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IN THE COURT OF APPEALS OF INDIANA

Rodrick L. Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 2, 2022

Court of Appeals Case No. 21A-CR-2089

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D05-2007-F3-57

Najam, Judge.

Statement of the Case

[1] Rodrick L. Davis appeals his convictions for burglary, as a Level 3 felony, domestic battery, as a Level 6 felony, and invasion of privacy, as a Level 6 felony. Davis raises two issues for our review, which we restate as:

1. Whether the trial court abused its discretion when it admitted evidence of Davis's subsequent bad acts.

2. Whether the State presented sufficient evidence to support his conviction for Level 3 felony burglary.

[2] We affirm.

Facts and Procedural History

[3] In July 2020, A.K. lived in a house in Allen County with her fourteen-year-old autistic son and her thirteen-year-old daughter. Davis was A.K.'s "on-again/off-again" boyfriend, and the two had been dating and living together for "two years, going on three." Tr. Vol. 2 at 130, 182. At the time the events relevant to this appeal took place, Davis was staying at A.K.'s house, despite the fact that A.K. had a protective order against Davis that had been issued in a separate case and was in effect since April 2020. Davis also had a key to the house, but he was not on the lease and did not pay any of the household bills.

[4] On July 17, A.K. left her home and went to work in the early hours of the day; her shift began at 4:15 a.m. and ended sometime between 2:00 and 4:00 p.m. During her entire shift, Davis "kept blowing [her] phone up, constantly calling [her] cell phone and . . . work phone . . . over 100 times." *Id.* at 134. And the two argued "back and forth." *Id.* at 134. Davis had drunk heavily the night before, and A.K. testified that "his drunkness [sic] stayed with him" into the following day. *Id.*

[5] Later that day, Davis attended a family gathering in a local park, and he was not at A.K.'s house when she arrived home from work. Davis consumed alcohol at the party, and he called A.K. "between maybe 30 and 40 times." *Id.* at 136. The two continued to argue, "going back and forth over the phone." *Id.* at 135. Davis told A.K. repeatedly that he wanted to come to her house, and A.K. told Davis not to come because she "knew he was drunk" and that "if he came over that he was going to jail." *Id.* A.K. also contacted one of Davis's brothers and told the brother, "[D]on't bring [Davis] back to my house tonight or else he's going to jail." *Id.* The last time A.K. spoke with Davis over the phone that day, Davis told her, "B[***]h, I'll be there." *Id.* at 136.

[6] After the last call ended, A.K. pulled the couch in front of her front door and told her daughter that, if Davis came to the house, she and her brother should "run out the back door and run over to [a family member's house.]" *Id.* A.K. and her daughter sat on the couch for "about an hour" and kept watch for Davis. *Id.* at 137. Eventually, A.K. became tired, left the couch, and walked toward her bedroom. Her daughter remained seated on the couch. However, before A.K. reached her bedroom, Davis arrived at around 7:15 p.m., and he began to kick and knock on the front door. A.K. ran back to the couch and jumped on it. She told her daughter and son to leave the house through the back door because she "wanted them to be safe and not have to see anything." *Id.* at 138.

[7] Davis used his key to unlock the front door. A.K. "tried keeping [the couch] pushed up against the [front] door," but Davis was able to push the door open.

Id. at 137. Davis entered the house, and he immediately confronted A.K. He and A.K. began to yell at each other. A.K. grabbed a can of mace, sprayed Davis in the face, then tried to push him out the front door. At some point, A.K. ran around the couch and exited her house through the front door. Davis, who remained inside of the house, tried to close the front door and lock A.K. out of the house, but A.K. ran back to the house and stuck her hand in the doorframe. A.K. sprayed Davis with mace for approximately two minutes—until the can was empty—and Davis slammed the door against A.K.'s hand ten to twenty times. He then opened the front door, "charg[ed]" toward A.K., and punched her in the face. *Id.* at 141. A.K. testified that "blood [was] everywhere" and she "couldn't breathe." *Id.* at 140, 141. She then began to walk along the sidewalk to her relative's house so that she could check on her children. Davis walked back inside of the house.

[8] Someone placed a call to 9-1-1, and police officers with the Fort Wayne Police Department responded to the scene. The officers saw A.K. walking along the sidewalk and observed that she was bleeding. Detective Calvin Dubose, who also arrived on-scene, interviewed A.K. and observed that she was "crying, visibly upset, and still bleeding"; she had blood "coming down her face"; and her right hand was swollen. *Id.* at 174. She told the detective that Davis hit her with his fists. Patrol Officer Aaron Bloomfield noticed that A.K. was crying and appeared "staggered, a bit dazed . . . [and s]he didn't have a normal stride that you would perceive as normal for a human." *Id.* at 180. Officer Bloomfield called for an ambulance and took photographs of A.K.'s injuries,

which included a broken nose and a sprained wrist. Medical personnel treated A.K.'s injuries at the scene.

[9] After tending to A.K., the officers surrounded A.K.'s house and sent a police dog inside. The officers followed and found that the couch partially blocked the front door, and household items had been knocked over. The officers proceeded into the kitchen and saw Davis standing at the kitchen sink. He appeared angry, and his face was wet. He told the officers that he had been sprayed with mace and that he was trying to clean his face. Officer Bloomfield observed "signs of intoxication" in Davis. *Id.* at 184. Davis was arrested and transported to jail.

[10] On July 22, the State charged Davis with burglary, as a Level 3 felony; domestic battery, as a Level 6 felony; invasion of privacy, as a Level 6 felony; and residential entry, as a Level 6 felony. Five days later, the court entered a no-contact order, directing that Davis have no contact with A.K. On September 22, the State amended the charging information to include a habitual offender enhancement, and on October 2, November 3, and December 9, the State filed separate informations against Davis for contempt of court, alleging in each that Davis had violated the no-contact order.

[11] While in jail, Davis used the jail-house phone to place over one hundred calls to A.K.'s phone, and he spoke with her twenty to fifty times between July 18 and August 24. He tried to convince A.K. to change her story and testify in his defense. In the initial calls, A.K. was angry with Davis, and she indicated that

she intended to cooperate with the State in its prosecution of Davis. However, at Davis's insistence, she recanted and changed her account of the July 17 incident, telling the prosecutor and Davis's lawyer that what took place on July 17 was an accident, that she sustained injuries because she sprayed Davis with mace, Davis did not mean to hurt her, and she lied about the July 17 incident to get Davis in trouble and out of her life. Ultimately, however, A.K. agreed to testify for the prosecution.

[12] On April 28, 2021, the State filed a notice under Indiana Evidence Rule 404(b)—evidence of crimes, wrongs, and other acts—of its intent to introduce evidence of two additional incidents of domestic violence that occurred between Davis and A.K., one that occurred in April 2020, and another that occurred on December 4, 2020. On June 10, 2021, the trial court granted the State's request to admit the December 4 evidence but denied the request to admit the April 2020 evidence. The court's order provided in relevant part that the December 4 evidence was "relevant and probative to the parties' hostile relationship and goes to the defendant's motive, intent, and state of mind." Appellant's App. Vol. 2 at 131.

[13] On June 22-24, 2021, the court held a three-day jury trial. At trial, A.K. testified for the State and against Davis, despite her earlier recantations. During the trial, the State introduced the December 4 evidence, which included A.K.'s testimony regarding the domestic violence that occurred that day, and photographs of the injuries A.K. sustained from the December 4 incident. The court noted and overruled Davis's objection and allowed A.K. to testify that, on

December 4, A.K. arrived home from work around 2:00 p.m. to find her daughter outside of their home and crying. A.K. entered the house and found Davis passed out on the couch, despite the no-contact order that had been issued. Davis was "extremely intoxicated" and the house was "trashed." Tr. Vol. 2 at 148. A.K.'s daughter's laptop computer had been "completely torn apart." *Id.* When A.K. tried to wake Davis, he called her derogatory names and punched her "so hard it was literally like blood [was] on the ceiling and on the walls." *Id.* at 149. He then flicked the hot ashes from a cigarette onto her face. Davis made A.K. take off her clothes and go into the bathroom to clean her face. The two then had sex "[b]ecause [Davis] wanted to." *Id.* at 150. A.K. further testified that she had "always been self-conscious of [her] body, and [Davis ordering her to take off her clothes] was just one of his ways to torture [her] more that night." *Id.* After the incident, A.K. went to the hospital for treatment because "the pain just became unbearable." *Id.* at 152.

[14] During final instructions, the court provided a limiting instruction and advised the jury that the December 4 evidence was admitted "solely on the issue of the relationship of the parties" and that it "should not be considered on the ultimate issue of guilt or innocence of the Defendant[.]" Tr. Vol. 3 at 43. At the conclusion of the trial, the jury found Davis guilty of Level 3 felony burglary and domestic battery, invasion of privacy, and residential entry, as Level 6

felonies.[1] At sentencing, the court vacated the residential-entry count due to double jeopardy concerns and sentenced Davis to concurrent sentences of fifteen years for the burglary count and two-and-one-half years each for the counts of domestic battery and invasion of privacy. This appeal ensued.

Discussion and Decision

Issue One: Evidence Rule 404(b)

[15] Davis contends that the trial court abused its discretion when it admitted the December 4 evidence. As our Supreme Court has explained:

> Generally, a trial court's ruling on the admission of evidence is accorded a great deal of deference on appeal. Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion and only reverse if a ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights.

Hall v. State, 36 N.E.3d 459, 466 (Ind. 2015) (citations and quotation marks omitted).

[16] Indiana Evidence Rule 404(b) generally prohibits "[e]vidence of a crime, wrong, or other act . . . to prove a person's character in order to show that on a

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[1] In the second phase of the jury trial, held to determine whether Davis was a habitual offender, Davis's counsel moved for, and the trial court granted, a directed verdict on the habitual offender enhancement. After the jury was excused, the court heard arguments on the three contempt-of-court informations that the State had filed and ultimately found Davis in contempt of court under the first information only. The trial court sentenced Davis to ninety days for contempt, to be served consecutive to his sentence in the instant case.

particular occasion the person acted in accordance with the character." But such 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.* And Rule 404(b)'s list of permissible purposes is illustrative but not exhaustive. *Hicks v. State*, 690 N.E.2d 215, 219 (Ind. 1997).

> Evidence Rule 404(b) is designed to prevent the jury from making the "forbidden inference" that prior wrongful conduct suggests present guilt. *Halliburton v. State*, 1 N.E.3d 670, 681 (Ind. 2013) (citing *Byers v. State*, 709 N.E.2d 1024, 1026-27 (Ind. 1999)). Or, as stated in *Bassett v. State*, 795 N.E.2d 1050, 1053 (Ind. 2003), the purpose behind Evidence Rule 404(b) is to "prevent[ ] the State from punishing people for their character, and evidence of extrinsic offenses poses the danger that the jury will convict the defendant because . . . he has a tendency to commit other crimes." (Internal quotation omitted). In assessing the admissibility of evidence under Evidence Rule 404(b), the trial court must first 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 then balance the probative value of the evidence against its prejudicial effect pursuant to Evidence Rule 403. *Halliburton*, 1 N.E.3d at 681-82 (citing *Wilson v. State*, 765 N.E.2d 1265, 1270 (Ind. 2002)). The effect of Rule 404(b) is that evidence is excluded only when it is introduced to prove the forbidden inference of demonstrating the defendant's propensity to commit the charged crime. *Rogers v. State*, 897 N.E.2d 955, 960 (Ind. Ct. App. 2008), *trans. denied*.

Laird v. State, 103 N.E.3d 1171, 1176-77 (Ind. Ct. App. 2018), *trans. denied*.

[17] Davis maintains that the December 4 evidence should have been excluded under Evidence Rule 404(b) as "impermissible propensity evidence" because,

according to Davis, the evidence "does not demonstrate [his] intent or motive" regarding the July 17 incident or his state of mind on that day. Appellant's Br. at 19, 23. Davis acknowledges that "[p]rior assaults or confrontations that are close in time to the presently charged conduct are reflective of a defendant's motive for the presently charged conduct." *Id.* at 24. However, he argues that "when the uncharged acts occur *after* the presently charged conduct," the acts "do not give rise" to the inference that the present conduct is part of a "series of events that led to the present charges." *Id.* (emphasis added). Davis asserts that "successive assaults are materially different from prior assaults." *Id.* And he maintains that "future hostility cannot show" that the parties were hostile "at the time of the presently charged conduct" or that "the present conduct was just the latest evidence of the parties' past hostility." *Id.* at 25.

[18] The State contends that the challenged evidence was not admitted to show Davis's propensity to commit the crimes that occurred on July 17; rather, it was admitted to explain Davis's intent "when he forced his way into A.K.'s house . . . and committed domestic battery" and to explain to the jury "A.K.'s apparent decision to recant and then reverse her recantation and testify against Davis." Appellee's Br. at 11. The State further contends that, if there was any error in the admission of the evidence, the error was harmless.

[19] We note that, although Rule 404(b) cases typically involve the issue of whether *prior* bad acts of the defendant are admissible, the wording of Rule 404(b) does not suggest that it only applies to prior bad acts and not subsequent ones. *Southern v. State*, 878 N.E.2d 315, 322 (Ind. Ct. App. 2007) (emphasis in

original), *trans. denied.* Therefore, when determining the admissibility of evidence of subsequent crimes, wrongs, or other acts, it is appropriate to use the Evidence Rule 404(b) test. *Id.* (citations omitted).

Intent

[20] The intent exception under Evidence Rule 404(b) is available when a defendant goes beyond simply denying the charged culpability and affirmatively alleges a particular contrary intent, whether in opening statement, by cross-examination of the State's witnesses, or by presentation in the defendant's own case-in-chief. *Thompson v. State*, 15 N.E.3d 1097, 1102 (Ind. Ct. App. 2014). When a defendant alleges a particular contrary intent at any time during trial, "'the State may respond by offering evidence of prior crimes, wrongs, or acts to the extent genuinely relevant to prove the defendant's intent at the time of the charged offense.'" *Evans v. State*, 727 N.E.2d 1072, 1080 (Ind. 2000) (quoting *Wickizer v. State*, 626 N.E.2d 795, 799 (Ind. 1993)). The evidence of other bad acts must be relevant to the defendant's state of mind at the time of the alleged crime. *See Gillespie v. State*, 832 N.E.2d 1112, 1117 (Ind. Ct. App. 2005).

[21] Davis argues that the December 4 evidence is inadmissible to show his intent on July 17 because he did not present a contrary intent at trial, and there was "no serious dispute concerning [his] state of mind" on that day. Appellant's Br. at 25. We cannot agree. When Davis's counsel offered the theory of defense during opening remarks at trial, counsel presented a claim of contrary intent, *i.e.*, Davis did not mean to hurt A.K., and Davis acted in self-defense when he repeatedly slammed the front door on A.K.'s hand to stop her from spraying

him with mace. Tr. Vol. 2 at 121-23. Self-defense is a claim of contrary intent. *Goldsberry v. State*, 821 N.E.2d 447, 456 (Ind. Ct. App. 2005). Because Davis affirmatively alleged a contrary intent, the December 4 evidence was relevant and admissible to disprove Davis's claim of self-defense and to show that, on July 17, Davis intended to harm A.K. *See Sanders v. State*, 704 N.E.2d 119, 124 (Ind. 1999) (other misconduct evidence admissible to rebut self-defense claim); *see also Sudberry v. State*, 982 N.E.2d 475, 480 (Ind. Ct. App. 2013) (holding that defendant placed his intent at issue during trial by raising the issue of self-defense).

Motive

[22] The December 4 evidence was also admissible to prove Davis's motive, that is, on July 17, he harbored hostility toward A.K. "Evidence of motive is always relevant in the proof of a crime[.]" *Ross v. State*, 676 N.E.2d 339, 346 (Ind. 1996) (citations omitted). And, "[h]ostility is a paradigmatic motive for committing a crime." *Hicks*, 690 N.E.2d at 222 (citation omitted). In this case, the December 4 evidence demonstrated Davis's hostile relationship with A.K. and was germane to prove his motive.

Prejudicial Effect

[23] Next, we must balance the probative value of the evidence against its prejudicial effect pursuant to Evidence Rule 403. *See id.* at 221. While the December 4 evidence was undoubtedly prejudicial, we find that the evidence was also highly relevant both to disprove Davis's claim that he was acting in self-defense on July 17, and to illustrate Davis's motive to commit the crimes. Further, the

admission of the evidence was not unfairly prejudicial. The jury was not told that Davis had been charged with any crimes related to the December 4 incident. The testimony and discussion regarding the contested evidence comprised only a short amount of time during the course of Davis's three-day trial. And, during final instructions, the court provided a limiting instruction and advised the jury that the December 4 evidence was admitted "solely on the issue of the relationship of the parties" and that it "should not be considered on the ultimate issue of guilt or innocence of the Defendant[.]" Tr. Vol. 3 at 43. "When the jury is properly instructed, we will presume they followed such instructions." *Weisheit v. State*, 26 N.E.3d 3, 20 (Ind. 2015) (citations omitted), *cert denied*, 577 U.S. 1106 (2016). As such, we cannot say that the probative value of the December 4 evidence was substantially outweighed by the danger of unfair prejudice to Davis. Therefore, we hold that the trial court did not abuse its discretion when it admitted the December 4 evidence of Davis's subsequent bad acts under Evidence Rule 404(b).

Issue Two: Sufficiency of the Evidence

[24] Next, Davis contends that the State presented insufficient evidence to support his conviction for Level 3 felony burglary. When reviewing sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh evidence or assess the credibility of witnesses, as that is the role of the factfinder. *Id.* When confronted with conflicting evidence, we must consider it most favorably to the

verdict. *Id.* We affirm a "conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (internal quotation marks and citation omitted). It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence, but rather the evidence is sufficient if an inference reasonably may be drawn from it to support the verdict. *Id.* at 147.

[25] To prove Davis committed Level 3 felony burglary, the State was required to show that (1) Davis, (2) broke and entered the structure of A.K., (3) with the intent to commit a felony or theft in it, and (4) Davis's conduct resulted in bodily injury to A.K. *See* Ind. Code § 35-43-2-1(2). The State alleged that Davis broke and entered A.K.'s house with the intent to commit domestic battery. Level 6 felony domestic battery requires the knowing or intentional touching of a family or household member in a rude, insolent, or angry manner resulting in moderate bodily injury. Ind. Code § 35-42-2-1.3(b)(3). According to Davis, the State's "evidence fail[ed] to show that [he] had any intention of committing a battery against [A.K.]" when he entered her home. Appellant's Br. at 23. We disagree.

[26] "A criminal conviction for burglary requires proof beyond a reasonable doubt of a specific criminal intent which coincides in time with the acts constituting the breaking and entering[.]" *Robinson v. State*, 541 N.E.2d 531, 533 (Ind. 1989) (citation omitted). "The intent to commit a felony may be inferred from the circumstances." *Taylor v. State*, 514 N.E.2d 290, 291 (Ind. 1987) (citation omitted). A burglary conviction can be sustained from circumstantial evidence

alone. *Id.* "Burglars rarely announce their intentions at the moment of entry[.]" *Gilliam v. State*, 508 N.E.2d 1270, 1271 (Ind. 1987). Further, a burglar can have multiple intents during the moment of breaking and entering, and other intents besides committing a felony "would subtract nothing from the reasonability of inferring the concurrent intent to do violence if confronted." *Eby v. State*, 154 Ind. App. 509, 518, 290 N.E.2d 89, 95 (1972).

> [W]hatever may have been [an intruder's] primary intent or purpose, he must have anticipated that confrontation with the home's inhabitants was not unlikely and that his presence would not be welcome. If a confrontation then occurs and he does commit an act of violence upon the person he thus confronts, the commission of the act is sufficient to justify the inference that he entered with the specific intent to do what he did, provided the occasion arose.

Id.

[27] Here, the evidence established that, on July 17, 2020, Davis was staying at A.K.'s house in violation of a protective order that had been issued against him. After A.K. left her house to go to work, and over the course of that day, Davis called A.K. over 100 times and the two argued over the phone. At some point, Davis left A.K.'s house to attend a family gathering where he consumed alcohol. In his phone calls to A.K., Davis told A.K. repeatedly that he wanted to come to her house, and A.K. told Davis not to come because she "knew he was drunk." Tr. Vol. 2 at 135. But Davis told A.K., "B[***]h, I'll be there." *Id.* at 136. Out of fear for her safety and the safety of her children, A.K. barricaded the front door with her couch.

[28] Despite being told to stay away, Davis returned to A.K.'s house. A.K. told her children to run out the back door and to the nearby home of a family member. Davis kicked the front door, used a key to unlock the door, shoved the door open, forced his way into A.K.'s house, and began to yell at her. A.K. then sprayed Davis with mace and tried to push him out the front door. Eventually, she ran out of the front door of her house. When she placed her hand in the doorframe, to prevent Davis from locking her out of her home, Davis slammed the door on her hand ten to twenty times, which caused A.K. to sustain a sprained wrist. Davis then exited the home, charged at A.K., and punched her in the face with such force that he bloodied her face and broke her nose, which made it difficult for her to breathe. The record clearly supports the conclusion that Davis showed up at A.K.'s house with a hostile state of mind.

[29] The police officers who responded to the 9-1-1 call and subsequently entered A.K.'s house found that household items had been knocked over and the couch was partially blocking the front door. One of the officers noticed that Davis showed "signs of intoxication." *Id.* at 184. The detective who interviewed A.K. shortly after the incident occurred observed that she was "crying, visibly upset, and still bleeding[,]" and that her right hand was swollen. *Id.* at 174. A.K. told the detective that Davis hit her with his fists.

[30] In addition, the jury heard the recording of the jail-house phone call that took place between Davis and A.K. on August 14, 2020. During the call, A.K. told Davis the following: "this is everything you have done, not me"; "all I ever asked you to do was to keep your hands off of me and back up"; "did I get it,

no"; "I'm not your dumba[**] no more"; "I'm no longer your punching bag"; "you did all this"; "you need some help". Supp. Ex. Vol., State's Ex. 34 at 8:23, 9:12, 10:00, 12:32, 13:09.

[31] Based on this evidence alone, it is reasonable that a jury would infer that, on July 17, Davis—who showed hostility toward A.K. the entire day and showed up at her house exhibiting hostility—intended to enter A.K.'s house and commit felony domestic battery against A.K. once inside. Davis's arguments to the contrary amount to a request for this Court to reweigh the evidence, which we cannot do. *See Drane*, 867 N.E.2d at 146. Therefore, we hold that the State presented sufficient evidence to support Davis's conviction for Level 3 felony burglary.

Conclusion

[32] We hold that the trial court did not abuse its discretion when it admitted evidence of Davis's subsequent bad acts, and the evidence was sufficient to support Davis's conviction for Level 3 felony burglary. The judgment of the trial court is affirmed.

[33] Affirmed.

Bradford, C.J., and Bailey, J., concur.