

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Gaspar Hernandez,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

November 18, 2022

Court of Appeals Case No.  
22A-CR-806

Appeal from the Marion Superior  
Court

The Honorable Shatrese M.  
Flowers, Judge

The Honorable James Snyder,  
Magistrate

Trial Court Cause No.  
49D28-2108-F5-24146

**Altice, Judge.**

## Case Summary

[1] Gaspar Hernandez appeals his conviction for domestic battery, a Class A misdemeanor, claiming that the trial court erred in instructing the jury that voluntary intoxication is not a defense to the crime charged. Hernandez contends that the instruction was erroneous because the evidence at trial failed to show that he was in fact intoxicated when he committed the charged offenses and the instruction “improperly highlighted evidence that was irrelevant and prejudicial.” *Appellant’s Brief* at 2.

[2] We affirm.

### **Facts and Procedural History**

[3] Fifteen-year-old M.M. was living with Hernandez—his uncle—along with his grandmother, Marialouisa, his seventeen-year-old cousin, D.M., and several other relatives at Hernandez’s house in Indianapolis. On the morning of August 1, 2021, M.M. walked into the living room and found Hernandez asleep on the floor. M.M. had to assist Hernandez to his feet because Hernandez had been drinking alcohol throughout the previous evening and had rolled off the couch.

[4] A few minutes later, Hernandez asked M.M. and D.M. to accompany him to the laundromat. The children refused to go because Hernandez was “inebriated” and “wasn’t fit to drive.” *Transcript Vol. II* at 132, 155. Hernandez became angry, started yelling at both children, and threatened to “kick them out of the house.” *Id.*

[5] D.M. went into her bedroom, and as an argument ensued, Marialouisa entered D.M.'s room and tried to shut the door. Hernandez shoved the door open, causing D.M. to fall and hit her leg on some furniture. The fall resulted in some bruising to D.M.'s leg. M.M. then grabbed Hernandez by the shoulders and pulled him into the living room where the two began to "tussle." *Id.* at 136. At some point, Hernandez head-butted M.M. on the chin, splitting M.M.'s lip. The police were called, and Hernandez left the residence.

[6] Lawrence Police Department Officer Cory Whaley was dispatched to the scene on a domestic violence report. As Officer Whaley was talking with D.M. and M.M. outside the residence, Hernandez returned and entered the house. Hernandez ignored Officer Whaley's requests to stop and "come here." *Id.* at 183. M.M. then walked to a side door, entered the house, and unlocked the front door from the inside to permit Officer Whaley to enter. When Officer Whaley approached Hernandez, he observed that Hernandez had an "odor of alcoholic beverage on his breath and person." *Id.* at 186.

[7] Hernandez was arrested and charged with Level 5 felony domestic battery resulting in serious bodily injury, Level 6 felony domestic battery, and two counts of Class A misdemeanor domestic battery. On March 21, 2022, the trial court dismissed the Level 5 felony domestic battery charge at the State's request.

[8] Following the presentation of evidence at Hernandez's jury trial on March 23, 2022, the State requested the trial court to issue a final instruction to the jury,

stating that voluntary intoxication is not a defense to domestic battery. Hernandez's counsel objected, arguing that although there was testimony relating to Hernandez's intoxication, there was no proof that Hernandez was actually intoxicated when he committed the offenses. The trial court overruled Hernandez's objection and instructed the jury that "voluntary intoxication is not a defense to a charge of domestic battery. You may not take voluntary intoxication into consideration in determining whether the Defendant acted knowingly as alleged in the information." *Id.* at 205, 227.

[9] The jury found Hernandez guilty of one count of Class A misdemeanor domestic battery and acquitted him of the remaining charges. The trial court sentenced Hernandez to one year of incarceration in the Marion County Jail that amounted to "time served." *Appellant's Appendix Vol. II* at 20; *Transcript* at 234-35. Hernandez now appeals.

## Discussion and Decision

[10] The purpose of a jury instruction is to inform the jury of the law applicable to the facts without misleading the jury and to enable it to comprehend the case clearly and arrive at a just, fair, and correct verdict. *Dill v. State*, 741 N.E.2d 1230, 1232 (Ind. 2001). We review a trial court's jury instructions for an abuse of discretion. *Batchelor v. State*, 119 N.E.3d 550, 554 (Ind. 2019). An abuse of discretion occurs when the instruction is erroneous, and the instructions taken as a whole misstate the law or otherwise mislead the jury. *Isom v. State*, 31 N.E.3d 469, 484-85 (Ind. 2015). On appeal, we review whether

the instruction correctly states the law, whether there is evidence in the record to support giving the instruction, and whether the substance of the instruction is covered by other instructions. *Id.* at 485. We will reverse a conviction only if the appellant demonstrates that the instruction error prejudices his substantial rights. *Treadway v. State*, 924 N.E.2d 621, 636 (Ind. 2010).

[11] Ind. Code § 35-41-2-5 provides that “intoxication is not a defense in a prosecution for an offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense. . . .”<sup>1</sup> The final instruction that the trial court gave at Hernandez’s trial tracks the language of I.C. § 35-41-2-5 and is identical to Indiana Pattern Jury Instruction 10.1400. Moreover, as the comment to that pattern jury instruction provides, the voluntary intoxication instruction “is to be given when the charged crime was committed on or after July 1, 1997, and evidence that the defendant was intoxicated has been admitted.” Thus, contrary to Hernandez’s contention, there is no requirement that a particular threshold of intoxication must be met before the instruction should be given. Rather, it is apparent that mere evidence of intoxication is sufficient to trigger its use. Also, the instruction that the trial court gave in this case is consistent with a voluntary intoxication instruction that our Supreme Court has previously upheld. *See*

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<sup>1</sup> Under I.C. § 35-41-3-5, intoxication is a defense “only if the intoxication resulted from the introduction of a substance into his body: (1) without his consent; or (2) when he did not know that the substance might cause intoxication.”

*Sanchez v. State*, 749 N.E.2d 509, 511 (Ind. 2001). For all these reasons, the instruction that the trial court gave was a correct statement of the law.

[12] There was also evidence in the record to support the giving of the instruction. More specifically, D.M., M.M., and Marialouisa testified at trial about Hernandez’s intoxication. The evidence established that Hernandez had fallen from a couch onto the living room floor after spending most of the previous night drinking alcohol. When M.M. helped Hernandez up from the floor the next morning, Hernandez became aggressive with the children when they refused to accompany him to the laundromat. M.M. and D.M. both believed that Hernandez was too drunk to drive. And when Officer Whaley arrived at the residence, he detected the “odor of alcoholic beverage on [Hernandez’s] breath and person.” *Transcript Vol. II* at 186.

[13] In short, the evidence at trial establishing that Hernandez had been drinking heavily throughout the previous night and was still inebriated in the morning when he committed the charged offenses warranted an instruction clarifying any concerns that the jury might have had as to how or whether they should consider that evidence.

[14] Finally, we reject Hernandez’s claim that the voluntary intoxication instruction unduly or improperly emphasized particular facts. As Hernandez was acquitted of two of the domestic battery counts, it is apparent that the jury followed the trial court’s instructions and applied them to the facts without being prejudiced by the evidence of Hernandez’s intoxication. Also, the trial court instructed the

jury to consider all of the final instructions together and “not to single out any certain sentence or any individual point or instruction and ignore the other.” *Transcript Vol. II* at 224. And the jury is presumed to follow the trial court’s instructions. *Weisheit v. State*, 26 N.E.3d 3, 20 (Ind. 2015).

[15] In sum, because the challenged instruction is a correct statement of law, the evidence at trial supported giving the instruction, there were no other instructions covering the issue, and there is nothing to support Hernandez’s claim that the instruction improperly emphasized particular facts or misled the jury, the trial court properly gave the challenged voluntary intoxication instruction. Thus, Hernandez’s claims fail.

[16] Judgment affirmed.

Brown, J. and Tavitas, J., concur.