MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Daniel A. Borges Arellano,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 12, 2024

Court of Appeals Case No.
23A-CR-1884

Appeal from the Marion Superior Court

The Honorable William Nelson, Judge
The Honorable Mark F. Renner, Magistrate Judge

Trial Court Cause No.
49D18-2301-F6-299

Memorandum Decision by Judge Foley
Judges Riley and Brown concur.

Foley, Judge.

[1] Following a jury trial, Daniel A. Borges Arellano ("Borges Arellano") was convicted of Class A misdemeanor domestic battery.[1] Borges Arellano now appeals, claiming the trial court abused its discretion in admitting inadmissible hearsay testimony. Concluding that the challenged testimony was either not hearsay or that Borges Arellano failed to preserve any alleged error, we affirm.

Facts and Procedural History

[2] In January 2023, the State filed a five-count information against Borges Arellano. In Count II, the State alleged that, on or about December 11, 2022, Borges Arrellano committed Class A misdemeanor domestic battery against Sofia A. Cabanillas Martinez ("Sofia"). A jury trial was held in June 2023.

[3] At trial, Sofia testified that she was dating Borges Arellano in December of 2022, and the two were living together. Sofia's testimony initially focused on the early morning hours of December 11, 2022, after she came home from a family gathering "[a]round 1:00 or 2:00 in the morning." Tr. Vol. 2 p. 105. Sofia testified that, when she returned to the home, Borges Arellano "started calling [her] names" and was upset about "why [she] didn't bring food for him[.]" *Id.* Sofia testified that Borges Arellano "slapped [her]," which "busted [her] lip a little bit." *Id.* After that, "[he] started hitting [her] and [he] started

[1] Ind. Code § 35-42-2-1.3(a)(1).

dragging [her] towards the bathroom" by her hair. *Id.* Sofia testified that, at that point, Borges Arellano retreated to the bedroom, and she ended up sleeping in the living room. Sofia testified that she was later woken up by Borges Arellano "kick[ing] [her] . . . on [the] leg." *Id.* at 106. Sofia said that Borges Arellano complained of being hungry and told her to "wake up to make him breakfast because he had not eaten anything" on the day before. *Id.* Sofia then told Borges Arellano to "make himself something to eat because . . . there was food . . . in the refrigerator" and she "had to go to work[.]" *Id.* Sofia then left for work. When Sofia returned later that day, Borges Arellano "continued complaining that he had not eaten anything, and he needed to eat." *Id.* Sofia testified that she was sitting in the living room when Borges Arellano threw a bundle of papers at her. While "she stayed sitting" and "was crying," Borges Arellano "grabbed [her] [by] the hair," "dragged [her] to the bathroom" by her hair, and then "threw [her] on the floor." *Id.* at 106–07. Sofia locked herself in the bathroom and contacted her cousin, Stephanie, for help. Before long, Sofia's uncle, Arturo Martinez Vega ("Arturo"), arrived and called the police.

[4] The State sought to elicit testimony from Arturo, asking him to recount the events on the evening of December 11, 2022. The following exchange ensued:

> Q I would like to take you back to Sunday, December 11, 2022, specifically that evening; do you remember what you were doing that evening?
>
> A I was taking a shower . . . when I received a phone call. I don't remember if it was on my phone or on my wife's phone. It was my other niece who made the phone call on

[a social media application]. Sofia called my other niece, Stephanie, and Stephanie called my house, and my wife told me[,] Arturo, something serious is going on.

[The Defense]: Objection. Hearsay.

[The State]: Your Honor, it's not coming in for the truth.

[The Court]: And I agree, overruled. Next question.

Q You can proceed.

A And she told me something is going on with Sofia, she's been hit --

[The Court]: All right, and that's sufficient. You're starting to get into facts, we're not going to go any further.

[The State]: Understood.

[The Court]: Next question.

Id. at 131.

[5] The jury found Borges Arellano guilty of Count II—Class A misdemeanor domestic battery—and not guilty of the remaining counts. The trial court entered its judgment of conviction and imposed a sentence of 360 days executed with 148 days suspended to probation. Borges Arellano now appeals.

Discussion and Decision

[6] Borges Arellano claims that the trial court abused its discretion in admitting Arturo's testimony about what his wife told him, i.e., that "something serious [was] going on" with Sofia, and that "something is going on with Sofia, she's been hit[.]" Tr. Vol. 2 p. 131. Borges Arellano argues that these statements were inadmissible hearsay.

[7] Hearsay is "a statement that: (1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted." Ind. Evidence Rule 801(c). Indiana Evidence Rule 802 generally prohibits hearsay, specifying that "[h]earsay is not admissible unless these rules or other law provides otherwise." In general, the trial court has broad discretion in admitting or excluding evidence, and we review its evidentiary rulings for an abuse of that discretion. *Combs v. State*, 168 N.E.3d 985, 990 (Ind. 2021). In reviewing an evidentiary ruling, "[w]e consider all the facts and circumstances surrounding the trial court's decision," reversing only if the decision is "'clearly against the logic and effect' of what those facts and circumstances dictate." *Satterfield v. State*, 33 N.E.3d 344, 352 (Ind. 2015) (quoting *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014)). Moreover, we may affirm the evidentiary ruling on any theory supported by the evidence. *Id.*

[8] A threshold issue is whether the appellant preserved the claim of error. To preserve a claim when the trial court "admits evidence," the party must "(A) timely object[] or move[] to strike; and (B) state[] the specific ground, unless it

was apparent from the context." Evid. R. 103(a)(1). If the party preserved the claim of error, we reverse "only if the error affects a substantial right of the party[.]" Evid. R. 103(a); *see also* Ind. Appellate R. 66(A) (directing appellate courts to disregard harmless error). But if the party failed to preserve the claim of error, we reverse only upon a showing of fundamental error. *Owen v. State*, 210 N.E.3d 256, 264 (Ind. 2023). Further, if a party fails to assert fundamental error on appeal, the party "waive[s] any claim of fundamental error[.]" *Id.*

[9] First, we consider Arturo's testimony that his wife said "something serious [was] going on" with Sofia. Tr. Vol. 2 p. 131. Borges Arellano objected to this testimony at trial, alleging that the statement constituted hearsay. The State responded that the testimony was not hearsay because it was "not coming in for the truth." *Id.* The trial court agreed with the State and overruled the objection. *Cf.* Evid. R. 801(c) (specifying that a statement is hearsay if it is "offered in evidence to prove the truth of the matter asserted"). On appeal, Borges Arellano maintains that the testimony constituted hearsay. But the State maintains that Arturo's "wife's statement that something serious was going on was not introduced to prove that was true, but instead to explain why [Arturo] then went to" check on Sofia. Appellee's Br. p. 8. The State directs us to caselaw involving similar testimony that the Indiana Supreme Court determined had a "non-hearsay purpose," in that the statements—"whether they were true or not"—were "relevant to explain why [the witness] was concerned about [the victim] and therefore went to the window to observe the person with whom [the victim] was speaking." *Anderson v. State*, 718 N.E.2d

1101, 1103 (Ind. 1999). There, our Supreme Court determined that "[b]ecause the out-of-court statements were not offered for their truth, they were not inadmissible on the basis of hearsay." *Id.*[2]

[10] We conclude that, under the circumstances, the trial court was well within its discretion to determine that the challenged testimony was not hearsay because it was not being offered to prove the truth of the matter asserted. Rather, the testimony was being used to explain why Arturo went to check on Sofia. Thus, because Borges Arellano has not raised any other challenge to the admissibility of the testimony, let alone asserted that the trial court committed fundamental error by admitting the testimony, we identify no error in the evidentiary ruling.

[11] Next, we turn to Arturo's testimony that his wife "told [him] something is going on with Sofia, she's been hit[.] Tr. Vol. 2 p. 131. Again, Borges Arellano claims that this testimony amounted to inadmissible hearsay. However, in this instance, Borges Arellano did not object to the testimony, nor did he move to strike the testimony from the record. Thus, Borges Arellano did not preserve this alleged error in the admission of evidence. *See* Evid. R. 103(a)(1). And because Borges Arellano does not claim that the alleged error was fundamental, we discern no grounds for reversing the trial court. *Cf. Owen*, 210 N.E.3d at 264

[2] The *Anderson* Court went on to analyze whether the statements were inadmissible for other reasons asserted on appeal. Here, however, Borges Arellano does not present other challenges to the admissibility of the testimony.

(identifying "no valid issue[] for . . . review" where the party did not object at trial, nor assert fundamental error on appeal).

[12] Borges Arellano has failed to identify grounds for reversal.

[13] Affirmed.

Riley, J., and Brown, J., concur.

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