

Jesse Savage (“Savage”) was convicted in Marion Superior Court of three counts of Class A felony child molesting and one count of Class C felony child molesting and was sentenced to an aggregate term of eighty years incarceration. Savage appeals and presents three arguments, which we reorder and restate as:

- I. Whether the trial court abused its discretion when it denied Savage’s motion for a continuance;
- II. Whether the trial court abused its discretion in determining that Savage’s statement to the police was admissible; and
- III. Whether Savage’s sentence is inappropriate.

We affirm.

Facts and Procedural History

Since 2003, Savage had been living with his girlfriend, who had two children: a daughter, B.G., and a young son. On November 19, 2006, B.G., who was five years old at the time, told her grandmother that Savage had performed anal intercourse with her. She also stated that Savage had made her perform oral sex on him and had touched her genitals. The next day, B.G. spoke with a forensic interviewer at the Child Advocacy Center, where she again stated that Savage had molested her. Later that day, Detective Julie Dutrieux interviewed Savage. Savage waived his Miranda rights and initially denied touching B.G. in an inappropriate manner, but he later admitted that he had put his penis in B.G.’s “butt” because he wanted to see what it felt like. Ex. Vol., State’s Ex. 2, p. 34. He also admitted that he had done this two or three different times. Savage further admitted that he had put his penis on B.G.’s lips and that he had “played” with her genitals. *Id.* at 44-45, 47.

On November 22, 2006, the State charged Savage with three counts of Class A felony child molesting and one count of Class C felony child molesting. On June 25, 2007, Savage filed a motion to suppress his statement to the police, claiming that he had a low I.Q. and did not knowingly and voluntarily waive his Miranda rights. The trial court initially set a hearing on this motion for August 7, 2007, but both the suppression hearing and the trial were continued several times.

On May 16, 2008, Savage moved to continue the trial so that he could present evidence of his mental capacity. The trial court granted this motion and rescheduled the trial from May 19, 2008 to July 21, 2008. Savage later submitted supplemental evidence to the court of his mental capacity, including the expert report of Dr. Donald Layton and Savage's school records. Based on this evidence, the trial court concluded that Savage's competency to stand trial should be determined. The court therefore vacated the trial date and appointed two experts, Dr. George Parker and Dr. Stephanie Callaway, to determine Savage's competency.

On November 10, 2008, the trial court held a hearing on Savage's competency to stand trial. Both court-appointed experts testified that Savage was competent to stand trial. Dr. Parker, however, opined that Savage lacked the comprehension to understand the waiver of his Miranda rights. Upon cross-examination by the State, however, Dr. Parker testified:

[I]f the officer had taken the time to go through each of the rights and asked if Mr. Savage understood them and had done any teaching on issues that Mr. Savage did not understand, there's a fair probability that Mr. Savage would have been able to learn the basic elements of the Miranda rights at that time.

Competency Hearing Tr. p. 11. Dr. Callaway similarly testified that if the Miranda rights had been quickly read to Savage, “it would be difficult for him to understand that and to take that in and to fully comprehend the consequences of that.” Id. at 17. But Dr. Callaway agreed that it was possible that Savage could have understood his rights if each one had been carefully explained to him by the interrogating officer. Id.

On December 4, 2008, the trial court entered an order finding Savage competent to stand trial and denying his motion to suppress. The trial court noted that the detective who had conducted the interview “went over each right individually and in great detail with Savage and rephrased words that required explanation in very simplistic language. Savage indicated that he understood each right and agreed to talk to the Detective.” Appellant’s App. p. 144. The trial court also found that after agreeing to waive his rights, Savage admitted to his actions “relaying each and every event in great detail.” Id. The trial court concluded that Savage knowingly and voluntarily waived his rights.

Savage’s trial was then set for September 21, 2009, but was moved to November 16, 2009 after the trial court granted the State’s motion for a continuance. On November 10, 2009, Savage filed a motion for a continuance, which the trial court denied. Two days later, Savage filed another motion for a continuance, this time claiming that Savage and his family wished for Dr. Layton to testify at the trial but could not raise the money to pay him before the scheduled trial date. That same day, the trial court granted the motion and rescheduled the trial for December 14, 2009. The trial court also warned that “[n]o further continuances will be granted.” Appellant’s App. p. 204. Despite this

warning, Savage's counsel moved for another continuance on the day of trial, again claiming that further time was needed to raise funds to pay Dr. Layton to testify. The trial court denied the motion.

During trial, the State offered into evidence the videotape of Savage's statement to the police, the transcript of the statement, and the signed advice-of-rights form. Savage objected, but the trial court overruled his objection and admitted the evidence. The jury found Savage guilty as charged. At a sentencing hearing held on January 15, 2010, the trial court found the following aggravating factors: the significant harm and damage done to the victim, the young age of the victim, that Savage had a criminal history, that Savage was on pre-trial release at the time of the offenses, and that Savage was in a position of care for the victim. The court did not find any mitigating factors.¹ The trial court sentenced Savage to forty years on Counts I through III, the Class A felonies, and to four years on Count IV, Class C felony count. The trial court also ordered that the sentences on Counts I, III, and IV run concurrently and ordered Count II to be served consecutive to Count I, for an aggregate sentence of eighty years. Savage now appeals.

I. Denial of Motion for Continuance

Savage first claims that the trial court erred in failing to grant his requested continuance so that he could procure the testimony of his expert witness, Dr. Layton. However, Savage fails to adequately develop this argument. Instead, he cites cases which stand for the proposition that expert psychological testimony concerning police

¹ The court did note that Savage had mental health referrals, but found nothing that rose to the level of a significant mitigating factor.

interrogation techniques and coerced confessions may be admissible under Indiana Evidence Rule 702. Be that as it may, the simple fact that Dr. Layton's may have been admissible does not speak to the question of whether the trial court abused its discretion in denying Savage's motion for a continuance in order to secure Dr. Layton's appearance. Because Savage does not present us with any real argument regarding the propriety of the trial court's denial of his motion for a continuance, we consider this argument waived. See Ind. Appellate Rule 46(A)(8)(a) (providing that argument section of appellant's brief must contain the contentions of the appellant on the issues presented, supported by cogent reasoning); Smith v. State, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (noting that a party waives an issue on appeal where the party fails to develop a cogent argument).

Still, we prefer to address issues on their merits where possible, and we will address Savage's argument regarding the continuance, waiver notwithstanding. See Armstrong v. State, 932 N.E.2d 1263, 1270 (Ind. Ct. App. 2010). A trial court's rulings non-statutory motions² for continuance lie within the discretion of the trial court and will be reversed only for an abuse of that discretion and resultant prejudice. Troutman v. State, 730 N.E.2d 149, 151 (Ind. 2000); Jackson v. State, 758 N.E.2d 1030, 1033 (Ind. Ct. App. 2001). An abuse of discretion occurs only where the decision is clearly against the logic and effect of the facts and circumstances. Jackson, 758 N.E.2d at 1033. "[T]here is

² Savage does not contend that his motion for a continuance fell within the provisions of Indiana Code section 35-36-7-1. Moreover, Savage's oral motion does not appear to have conformed with the special statutory requirements and therefore is governed by the highly deferential abuse-of-discretion standard. See Vaughn v. State, 590 N.E.2d 134, 136 (Ind. 1992).

always a strong presumption that the trial court properly exercised its discretion.” Elmore v. State, 657 N.E.2d 1216, 1218 (Ind. 1995).

Here, at the time of Savage’s motion to continue, the case was almost three years old and the trial court had granted several prior motions filed by Savage’s counsel to continue the trial. In his penultimate motion for continuance, Savage had convinced the trial court to continue the trial in order to allow him more time to raise the funds to pay Dr. Layton to testify, but he was obviously unable to do so. And when the trial court granted that last continuance, it specifically warned that no further continuances would be granted. Savage also fails to explain how he was prejudiced by Dr. Layton’s failure to testify. Under these facts and circumstances, the trial court was well within its discretion to deny Savage’s day-of-trial request for yet another continuance.

II. Admission of Statement to Police

Savage also claims that the trial court erred in admitting his statement to the police, claiming that the evidence presented at the hearing on his motion to suppress clearly supported his contention that he was intellectually unable to comprehend the waiver of his Miranda rights. The admission of evidence is within the sound discretion of the trial court, and we will not reverse the trial court’s decision absent a showing of a manifest abuse of that discretion resulting in the denial of a fair trial. Williams v. State, 782 N.E.2d 1039, 1045 (Ind. Ct. App. 2003). The trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before the court. Id. In reviewing the decision, we only consider the evidence in favor of the trial court’s ruling and any unrefuted evidence in the defendant’s favor. Id.

We would again be within our discretion to consider Savage's appellate argument waived for failure to make a cogent argument. His actual argument consists of a recitation of the facts most favorable to his position and a brief summary of the procedural history of his motion to suppress, followed by the following: "Appellant maintains that the statement was inadmissible, given the expert testimony of [Doctors] Parker and Calloway. Both Doctors testified that [Savage] was mentally deficient and unable to knowingly waive his Miranda Rights." Appellant's Br. p. 15. Savage cites no case law, statute, or other relevant authority in support of his claim. His argument is therefore waived. See App. R. 46(A)(8)(a); Smith, 822 N.E.2d at 202-03.

But again, even if we considered the merits of Savage's claim, he would not prevail. As noted above, although both expert witnesses initially testified that Savage lacked ability to comprehend the waiver of his Miranda rights, they both opined on cross-examination that it was also possible for Savage to have understood his rights if each right was sufficiently explained and if the interrogating officer ensured that Savage understood his rights. Moreover, the trial court reviewed the transcript of the interview and noted that the detective who interviewed Savage did indeed go over "each right individually and in great detail with Savage and rephrased words that required explanation in very simplistic language." Appellant's App. p. 144.

This is confirmed by our review of the transcript of the interview. After reading to Savage his Miranda rights, Detective Detrieux explained each of these rights individually, and Savage indicated that he understood them. In fact, it appears that Detective Detrieux was aware that Savage was of low intellect and went to great lengths

to explain Savage's rights in simplistic terms. Savage's argument on appeal is simply a request that we reweigh the evidence and make a factual finding that differs from that of the trial court. This we will not do. Given our standard of review, we cannot say that the trial court manifestly abused its discretion in concluding that Savage's knowingly waived his Miranda rights and in admitting into evidence Savage's statement to the police.

III. Sentencing

Lastly, we address Savage's claim that his sentence is improper. Savage simply claims that given the pre-sentence investigation report and the "medical findings," Savage's eighty-year sentence is not "justified." Appellant's Br. p. 14. To the extent that Savage claims that the trial court abused its discretion in the weight given to the aggravators and mitigators, this is no longer reviewable on appeal. See Lamar v. State, 915 N.E.2d 193, 196 (Ind. Ct. App. 2009) (citing Anglemyer v. State, 868 N.E.2d 482, 493-94 (Ind. 2007)).

Savage also claims that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence otherwise authorized by statute 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." Although we have the power to review and revise sentences, "[t]he principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). As explained in Anglemyer v. State, 868 N.E.2d 482,

491 (Ind. 2007), it is on the basis of Appellate Rule 7(B) alone that a criminal defendant may now challenge his sentence “where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.” On appeal, it is the defendant’s burden to persuade us that the sentence imposed by the trial court is inappropriate. *Id.* at 494.

The nature of Savage’s offenses are particularly heinous, even for the crime of Class A felony child molesting. He forced his penis into the anus of a five-year-old girl on multiple occasions. B.G. testified that Savage placed a pillow over her face to muffle her screams while Savage violated her. B.G. also testified that Savage forced her to perform oral sex on him and that he ejaculated in the child’s mouth. Savage had lived with B.G. and her family since 2003 and took care of B.G. and her brother while their mother worked. Savage abused this position of trust to molest B.G. There was evidence that B.G. was greatly affected by these incidents; she suffers from reactive attachment disorder, meaning that she does not trust adults and caregivers. She will approach and show affection to strangers, but not her mother. She has become tearful and anxious, and she now talks about and simulates sex acts.

Although the nature of the offense alone would support Savage’s eighty-year sentence, his character provides further support for the trial court’s sentencing decision. Savage had a minor history of juvenile delinquency and as an adult had two Class A misdemeanor convictions, one for possession of marijuana and one for battery. He was

given probation in the latter case, but violated his probation twice, and his probation was ultimately revoked. He was also on pre-trial release when he committed the instant offenses. Although Savage's criminal history is not exceptionally grievous, it does not speak well for his character.

After giving due consideration to the trial court's sentencing decision, we cannot say that Savage has met his burden of showing that his eighty-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The trial court did not abuse its discretion in denying Savage's last-minute motion for a continuance, nor did the court abuse its discretion in admitting into evidence Savage's statement to the police. Finally, Savage has not met his burden of showing that his eighty-year sentence is inappropriate in light of the nature of the offense or the character of the offender.

Affirmed.

KIRSCH, J., and VAIDIK, J., concur.