MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Joshua Q. Eirhart,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 3, 2024

Court of Appeals Case No.
23A-CR-2401

Appeal from the Morgan Superior Court

The Honorable Sara A. Dungan, Judge

Trial Court Cause No.
55D03-2205-F5-589

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

[1] Joshua Eirhart was convicted of neglecting, battering, and strangling his six-year-old son, Q.E., after which the trial court sentenced him to a total of 11 years in prison. Eirhart appeals both his convictions and his sentence, arguing that the trial court improperly admitted two videos into evidence at his trial and that his sentence is inappropriate. We affirm.

Facts

[2] Throughout 2021 and 2022, DCS received several reports about Q.E. At two separate schools, Q.E.'s kindergarten teachers and others expressed concerns for Q.E.'s well-being based on his "obsess[ive]" relationship with food. Tr. Vol. III, pp. 59-60. They reported he would sneak extra food, eat what he had in tiny bites, and even eat waste from trash cans. Q.E. was thin and small for his age, with one witness describing him as "frail [and] skinny" with a "little pot belly" and the general appearance of being "malnourished." *Id.* at 46. Ashley Purdue served as the family's case manager and made multiple in-person visits to their home.

[3] On March 22, 2022, Purdue visited Eirhart's home in connection with a report that Q.E. had been choked. Although Eirhart denied the allegations of abuse, Purdue noticed that Q.E. had injuries and bruises all over his body. Eirhart asserted that Q.E.'s injuries were from falling off a bike at school. In any case, Q.E.'s injuries were severe enough to warrant medical attention, so he was taken to the emergency room.

[4] Doctors at the emergency room also observed extensive injuries all over Q.E.'s body. The injuries extended to nearly "every extremity," including Q.E.'s stomach, neck, back, and buttocks. *Id.* at 102. When asked about the injuries to his neck, Q.E. stated that Eirhart choked him. Medical staff found Q.E.'s injuries to be consistent with strangulation. Beyond Q.E.'s physical injuries, he also suffered from low protein and hemoglobin levels that likely stemmed from malnutrition. Multiple medical professionals concurred in their belief that Q.E.'s injuries pointed to neglect and physical abuse.

[5] The State charged Eirhart with five crimes: two counts of Level 5 felony battery resulting in bodily injury to a person less than 14 years of age; and one count each of Level 5 felony neglect of a dependent resulting in bodily injury, Level 6 felony strangulation, and Level 6 felony neglect of a dependent. During Eirhart's three-day jury trial, the State called multiple witnesses, including all four of Q.E.'s siblings. The siblings uniformly testified to the abuse and neglect Q.E. experienced under Eirhart's care.

[6] The State also admitted two Snapchat recordings from Q.E.'s older brother, J.E. The first recording showed Eirhart's wife, Tabitha, around 10:30 a.m. at Eirhart's home, beating Q.E. repeatedly all over his body. That same day, J.E. made a second recording showing Q.E. crying while Tabitha struck him. Eirhart moved to suppress the videos as irrelevant because he did not appear in them and was not present in the home. Alternatively, he also argued that the videos were unduly prejudicial to him due to their graphic nature. The trial court overruled Eirhart's objections and admitted the videos.

[7] Eirhart was found guilty and convicted of all charges except for one of the batteries. The court then merged his convictions for battery and strangulation before imposing an aggregate sentence of 11 years imprisonment, comprised of 5 years for the battery, 4 years for neglect of a dependent causing bodily injury; and 2 years for neglect that endangers the dependent.

Discussion and Decision

[8] On appeal, Eirhart presents two arguments for relief. First, he contends the trial court erroneously admitted the two Snapchat video recordings into evidence because they were irrelevant and unfairly prejudicial. Second, he contends his 11-year aggregate sentence is inappropriate under Indiana Appellate Rule 7(B). We address each in turn and affirm in full.

I. The Videos Were Admissible

[9] Trial courts have broad discretion on the admissibility of evidence. *Turner v. State*, 953 N.E.2d 1039, 1045 (Ind. 2011). Appellate courts will disturb the trial court's ruling only when the trial court has abused its discretion. *Id.* "An abuse of discretion occurs if 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." *Id.*

A. Relevance

[10] The bedrock requirement of all admissible evidence is that it be relevant. Evidence is relevant if it has "any tendency to make a fact more or less

probable" and is "of consequence" in resolving the issue. Ind. Evidence Rule 401. If evidence is not relevant, it is inadmissible. Evid. R. 402.

[11] As related to the Snapchat videos, Eirhart was accused of neglecting a dependent resulting in bodily injury. Besides a bodily injury, this crime requires:

> (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:
>
> (1) places the dependent in a situation that endangers the dependent's life or health;
>
> (2) abandons or cruelly confines the dependent;
>
> (3) deprives the dependent of necessary support; or
>
> (4) deprives the dependent of education as required by law.

Ind. Code 35-46-1-4(a). Under this child neglect statute, a "knowing" intent requires the defendant to have a "subjective awareness of a 'high probability' that a dependent has been placed in a dangerous situation . . . ." *Scruggs v. State*, 883 N.E.2d 189, 191 (Ind. Ct. App. 2008) (quoting *Gross v. State*, 817 N.E.2d 306, 308 (Ind. Ct. App. 2008)); *see also* Ind. Code § 35-41-2-2(b) (defining "knowingly or intentionally"). Because such a finding requires the factfinder to infer the defendant's mental state, it is proper to consider "all the surrounding circumstances of a case to determine if a guilty verdict is proper." *Scruggs*, 883 N.E.2d at 191 (quoting *McMichael v. State*, 471 N.E.2d 726, 731 (Ind. Ct. App. 1984)).

[12] The Snapchat videos were relevant to whether Eirhart endangered Q.E. The videos vividly demonstrate the physical abuse Q.E. suffered in Eirhart's home. Thus, the videos were plainly relevant to at least one element of the crime: whether Eirhart placed Q.E. in an environment that endangered him. Ind. Code 35-46-1-4(a)(1).

[13] Eirhart appears to concede this point but argues that, because he does not appear in the videos, they are irrelevant to whether he "knowingly" placed Q.E. in these conditions. Besides the obvious fact that the videos' location in Eirhart's home has at least some tendency to prove that he knew of Q.E.'s abuse, this argument relies on the premise that every piece of evidence must go to every element of the crime. But as highlighted above, the factfinder may consider "all the surrounding circumstances" in determining whether the defendant satisfies the required mental state. *Id.* The jury was therefore allowed to consider evidence beyond videos to prove Eirhart's mental state. And Eirhart makes no argument that the evidence as a whole is insufficient to establish his guilt.

B. Probative Value

[14] Eirhart also argues that Rule 403 bars the video's admission due to unfair prejudice. The rule states:

> The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.

Evid. R. 403. "Unfair prejudice looks to the capacity of the evidence to persuade by illegitimate means, or the tendency of the evidence to suggest decision on an improper basis." *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021) (quoting *Camm v. State*, 908 N.E.2d 215, 224 (Ind. 2009)).

[15] The videos' probative value was not substantially outweighed by unfair prejudice. To be sure, the videos are certainly "uncomfortable," as Eirhart alleges, and their depictions invited the jury to think negatively of him. Appellant's Br., pp. 7-8. But there was nothing "illegitimate" or "improper" about them. *Hall*, 177 N.E.3d at 1193. Q.E. was abused and neglected in Eirhart's home for at least a year. And the videos showed just two examples of this abuse compared to the multitude of documented examples provided by other witnesses. In short, we see no abuse of the trial court's discretion in determining that the videos' probative value was not substantially outweighed by the danger of unfair prejudice.

II. Eirhart's Sentence Is Not Inappropriate

[16] Eirhart next challenges his sentence under Indiana Appellate Rule 7(B).[1] Under this rule, we may 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." Ind. Appellate Rule 7(B). We

[1] Eirhart also makes several references in his brief to the trial court abusing its discretion in sentencing him. But any argument Eirhart wished to make on this issue has been waived as he frames his argument only in terms of Indiana Appellate Rule 7(B). *See King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (noting "inappropriate sentence claims and abuse of discretion claims are to be analyzed separately").

defer substantially to the trial court's sentencing decision, which prevails unless "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[17] The sentencing range for a Level 5 felony is between 1 and 6 years. Ind. Code § 35-50-2-6(b). And the sentencing range for a Level 6 felony is between 6 months and 2½ years. Ind Code § 35-50-2-7(b). Eirhart's sentences fell between the advisory and the maximum on each conviction: 5 years for battery resulting in bodily injury, a Level 5 felony; 4 years for neglect of a dependent resulting in bodily injury, a Level 5 felony; and 2 years for basic neglectfully placing the dependent in a situation that endangers him, a Level 6 felony. The trial court ordered consecutive sentences, thus creating an aggregate sentence of 11 years.

[18] The nature of Eirhart's crimes does not support finding his sentence inappropriate. Eirhart concedes the seriousness of his acts but asserts that sentencing revision is nonetheless warranted because Q.E. might not suffer long-term physical damage. While one can only hope that is the case, we note the trial court's statement that the "evidence presented at trial was one of the most egregious that [the court has] seen in terms of child abuse." Tr. Vol. IV, p. 143. Eirhart has not proved here that his sentence is inappropriate compared to the nature of his offenses.

[19] Nor does Eirhart's character render his sentence inappropriate. Like the trial court found, we note Eirhart's lack of a criminal history and that this sentence

will impose a hardship on his family. That said, these crimes show that Eirhart has *already* hurt his family. *See Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013) (noting during a sentence review that a defendant charged with neglect of a dependent "*was* the danger") (emphasis in original).

[20] Accordingly, Eirhart's sentence is not inappropriate.

Conclusion

[21] In sum, Eirhart failed to establish error from the admission of the Snapchat videos at his trial and did not present compelling evidence that his sentence is inappropriate.

[22] Affirmed.

Mathias, J., and Tavitas, J., concur.

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