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IN THE
COURT OF APPEALS OF INDIANA

LLOYD SINGLETON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 41A01-0901-CR-7
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Cynthia Emkes, Commissioner
Cause No. 41D02-0803-FC-5

June 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Lloyd Singleton appeals his conviction for class D felony domestic battery. We affirm.

Issue

Did the trial court abuse its discretion by excluding certain evidence?

Facts and Procedural History

On February 6, 2008, Singleton became angry with his wife, Stasha, when her ex-boyfriend, Stephen Simpson, called their house to ask whether he could deliver birthday presents to Simpson and Stasha's son. Singleton began to yell and ignored Stasha's pleas for him to be quiet. After Stasha hung up the phone, Singleton called her a "whore" and a "slut." Tr. of Trial, Vol. II, at 19. Singleton told Stasha to "get [her] shit and get out" of the house, but when Stasha (holding her young son on her hip) opened the door to leave, Singleton slammed it shut and said, "you are not f***ing going anywhere." *Id*. at 23, 37. He put his hands on her throat and applied pressure, making it difficult for Stasha to breathe. He then grabbed her ponytail and pulled her around the living room. That evening, Singleton left the house, and Stasha went to a neighbor's house. The police were called, and a responding officer saw and photographed the injuries on Stasha's neck, which consisted of red marks and bruising.

On February 11, 2008, the State charged Singleton with class C felony criminal confinement, class D felony domestic battery, and class D felony intimidation. On May 22, 2008, the trial court conducted a preliminary hearing, during which Singleton asked the court

for a preliminary determination as to the admissibility of certain evidence. In an offer of proof, he called Jonathan and Jessica McClain to testify. Following the hearing, Singleton filed a motion to introduce at trial the McClains' testimony on the following issues:

> Evidence of demonstrably false statement made by Stasha Singleton on January 3, 2008.
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> ….
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> Evidence of demonstrably false statement of victim also made January 3, 2008, concerning sexual relations with John McClain.
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> ….
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> Statements by the victim that she would leave the relationship with the Defendant having him incarcerated.
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> ….
>
> Acts of aggressiveness by the alleged victim towards the defendant by hitting him and kicking him without retaliation from the defendant.
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> ….
>
> Evidence of accusation of battery made on April 26, 2007 by the victim and her cousin, Jessie Johnson, against the victim's former boyfriend, Stephen Simpson.
>
> ….
>
> Evidence of regular telephone contact initiated by the victim to her former boyfriend Stephen Simpson during the period of time she was married to the defendant.

Appellant's App. at 60-62. On June 3, 2008, the trial court issued an order denying Singleton's motion and excluding the evidence from the trial. On July 17, 2008, a jury found Singleton guilty of domestic battery as a class D felony and acquitted of the other charges. This appeal ensued.

Discussion and Decision

I. Exclusion of Evidence

Singleton claims that the trial court improperly excluded the evidence described above. Our standard of review is well settled.

> [T]he standard of review for admissibility of evidence issues is whether the trial court's decision was an abuse of discretion. The decision whether to admit evidence will not be reversed absent a showing of manifest abuse of a trial court's discretion resulting in the denial of a fair trial. Generally, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. In determining whether an evidentiary ruling affected a party's substantial rights, the court assesses the probable impact of the evidence on the trier of fact.

Allen v. State, 813 N.E.2d 349, 361 (Ind. Ct. App. 2004) (citations omitted), *trans. denied*. We view the circumstances in their totality and without reweighing the evidence. *Griffith v. State*, 788 N.E.2d 835, 839 (Ind. 2003). We may uphold the trial court's ruling on any basis. *Lashbrook v. State*, 762 N.E.2d 756, 758 (Ind. 2002).

According to Singleton, the evidence excluded by the trial court included evidence of "prior false allegations, prior untruthful statements [Stasha] made about being battered by [Singleton], and other statements from the victim that gave her motive to lie in order to have [Singleton] incarcerated." Appellant's Br. at 9. Pursuant to Indiana Evidence Rule 402, evidence which is not relevant is not admissible. Indiana Evidence Rule 403 states in pertinent part, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" We address each piece of evidence in turn.

A. Evidence of Stasha's Accusation against Singleton on January 3, 2008

At the evidentiary hearing, Jonathan McClain, testified that Singleton—whom he referred to as his "uncle-in-law"—and Stasha were living with him and his wife, Jessica, on January 3, 2008. Tr. of Evidentiary Hearing ("Tr. of Evid .Hrg.") at 2. He stated that he was watching television in the living room that evening, and the Singletons were in their room

right above the living room. Stasha came downstairs and borrowed his cell phone. She called a friend and stated that Singleton "had beat her, start[ed] to stab her and cut her up into little pieces." *Id*. at 4. McClain testified that he was surprised by the conversation because he "could hear people walking around up there, but I didn't hear anything near as bad as what she was saying was happening." *Id*. Jessica McClain testified that when the police were called later that night, Stasha told them that Singleton had not physically assaulted her. *Id*. at 21.

Singleton notes that in context of the rape shield statute, evidence of prior false accusations may be admitted if (1) the complaining witness admits he or she made a prior false accusation of rape; or (2) the accusation is demonstrably false. *Fugett v. State*, 812 N.E.2d 846, 849 (Ind. Ct. App. 2004); *see* Ind. Code § 35-37-4-4. This case does not involve rape; therefore, this exception to the rape shield statute is inapplicable. Even if we were to apply it by analogy, however, Singleton's argument must fail. There is no evidence that Stasha admitted that she made a prior false accusation of abuse; she claimed to have told the police that Singleton did not assault her because she feared retribution from him. Moreover, while the McClains' testimony may raise questions about the veracity of Stasha's alleged statements to her friend that night, creating "merely an inference that the accusation was false" is not enough to satisfy the "demonstrably false" requirement. *Id.*; s*ee also Williams v. State*, 779 N.E.2d 610, 613-14 (Ind. Ct. App. 2002).

B. Evidence of Stasha's Statement about Jonathan McClain

At the evidentiary hearing, Jonathan and Jessica McClain also testified that Stasha

stated on January 3, 2008, that she had had sex with Jonathan in the garage that evening. Singleton argues that this testimony is admissible pursuant to Indiana Evidence Rule 404(a)(2), which allows "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused[.]" Singleton contends that the McClains' testimony shows that Stasha "will lie in an effort at [sic] agitating [Singleton]." Appellant's Br. at 13. In our view, whether Stasha has in the past lied for the purpose of upsetting Singleton is not pertinent here because such a finding would not be relevant to the elements of domestic battery, the crime of which Singleton was convicted, and because the alleged lie has no connection to the incident in this case. Thus, the trial court did not abuse its discretion in excluding this evidence.

C. Evidence of Stasha's Statements that She Planned to have Singleton Incarcerated

The McClains testified that they had heard Stasha state on prior occasions that "if she ever wanted to leave [Singleton] that she would have him thrown in jail and drive by the courthouse in his van waving at him with her new boyfriend." Tr. of Evid. Hrg. at 8; *see also id*. at 21-22. As the State points out, Jessica McClain stated that Stasha made these statements "jokingly[.]" *Id*. at 9. Moreover, the statements were not made in connection with the incident in this case. For these reasons, this evidence is not relevant, and the trial court did not abuse its discretion by excluding it.

D. Evidence of Singleton's "Peacefulness"

Pursuant to Indiana Evidence Rule 404(a)(1), evidence of a "pertinent trait of

character" of the defendant may be admissible.[1] Jonathan McClain testified that he had seen Stasha "jokingly" punch and/or kick Singleton on occasion and that, in response, Singleton had only held Stasha back and laughed. Tr. of Evid. Hrg. at 10. He stated that Singleton's laughing appeared to "kind of make [Stasha] mad" and she would continue hitting him. *Id.* Singleton argues that this evidence is admissible to demonstrate his character trait of peacefulness. We do not think this evidence is relevant because it involves apparently playful situations between the Singletons initiated by Stasha. In this case, Singleton's violence arose from a serious domestic argument initiated by Singleton.[2]

E. Evidence of Accusation by Stasha and Jessica Johnson Against Stasha's Former Boyfriend

John McClain testified that Stasha had told him she had contacted police on April 26, 2007, to report an alleged battery. She claimed that her then-boyfriend, Stephen Simpson, had beaten her and that her cousin, Jessica Johnson, had accompanied her to the police station and assisted her in making the report. Singleton argues that because Jessica Johnson also assisted Stasha in her communications with police in this case, the accusation against him is suspicious. Notably, however, Singleton failed to present any evidence that Stasha's allegations against Simpson were untrue. Thus, as discussed above, even if we were to apply

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[1] Singleton mistakenly cites Indiana Evidence Rule 404(a)(2), which addresses evidence related to the victim's character.

[2] The State makes note that Singleton filed a motion in limine, asking the trial court to exclude "[g]eneral character evidence of the Defendant's bad temper or the Defendant's propensity to become [angry] as said evidence is impermissible character evidence." Appellant's App. at 71. If the trial court were to admit this evidence, it would open the door for the State to present character evidence as well. *See Berkley v. State*, 501 N.E.2d 399, 400 (Ind. 1986) (holding that when accused offered evidence of her own character, she opened the door to the subject of her character for the trait placed at issue).

the rape shield exception, this evidence of a prior accusation should be excluded because Stasha has not admitted that it was false, and Singleton has failed to show that it is demonstrably false. There was no error here.

F. Evidence of Regular Phone Contact between Stasha and Stephen Simpson

The McClains testified that during her marriage to Singleton, Stasha had frequent phone contact with Simpson. Singleton contends that this evidence "establishes a motive for [Stasha] to make a false allegation of battery against [Singleton] as she had threatened to do on numerous occasions." Appellant's Br. at 15. We disagree. Simpson was the father of Stasha's child, a fact which would explain regular telephone contact. Evidence of her efforts to hide these conversations from Singleton might even support the State's theory that Singleton did not want her to talk with Simpson and that his anger over such a conversation led to the battery in this case. Evidence that Stasha had romantic feelings for Simpson, as suggested by Jonathan McClain's testimony, is not a defense to the battery charge, nor does it necessarily provide a motive for Stasha to falsely accuse Singleton of battering her. For all these reasons, the trial court did not abuse its discretion by excluding this evidence.

G. Harmless Error

Finally, we again note that errors in the admission or exclusion of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party. *Gall v. State*, 811 N.E.2d 969, 976 (Ind. Ct. App. 2004), *trans. denied*. "An error will be found harmless if its probable impact on the jury, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties." *Id*.

The evidence presented at trial was sufficient to convict Singleton. Stasha testified that Singleton grabbed her throat and applied pressure so that she had difficulty breathing. She testified that he grabbed her by her hair and pulled her around the living room. The responding police officer testified that he saw red marks and bruising on Stasha's neck when he arrived at the scene. Tr. of Trial, Vol. I, at 76. Photographs of Stasha's neck, taken by the officer, were admitted into evidence. This evidence, along with the rest of the State's case, was sufficient to convict Singleton of battery, and thus his substantial rights were not affected. If there was any error by the trial court in excluding the evidence discussed above, it was harmless.

Affirmed.

BRADFORD, J., and BROWN, J., concur.