MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin Lee McFadden,
Appellant-Defendant,

v.

State of Indiana
Appellee-Plaintiff.

April 14, 2021

Court of Appeals Case No. 20A-CR-1841

Appeal from the Madison Circuit Court

The Honorable Angela Warner Sims, Judge

Trial Court Cause Nos. 48C01-1910-F6-2452 48C01-2006-F6-1453

Bradford, Chief Judge.

Case Summary

[1] In October 2019, Justin Lee McFadden was arrested after he committed domestic violence against his partner Farrah Sayyah at a motel. During the incident, McFadden confined Sayyah, hit her on the head, held her down on the bed, and put his hand over her mouth preventing her from breathing. McFadden pushed the police officer who attempted to arrest him, fled from the motel, hid in a nearby thicket, and struck a police dog in an attempt to evade capture. McFadden was eventually arrested and charged with Level 6 felony battery against a public safety official, Level 6 felony confinement, Class A misdemeanor resisting law enforcement, Class A misdemeanor domestic battery, and Class A misdemeanor interfering with a law enforcement animal under cause number 48C01-1901-F6-2452 ("F6-2452"). A no-contact order was issued forbidding McFadden from communicating with Sayyah. While incarcerated, McFadden wrote a letter to Sayyah, attempting to persuade her to recant her story to law enforcement and prosecutors by offering money, using their past relationship as pressure, and telling her that he wanted to be present to raise their child together. This letter was intercepted by a corrections officer. McFadden was charged with Level 6 felony obstruction of justice and Class A misdemeanor invasion of privacy under cause number 48C01-2006-F6-1453 ("F6-1453").

[2] On motion by the State, the trial court joined the two cases, F6-2452 and F6-1453, for trial. The State presented evidence of two prior domestic-violence charges against McFadden at trial in an attempt to establish a pattern of

hostility by McFadden toward Sayyah as motive for some of the charges under F6-2452. McFadden was convicted and sentenced to an aggregate five-year sentence to be executed in the Department of Correction ("DOC"). McFadden appeals, arguing that the trial court abused its discretion when it joined McFadden's two cases and when it admitted the State's evidence of McFadden's prior domestic violence charges. Because we disagree, we affirm.

Facts and Procedural History

[3] In October of 2019, McFadden and Sayyah were dating each other. On October 9, 2019, Sayyah was staying at the America's Best Value Inn in Anderson. McFadden and Sayyah got into an extremely loud argument that evening, prompting a motel employee to call 911. Anderson police officer Chris Barnett was dispatched to the motel, arriving at approximately 10:20 p.m. Sayyah answered the door and told Officer Barnett that everything was all right and that McFadden had left the room. Officer Barnett ran McFadden's name through dispatch and discovered that there was an active warrant for McFadden's arrest. Later that evening, Sayyah called 911 and asked to have Officer Barnett contact her again so that she could provide him with some additional information.

[4] Later that evening McFadden returned to the motel and the couple began arguing again. Sayyah tried to leave the room several times, but McFadden stood in front of the door, blocking her exit. McFadden held Sayyah down on the bed so that she could not get up, hit her on the head with his hand several

times, and put his hand over her nose and mouth so that she could not breathe. Around 1:15 a.m., Officer Barnett returned in the midst of this argument, responding to Sayyah's earlier call. As Officer Barnett stood outside of the room waiting for backup, he heard male and female voices talking inside, which escalated to arguing, so he knocked on the door and announced himself as a police officer. As he was knocking, identifying himself, and ordering that those inside open the door, Officer Barnett heard a female voice yell "help me." Tr. Vol. II p. 74–76.

[5] McFadden finally opened the door, at which point Officer Barnett informed McFadden that he was under arrest and ordered him to turn around and put his hands behind his back. McFadden started to comply, but did not turn all the way around, and when Officer Barnett grabbed his arm to gain control of him, McFadden forcibly pulled his arm away and took a step back into the room. McFadden then pushed Officer Barnett back with both hands and fled. Officer Barnett gave chase. McFadden ran north behind a Red Lobster and Days Inn before Officer Barnett lost sight of him, though he was confident McFadden was hiding in a clump of trees and bushes located in that area.

[6] After a K-9 officer arrived on the scene, the dog indicated by the dense pocket of woods and, after giving McFadden several verbal warnings to come out, the officer sent the dog into the bushes and the dog made contact with McFadden. McFadden came out fighting with the dog, pushing and hitting it in an effort to separate the dog from his leg. When the officer ordered the dog to release,

McFadden fled back into the bushes. The officers were able to handcuff him and take him into custody after the dog pulled McFadden out a second time.

[7] On October 10, 2019, McFadden was charged with Level 6 felony battery against a public safety official, Level 6 felony confinement, Class A misdemeanor resisting law enforcement, Class A misdemeanor domestic battery, and Class A misdemeanor interfering with a law enforcement animal under cause number F6-2452. The court issued a no-contact order forbidding McFadden from having any contact with Sayyah.

[8] While incarcerated, despite the no-contact order's provision prohibiting such contact, McFadden wrote a six-page letter to Sayyah. A corrections officer intercepted the letter. The letter, which was addressed to "Mrs. McFadden," suggested several times that McFadden and Sayyah were married, though they legally divorced. State's Ex. p. 18. In the letter, McFadden repeatedly asked Sayyah to tell the police and prosecutors that she wanted to drop the charges. McFadden also asked Sayyah to explain that she had been diagnosed with a mental illness and that she had been going through a mental breakdown when she made the accusations, also writing "which you and I know isn't true, baby." State's Ex. 18. McFadden also wrote that a pending battery charge in Edgewood Town Court was true, conceding that he had been wrong on that occasion. McFadden repeatedly wrote that he loved Sayyah and that he wanted to be a family and help raise their son but that he would face twelve years of incarceration if she did not do as he requested. McFadden's letter also informed Sayyah that they would receive a large settlement from his lawsuit

against the police and that she should start looking for her dream home, which he would buy for her when he was released.

[9] The State charged McFadden with Level 6 felony obstruction of justice and Class A misdemeanor invasion of privacy. The State moved to join the two cases for trial and the trial court granted the motion over McFadden's objection. The State also filed a notice of its intent to offer Evidence Rule 404(b) evidence, specifically evidence of McFadden's prior domestic violence against Sayyah. The trial court ruled that this evidence was admissible over McFadden's objections. At trial, Sayyah testified that in September of 2016, McFadden was convicted of domestic battery for hitting her and that in September of 2019, McFadden was charged with hitting her.

[10] The jury found McFadden guilty of Level 6 felony battery against a public official, Level 6 felony confinement, Class A misdemeanor resisting law enforcement, Class A domestic battery, Class A misdemeanor interfering with a law enforcement animal, Level 6 felony attempted obstruction of justice, and Class A misdemeanor attempted invasion of privacy. The trial court imposed an aggregate five-year sentence to be executed in the DOC.

Discussion and Decision

[11] McFadden argues that the trial court abused its discretion in granting (1) the joinder of his two separate cases and (2) the State's motion to introduce 404(b) evidence.

I. Joinder

[12] Indiana Code section 35-34-1-9(a) states:

> Two (2) or more offenses may be joined in the same indictment or information, with each offense stated in a separate count, when the offenses
>
> (1) are of the same or similar character even if not part of a single scheme or plan; or
>
> (2) are based on the same conduct or on a series of acts connected together or constituting parts of a scheme or plan

"Offenses may be sufficiently linked together under the statute if they are connected by a distinctive nature, linked by a common modus operandi, or if the same motive induced the criminal behavior." *State v. D.B.*, 819 N.E.2d 904, 906 (Ind. Ct. App. 2004) (citing *Blanchard v. State*, 802 N.E.2d 14, 25 (Ind. Ct. App. 2004)). Indiana Code section 35-34-1-10 states, in pertinent part, that if charges may be joined under Indiana Code section 35-34-1-9(a)(2), "the court shall join for trial all of such indictments or informations unless the court, in the interest of justice, orders that one (1) or more of such offenses shall be tried separately." A trial court's decision to join charges for trial under Indiana Code section 35-34-1-9(a)(2) is reviewed only for an abuse of discretion. *Pierce v. State*, 29 N.E.3d 1258, 1264 (Ind. 2015).

[13] McFadden argues that the trial court abused its discretion because it incorrectly applied Indiana Code section 35-34-1-9 in granting the joinder:

> These two cases also were not connected by a common modus operandi. Neither the nature of the offenses nor the means used to commit them were similar. The means used in the October 2019 case was hitting, shoving, running, and striking, whereas the means used in the June 2020 case were a pen and paper. Finally, neither case is connected to the other by a common motive.

Appellant's Br. p. 17. We are unconvinced. In *State v. D.B.*, another panel of this court held that two cases, a carjacking charge and intimidation charge, were sufficiently linked together to permit joinder of the two charges in one trial. 819 N.E.2d at 906–07. In pertinent part, the *D.B.* court stated:

> The record reveals that Richard is a State's witness in the carjacking charge against D.B. The evidence further reflects that while awaiting trial, D.B. called Richard[] from the Allen County Jail, threatening to kill her if she testified against him during trial. Thus, the act of intimidation clearly arose from the carjacking charge and is therefore part and parcel of the latter charge. Moreover, as both charges require most of the same evidence and witnesses, we conclude that the intimidation charge is inextricably linked to the carjacking charge.

819 N.E.2d at 907 (Ind. Ct. App. 2004). McFadden's two cases are related in a similar fashion. McFadden wrote the letter to Sayyah, the underlying conduct for the F6-1453 charges, in order to be released and immunized from guilt for battering and confining Sayyah, the underlying conduct for some of the F6-2542 charges. But for the charges he incurred under F6-2542, McFadden would never have committed the offenses charged under F6-1453. Further, it is likely that even if the trials were separate the evidence presented at each trial would overlap. Evidence of the battery and charges that McFadden was trying

to evade by writing the letter would have been admissible in a trial under F6-1453 in order to explain why he was writing the letter. Likewise, the letter could have been at least partially admissible in the F6-2452 case as evidence of consciousness of guilt. *See Games v. State*, 535 N.E.2d 530, 541–42 (Ind. 1989) (admitting a letter by defendant, stating "[l]ikewise, we must here reject the notion that the letter was without probative value. The letter clearly manifests a consciousness of guilt")

[14] The only prejudice McFadden ascribes to the joinder of his cases is that the jury might infer from the letter urging Sayyah to recant that McFadden was guilty of his confinement and battery charges. However, as stated above, the letter may have been admissible in F6-2452 even if the cases were not joined. Further, McFadden does not argue that joinder was not in the interests of justice. The trial below was straightforward, with easily separable charges and evidence that has little danger of being confused by or misleading the jury. For the above reasons, we do not believe that the trial court abused its discretion in joining McFadden's cases for a single trial.[1]

[1] As pointed out in the State's brief, McFadden's trial was the first jury trial in Madison County after a months-long cessation of all jury trials in the state due to the Covid-19 pandemic. That cessation caused a backlog of cases to accumulate in Madison County, and around the state. In the wake of the COVID-19 pandemic, we note the importance of the broad discretion trial courts have in order to manage their dockets. *See Williams v. State*, 690 N.E.2d 162, 169 n.11 (Ind. 1997); *Storey v. Leonas*, 904 N.E.2d, 238 n.5 (Ind. Ct. App. 2009); *see also Wright v. Miller*, 989 N.E.2d 324, 327 (Ind. 2013).

II. Rule 404(b)

[15] "[T]he decision to admit or exclude evidence is within a trial court's sound discretion and is afforded great deference on appeal." *Carpenter v. State*, 786 N.E.2d 696, 702 (Ind. 2003). We will reverse a trial court's ruling on the admission of evidence only if "it represents a manifest abuse of discretion that results in the denial of a fair trial." *Id*. Indiana Rule of Evidence 403 states that a "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Indiana Rule of Evidence 404(b), concerning character evidence; states in pertinent part,

> (1) *Prohibited Uses.* Evidence 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.
>
> (2) *Permitted Uses; Notice in a Criminal Case.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

"[T]he paradigm of inadmissible evidence under Rule 404(b) is a crime committed on another day in another place, evidence whose only apparent purpose is to prove the defendant is a person who commits crimes." *Wages v. State*, 863 N.E.2d 408, 411 (Ind. Ct. App. 2007), *trans denied*.

[16] McFadden argues that the State's use of prior incidents of domestic violence against Sayyah is impermissible character evidence, which only suggests that because he committed violence against Sayyah before, he must be guilty of it in this case. Though McFadden now raises this issue on appeal, he has waived review of this issue because he made no objection when this evidence was admitted. Though McFadden objected when the trial court admitted the evidence in an earlier hearing, that was before opening statements and not before the jury. McFadden made no objection when the evidence was introduced at trial. "As a general rule, motions in limine do not preserve errors for appeal; the defendant must reassert his objection at trial contemporaneously with the introduction of the evidence." *White v.* State, 687 N.E.2d 178, 179 (Ind. 1997). Despite McFadden's waiver, we choose to address the merits of his argument.

[17] "Evidence of motive is always relevant in the proof of a crime." *Wilson v. State*, 765 N.E.2d 1265, 1270 (Ind. 2002). This holds true for cases involving domestic violence as well. "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." *Iqbal v. State*, 805 N.E.2d 401, 408 (Ind. Ct. App. 2004); *see Hicks v. State*, 690 N.E.2d 215 (Ind. 1997); *see also Haggenjos v. State*, 441 N.E.2d 430 (Ind. 1982). Here, McFadden's two prior instances of domestic violence convictions, which occurred one month and three years before the

domestic violence in F6-2452, were capable of being used to establish a motive of hostility for McFadden's domestic violence against Sayyah in this case. Based on our review of the record, the previous incidents of domestic violence were only mentioned briefly at trial and almost no details were supplied as to the severity or graphic nature of these incidents. *Cf. Hicks*, 690 N.E.2d at 223 (finding that even though one incident of domestic violence was probative of a hostile relationship, another incident of domestic violence was improperly admitted in part because of the graphic nature of the evidence used). We cannot say that the danger of unfair prejudice of admitting these brief references to McFadden's history of hostility towards Sayyah substantially outweighed the probative value of this evidence to establish motive.

[18] The judgment of the trial court is affirmed

Vaidik, J., and Brown, J., concur.