

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher Camden,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 25, 2023

Court of Appeals Case No.
22A-CR-1398

Appeal from the Greene Circuit
Court

The Honorable Erik Allen, Judge

Trial Court Cause No.
28C01-2004-F3-8

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

- [1] Following a jury trial, Christopher Camden was convicted of Level 3 felony aggravated battery¹ and was found to be a habitual offender.² Camden now appeals, raising two issues: Did the trial court abuse its discretion by (1) denying Camden’s motion to correct error based on alleged newly discovered evidence and (2) admitting State’s Exhibit 15—an audio-recorded interview in which Camden claims to have heard about the incident from the Indiana Department of Child Services (“DCS”)? Concluding the trial court did not abuse its discretion in either respect, we affirm.

Facts and Procedural History

- [2] Camden drove his nephew,³ Matthew Camden, and Matthew’s wife, Karrie Wicker Camden, to a residence to celebrate the birth of Matthew and Karrie’s child. They went to the home of Karrie’s father, James Wicker, and Karrie’s sister, Jennifer Wicker. Jennifer was in the process of moving and was at her new house when the Camdens arrived. James, Scott Wicker (James’s son, and Karrie and Jennifer’s brother), and Jeremy Collins, who was in an on-again, off-again relationship with Jennifer, were present at James and Jennifer’s house

¹ Ind. Code § 35-42-2-1.5 (2014).

² Ind. Code § 35-50-2-8(b) (2017).

³ Matthew is Camden’s biological nephew. Camden’s parents adopted Matthew, making Matthew legally Camden’s brother. The record and the parties refer to Matthew both as Camden’s nephew and brother.

when the Camdens arrived. Jeremy and Scott were loading things to take to Jennifer's new home.

[3] When Camden, Matthew, and Karrie exited the vehicle, they appeared drunk. Matthew recognized Jeremy as a person who had been in a relationship with Camden's ex-wife of more than ten years and revealed Jeremy's identity to Camden. Camden confronted Jeremy and accused him of having sexual relations with Camden's ex-wife. Jeremy deflected Camden's confrontation, telling him, "[N]ow is not the place or the time," as he carried children's bicycles to load in his truck. *Tr. Vol. 2* at 116. As Jeremy lifted a bike over the side of the truck bed, Matthew came behind him and placed him in a chokehold. Jeremy lost consciousness. Matthew released Jeremy and struck him three times as he fell to the ground. Scott pulled Matthew away from Jeremy. While Jeremy was still unconscious, Camden pulled Jeremy off the ground and propped him up against the hood of Jeremy's truck, yelling at him and "demanding that he apologize." *Id.* at 192. Camden slapped and punched Jeremy in the face.

[4] When Jeremy regained consciousness, he was in James's van, and Camden was slapping his face. Jeremy could feel his jaw was broken, and he was bleeding. James offered to drive Jeremy to the hospital, but Jeremy wanted Jennifer to come with him. James took Jeremy to Jennifer's new home, and Jennifer drove Jeremy to the local hospital.

- [5] The emergency room doctor who treated Jeremy could see Jeremy’s broken, hanging jaw when he entered Jeremy’s room. Jeremy’s jaw had three fractures: one in the middle and one on each side. He also suffered bruising on the back of his head from falling. Jeremy was transported to a hospital in Indianapolis, where his jaw was wired shut. During the eight-week recovery with his wired jaw, Jeremy experienced sometimes crippling pain and a limited ability to speak and eat. He lost around twenty pounds during recovery and continued to struggle with eating at the time the trial took place almost two years later.
- [6] Two days after the incident, Detective Shawn Cullison conducted and recorded an interview at Camden’s house. The State later charged Camden with Level 3 felony aggravated battery and alleged he was a habitual offender.
- [7] Before trial, Camden filed a motion *in limine* to exclude portions of the recorded interview, arguing the statements in the interview were highly prejudicial and prohibited by Indiana Evidence Rule 404(b). Camden claimed “[t]hroughout the audio recording, the Defendant and the officers on the scene are discussing the Defendant’s involvement with the Department of Child Services and the Defendant’s past criminal history.” *Appellant’s App. Vol. 2* at 111. The State’s redacted recording was originally twenty-two minutes long, but—because of Camden’s motion *in limine*—the State again redacted the recording to contain a five-minute segment Camden agreed was admissible. The recording also included a two-minute segment in which the detective introduces himself and asks Camden if he participated in the incident. In the two-minute segment,

Camden tells the officer he heard about the battery from DCS, but DCS is never mentioned again or discussed in the redacted version of the recording.

[8] On the morning of the trial, the court held a hearing for the motion *in limine* outside the presence of the jury. Camden objected to the introduction of Exhibit 15, the final redacted audio recording of the interview. Camden argued the reference to DCS “is such a taint sometimes that it caused [jury members] to believe bad acts or character just based on the reference.” *Tr. Vol. 2* at 97. The trial court denied Camden’s motion.

[9] During trial, Detective Cullison testified the audio recording was significant because Camden claimed he learned about the allegations earlier that day, stated he was not involved in the battery, and claimed he knew who Jeremy was from a long time ago but “probably wouldn’t recognize him that day even if he saw him.” *Id.* at 220. In the recorded interview, Camden also claimed he thought people were confusing him with someone else, denied sharing an ex with Jeremy, and said he only went to Walmart and CVS on the day of the incident. Camden objected to the admission of Exhibit 15, asserting the same arguments he made in his motion *in limine*, and the trial court overruled the objection.

[10] Jeremy, Scott, Matthew, and Camden gave their accounts of the incident. Jeremy recalled losing consciousness soon after Matthew placed him in a chokehold and waking up in James’s van as Camden slapped Jeremy in the face. Scott and Matthew testified they saw Camden strike Jeremy while Jeremy

was unconscious. Camden admitted he was present during the incident but maintained he did not hit Jeremy. Matthew, who was charged with Level 3 felony aggravated battery and Level 6 felony strangulation for his attack on Jeremy, had entered a plea agreement with the State to testify at Camden's trial in exchange for a sentencing cap of eight years. Camden cross-examined Matthew about the agreement. The jury returned a guilty verdict for the Level 3 felony aggravated battery charge against Camden and, during the enhancement phase of the trial, found Camden to be a habitual offender. The trial court entered judgment of conviction.

[11] Nearly a month after the trial, while Camden awaited sentencing, Camden filed a motion to correct error alleging newly discovered evidence. Camden's motion to correct error included his own affidavit in support of the motion and a copy of a handwritten note. Camden claimed while he and Matthew were incarcerated, Matthew wrote a note and passed it to Camden. The note says, "I Matthew A Camden did not give a truthful statement on Chris L Camden. He did not touch Jeremy Collins. He was not involved with the fight." *Appellant's App. Vol. 2* at 202. The note bore Matthew's signature and the date April 3, 2022. Camden requested the trial court vacate his conviction and set the case for a new trial based on the emergence of newly discovered evidence.

[12] Detective David Elmore investigated the note and interviewed Matthew. During the interview, Matthew appeared "extremely nervous." *Tr. Vol. 3* at 131. Matthew at first denied having written the note. Detective Elmore reviewed the security camera footage, which showed Camden approaching

Matthew's cell door from the recreation room, Camden knocking on the door repeatedly and yelling, and Matthew sliding a piece of paper under the door. In a follow-up interview, Matthew told Detective Elmore he wrote the note but only did so because he felt pressured by Camden. Matthew signed an affidavit confirming his trial testimony was accurate and he lied when he wrote the note because he feared for his safety after "getting the title of a snitch in prison." *Id.* at 135.

[13] At the hearing on Camden's motion to correct error, Darrell White, an inmate living in the same cell block as Camden, testified he overheard Camden ask Matthew why he lied at trial. White said Matthew told Camden he was offered a deal and asked Camden how he could make things right. White heard Camden ask Matthew to write a letter saying Matthew lied at trial. White saw a note slide under the door shortly after the exchange. Matthew also testified at the hearing, acknowledging he told Detective Elmore he had been coerced into writing the note for Camden, the note was Camden's idea, and Matthew was being harassed by other members of his cell block because Camden told the other members Matthew was a "snitch." *Id.*

[14] The trial court denied Camden's motion to correct error, concluding "the evidence presented in support of the Defendant's Amended Motion to Correct Error is without credit and it is not probable to produce a different result." *Appellant's App. Vol. 2* at 228. The trial court sentenced Camden to twelve years in the Indiana Department of Correction. Camden now appeals.

Discussion and Decision

1. Motion to Correct Error

[15] Camden argues the trial court should not have denied his motion to correct error given the newly discovered evidence: Camden’s affidavit and a copy of the handwritten note from Matthew. “A Motion to Correct Error is not a prerequisite for appeal, except when a party seeks to address newly discovered material evidence[.]” Ind. Criminal Rule 16(A). And such motion “shall be filed within thirty (30) days after the date of sentencing[.]” Ind. Crim. R. 16(B). Camden properly filed his motion to correct error based on newly discovered evidence before his sentencing.

[16] A motion to correct error based upon the ground of newly discovered evidence must be supported by one or more affidavits which must contain a statement of the facts showing (1) that the evidence has been discovered since the trial; (2) that it is material and relevant; (3) that it is not cumulative; (4) that it is not merely impeaching; (5) that it is not privileged or incompetent; (6) that due diligence was used to discover it in time for trial; (7) that the evidence is worthy of credit; (8) that it can be produced upon a retrial of the case; and (9) that it will probably produce a different result.

Fox v. State, 568 N.E.2d 1006, 1007 (Ind. 1991). We review a ruling on motions based on newly discovered evidence for an abuse of discretion. *Bradford v. State*, 675 N.E.2d 296, 302 (Ind. 1996). An abuse of discretion occurs if “the court’s decision is clearly against the logic and effect of the facts and circumstances or it is a misinterpretation of the law.” *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014).

[17] Here, the trial court found the evidence was not worthy of credit and probably would not produce a different result. On appeal, the State adds the evidence was merely impeaching. “The moving party has the burden of showing that the newly discovered evidence meets *all* nine prerequisites for a new trial.” *Godby v. State*, 736 N.E.2d 252, 258 (Ind. 2000) (emphasis added); *see also Taylor v. State*, 840 N.E.2d 324, 330 (Ind. 2006). In other words, we will affirm the trial court’s decision if we find the defendant has not met any one of the prerequisites.

[18] We begin by addressing whether the trial court abused its discretion in finding the admission of the newly discovered evidence would probably not produce a different result. “A sufficient probability of a different result upon retrial is present where the omitted evidence creates a reasonable doubt that did not otherwise exist.” *Fox*, 568 N.E.2d at 1008. Further, “[i]n ruling whether a piece of evidence would produce a different result, the judge may properly consider the weight that a reasonable trier of fact would give it and, while so doing, may also evaluate its probable impact on a new trial in light of all the facts and circumstances shown at the original trial of the case.” *Id.* at 1007.

[19] Camden characterizes Matthew as the State’s principal witness, claiming the admission of the handwritten note would discredit Matthew’s trial testimony, leaving only Scott’s testimony that Camden hit Jeremy. Scott testified Camden slapped and punched Jeremy, and Jeremy testified he woke up to Camden slapping him in the face. Moreover, Matthew’s credibility was litigated before the jury, in that Camden cross-examined Matthew about his plea agreement with the State. Camden also extensively cross-examined Scott and Jeremy.

The trial court, considering the weight of the handwritten note against the corroborating testimony of Scott, Jeremy, and Matthew, could reasonably conclude the admission of the handwritten note would probably not produce a different result. Therefore, the trial court did not abuse its discretion by denying Camden’s motion to correct error.

2. Admission of Exhibit 15

[20] Camden argues the trial court abused its discretion by admitting Exhibit 15, the recorded interview in which Camden says he heard about the incident from DCS. Camden claims the prejudicial statement contained in Exhibit 15 violated Indiana Rule of Evidence 404(b), in that jurors could have believed Camden was in contact with DCS because he committed prior wrongs or bad acts. Yet Camden’s statement that he learned of the incident through DCS does not constitute “a crime, wrong, or other act” prohibited by Rule 404(b).

[21] On appeal of a decision to admit or exclude evidence offered at trial, we review the trial court’s decision for an abuse of discretion. *Carpenter v. State*, 786 N.E.2d 696, 702 (Ind. 2003). “Evidence of a crime, wrong, or other act is not admissible to prove a person’s 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.” Ind. Evidence Rule 404(b). The purpose of Rule 404(b) is to prevent evidence of prior wrongs from being used to advance the forbidden inference that a defendant’s past bad conduct suggests present guilt for a charged offense.

Fairbanks v. State, 119 N.E.3d 564, 568 (Ind. 2019). Camden at first objected to

the admission of Exhibit 15 under Rule 404(b) because “[t]hroughout the audio recording, the Defendant and the officers on the scene are discussing the Defendant’s involvement with the Department of Child Services and the Defendant’s past criminal history.” *Appellant’s App. Vol. 2* at 111. Camden disapproved of including his *discussion* of DCS after the first redaction of the recording. Still, once the State redacted the recording again, Camden argued even the *mention* of DCS was too prejudicial.

[22] Camden distinguishes his case from the cases cited by the State on this issue, claiming those cases involve “mere allusions which require the jury to infer prior bad acts.” *Appellant’s Reply Br.* at 11; see *Dixson v. State*, 865 N.E.2d 704 (Ind. Ct. App. 2007) (addressing defendant’s statements about infidelity), *trans. denied*; *Hinesley v. State*, 999 N.E.2d 975 (Ind. Ct. App. 2013) (addressing a statement by someone other than the victim about unwanted physical attention from defendant). Camden argues here, “the jury did not need to make any logical leaps to connect a DCS investigation to [Camden], as he makes the statement directly in State’s Exhibit 15.” *Appellant’s Reply Br.* at 11. But the mere fact Camden spoke with DCS does not directly connect Camden to a DCS *investigation*. To reach an inference about Camden’s prior wrongful conduct, the jury would have to assume Camden had an open DCS case pending and had committed bad acts against a child. “Evidence which creates a mere inference of prior misconduct is not prohibited by Evidence Rule 404(b).” *Hinesley*, 999 N.E.2d at 986.

[23] Camden argues the trial court abused its discretion in its application of Indiana Rule of Evidence 403. Camden claims there is very little, if any, probative value to the mention of DCS in the recording, and the acronym is charged with unfair prejudice. Camden compares his case with *Brown v. State*, in which the defendant was charged with possessing an unlicensed handgun and the Court excluded evidence of a shot gun, duct tape, and ski masks found in the defendant's trunk. 747 N.E.2d 66, 69 (Ind. Ct. App. 2001). Camden claims in both cases, "the jury could surmise that this evidence foreboded the commission of another felonious crime[.]" *Appellant's Reply Br.* at 11–12 (internal citation omitted).

[24] Rule 403 states in pertinent part, "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice[.]" Evid. R. 403. In *Brown*, this Court determined the evidence "had no relevancy to the issue[.]" 747 N.E.2d at 68, and "was prejudicial because the probative value was outweighed by the danger of unfair prejudice, by causing confusion of the issues, and misleading . . . the jury," *id.* at 69. Here, the mention of DCS is comparatively brief, lasting less than a second. Indeed, the State claimed it was uncertain whether it would even be possible to redact the recording to exclude the mention of DCS without altering the rest of the statement in the recording. The trial court could properly find probative value in the entirety of Camden's recorded statement that he had just heard of the event from an outside source two days after the event occurred. The statement corroborated evidence Camden tried to cover up his involvement with the crime

and contradicted his trial testimony that he was present at the attack. There is no evidence elsewhere in the record that Camden was the subject of a DCS investigation, and it is possible members of the jury did not catch the mention of DCS in the recording or understand what the acronym means. The trial court was within its discretion to find the probative value of the recorded statement taken as a whole was not substantially outweighed by the danger of unfair prejudice from the brief mention of DCS.

[25] Camden also briefly argues the trial court erred by failing to give a limiting instruction to the jury regarding the reference to DCS in Exhibit 15, which may have “cured the error and removed the substantial risk of unfair prejudice.” *Appellant’s Br.* at 33. But “[i]f the court admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the court, *on timely request*, must restrict the evidence to its proper scope and instruct the jury accordingly.” Evid. R. 105 (emphasis added). Camden did not make such a request or objection. Parties cannot rely on the trial court to act *sua sponte* to provide a limiting instruction because such admonishments are “double-edged swords.” *Merritt v. State*, 99 N.E.3d 706, 710 (Ind. Ct. App. 2018). “On the one hand, they can help focus the jury on the proper considerations for admitted evidence. However, on the other hand, they can draw unnecessary attention to unfavorable aspects of the evidence.” *Id.* (internal citations omitted). Camden has waived the argument that the trial court should have provided a limiting instruction because he failed to timely request a limiting instruction at trial.

Conclusion

[26] We conclude the trial court did not abuse its discretion by denying the motion to correct error and admitting Exhibit 15.

[27] Affirmed.

Robb, J., and Crone, J., concur.