MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Steven Ulysses Moredock,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 30, 2024

Court of Appeals Case No.
23A-CR-2123

Appeal from the
Marion Superior Court

The Honorable
Jeffrey L. Marchal, Judge

Trial Court Cause No.
49D31-1906-FA-23285

Memorandum Decision by Senior Judge Baker
Judges Bailey and Vaidik concur.

Baker, Senior Judge.

Statement of the Case

[1] Steven Ulysses Moredock appeals from his conviction of one count of Class A felony child molesting, arguing that: 1) the trial court erred by denying his motion for mistrial; 2) the evidence is insufficient to sustain his conviction; and 3) his sentence is inappropriate. Concluding that the record does not support any of Moredock's contentions, we affirm.

Facts and Procedural History

[2] Sometime between 2011 and 2013, Steven Moredock attended a family reunion. D.C., Moredock's niece, was also in attendance with her four-year-old son, T.C. During the reunion, Moredock and T.C. were photographed together. At some point during the reunion, it began raining, and the group decided to leave and meet up at a relative's house. T.C. asked D.C. if he could leave with Moredock, but D.C. refused. However, when T.C. returned with Moredock, D.C. relented and agreed to allow T.C. to ride with Moredock to the relative's house.

[3] Moredock and T.C. did not arrive at the relative's house and D.C. did not see her son again that day. Instead, Moredock took T.C. to a McDonald's to eat

and then to Moredock's home to watch movies. T.C. ended up sleeping on a pallet on the living room floor at Moredock's house, while Moredock and his girlfriend slept in another room. At some point, while lying on his stomach, T.C. was awakened by Moredock breathing over him from behind. T.C. was wearing shorts and could feel Moredock reaching under his shorts to fondle his buttocks. Next, Moredock removed T.C's. shorts and touched T.C.'s buttocks with his penis. Moredock inserted his penis into T.C.'s anus and began moving back and forth. T.C. recalled that it felt weird and uncomfortable. When Moredock finished, T.C. went back to sleep.

[4] D.C.'s attempts to reach Moredock were unsuccessful until she reached Moredock's girlfriend at his house the next day at around noon. Moredock's girlfriend told D.C. not to come to their house because they would return T.C. to her. However, D.C. refused and retrieved T.C. from Moredock's home.

[5] T.C. did not report the molestation to his mother after he returned home. Yet, D.C. noticed changes in T.C.'s behavior. His gait had changed, he was having problems with his bowel movements, and T.C.'s older brother K.P. noticed that T.C. would scream in the night. D.C. took T.C. to the pediatrician but no cause for these changes was determined at the time.

[6] In 2019, when T.C. was twelve or thirteen years old, he argued with K.P. During the argument K.P. called T.C. various anti-gay slurs. T.C. responded by crying and disclosed to K.P. that Moredock had molested him.

[7] K.P. reported the abuse to D.C. She took T.C. to the emergency room where he was examined by a sexual-assault nurse practitioner. Because of the passage of time since the crime, it was impossible to collect any physical evidence. T.C. was also interviewed by the Department of Child Services, and an IMPD detective was assigned to investigate T.C.'s allegations. The State charged Moredock with one count of Class A felony child molesting and one count of Class C felony child molesting for the events described above.

[8] Before the start of the jury trial, the trial court granted Moredock's motion to prevent the admission of evidence of his criminal record. There were two incidents during D.C.'s testimony which ultimately caused the trial court to halt the trial and conduct a hearing outside the presence of the jury. First, during D.C.'s direct examination, D.C. responded to the State's questions as follows:

> Q: And about how old were [K.P.] and T.C. when you first got to know the Defendant?
> A: Maybe about two and four. I'm not really sure.
> Q: Okay. And what was your relationship like at that point? How would you guys interact?
> A: he used to come visit me **after he got out** when I stayed with my --
> Q: He would visit you at your apartment?

Tr. Vol. III, p. 118 (emphasis added). D.C.'s testimony also included her description of Moredock leaving the reunion with T.C., not returning T.C. to their relative's home, and keeping T.C. overnight without communicating with her.

[9] During redirect, the State asked D.C. about how she learned that Moredock was moving out of state. This colloquy followed:

> Q: Okay. And I want to kind of fast forward. At some point, did the Defendant move out of state?
> A: Yes.
> Q: Okay. And did you learn about that as a family, just - -
> A: Yes. He moved out. We—we met at my auntie's house, my other aunt's house, and him and his girlfriend was there again. He didn't really say nothing, but apparently he was telling T.C. he was going—he was out getting off parole, so--
> Q: And did he ultimately tell you that he was moving to Florida?
> A: Yes.

Id. at 127 (emphasis added). The trial court stopped the trial at this point and held a hearing outside the presence of the jury.

[10] The trial court engaged in a colloquy with counsel, stating that it was "in a quandary[sic]," and learned that Moredock's counsel had not heard D.C.'s remarks. *Id.* at 128. Moredock's counsel stated that he had heard D.C. mention that Moredock had "got out," but that he had not heard her mention that Moredock was "getting off parole," because D.C. was so soft spoken. *Id.* The State confirmed that D.C. had been instructed about the order in limine, but explained that because of D.C.'s nervousness, it was difficult to navigate around the excluded evidence.

[11] Moredock moved for a mistrial "based on a violation of motion in limine." *Id.* at 129. The court denied the motion and then discussed the option of

admonishing the jury. The following reflects Moredock's counsel's decision not to admonish the jury:

> [COURT]: No. I'm going to say—how am I going to deal with this? I don't want to reinforce the problem.
> [DEFENSE]: Right.
> [COURT]: If the Defense perspective is that I'm not to give them an admonishment at all and you would rather err on let's not highlight the problem, I will do that. If that's what you would prefer.
> [DEFENSE]: Judge, with all due respect, I think maybe an admonishment might highlight it if the Court centers on any particular part of her testimony.
> [COURT]: So you're asking for no admonishment?
> [DEFENSE]: Yes, Judge.
> [COURT]: State, are you asking for admonishment or no?
> [STATE]: I'm fine with that . . . From Defense's perspective, I agree that it just draws attention.
> [COURT]: So, no admonishment. I think I'm going to give the State a little leeway to lead in this instance.

Id. at 131-32. The court permitted the State to discuss the order in limine again with D.C., after which the trial resumed and then concluded for the day.

[12] On the next day of trial, Moredock's counsel renewed his motion for a mistrial, arguing "number one . . . Moredock had just gotten out, O-U-T, and number two that . . . Moredock was on parole." Tr. Vol. IV, p. 4. The trial court reminded counsel that he had previously declined an admonishment for the same comments. However, the court proposed final instructions which would include an instruction that the jury was not to consider any wrongful conduct

other than that charged in the information. The trial court then denied the renewed motion for mistrial.

[13] At the close of evidence, the court reviewed the proposed final instructions with counsel, and Moredock did not lodge an objection. The trial court instructed the jury, in pertinent part, that "Any testimony that the Defendant was involved in wrongful conduct other than that charged in the information shall not be considered by you in any manner." *Id.* at 79. The jury found Moredock guilty as charged and found that T.C. was under twelve years old when Moredock molested him.

[14] At sentencing, the trial court heard evidence that Moredock was at least fifty-five years old when he molested T.C. And the court heard evidence of Moredock's criminal history. His adult criminal history began when he was arrested in Marion County for third-degree burglary in 1975 when he was nineteen years old. Three years later, Moredock was arrested for Class C felony attempted robbery, was convicted, and was sentenced to two years in the Department of Correction (DOC). Two years later, Moredock was arrested for Class A felony rape, Class B felony criminal confinement, and Class D felony carrying a handgun without a license. He was convicted of the handgun offense in 1983 and was sentenced to four years in the DOC with two years suspended. Also in 1983, Moredock was convicted of Class D felony criminal confinement and Class A misdemeanor battery in another case and was sentenced to two years in the DOC.

[15] In 1985, Moredock was charged with Class B felony armed robbery, two counts of Class B felony robbery, Class D felony criminal confinement, Class D felony resisting law enforcement, Class A misdemeanor carrying a handgun without a license, and was alleged to be an habitual offender. He was found guilty of all charges and received an aggregate sentence of fifty years in the DOC. Twenty-five years later, in 2011, Moredock was charged and found guilty of Class D felony intimidation, but he was given alternative misdemeanor sentencing of 343 days' probation.

[16] Over the next year, Moredock amassed eleven allegations that he violated the terms of his probation by being arrested for a new crime, failing to report for drug screening on multiple occasions, failure to report to the probation department and maintain a verifiable residence, and marijuana use. Moredock's probation was revoked in 2012, and he was ordered to serve one hundred days on house arrest.

[17] Moredock's new arrest in 2012 was for Class A misdemeanor criminal conversion. He was convicted and sentenced to eight days' imprisonment with credit for four days. That same year he was arrested and convicted for Class A misdemeanor patronizing a prostitute. He was sentenced to time served for that offense. In 2013, after molesting T.C., Moredock was charged with Class A misdemeanor operating a vehicle while intoxicated endangering a person and also with an illegal alcohol-concentration equivalent. He was found guilty and sentenced to sixty days with community service.

[18] When providing information for his pre-sentence investigation report, Moredock informed the officer that he had obtained a G.E.D. and an associate's degree in political science. He had served in the United States Army between 1972 and 1977 and was deployed to Germany, Russia, Vietnam, Iraq, and Afghanistan. He reported that he received compensation of $4,000 per month from the Veteran's Administration. Moredock did not claim to be disabled but reported that he suffered from high blood pressure, back problems, and headaches. He also disclosed that he had regularly used marijuana until 2021. His IRAS score indicated that he had a moderate risk of reoffending.

[19] The trial court heard from D.C. about the effects of Moredock's crimes committed against T.C. She explained that T.C. had been prescribed medication and that he had been involved in the juvenile court system on and off since the molestation. Moredock argued in favor of his military service, age, and medical disabilities being considered as mitigating factors.

[20] The trial court found that Moredock's military service, age, and health were mitigating factors. However, the court found Moredock's significant criminal history in aggravation. The court also noted that Moredock was on parole when he committed the crime against T.C. The court imposed a sentence of thirty-five years in the DOC for his Class A child molesting conviction, found that Moredock was a credit-restricted felon, and found that he was a sexually violent predator.

Discussion and Decision

[21] Moredock appeals from his conviction and sentence for Class A felony child molesting. We address each of his arguments in turn.

A. Mistrial

[22] Moredock argues that the trial court erred by denying his motion for mistrial. "We review a trial court's decision whether to grant or deny a mistrial only for an abuse of discretion, as the trial court is in the best position to judge the surrounding circumstances of the event and its impact on the jury." *Turner v. State*, 216 N.E.3d 1179, 1184 (Ind. Ct. App. 2023). "A mistrial is an extreme remedy that should be granted only where other remedies cannot satisfactorily rectify the error." *Id.* "'To prevail on appeal from the denial of a motion for mistrial, the appellant must demonstrate the statement or conduct in question was so prejudicial and inflammatory that he was placed in a position of grave peril to which he should not have been subjected.'" *Id.* (quoting *Agilera v. State*, 862 N.E.2d 298, 307 (Ind. Ct. App. 2007), *trans. denied*). "Gravity of peril is determined by the probable persuasive effect of the misconduct on the jury's decision rather than the degree of impropriety of the conduct." *Id.* "The appellant carries the burden of showing that no action other than a mistrial could have remedied the perilous situation into which he was placed." *Ballin v. State*, 610 N.E.2d 846, 848 (Ind. Ct. App. 1993).

[23] The thrust of Moredock's argument here is that the State did not properly prepare D.C. for trial. However, Moredock does not explain why the State's

preparation of D.C., or suggested lack thereof, warranted a mistrial. As described above, the State disclosed that it had advised D.C. of the order in limine. In *Pittman v. State*, 885 N.E.2d 1246, 1255 (Ind. 2008), our Supreme Court held that a witness' disclosure in violation of the order in limine did not warrant a mistrial even where the State failed to advise the witness of the order. "Innocent violation of a motion in limine does not automatically warrant a mistrial." *Id.* And similar to *Pittman*, given the ample evidence here against Moredock, it is highly unlikely that D.C.'s disclosure had any significant effect on the jury. *See id*.

[24] Furthermore, D.C.'s disclosures were nonresponsive to the State's questioning. As set out above, D.C. answered the State's question about her relationship with Moredock and how they interacted by mentioning that Moredock "got out." Tr. Vol. III, p. 118. The questions were not designed to elicit the response that was given. As for D.C.'s disclosure about Moredock's parole, that was an extraneous comment in response to the State's question about when D.C.'s family learned that Moredock was moving out of state. "When an answer is volunteered and unresponsive, and there is no evidence the prosecutor deliberately sought to introduce testimony regarding the inadmissible evidence, the complained-of error does not constitute an evidentiary harpoon." *DeBerry v. State*, 659 N.E.2d 665, 668 (Ind. Ct. App. 1995).

[25] And the absence of grave peril is further illustrated by Moredock's counsel's request not to admonish the jury at the time the disclosures occurred. As set

out in detail above, Moredock's strategy was to avoid drawing the jurors' attention to D.C.'s remarks. Our Supreme Court held in *Jackson v. State*, 518 N.E.2d 787, 788 (Ind. 1988) that the witness' "fragmentary and inadvertent" reference to the defendant's criminal history did not warrant a mistrial. The same is true here.

[26] Additionally, Moredock did not object to the trial court's final jury instruction that "[a]ny testimony that the Defendant was involved in wrongful conduct other than that charged in the information shall not be considered by you in any manner." Tr. Vol. IV, p. 79. Instructions, such as the one given here, are presumed to cure any error. *Lucio v. State*, 907 N.E.2d 1008, 111 (Ind. 2009). And Moredock has not rebutted that presumption.

[27] For all of the foregoing reasons, we conclude that the trial court did not abuse its discretion by denying the motion for mistrial.

B. Sufficiency of the Evidence

[28] Next, Moredock challenges the sufficiency of the evidence supporting his conviction. "For a sufficiency of the evidence claim, we look only at the probative evidence and reasonable inferences supporting the verdict." *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017). "We do not assess the credibility of witnesses or reweigh the evidence." *Id.* "We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.*

[29] To convict Moredock of what was at the time Class A felony child molesting, the State was required to establish beyond a reasonable doubt that Moredock, who was at least twenty-one years old, with T.C., a child under fourteen years of age, performed or submitted to deviate sexual conduct. *See* Ind. Code 35-42-4-3(a)(1) (2007). Anal intercourse is defined by statute as deviate sexual conduct. Ind. Code §§ 35-49-1-9(1) (1983) (sexual conduct); 35-31.5-2-221.5 (other sexual conduct).[1]

[30] As described in detail above, T.C. testified that when he was four years old Moredock woke him, fondled his buttocks underneath his clothes, removed his clothes, and subjected him to anal intercourse. Our Supreme Court has held that the "uncorroborated testimony of a child victim is sufficient to support a conviction for child molesting." *Stewart*, 768 N.E.2d at 436. Thus, T.C.'s testimony alone is enough to sustain Moredock's conviction.

[31] However, on appeal, Moredock says we should discredit T.C.'s testimony because there were discrepancies between his testimony and that of other witnesses on matters that are ancillary to the facts required to establish that Moredock committed the charged crime. Whether his mother brought him home from Moredock's house after the assault or whether Moredock did, and whether K.P. called T.C. the anti-gay slur which triggered T.C.'s memory or it

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[1] Prior to recodification and amendment of the criminal code, "[d]eviate sexual conduct [was] defined as 'an act involving: (1) a sex organ of one person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object.'" *Stewart v. State*, 768 N.E.2d 433, 436 (Ind. 2002) (quoting prior version of the statute).

was someone else, T.C.'s testimony about the molestation was unequivocal. And any discrepancies in T.C.'s testimony about these other matters were for the jury to resolve, and are not within our purview on appeal. *See Love*, 73 N.E.3d at 696.

[32] Moredock also argues that T.C. would have provided more "detail" about the physical sensations he experienced during the molestation if they truly had happened. Appellant's Br. p. 11. But a child victim's "limited sexual vocabulary or unfamiliarity with anatomical terms" is not a reason to overturn a verdict based on the child victim's testimony. *Stewart*, 768 N.E.2d at 436. Here, T.C. was a teenager by the time of trial, describing sexual abuse he was subjected to when he was four years old. It was the jury's province to determine how much weight to give to T.C.'s testimony and whether that testimony was credible. *See Love*, 73 N.E.3d at 696.

[33] And Moredock's contention that T.C.'s lack of bleeding, extreme pain, or alarming injuries supports the conclusion that T.C. was lying, similarly finds no support on appeal. IMPD Detective Vinson Boyce testified at trial that it was possible for T.C. to have been molested by Moredock as charged without exhibiting "a significant injury." Tr. Vol. III, p. 179. Jill Carr, a forensic child interviewer with the Child Advocacy Center in Indianapolis, testified to the same effect. Tr. Vol. IV, pp. 30-31. A court on appeal "need not find that the evidence overcomes every reasonable hypothesis of innocence but only that an inference may be drawn from the circumstantial evidence that supports the

jury's verdict." *Craig v. State*, 730 N.E.2d 1262, 1266 (Ind. 2000). And in this case, we have T.C.'s direct testimony to support the verdict.

[34] Moredock also claims that the State's leading questions call into doubt the veracity of T.C.'s testimony. He directs us to the State's questions, "When you say a beater, is that like a white tank top?," "Were your pants on or off at this point?" and "[D]id he touch you with his hands anywhere?" Appellant's Br. p. 11; Tr. Vol. III, pp. 151-153. Moredock lodged a sole objection that the State was leading the witness, the trial court overruled the objection, and Moredock does not now claim the trial court's ruling was erroneous. Indiana Evidence Rule 611(c) provides that "Leading questions should not be used on direct examination except as necessary to develop the witness's testimony." And "[o]ur case law has allowed leading questions on direct examination to develop the testimony of certain kinds of witnesses—for example children witnesses; young, inexperienced, and frightened witnesses; special education student witnesses; and weak-minded adult witnesses." *Williams v. State*, 733 N.E.2d 919, 922 (Ind. 2000). Thus, Moredock's argument here is unpersuasive.

[35] For all of the reasons stated above, we find the evidence is sufficient to sustain Moredock's conviction.

C. Inappropriate Sentence

[36] Moredock argues that his sentence should be reduced and revised because his thirty-five-year sentence is inappropriate "given the nature of the case and the character of the defendant" because "Moredock is an elderly man with various

physical illnesses, who needs extensive treatment, and this cannot be achieved in the Department of Corrections[sic]." Appellant's Br. p. 16.

[37] We may review and revise criminal sentences pursuant to the authority derived from article 7, section 6 of the Indiana Constitution. Indiana Appellate Rule 7(B) empowers us to revise a sentence "if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Because a trial court's judgment "should receive considerable deference[,]" our principal role is to "leaven the outliers." *Cardwell v. State*, 895 N.E.2d 1219, 1222-25 (Ind. 2008). "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). The defendant bears the burden to persuade this Court that his or her sentence is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may look to any factors appearing in the record for such a determination. *Stokes v. State*, 947 N.E.2d 1033, 1038 (Ind. Ct. App. 2011), *trans. denied*.

[38] We begin with the advisory sentence selected by the General Assembly as appropriate for Moredock's offense. *See Childress*, 848 N.E.2d at 1080. In 2011, the statutory range for a Class A felony was a fixed term of between twenty and fifty years with the advisory sentence being thirty years. Ind. Code § 35-50-2-

4(a) (2005). Moredock's thirty-five year sentence is just slightly above the advisory sentence for his offense.

[39] Moredock contends that his sentence should be revised due to suggested evidentiary weaknesses that "lead to serious questions [about] whether this offense occurred." Appellant's Br. p. 14. However, "the role of an appellate court in reviewing a sentence is unlike its role in reviewing an appeal for legal error or sufficiency of evidence." *Cardwell*, 895 N.E.2d at 1224.

[40] Thus, we turn to the nature of Moredock's crime. As described in detail above, Moredock lied to D.C. by saying he would bring T.C. to the relative's house for the family gathering. Instead, he kept T.C. overnight and sexually abused his four-year-old relative, while failing to let D.C. know of T.C.'s whereabouts. And Moredock lured T.C. with a meal from McDonald's and movies before waking him from his sleep and sexually abusing him. T.C. continues to suffer from the effects of Moredock's crime, including his own trouble with the law. This conduct does not amount to compelling evidence of Moredock's restraint, regard, and lack of brutality portraying the nature of his crime in a positive light.

[41] Next, we turn to Moredock's character. As we just mentioned, Moredock lied to D.C. about his plans when he took her son from the family reunion. And the trial court found Moredock's criminal history to be an aggravating factor which was more significant than any of the mitigating factors. We have set out Moredock's substantial criminal history in detail above. His adult criminal

activity began when he was nineteen years old and has continued, undeterred, despite serving executed sentences in the DOC and failed efforts during periods of probation. He contends on appeal that "placing an elderly sick man in prison for a long duration exposes him to an onslaught of 'jailhouse justice' that individuals in this sort of offense are already well known to be exposed to or taken advantage of . . . ." Appellant's Br. p. 15. However, this argument is not evidence portraying Moredock's character in a positive light inasmuch as it reflects the recognition of potential unlawful consequences for his behavior, which he would not be subject to had he taken advantage of the ample opportunities to reform and rehabilitate himself. A consideration that is pertinent here is that Moredock's contacts with the criminal justice system, including sentences for attempted robbery, criminal confinement, battery, armed robbery, resisting law enforcement, firearms offense and intimidation, have not moved him to conform his behavior to lead a law-abiding life.

[42] We conclude that Moredock's sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

[43] We conclude that the trial court did not abuse its discretion by denying Moredock's request for a mistrial. The evidence also sufficiently supports Moredock's conviction. Last, Moredock's sentence is not inappropriate. Therefore, we affirm the trial court's judgment in all respects.

[44] Affirmed.

Bailey, J., and Vaidik, J., concur.

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