

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Michael Preston Polley,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 9, 2022

Court of Appeals Case No.  
21A-CR-2411

Appeal from the Wayne Superior  
Court

The Honorable Charles K. Todd,  
Jr., Judge

Trial Court Cause No.  
89D01-2009-F5-80

**Altice, Judge.**

## Case Summary

[1] Michael Preston Polley appeals his convictions for domestic battery, a Level 5 felony, domestic battery, a Level 6 felony, and strangulation, a level 6 Felony. Polley argues that these convictions must be reversed because the trial court abused its discretion in admitting evidence of his previous acts of domestic violence against the victim.

[2] We affirm.

## Facts and Procedural History

[3] Polley and C.P. married in July 2015 and separated in 2019. In September 2020, the couple participated in marriage counseling in an attempt to reconcile. At the time, C.P. was living in an apartment in Centerville with the couple's two-year-old daughter, P.P.

[4] On September 20, 2020, C.P. invited Polley to her apartment to spend time with P.P. and stay the night. After putting P.P. to bed, C.P. took her prescription sleeping pill and fell asleep around 10:00 p.m. Approximately three hours later, C.P. woke up because she heard P.P. crying. After tending to P.P. and starting a movie for her, C.P. went into the kitchen and noticed that Polley had left a note on the kitchen table. The note stated, "Wife, I went to

the bar so I could think about the two guys texting you. Took care of the baby also.” *Transcript Vol. II* at 212. C.P. realized that Polley had left the apartment after seeing text messages on her phone that she had received from other men.

[5] Sometime later, Polley returned to C.P.’s residence and opened the front door with a key that he had taken from C.P.’s apartment. C.P. was in her bedroom with P.P. and both were awake. C.P. believed that Polley was intoxicated because he smelled of alcohol, was slurring his words, and was belligerent and combative. The couple started to argue and Polley eventually got on top of C.P. and tried to grab her phone from her. He then put his hand on C.P.’s throat and pinned her down, which caused C.P. severe pain and restricted her ability to breathe. The couple continued to struggle and C.P. was eventually able to kick Polley off her.

[6] When C.P. got up and walked into P.P.’s room, Polley followed and again grabbed C.P., got on top of her, and choked her. Polley pushed C.P.’s head against the bed frame in such a way that restricted her breathing. Although C.P. managed to momentarily escape from Polley, he pinned her down again and displayed a knife. Polley held the knife to C.P. and told her that he was going to kill her. As the altercation continued, C.P.’s hand was cut by the knife.

[7] C.P. was eventually able to shove Polley out of her apartment. As Polley was walking through the parking lot, he punctured and deflated two of C.P.’s car tires with the knife. C.P. called 911, and Centerville Police Department Officer

Adam Hampton met C.P. at her residence. As C.P. was explaining what had occurred, Officer Hampton observed redness around C.P.'s neck, blood on her arm and hand, abrasions on her side, and redness on her legs. Another police officer located Polley in the vicinity and arrested him.

- [8] On September 25, 2020, the State charged Polley with Count I, domestic battery by means of a deadly weapon, a Level 5 felony; Count II, domestic battery, a Level 5 felony; Count III, domestic battery, a Level 6 felony; and Count IV, strangulation, a Level 6 felony. The State also alleged that Polley was a habitual offender.
- [9] On July 19, 2021, Polley filed a notice objecting to the State's presentation of prohibited evidence at trial under Indiana Evid. Rule 404(b) regarding Polley's previous conviction for domestic battery. Prior to the presentation of evidence at Polley's jury trial that commenced on August 3, 2021, the trial court conducted a hearing outside of the jury's presence to address Polley's contention that allowing the jury to hear about prior incidents of domestic violence amounted to inadmissible character evidence under Evid. R. 404(b). Specifically, the State wanted to introduce evidence of a domestic violence incident between C.P. and Polley that occurred on April 19, 2019, which resulted in Polley's conviction. The State also wanted to elicit C.P.'s testimony about another episode of domestic violence that occurred approximately one week before the April 19 incident where C.P. required stitches after Polley hit her. The State argued that the evidence was admissible to establish motive and to demonstrate the hostile relationship of the couple.

[10] At the conclusion of the hearing, the trial court determined that the evidence was admissible to prove motive and the relationship of the parties. The trial court noted that “any time you have a prior bad act, ... there’s prejudice to it, that’s why there’s a weighing process.” *Transcript Vol. II* at 202. The trial court further observed that while C.P. testified at the hearing about numerous instances of Polley’s abuse, the State would focus during trial on only two episodes, which would effectively limit the prejudice that would inure to Polley.

[11] After C.P. testified about those two incidents at trial, the trial court instructed the jury that “[e]vidence of prior misconduct would not be admitted to demonstrate the defendant’s character or to prove that the Defendant acted in conformity with that prior conduct” and the jury was not to consider it for that purpose, but instead that evidence of prior misconduct “would be considered for purposes of motive of the Defendant and the relationship of the parties.” *Id.* at 239, 241. Following the presentation of evidence, the jury found Polley guilty of two counts of domestic battery and one count of strangulation but acquitted him of the charge of domestic battery that he allegedly committed by means of a deadly weapon. Polley then filed a notice of intent to admit to being a habitual offender.

[12] On October 1, 2021, the trial court conducted a sentencing hearing and found Polley to be a habitual offender pursuant to his admission. The trial court then sentenced Polley to an aggregate term of six years of incarceration on the convictions.

[13] Polley now appeals.

## Discussion and Decision

[14] Polley argues that his convictions must be reversed because the trial court abused its discretion in admitting evidence about prior incidents of domestic violence. Polley claims that such evidence was erroneously admitted because the prior batteries lacked probative value, showed his propensity to batter C.P. in violation of Evid. R. 404(b), and permitting the jury to hear about those incidents unfairly prejudiced him.

[15] The trial court has broad discretion in ruling on the admissibility of evidence. *Griffith v. State*, 788 N.E.2d 835, 839 (Ind. 2003). We will disturb its ruling only upon a showing of abuse of that discretion. *Timberlake v. State*, 690 N.E.2d 243, 255 (Ind. 1997). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *McClendon v. State*, 910 N.E.2d 826, 832 (Ind. Ct. App. 2009), *trans. denied*.

[16] Evid. R. 404(b)(1) states 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.” However, that evidence may be admissible for other purposes, such as to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Evid. R. 404(b)(2).

[17] In assessing the admissibility of evidence under Evid. R. 404(b), the trial court must first “determine whether 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.” *Hicks v. State*, 690 N.E.2d 215, 219 (Ind. 1997); *see also Iqbal v. State*, 805 N.E.2d 401, 406 (Ind. Ct. App. 2004). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Hicks*, 690 N.E.2d at 219-20; *see also* Indiana Evid. R. 401. When inquiring into relevance, the trial court “may consider any factor it would ordinarily consider under Rule 402.”<sup>1</sup> *Hicks*, 690 N.E.2d at 219-20. Those factors include the similarity and proximity in time of the prior acts, as well as tying the prior acts to the defendant. *Id.* The rule does not *require* that the prior bad acts be similar or close in time to the charged offense to be relevant. *Id.* at 220. If the evidence is found to be relevant, the trial court must then “balance the probative value of the evidence against its prejudicial effect.” *Id.* at 221.

[18] Numerous cases have held that “where a relationship between parties is characterized by frequent conflict, evidence of the defendant’s prior assaults and confrontations with the victim may be admitted to show the relationship between the parties and motive for committing the crime.” *Id.* at 222; *Iqbal*, 805

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<sup>1</sup> Indiana Evid. Rule 402 provides that “Relevant evidence is admissible unless any of the following provides otherwise: (a) the United States Constitution; (b) the Indiana Constitution; (c) a statute not in conflict with these rules; or (e) other rules applicable in the courts of this state.”

N.E.2d at 408. Thus, when the defendant and the victim have a frequently hostile relationship, evidence of those prior hostilities “are ... usually admissible.” *Hicks*, 690 N.E.2d at 222 (quoting *Ross v. State*, 676 N.E.2d 339, 346 (Ind. 1996)). And when prior acts of domestic violence are directed against the same partner, evidence of the prior acts is admissible and demonstrates the defendant’s hostility toward the partner. *Whitham v. State*, 49 N.E.3d 162, 166-67 (Ind. Ct. App. 2015), *trans. denied*. That hostility, “in turn, may be the motive for the charged act of domestic violence.” *Id.* Evidence of motive “is always relevant in the proof of a crime.” *Wilson v. State*, 765 N.E.2d 1265, 1270 (Ind. 2002).

[19] In this case, the relationship between Polley and C.P. was characterized as one of frequent and hostile conflict. Such hostility existed for years. C.P. testified outside of the presence of the jury about numerous incidents where Polley had battered her. Thus, evidence of Polley’s prior incidents of domestic violence and his prior conviction for domestic battery against C.P. were relevant to show the nature of the relationship between Polley and C.P. *See, e.g., Wilson*, 765 N.E.2d at 1270-71 (holding that “evidence of the defendant’s other crimes, wrongs or acts were necessary for the jury to understand the relationship between the victim ... and the defendant” and the admission of the challenged evidence did not violate Rule 404(b), particularly in light of the trial court’s limiting instruction and the “thorough jury admonishments limiting the use of the evidence”). Moreover, the evidence of the prior domestic violence episodes demonstrated Polley’s pattern of hostility towards C.P., and that hostility was

admissible to prove Polley's motive for committing the charged offenses. *See Whitham*, 49 N.E.3d at 167.

[20] We note, however, that even if evidence is relevant to show motive and the relationship between parties, it may still be inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice pursuant to Indiana Evid. R. 403.<sup>2</sup> *See Hicks*, 690 N.E.2d at 221.

[21] In this case, we agree with the State's proposition that the trial court properly balanced the probative value of the evidence against its prejudicial effect by limiting the amount of admissible character evidence that could be presented to the jury. *See Iqbal*, 805 N.E.2d at 401. More specifically, although C.P. testified outside of the jury's presence about numerous episodes of violence during the couple's relationship, the State and the trial court limited the evidence presented to the jury to only two prior instances of domestic violence. Moreover, the trial court provided the jury with a specific limiting instruction that it was to consider Polley's prior bad acts only as to the issue of the couple's relationship and Polley's motive for battering C.P.

[22] For all these reasons, we conclude that the admission of the challenged evidence was relevant and did not violate Evid. R. 404(b). We further conclude that the trial court recognized and evaluated the probative value of that

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<sup>2</sup> Evid. R. 403 states in pertinent part that relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice."

evidence and the danger of unfair prejudice that would result to Polley. Thus, we decline to find that the trial court abused its discretion in admitting evidence of the two prior incidents of domestic violence.

[23] Judgment affirmed.

Vaidik J. and Crone, J., concur.