MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Glen E. Koch II
Boren, Oliver & Coffey, LLP
Martinsville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Josiah Swinney
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Ronald Davidson II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 15, 2021

Court of Appeals Case No.
20A-CR-1863

Appeal from the
Morgan Superior Court

The Honorable
Peter R. Foley, Judge

Trial Court Cause No.
55D01-1907-F5-1217

Vaidik, Judge.

Case Summary

[1] Ronald Davidson II appeals his conviction for Level 5 felony domestic battery, arguing the trial court erred in admitting testimony about threats he made to the victim's friend. We affirm.

Facts and Procedural History

[2] On June 11, 2019, Davidson's mother, Janice, asked him to drive her to the Indianapolis airport. Janice and Davidson lived together in Paragon, Indiana. Janice planned to fly to California to help her sister move to Indiana. Davidson drove, and Janice sat in the passenger seat. While he was driving, Davidson started "screaming" at Janice for borrowing his car the day before with a friend, Joe, whom Davidson did not like. Tr. Vol. II p. 239. He then began driving erratically—"stomping on the brake, coming to a complete stop, and then pushing his foot on the gas pedal and taking off real fast" while "hitting [Janice] in the head and the arm" with a closed fist. *Id*. at 239, 240. Davidson hit her "fifty or sixty times" but stopped when they reached the airport. *Id*. at 250. Janice was "terrified" and "disoriented." *Id.* at 242. Her arm was "sore," and she had a headache. *Id*. at 243. She arrived in California later that day. The following morning, her sister noticed she had a large bruise on her arm and discoloration around her eye. Janice said Davidson had hit her, and her sister took photos of the injuries.

[3] Janice spent around two weeks in California helping her sister pack and get ready to move. As the two were driving back to Indiana, Janice received a text message from Davidson in which he "threatened to take Joe out." Tr. Vol. III p. 11. She and her sister stopped in Utah and reported the threat to law enforcement there and called the Morgan County Sheriff's Department in Indiana. Deputies attempted to follow up with both Davidson and Joe but could not make contact. Janice arrived in Morgan County on June 30 or July 1. She then reported the battery to the Morgan County Sheriff's Department.

[4] In July 2019, the State charged Davidson with Level 5 felony domestic battery, enhanced from a Level 6 felony because of a prior domestic battery against Janice, and Class B misdemeanor disorderly conduct. Before trial, the trial court granted Davidson's motion in limine to keep out evidence of the text message he sent to Janice threatening Joe.

[5] At trial, the State acknowledged in its opening statement that Janice had waited over two weeks to report the battery and explained she waited because she needed to help her sister and knew California was not the proper jurisdiction. Janice testified on direct examination that after the battery, she decided "when [she got] back from California, [Davidson]'s going to jail. Because [she] can't take it." Tr. Vol. II p. 243. She confirmed she reported the battery to Indiana law enforcement when she returned from California.

[6] The following exchange then occurred on cross-examination:

Q. And you made a comment that you didn't think that California had jurisdiction and that's why you didn't call the police at that point once you made it to your sister's house?

A. No. I never considered calling from California.

Q. Okay.

A. I was going to wait until I got back. I stopped in [] Utah . . .

Q. Hold on. You've answered there, ma'am, thank you. Did you ever make contact with Indiana law enforcement before you returned?

A. No, I tried to.

Q. You tried, but couldn't get through?

A. I tried by going through the Utah Police.

Q. Okay so while you were driving back, obviously Utah is between Indiana and California, so you stopped and talked to somebody local there?

A. Yes, in Utah.

Q. All right. But that wasn't . . . you did not call Morgan County or anyone local here in Indiana at that point, correct?

A. I believe I called them after I talked to the Utah police.

Q. Okay. And then you said it took about five days to drive back and you arrived back approximately June 30th, July 1st, somewhere in that time?

A. Yes.

Q. And that's when you made contact with law enforcement here again?

A. Yes.

Q. Did you talk to them completely by phone, or did you come in?

A. I went in person.

Q. Did you make an appointment prior to showing up?

A. Yes.

Q. And when you made that appointment, did you disclose the potential battery?

A. I believe I did. **I was more concerned over the threat of my friend.**

Tr. Vol. III pp. 7-8 (emphasis added, formatting altered).

[7] Davidson did not object to Janice's statement regarding the threat. At a sidebar after Janice's cross-exam, the State asked permission to elicit testimony from Janice on redirect as to the threat against Joe, arguing the defense had "opened

the door" to such testimony on cross. *Id*. at 10. Davidson argued he had not opened the door because his questions "didn't specifically call for" Janice to mention the threat. *Id.* The trial court agreed Davidson had opened the door on cross and allowed redirect questioning on "the threat." *Id*. at 11. Janice testified on redirect:

> Q. Janice, [defense counsel] while he was questioning you asked about reporting to Morgan County law enforcement officers, and also about stopping along the way, do you recall that . . .
>
> A. Yes.
>
> Q. . . . line of questioning? You said you stopped in Utah to make a report, is that correct?
>
> A. Yes.
>
> Q. What were you reporting to the Utah police?
>
> A. I was scared because [Davidson] had threatened to take Joe out, if Joe came to my house.
>
> Q. And this is the same Joe that had been in the car previously?
>
> A. Yes.
>
> Q. And did you learn about these threats while you were driving back from California to Indiana?
>
> A. Yes.

> Q. And so when you said you had called to try to speak with Morgan County, was that in reference to those threats that you had received as well?
>
> A. Yes.
>
> Q. And then when you followed up with them in person, did you tell them about those threats, in addition?
>
> A. Yes.

Id. at 11-12 (formatting altered). Janice's sister also testified as to the bruises she saw on Janice the morning after the battery, and the court admitted the photos she took.

[8] The jury found Davidson guilty of Level 6 felony domestic battery and Class B misdemeanor disorderly conduct. Davidson then admitted to the prior battery and the enhancement, and the court entered judgment of conviction for Level 5 felony domestic battery. Due to double-jeopardy concerns, the court did not enter judgment on the disorderly-conduct count. The court sentenced Davidson to six years.

[9] Davidson now appeals.

Discussion and Decision

[10] Davidson argues the trial court erred in admitting Janice's testimony about his threats to Joe because such testimony was "uncharged bad act evidence" within

the purview of Indiana Rule of Evidence 404(b), "irrelevant," and "prejudicial." Appellant's Br. p. 7. However, the trial court held the testimony was admissible because the defense "opened the door" to such testimony. We agree.

[11] Otherwise inadmissible evidence can be admissible where the defendant "opens the door" to questioning on that evidence. *Clark v. State*, 915 N.E.2d 126, 130 (Ind. 2009), *reh'g denied*. "Opening the door refers to the principle that where one party introduces evidence of a particular fact, the opposing party is entitled to introduce evidence in explanation or rebuttal thereof, even though the rebuttal evidence otherwise would have been inadmissible." *Sampson v. State*, 38 N.E.3d 985, 992 n.4 (Ind. 2015). "Evidence which opens the door must leave the trier of fact with a false or misleading impression of the facts related." *Wilder v. State*, 91 N.E.3d 1016, 1023 (Ind. Ct. App. 2018) (quotation omitted). When this happens, "the State may introduce otherwise inadmissible evidence if it is a fair response to evidence elicited by the defendant." *Id.* (quotation omitted).

[12] Here, Davidson opened the door to Janice's testimony by attacking the timing of her battery report. On direct, the State and Janice—in trying to comply with the motion in limine—carefully avoided mentioning she reported Davidson's threat to Joe to Utah law enforcement and instead maintained she had decided to wait until she returned to Indiana to report the battery. But on cross-exam, the defense questioned this timeline—extensively asking when Janice contacted law enforcement and where. This questioning necessarily left the jury with a false impression of Janice's reporting timeline—on direct she said she decided

to wait until she got back to Indiana to report the battery, but on cross she said she stopped in Utah to make a report with law enforcement. At that point, the State was entitled to elicit testimony explaining the discrepancy—that Janice waited until she got back to Indiana to report the battery but did contact law enforcement in Utah regarding the threats to Joe. *See Wilder*, 91 N.E.3d at 1023 (defendant opened the door for otherwise inadmissible opinion evidence regarding why police did not interview the defendant before filing charges by "attacking" the sufficiency of the police investigation). Having opened the door, Davidson cannot now complain about Janice's redirect testimony.

[13] Furthermore, any error in the admission of this testimony was harmless. "[W]here the trial court has erred in the admission of evidence, we will not reverse the conviction if that error was harmless." *Turner v. State*, 953 N.E.2d 1039, 1058 (Ind. 2011). Generally, errors in the admission of evidence are to be disregarded unless they affect the substantial rights of a party. *Montgomery v. State*, 694 N.E.2d 1137, 1140 (Ind. 1998). In viewing the effect of the evidentiary ruling on a defendant's substantial rights, we look to the probable impact on the fact finder. *Id*. The improper admission is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction. *Turner*, 953 N.E.2d at 1059. Here, there was sufficient independent evidence of guilt. Janice testified Davidson hit her fifty to sixty times. Her sister also testified about Janice's injuries, and photos of injuries were admitted. Because of this evidence, we do not believe testimony

regarding a threat Davidson made to a person other than Janice days after the battery contributed to the jury's conviction.

[14] Affirmed.

Brown, J., and Pyle, J., concur.