MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Larry C. Perry, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 28, 2021

Court of Appeals Case No. 21A-CR-201

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D06-2006-F6-764

Mathias, Judge.

[1] Larry Perry, Jr., was convicted in Allen Superior Court of Level 6 felony invasion of privacy. Larry now appeals his conviction, presenting a single issue

for review: whether the trial court abused its discretion under Indiana Evidence Rule 404(b) when it admitted evidence of other acts. Concluding that even if the court erred, any such error was harmless, we affirm.

Facts and Procedural History

[2] Larry's wife, Margaret Jennison, was pregnant with the couple's daughter when, in July 2019, she alleged that a violent incident between her and Larry occurred in her home (the "July 2019 incident"). Tr. pp. 15–16; 89–91. As a result of that incident, the State filed domestic battery and criminal confinement charges against Larry.[1] *See* Ex. Vol. Conf. at 7–15, 16. In that case, the trial court released Larry from custody pending trial and issued a no-contact order as a condition of his release. *Id*. at 4–5; Tr. p. 87. The order prohibited Larry from contacting Margaret "in person, by telephone or letter, through an intermediary, or in any other way, directly or indirectly." Ex. Vol. Conf. at 4. He was also "forbidden to enter or stay" at Margaret's home, "even if invited to do so." *Id*. at 5.

[3] The couple's daughter was born that winter, in January 2020. A few months later—with the no-contact order still in place—Margaret invited Larry to her home. *Id.* at 100–02. Margaret asked him to come over because she "loved him" and "still wanted to try to make things work." *Id.* at 92. So, Larry spent a

[1] Those charges were filed under Cause No. 02D06-1909-F5-000302.

night at Margaret's home with her and their daughter. The three of them also spent the next morning, April 1, 2020, at Margaret's home.

[4] Later that morning, Margaret and Larry argued. The argument eventually moved beyond words, and Margaret felt "scared for [her] life." *Id.* at 94. She text-messaged her mother to "come over asap." Ex. Vol. Conf. at 33. She also explained to her mother, "He just choked me . . . I can't call cops he'll take my phone and try to kill me again." *Id.* at 33–34. Her mother then called 911, and law enforcement arrived at Margaret's home shortly thereafter.

[5] The State charged Larry with four counts related to the April 2020 incident: (I) domestic battery in the presence of a child, a Level 6 felony; (II) domestic battery with a prior conviction for domestic battery, a Level 6 felony; (III) strangulation, a Level 6 felony; and (IV) invasion of privacy with a prior conviction for invasion of privacy, a Level 6 felony. The trial court scheduled a two-day jury trial on these charges.

[6] Several weeks before the trial, the State filed notice of its intent to present evidence under Indiana Evidence Rule 404(b). Specifically, the State intended to present evidence detailing the July 2019 incident, even though the upcoming trial concerned only the charges arising from the April 2020 incident. Appellant's App. 49. The court held a hearing on the admissibility of the State's proposed 404(b) evidence on September 25, 2020. Over Larry's objection, the court granted the State's request to admit the evidence.

[7] Following the two-day jury trial, which began on December 1, the jury found Larry not guilty of strangulation. And because the jury hung on the two domestic battery charges, the State dismissed those counts. Ultimately, the jury found Larry guilty of committing Level 6 felony invasion of privacy, and the court sentenced Larry to two years in the Department of Correction.

[8] Larry now appeals his conviction.

Discussion and Decision

[9] Larry contends that the trial court abused its discretion when it admitted evidence detailing the July 2019 incident, and that, as a result, his conviction should be reversed. Because the admission of this evidence, even if erroneous, did not affect Larry's substantial rights, we disagree.

[10] Trial courts have broad discretion in ruling on the admissibility of evidence. *Griffith v. State,* 788 N.E.2d 835, 839 (Ind. 2003). We will disturb a court's evidentiary ruling only where it is shown that the court abused its discretion. *Id.* An abuse of discretion occurs if a trial court's decision to admit or exclude evidence is clearly against the logic and effect of the facts and circumstances before it. *Turner v. State*, 953 N.E.2d 1039, 159 (Ind. 2011). We will disregard an error in the admission of evidence as harmless unless the error affects a party's substantial rights. *Luke v. State*, 51 N.E.3d 401, 416–17 (Ind. Ct. App. 2016).

[11] Larry specifically argues that the trial court abused its discretion under Indiana Evidence Rule 404(b) when it permitted Margaret to testify to the July 2019

incident, which was not the incident giving rise to the charges in this case. Rule 404(b) provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Ind. Evidence Rule 404(b). However, "[t]his evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." *Id*.

[12] Rule 404(b) is designed to prevent juries from assessing a defendant's present guilt on the basis of his propensities—the so-called "forbidden inference." *Whitham v. State*, 49 N.E.3d 162, 167 (Ind. Ct. App. 2015). In assessing the admissibility of 404(b) evidence, a trial court must (1) determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act, and (2) balance the probative value of the evidence against its prejudicial effect pursuant to Indiana Evidence Rule 403. *Embry v. State*, 923 N.E.2d 1, 9 (Ind. Ct. App. 2010). Rule 403 provides that relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice" or "misleading the jury," among other dangers. Evid. R. 403.

[13] Here, we need not consider whether the probative value of the State's 404(b) evidence was outweighed by a danger of unfair prejudice because even if the trial court erred in admitting the evidence, such error was harmless. We will disregard the erroneous admission of evidence as harmless unless it affects a party's substantial rights. *Luke*, 51 N.E.3d at 416–17. To determine whether

Larry's substantial rights were violated, we consider "the probable impact of that evidence upon the jury." *Goldsberry v. State*, 821 N.E.2d 447 (Ind. Ct. App. 2005) (quoting *Evans v. State*, 727 N.E.2d 1072, 1080 (Ind. 2000)). On the unique facts and circumstances of this case, we conclude that the State's evidence detailing the July 2019 incident did not impact Larry's conviction for invasion of privacy.

[14] "A person who knowingly or intentionally violates . . . a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance . . . commits invasion of privacy." Ind. Code § 35-46-1-15.1. The State proved that Larry's no-contact order prohibited him from directly or indirectly contacting Margaret, and from visiting Margaret's home, even if she invited him over. The parties do not dispute the validity of the no-contact order. And Margaret testified that Larry was with her at her home on April 1, 2020. Margaret's testimony concerning the July 2019 incident did not impact the jury's determination of guilt on the invasion of privacy charge.[2] Therefore, the alleged error in the trial court's admission of evidence related to the separate July 2019 incident is, at most, harmless error.

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[2] Larry points out that no one except Margaret claimed to have witnessed his presence at her home on April 1. He further claims that "[w]ithout her statements the remaining evidence would provided [sic] circumstantial evidence that, at most, someone other than [Margaret] could have been in the home." Appellant's Br. at 17. However, these claims seem to suggest that the State failed to present sufficient evidence that he violated the no-contact order. We note that Larry has not raised sufficiency as a separate issue. Moreover, these claims amount to a request that we reweigh the evidence, which we will not do. *McGill v. State*, 160 N.E.3d 239, 246 (Ind. Ct. App. 2020).

Conclusion

[15] For all of these reasons, even if the court's decision to admit the State's 404(b) evidence was error, it was harmless error. We therefore disregard it, and it cannot serve as the basis for reversal of Larry's conviction.

Affirmed.

Riley, J., and Crone, J., concur.