MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Demarcus Antoine Nelson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 20, 2021

Court of Appeals Case No. 21A-CR-445

Appeal from the Marion Superior Court

The Honorable James Snyder, Magistrate

Trial Court Cause No. 49D28-2004-F5-13416

Brown, Judge.

[1] Demarcus Antoine Nelson appeals his conviction for domestic battery as a level 5 felony and argues that the trial court erred in admitting an officer arrest report. We affirm.

Facts and Procedural History

[2] In April 2020, the State filed a charging information alleging that Nelson committed domestic battery as a class A misdemeanor under Count I and battery as a class B misdemeanor under Count II.[1] For each count the State also filed a separate information alleging Nelson was previously convicted of a battery offense on the same person, T.J., under cause number 49G02-1410-F5-48631 ("Cause No. 31") and that his offenses under Counts I and II were level 5 felonies.

[3] In February 2021, the trial court held a bench trial in two phases. In the first phase, T.J. testified that she had been in a romantic relationship with Nelson for ten years, and the court found Nelson guilty of domestic battery as a class A misdemeanor and battery as a class B misdemeanor. During the second phase, the court admitted State's Exhibits 6 through 9 into evidence which contained

[1] The charging information identified "Demarcus Antoine Nelson B/Male DOB 1/8/1995." Appellant's Appendix Volume II at 25. The State also charged Nelson with invasion of privacy under Count III but later dismissed that charge.

certified court records of the charging information, plea agreement, sentencing order, and abstract of judgment under Cause No. 31.[2]

[4] The State called Daniel Morlan as a witness, and Morlan indicated he was an identification processing officer for the Indianapolis Metropolitan Police Department (the "IMPD") and had worked for the IMPD for sixteen years. When asked "[h]ave you been working in fingerprinting the entire time," Morlan replied "[y]es, although my duties have changed a little bit in the last couple years" and "I do more records work now than processing and quality control." Transcript Volume II at 54. He testified "I . . . routinely compare prints of individuals that various agencies that want to know who they have in custody," "I process requests from F.B.I. (indiscernible). I do dispositions for states when they make inquiries," "[s]ometimes I will work overtime in IDENT and do things like the quality control and the print comparisons there," and "[i]n circumstances such as this, I testify as keeper of the records." *Id*. at 54-55. He testified as to his training and experience in the field of fingerprinting.

[5] The prosecutor showed Morlan a document marked as State's Exhibit 10, and Morlan testified that he recognized the document as "an officer arrest report or OAR." *Id*. at 57. State's Exhibit 10 in the record consists of two pages, the first

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[2] The charging information under Cause No. 31 alleged under Count I that, on or about October 21, 2014, "Demarcus Antonine Nelson B/Male DOB 1/8/1995" committed battery resulting in bodily injury to a pregnant woman, specifically, T.J. State's Exhibit 6. The plea agreement indicates Nelson pled guilty to Count I. The sentencing order and abstract of judgment state Nelson's full name and indicate the date of the offense was October 21, 2014.

page states "Officer's Arrest Report Book-In Slip" and contains a thumbprint, and the second page contains the phrase, which appears to be applied by a stamp, "Indianapolis Metropolitan Police Dept. Certified to be a true copy." State's Exhibit 10. The report indicated an "Offense Date" and an "Arrest Date" of "10/21/14," that the prisoner's name was Demarcus Antoine Nelson, and stated "Race: B," "Sex: M," and "DOB: 1/8/1995." *Id*. When asked "[i]s this officer arrest report, OAR, kept in the ordinary and routine course of business for the [IMPD]," Morlan replied "[y]es, it is." Transcript Volume II at 57. Nelson's counsel asked "did you take this document from the I.M.P.D. files yourself," and Morlan stated "did I retrieve this from something I filed myself? No, I did not." *Id*. at 58. He asked "[t]he prosecutor just handed you this paper," Morlan said "[y]es," he asked "but you didn't . . . collect it yourself," and Morlan replied: "Not that I'm aware of. I have no way of knowing for sure, if I was the one that submitted it." *Id*. at 58-59.

[6] Nelson's counsel objected "to any testimony about whether it's kept in the ordinary course of business, whether - how it was produced because this witness who is the keeper of records, did not collect this document himself. . . . So, it is a foundational issue." *Id.* at 59. The court stated, "the grounds for the objection is the fact that Mr. Morlan did not retrieve this document himself," and Nelson's counsel said "[c]orrect." *Id*. He argued, "[i]n this situation, the keeper of the record doesn't know anything about where the paperwork came from, who retrieved it, where it was kept, whether it was kept in the normal course of business," "[h]e has no idea because he didn't have anything to do

with the retrieval of the document," and "therefore, the State can't make any type of foundation that would satisfy a hearsay exception. It's foundation, chain of custody, hearsay, authenticity." *Id*. at 59-60. The prosecutor argued "this is a business record" which falls under an exception to the hearsay rule, Morlan was "in the process as . . . the keeper of the records, who is somebody who is familiar with officer arrest reports," "[h]e has seen many of these and can testify about how they are filled out," and "[h]e's qualified to testify about the authenticity." *Id*. at 60. The court overruled Nelson's objection.

[7] Morlan indicated that, to his knowledge, State's Exhibit 10 was a true and accurate photocopy of the original and permanent record kept in the identification branch of the IMPD. He testified that the arresting officer is the person who usually fills out a certain portion of the arrest report, "the people that process them will do another portion," and "[t]hen the people at quality control fill out the bottom." *Id*. at 65. When asked "[s]o, this would have been another IDENT worker who would have been the one to sign this," Morlan testified "[y]es, this would be their IDENT numbers - technician record numbers. They do their quality control (indiscernible) and make sure that the data is correct." *Id*. The prosecutor moved to admit State's Exhibit 10.

[8] Nelson's counsel stated: "I have [an] objection, one that sufficient foundation has not been laid. We have a keeper of the record for I.M.P.D. We do not have the keeper of the record that produced this and there's nothing in the record about where this document from [sic] or how. As to the first page of this document, it's uncertified. . . . The second page has a certification on it." *Id*. at

66. The prosecutor argued a foundation had been laid that the document was a business record under Ind. Evidence Rule 803(6), Morlan testified the arresting officer would have been the person who filled out part of the report, the record was kept in the course of regularly conducted activity of the IMPD, the making of the record was a regular practice, the keeper of the records was present to testify, and there was no evidence the document was untrustworthy.

[9] The court overruled the objection and admitted State's Exhibit 10. The court also admitted State's Exhibit 11 which was a "thumbprint card," and Morlan testified that he "inked [Nelson] on the back of this card and that was how I made it." *Id*. at 69. Morlan testified that he compared the thumbprint on State's Exhibit 10 with the thumbprint on State's Exhibit 11 and determined that they "were a match" and that they both came from the same person, Nelson. *Id*. at 71. The court found Nelson was "in fact the same Demarcus Nelson" who was previously convicted of a battery offense on T.J. under Cause No. 31. *Id.* at 74. The court found: "I show a Demarcus Nelson arrested on October 21st, 2014 under a [Cause No. 31] which gave a thumbprint on page 1 of State's Exhibit 10, that is the one in the same to the individual sitting in front of me today." *Id*. The court entered judgment of conviction as level 5 felonies under Counts I and II. At sentencing, the court vacated Count II and sentenced Nelson to three years for domestic battery as a level 5 felony.

Discussion

[10] A trial court's ruling on the admission of evidence is generally accorded a great deal of deference on appeal. *Hall v. State*, 36 N.E.3d 459, 466 (Ind. 2015), *reh'g*

denied. Because the trial court is best able to weigh the evidence and assess witness credibility, we review its rulings on admissibility for abuse of discretion and only reverse if a ruling is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Id.* We may affirm a trial court's decision if it is sustainable on any basis in the record. *Barker v. State*, 695 N.E.2d 925, 930 (Ind. 1998). Even if the trial court's decision was an abuse of discretion, we will not reverse if the admission constituted harmless error. *Fox v. State*, 717 N.E.2d 957, 966 (Ind. Ct. App. 1999), *reh'g denied*, *trans. denied.*

[11] Nelson argues the admission of State's Exhibit 10 pursuant to Ind. Evidence Rule 803(6) was improper. He contends that Morlan "was unable to establish that Exhibit 10 was actually an IMPD record," Morlan "did not retrieve the documents from IMPD records," and "it is clear from his testimony that the first time he ever saw the document was at [the] trial when it was handed to him by the prosecuting attorney." Appellant's Brief at 9.

[12] Ind. Evidence Rule 801(c) provides hearsay is a statement which is not made by the declarant while testifying at trial and offered to prove the truth of the matter asserted. Ind. Evidence Rule 802 provides hearsay is inadmissible unless the rules or other law provide otherwise. Ind. Evidence Rule 803 provides in part:

> The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
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> * * * * *

> **(6) Records of a Regularly Conducted Activity**. A record of an act, event, condition, opinion, or diagnosis if:
>
> > (A) the record was made at or near the time by – or from information transmitted by – someone with knowledge;
> >
> > (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
> >
> > (C) making the record was a regular practice of that activity;
> >
> > (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(9) or (10) or with a statute permitting certification; and
> >
> > (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

[13] "[T]he sponsor of an exhibit offered under this exception need not have personally made it, filed it, or had firsthand knowledge of the transaction represented by it." *Tate v. State*, 835 N.E.2d 499, 509 (Ind. Ct. App. 2005) (citing *Payne v. State*, 658 N.E.2d 635, 645 (Ind. Ct. App. 1995) (citation omitted), *trans. denied*), *trans. denied*. "[A] sponsoring witness is not required to testify that he knew that the person who entered the information on the documents had personal knowledge of the events recorded." *Payne*, 658 N.E.2d at 645. "Rather, records kept in the usual course of business are presumed to have been placed there by those who have a duty to so record and have personal knowledge of the transaction represented by the entry, unless there is a showing to the contrary." *Id.* (citing *Lyons v. State*, 506 N.E.2d 813, 816-817 (Ind. 1987) ("An official record, such as the arrest reports here, may be attested

to by the person who has custody of those records . . . . Records contained in the usual course of business are presumed to have been placed there by those who have a duty to so record and have personal knowledge of the transaction represented by the entry, unless there is a showing to the contrary.")).

[14] Here, the State presented testimony that State's Exhibit 10 consisting of the officer arrest report was kept in the course of a regularly conducted activity of the IMPD. The officer arrest report contains biographical information, the location, date, and time of the arrest, the names and agencies of the arresting, transporting, and receiving officers, the booking date and time, and the type of offenses. The second page of the report contains the stamped phrase "Indianapolis Metropolitan Police Dept. Certified to be a true copy." Morlan testified he was an identification processing officer and a keeper of the records for the IMPD. He testified he recognized State's Exhibit 10 as an officer arrest report and to his knowledge the exhibit was a true and accurate photocopy of the original and permanent record kept in the identification branch of the IMPD. He testified the arresting officer is generally the person who prepares the report, indicated other persons including those at quality control complete other portions of the report, and referenced the IDENT signature and technician record numbers. The fact Morlan did not personally retrieve the record or have firsthand knowledge of the transaction represented by the report does not render the record inadmissible under Evidence Rule 803(6). *See Tate*, 835 N.E.2d at 510; *Payne,* 658 N.E.2d at 647. Based upon the record and under the circumstances, we cannot say the trial court abused its discretion in

overruling Nelson's objections and in admitting State's Exhibit 10. Moreover, we note that T.J. testified as to the length of her relationship with Nelson and that State's Exhibits 6 through 9 contained the charging information, plea agreement, sentencing order, and abstract of judgment under Cause No. 31 which showed Nelson's full name, his date of birth, the date of the offense in 2014, and T.J.'s full name.

[15] For the foregoing reasons, we affirm.

[16] Affirmed.

Najam, J., and Riley, J., concur.