



Calvert T. Byrd appeals his convictions for battery as a class A misdemeanor<sup>1</sup> and interference with the reporting of a crime as a class A misdemeanor.<sup>2</sup> Byrd raises one issue, which we revise and restate as whether the trial court abused its discretion in admitting a letter into evidence. We affirm.

The relevant facts follow. On May 8, 2010, S.M. picked up Byrd at a bus station and the two returned to S.M.'s apartment in Allen County, Indiana. During that day and the following day, Byrd and S.M. watched television and had sex. On May 10, 2010, Byrd discovered a letter that S.M. had written to send to her former boyfriend stating that she still loved him. Byrd became angry, yelled at S.M., and called her names and a liar. Byrd jumped on S.M. and choked her, and S.M. could not breathe. After S.M. told Byrd to leave, Byrd struck S.M. multiple times in the face with his fists. At some point, S.M. attempted to call 911, but Byrd took the phone and broke it by throwing it on the floor. S.M. screamed for help and for someone to call 911, and a neighbor called 911. Byrd continued to hit S.M. Fort Wayne Police Department Officer Daniel Ray Nigro responded to the 911 call and knocked on the front door of S.M.'s apartment. When Officer Nigro knocked on the door, Byrd stopped hitting S.M. and stated: "Ha ha, it's only a misdemeanor." Transcript at 69. From outside the door, the officer heard a female voice say "you're going to jail" and a male voice respond "f---, I know that." *Id.* at 82. A short time later, the door opened and the officer observed Byrd standing in front of him and S.M., who was shaking and crying and had a bloody face.

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<sup>1</sup> Ind. Code § 35-42-2-1 (Supp. 2009).

<sup>2</sup> Ind. Code § 35-45-2-5 (2004).

On March 14, 2010, the State charged Byrd with Count I, strangulation as a class D felony; Count II, battery as a class A misdemeanor; and Count III, interference with the reporting of a crime as a class A misdemeanor. During the jury trial, the State introduced into evidence a letter and indicated it had been written by Byrd. The trial court admitted the letter into evidence over Byrd's objection that the letter could have been authored by "anybody who had any details about this case . . . ." Id. at 67. The jury found Byrd guilty on Counts II and III and not guilty on Count I. The court sentenced Byrd to one year suspended for each of his convictions and ordered the sentences to be served consecutively.

The issue is whether the court abused its discretion in admitting the letter into evidence. Byrd argues that the letter was not properly authenticated and that the probative value of the letter was outweighed by its prejudicial effect. The State argues that, considering the contents of the letter, there is more than a reasonable possibility that Byrd wrote the letter, that any error was harmless in light of the other evidence presented by the State, and that Byrd failed to raise a contemporaneous objection to the letter concerning its prejudicial effect.

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Ind. Evidence Rule 901(a). Absolute proof of authenticity is not required. Fry v. State, 885 N.E.2d 742, 748 (Ind. Ct. App. 2008), trans. denied. When evidence establishes a reasonable probability that an item is what it is claimed to be, the item is admissible. Thomas v. State, 734 N.E.2d 572, 573 (Ind.

2000). When a trial court has made a ruling concerning the sufficiency of the foundation laid to justify the admission of evidence, we review that decision for an abuse of discretion. Id. (citing State v. Walton, 715 N.E.2d 824, 828 (Ind. 1999)). Ind. Evidence Rule 901(b) provides “[b]y way of illustration only, and not by way of limitation . . . examples of authentication or identification conforming with the requirements of this rule” and includes the “[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.” Ind. Evidence Rule 901(b); (b)(4).

In Thomas v. State, the defendant argued that the trial court erred in admitting into evidence a letter he had written to the court and that the State failed to lay a proper foundation for the exhibit. 734 N.E.2d at 573. The Indiana Supreme Court noted that the author of the letter demonstrated knowledge of witnesses and events related to the crime that were not likely known at the facility where defendant was located by anyone except the defendant. Id. at 574. The Court concluded that there was sufficient evidence to support a finding that the defendant authored the letter, that thus the State had laid an adequate foundation to meet the requirements for authentication, and that the court did not abuse its discretion in admitting the letter into evidence. Id.

The letter here, which is unsigned but written in the first person from the writer’s point of view, was sent to S.M. through the mail to the address of the apartment where the incident took place and describes specific events which occurred at S.M.’s apartment. Specifically, the author stated that he “was thinking about all of the damn good sex we were having up until your neighbor called the cops,” that he wanted to “say how much I

AM SORRY FOR WHAT happened that day, baby!” and “I could care less that you were still in love with [S.M.’s former boyfriend].” State’s Exhibit No. 2. The letter also stated “I hope you don[’]t send me to prison either . . . it would ruin me! And our chances of ever having make up sex!” Id. Based upon the record, we conclude that the State established a foundation for admission of the letter pursuant to Ind. Evidence Rule 901, and the court did not abuse its discretion in admitting the letter. See Thomas, 734 N.E.2d at 574.

Moreover, even if admission of the letter was an abuse of discretion, any error was harmless. Errors in the admission or exclusion of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. Ortiz v. State, 741 N.E.2d 1203, 1206 (Ind. 2001). At trial, the State presented the testimony of S.M., S.M.’s neighbor, Officer Nigro, and another back-up officer, as well as other evidence including photographs of the injuries sustained by S.M. to her face and body, blood on a wall and door in S.M.’s apartment, and the shattered phone. The testimony of the State’s witnesses described facts consistent with those set forth in more detail above. We conclude that even if it was error, the admission of the letter was harmless. See Hubbell v. State, 754 N.E.2d 884, 892 (Ind. 2001) (holding that any error in the admission of challenged evidence was harmless).<sup>3</sup>

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<sup>3</sup> To the extent that Byrd argues that the probative value of the letter was outweighed by its prejudicial effect, we note that Byrd did not object to the letter based upon Ind. Evidence Rule 403(b). A failure to state a specific objection at trial results in waiver of the issue on appeal. Mitchell v. State, 726 N.E.2d 1228, 1235 (Ind. 2000), reh’g denied, abrogated on other grounds by Beattie v. State, 924 N.E.2d 643 (Ind. 2010).

For the foregoing reasons, we affirm Byrd's convictions for battery as a class A misdemeanor and interference with the reporting of a crime as a class A misdemeanor.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.