

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert E. Hamilton, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 30, 2022

Court of Appeals Case No.
21A-CR-1186

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-1910-F1-23

May, Judge.

[1] Robert E. Hamilton, Jr., appeals following his convictions of Level 1 felony child molesting,¹ Level 4 felony child molesting,² and Level 5 felony battery.³ Hamilton argues the trial court abused its discretion when it admitted evidence of his prior crimes, wrongs, and other acts at trial in violation of Indiana Evidence Rule 404(b). We affirm.

Facts and Procedural History

[1] Three months after Hamilton and Nicole Horner began their relationship in 2010, Horner and her two daughters, A.H. and A.L.H., moved into Hamilton's duplex. The four lived in the duplex in Fort Wayne with Hamilton's mother, his sister, and his sister's son. In 2016, Hamilton, Horner, and her daughters moved to the other side of the duplex to live with Hamilton's aunt and her son and daughter.

[2] While living with Hamilton's aunt and cousins, Hamilton and ten-year-old A.H. began habitually watching animated stories on Hamilton's phone. They would watch these videos alone in the upstairs bedroom that Hamilton, Horner, and her two daughters shared. Hamilton would make A.H. rub his leg, thigh,

¹ Ind. Code § 35-42-4-3(a)(1).

² Ind. Code § 35-42-4-3(b).

³ Ind. Code § 35-42-2-1(c)(1).

and penis, and he touched her breasts and buttocks over and under her clothes while they watched the animated stories.

[3] Hamilton, Horner, and the girls eventually moved back to the other side of the duplex after Hamilton's mother and sister moved out. Hamilton again began taking A.H. to an upstairs bedroom, where he tried to make the now eleven-year-old A.H. put his penis in her mouth. When she refused, he pinned her against the wall of the bedroom closet, took off her pants, and forced his penis into her vagina. This abuse occurred approximately once or twice a week from the time A.H. was eleven or twelve years old, until she turned thirteen years old.

[4] Hamilton continued to get A.H. to go to the upstairs bedroom under the guise of watching animated scary stories because no one else in the house other than A.H. knew what that implied. (Tr. Vol II at 142.) A.H. did not tell her mother or sister about the sexual abuse because she feared Hamilton, and Hamilton in turn gifted A.H. a gold necklace, earrings, and a flat screen T.V. just for her to use. Over time, A.H. began to cut herself, struggled with depression, and developed night terrors. Despite knowing of A.H.'s self-harm, Hamilton did not stop his abuse and chose not to help her.

[5] Hamilton and Horner terminated their relationship at the end of 2018, but Horner and her daughters continued to visit Hamilton on the weekends. A.H. testified she felt angry about going to see Hamilton and yelled at her mother about being made to visit him. In January 2019, A.H. and a few of her friends

engaged in a conversation over social media, where A.H. posted a comment revealing that Hamilton had sexually abused her. A.H.'s friend mentioned the comment to the school counselor, who reported it to the Indiana Department of Child Services, which began an investigation.

[6] The State charged Hamilton with one count of Level 1 felony child molesting, two counts of Level 4 felony child molesting, and one count of Level 5 felony battery. Prior to trial, the State filed a notice of intent to present Rule 404 evidence that Hamilton had physically abused Horner, A.H., and A.L.H. Additionally, the State also sought to admit evidence that Hamilton had threatened to harm A.H., her sister, Horner, and Horner's disabled brother with Hamilton's gun if A.H. disclosed the sexual and physical abuse. The trial court overruled Hamilton's opposition to the State's notice of intent in an order that provided:

The Court, having taken under advisement the State's Notice of 404 Evidence, the Memorandum in Support of the Notice of 404, the deposition of [A.L.H.], the deposition of Nicole R. Horner, and the Defendant's Memorandum in Opposition to State's Notice of 404 Evidence, now finds that the evidence is relevant and admissible as it goes to the relationship of the parties, and the Defendant's motive, intent, knowledge, and preparation. The prior incidents of violence and threats made against the victim and her family are probative and their prejudicial impact is not substantially outweighed by their probative value. The Court will allow the evidence outlined in the Notice of 404 in the trial of this cause.

(Appellant's App. Vol. II at 26.)

[7] A.H. and A.L.H. both testified at trial that Hamilton physically abused them and their mother, and they recounted an instance when Hamilton broke several of Horner's ribs by squeezing her with his legs. A.H. revealed Hamilton hit and kicked her in the head on multiple occasions. She testified his physical abuse left bruises on her legs and arms, which prompted her to wear long-sleeved clothing to school and to change outside of her peers' view so that no one would see the marks. A.H.'s testimony was corroborated by Horner, who testified Hamilton abused the girls by slapping them on the back of the head and he physically abused her multiple times a week. A.H. testified she was fearful, based on Hamilton's previous aggression and threats of violence, that he would harm her and her family with a gun if she mentioned the physical and sexual abuse to anyone.

[8] Hamilton objected throughout the trial to the admission of Rule 404(b) evidence regarding his possession of a gun, his past physical abuse of Horner and her daughters, and his retaliatory threats. He argued its relevance was overshadowed by unfair prejudice. At the conclusion of a three-day jury trial held on April 20, 2021, Hamilton was found guilty of all four counts. The court sentenced him on May 21, 2021, to an aggregate fifty-three-year sentence in the Indiana Department of Correction.

Discussion and Decision

[9] The trial court has broad discretion to rule on the admissibility of evidence, and a reviewing court will reverse the trial court's decision only upon finding an

abuse of discretion. *Holloway v. State*, 69 N.E.3d 924, 929 (Ind. Ct. App. 2017), *trans. denied*. An abuse of discretion occurs when “admission is clearly against the logic and effect of the facts and circumstances and the error affects a party’s substantial rights.” *Id.* We will not reweigh the evidence and will resolve all conflicts in favor of the trial court’s ruling. *Id.* The trial court’s ruling is presumptively correct, and a challenger bears the burden on appeal of persuading us the trial court erred in its exercise of discretion. *Sears Roebuck & Co. v. Manuilov*, 742 N.E.2d 453, 457 (Ind. 2001). A trial court’s evidentiary rulings are controlled by the Indiana Rules of Evidence, and the court in its discretion is permitted to exclude relevant and otherwise admissible evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.” Ind. Evid. R. 403.

[10] Hamilton argues the admission of evidence regarding his threats against A.H. if she disclosed the sexual abuse, his possession of a gun, and his prior physical violence towards A.H. and her family was impermissible under Evidence Rule 404(b) due to its prejudicial nature. Rule 404(b)(1) renders inadmissible any evidence of a past “crime, wrong, or other act” to prove conformity therewith, because we want to prevent fact-finders from drawing the forbidden inference that “prior wrongful conduct suggests present guilt.” *Halliburton v. State*, 1 N.E.3d 670, 681 (Ind. 2013). However, such evidence may be admissible for other purposes, “such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Evid. R.

404(b)(2). The list of permissible purposes as outlined by the Evidence Rule is illustrative but not exhaustive. *Curry v. State*, 90 N.E.3d 677, 689 (Ind. Ct. App. 2017), *trans. denied*. As such, evidence may be admissible for a permitted purpose under the exceptions set forth by Rule 404(b) contingent upon the following requirements: first, the court must determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant's propensity to commit the charged act; and second, the court must balance whether the probative value of the evidence is outweighed by prejudicial effect. *Pierce v. State*, 29 N.E.3d 1258, 1269 (Ind. 2015).

[11] As an initial matter, we note that some of the evidence about which Hamilton complains – specifically A.H.'s testimony about times when Hamilton battered her – was required to prove the State's charge that Hamilton had committed Level 5 felony battery of A.H. between August 1, 2016, and January 31, 2019. (See Appellant's App. at 22 (charging information for battery).) As such, those portions of A.H.'s testimony were direct evidence of a charged crime, which Rule 404(b) is not intended to render inadmissible. See *Mise v. State*, 142 N.E.3d 1079, 1086 (Ind. Ct. App. 2020) (finding no violation of Rule 404(b) because victim's testimony provided direct evidence that the defendants had committed the charged offenses during the charged time period, and was not offered to demonstrate the defendants had acted in accordance with their character to commit the offenses), *trans. denied*.

[12] Next, as to A.H.'s testimony about threats Hamilton made to hurt A.H. or her family, we note Rule 404(b) allows admission of evidence demonstrating

uncharged criminal acts that are intrinsic to the charged offense, where the acts occur “at the same time and under the same circumstances as the crimes charged.” *Bennett v. State*, 5 N.E.3d 498, 509 (Ind. Ct. App. 2014), *trans. denied*. This exception does not indicate the presence of a wholly separate crime or wrongdoing, *Kyle v. State*, 54 N.E.3d 439, 444 (Ind. Ct. App. 2016), and in order to ensure the evidence is not offered for an impermissible purpose, is still dependent on the balance between probative value and risk of unfair prejudice. *Ware v. State*, 816 N.E.2d 1167, 1175 (Ind. Ct. App. 2004). At Hamilton’s trial, at least some of A.H.’s testimony about Hamilton’s threats was intrinsic to the episodes of molesting and battery. For example, A.H. testified:

[State]: When you say you wouldn’t let him put his penis in your mouth, what – how did he react then?

[A.H.]: He got mad and he just got really aggressive.

[State]: What do you mean by really aggressive?

[A.H.]: Like he started like – like he pulled me up really aggressively and he like grabbed me by my hair and put me against the wall.

[State]: How did that feel when he grabbed you by the hair and put you against the wall?

[A.H.]: It hurt.

* * * * *

[State]: I'm gonna ask you, why – why didn't you tell anybody what was going on?

[A.H.]: Because when I told him I was gonna tell my mom, he grabbed me by my throat and put me up against the wall and told me he was gonna make me watch him kill my family, and then kill me after.

[State]: And did you think that he was capable of – of carrying out that threat that he would kill your family and make you watch?

[A.H.]: Yes.

(Tr. Vol. II at 141-143.) As such, A.H.'s testimony about at least some of Hamilton's threats was permissible as intrinsic to telling A.H.'s story of Hamilton's sexual and physical abuse.⁴

[13] Now, having resolved the proper admission of those forms of evidence, we turn to the remaining evidence about which Hamilton complains – testimony by A.H. about Hamilton's abuse of Horner and A.L.H., testimony by Horner and A.L.H. about Hamilton being abusive, and other testimony about Hamilton threatening harm. Pursuant to the Indiana Rules of Evidence, “[i]rrelevant evidence is not admissible” while “[r]elevant evidence is admissible,” barring a

⁴ Moreover, as Hamilton conceded during trial, A.H.'s testimony about threats was admissible to explain why A.H. did not report the abuse while she still lived with Hamilton. (*See* Tr. Vol. II at 171 (acknowledging A.H.'s testimony was allowed to explain delay but asking court to prohibit mother and sister from producing a drum-beat repetition).)

few exceptions as noted above. Ind. Evid. R. 402. Evidence is considered relevant if “it has any tendency to make a fact more or less probable than it would be without the evidence,” and such fact must be of “consequence in determining the action.” Ind. Evid. R. 401.

[14] Here, evidence regarding Hamilton’s threats and past aggression toward A.H.’s family was presented to the jury in part to explain A.H.’s hesitation to come forward and reveal the abuse. In its opening statement, the defense articulated that “this is a case where somebody is lying...[y]ou’re gonna have to believe – have to believe A. H. or have to believe [Hamilton].” (Tr. Vol. II at 129.) A.H.’s credibility during her testimony was a crucial aspect of convincing the jury of Hamilton’s guilt of the charged offenses, which may have required an explanation of her delay in disclosure, particularly because the abuse continued over the course of two years and was only inadvertently revealed. To that end, A.H. testified she did not tell anyone what was going on because “when [she] told [Hamilton] [she] was gonna tell [her] mom, he grabbed [her] by [the] throat and put [her] up against the wall and told [her] he was gonna make [her] watch him kill [her] family, and then kill [her] after.” (*Id.* at 143.) A.H. testified she wholeheartedly believed Hamilton was capable of carrying out that threat of violence against her and her family because he had previously acted in an aggressive manner toward her, he was physically abusive on numerous occasions, and he possessed a gun. (*Id.* at 143-145.)

[15] Hamilton, in his reply brief, states that “[b]y allowing in the 404 evidence, this trial became NOT a contest of who was most credible, but became instead a

trial of Defendant is a bad actor because of the 404 evidence.” (Reply Br. of Appellant at 5.) However, the emphasis at trial was not to incessantly inundate the jury with Hamilton’s supposed violent character in order to suggest a forbidden inference. Rather, because the jury might reasonably wonder and make potentially incorrect assumptions about A.H.’s credibility as a result of the gap between the abuse and disclosure, presenting evidence of past physical abuse and threat of future harm explained A.H.’s hesitation to come forward.

[16] In *Baumholser v. State*, we rejected a defendant’s claim that “the State used the evidence regarding his status as an alcohol drinker and gun-owner to prove he had a dangerous character, and that molesting his stepdaughter was consistent with that character[.]” 62 N.E.3d 411, 415 (Ind. Ct. App. 2016), *trans. denied*. Instead, we determined such evidence was not offered to prove defendant molested his stepdaughter, but rather presented to explain that the victim waited to disclose the abuse because she was afraid of the defendant. *Id.* Similarly, A.H.’s testimony regarding Hamilton’s physical violence was probative and relevant to dispel any negative inferences the jury may have made from her delay in reporting Hamilton’s sexual abuse. A.H.’s testimony that Hamilton “would hit us in the head, in the body. He would hit us so hard we’d fall to the ground and then he’d kick us while we were on the ground” demonstrated the kind of consequences A.H. or her family might be subjected to because of Hamilton’s pattern of previous physical violence. (Tr. Vol. II at 144.) A similar issue was presented in *Hackney v. State*, in which the defendant argued the trial court violated Indiana Evidence Rule 404(b) in permitting the

victim to testify regarding alleged domestic abuse she observed Hackney inflict upon her mother. 649 N.E.2d 690, 692 (Ind. Ct. App. 1995), *trans. denied*. The State, however, introduced this evidence for the limited purpose of demonstrating the victim's state of mind and to explain the year-long gap it took to reveal Hackney's sexual abuse due to her fear of him.

[17] Regarding any prejudicial effect, we note the trial court addressed the defense's objection to Rule 404(b) testimony following the initial filing of the State's notice of intent to use Rule 404 evidence and also as a continuing objection during trial:

[Defense]: Judge, I just wanted to renew my objection as to the 404 evidence. Obviously it was inputted to give motive to why A.H. wouldn't, uh, say anything... I think that's been established through A. H. I think anymore bringing that in through [Horner] or through, uh, A., the sister, is gonna amount to just drumbeat and it's gonna overshadow the real evidence in this case. And based on Rule 404 or 403, uh, I would make an objection to continuing to allow the Prosecutor to bring that evidence in.

[State]: Your Honor, they also have details about the abuse that occurred. And –

[Court]: Of what?

[State]: That – the – about the physical abuse that was occurring. If they don't talk about it and nobody else talks about it, it looks like A. H. is the only one saying it happened. I think they have – we have a right to say they also witnessed it. It's – it's corroboration.

[Court]: It is, but I think – I think the objection is – is well founded to the extent that we don't need to get into the repetitive drumbeat nature of it.

[State]: Okay.

[Court]: So, as long as you limit it to –

[State]: I can do that.

[Court]: - what she previously testified to and what happened in front of her that she was aware of, I think it's admissible.

(Tr. Vol. II at 171-172.)

[18] Although admission of Hamilton's prior physical abuse of Horner and A.L.H and his threats of aggression to deter disclosure of the sexual abuse may prompt a jury to consider Hamilton's prior acts and possession of a gun as an indication of current guilt, this risk does not substantially outweigh the highly probative value of the evidence itself. Furthermore, the court specifically directed the State to inquire only about abuse to which A.H. had already testified, in order to substantiate her testimony without further Rule 404 evidence being admitted. Lastly, because some of the evidence proved the charge of battery, and was also intrinsic to the abuse itself, this satisfies the second part of the Rule 404(b) admissibility analysis. The trial court did not abuse its discretion by admitting the contested Rule 404(b) evidence, as its high probative value was not substantially outweighed by any potential risk of unfair prejudice. *See Purifoy v. State*, 821 N.E.2d 409, 413 (Ind. Ct. App. 2005) (introduction of prejudicial

evidence was not “such a blatant denial of fundamental due process” so as to require reversal of conviction, particularly when the conviction was not based solely on prejudicial evidence alone), *trans. denied*.

Conclusion

[19] The trial court did not abuse its discretion by allowing the State to present limited Rule 404 evidence. Not only were certain parts of A.H.’s testimony demonstrative of a charged offense, her testimony as a whole was also offered to dispel any potential skepticism the jury may have harbored regarding her truthfulness based on her delay in reporting the sexual abuse. The challenged testimony was highly probative and relevant, and the risk of unfair prejudice to Hamilton was not substantial. Accordingly, we affirm Hamilton’s convictions.

[20] Affirmed.

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