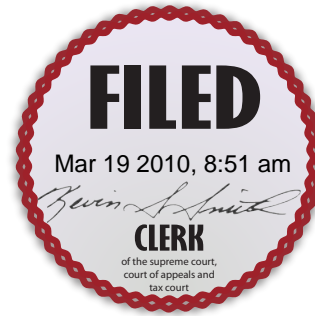


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CARLOS GUERRERO,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-0908-CR-468
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark H. Rogers, Judge
Cause No. 49G17-0904-FD-38798

March 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Carlos Guerrero appeals his conviction for domestic battery, as a Class A misdemeanor, following a jury trial. Guerrero raises a single issue for our review, namely, whether the trial court abused its discretion when it limited his cross-examination of his victim.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 6, 2009, Guerrero and Amanda Fugate—his girlfriend of eight years and the mother of his three daughters—agreed to move in together. Afterwards, Guerrero drove Fugate to her prior residence. Shortly before they arrived, Guerrero “g[ave Fugate] the ground rules for living with him.” Transcript at 24. An argument ensued and continued as Guerrero parked the car in front of Fugate’s residence. Guerrero then slapped Fugate across her face and started to choke her. Fugate used her feet to push Guerrero away, and as a result she also pushed herself out of the vehicle and landed on her back in the driveway.

There, Fugate made her way to the front of the vehicle in an attempt to get inside of her house, but Guerrero grabbed her by her shirt and pushed her onto the hood of the car. Guerrero began punching Fugate in the face with the closed fist of his right hand. One of their daughters witnessed the incident from the front door and “holler[ed] daddy was hitting mommy.” *Id.* at 65. Fugate’s brother, Billy Brooks, who lived at Fugate’s home, looked out of a window and observed Guerrero “striking [Fugate] repeatedly in the face.” *Id.* at 59. Brooks ran out to protect Fugate, but by the time he arrived Guerrero

had “sped off.” Id. Fugate then lost consciousness and was later taken to Wishard Hospital.

On April 20, the State charged Guerrero with numerous offenses, including conversion, as a Class A misdemeanor, and domestic battery, as a Class A misdemeanor. The conversion charge was based on an allegation by Fugate that Guerrero had exerted unauthorized control over her vehicle on April 6. However, prior to trial, the court granted the State’s motion to dismiss the conversion allegation. Likewise, the court granted the State’s motion in limine, which sought to prevent Guerrero from questioning Fugate about the rightful owner of the vehicle as of April 6 and the State’s allegations regarding the conversion charge.

The court held Guerrero’s jury trial on July 23. During the trial, Fugate testified about the details of the April 6 battery. Brooks testified, without objection, that he heard one of the daughters yell from the doorway that Guerrero was beating Fugate. Brooks also corroborated Fugate’s testimony when he stated that he witnessed Guerrero beating Fugate on the hood of the car.

During Fugate’s cross-examination, Guerrero’s trial counsel inquired as to whether Fugate had told the responding police officer that Guerrero had stolen her car. Fugate stated that she had told the officer that, that it was a true statement, and that she remained in possession of that vehicle. Guerrero’s trial counsel then sought to impeach Fugate by admitting into evidence a document in which Fugate purported to deliver the vehicle’s title to a third party on August 6, 2008. The State objected to that document’s admissibility, and the trial court sustained the State’s objection.

After deliberations, the jury found Guerrero guilty of domestic battery, as a Class A misdemeanor.¹ Thereafter, the court sentenced Guerrero to one year, with 185 days suspended. This appeal ensued.

DISCUSSION AND DECISION

On appeal, Guerrero argues that the trial court abused its discretion when it refused his request to admit the document that purported to show that Fugate had sold the vehicle to a third party in August of 2008. 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).²

Here, any error in the trial court's decision to exclude the document is harmless. The jury found Guerrero guilty of domestic battery. That verdict was supported not only

¹ The jury also found Guerrero guilty of battery, as a Class A misdemeanor, but the trial court did not enter a judgment of conviction on that verdict.

² In Fleener, our supreme court distinguished the above stated harmless error standard, which applies to evidentiary and other state law rulings, from the reasonable doubt standard that applies to errors potentially affecting the defendant's federal constitutional rights. 656 N.E.2d at 1141-42. We apply the evidentiary standard here in part because Guerrero does not argue that the trial court's evidentiary rulings violated his federal constitutional rights. See Ind. Appellate Rule 46(A)(8)(a).

by Fugate's testimony, but by Brooks' testimony that he personally saw Guerrero beating Fugate, Brooks' testimony (to which Guerrero did not object) of the daughter's outburst while Guerrero was beating Fugate, Fugate's medical records, and photographs of Fugate's face shortly after the beating occurred. Thus, even if the trial court erred in not permitting Guerrero to enter the document into the record, the probable impact of that evidence, in light of all of the evidence presented, would have been minor and would not have affected Guerrero's substantial rights. See id. Accordingly, Guerrero cannot demonstrate reversible error, and we affirm his conviction.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.