

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Geovanny Tellez Mata,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 10, 2023

Court of Appeals Case No.  
22A-CR-881

Appeal from the Marion Superior  
Court

The Honorable Jennifer Prinz  
Harrison, Judge

Trial Court Cause No.  
49D20-2107-F3-20812

**Memorandum Decision by Chief Judge Altice**  
Judges Brown and Tavitias concur.

**Altice, Chief Judge.**

## Case Summary

- [1] Geovanny Tellez Mata appeals his convictions, following a jury trial, of Level 3 felony armed robbery, Level 3 felony criminal confinement, Level 5 felony battery by means of a deadly weapon, and Level 5 felony intimidation. He raises the following restated issue: Did the trial court commit reversible error when it excluded Mata's proffered evidence that the victim previously made statements to another person that being the victim of a crime would be beneficial to his immigration efforts?
- [2] We affirm.

## Facts & Procedural History

- [3] At all times relevant to this appeal, Mata and Ruth Arias (Ruth) were in a relationship. Sometime in 2019, Ruth engaged in an affair with David Hernandez Ramirez (David), who is the victim in this case. The affair lasted until late 2019 or early 2020. Thereafter, Mata was made aware of the relationship, first by David in mid-2020, then by Ruth in February 2021. Ruth described that when she disclosed the affair to Mata, his response was "not good," with Mata being angry and jealous. *Transcript Vol. 2* at 136.
- [4] On the morning of July 1, 2021, Ruth invited David to her home to "talk about things." *Id.* at 139. Later that morning, Mata, using Ruth's phone, sent David a picture of Ruth's "bottom" in her "panties." *Id.* at 171. David also received other sexually suggestive texts from Ruth's phone that day. David arrived at Ruth's home later that afternoon. Ruth was waiting outside when David

arrived, and they went into the detached garage. Alone in the garage, the two hugged and kissed.

[5] After some minutes, Mata and Santiago Amortigui (Santiago), who was a friend of Mata and Ruth, entered the garage through a side door and each was holding a handgun. Mata appeared “really mad” and pointed his handgun at David. *Id.* at 141. Mata ordered David to sit down and told him he “was going to die there.” *Transcript Vol. 3* at 77. David sat in a chair in the middle of the garage, and Mata tied David to the chair with a rope and punched David in the face, stomach, and testicles. Mata also kicked David, and Santiago used a 2x4 piece of wood to hit David’s legs. David recalled that, at one point, Santiago, at Mata’s instruction, handed his gun to Ruth, who pointed it at David.

[6] During this incident, Mata took David’s chain necklace, car keys, and phone and threatened to kill David’s family if David did not leave Indiana in fifteen days. David recalled that Ruth was “laughing with them” as these things occurred and said that she had “accomplished” bringing David to the house. *Id.* at 78, 85.

[7] Mata then untied David, who walked to his car as Mata held a gun to him. When they reached the car, Mata returned David’s keys to him. David drove to a friend’s nearby apartment and used the friend’s phone to call his family and warn them to get out of their apartment. David later explained that he did not call 911 at that time because he was afraid of Mata. David called a nephew, Luis, who, along with Luis’s girlfriend, Susan, came to meet David. When

Luis and Susan arrived, David was crying and looked “distraught,” with blood on his face and unable to walk. *Id.* at 63. Susan called 911 and, at David’s request, interpreted for David.

[8] Indianapolis Metropolitan Police Department (IMPD) Officer Rene Reynoso responded to the 911 call that “related to a robbery of a person with injuries.” *Id.* at 5. Upon his arrival, he observed David on the ground with blood running from his nose, a swollen face, arms, and legs, and marks to his arms that were consistent with rope burns. David appeared scared and nervous and was complaining of pain. David told Officer Reynoso that he had been tied up, beaten, hit with a 2x4, and robbed. He told Officer Reynoso of the location of the home where it occurred and explained that he had gone there to meet a woman he knew. He said that after he entered the garage, two men approached him with handguns drawn. He also told Officer Reynoso that he was threatened to “not say anything” or his family would be “killed.” *Id.* at 10.

[9] IMPD Detective Ivan Ivanov arrived on the scene and observed that David appeared scared, “[i]n a lot of pain,” and could barely walk. *Id.* at 27. Detective Ivanov saw injuries to David’s head and bruising to his arms and legs. He drove David and Officer Reynoso to Ruth and Mata’s home, where David identified Mata, Santiago, and Ruth as those involved in the assault.

[10] Officers arrested Mata, Ruth, and Santiago, and pursuant to a search warrant, Detective Ivanov and others searched the garage and home. There were 2x4s stacked in the garage, and atop the pile of wood was a 9 mm handgun bullet.

Officers also found a rope, which David later identified as the rope that was used to tie him up in the garage.

[11] As part of the investigation, IMPD officers collected the cell phones of Mata, Ruth, and Santiago and conducted forensic analysis and cell phone data extraction on them. The records revealed communication between the three of them on July 1, as well as communication from Ruth to David's phone. Texts suggested that Mata and Ruth had planned to lure David to the house on July 1. The communications included a text from Ruth to Mata at 1:16 p.m. stating, "I'll talk to you about it later . . . about David, if he arrives. So we can finish this once and for all." *Transcript Vol. 2* at 246. At 3:24 p.m., Mata asked Ruth, "So how long is it going to take to arrive?" and fifteen seconds later Ruth told Mata "I'm going to do that thing you told me to do." *Id.* at 248. About two minutes after that, Mata told Ruth, "Tell him that I'm far away" and seconds later Mata said, "Jack him up." *Id.* Police never located the handguns that were held by Mata and Santiago or the items taken from David.

[12] On July 7, 2021, the State charged Mata with Level 3 felony robbery (Count I), Level 3 felony criminal confinement (Count II), Level 5 felony battery by means of a deadly weapon (Count III), and Level 5 felony intimidation (Count IV).

[13] Prior to trial, the State filed a motion in limine seeking to prohibit the admission of any and all references "to victim [David]'s alleged scheme to

obtain a U-Visa<sup>1</sup> by falsifying allegations as the victim of a crime.” *Appellant’s Appendix* at 113. The State’s motion argued that reference to any such alleged scheme to falsify allegations should be excluded under Ind. Evid. Rules 401 and 403, as not relevant and highly prejudicial, and barred by Evid. R. 802 as hearsay.

[14] After hearing argument, the trial court granted the State’s motion, finding that David having told Ruth “at one point in time in 2018 or 2019 . . . that he needed to invent a crime in order to get a U [V]isa is too tenuous in time to this case.” *Transcript Vol. 2* at 115. The trial court explained that “there’s too much time” between the alleged statements and the incident at issue and there was no evidence of an application for a U-Visa based on this incident. *Id.* The court also observed that, pursuant to case law, evidence of one’s status as an unauthorized immigrant “could be viewed as prejudicial towards either side.” *Id.*

[15] A two-day jury trial was held in March 2022. Ruth testified that she and Mata “planned” for David to come to the home that day but maintained that it was Mata’s idea. *Id.* at 138. Specifically, the plan was “all about making [David] think that he was going to come to the house and have sex.” *Id.* at 195. Ruth

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<sup>1</sup> “A U Visa allows victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement in prosecution of criminal activity to apply for a visa to remain in the United States legally.” *Appellant’s Brief* at 5 (citing to Victims of Criminal Activity: U Nonimmigrant Status, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, (Feb. 28, 2022), <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-othercrimes/victims-of-criminal-activity-u-nonimmigrant-status>) David testified that he came to the United States from Mexico in 2007 “without documents.” *Transcript Vol. 3* at 133.

acknowledged that she had entered into a plea agreement for Level 6 felony assisting a criminal and that sentencing, which was left open to the court, had not yet occurred.

[16] During Ruth’s testimony as well as during David’s, Mata raised the matter of David’s purported statements to Ruth about wanting to be the victim of a crime in order to seek a U-Visa. The trial court permitted Mata to proffer the testimony of Ruth outside the presence of the jury. During such, Ruth stated that David had talked about needing a U-Visa the entire time she knew him, most recently in April 2021. When asked by the State if David had talked about getting a U-Visa for this specific situation, Ruth testified, “For this situation? I mean, he always just said somehow, I have to get a visa. I better get beat up or whatever incident that he had in his mind.” *Id.* at 222.

[17] The trial court thereafter affirmed its denial of Mata’s request to present this evidence to the jury because Ruth’s account was “not on point” to this specific incident and, rather, was “something that he’s been talking about for years.” *Id.* at 225. That is, Ruth did not say that David “was going to make it up” for this specific instance, and, to the contrary, testified that David had been beaten and robbed. *Id.* In addition, the court reaffirmed its concern about wading into undocumented immigrant status “as it can be more prejudicial than probative.” *Id.*

[18] In response, Mata urged the court to focus on David’s indication to Ruth that he needed to fake being the victim of a crime, suggesting that the immigration

aspect could be left out in any admitted testimony. The trial court again denied admission of the evidence, stating “I don’t think you’ve gotten to the point where that becomes relevant enough to this for me to go there because it’s not specific enough, it’s not tight enough. It’s just a general statement that he’s made to her.” *Id.* at 227; *see also Transcript Vol. 3* at 126 (court stating in sidebar that exclusion was based both on the timing between when statements were allegedly made and the current incident and on the “non-specificity” of the alleged discussions about it).

[19] The trial court also allowed Mata to make an offer of proof after David’s testimony. David was asked whether Ruth’s testimony – that David had told her “on several occasions” about wanting to fake a crime in order to obtain a visa – was true, and he replied, “Not at all.” *Transcript Vol. 3* at 134. He acknowledged that, about five days after the incident, he called the law office of attorney Oscar Rivas, Jr. – who unbeknownst to David was representing Mata – to ask for advice because David “didn’t know what to do or who to contact,” and the office personnel “asked me what kind of benefit I was seeking” and also mentioned the U-Visa. *Id.* Counsel then asked David, “So in April of 2021, you didn’t talk about a new visa with Ruth?”, to which David replied, “Not at all. We didn’t talk about those things.” *Id.* at 135. The trial court thereafter reaffirmed its previous rulings excluding the evidence, again noting that “Ruth’s testimony doesn’t have any discussion of specificity and [David] has denied making any of those statements.” *Id.* at 136-37.



- [20] In closing arguments, Mata argued that David and Ruth had conspired to fake the crime and blame him, and that Ruth was the ringleader, refuting the State's position that Mata and Ruth planned the attack and enlisted Santiago's help. Mata urged, among other things, that the photographic evidence of David's injuries was not consistent with his testimony about where on his body, with what, and how many times he was hit, noting that no blood was found in the garage or on any of the wood in the garage. And Mata highlighted for the jury that Ruth's and David's stories of what occurred differed in some respects.
- [21] The jury found Mata guilty as charged. Thereafter, on April 1, 2022, the trial court sentenced Mata to concurrent sentences of nine years each for armed robbery and criminal confinement, with two years executed in the Indiana Department of Correction, two years in community corrections, and two years of probation, with the balance of each sentence suspended. The trial court also sentenced Mata to concurrent terms of two years each for battery by means of a deadly weapon and for intimidation. Mata now appeals. Additional facts will be supplied as necessary.

## **Discussion & Decision**

- [22] Mata argues that Ruth's testimony – that over a period of years, and as recently as April 2021, David mentioned that being the victim of a crime would be beneficial to him in obtaining a U-Visa – should not have been excluded. The decision to admit or exclude evidence will not be reversed absent a showing of manifest abuse of a trial court's discretion resulting in the denial of a fair trial. *Allen v. State*, 813 N.E.2d 349, 361 (Ind. Ct. App. 2004), *trans. denied*. As a

general rule, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. *Id.*; see also Ind. Trial Rule 61. We will find an error in the exclusion of evidence harmless if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect the defendant's substantial rights. *Barnhart v. State*, 15 N.E.3d 138, 143 (Ind. Ct. App. 2014).

[23] Mata argues that Ruth's testimony about what David purportedly said to her regarding a U-Visa was relevant "because it could lead the jury to find his testimony less credible" and it was "highly probative" to Mata's theory of defense. *Appellant's Brief* at 13. He argues, "The chance that this motive led a principal witness [David] to fabricate his testimony should have been presented to the jury," especially because only Ruth and David testified to the events that occurred in the garage. *Id.* at 15. Mata acknowledges that Indiana courts have found the risk of unfair prejudice is high when an individual's immigration status is presented to a jury. However, he states that he "was not attempting to attack David's credibility on the basis of his immigration status but rather to provide a motive for why his testimony may be fabricated." *Id.* at 16. He maintains that any risk of unfair prejudice, confusion of the issues, or misleading the jury did not outweigh the probative value of the evidence.

[24] Acknowledging that the proffered testimony from Ruth of what David purportedly told her was hearsay, Mata argues that said evidence fell under

Evid. Rule 803(3),<sup>2</sup> the state of mind exception to the rule against hearsay. Our Supreme Court has identified three situations where evidence of a victim's state of mind is admissible under this exception: "(1) to show the intent of the victim to act in a particular way, (2) when the defendant puts the victim's state of mind in issue, and (3) sometimes to explain physical injuries suffered by the victim." *Hatcher v. State*, 735 N.E.2d 1155, 1161 (Ind. 2000). Mata argues that, in this case, the evidence was being offered to show the intent of the victim to act in a particular way, namely David's intent to act consistently with what he had previously told Ruth, i.e., fabricate the allegations against Mata so as to make himself a victim of a crime.

[25] The State, on the other hand, argues that the unspecific nature of the purported statements made three months before July 1, 2021, would have caused unfair prejudice and confused the jury "as to whether the statements applied to the crimes at issue or not." *Appellee's Brief* at 11. Further, as to the hearsay exception, the State maintains that, at best, David's alleged statements to Ruth "indicated [David's] . . . state of mind in April 2021, rather than his state of mind in July of 2021." *Id.* at 17. We are inclined to agree with the State both

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<sup>2</sup> Evid. R. 803(3), titled "Then-Existing Mental, Emotional, or Physical Condition," provides that the following is not excluded by the rule against hearsay:

A statement of the declarant's then-existing state of mind (such as motive, design, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of the declarant's will.

that the potential for confusion and unfair prejudice outweighed the probative value of the offered testimony and that David's purported statements to Ruth were not admissible under Evid. R. 803(3). Regardless, we find that even if it was error to exclude the evidence, any error was harmless.

[26] As mentioned, “[w]e will not reverse a conviction for an error that does not affect the substantial rights of the defendant.” *Thomas v. State*, 774 N.E.2d 33, 36 (Ind. 2002). Mata argues that the exclusion of the evidence affected his substantial rights because “[w]hen taken as a whole,” the evidence presented to the jury “was not consistent or conclusive” and the proffered evidence was thus particularly necessary in order for the jury to properly evaluate the credibility of Ruth and David. *Appellant’s Brief* at 13, 19. We are unpersuaded by such arguments. The jury heard evidence from Ruth that she and Mata lured David to the home. And it heard from both Ruth and David that David was held at gunpoint, tied up, beaten by hand and with a board, kicked, and threatened that his family would be killed if he did not leave Indiana in fifteen days. Further, police found a stack of 2x4 lumber in the garage and a rope, which David testified was the same rope that Mata used to tie him up. Susan and the officers testified that David was scared, bruised, had blood on his face, and could hardly walk.

[27] In arguing that the evidence was inconsistent, Mata observes that, in a photo that Ruth took of David while he was seated in the garage and before being tied up, David appeared “calm and casual,” that is, unafraid, which was inconsistent with someone that had a gun pointed at him. *Id.* at 19. Mata also

notes that although a stack of wood was found in the garage “no particular piece of 2x4 appeared to be the one used in the assault” as none had blood on it. *Id.* And although David was bleeding when Luis, Susan, and the responding officers encountered him, no blood was found in the garage. At trial, Mata’s counsel highlighted these matters for the jury and further argued David’s injuries should have been worse based on his description of the beating.

[28] As Mata recognizes, “the court on appeal must affirm if the likely impact of an error, when compared with the whole of the record, does not undermine the appellate court’s confidence in the trial court’s outcome.” *Id.* at 18 (quoting Edward W. Najam, Jr. & Jonathan B. Warner, Indiana’s Probable-Impact Test for Reversible Error, 55 IND. L.R. 27 (2022)). While we do not disagree with Mata that “[t]he credibility of David and Ruth’s testimony was paramount to the jury’s verdict,” *id.* at 19, we find that the jury heard enough evidence to enable it to weigh David’s credibility, as well as Ruth’s, and any error in denying the admission of David’s alleged statements to Ruth made some months prior does not undermine our confidence in the outcome reached in the trial court.

[29] Judgment affirmed.

Brown, J. and Tavitas, J., concur.