

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Derrick Duane Dale,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 19, 2023
Court of Appeals Case No.
22A-CR-1768
Appeal from the
Marion Superior Court
The Honorable
Mark D. Stoner, Judge
Trial Court Cause No.
49D32-2004-F1-13564

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Derrick Duane Dale was convicted of Level 1 felony aggravated battery and other charges stemming from the beating death of his girlfriend’s eight-year-old daughter. Dale now appeals, arguing the trial court erred in admitting a video of the victim being beaten on a different date. Finding any error in the admission of the video to be harmless, we affirm.

Facts and Procedural History

- [2] In March and April 2020, Dale lived with his girlfriend Kimberly Grosklos and her four children—eleven-year-old S.M., nine-year-old K.M., eight-year-old B.M., and four-year-old J.M.—on the east side of Indianapolis. When school went virtual because of the pandemic, Dale stayed home with the children during the day while Grosklos worked. During this time, Dale would “whoop” B.M. Tr. Vol. III p. 34. Before doing so, he would make B.M. get undressed. The “whoopings” depended on what B.M. did. Dale would tie B.M. with a rope or have the other children hold her down, hit her with his hand, a belt, or jumper cables, and “stick pens and dinosaur toys up her butt.” *Id.* at 58. After beating B.M., Dale would make her take a cold bath to minimize the appearance of injuries.

- [3] On March 26, ten days before B.M.’s death, Grosklos was at work when Dale texted her a video of B.M. biting her toenails. Ex. 145. Grosklos responded that

S.M. had already sent it to her and that it was “nasty.” *Id.* Dale asked Grosklos what time she was getting off work, and when Grosklos responded that it wouldn’t be until later, Dale said he would “go ahead and whoop her[.]” *Id.* Grosklos told Dale to “[g]o for it lol” and that there was “[n]o point of waiting on” her. *Id.* About twenty-five minutes later, Dale texted Grosklos, “I f*cked her up.” *Id.* Grosklos responded, “Lol I’m sure u did. Her fault.” *Id.* Dale explained that he “got her wor[se] than” K.M. and that he “had to tie this lil mf up with our rope” and “hang her on the door knob.” *Id.* He further explained that as he tied B.M.’s feet, she tried to run so he “slapped the shit outta her.” *Id.* Dale said that when B.M. tried to run again, he “slapped her a** with the other hand instant bloody mouth smh.” *Id.* Grosklos asked if B.M.’s face was bad because she already had a “big bruise,” and Dale said there was no bruise to B.M.’s face but she did bite the inside of her mouth. *Id.* Later, Dale sent a photo of B.M.’s back and stated, “[t]old u it was bad.” *Id.*; *see also* Ex. 147 (photo of B.M. in bath). Grosklos texted “Omg babe that’s horrible,” to which Dale responded, “Cold bath will heal all wounds lol.” Ex. 145.

[4] On April 6, Grosklos was at work while Dale was home with the children. Dale and S.M. went for a walk. When they returned, Dale saw a “green marker spilled on the counter.” Tr. Vol. III p. 36. Dale asked B.M. about it, but she denied doing it. Dale eventually had “enough of [B.M.’s] lying,” so he beat her with jumper cables. *Id.* B.M. “scream[ed]” and tried to run away from him. Dale grabbed B.M. by the neck, causing her to “pass out.” *Id.* at 37. When B.M. regained consciousness, Dale started “beating” her again. *Id.* The jumper

cables left marks “all over” B.M. like “[t]iger stripes.” *Id.* at 59. Dale then started “an ice-cold bath” and made B.M. get in it. *Id.* at 60.

[5] Grosklos came home from work while B.M. was still in the bath. Dale, Grosklos, S.M., and K.M. went to Grosklos and Dale’s bedroom. Dale, Grosklos, and S.M. “s[at] there getting high, like, per usual” while B.M. was in the bath. *Id.* At some point, Dale and Grosklos went back and forth to the bathroom, separately. *Id.* at 38, 51-52, 60-61, 64-65. About five minutes later, they heard a loud thud in the bathroom. They went in the bathroom and saw that B.M. “wasn’t moving.” *Id.* at 38. Dale took B.M. out of the bathtub, and they started CPR. Dale and Grosklos instructed S.M. not to call 911 because “they had it under control.” *Id.* After about ten minutes of CPR, they “g[a]ve up” and called 911. *Id.* Dale and Grosklos put clothes on B.M. before the ambulance arrived.

[6] When the ambulance arrived, the paramedics observed that B.M. was fully clothed even though they were told it was a bath drowning. B.M. was unresponsive, “very pale,” and bluish, the mucosa of her eyes were “very dry,” and her pupils were dilated. Tr. Vol. II p. 162. They suspected that B.M. had “been down a long time.” *Id.* at 163. When they lifted B.M.’s shirt to do an assessment, they saw “bruises all over her torso” in a “looping” pattern. *Id.* They immediately suspected child abuse and took B.M. to the ambulance for treatment for “safety” concerns. *Id.* at 164. When the paramedics removed B.M.’s clothing so they could use the defibrillator, they saw bruises on her “whole” body. *Id.* at 165. The paramedics worked on B.M. on the scene for at

least fifteen minutes using CPR, medication, and a defibrillator to no avail before taking her to Community East Hospital. After more resuscitation efforts at the hospital, B.M. was pronounced dead.

[7] After the paramedics took B.M. to the hospital, Dale told S.M. to say that Grosklos had beaten B.M., not him. S.M. said okay because she was “terrified” of him. Tr. Vol. III p. 39. The police arrived and searched the house. Jumper cables, a green marker, and a purple rope were collected. Tr. Vol. III p. 107; Exs. 111-13. The Department of Child Services also arrived, took custody of the children, and placed them in therapeutic foster care (two of the children were later placed with their maternal grandmother). The children didn’t see their mother or Dale after that point. Dale was interviewed later that night. He denied disciplining B.M. because she was so “small” and said he left that to Grosklos because she had a “softer” hand. Exs. 109, 154. Dale said that when Grosklos got home from work that day, she “whooped” B.M. with a belt because of the green-marker incident. *Id.*

[8] After B.M. died, a forensic nurse, Jennifer Conley, documented injuries to B.M.’s body through body mapping and photographs. *See* Exs. 12-51. Nurse Conley documented bruises (“linear,” “looping,” and “fingerprint-like”) and lacerations on B.M.’s arms, legs, chest, stomach, back, and bottom. Tr. Vol. II pp. 204-09; Ex. 12-51 (photos). The injuries were in various stages of healing. Nurse Conley noted “venous congestion” in B.M.’s eyes and marks around her neck, which indicated strangulation. Tr. Vol. II pp. 208, 222. Nurse Conley also noted an abrasion and redness to B.M.’s vaginal opening and bruising to her

anus. *Id.* at 208-09. In Nurse Conley’s training and experience, B.M.’s injuries indicated child abuse and were inflicted in part by an object. *Id.* at 220, 228.

[9] Dr. Amanda Paul, a forensic pathologist, conducted an autopsy. She found numerous abrasions and contusions on B.M.’s body. Tr. Vol. IV pp. 53-63. She also described internal injuries, including lung contusions, a hemorrhage in her pancreas, a subcutaneous hemorrhage in the occipital region of her brain, “a small amount of hemorrhage in the soft tissue posterior to the vagina,” and subcutaneous hemorrhages that “basically corresponded to what we could see overlying her skin,” including hemorrhages on the front of her neck. *Id.* at 64-65, 70, 78. According to Dr. Paul, some injuries were likely caused by jumper cables due to the pattern of the marks on B.M.’s body. *Id.* at 69. B.M.’s cause of death was “mixed modality trauma”—which means “multiple types of injuries”—“including, but not limited to, multiple blunt force injuries,” and the manner of death was homicide. *Id.* at 74, 75. Dr. Paul believed that asphyxia was a “component” in the cause of death. *Id.* at 78.

[10] Detective Mark Waggoner of the Cumberland Police Department was assigned to the case. Dale’s and Grosklos’s cell phones were seized and sent for forensic examinations. Texts between Dale and Grosklos from April 6 could not be recovered. *Id.* at 36. But as detailed above, texts from March 26 were recovered. Detective Waggoner received S.M.’s cell phone from DCS. Tr. Vol. III p. 112. A video thirty-nine seconds in length was found on S.M.’s phone showing B.M. on the ground and someone flicking and slapping her face while she was being

held down. Ex. 141. The arm and part of the body (but not the face) of the person flicking and slapping B.M. can be seen in the video.

[11] The State charged Dale with four counts: Count I: murder (April 6), Count II: Level 1 felony aggravated battery (April 6), Count III: Level 1 felony neglect of a dependent resulting in death (March 23-April 6), and Count IV: Level 3 felony battery (March 26).¹ A three-day jury trial was held in June 2022. S.M., then age thirteen, testified that she was interviewed twice after her sister’s death. In the first interview, she said her mother had beaten B.M. In the second interview, she said Dale had beaten B.M. S.M. explained that she didn’t tell the truth during the first interview because she was “scared” of Dale and worried that she would “end up like [her] sister.” Tr. Vol. III p. 40. K.M., then age twelve, testified that he was interviewed once after his sister’s death and that he said Dale had beaten B.M. *Id.* at 64.

[12] During a break in trial, defense counsel said he planned to object to a “very small video” that the State planned to introduce. The video was Exhibit 141, which was recovered from S.M.’s phone. Tr. Vol. IV p. 9. Defense counsel said the video shows “[Dale] and the boy.” *Id.* The State corrected defense counsel, stating the video shows “[Dale] and [B.M.]” *Id.* Even so, defense counsel said he “would still argue relevance.” *Id.* The trial court asked if the video was being introduced through Detective Waggoner, and the State said yes. *Id.* Defense

¹ The State filed identical charges against Grosklos. She pled guilty to Level 1 felony neglect of a dependent resulting in death and was sentenced to twenty years in prison.

counsel then described the video as Dale “flicking” B.M. *Id.* Although the video doesn’t show the face of the person doing the flicking, at no point did defense counsel claim that the video does not depict Dale. Instead, defense counsel acknowledged that it is Dale in the video by his comments. The State added that Dale hit B.M. too. Defense counsel disagreed with the State’s characterization and maintained that Dale only flicked B.M. *Id.* The court asked the State when the incident occurred, and the State said March 24. The court said they would revisit the issue when the video was introduced. When the issue came up later, defense counsel objected to the video on grounds it was “irrelevant” and “prejudicial.” *Id.* at 24. The State said the video was relevant because in his interview with police Dale denied hitting B.M. The court admitted Exhibit 141 over defense counsel’s objection.

[13] The jury acquitted Dale of murder but convicted him of the remaining charges. The trial court reduced the conviction for Count III from a Level 1 felony to a Level 5 felony and sentenced Dale to an aggregate term of forty-nine years, with five years suspended to probation.

[14] Dale now appeals.

Discussion and Decision

- [15] Dale raises one issue on appeal. That is, he contends the trial court erred in admitting Exhibit 141, the video found on S.M.'s phone. We review a trial court's evidentiary rulings for an abuse of discretion. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018).
- [16] Dale argues Exhibit 141 was irrelevant and unduly prejudicial under Indiana Evidence Rules 401-403 because Detective Waggoner did not testify about "when the video was recorded or who was flicking and slapping B.M. in the video."² Appellant's Br. p. 10. The State responds that Dale has waived this argument because he did not object on these grounds below. That is, although defense counsel objected on grounds of relevance and undue prejudice, he acknowledged that it is Dale in the video and didn't dispute the State's assertion that the video was recorded on March 24.
- [17] We agree with the State that Dale has waived this argument for review. Had Dale objected on these grounds below, perhaps the trial court would have ruled differently or the State would have elicited more information from Detective Waggoner. But even assuming Dale has preserved this argument for review **and**

² Although Dale cites Indiana Evidence Rule 404 in his opening brief, he does not cite it in his reply brief and says that his argument is based on Evidence Rules 401-403:

The video, admitted at trial, of someone flicking and smacking B.M. was irrelevant and unfairly prejudicial. Ex. 141; Ind. Evidence Rule 401-403. Dale objected to the video on those grounds at trial. Tr. Vol. IV, p. 9, 24, 29. Dale makes the same argument on appeal. Br. of Appellant, p. 10-15.

Appellant's Reply Br. p. 4.

the trial court erred in admitting the video, the error was harmless. An error in the admission of evidence does not require reversal “unless it prejudices the defendant’s substantial rights.” *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). “To determine whether an evidentiary error was prejudicial, we assess the probable impact the evidence had upon the jury in light of all of the other evidence that was properly presented.” *Id.* “If we are satisfied the conviction is supported by independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict, the error is harmless.” *Id.*

[18] We do not believe the challenged evidence contributed to the verdicts because there is substantial independent evidence of Dale’s guilt. We first note, as the State points out, that “the video was never commented upon during opening statements or closing arguments.” Appellee’s Br. p. 17. The trial was three days long and involved fourteen witnesses and around 150 exhibits. As for the April 6 death of B.M., both S.M. and K.M. testified that they witnessed Dale beat B.M. with jumper cables and forced her to get in an ice-cold bath. As for the March 26 beating of B.M., Dale documented the beating by texting Grosklos before he did it, while he did it, and after he did it. He also texted Grosklos how he beat B.M. and sent her a photo of the injuries to B.M. while she was naked in the bath. It is undisputed that Dale was home alone with the children on both March 26 and April 6 and was their caregiver when Grosklos was at work. This evidence, along with the evidence of B.M.’s severe injuries over her entire body that the medical professionals testified were at various stages of healing and indicative of child abuse, is more than sufficient to support Dale’s

convictions. Given this independent evidence of guilt, any error in the admission of Exhibit 141 was harmless.

[19] Affirmed.

Tavitas, J., and Foley, J., concur.