had taken out protective orders against him, and the protective order T.A. obtained ultimately did not stop Allman from attacking her. The State asked the trial court to impose an aggregate sentence of thirty-eight years.

[13] In a written order issued after the sentencing hearing, the trial court stated:

> The Court finds the following aggravating circumstances:
>
> 1. The defendant's prior criminal history. Defendant further blames others in some of his past criminal conduct, one specifically, which included a 12-year-old victim.
>
> 2. The defendant has been placed on probation previously and has violated.
>
> 3. There was a protective order in effect at the time of these offenses.
>
> 4. The defendant shows no remorse and blames the victim and others. His inability to take responsibility and understand the harm he has caused, makes him dangerous.
>
> 5. The defendant tied the victim up with zip ties at the wrists and the ankles, and further struck her causing injuries to the victim.

> 6. The defendant has had four previous protective orders granted against him, which he claims were the fault of others and/or he was the true victim.
>
> 7. The defendant has an ODARA[6] score of 7.
>
> The Court finds as a slight mitigating factor the defendant's medical issues and mental health issues. However, the medical issues have and are being attended to, and the mental health issues are being attended to through medication in the jail. The defendant failed to comply with mental health medication recommendation [sic] when not in jail, and further used illegal controlled substances.

(*Id*. at 41-42) (footnote added). With respect to Allman's Level 1 felony rape conviction, the trial court sentenced Allman to a term of thirty-five years, and the trial court ordered Allman to serve the final seven-years of that sentence in community corrections. The trial court also sentenced Allman to a term of sixteen years because of his Level 3 felony criminal confinement conviction and a term of six years in connection with his Level 5 felony intimidation conviction. The trial court ordered Allman to serve all of his sentences concurrently. Thus, the trial court imposed an aggregate thirty-five-year sentence, with the final seven years of that sentence suspended to community corrections.

---

[6] This acronym stands for Ontario Domestic Assault Risk Assessment.

Discussion and Decision

1. Motion to Dismiss

[14] Allman contends the trial court erred by denying his motion to dismiss the criminal charges against him after his vehicle was lost. He asserts that he lost "pivotal" evidence consisting of sexually explicit photographs of T.A. engaged in bondage activity with Allman and another man, a post-nuptial agreement, a form giving him power of attorney over T.A., and other documents. (Appellant's Br. at 14.) We review a trial court's denial of a motion to dismiss for an abuse of discretion. *Pimentel v. State*, 181 N.E.3d 474, 479 (Ind. Ct. App. 2022), *trans. denied*. "An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the trial court." *Id.*

[15] "A defendant's due process rights are violated when the State fails to disclose or preserve material exculpatory evidence." *Bishop v. State*, 40 N.E.3d 935, 950 (Ind. Ct. App. 2015), *trans. denied*. Evidence is material exculpatory if the exculpatory nature of the evidence is apparent before the evidence is destroyed and the defendant cannot obtain comparable evidence through other reasonably available means. *Id.* "Exculpatory is defined as clearing or tending to clear from alleged fault or guilt; excusing." *Land v. State*, 802 N.E.2d 45, 49-50 (Ind. Ct. App. 2004) (internal quotation marks and brackets omitted), *trans. denied*. "When the evidence at issue is material exculpatory evidence, it is irrelevant whether the State's failure to disclose or preserve the evidence was in good or

bad faith." *Bishop*, 40 N.E.3d at 950. However, "when the evidence at issue is 'potentially useful evidence,' as opposed to material exculpatory evidence, failure to preserve that evidence does not amount to a due process violation 'unless a criminal defendant can show bad faith' on the State's behalf." *Id*. (quoting *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988), *reh'g denied*). The State is not required to retain and preserve all material that might conceivably be of evidentiary significance in a particular prosecution. *Id*.

[16] Allman does not contend the evidence in the car would have proved he did not commit the charged crimes. He instead asserts he would have used the evidence to attack T.A.'s credibility. However, mere impeachment evidence generally does not rise to the level of material exculpatory evidence. *See*, *e.g.*, *Seal v. State*, 38 N.E.3d 717, 722 (Ind. Ct. App. 2015) (holding lost recordings were not materially exculpatory when the only value of the recordings would have been to impeach the victims), *trans. denied*. Moreover, we will consider evidence to be material exculpatory evidence only if comparable evidence is not otherwise obtainable through other reasonably available means. *Pimentel*, 181 N.E.3d at 479. While Allman asserted a memory card that stored photographs of the alleged sexual encounter involving him, T.A., and a third person was destroyed, the trial court found Allman's testimony in this regard not credible. In addition, Allman did not present evidence of the unavailability of the third person or the person who took the photographs to testify at trial. Allman also did not present evidence to corroborate his claims that the only available copies of the alleged contracts between him and T.A. were inside his vehicle.

[17] Pro-Tow did not go out of business until approximately two years after BCSO impounded the vehicle. While Allman's son might have visited Pro-Tow one time to attempt to get the vehicle, Allman's son did not return with written authorization from Allman to release the vehicle to him. Allman also did not seek a court order directing Pro-Tow to release the vehicle nor did Allman have his attorney attempt to retrieve the evidence from the vehicle. In addition, even though the trial court directed Allman on March 23, 2021, to describe the nature of the documents he alleged were lost with greater specificity, Allman's response failed to describe the documents in greater detail. Allman's minimal efforts to attempt to retrieve the evidence in his vehicle and his inability to specify the exact nature of the lost evidence in response to the trial court's order suggest the evidence was of limited value and not exculpatory. Thus, at most, the evidence was potentially useful. *See*, *e.g.*, *Land*, 802 N.E.2d at 51 (holding lost shoes that allegedly had an accelerant on them were, at most, potentially useful evidence in arson prosecution).

[18] Assuming *arguendo* the evidence was potentially useful,[7] Allman was still required to show the BCSO acted in bad faith. *Bishop*, 40 N.E.3d at 950. "Bad faith is defined as being 'not simply bad judgment or negligence, but rather implies the conscious doing of wrong because of dishonest purpose or moral

[7] The trial court found the evidence did not even rise to the level of potentially useful evidence, and the State asserts Allman "makes no cogent argument in his dismissal issue as to how these photographs could have been admissible evidence at the trial." (Appellee's Br. at 24.) However, we need not decide whether the evidence could have been admitted at trial because whether the officers acted in bad faith is dispositive.

obliquity.'" *Samek v. State*, 688 N.E.2d 1286, 1289 (Ind. Ct. App. 1997) (quoting Black's Law Dictionary 139 (6th ed. 1990)), *reh'g denied*, *trans. denied*. After the deputies completed searching Allman's vehicle pursuant to the search warrant, they did not perform a second inventory search of the vehicle. Captain David Skeinkoenig of the BCSO testified that if a vehicle had already been searched pursuant to a search warrant, the deputies would not typically perform an inventory search before releasing the vehicle to the tow company. However, BCSO General Order 2009-59 stated: "Whenever an officer takes a vehicle into custody, an inventory search will be conducted prior to impoundment and a detailed listing of any property with values found in the vehicle shall be made." (Tr. Vol. VI at 45.) The General Order further provided: "All containers in the vehicle must be inventoried. . . . All property discovered during an inventory, including those found in closed containers, will be listed on the tow form, or in the officer's report." (*Id.* at 45-46.) The general order did not include an exception to the inventory search requirement if the vehicle had already been searched pursuant to a search warrant. Thus, the BCSO should have conducted an inventory search before releasing Allman's vehicle to Pro-Tow. If the BCSO had performed an inventory search, then there would have been a detailed list of the property Allman had inside his vehicle before it was released to Pro-Tow. Yet, there is no evidence that the BCSO acted with a dishonest purpose or moral obliquity. The BCSO took photographs of the contents of Allman's vehicle when searching it pursuant to a search warrant, and the BCSO retained the items it believed to be of evidentiary value. Moreover, in releasing the vehicle to Pro-Tow, the deputies made the

contents of the vehicle available to Allman if he wished to retrieve the vehicle. Therefore, we hold Allman failed to show the BCSO acted in bad faith in its handling of his vehicle. *See*, *e.g.*, *Seal*, 38 N.E.3d at 722 (holding defendant failed to show the police acted in bad faith when they did not preserve recordings of victim interviews).

2. Impeachment

[19] Second, Allman asserts the trial court abused its discretion in not allowing him to use T.A.'s 1997 welfare fraud conviction to impeach her. Indiana Rule of Evidence 609 states:

> (a) General Rule. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime or an attempt of a crime must be admitted but only if the crime committed or attempted is (1) murder, treason, rape, robbery, kidnapping, burglary, arson, or criminal confinement; or (2) a crime involving dishonesty or false statement, including perjury.
>
> (b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than ten (10) years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:
>
> > (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
> >
> > (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

Thus, before a party may use a conviction that occurred over a decade earlier to impeach a witness, the trial court must first determine that the probative value of the conviction outweighs its prejudicial effect and that the party wishing to use the conviction for impeachment purposes provided reasonable written notice to the adverse party. *Chapman v. State*, 141 N.E.3d 881, 887 (Ind. Ct. App. 2020). "We review a trial court's ruling under Rule 609(b) for an abuse of discretion." *Id*. at 885. We will reverse a defendant's conviction as the result of the erroneous exclusion of evidence only if the exclusion is a "manifest abuse of discretion resulting in a denial of a fair trial." *Fugett v. State*, 812 N.E.2d 846, 848 (Ind. Ct. App. 2004).

[20] In *Scalissi v. State*, our Indiana Supreme Court announced a five-factor test to determine whether a conviction that is more than ten years old should be admitted pursuant to Rule 609(b). 759 N.E.2d 618, 625 (Ind. 2001). The Court explained:

> The trial court is to consider the following five factors, but this list is not exclusive: "(1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness' subsequent history; (3) the similarity between the past crime and the charged crimes; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue."

Id. (quoting *U.S. v. Castor*, 937 F.2d 293, 299 n.8 (7th Cir. 1991)). Allman notes T.A.'s welfare fraud conviction was a crime of dishonesty, and he asserts "the creditability of T.A. was central to Allman's defense theory and, thus, an extraordinarily important issue in the case." (Appellant's Br. at 20.) However,

the conviction was twenty-five years old at the time of Allman's trial, and T.A. had not been convicted of any similar offenses in the intervening twenty-five years. Moreover, as the State notes, "the conviction bore no similarity to the instant case. Eligibility for government benefits is unrelated to matters of sexual conduct; [T.A.'s] conviction did not constitute evidence that T.A. had previously lied about an accusation of sexual assault." (Appellee's Br. at 32.) While T.A.'s testimony was important to the State's case, the importance of the witness's testimony alone is not sufficient to overcome Rule 609's presumption against admissibility. *See*, *e.g.*, *Schwestak v. State*, 674 N.E.2d 962, 964 (Ind. 1996) (holding trial court did not abuse its discretion in refusing to allow defendant to use victim's over-ten-year-old burglary conviction to impeach the victim when the only reason given by the defendant to allow the evidence was the importance of the victim's testimony). Thus, we hold the trial court did not abuse its discretion by excluding evidence of T.A.'s 1997 welfare fraud conviction. *See*, *e.g.*, *Saunders v. State*, 848 N.E.2d 1117, 1123-24 (Ind. Ct. App. 2006) (holding trial court did not abuse its discretion in excluding evidence of witness's theft and forgery convictions when the convictions were over ten years old, the convictions bore little relevance to the subject of the witness's testimony, and the witness's testimony was cumulative of other testimony), *trans. denied*.

3. Incredible Dubiosity

[21] Third, Allman asserts the State presented insufficient evidence to sustain his conviction because his conviction rested solely on T.A.'s testimony and her

testimony was incredibly dubious. In general, "sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). However, the incredible dubiosity rule allows us to impinge upon the jury's fact-finding function when a witness's testimony at trial is "so unbelievable, incredible, or improbable that no reasonable person could ever reach a guilty verdict based upon that evidence alone." *Carter v. State*, 44 N.E.3d 47, 52 (Ind. Ct. App. 2015) (internal quotation marks omitted). "This rule is applicable only when a lone witness offers 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." *Edwards v. State*, 753 N.E.2d 618, 622 (Ind. 2001).

[22] Allman notes T.A. could not recall certain details of her encounter with Allman. For instance, T.A. did not remember what happened to her knife after she dropped it. She also could not recall seeing Allman take his pants off, and she was not sure when Allman turned on the lights or took off the ski mask. However, T.A.'s failure to recall every detail of the encounter does not render her testimony inherently contradictory or equivocal. In addition, the State presented a significant amount of corroborating evidence to support T.A.'s account of the events. T.A. had injuries on her wrists consistent with being restrained. She also had injuries to her forehead, lips, chin, and tongue. There was a footprint found on T.A.'s door, which supported her testimony that

Allman kicked her door in to gain entry. Moreover, Allman's DNA was present in the genetic material collected from T.A.'s vagina shortly after the incident. Allman also took videos of T.A. during the encounter. The deputies additionally found Allman where T.A. told them he would be located. Thus, we hold T.A.'s testimony was not incredibly dubious, and therefore, the State presented sufficient evidence to sustain Allman's convictions. *See*, *e.g.*, *Holeton v. State*, 853 N.E.2d 539, 542 (Ind. Ct. App. 2006) (holding victim's testimony was not incredibly dubious when it was corroborated by other evidence including photographs of the victim's injuries and the scene of the crime).

4. Inappropriate Sentence

[23] Finally, Allman claims his aggregate thirty-five-year sentence, with seven of those years suspended to probation, is inappropriate given the nature of his offenses and his character. Our standard of review for such claims is well-settled:

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

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*.

[24] "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, "we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). A person convicted of a Level 1 felony "shall be imprisoned for a fixed term of between twenty (20) and forty (40) years, with the advisory sentence being thirty (30) years." Ind. Code § 35-50-2-4(b) (2014). For a Level 3 felony, the person "shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being nine (9) years." Ind. Code § 35-50-2-5(b) (2014). A person convicted of a Level 5 felony "shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years." Ind. Code § 35-50-2-6.

[25] Allman's offenses were particularly horrific. He violated a protective order in committing his offenses against T.A., and what is worse, Allman intended for the attack to motivate T.A. to rescind the protective order. He not only threatened T.A. during the encounter, but he also threatened her children and grandchildren. He wielded a knife during the attack and punched and kicked T.A. This resulted in T.A. sustaining multiple physical injuries. He also bound T.A. with zip ties and duct tape and videotaped portions of the encounter to humiliate her. Thus, we can confidently say the nature of Allman's offenses do not render his sentence inappropriately harsh. *See*, *e.g.*, *Madden*, 162 N.E.3d at

564 (holding "egregious" nature of defendant's offenses rendered his aggregate forty-year sentence not inappropriate when he kicked and punched the victim while she was handcuffed).

[26] Moving to Allman's character, one of the factors we evaluate when assessing the appropriateness of a defendant's sentence is his criminal history. *Williams v. State*, 170 N.E.3d 237, 246 (Ind. Ct. App. 2021) ("When considering the character of the offender, one relevant fact is the defendant's criminal history."), *trans. denied*. Allman's criminal history is significant. Allman's past felony convictions include a conviction of a sex crime against a young girl in Kentucky, and a conviction of failure to register as a sex offender in Indiana. These past offenses reflect very poorly on Allman's character, particularly because he was convicted of a sex offense in the instant case. In addition, four separate women, including T.A., obtained protective orders against Allman. Allman also has a history of not abiding by the terms of his probation, resulting in multiple probation revocations. Moreover, Allman was not honest in his interviews with Detective Williams because he relayed multiple and contradictory stories. While Allman blames his past criminal behavior on substance abuse issues and untreated mental health conditions, the PSI indicates these are longstanding problems for Allman. Yet, he has chosen to continue with his criminal lifestyle rather than seek help. Allman also notes his various physical health concerns, but as the trial court noted, those concerns can be adequately addressed by the medical care he will receive while incarcerated. Thus, we cannot say Allman's sentence is inappropriately harsh

given his character. *See*, *e.g.*, *Carter v. State*, 44 N.E.3d 47, 56 (Ind. Ct. App. 2015) (holding defendant's thirty-two-year sentence for rape was not inappropriate given the nature of his offense and his criminal history). In fact, we agree with the State that "if anything, it is inappropriately lenient." (Appellee's Br. at 40.) However, the State does not ask us to revise Allman's sentence upward, and therefore, we will not do so. *See*, *e.g.*, *Akard v. State*, 937 N.E.2d 811, 814 (Ind. 2010) (reversing this Court's decision to revise defendant's sentence upward).

Conclusion

[27] The trial court did not abuse its discretion by denying Allman's motion to dismiss based on the loss of his vehicle or by prohibiting Allman from using a 1997 fraud conviction to impeach T.A. Because T.A.'s testimony was not incredibly dubious, sufficient evidence supported Allman's convictions. Moreover, Allman's aggregate thirty-five-year sentence is not inappropriate given the nature of his offenses and his character. We accordingly affirm the trial court.

[28] Affirmed

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