



## STATEMENT OF THE CASE

Darik Morell appeals his conviction and sentence for neglect of a dependent as a class A felony.<sup>1</sup>

We affirm.

### ISSUES

1. Whether there is sufficient evidence to support the conviction.
2. Whether the trial court abused its discretion in admitting evidence.
3. Whether Morell's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

### FACTS

In 2009, Morell lived with his girlfriend, Brittany Fox, and their six-month old son, D.M. They shared the home with Morell's mother and a friend, Tavis Anderson. Morell and Fox had an upstairs bedroom but often slept on the first floor's living room couch.

On March 26, 2009, while Morell's sister took care of D.M., Morell and Fox smoked methamphetamine because they needed "to get stuff around the house done . . . ." (Tr. 664). They also smoked marijuana. Morell had previously used methamphetamine.

During the evening of Saturday, March 28, 2009, Morell's extended family visited him at home, and he participated in a lengthy video-game tournament with several relatives. Later that night, Morell and Fox fell asleep, "head to foot," on the couch with

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<sup>1</sup> Ind. Code § 35-46-1-4.

D.M. (Tr. 370). At some point after 11:30 p.m., Anderson, who was in the basement, heard D.M. crying. He went upstairs and woke Fox. Fox then woke Morell and gave D.M. to him to hold while she prepared a bottle. After preparing the bottle, she gave it to Morell and then fell asleep. When she awoke, she found D.M., not breathing, on the couch. Morell was still on the couch, sleeping. Fox “grabbed” D.M., woke up Morell, and telephoned 911. (Tr. 373).

At 2:48 a.m. on March 29, 2009, Evansville Police Officer Michael Evans received a dispatch to Morell and Fox’s residence regarding a medical emergency. When he arrived at the residence, firefighters with the Evansville Fire Department were performing CPR on D.M. He observed Morell “lying on the couch near where they were working with the child,” with a “cover pulled up over his head.” (Tr. 65). When Officer Evans spoke with Morell, he noticed that Morell “had droopy eye lids” and that “his speech was kind of slurr[ed.]” (Tr. 67). Based on his experience, Officer Evans believed Morell to be “under the influence of some sort of medication or drug.” (Tr. 70).

Officer Evans took Morell next door, to Morell’s sister’s residence, where Morell “laid down on the sofa . . . and he kind of just dozed off . . . .” (Tr. 71). “After awhile,” Morell “came to or regained consciousness” and “asked for a soda . . . .” (Tr. 71-72). Morell then laid back down. As Officer Evans talked with Morell, Morell “was kind of drifting in and out of consciousness.” (Tr. 72).

As the medical personnel were retrieving a stretcher from the ambulance, Morell “kind of awoke for a moment” and “charged the door.” (Tr. 72). Officer Evans “had to

physically hold him back to keep him from charging.” (Tr. 72). After Officer Evans restrained him, they sat down, whereupon Morell again began to “drift[] in and out of consciousness,” until a family member took him to St. Mary’s Medical Center (“St. Mary’s”), where D.M. had been transported.

D.M. arrived at St. Mary’s at approximately 3:30 a.m. Dr. Hiram Brooks, the emergency room physician, noted that paramedics had attempted to resuscitate D.M. D.M., however, “appeared lifeless.” (Tr. 147). D.M. “was in full arrest,” meaning “he had no heart rate[.]” (Tr. 155). Despite their efforts, medical personnel could not resuscitate D.M.

While personnel attempted to resuscitate D.M., Sister Darlene Boyd, St. Mary’s chaplain, took Morell and Fox into a consult room to wait. At one point, Sister Boyd “noticed that [Morell] was stretched out on the couch and he was actually out, he was asleep and he actually had to be aroused” so that Sister Boyd could take him to see D.M. (Tr. 181).

After the coroner examined D.M., Patricia Seibert, a nurse in St. Mary’s Pediatric Intensive Care Unit, “cleaned [him] up”; “put him in a cover”; and placed him on an emergency room cart before “the parents came in to see him.” (Tr. 158). When Morell arrived, he began to cry before lying “across the body, his full weight on the baby and then got quiet.” (Tr. 163). He appeared to be asleep until Seibert roused him by touching his shoulder, startling him.

That same morning, Kelly Whitledge, a case manager from the Vanderburgh County's office for the Indiana Department of Child Services ("DCS"), went to St. Mary's after receiving a report of D.M.'s death. When she arrived, Morell and Fox were in a consult room. During the approximately forty-five minutes that Whitledge stayed with Morell, he "wasn't very coherent" and "kept falling asleep." (Tr. 218). He was lying on a couch and "not responding very well to [Whitledge's] questions." (Tr. 218). When Whitledge asked Morell whether he would "test positive for any illegal substances," he replied "marijuana and meth." (Tr. 222). He admitted to having smoked methamphetamine "within the last day or two . . . ." (Tr. 77).

Whitledge asked Mindy Middleton to come to the hospital to perform a drug test on Morell. Middleton arrived at approximately 4:30 a.m. and observed that Morell "was in a very lethargic state" and appeared to be asleep. (Tr. 275). "[W]hen he would attempt to answer [her] questions, his speech was slurred," and he would nod off in the middle of a sentence. (Tr. 276). At times, Fox had to "nudge[] him to urge him to answer the questions[.]" (Tr. 279-80). Middleton observed that Morell's eyes were "rolling" or "going up or to the side . . . ." (Tr. 280). His condition did not change during the thirty minutes Middleton spent with him.

During that time, Middleton asked Morell "a series of questions that are asked of every individual that [she] drug test[s]" for DCS. (Tr. 277). Morell admitted that he had been using methamphetamine and marijuana. When asked how he ingested the methamphetamine, Morell replied that he smoked it. Tests later confirmed the presence

of pseudoephedrine, methamphetamine, and amphetamine, a by-product of methamphetamine, in Morell's urine and blood. The State did not test for the presence of marijuana in Morell's system.

An autopsy revealed that D.M. died from "respiratory arrest due to mechanical asphyxia" or suffocation due to "unsafe sleeping conditions." (Tr. 253, 254). According to the forensic pathologist, "a great force, pressing on [D.M.'s] chest" and face prevented him from breathing. (Tr. 255). The same "pressure on his chest" caused both lungs to collapse and hemorrhage. (Tr. 256). The autopsy also revealed "a displaced skull fracture" on the back of D.M.'s head, the size of which coincided with the diameter of his baby bottle, as if the bottle had been "pressed against the skull," (tr. 264), with "constant force over a longer period of time." (Tr. 267). The autopsy revealed that D.M.'s stomach was empty.

On April 9, 2009, the State charged Morell with neglect of a dependent as a class A felony. After receiving toxicology reports, the State filed an amended information on December 10, 2009, alleging that Morell committed class A felony neglect of a dependent by "knowingly plac[ing] [D.M.] in a situation that endangered [D.M.]'s life or health by caring for D.M. while under the influence of illegal substances and/or placing D.M. in a place of danger due to the condition of [Morell] . . . ." (App. 108).

On or about March 18, 2010, the State and Morell entered into a plea agreement, whereby Morell agreed to plead guilty to neglect of a dependent as a class B felony.

Morell, however, subsequently filed a motion to withdraw his plea agreement, which the trial court granted on April 28, 2010.

The trial court commenced a three-day jury trial on October 27, 2010. During the trial, Scott Kriger, a forensic toxicologist, testified that methamphetamine initially acts as a stimulant. He further testified, however, that “once you start to excrete that drug from your body, . . . you go through what’s known as a crash period.” (Tr. 318). According to Kriger’s testimony, this process begins approximately twenty-four hours after ingesting methamphetamine and that the symptoms of this period include drowsiness, sleepiness and general decreased alertness. Thus, he testified the person may “appear impaired,” with slurred speech and that “these effects may last for days after the use of methamphetamine.” (Tr. 321). He also testified that levels of methamphetamine and its by-products present in Morell’s samples indicated drug usage within three days prior to the morning of March 29, 2009.

Regarding marijuana, Kriger testified that its “effects significantly decrease over a period of about four hours . . . .” (Tr. 343). He further testified that even if marijuana is “not detectable in [the] blood, there still may be some slight euphoric effects from it or slight impairment effects from it, but compared to the crash effects of methamphetamine, [it] would be minimal.” (Tr. 344).

Morell testified, as did several relatives, that he was not lethargic or sleepy either the night before or the morning of D.M.’s death. They also testified that when he

appeared to be under the influence, he actually was praying. Morell admitted to using both methamphetamine and marijuana prior to D.M.'s death.

Also during trial, the trial court admitted several photographs of the interior of Morell and Fox's residence into evidence. The photographs included two photographs of their bedroom admitted without objection and two photographs of the living room admitted over Morell's objection.

The photographs of the living room show several items lying on the living room floor next to the couch. The photographs depict the living room as it appeared shortly after D.M.'s death. Among the items on the floor is a can of infant formula; Fox testified that before D.M.'s death, she prepared a bottle of formula for him.

The two photographs of the bedroom show several items on the bedroom floor and bed. Contrary to Morell's testimony, the photographs show that a bassinet was not in the room. Morell testified that the bedroom was in disarray because the night he used methamphetamine, he "got a bunch of stuff out of the closet that [his] dad packed up in there and [Fox] was supposed to go through and put it all, rearrange it all and put it in different spots," but she "didn't quite get that done . . . ." (Tr. 614-15). He also testified that he and Fox had used the methamphetamine to give them energy to clean the room.

The jury found Morell guilty as charged. The trial court ordered a pre-sentence investigation report ("PSI") and held a sentencing hearing on November 23, 2010. According to the PSI, Morell had been adjudicated a juvenile delinquent in 1998 for committing acts which, if committed by an adult, would have constituted battery as a

class C felony; driving without a license, a class C misdemeanor; and leaving the scene of an accident, a class B misdemeanor. As an adult, Morell had been convicted of the following in 2007: criminal recklessness as a class A misdemeanor and two counts of driving with a suspended license as a class A misdemeanor. The State also dismissed a possession of marijuana charge in 2008. The PSI further reported that Morell had been found in contempt on four occasions for failing to complete work release programs.

The trial court found Morell's criminal history and D.M.'s very young age, which "mean[t] that the child was unable to care for himself in any way whatsoever," to be aggravating factors and Morell's remorse to be a mitigating factor. (Tr. 820). Finding that the aggravators outweighed the mitigator, the trial court sentenced Morell to forty years.

Additional facts will be provided as necessary.

## DECISION

### 1. Sufficiency of the Evidence

Morell asserts that the evidence is insufficient to support his conviction. Specifically, he argues that the State failed to present evidence that he "'knowingly' endangered D.M." and that his "use of methamphetamine 'resulted' in D.M.'s death." Morell's Br. at 8.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this

structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

a. *Knowingly*

Morell maintains that the State failed to present evidence that he knowingly placed D.M. in danger, where he had ingested methamphetamine two or three nights prior to D.M.'s death and did not feel sleepy or lethargic the night before.

Indiana Code section 35-46-1-4 provides, in relevant part, that a "person, having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly . . . places the dependent in a situation that endangers the dependent's life or health," commits neglect of a dependent. It is a class A felony if the person having the care of the dependent is at least eighteen years old, the dependent is less than fourteen years old, and the situation in which the person has placed the dependent results in the dependent's death. *See* I.C. § 35-46-1-4(3).

"A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35-41-2-2(b). Thus, the statute requires "subjective awareness of a 'high probability' that a dependent has been placed in a dangerous situation, not just any probability." *Gross v. State*, 817 N.E.2d 306, 309 (Ind. Ct. App. 2004). "Because such a finding requires one to resort to inferential

reasoning to ascertain the defendant's mental state, the appellate courts must look to all the surrounding circumstances of a case to determine if a guilty verdict is proper.” *Scruggs v. State*, 883 N.E.2d 189, 191 (Ind. Ct. App. 2008) (quoting *McMichael v. State*, 471 N.E.2d 726, 731 (Ind. Ct. App. 1984), *trans. denied*), *trans. denied*. Regarding a child's exposure to illegal drug use, the Indiana Supreme Court has concluded that “the knowing exposure of a dependent to an environment of illegal drug use poses an actual and appreciable danger to that dependent and thereby constitutes neglect regarding the endangerment requirement of the offense.” *White v. State*, 547 N.E.2d 831, 836 (Ind. 1989).

Here, the State presented evidence that Morell knowingly ingested methamphetamine one or two days prior to D.M.'s death and that he had done so in the past. The State also presented evidence that while methamphetamine initially stimulates the central nervous system, it begins to impair the user after the first twenty-four hours and that the impairment can last for days. During such a period, Morell fell asleep on a couch with D.M. Rather than leaving D.M. with an unimpaired adult, Morell kept D.M. in his care.

Given Morell's actual knowledge that he ingested methamphetamine and had D.M. in his care, the jury could have reasonably inferred that Morell had actual knowledge that a dangerous situation existed. The jury therefore could have drawn the reasonable inference that Morell was subjectively aware of the danger that ingesting methamphetamine posed to D.M. and that he appreciated the danger in which he placed

D.M. See, e.g., *Kellogg v. State*, 636 N.E.2d 1262, 1265-66 (Ind. Ct. App. 1994) (finding that the jury could infer actual knowledge of a dangerous condition where the defendant admitted to consuming alcohol and then driving while his child was a passenger in the vehicle). Accordingly, we find the evidence sufficient to establish that Morell knowingly placed D.M. in a situation that endangered D.M.’s life.

b. *Causation*

Morell contends that “the State failed to establish that [Morell]’s use of methamphetamine on Thursday could possibly cause or did cause D.M.’s death on late Saturday o[r] early Sunday . . . .” Morell’s Br. at 14. Specifically, he argues that the State did not show how his “‘sleepiness’ from an alleged methamphetamine ‘crash’ caused him to roll over on D.M. or how it would have prevented him from realizing this fatal accident.” Morell’s Br. at 16-17.

Contrary to Morell’s assertion, the State did not have to prove that Morell’s drug use directly resulted in D.M.’s death. Rather, the State only had to prove that Morell knowingly placed D.M. in a situation that endangered D.M.’s health or life and that the placement was a proximate cause of D.M.’s death.<sup>2</sup> Cf. *Hurt v. State*, 946 N.E.2d 44, 49-50 (Ind. Ct. App. 2011) (finding that in convicting the defendant of felony disregard of a traffic control device within a highway work zone resulting in death, the State “only had to prove that he recklessly disregarded a traffic control device or devices, and that the disregard caused a death”), *trans. denied*.

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<sup>2</sup> Morell does not contest his age or D.M.’s age.

Here, the State presented evidence that Morell ingested methamphetamine, an illegal drug that causes impairment, before assuming the care of D.M. The jury heard extensive testimony from Officer Evans, DCS affiliates and St. Mary's staff regarding Morell's behavior. Namely, they testified that Morell exhibited several signs of impairment, including slurred speech, drowsiness, and being unresponsive. Given the evidence, the jury could infer that Morell suffered from such impairment when he assumed D.M.'s care, and it is evident that Morell's conduct following his ingestion of methamphetamine was a proximate cause of D.M.'s death. Thus, the State presented sufficient evidence that Morell placed D.M. in a situation that endangered D.M.'s health or life that ultimately resulted in D.M.'s death.

## 2. Admission of Evidence

Morell asserts that the trial court abused its discretion in admitting into evidence testimony that Morell had smoked marijuana on March 26, 2009, and photographs of the interior of Morell's house, depicting its condition shortly after D.M.'s death.

### a. *Marijuana*

Morell argues that the trial court abused its discretion in admitting testimony regarding Morell's marijuana use. He maintains that the evidence was irrelevant and "designed to do nothing more than impugn [his] character," Morell's br. at 20, by "attempting to establish [him] as a habitual drug user to shock the conscience of the jury." Morell's Br. at 21.

Generally, the admission or exclusion of evidence is within the sound discretion of the trial court, and we will reverse the trial court's determination only for an abuse of that discretion. *Redding v. State*, 844 N.E.2d 1067, 1069 (Ind. Ct. App. 2006). In this case, however, the record reveals that Morell failed to object to the testimony regarding his use of marijuana.

By failing to object to the admission of evidence regarding the marijuana use, Morell failed to preserve his challenge to its admissibility. *See Delarosa v. State*, 938 N.E.2d 690, 694 (Ind. 2010). Nonetheless, "a claim waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred." *Id.* The fundamental error exception is extremely narrow and "applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process." *Id.* We apply the exception only in egregious circumstances, such as where there has been "a conviction without proof of an element of the crime despite the lack of objection." *Id.* at 695.

Here, the State presented extensive evidence, including Morell's own testimony, that he had used methamphetamine only two days prior to D.M.'s death and that methamphetamine causes severe and long-lasting impairment following its use. The jury also heard testimony that Morell had used methamphetamine on occasions prior to March 26, 2009. Given this testimony regarding Morell's methamphetamine use, we do not find

that the admission of evidence of Morell's use of marijuana in conjunction with methamphetamine on one occasion constituted fundamental error, if error at all.<sup>3</sup>

b. *Photographs*

Morell further asserts that the trial court abused its discretion in admitting four photographs of the interior of Morell and Fox's residence, arguing that "the evidence of [his] messy house was not relevant" and constituted "impermissible conduct evidence." Morell's Br. at 20. Again, the trial court admitted into evidence, over Morell's objection, two photographs of Morell's living room. Without objection, the trial court also admitted into evidence two photographs of Morell and Fox's bedroom.<sup>4</sup>

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<sup>3</sup> We note that Morell cites to one colloquy between the State and Morell as being inflammatory, claiming that the "State even taunted [Morell] with this evidence in front of the jury by making him recount prejudicial details about how to use marijuana." Morell's Br. at 24. That colloquy reads as follows:

Q Now, when was the last time before the night of March 29<sup>th</sup> . . . that you had smoked marijuana as well?  
A . . . I think it was the same day as we smoked the meth.  
Q So you smoked meth and marijuana on the same day . . . ?  
A Yea, I smoked a bowl, yea.  
Q Smoked a what?  
A A bowl.  
Q Tell the members of the Jury what a bolt [sic] is since I don't have a clue[.]  
A A bowl you put marijuana in.  
Q You put it in a bolt [sic]?  
A A bowl.  
Q Well, explain to us what that is, I don't know.  
A It's a bowl that you buy from the store, it's got a little lid up here and you put marijuana [sic].

(Tr. 684-85). Contrary to Morell's characterization, the State did not elicit the initial testimony regarding the manner in which Morell smoked the marijuana.

<sup>4</sup> We note that although the trial court admitted other photographs of the bedroom and living room into evidence, Morell does not assert that their admission constituted an abuse of discretion. We therefore only address those four photographs specifically cited to in Morell's brief.

As previously noted, “a trial court’s ruling on the admissibility of evidence is reviewed for an abuse of discretion.” *Hape v. State*, 903 N.E.2d 977, 991 (Ind. Ct. App. 2009), *trans. denied*. We will reverse a trial court’s decision only if it clearly against the logic and effect of the facts and circumstances of the case. *Id.* “Even if the decision was an abuse of discretion, we will not reverse if the admission of evidence constituted harmless error.” *Id.*

Here, we do not decide whether the trial court improperly admitted the living room photographs because we conclude any error to be harmless.

No error in the admission of evidence is grounds for setting aside a conviction unless such erroneous admission appears inconsistent with substantial justice or affects the substantial rights of the parties. The improper admission of evidence is harmless error when the conviction is supported by such substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction.

*Lafayette v. State*, 917 N.E.2d 660, 668 (Ind. 2009) (internal citations omitted).

“A reversal may be obtained only if the record as a whole discloses that the erroneously admitted evidence was likely to have had a prejudicial impact upon the mind of the average juror, thereby contributing to the verdict.” *Wales v. State*, 768 N.E.2d 513, 521 (Ind. Ct. App. 2002), *aff’d on reh’g*, 774 N.E.2d 116 (Ind. Ct. App. 2002), *trans. denied*. Thus, “[t]he question is not whether there is sufficient evidence to support the conviction absent the erroneously admitted evidence, but whether the evidence was likely to have had a prejudicial impact on the jury.” *Shepherd v. State*, 902 N.E.2d 360, 364

(Ind. Ct. App. 2009) (quoting *Camm v. State*, 812 N.E.2d 1127, 1137 (Ind. Ct. App. 2004), *trans. denied*), *trans. denied*.

We cannot say that the living room photographs had a prejudicial impact on the jury; again, the photographs do not depict an exceptionally messy room; rather, they depict the usual clutter one would find in a family home, particularly following a family gathering. Moreover, we cannot say that the photographs contributed to the guilty verdict, where the evidence reveals that Morell ingested methamphetamine and took care of his son during the time period that methamphetamine causes severe impairment to the user, and the jury heard extensive testimony from which they could infer that Morell suffered from methamphetamine-induced impairment. Given the evidence, we do not find substantial likelihood that the questioned evidence contributed to the conviction. For these same reasons, we find no fundamental error in admitting the photographs of the bedroom.

### 3. Inappropriate Sentence

Morell asserts that his sentence is inappropriate. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In determining whether a sentence is inappropriate, the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. The advisory sentence for a class A felony is thirty years. I.C. § 35-50-2-4. The potential maximum sentence is fifty years. *Id.* Morell received a sentence of forty years.

Morell argues that his character does not support his sentence as he is “grief-stricken,” loved D.M., and never neglected D.M. prior to the current offense. Morell’s Br. at 26. He also argues that his conduct does not support his sentence because the offense “was entirely accidental and unconsciously done.” Morell’s Br. at 29. Although Morell did not receive the maximum sentence, he argues that he is entitled to a lesser sentence because his case “differs markedly” from other neglect of dependent cases. Morell’s Br. at 28.

As to Morell’s character, we acknowledge that he does not have an extensive criminal history. That criminal history, however, includes a juvenile adjudication for what would constitute class C felony battery. Furthermore, Morell’s history of failing to complete court-ordered programs indicates a lack of respect for the law. Morell also admitted to drug abuse in the past. Thus, the current offense was not the first occasion that Morell had used methamphetamine.

As to his conduct, Morell ingested methamphetamine prior to assuming the care of his six-month-old son, an utterly defenseless and helpless child.<sup>5</sup> In an impaired state, he went to sleep with D.M. on the couch, where he subsequently rolled over onto D.M., suffocating D.M. and applying so much pressure that D.M.'s own bottle crushed his skull. Although he has shown remorse for the death of his son, Morell consistently failed to take responsibility for his actions, calling it a "freak accident" that "could of happened to anybody," and denying the role his drug use played in D.M.'s death. (Tr. 794). In light of the nature of the offense and the character of the offender, we cannot conclude that Morell's total sentence is inappropriate, particularly as it is not the maximum sentence possible.

Affirmed.

FRIEDLANDER, J., and VAIDIK, J., concur.

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<sup>5</sup> Although D.M.'s age is element of the offense, the particularized factual circumstances of the crime, including a victim's young age, may be considered as aggravating circumstances. *See Kile v. State*, 729 N.E.2d 211, 214 (Ind. Ct. App. 2000) (finding no error in finding the six-year-old victim's age as an aggravator in sentencing the victim's father for neglect of a dependent).