MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stacy N. Sandoval,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

May 10, 2023

Court of Appeals Case No. 22A-CR-1819

Appeal from the Marion Superior Court

The Honorable Shatrese Flowers, Judge

The Honorable James Snyder, Magistrate

Trial Court Cause No. 49D28-1910-F5-41393

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

[1] Stacy Sandoval[1] was convicted of battery, an offense elevated to a Level 5 felony because of a prior battery conviction against the same victim.[2] Sandoval now appeals, raising two issues: Did the trial court abuse its discretion when it (1) admitted State's Exhibit 9 ("Exhibit 9")—the charging information, plea agreement, and sentencing order from Sandoval's prior battery conviction—during the first phase of Sandoval's trial and (2) imposed court costs and fees exceeding Sandoval's cash bond without holding an indigency hearing? As to the second issue, without objection from the State, Sandoval asks us to remand for a determination of her ability to pay the imposed costs and fees.

[2] Concluding the trial court did not abuse its discretion when it admitted Exhibit 9, we affirm as to the first issue. As to the second issue, we agree with the State and Sandoval and reverse and remand to determine Sandoval's ability to pay her monetary obligations.

Facts and Procedural History

[3] In September 2019, Sandoval went to dinner with her fiancé, Mark Ballard; her three sons, S.S. (sixteen or seventeen years old then), E.S. (eleven years old), and N.S. (six years old); and Ballard's three children. S.S., E.S., and N.S. were living with their father at the time, and Sandoval was several months pregnant

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[1] Sandoval also uses the last name "Spangler," which is the name on State's Exhibit 9.

[2] Ind. Code §§ 35-42-2-1(c)(1), (g)(4)(A) (2018).

with Ballard's child. Ballard was acting as a DJ, and S.S. and Ballard's oldest child stayed behind to help Ballard pack up his equipment while Sandoval drove the rest of the children to Ballard and Sandoval's home. Ballard returned home later with his child and S.S.

[4] A neighbor gifted Ballard and Sandoval a bottle of wine to celebrate their engagement. Ballard said after he got home, he and Sandoval "had a couple glasses of wine," *Tr. Vol. 2* at 244, but he was not intoxicated, *id.* at 246. S.S. said Sandoval was "stumbling and slurring her words[.]" *Id.* at 122.

[5] S.S. texted his father to pick up S.S. and his brothers because he did not think they needed to be at Ballard and Sandoval's house. S.S. went to Ballard and Sandoval's bedroom to tell Sandoval his father was coming to pick the children up, sparking an argument between S.S. and Sandoval. At that point, S.S., Ballard, and Sandoval were in the room together. S.S. threw a vape pen at the wall, close to the ceiling, out of frustration. Sandoval, who had been seated on the bed, got up, "started getting in [S.S.'s] face," and yelling at S.S. *Id.* at 126. S.S. "stuck [his] hand up like – you can't be getting too close," but he did not touch Sandoval. *Id.* at 128. Ballard grabbed S.S. in a bear hug from behind, and Sandoval punched S.S. in the nose. *Id.* S.S. rated the pain he felt as eight or nine out of ten. Ballard took S.S. outside. S.S. took a picture of his resulting injury, a swollen, bloody nose. *Tr. Ex. Vol. 1* at 4 (Exhibit 1).

[6] Ballard recalled the events differently. He said S.S. entered Ballard and Sandoval's room to ask for a new vape pen. When Sandoval told S.S. no, S.S.

deliberately threw his old vape pen at Sandoval, narrowly missing her face. Sandoval got up from the bed and she and S.S. began arguing. S.S. called Sandoval names, and he and Sandoval "were just kind of going back and forth for . . . maybe forty seconds and that's when he decided he wanted to put his hands on his mother." *Tr. Vol. 2* at 232. S.S. pushed Sandoval with closed fists against Sandoval's chest. When Ballard saw that, he grabbed S.S and took him outside. Ballard did not see Sandoval hit S.S., nor did he see any blood in the bedroom.

[7] S.S. sent the picture of his face to his father, who called the police and began driving to the house. The police arrived first, and the officer who spoke with S.S. called for an ambulance because S.S. said he could not breathe due to a deviated septum. The ambulance crew arrived and decided against taking S.S. to the hospital. S.S.'s father arrived and took his three children to his house.

[8] The State charged Sandoval with battery as a Level 5 felony[3] and domestic battery resulting in moderate bodily injury[4] as a Level 6 felony. Sandoval had a prior conviction for battering S.S. and was on probation for the conviction when this incident occurred. A bifurcated jury trial began in June 2022.[5] During a bench conference before *voir dire*, the State raised its concerns about a

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[3] The State charged Sandoval in two parts: first as a Class B misdemeanor, then as a Level 5 felony because of Sandoval's prior conviction.

[4] I.C. § 35-42-2-1.3(a)(1) (2019).

[5] A jury trial began in May 2022 but ended in a mistrial.

witness for the defense. The State anticipated the witness, Tiffianie King, a Department of Child Services visitation provider for Sandoval, would testify that Sandoval was not aggressive. The State asserted that, if the witness testified to that effect, the testimony "would open the door to the State talking about the prior conviction for battery she has with S.S., as the victim." *Id.* at 38–39. The court agreed "it does certainly open potential doors to her probation status and her prior conviction[.]" *Id.* at 39. Sandoval's attorney responded, "We understand that, Your Honor. Nevertheless, we'd like the opportunity . . . to put Ms. King on the stand and give her testimony." *Id.* During the first phase of the trial, King testified:

[Defense Attorney:]	Okay, at any time was there anything that you noticed in your observations of her, that would suggest to you that she was an aggressive person?
[King:]	Never.
[Defense Attorney:]	Anything during the time that you knew her, during that time period and your observations that would indicate to you that she was under the influence of any kind of alcohol or anything else?
[King:]	Never.

Tr. Vol. 3 at 11. When the attorneys conferred at the bench after the exchange, the State said, "We believe that talking about aggression in general, opens the door to her past aggression." *Id.* at 12. The court agreed:

THE COURT:	I believe, based on the questions . . . that you [were] intimating that . . . she is not an aggressive person and never exhibited that aggression in visitation with the children, is that right?
[DEFENSE ATTORNEY]:	Correct.
THE COURT:	I believe you've opened the door, . . . because there are past aggressions.

Id. at 13.

[9] To rebut the character evidence, the court allowed S.S. to testify about Sandoval's past conviction of battery against S.S. when he was about fourteen years old. The State elicited little from S.S., using S.S. as a witness only to confirm Sandoval was convicted of the battery, S.S. was the victim, S.S. was about fourteen years old at the time, and Sandoval also used the name "Spangler." The State moved to admit an unredacted certified copy of the charging information, plea agreement, and sentencing order for the prior battery conviction. *Tr. Ex. Vol. 1* at 12 (Exhibit 9); *Tr. Vol. 3* at 22. The charging information revealed Sandoval was charged with domestic battery, criminal recklessness, resisting law enforcement, and battery against another individual.

The plea agreement and sentencing order revealed Sandoval was convicted of resisting law enforcement in addition to battery against S.S. Sandoval objected to the admission of Exhibit 9 as cumulative, and the trial court admitted the Exhibit over her objection. After the first phase of the trial, the jury found Sandoval guilty of Class B misdemeanor battery resulting in moderate bodily injury and Level 6 felony domestic battery.

[10] During the second phase of the trial, Sandoval stipulated to her earlier conviction, and the jury found her guilty of Level 5 felony battery with a prior battery conviction.

[11] At the sentencing hearing, the trial court vacated the domestic battery conviction because of double jeopardy concerns. The court sentenced Sandoval to three years in the Indiana Department of Correction, with one year executed in community corrections and two years suspended to probation. The court assessed court costs and fees totaling $935, including a $50 domestic violence prevention and treatment fee. Sandoval had posted a $500 cash bond, and the court ordered fees to be recouped from the bond. Sandoval told the court she was "completely depleted of funds." *Id.* at 93. Sandoval now appeals.

Discussion and Decision

1. Admission of Exhibit 9

[12] Although character evidence is generally inadmissible, "a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it[.]" Ind. Evid. R. 404(a)(2)(A). That

is, otherwise inadmissible character evidence "may become admissible where the defendant 'opens the door' to questioning on that evidence." *Wilson v. State*, 997 N.E.2d 38, 43 (Ind. Ct. App. 2013), *trans. denied*. Even when character evidence is admissible, "[t]he court may exclude relevant 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. Here, Sandoval does not dispute she opened the door to the admission of character evidence by asking King about Sandoval's aggressiveness generally, nor does she dispute the questioning of S.S. about Sandoval's prior conviction. Instead, she argues the admission of Exhibit 9 was cumulative and prejudicial, warranting exclusion under Rule 403.

[13] We review the trial court's admission of evidence for abuse of discretion. *Hicks v. State*, 690 N.E.2d 215, 223 (Ind. 1997). Sandoval argues the admission of Exhibit 9 was cumulative because S.S. testified about Sandoval's prior battery conviction, and the trial court should not have permitted the State to also submit Exhibit 9 to prove the conviction. However, "[e]vidence relevant to illustrate the testimony of witnesses is admissible although it is cumulative." *Davis v. State*, 456 N.E.2d 405, 409 (Ind. 1983). The trial court was within its discretion to admit Exhibit 9 to illustrate S.S.'s testimony. Sandoval disagrees, arguing Exhibit 9 was used to show Sandoval acted in accordance with the character portrayed in the exhibit, not to impeach the testimony, show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake,

or lack of accident under Indiana Evidence Rule 404(b)(2). Yet once Sandoval opened the door by "intimating . . . [Sandoval] is not an aggressive person and never exhibited that aggression in visitation with the children," *Tr. Vol. 3* at 13, the trial court could permit the State to rebut the testimony by offering evidence of Sandoval's prior acts of aggression.

[14] Sandoval also argues the admission of Exhibit 9 was prejudicial because there was no need to inform the jury of charges other than the charge for conduct against S.S. Yet the other charges in Exhibit 9 were relevant to the question of Sandoval's aggression. King testified about Sandoval's lack of aggression generally. The trial court was within its discretion to let the State introduce Exhibit 9, showing Sandoval acted aggressively toward people other than S.S. *See Schwestak v. State*, 674 N.E.2d 962 (Ind. 1996) (holding the admission of character evidence of the defendant's reputation for violence after drinking was proper to rebut the defendant's evidence of being hard-working, decent, and peaceful). At one point, Sandoval notes "the charging information was not redacted and contained multiple charges against victims other than S.S." *Appellant's Br.* at 9. To the extent Sandoval suggests Exhibit 9 is prejudicial because it was unredacted, Sandoval did not seek redaction at trial. *Tr. Vol. 3* at 22; *see* Ind. Evid. R. 103(a).

[15] At bottom, Sandoval asserts the probative value of Exhibit 9 was substantially outweighed by a potential prejudicial effect. Ultimately, in this case, we cannot say the trial court abused its discretion in declining to exclude the evidence under Evidence Rule 403.

[16] Even still, assuming the evidence should have been excluded, we readily conclude any error in the admission of Exhibit 9 would amount to harmless error at most. "An error is harmless when it results in no prejudice to the substantial rights of a party." *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018) (internal quotations omitted); *see* Ind. Trial Rule 61. Sandoval claims "[t]he evidence was not overwhelming here[,]" because S.S. was the only person who testified Sandoval hit him. *Appellant's Br.* at 18. Even so, the only person who testified Sandoval did not hit S.S. was Ballard. And there is ample independent evidence that Sandoval hit S.S. in the nose. Sandoval, S.S., and Ballard were the only individuals in the room when the event occurred, but S.S.'s brother heard the argument between S.S. and Sandoval and saw S.S. "getting thrown around." *Tr. Vol. 2* at 165. There was also testimony from the officer who spoke with S.S. and noticed S.S.'s swollen, bloody nose. The evidence includes photographs of S.S.'s injury. All in all, even if we could say the trial court erred in admitting Exhibit 9, we are unpersuaded the Exhibit resulted in prejudice to Sandoval's substantial rights based on the nature of the independent evidence in the case.

2. Costs and Fees

[17] Sandoval argues and the State does not dispute the trial court needed to hold an indigency hearing regarding the court costs and fees it imposed that exceeded Sandoval's posted cash bond. We agree.

[18] The legislature authorizes the trial court to impose certain costs and fees on a convicted defendant, leaving decisions to impose costs and fees within the

statutory parameters to the trial court's discretion, *Berry v. State*, 950 N.E.2d 798, 799 (Ind. Ct. App. 2011) (internal citation omitted). We reverse only for abuse of discretion, which occurs if the sentencing decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007) (internal citation omitted). Under Indiana Code Section 33-37-2-3(a), "when the court imposes costs, it shall conduct a hearing to determine whether the convicted person is indigent." No indigency hearing is necessary if the court suspends payment of the costs and requires the court to conduct an indigency hearing when the costs are due. I.C. § 33-37-2-3(b). An indigency hearing is also not necessary if the court has required the defendant to post a cash bail bond to ensure a defendant's appearance and cover costs if the defendant is convicted. I.C. §§ 35-33-8-3.2(a)(1)–(a)(2). The trial court may simply apply the cash bond to the court costs. *See Wright v. State*, 949 N.E.2d 411, 416 (Ind. Ct. App. 2011). But, according to *Holder v. State*, an indigency hearing *is* required when the court costs total more than the cash bond posted. 119 N.E.3d 621, 624 n.1 (Ind. Ct. App. 2019).

[19] Here, the trial court found Sandoval indigent to appoint her appellate counsel but did not determine Sandoval's indigency for imposing court costs as part of her sentence. There is no indication the court suspended the costs pending an indigency hearing to be held later. Sandoval posted a $500 cash bond, and the court costs and fees totaled $935. The trial court could apply Sandoval's $500

bond to the court costs without an indigency hearing but should have held an indigency hearing as to the remaining $435. We remand to the trial court for the required indigency hearing regarding the court fees in excess of the $500 bond.[6]

Conclusion

[20] The trial court did not abuse its discretion in admitting Exhibit 9. The trial court erred in not holding an indigency hearing regarding the court fees in excess of the posted bond.

[21] Affirmed in part, and reversed and remanded in part.

Robb, J., and Crone, J., concur.

[6] As to the $50 domestic violence and prevention fee, Indiana Code Section 33-37-5-13(2) does not authorize imposing the fee if the victim is the defendant's child, and we encourage the trial court to reconsider imposing this fee. I.C. § 33-37-5-13(2); *see, cf. Sutton v. State*, 714 N.E.2d 694 (Ind. Ct. App. 1999) (holding the domestic violence prevention and treatment fee does not apply if the victim is a future spouse living with the defendant), *trans. denied*.