MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Riley L. Parr
Lebanon, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tyler Banks
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Douglas J. Bray,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

September 29, 2023

Court of Appeals Case No. 23A-CR-668

Appeal from the Boone Superior Court

The Honorable Matthew C. Kincaid, Judge
The Honorable John G. Baker, Judge Pro Tempore

Trial Court Cause No. 06D01-2009-F1-1596

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] Douglas J. Bray ("Bray") appeals, following a jury trial, his conviction for Level 4 felony child molesting.[1] Bray contends that the trial court improperly restricted his cross-examination of the child victim. Concluding that Bray has waived his argument on appeal where he raised no objection during his cross-examination of the child, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether the trial court improperly restricted Bray's cross-examination of the child victim.

Facts

[3] Bray's daughter, H.B. ("H.B."), was friends with M.N. ("M.N."), and the two girls had been friends since they were about seven years old. Between December 2019 and January 2020, when M.N. was thirteen years old, she frequently spent the night with H.B. at Bray's house. Bray and his wife ("Bray's wife") were like M.N.'s "second mom and dad." (Tr. Vol. 2 at 210).

[4] During that time, Bray inappropriately touched M.N. on multiple occasions. The first instance occurred when M.N. was in Bray's car with him. Bray had

---

[1] IND. CODE § 35-42-4-3.

asked M.N. to go to a gas station with him to buy some drinks while Bray's wife and H.B. stayed at home. While they were driving to the gas station near a Wal-Mart, Bray put his hand on M.N.'s thigh, on the outside of her clothing, and "moved his hand around and . . . into [her] inner thigh." (Tr. Vol. 2 at 215). M.N. told Bray to stop, and he did. After they got drinks at the gas station and were driving home, Bray again touched M.N.'s thigh, touched "near [her] clitoris" and "[v]agina," and moved his hand against her clothing. (Tr. Vol. 2 at 215). M.N. told Bray to stop, and he did. Bray inappropriately touched M.N.'s vaginal area over her clothing on two or three other occasions when they were alone together in the car.

[5] Bray also inappropriately touched M.N.'s vaginal area under her clothing. On one occasion when M.N. spent the night with H.B., Bray woke up M.N. and told her to drive with him to get breakfast. On the way to get breakfast, Bray put his hand down M.N.'s pants and under her underwear, and he then moved his hand around while touching M.N.'s vagina.

[6] Additionally, Bray inappropriately touched M.N.'s breasts on more than one occasion. One of those times occurred when Bray had M.N. ride with him to a gas station to get drinks. On the drive home, Bray pulled his car over, lifted up M.N.'s shirt, put his mouth on her breast, asked M.N. to kiss him, and then kissed her. Another act of inappropriate touching occurred at Bray's house when H.B. had gone to take a shower. Bray "pulled" M.N. into H.B.'s room, lifted up M.N.'s shirt and bra, and put his hands and mouth on her breast. (Tr. Vol. 2 at 218).

[7] M.N. did not initially disclose what Bray had done to her because she wanted to protect H.B., who M.N. considered to be her "best friend[,]" and she did not want H.B.'s parents to get into trouble. (Tr. Vol. 2 at 213). In December 2019, M.N. started cutting her wrists and arms because "it became overbearing." (Tr. Vol. 2 at 213). In February or March of 2020, a student at M.N.'s school told M.N.'s school counselor ("the school counselor") that M.N. had cuts on her arms. The school counselor met with M.N. on March 4, 2020 and learned that M.N. had been cutting her wrists with kitchen knives. The school counselor contacted M.N.'s grandmother ("Grandmother"), who was M.N.'s guardian, and referred M.N. to a counseling center. When M.N. was interviewed at the counseling center, she was "uncomfortable" and told the counselor only that Bray had "touched [her] butt." (Tr. Vol. 2 at 222, 223). A few days later, M.N. told her mother ("M.N.'s mother") and Grandmother what Bray had done to her. M.N.'s mother told Bray's wife about the allegations and then reported the allegations to the police.

[8] The State charged Bray with Level 4 felony child molesting.[2] The trial court held a two-day jury trial in January 2023. Bray's theory of defense was that M.N.'s allegations against Bray were false, especially because she had delayed in reporting the offenses.

[2] The State also initially charged Bray with Level 1 felony child molesting but then dismissed that charge prior to trial.

[9] During the jury trial, M.N. testified about the multiple acts of inappropriate touching as set forth above. When M.N. testified about the first time that Bray had touched her thigh and vaginal area on the way home from the gas station, M.N. specifically testified that the gas station was near a Wal-Mart.

[10] When Bray's counsel cross-examined M.N., he asked her multiple questions to point out the inconsistencies between her trial testimony and her pre-trial deposition and child advocacy center interview. Towards the end of the cross-examination, the trial court asked Bray's counsel, "[Counsel], do you have any other questions, sir?" (Tr. Vol. 2 at 237). Bray's counsel responded, "Yes, just a couple, Judge." (Tr. Vol. 2 at 237). Thereafter, Bray's counsel asked M.N. a few questions about her child advocacy center interview. For example, Bray's counsel asked M.N. questions about her testimony during that interview that Bray had inappropriately touched her in his car on the way to a Wal-Mart, and counsel stated that she had not testified about Wal-Mart during trial. Bray's counsel also asked her about deposition testimony regarding the same subject. Bray's counsel then asked the trial court, "Judge, may I have just a moment?" (Tr. Vol. 2 at 237). The trial court responded, "You have had more than one. I am going to give you literally thirty seconds to wrap this up[,]" and Bray's counsel replied, "Okay." (Tr. Vol. 2 at 237). Bray's counsel continued his cross-examination of M.N., asking another five questions. Counsel then told the trial court, "Judge, I don't think I have anything else." (Tr. Vol. 2 at 238).

[11] Thereafter, the State asked M.N. some questions on redirect. After the State had finished its redirect of M.N., the trial court asked Bray's counsel,

"Anything else, sir?" (Tr. Vol. 2 at 239). Bray's counsel informed the trial court that he had no further questions. (Tr. Vol. 2 at 239).

[12] The jury found Bray guilty as charged. The trial court sentenced Bray to eight (8) years, with six (6) years executed and two (2) years suspended to probation.

[13] Bray now appeals.

Decision

[14] Bray argues that the trial court improperly restricted his cross-examination of M.N. Bray specifically contends the trial court violated his rights to cross-examination under the Sixth Amendment of the United States Constitution and Article I, Section 13 of the Indiana Constitution when the trial court instructed him to "wrap up" his cross-examination. Bray essentially argues that the trial court excluded the admission of M.N.'s testimony on cross-examination.

[15] However, we need not review Bray's asserted evidentiary challenge. Bray has failed to preserve the issue for appellate review because he made no objection, let alone an objection based on the federal and state constitutions. "To preserve a claim of trial court error, an objection must be made with the specific ground or grounds on which the objection is based." *Burkins v. State*, -- N.E.3d -- , 2023 WL 5229430, at *4 (Ind. Ct. App. Aug. 15, 2023). Because Bray did not object to the trial court's statement during trial, he has waived his appellate review of the argument. *See id. See also Hoglund v. State*, 962 N.E.2d 1230, 1239 (Ind. 2012) ("Failure to object at trial waives the issue for review unless fundamental error occurred."), *reh'g denied*. Bray fails to make a fundamental

error argument, and we will not make such an argument for him. *See Norton v. State*, 137 N.E.3d 974, 987 (Ind. Ct. App. 2019) (explaining that our Court would not consider a defendant's appellate argument where he had waived the argument and had failed to argue fundamental error), *reh'g denied*, *trans. denied*. Accordingly, we affirm the trial court's judgment.

[16] Affirmed.

Tavitas, J., and Foley, J., concur.