Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JOSEPH M. CLEARY
Collignon & Dietrick
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

WADE JAMES HORNBACHER
Deputy Attorney General
Indianapolis, Indiana

FILED
Jun 28 2011, 9:45 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

RODNEY HOUSER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 92A03-1007-CR-399
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WHITLEY CIRCUIT COURT
The Honorable James R. Heuer, Judge
Cause No. 92C01-0911-MR-128

June 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Rodney Houser appeals his conviction for murder.[1] Houser raises three issues, which we consolidate and restate as whether the trial court erred in admitting certain evidence. We affirm.

The relevant facts follow. Houser and Debra Houser were married in Indiana in 1999, had one child, G.H., and divorced in 2006. At some point, Houser moved out of state for work, and in the fall of 2009 Houser moved back to Indiana and lived with Debra and G.H. in Whitley County. On one occasion, Houser and Debra met one of Debra's coworkers and had several beers at a tavern. At the tavern, Houser stated that Debra "had locked him up twice previously" and that "if that ever happened again he would kill the bitch." Transcript at 242. Debra's coworker "kind of chuckled," Houser said "[n]o, I'm serious," and Debra "just looked straight down and didn't say a word." Id.

On the morning of November 17, 2009, Debra left home for work and G.H. left for school. During the day, Houser visited a Workforce Development Center to inquire about unemployment benefits, visited the public library, and had several beers during the afternoon hours at a tavern with an acquaintance. Between approximately 4:00 and 5:00 p.m., Houser returned to Debra's house. Debra was upset with Houser because he was not home when G.H. arrived home from school. Between 6:00 and 6:30 p.m., Houser returned to the tavern and ordered a beer.

Around 8:00 or 8:30 p.m., Houser returned to Debra's house while Debra was speaking on the phone with her daughter. Houser asked "who in the 'F' she was on the

[1] Ind. Code § 35-42-1-1 (Supp. 2007).

phone with." Id. at 119. Debra stated that she needed to go, Debra's daughter told Debra "to call the cops and get him taken care of" and to "call [her] back," and Debra "said she would" and stated "I'll call you back." Id. at 119-120.

While in the house, Houser struck Debra in the face, knocking out two of her teeth, and then dragged "her out in the front yard." Id. at 142. Houser pulled Debra onto the gravel driveway and attacked her. Houser hit and strangled Debra with his hands, and, while wearing cowboy boots, kicked and stomped Debra's body. All of the bones in Debra's face were "crushed," there were multiple skull fractures and the "whole front of the skull . . . was separated from the rest of the skull," the skull was "caved in" on the right side, there was "evidence of breaking of the delicate bones in [t]he neck," ten of the ribs on the right side and three of the ribs on the left side of Debra's ribcage were fractured, and "basically the whole rib cage was fractured." Id. at 247. Debra died as a result of Houser's attack. Houser put her body in the back of her SUV, drove to a location along a creek several miles from her house, and dumped Debra's body.

The following morning, Houser woke up G.H. and made sure he boarded the school bus and then drove the SUV to the home of Daniel Booth. Houser stated to Booth that he had had a fight with Debra the previous night and that he needed to "get rid of the car and get back to the house." Id. at 138. Houser also showed Booth a trash bag which contained Houser's cowboy boots, some clothes, a purse, and a cell phone, and told Booth that he "didn't call . . . or make any contact with [Booth] [be]cause [he] didn't want any connection between [them]." Id. Houser instructed Booth "to take the contents [of the bag] and take it out back and burn it." Id. at 139. Booth told Houser to put the

bag in the garbage can and that he would "deal with it later," and Houser put the bag in the garbage can. Id.

Booth and Houser then drove in their separate vehicles to the American Legion, where Houser removed the SUV's license plate. Booth asked Houser what he was doing, and Houser stated that he "offed" Debra and "put the boot to her." Id. at 140. Houser and Booth traveled in Booth's vehicle towards Debra's house. While traveling, Houser began to explain to Booth what had occurred the previous night, how he had struck Debra in the living room, dragged her out in the front yard, and "put the boots to her." Id. at 142. Booth asked "are you sure she's not hurt – are you sure she's not out there hurt?" and Houser said "[n]o, no sir, I made sure of it." Id.

After arriving at Debra's house, Houser asked Booth to help him move Debra's body. Houser stated that Debra's body was "two miles" away and that he had "dumped the body in the river." Id. at 142-143. Houser further stated that he wanted Booth "to wait while he went in and put his camous [sic] on" so that they could "go move the body." Id. at 142. Booth told Houser that he did not want to help. As soon as Houser entered the house, Booth drove away and went to the Sheriff's office in Whitley County to report what had occurred and Houser was later arrested. Approximately one month later, police located Debra's body in a creek about two miles from her house.

On November 18, 2009, the State charged Houser with murder. While awaiting trial, Houser spoke with his girlfriend on the phone from jail and the call was recorded. Prior to trial, Houser filed a motion in limine to prevent the State from presenting

evidence of Houser's prior conviction in 2005 for battery of his son G.H.[2] Prior to cross-examination at trial, the State requested relief from the motion in limine.[3] During cross-examination, the State asked Houser if he had been convicted of battery against G.H. in 2005, and Houser stated "Yes." Id. at 342. The trial court also admitted into evidence, over Houser's objections, photographs depicting Debra's body in the creek where it was discovered and Debra's body before and after an autopsy was performed and the recording of Houser's phone call from jail. Houser admitted that he attacked Debra and later dumped her body in a creek but argued that he did so under sudden heat. The jury was given instructions on the definitions of murder, voluntary manslaughter, and sudden heat. The jury found Houser guilty of murder. The court sentenced Houser to sixty-five years with five years suspended to probation.

The issue is whether the trial court erred in admitting certain evidence during Houser's trial. Generally, we review the trial court's ruling on the admission or exclusion of evidence for an abuse of discretion. Roche v. State, 690 N.E.2d 1115, 1134 (Ind. 1997), reh'g denied. We reverse only where the decision is clearly against the logic and effect of the facts and circumstances. Joyner v. State, 678 N.E.2d 386, 390 (Ind. 1997), reh'g denied. "Errors in the admission or exclusion of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party." Fleener v. State, 656 N.E.2d 1140, 1141 (Ind. 1995) (citations omitted).

---

[2] The chronological case summary (CCS) indicates: "Crt grants Mtn in Limine in part, denied in part." Appellant's Appendix at 7.

[3] The transcript indicates that most of the trial court's comments and ruling on the State's request were inaudible.

Houser argues that the court abused its discretion when it admitted into evidence: (A) certain photographs; (B) the jail phone call recording; and (C) Houser's prior conviction for battery. Houser generally argues that this evidence was improperly admitted because it was irrelevant, did not rebut his claim of sudden heat, and inflamed the jury and severely prejudiced him. The State argues the evidence rebutted Houser's claim of sudden heat and that any error was harmless because "the evidence that [Houser] was not acting under sudden heat is devastating." Appellee's Brief at 12.

A person commits murder when the person "knowingly or intentionally kills another human being." Ind. Code § 35-42-1-1. On the other hand, a person commits voluntary manslaughter when the person knowingly or intentionally kills another human being "while acting under sudden heat." Ind. Code § 35-42-1-3(a). Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. Ind. Code § 35-42-1-3(b). The Indiana Supreme Court has defined "sudden heat" as "anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary person, preventing deliberation and premeditation, excluding malice, and rendering a person incapable of cool reflection." Id.

A. Photographs

At trial, the court admitted into evidence several sets of photographs. One set of photographs depicts the area where Debra's body was discovered. Several of the pictures showed the area of the river where Debra's body was found and others depicted Debra's body from several angles and distances in the location and condition it was discovered. At trial, Houser argued that "nineteen photographs of the same scene is cumulative and

so many pictures of the same scene, especially the ones toward the end which focus on the body itself, is [sic] overly prejudicial." Transcript at 176-177. The court excluded two of the photographs and admitted the remaining ones. Another set of photographs depicted Debra's body before and after an autopsy had been performed. Houser objected to eighteen autopsy photographs and argued that the prejudicial impact of the photographs outweighed any probative value and noted that Debra's death and injuries were not being contested. The court overruled the objection.

On appeal, Houser argues that the court abused its discretion in admitting the photographs into evidence. Houser argues that the autopsy photographs are particularly graphic in nature, that the pictures were explained by the pathologist, and that Houser did not deny killing Debra or causing her injuries. Houser further argues that "[e]ighteen autopsy pictures were clearly overkill and were admitted to inflame the jury against Houser" and that "[t]he pictures were not relevant to the issue of sudden heat and only served to unfairly prejudice Houser." Appellant's Brief at 15.

The State argues that the autopsy photographs were properly admitted into evidence to show the nature and extent of Debra's extreme injuries. The State notes that eleven of the eighteen photographs show Debra's "body in its natural condition" and argues that the "photos show the relevant injuries." Appellee's Brief at 10. The State argues that "[t]he injuries are not relevant only to show cause of death, but are also relevant to rebut sudden heat and to show the prolonged and violent nature of the attack." Id. The State asserts that the "external photos" show "teeth missing, due to [Houser's] initial blow, the sunken face, which resulted from Debra having every bone in her face

crushed, and the six inch laceration on her head that exposed her skull." Id. The State further argues that "[t]he remaining seven photos, while showing the chest and head opened, were nonetheless, as the pathologist testified, 'necessary' to explain and convey the extent of the injuries." Id. at 11. Specifically, the State notes that "the photos of the chest showed how all of the ribs on the right side of Debra's body, and many on the left, had been broken and that a piece of her skull had broken off and been pushed down into her brain." Id. The State argues that "[i]n all, while the photographs were gruesome, they were probative as they showed the brutal and extensive injuries inflicted by" Houser and that "it was not an abuse of discretion for the trial court to find that the probative value was not substantially outweighed by the danger of unfair prejudice." Id.

The admission of photographic evidence is within the sound discretion of the trial court, and this Court reviews the admission of photographic evidence only for abuse of discretion. Helsley v. State, 809 N.E.2d 292, 296 (Ind. 2004) (citing Corbett v. State, 764 N.E.2d 622, 627 (Ind. 2002)). Photographs, as with all relevant evidence, may only be excluded if their probative value is substantially outweighed by the danger of unfair prejudice. Id. (citing Ind. Evidence Rule 403; Corbett, 764 N.E.2d at 627). Admission of cumulative evidence alone is insufficient to warrant a new trial. Id. (citing Kubsch v. State, 784 N.E.2d 905, 923 (Ind. 2003)). An appellant must establish that the probative value of the evidence was outweighed by the unfair prejudice flowing from it. Id. The Indiana Supreme Court has stated:

> Because the admission and exclusion of evidence falls within the sound discretion of the trial court, this Court reviews the admission of photographic evidence only for abuse of discretion. Relevant evidence, including photographs, may be excluded only if its probative value is

> substantially outweighed by the danger of unfair prejudice. Even gory and revolting photographs may be admissible as long as they are relevant to some material issue or show scenes that a witness could describe orally. Photographs, even those gruesome in nature, are admissible if they act as interpretative aids for the jury and have strong probative value.

Corbett, 764 N.E.2d at 627 (internal citations and quotation marks omitted). For its admission to amount to reversible error, a photograph must be irrelevant to an issue or its probative value must be substantially outweighed by the danger of unfair prejudice. Custis v. State, 793 N.E.2d 1220, 1224 (Ind. Ct. App. 2003), trans. denied. A defendant is not entitled to have his actions sanitized when evidence is presented to a jury. See Reaves v. State, 586 N.E.2d 847, 859 (Ind. 1992) (citing Shelton v. State, 490 N.E.2d 738, 743 (Ind. 1986)). Evaluating whether an exhibit's probative value is substantially outweighed by the danger of unfair prejudice is a discretionary task best performed by the trial court. Helsley, 809 N.E.2d at 296 (citing Dunlap v. State, 761 N.E.2d 837, 842 (Ind. 2002)).

We initially note that Houser fails to develop an argument on appeal that the trial court abused its discretion in admitting the photographs of Debra's body in the location where it was discovered, and thus he has waived his argument with respect to those photographs. See Shane v. State, 716 N.E.2d 391, 398 n.3 (Ind. 1999) (holding that the defendant waived argument on appeal by failing to develop a cogent argument). Waiver notwithstanding, we note that the photographs depict various aspects of Debra's body and the surrounding area at the time of discovery. These photographs of Debra's body are unpleasant to view in part because her body had been in a creek for approximately one month before it was discovered. We find no error in the admission of the photographs of

Debra's body in the location it was discovered. See Shelton, 490 N.E.2d at 742 (noting that photographs of the crime scene depicting the body of the victim at the time of discovery were properly admitted); Grimes v. State, 450 N.E.2d 512, 517 (Ind. 1983) (finding no error in the admission of crime scene photographs which depicted different aspects of the victim's dead body and the place in which it was found and noting that photographs of a crime scene are generally admissible because they are relevant aids by which a jury can orient itself to best understand the evidence submitted to it).

With respect to the autopsy photographs, we note that a number of the challenged photographs show Debra's body before the autopsy was performed. The admission of these photographs was not error. See Corbett, 764 N.E.2d at 627 (holding that admission of photographs depicting the body before the autopsy was not error) (citing Loy v. State, 436 N.E.2d 1125, 1128 (Ind. 1982) (holding photographs that depict victim in natural state after death were admissible)).

While we acknowledge that a number of the photographs of Debra's body following the autopsy are gruesome and somewhat cumulative, the photographs are, for the most part, relevant to show the cause of death, the prolonged and violent nature of the attack, and to rebut the presence of sudden heat. Prior to the presentation of evidence, Houser's counsel argued to the jury that Houser and Debra got into an argument and that the "argument spurred such a rage, such anger in [Houser], that he acted irrationally," that the argument "turned physical and he . . . started punching, he started kicking and before he [knew] it, she was dead." Transcript at 112. Houser's counsel argued: "When the evidence concludes, . . . you're going to have two options before you. You're going

to have the option to convict [Houser] for Murder, for the premeditated death of Debra Houser. You're also going to have the option to convict him of Voluntary Manslaughter" and "[t]hroughout the trial, you're going to hear evidence that's going to . . . substantiate this sudden heat." Id. Houser later testified in part that, although he did cause the injuries to Debra's body, "[t]he whole thing's kind of a blank, really. I mean I just lost it." See id. at 332.

The anatomical and forensic pathologist who performed the autopsy testified regarding the injuries to Debra's body, including the numerous fractures in her face, neck, skull, and ribcage. The pathologist testified that "[t]o fracture the first rib takes quite a bit of force" and that "[t]his is what we usually [] see in a high-speed auto crash." Id. at 247. The pathologist explained to the jury what each of the admitted photographs showed regarding Debra's extensive injuries. The pathologist specifically referenced the photographs to point to the broken facial bones, the laceration exposing the skull, the missing teeth and some bridge work that had come out, the fact that the face was "sunken in from the fractures," see id. at 251, and hemorrhaging in the chest and neck, indicating that the injuries occurred while Debra was alive. The pathologist testified, with respect to the five- or six-inch laceration shown in State's Exhibit 255 exposing the skull that the laceration occurred while Debra was alive due to the "hemorrhage around the muscles and tissues showing that the heart had to be beating when this injury occurred." Id. at 252. With respect to the depictions in State's Exhibit 257, 259, and 260, the pathologist pointed to various portions of the photographs and described the injuries in the chest, namely, the various "dark purple or blackish areas" which showed bruising at the base of

the neck, above the clavicles, up into the neck and the base of the jaw, the "extreme trauma that the rib cage took," and the fractures which caused "tears in the lungs" and a collapsed lung. Id. at 252-253. The pathologist testified that these injuries "definitely" occurred while Debra was alive. Id. at 253. With respect to a fracture of the skull portrayed in State's Exhibit 266, the pathologist described the "tremendous amount of force" necessary to cause the blunt-force injury. Id. at 254. With respect to State's Exhibit 274, the pathologist pointed to an extreme fracture "just over the eye," noted that the "fracture goes from [one] side of the skull all the way over" and that it was "[t]he kind of fracture we see in auto crashes . . . ." Id. at 255.

The pathologist further testified that "severe stomping" could cause many of the injuries suffered by Debra. Id. at 256. When asked about the order of the injuries, the pathologist indicated that all of the injuries he described had occurred while Debra was alive and that the crushing of the skull would have caused death within a minute or less.

In sum, the images depicted in the autopsy photographs reflect and clarify the testimony of the pathologist regarding Debra's injuries, and the photographs depict various parts of Debra's body to show among other injuries the missing teeth in her mouth, the fractured and crushed bones in her face, and the laceration on her head which exposed her skull, and the numerous broken ribs. The photographs, as evidence of the extremely violent and prolonged nature of Houser's attack on Debra, rebut Houser's claim that he attacked Debra in sudden heat and should thus be convicted of the crime of voluntary manslaughter rather than murder. Further, even though Houser did not assert that the attack did not cause Debra's death, we note that the State maintained the burden

of proving that Houser was not acting in sudden heat. See Carroll v. State, 744 N.E.2d 432, 434 (Ind. 2001) (stating that "[o]nce sudden heat has been injected into a case, the State has the burden to negate its existence"); see also Dunlap, 761 N.E.2d at 841 (noting, where the defendant challenged the admission of an autopsy photograph and argued that the photograph was not relevant because there was no dispute about the identity of the victim or that the victim was killed, that the State still had the burden of proving the identity of the alleged victim); Rice v. State, 916 N.E.2d 962, 966-967 (Ind. Ct. App. 2009) (noting that, although the defendant argued there was no dispute as to the cause of the victim's death, the court did not abuse its discretion in admitting autopsy photographs which could have helped the jury understand the testimony and sort out the issues).

Even if some of the challenged photographs were admitted in error, we conclude that such error is not enough to warrant reversal. Errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of the party. See Corbett, 764 N.E.2d at 628 (citations omitted). To determine whether an error in the introduction of evidence affected the appellant's substantial rights, we must assess the probable impact of that evidence upon the jury. Id. Houser does not demonstrate how the admission of some of the photographs affected his substantial rights. According to Houser, he acted in sudden heat when he dragged Debra from the house to the driveway and proceeded to stomp her to death. Specifically, Houser testified that he and Debra had been arguing and that she said "F.U." and hit him. See Transcript at 332. Words alone are not sufficient provocation to precipitate sudden heat for purposes of determining whether a killing constitutes voluntary manslaughter as opposed to murder.

Gregory v. State, 540 N.E.2d 585, 593 (Ind. 1989). Nor was the jury bound to be persuaded that Houser allegedly being hit by Debra combined with the argument provided sufficient provocation for a voluntary manslaughter conviction. The jury heard testimony that Houser struck Debra in the face while in her house, and the evidence shows that two of Debra's teeth were discovered in the house. The testimony and other physical evidence also established that Houser took Debra out to the driveway and hit, strangled, kicked and stomped her body in a prolonged and extensive attack.

Based upon our review of the record, we find that the probable impact of any erroneous admission of the photographs did not affect Houser's substantial rights, and any error in admitting the exhibits must be disregarded as harmless. See Corbett, 764 N.E.2d at 628 (finding that the trial court's error in admitting certain photographs was not enough to warrant reversal, that it was highly improbable that the erroneously admitted photographs influenced the jury from believing the defendant's highly improbable version of events, and that the error in admitting the exhibit must be disregarded as harmless).

B. Jail Phone Call Recording

The court admitted State's Exhibit 284, which was a recorded phone call between Houser and his girlfriend while Houser was in the Whitley County Jail on February 28, 2010, in which Houser said, among other things, that "I can stand up and I can change something" and "I had one thing in my f------ life that was a total, total curse." See State's Exhibit 284 at 7:40-8:10, 9:40-10:34. Houser argues that the court abused its discretion in playing the phone call to the jury. Houser argues that the only issue at trial

was "whether [he] killed Debra in sudden heat" and that Houser's statements "on February 28, were not relevant to whether he acted in sudden heat on November 17." Appellant's Brief at 6. Houser further argues that his "remorse or lack thereof was irrelevant to the issues before the jury." Id. Houser also argues that the prejudicial impact of the recording outweighed any probative value and that "[t]his was nothing more than a chance to appeal to the sympathy and passion of the jury using a phone call that did not shed any light on whether sudden heat existed some three months prior." Id. at 8.

The State argues that the recording was "relevant not only to [Houser's] identity as the individual who killed Debra, but it is also relevant to show the absence of sudden heat." Appellee's Brief at 6. The State argues that Houser's statement that he "decided on [his] own" to take action "negate[s] any claim of sudden heat." Id. at 6-7. The State also argues that "the probative value of the statements about his deliberative process in ending Debra's life are not greatly outweighed by the 'inflammatory' manner in which he describes the victim to his girlfriend." Id. at 7. The State further argues that any error in admitting the recording was harmless. In his reply brief, Houser argues that "[t]he issue of his emotional state when he [took Debra's life] was contested and there was not overwhelming evidence he acted in sudden heat." Appellant's Reply Brief at 2-3.

During the February 28, 2010 phone call, Houser stated:

> I'm gonna get maxed out on this because once and for all instead of just sitting back and saying . . . I can't change nothin', I can't change nothin', I can't change nothin', I went all out to prove to God . . . people . . . that wanted Deb or whoever on this freakin' earth . . . that you know what, I can stand up and I can change something . . . .

State's Exhibit 284 at 7:40-8:10. Houser also stated during the call:

> You know what, [] I'm happy with the world and the outcome. I had one thing in my f------ life that was a total, total curse. You know what that is. It's gone now. Because instead of just accepting the f------- judges in Allen County . . . and the rest of the f------ world, I decided on my own you know what, in that spur of the f------ moment that that happened, it happened. Actually, . . . it wasn't something I decided . . . it just f------ happened. But you know what . . . you can't take it back. . . . For once, f------ something happened that got f------ changed.

Id. at 9:40-10:34. While Houser's statements include the fact that he considered Debra a "total curse" and the statements were made several months after the crime was committed, the recorded statements were relevant to Houser's claim that he acted in sudden heat when he killed Debra. Based upon our review of the evidence and the recorded phone call presented to the jury, we cannot say that the trial court abused its discretion in admitting State's Exhibit 284.

In addition, even if the recording was admitted in error, we would conclude that the error would not have been enough to warrant reversal. As previously mentioned, Houser claimed that he acted in sudden heat when he attacked Debra. Testimony and physical evidence were presented to the jury that Houser struck Debra in the face while in the house, that two of Debra's teeth were discovered in the house, and that Houser dragged Debra from the house to the driveway and attacked her. The evidence established that the attack was prolonged and extensive. The probable impact of any erroneous admission of the phone call recording did not affect Houser's substantial rights, and any error in admitting the exhibit must be disregarded as harmless. See Corbett, 764 N.E.2d at 628.

C. Prior Conviction for Battery

Houser filed a motion in limine prior to trial to prevent the State from presenting evidence of Houser's prior conviction in 2005 for battery of his son G.H. During trial, Houser took the stand and testified that Debra was agitated because he was not home when G.H. got off the bus. Houser further testified that, when he returned from the tavern later in the evening, he noticed a bag of clothes by the door, that he started to head back out the door, and that Debra followed him outside with the bag of clothes, threw the bag in the truck, and told him "to get everything [he] had out of the house." Transcript at 330. Houser testified that he replied to Debra that he was leaving and was not going to get everything out of the house, and Debra said "don't worry about coming back" because she "was planning on taking [G.H.] and moving to Florida." Id. at 331. When asked if he enjoyed spending time with G.H., Houser testified: "I love spending time with my son." Id. Prior to cross-examination, the State requested relief from the motion in limine.[4] During cross-examination, the State asked Houser if he had been convicted of battery against G.H. in 2005, and Houser stated "Yes." Id. at 342.

Houser argues that he did not open the door to the battery conviction, that the argument between he and Debra did not involve his prior battery conviction, that the conviction was not admissible under Ind. Evidence Rule 404(b) or any of the exceptions to that rule such as to show identity, and that he was unfairly prejudiced by the admission of the battery conviction. The State argues that Houser opened the door to the prior battery upon his son by claiming that he was a good father and that the homicide was

[4] As previously mentioned, the transcript indicates that most of the trial court's comments and ruling on the State's request were inaudible.

sparked by Debra acting unfairly in planning to keep him from his son. The State argues that "the impact on the jury of the testimony that [Houser] had been convicted of battering his son would have been minimal" and that "[a]t the time [Houser] testified, it was already in evidence that [Houser] had been in jail twice as a result of information Debra reported to the police." Appellee's Brief at 13. The State also argues that any error in admitting the prior conviction was harmless, and Houser argues in his reply brief that the State "used this evidence in its final argument" and that he was prejudiced and entitled to a new trial. Appellant's Reply Brief at 4.

Even if the court abused its discretion in permitting the State to ask or Houser to answer the question regarding Houser's 2005 battery conviction, the error would not warrant reversal. Based upon our review of the record, which includes overwhelming evidence of Houser's vicious, prolonged, and extensive attack on Debra, we find it highly improbable that Houser's response to the State's question acknowledging that he had been convicted in 2005 of battery on G.H., even if erroneously admitted, influenced the jury from believing his version of events. The probable impact of any erroneous admission of the prior conviction did not affect Houser's substantial rights, and any error in admitting the conviction must be disregarded as harmless. See Ortiz v. State, 741 N.E.2d 1203, 1208 (Ind. 2001) (holding that the admission of evidence of defendant's prior bad acts was harmless error).

Houser also argues that "[t]o the extent that any of the above instances individually, do not rise to the level of prejudice required for reversal, the cumulative effect of the inadmissible evidence served to deny [him] a fair trial . . . ." Appellant's

Brief at 15. We cannot say that the cumulative effect of Houser's alleged errors demonstrates that Houser was denied a fair trial or warrants reversal.

For the foregoing reasons, we affirm Houser's conviction for murder.

Affirmed.

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