IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 50-2019-AP-000119-AXXX-MB
L.T. NO.: 50-2018-MM-011876-AXXX-MB

KINSLER BRICE JEAN BART, JR.,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

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Opinion filed: November 30, 2020

Appeal from the County Court in and for Palm Beach County;
Judge Debra Moses Stephens

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PER CURIAM.

Appellant, Kinsler Brice Jean Bart, Jr., appeals his judgement and sentence for battery in county court. The trial court sentenced Appellant to twelve months of probation with the special conditions that he attend a parenting class and a batterers' intervention program; it also ordered Appellant to pay restitution and a $201 domestic violence surcharge pursuant to section 938.08, Florida Statutes (2018). We affirm, but write to address Appellant's argument that the trial court

imposed an illegal sentence when it found that Appellant's battery conviction qualified as a "crime of domestic violence." We hold that, in doing so, the trial court violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), but that the trial court's error was harmless.

Under *Apprendi*, a court is prohibited from finding any fact which "increases the penalty for a crime" unless that fact is submitted to a jury and proven beyond a reasonable doubt. *Alleyne v. United States*, 570 U.S. 99, 103 (2013) (citing *Apprendi*, 530 U.S. at 490). In short, the court exceeds its authority when it inflicts a punishment that the jury's verdict does not allow since the jury has not found all the facts which the law makes essential to punishment. *See Blakely v. Washington*, 542 U.S. 296, 304 (2004). Nevertheless, an error based on *Apprendi* or its progeny is subject to the harmless error test. *See Williams v. State*, 242 So. 3d 280, 290 (Fla. 2018); *State v. DiGuilio*, 491 So. 2d 1129, 1139 (Fla. 1986). Such an error is harmless if it is "clear beyond a reasonable doubt" that a jury would have also the requisite facts needed by the trial court to impose a harsher sentence. *See Galindez v. State*, 955 So. 2d 517, 522 (Fla. 2007).

Section 741.28(2), Florida Statutes (2018), allows certain crimes (such as battery, assault, or kidnapping) to be classified as a "crime of domestic violence" when the offense results "in physical injury or death of one family or household member by another family or household member." If a defendant is adjudicated guilty of one of the predicate offenses and the crime is classified as a crime of domestic violence, the defendant is then subject to additional, mandatory penalties such as completion of a batterers' intervention program and/or a minimum sentence of up to twenty days in the county jail. *See* §§ 741.281, 741.283, Fla. Stat. (2018).

Since finding an offense to be a crime of domestic violence increases the penalties a defendant faces, the lower court erred in finding that the battery committed by Appellant was domestic in nature. *See Williams*, 242 So. 3d at 288 (quoting *Alleyne*, 570 U.S. at 115). Not only

should a jury have been responsible for finding the necessary facts, but the record is not "clear beyond a reasonable doubt" that a jury would have done so. *See Galindez*, 955 So. 2d at 522. However, this error is harmless because Appellant did not receive an enhanced penalty that was unavailable to any other defendant convicted of a non-domestic violence misdemeanor battery. *See Alleyne*, 570 U.S. at 112. Although Appellant was ordered to attend and complete a batterers' intervention program, which is a mandatory special condition of probation if a defendant is found guilty of a crime of domestic violence, the lower court had discretion to impose this special condition in the instant case regardless of a domestic violence finding since attendance in this program bears a relationship to the crime for which Appellant was convicted. *See Spano v. State*, 60 So. 3d 1108, 1109 (Fla. 4th DCA 2011). Likewise, although Appellant argues that the trial court's imposition of the domestic violence surcharge qualifies as an enhanced penalty, the surcharge is imposed for any battery conviction, without regard for the domestic violence designation. *See* § 938.08, Fla. Stat. (2018) (citing § 784.03, Fla. Stat.).

Since any *Apprendi* error was harmless, we **AFFIRM** the judgment and sentence of the lower court.

SHEPHERD, G. KEYSER, and SCHER, JJ., concur.