

STATEMENT OF THE CASE

Larry Nash-Aleman appeals his convictions for strangulation, a Class D felony, domestic battery, as a Class A misdemeanor, and interfering with the reporting of a crime, a Class A misdemeanor, following a jury trial. Nash-Aleman presents a single issue for our review, namely, whether the trial court abused its discretion when it admitted into evidence certain photographs.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 5, 2010, Nash-Aleman was living with his ex-girlfriend Carmen Medina in Indianapolis. On that date, Medina came home to find Nash-Aleman sitting on the couch, and Medina was upset because Nash-Aleman had failed to pick up their children from school. An argument ensued, and Nash-Aleman pushed Medina down onto her bed and pinned her with his body. Nash-Aleman then punched Medina in the face and chest, and he began to strangle her. Nash-Aleman eventually let go of his strangle-hold of Medina, and she was able to free herself and telephone the police. Nash-Aleman grabbed the phone from Medina and told the person on the phone that they “didn’t need anybody. That everything was fine.” Transcript at 76. Nash-Aleman also stated to the person on the phone that Medina had been hitting him, and then he hung up the phone. Nash-Aleman threatened to kill Medina if she “fuck[ed] him over,” and he left Medina’s house. Id. Medina telephoned the police again to report the incident.

Indianapolis Metropolitan Police Department Officer Phillip Robinett arrived and observed Medina standing on the front porch crying. He observed that Medina’s face and

chest were red; her left eye appeared puffy; and she had scratches on her face and chest. Medina told Officer Robinett that she and Nash-Aleman had been arguing when he grabbed her around the neck and punched her.

The State charged Nash-Aleman with strangulation, a Class D felony; intimidation, as a Class D felony; domestic battery, as a Class A misdemeanor; battery, as a Class A misdemeanor; and interference with reporting a crime, a Class A misdemeanor. A jury acquitted Nash-Aleman of intimidation, but found him guilty of all remaining charges. The trial court entered judgment of conviction only on strangulation, domestic battery, and interfering with reporting of a crime and sentenced him accordingly. This appeal ensued.

DISCUSSION AND DECISION

Nash-Aleman contends that the trial court abused its discretion when it admitted into evidence photographs depicting Medina's injuries. In particular, Nash-Aleman objected to the photographs on the basis that they were processed and printed in such a way that they had an excessive red tone to them that exaggerated the severity of Medina's injuries. Indeed, the trial court commented that the photographs appeared "really red." Transcript at 80. Still, the trial court admitted the photographs over Nash-Aleman's objection. Nash-Aleman submitted his own copies of the same photographs, but the prints did not have a red tone. The trial court admitted those prints into evidence also, and the jury was able to view both sets of photographs. Still, Nash-Aleman maintains that the State's photographs unduly prejudiced him.

The admission or exclusion of evidence rests within the sound discretion of the trial court, and generally we review its rulings for an abuse of that discretion. Hinds v. State, 906 N.E.2d 877, 879 (Ind. Ct. App. 2009). An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Id. And even if the trial court errs in admitting or excluding evidence, this court will not reverse the defendant's conviction if the error is harmless. See Ind. Trial Rule 61. An error is harmless when the probable impact of the erroneously admitted or excluded evidence, in light of all the evidence presented, is sufficiently minor so as not to affect the defendant's substantial rights. Fleener v. State, 656 N.E.2d 1140, 1141-42 (Ind. 1995).

Here, when the State introduced the challenged photographs into evidence, Medina testified that they accurately depicted her face, neck, and upper chest as they appeared after Nash-Aleman battered her. And when Nash-Aleman introduced his own copies of many of the same photographs into evidence, which did not have a red tone to them, Medina also testified that they were accurate representations of her appearance at that time. During deliberations, the jury looked at both sets of photographs. On appeal, Nash-Aleman contends that the State's photographs were "intentionally or accidentally enhanced in a manner that would only serve to inflame the passions of the jury." Brief of Appellant at 5.

The fact that photographs depict gory, revolting, or inflammatory details of the crime is not a sufficient basis for reversal unless they are without relevance to any matter at issue. Barnes v. State, 634 N.E.2d 46, 48 (Ind. 1994). Photographs are admissible if

they depict the subject of the testimony received from a witness. Id. 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. Evid. R. 402; Evid. R. 403; Bufkin v. State, 700 N.E.2d 1147, 1149 (Ind. 1998).

Here, Nash-Aleman does not challenge the relevance of the photographs, but he does contend that the photographs' probative value was substantially outweighed by the danger of unfair prejudice. See id. Our review of the photographs indicates that this may be a close case, but we hold that the trial court did not abuse its discretion when it admitted the State's photographic evidence. Medina testified that Nash-Aleman hit her twice in the chest and once in the eye and strangled her. Officer Robinett testified that when he arrived at the scene, Medina was crying and she was "red around her face and her chest." Transcript at 118. Officer Robinett also testified that he "saw darkness beneath [Medina]'s left eye" and that that eye "looked to be more puffy than the other [eye]." Id. at 119.

State's Exhibits 1 through 5 depict Medina's face, neck and part of her upper chest. While the photographs do have a strong red tone, that red tone does more to accentuate the acne or other imperfections on Medina's skin than to exaggerate her injuries as they were described at trial. For instance, her left eye does not look significantly puffier than her right eye. And while there is a mark on her neck that appears to have resulted from the strangulation, that mark does not appear exaggerated in light of the testimony or compared to Nash-Aleman's photographs. Moreover, the jurors had both the State's and Nash-Aleman's sets of photographs to compare. We are

confident that the jurors understood that the difference in the sets of photographs was the result of different processing and were able to weigh the evidence accordingly. Indeed, the nature of photographic printing is such that it is very difficult to get the contrasts and colors exactly as they appear in real life. Nash-Aleman has not demonstrated an abuse of discretion.

Even if we were to hold that the trial court abused its discretion, that error would be harmless. Medina testified that Nash-Aleman pushed her onto the bed, got on top of her, pinned her down, punched her in her left eye and chest, and strangled her with his arm around her neck. Officer Robinett's testimony corroborated Medina's testimony. Given the testimonial evidence of Medina's injuries and the two sets of photographs for the jurors to compare and contrast, we cannot say that the probable impact of the challenged photographs, in light of all the evidence presented, was such that the defendant's substantial rights were affected. See Fleener, 656 N.E.2d at 1141-42.

Affirmed.

RILEY, J., and MAY, J., concur.