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FILED
Dec 08 2009, 9:19 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

KEITH W. YODER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-0908-CR-485
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Olga H. Stickel, Judge
Cause No. 20D04-0804-CM-225

December 8, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Keith W. Yoder appeals his conviction for Battery,[1] a class A misdemeanor. Yoder argues that the trial court considered evidence outside the record and was biased against him as a result of that evidence. Finding no reversible error, we affirm.

FACTS

On March 19, 2008, Yoder was moving out of his apartment on the second floor of a house in Elkhart. His landlord had given Shelley Ray, who lived in the apartment across the hall from Yoder's, permission to occupy the entire floor of the house after Yoder moved out. After Ray believed that Yoder had finished moving his belongings out and left the building, she entered the apartment and took the keys he had left inside.

Fifteen to twenty minutes later, Yoder returned and became angry when Ray told him that she had entered the apartment and taken his keys. After Ray refused to return the keys, Yoder repeatedly struck her in the head, driving her out the exterior door and onto the porch. As Yoder left, Ray's dog followed him down the stairs. Ray ran after them to grab her dog, and at the bottom of the stairs, Yoder hit her again before climbing into his truck and driving away. Yoder hit Ray approximately six times in the head and she sustained multiple contusions to her head and face.

On April 23, 2008, the State charged Yoder with class A misdemeanor battery. At the February 10, 2009, bench trial, the following colloquy took place during Yoder's direct examination:

[1] Ind. Code § 35-42-2-1.

Q Now you . . . wanted me to bring up something. . . . I told you I didn't think it was admissible, but you wanted me to bring this up, concerning your past; right?

A Yes, sir. I think it's relevant to this case. . . .

***

A . . . it has relevance to this courtroom.

Q That is, is that about some nineteen years ago . . .

***

Q --you were convicted of a battery; is that right?

A Yes, sir, I was.

***

Q And, and this Judge had sent you to jail on that occasion?

A After numerous violations of probation, she, your Honor, with all respect did sentence me to the jail. . . .

Q And since that time, have you gotten in any trouble with the police?

A No . . . .

***

Q Okay. What did it teach you then when you were convicted of battery before?

A . . . It gave me time to [take] the Judge's, your Honor's words to heart and do exactly what she had said for me to do, sit and think about why this type of actions [sic] is not acceptable, and to learn to control my temper.

Tr. p. 89-91. Subsequently, the trial court asked some follow-up questions:

Q Okay, there's something a little awkward but you brought it up in terms of the 19 years ago when I was dealing with the situation. And I certainly don't want to start testifying from the bench, so I

> guess without getting really into it let me ask you this. Mr. Yoder, about that time, were you put on medication?
>
> ***
>
> A I was on a type of medication, yes.
>
> Q Okay.
>
> A I'm not on that same medication.
>
> Q That's, that was my next question. Are you on any medication now?
>
> A Yes, ma'am, I am.
>
> ***
>
> Q At the time of the incident, were you taking your [prescription medications]?
>
> A I take them as prescribed by the doctor, yes.

Id. at 103-04.

After closing arguments, the trial court acknowledged the conflicting testimony offered by the witnesses at trial but specifically noted the fact that Ray had sustained actual bruises on the day in question: "there were visible bruises and that, that's the difficulty here for me. . . . That's, that's the issue here that can't be explained by anything I've heard from anybody really other than, yeah, he was hitting her . . . ." Id. at 112-13. Finally, the trial court stated that it remembered Yoder from nineteen years before:

> You know, for whatever it's worth, and only because Mr. Yoder brought it up and I feel like I kind of have to disclose this to you [be]cause I have Mr., Mr. Yoder appearing in front of me 19 years ago, and we have repeat offenders, defendants who come in over and over and it doesn't impact how you view, at least we hope it doesn't impact a new charge.

> But I do remember this about Mr. Yoder and he had anger problem when we have those domestic batteries with the wife. But after Mr. Yoder went on the medication, which I had a memory [of] too, there was a complete change in him. . . .
>
> So I do have at least that bit of information with respect to the necessity for the medication [and the] impact it made, and I really felt that I needed to disclose that to you because, you know, he brought up what happened 19 years ago, okay.
>
> ***
>
> MR. YODER: Thank you for taking that into consideration, Your Honor.

Id. at 114. The trial court took the case under consideration and found Yoder guilty as charged on March 11, 2009. Following an April 22, 2009, sentencing hearing, the trial court sentenced Yoder to one year with all but twelve days suspended to probation. Yoder now appeals.

DISCUSSION AND DECISION

Yoder's sole argument on appeal is that the trial court improperly considered evidence stemming from his nineteen-year-old battery conviction and that the trial court was biased as a result of this evidence. Initially, we observe that there is a strong presumption that a trial judge is impartial and unbiased. Mitchell v. State, 690 N.E.2d 1200, 1208 (Ind. Ct. App. 1998). To make a showing of reversible error, the defendant must establish that the trial court's conduct—here, asking questions of Yoder regarding the past conviction and alleged use of that information—was harmful and prejudicial to his case. Timberlake v. State, 690 N.E.2d 243, 256 (Ind. 1997).

Initially, we observe that Yoder introduced this evidence into the trial. He discussed it during his direct examination to show that he had learned from past mistakes.

He evidently decided, as a matter of defense strategy, that it inured to his benefit to open the door to this past conviction. Thus, to the extent that it was erroneous to consider this evidence, Yoder invited this error and may not now take advantage of it. See Hape v. State, 903 N.E.2d 977, 997 (Ind. Ct. App. 2009) (holding that a party may not invite error and then later argue that the invited error supports reversal; in other words, error invited by the complaining party is not reversible error), trans. denied.

Along the same lines, we note that Yoder did not object when the trial court questioned him about his past or present medication use. And in fact, when the trial court explained at the end of the proceedings that it recalled Yoder from nineteen years before, Yoder thanked the court for taking it into consideration. Thus, we can only conclude that Yoder has waived this argument by failing to object below. Stellwag v. State, 854 N.E.2d 64, 66 (Ind. Ct. App. 2006).

Finally, waiver and invited error notwithstanding, we note that there is no evidence whatsoever that this information affected the trial court's analysis. Indeed, the trial court stated that it was weighing the conflicting testimony and seemed to focus on the fact that Ray had visible bruising, which was not explained by Yoder's version of events. The trial court felt obligated to disclose its memory of Yoder from nineteen years earlier, but only because Yoder brought it up. Nothing in the record supports Yoder's argument that this information somehow influenced the trial court's analysis of the charge. Therefore, Yoder has not established that the trial court's acknowledgement of the past battery conviction was harmful or prejudicial to his case.

The judgment of the trial court is affirmed.

DARDEN, J., and MAY, J., concur.