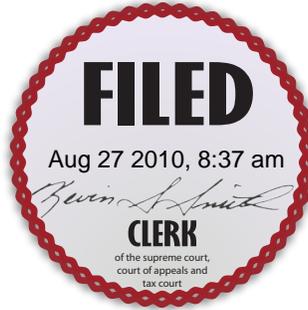


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**IN THE
COURT OF APPEALS OF INDIANA**

DANITRA WHITE,)
)
 Appellant- Defendant,)
)
 vs.) No. 49A02-0911-CR-1150
)
 STATE OF INDIANA,)
)
 Appellee- Plaintiff,)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly Brown, Judge
Cause No. 49G16-0903-FD-30800

August 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Danitra White appeals her convictions, following a bench trial, of domestic battery and two counts of battery, all Class D felonies. For our review, White raises one issue: whether her convictions should be reversed because the trial court erroneously considered certain statements in finding her guilty. Concluding the trial court did not commit reversible error in its consideration of the evidence, we affirm.

Facts and Procedural History

White and Mauricus White were previously in a relationship and shared custody of their three children. On March 8, 2009, White went to Mauricus's townhome to pick up the children. When White saw one of her daughters, she became angered because Mauricus's girlfriend, Danielle Grier, had styled her hair. White removed items from her daughter's hair and threw them into the townhome. White yelled and cursed at Grier so that she would come outside and confront her. Mauricus escorted all three children outside and closed the door so that White would leave. White did not leave; instead, she went to the side of Mauricus's townhome and attempted to cut the screen to the kitchen window. Mauricus opened the door and brought the children back into the house so that he could call the police. Before he could close the door, White put her foot in the doorway and sprayed mace, hitting Mauricus and the children. Mauricus held the door closed against White's foot while Grier called the police. Officer Donald Neal arrived on the scene and found White with her foot in the door. When Officer Neal called for White to step away from the door to ask her what happened, White acted hysterical and out of control, so he put her in handcuffs for officer safety. Officer Neal went into the

townhome to question Mauricus, Grier, and two of the children. While in the townhome, Officer Neal identified the presence of mace in the air. On the front porch, Officer Neal asked White if she sprayed mace in the townhome. Mauricus overheard White claim that she did not have mace. Officers found mace in a flowerbed on the other side of the townhome.

At White's bench trial, Mauricus testified first. When asked by the State if he was able to hear anything White said to the police officers who responded to the scene, Mauricus answered that he was. The State then asked what he heard White say to the officers. Mauricus answered, "That she didn't have any mace it was perfume." Tr. at 14. White did not object to this testimony. During Officer Neal's subsequent testimony, he stated he asked White what she had sprayed inside the house. White objected to the admission of any statements she made to the officer because she was in custody but had not been given her Miranda rights. The trial court agreed White was in custody, sustained the objection, and stated that "[s]tatements made by [White] are excluded." Id. at 49. At the close of evidence, the trial court stated the case "does come down to the credibility." Id. at 79. In explaining why it found White's testimony unreliable, the trial court mentioned that "[s]he lied to the officer. Told the officer that she didn't have no [sic] mace. . . . [J]ust for the record, the officer . . . [White's] statements were excluded during the officer[']s testimony, but there was no objection during the testimony of [Mauricus]. So, that statement came in." Id. at 80. The trial court found White guilty of domestic battery and two counts of battery, all Class D felonies,¹ and sentenced White to

¹ The appendix provided by White includes only the chronological case summary and the abstract of judgment. The transcript does not include the initial hearing or the sentencing hearing. We therefore cannot

an aggregate sentence of 545 days at the Indiana Department of Correction. White now appeals her convictions.

Discussion and Decision

White contends that because the trial court, in finding her guilty, referenced a statement about which Officer Neal was not allowed to testify, the trial court improperly considered excluded evidence and she was denied the right of confrontation and the right to present a defense. However, as the trial court also noted, the same statement had already been introduced into evidence without objection during the testimony of Mauricus. The ruling regarding Officer Neal's testimony did not encompass testimony already given, and the failure to object to Mauricus's testimony waived any error in the admission, and therefore the consideration, of the statement. See Moore v. State, 669 N.E.2d 733, 742 (Ind. 1996) ("Where a defendant fails to object to the introduction of evidence . . . the defendant waives the suppression claim").

However, even if the trial court should have either allowed Officer Neal to testify to White's statement to allow her an opportunity to cross-examine him or not relied on Mauricus's testimony regarding White's statement, there was no harm to White. Whether or not Officer Neal's testimony would have corroborated Mauricus's testimony, neither witness's testimony would prove anything other than what White said; it would not have proved what substance White in fact sprayed into the house. Given the testimony regarding Officer Neal's training and experience in identifying chemical

determine the specific allegations of the charges for ourselves, but because White does not challenge her convictions on double jeopardy grounds, we assume the separate counts are for acts committed against Mauricus and against the children.

substances, the effects of the substance on the residents of the townhome and on Officer Neal when he entered, the fact that a can of mace was found beside the townhome, and White's own testimony that she had mace on her keychain and felt like she had no choice but to mace Mauricus, there is no question White sprayed mace. Moreover, although the trial court specifically mentioned White's statement that she had perfume, not mace, in commenting on her credibility, the trial court also mentioned several other instances in which it found White's testimony not credible as compared to the other witnesses. See Tr. at 79-80 (trial court commenting on the credibility of White's testimony regarding whether the children were present during the altercation, her explanation of how a screen came to be torn, and her claim that Mauricus trapped her foot in the door). In short, even if the trial court should not have considered White's statement, White's rights were not prejudiced because there is no substantial likelihood that the questioned evidence contributed to her conviction. See Tolliver v. State, 922 N.E.2d 1272, 1279 (Ind. Ct. App. 2010) ("Error is harmless if the conviction is supported by substantial independent evidence of guilt such that there is no substantial likelihood that the questioned evidence contributed to the conviction."), trans. denied.

Conclusion

White's convictions are affirmed.

Affirmed.

MAY, J., and VAIDIK, J., concur.