MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeramy L. Heavrin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 18, 2022

Court of Appeals Case No. 21A-CR-712

Appeal from the Floyd Superior Court

The Honorable Maria Granger, Judge

Trial Court Cause No. 22D03-2010-CM-1725

Pyle, Judge.

Statement of the Case

[1] Jeramy Heavrin ("Heavrin") appeals his conviction, following a bench trial, for Class A misdemeanor domestic battery.[1] Heavrin argues that: (1) he did not waive his right to a jury trial; (2) the trial court abused its discretion when it admitted evidence; and (3) there was insufficient evidence to support his conviction. Concluding that Heavrin waived his right to a jury trial, the trial court did not abuse its discretion, and the evidence was sufficient to support his conviction, we affirm the trial court's judgment.

[2] We affirm.

Issues

1. Whether Heavrin waived his right to a jury trial.

2. Whether the trial court abused its discretion when it admitted evidence.

3. Whether there is sufficient evidence to support Heavrin's conviction.

Facts

[3] In October 2020, Heavrin and his wife, J.H. ("J.H."), got into an argument at their home. The argument quickly turned into a physical altercation when

[1] IND. CODE § 35-42-2-1.3.

Heavrin started to throw his stepchildren's belongings out of the home and into the yard. Heavrin and J.H. pushed each other multiple times, and, during this scuffle, Heavrin pushed J.H. into a wall. J.H. fled the house and called 911. J.H. told the 911 operator that Heavrin had "t[aken] [her] by [her] throat and [had] thrown [her] against the wall." (Tr. Vol. 2 at 19).

[4] Officer Richard Lyninger ("Officer Lyninger") responded to the 911 call and arrived at Heavrin and J.H.'s house approximately twenty minutes after J.H. had called 911. Officer Lyninger found J.H. standing down the street with a neighbor. He described J.H. as being "very upset" and "very shaken." (Tr. Vol. 2 at 21). Officer Lyninger noticed red marks on the sides of J.H.'s neck and "blood about her face." (Tr. Vol. 2 at 21). J.H. told Officer Lyninger that Heavrin had grabbed her by the neck and had shoved her into a wall. Officer Lyninger asked J.H. to wait in a police car while he and a few other officers, who had just arrived at the house, began searching for Heavrin.

[5] A few minutes later, Heavrin made contact with the officers down the street from his house. Heavrin approached Officer Lyninger and Detective Phillip Kaiser ("Detective Kaiser"). After confirming Heavrin's identity, Officer Lyninger handcuffed Heavrin and advised him of his Miranda rights. Detective Kaiser began recording their conversation. Heavrin told the officers that he had pushed J.H. at least twice. Heavrin also explained to the officers that "[J.H. has] got this thing, oh, my God, she knows how to push my fucking buttons." (Tr. Vol. 2 at 62). After recording Heavrin's statement, the officers transported him to the police station.

[6] The State charged Heavrin with Class A misdemeanor domestic battery. At the initial hearing, the trial court did not inform Heavrin of his right to request a jury trial pursuant to Indiana Rule of Criminal Procedure 22 but set a date for a jury trial for February 1, 2021. However, due to the COVID-19 pandemic, jury trials were temporarily suspended. On February 1, 2021, defense counsel appeared before the trial court and discussed waiving the previously scheduled jury trial. The trial court asked defense counsel, "I just wan[t to] make sure that we have confirmation from the Defendant that that's . . . what they're desiring[?]" (Tr. Supp. at 5). Defense counsel responded, "Sure." (Tr. Supp. at 5-6). Defense counsel then stated, "I'll be glad to go ahead and . . . file a motion to . . . waive the jury trial." (Tr. Supp. at 6). Later that day, defense counsel filed a motion to waive the jury trial and requested a bench trial. The motion stated:

> 1. That the jury trial was set for February 1, 2021, but as [a] result of the Supreme Court order on Covid, the Court could not conduct a jury trial.
>
> 2. In order to bring this matter to a conclusion, . . . Heavrin . . . requests a bench trial at the Court's earliest convenience.
>
> WHEREFORE, . . . Heavrin . . . respectfully requests [the] jury trial be waived and a bench trial be set at the earliest convenience of the Court.

(App. Vol. 2 at 32). The trial court granted the motion and scheduled a bench trial for March 8, 2021.

[7] At the bench trial, Heavrin made no objection to having a bench trial and made no mention of a desire for a jury trial. The trial court heard the evidence as set forth above. In addition, J.H. was called to the stand, but she did not appear at trial. The trial court then found J.H. to be "unavailable . . . for the purpose of this trial." (Tr. Vol. 2 at 12). The State moved to admit the transcripts of a prior bond reduction hearing and no contact order hearing in which J.H. had testified,[2] and Heavrin stated that he had "[n]o objection[.]" (Tr. Vol. 2 at 66). Officer Lyninger testified about his interactions with J.H. at the scene, including what J.H. had told him when he had arrived at the house. Heavrin did not object to this testimony. Additionally, the State introduced photographic exhibits detailing J.H.'s injuries, including red marks on her neck and blood on her face. When the State moved to admit an audio recording of J.H.'s 911 call, Heavrin objected "on the grounds that it [was] introduced through leading testimony." (Tr. Vol. 2 at 17). The trial court overruled the objection. When the State moved to admit the audio recordings of Heavrin speaking with Detective Kaiser, Heavrin stated that he had "no objection to admission, Judge." (Tr. Vol. 2 at 41). At the conclusion of the bench trial, the trial court found Heavrin guilty as charged.

[8] Heavrin now appeals.

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[2] Heavrin called J.H. as a witness at this hearing.

Decision

[9] Heavrin argues that: (1) he did not waive his right to a jury trial; (2) the trial court abused its discretion when it admitted evidence; and (3) there is insufficient evidence to support his domestic battery conviction. We address each of his arguments in turn.

1. Waiver of Jury Trial

[10] Heavrin first argues that he did not waive his right to be tried by a jury. The right to a jury trial in a criminal case is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana Constitution. *Poore v. State*, 681 N.E.2d 204, 206 (Ind. 1997). A defendant charged with a misdemeanor must demand a jury trial and may waive that right by inaction. *Id.* at 207. The procedure for demanding a jury trial in a misdemeanor case is controlled by Indiana Rule of Criminal Procedure 22, which states:

> A defendant charged with a misdemeanor may demand trial by jury by filing a written demand therefor[e] not later than ten (10) days before his first scheduled trial date. The failure of a defendant to demand a trial by jury as required by this rule shall constitute a waiver by him of trial by jury unless the defendant has not had at least fifteen (15) days advance notice of his scheduled trial date and of the consequences of his failure to demand a trial by jury.

[11] Here, the issue is whether Heavrin waived his previously scheduled jury trial for his misdemeanor charge when he actively filed a motion waiving his jury trial and requesting a bench trial. We conclude that he did. Our review of the record

reveals that the trial court scheduled a February 2021 jury trial for Heavrin at his initial hearing. However, due to the COVID-19 pandemic, the trial court was unable to hold jury trials at that time. On the date of Heavrin's scheduled trial, his counsel appeared before the trial court and stated, orally and then in writing, that Heavrin would like to waive his jury trial and request a bench trial. The trial court granted his request. At Heavrin's bench trial, neither Heavrin nor his counsel made any indication that Heavrin wanted a jury trial. Heavrin has, therefore, invited the error about which he now complains.

[12] The Indiana Supreme Court recently explained the invited error doctrine as follows:

> The invited-error doctrine is based on the doctrine of estoppel and forbids a party from taking advantage of an error that [he] commits, invites, or which is the natural consequence of [his] own neglect or misconduct. Where a party invites the error, [he] cannot take advantage of that error. In short, invited error is not reversible error.

Matter of J.C., 142 N.E.3d 427, 432 (Ind. 2020) (internal citations omitted). Here, Heavrin, through his counsel, affirmatively asked, both orally and in writing, for the jury trial to be waived and for a bench trial to be set. He cannot now complain that he was denied a jury trial when he requested a bench trial.

[13] Nevertheless, Heavrin argues that his jury trial waiver is invalid because he was not involved in the dialogue with the trial court during the February hearing. Heavrin's argument fails because if a defendant has counsel, he speaks to the court through his counsel. *Underwood v. State*, 722 N.E.2d 828, 832 (Ind. 2000),

reh'g denied. Here, Heavrin's counsel clearly stated that Heavrin was waiving the jury trial and requesting a bench trial; counsel did so before the trial court in person and by motion. Additionally, neither Heavrin nor his counsel objected to the bench trial before this appeal was taken.

[14] Heavrin also argues that he did not voluntarily waive his right to a jury trial because his waiver was not done by a written waiver signed by him or by colloquy in open court. In support of this argument, Heavrin cites to *Jones v. State*, 810 N.E.2d 777 (Ind. Ct. App. 2004), which discusses the requirements when waiving a felony jury trial. We reject Heavrin's attempt to apply the requirements from *Jones* to his waiver of a misdemeanor jury trial. *See Horton v. State*, 51 N.E.3d 1154, 1158 (Ind. 2016) (noting that in a *felony* prosecution, waiver is valid only if communicated personally by the defendant) (emphasis added).

2. Admission of Evidence

[15] Heavrin argues that the trial court abused its discretion in admitting: (1) the transcripts of his bond reduction hearing and his no contact order hearing (collectively, "the hearing transcripts"); (2) J.H.'s statements to the officers; and (3) the audio recording of J.H.'s 911 call. We will address each piece of evidence in turn.

[16] The admission and exclusion of evidence falls within the sound discretion of the trial court. *Guffey v. State*, 42 N.E.3d 152, 159 (Ind. Ct. App. 2015), *trans. denied*. As a result, we review the admission of evidence only for an abuse of

discretion. *Id.* An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

[17] Heavrin argues that the trial court abused its discretion in admitting the hearing transcripts because they were inadmissible hearsay. However, Heavrin has waived this argument on appeal because "[a] failure to object when the evidence is introduced at trial waives the issue for appeal." *Delarosa v. State*, 938 N.E.2d 690, 694 (Ind. 2010). Our review of the record reveals that when the State moved to admit the hearing transcripts in which J.H. had testified, Heavrin stated that he had "[n]o objection[.]" (Tr. Vol. 2 at 66).

[18] Heavrin also argues that the trial court abused its discretion in admitting J.H.'s statements to the officers because it was inadmissible hearsay. However, this argument is also waived on appeal. Our review of the record reveals that Officer Lyninger testified about his interactions with J.H. at the scene, including what J.H. had told him when he had arrived at the house, and Heavrin did not object to this testimony. *See Delarosa*, 938 N.E.2d at 694.

[19] Additionally, Heavrin argues that the trial court abused its discretion in admitting the audio recording of J.H.'s 911 call because it was inadmissible hearsay. However, this argument is waived on appeal because Heavrin did not object on these grounds at trial. *See Marshall v. State*, 621 N.E.2d 308, 316 (Ind. 1993) (holding that appellant cannot raise one ground for objection at trial and argue a different ground on appeal). Our review of the record reveals that when the State moved to admit the recording of J.H.'s 911 call, Heavrin objected "on

the grounds that it [was] introduced through leading testimony." (Tr. Vol. 2 at 17). Heavrin cannot now argue that it is inadmissible hearsay.

[20] In an attempt to circumvent waiver, Heavrin argues that admission of some of the contested evidence constituted fundamental error. While Heavrin makes no such argument in relation to the audio of J.H.'s 911 call, he argues that admission of the hearing transcripts and J.H.'s statements to the officers constituted fundamental error. These claims "can be reviewed on appeal if the reviewing court determines that a fundamental error occurred." *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010), *reh'g denied*. The error claimed must either "make[] a fair trial impossible" or constitute "clearly blatant violations of basic and elementary principles of due process[.]" *Clark v. State*, 915 N.E.2d 126, 131 (Ind. 2009), *reh'g denied*. This exception is narrow and only available in "egregious circumstances." *Brown v. State*, 799 N.E.2d 1064, 1068 (Ind. 2003). However, even when improperly admitted evidence is admitted, it will not be found to be fundamental error if substantial independent evidence of guilt was properly admitted. *Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012). As a result, the erroneously admitted hearsay evidence is merely cumulative and harmless. *Id*.

[21] Here, there was sufficient independent evidence to convict Heavrin of domestic battery outside of the contested evidence. Heavrin admitted to Detective Kaiser that he had pushed J.H. at least twice. Detective Kaiser recorded the admission and it was presented at trial without objection from Heavrin. Additionally, the audio of J.H.'s 911 call was admitted at trial. *See Davenport v. State*, 749 N.E.2d

1144, 1148 (Ind. 2001) (admission of 911 call can be admitted into evidence as admissible hearsay under the excited utterance exception); *Davis v. Washington*, 547 U.S. 813, 826 (2006) (statements made to 911 operator may be deemed non-testimonial, not triggering Sixth Amendment Confrontation Clause requirement because primary purpose was to seek police assistance to ongoing emergency). In this recording, J.H. had told the 911 operator that Heavrin had "t[aken] [her] by [her] throat and [had] thrown [her] against the wall." (Tr. Vol. 2 at 19). Additionally, Officer Lyninger testified that he saw red marks on J.H.'s neck and blood on her face when he arrived at the house, and photos of her injuries were taken and admitted at trial. Thus, the claimed error, if erroneous, would be cumulative and merely harmless, not fundamental error. *See Delarosa*, 938 N.E.2d at 695 (holding no fundamental error where alleged hearsay statements were admitted because there was ample evidence corroborating the testimony and testimony did not add anything of consequence).

3. Sufficiency of the Evidence

[22] Heavrin next argues that the evidence was insufficient to support his conviction. Specifically, Heavrin argues that "the totality of evidence is insufficient to convict [Heavrin] of misdemeanor battery[.]" (Heavrin's Br. 18). Our standard of review for sufficiency of the evidence claims is well settled. We 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 the evidence or judge witness credibility. *Id.* We will affirm the conviction unless

no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[23] INDIANA CODE § 35-42-2-1.3(a)(1) provides "a person who knowingly or intentionally . . . touches a family or household member in a rude, insolent, or angry manner . . . commits domestic battery[.]" "Evidence of touching, however slight, is sufficient to support a conviction for battery." *Wolf v. State*, 76 N.E.3d 911, 915 (Ind. Ct. App. 2017) (internal quotation marks omitted and citation omitted).

[24] Our review of the record reveals that Heavrin and J.H. had an argument that turned into a physical altercation. In her 911 call, J.H. told the operator that Heavrin had "t[aken] [her] by [her] throat and [had] thrown [her] against the wall." (Tr. Vol. 2 at 19). J.H. also told officers the same when they were dispatched to the scene. Officer Lyninger noticed red marks on J.H.'s neck and blood on her face while she explained to him that Heavrin had shoved her into a wall by her neck. Additionally, when talking with Detective Kaiser, Heavrin admitted that he had pushed J.H. at least twice. Finally, at trial, the State admitted an exhibit showing photographs of J.H.'s injuries, including red marks along her neck and blood on her face. This evidence is sufficient to support the conviction. Based on this evidence, there was sufficient evidence from which a reasonable trier of fact could have convicted Heavrin of domestic battery beyond a reasonable doubt. Accordingly, we affirm Heavrin's conviction.

[25] Affirmed.

May, J., and Brown, J., concur.