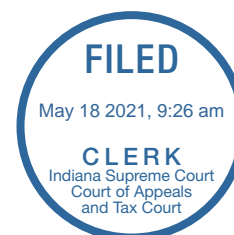


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Gregory L. Fumarolo
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Myriam Serrano
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Shawn Lacey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 18, 2021

Court of Appeals Case No.
20A-CR-1689

Appeal from the Allen Superior
Court

The Honorable David M. Zent,
Judge

Trial Court Cause No.
02D06-1908-F5-266

Bradford, Chief Judge.

Case Summary

- [1] During the early morning hours of May 19, 2019, Shawn Lacey and his then-girlfriend, Nicole Cramer, got into a verbal argument, which turned physical with Lacey placing Cramer in a chokehold, causing her to lose consciousness. Cramer also suffered a number of injuries, which caused her significant pain. Lacey was subsequently charged with and found guilty of Level 5 felony battery. On appeal, Lacey challenges the sufficiency of the evidence to sustain his conviction. We affirm.

Facts and Procedural History

- [2] For approximately eight months leading up to May 18, 2019, Lacey and Cramer were involved in a relationship and lived together. During the evening hours of May 18, 2019, Lacey, Cramer, and Cramer's friend, Katie Nania, went out together, visiting The Deck and Flashbacks.¹ Upon arriving at Flashbacks, Cramer hugged and spoke to a friend named Jordan Torrez. Cramer introduced Lacey to Torrez and, shortly thereafter, Lacey said he was going to the restroom. Lacey did not return and Cramer eventually found him standing on the dance floor.

¹ The Deck is a restaurant and bar located in Fort Wayne and Flashbacks is a nightclub located in Fort Wayne.

[3] When Cramer approached Lacey, he was angry and the two began to argue. Soon thereafter, Cramer, upset and crying, went to find Nania to let her know it was time to leave. The trio left and during the drive back to Lacey's and Cramer's apartment, Lacey was yelling and driving very fast. He called Cramer a b[****], among other names, and indicated that he was angry because Cramer had given Torrez a hug. Upon arriving at the apartment, Nania left and Lacey and Cramer went inside. Nania did not see any injuries on Cramer at any time that evening.

[4] The argument continued inside the apartment, even after Lacey left and returned home a few hours later. Upon returning home, Lacey went to the bathroom. Cramer followed, asking where he had been. Lacey responded that "it was none of [her] f[***]ing business." Tr. Vol. I p. 157. As he exited the bathroom, Lacey walked past Cramer and shoved her into the wall. He then wrapped his bicep and forearm around her neck in a chokehold and told her to "sleep, b[****], sleep." Tr. Vol. I p. 157. Lacey applied so much pressure to Cramer's neck that her feet left the ground and she lost consciousness. He then threw Cramer onto the floor.

[5] Upon regaining consciousness, Cramer was in excruciating pain; had blood on her hands; and was confused, scared, and "freaking out" because she did not know what had happened or where the blood had come from. Tr. Vol. I p. 161. Cramer eventually realized that the blood was coming from her face and mouth. She went to the bathroom, where she found Lacey. Lacey rushed to her, apologized, and told her that he did not know that was going to happen.

Cramer looked in the mirror, spat out blood from her mouth, and began cleaning the blood off her face. Lacey attempted to help clean up the blood, but left the bathroom after Cramer told him to stop. Once she got the bleeding under control, Cramer found Lacey and asked him what happened. She then helped Lacey clean blood off of the floor, noticing that there was blood in the kitchen doorway, on the kitchen backsplash, in the hallway, in the bathroom, on the closet doors, and on the bathroom door. After they finished cleaning, Lacey washed their bloody clothing and they showered together before going to sleep.

[6] The following day, Nania came to visit Cramer, who was afraid to leave the apartment, while Lacey was at work. Nania thought Cramer looked horrible, “like she had just gotten hit by a bus.” Tr. Vol. I p. 220. Nania observed that Cramer had bruises on her head, dried blood under her nose, and an injury to her lip and mouth. Nania also observed that it looked as if someone had attempted to clean up blood in the kitchen and hallway and on the bathroom door. Nania was still at the apartment when Lacey returned home from work. Lacey looked upset so Cramer followed him into the bathroom and asked him what was wrong. Nania overheard Lacey tell Cramer that “he doesn’t care if [Nania] knew that he choked the sh[**] out of” Cramer. Tr. Vol. I p. 221. Cramer then told Nania she should leave the apartment.

[7] For the next few days, Cramer, who was having dizzy spells, was unable to put her glasses on due to an injury to her nose, and was “not in good shape,” mostly stayed in bed and slept. Tr. Vol. I pp. 164–65. Cramer took

photographs of her injuries, which showed that she had abrasions on the bridge of her nose and under her nose, a cut on the inside of her mouth, and a black eye. In addition to these injuries, Cramer was in “a lot of pain.” Tr. Vol. I p. 211.

[8] Lacey and Cramer communicated via text while Lacey was at work between May 19, and May 23, 2019. In these messages, Lacey told Cramer that he was sorry, he felt terrible, and that “[e]ven when I try not to hurt you I still end up hurting you.” Ex. 11.

[9] Cramer stayed with Lacey for a few days following the assault because she was scared that he would find her if she left, she was not physically able to drive due to her injuries, and she loved him and hoped the relationship would improve. After three days, however, Cramer decided to pack her things and move out of Lacey’s apartment. Cramer also went to the hospital for medical treatment. At that time, she still had a black eye, cuts in her mouth, and bruises on her arm. Cramer later indicated that the emergency room doctor determined that her dizziness was the result of a blow to the head. Hospital staff encouraged Cramer to report the battery to the police.

[10] The next day, four days after the battery occurred, Cramer reported the battery to the police. Allen County Police Officer Thomas Braun met with Cramer. Cramer told Officer Braun that Lacey had choked her by putting his bicep and forearm around her neck, she had had difficulty breathing, and, as a result, she had blacked out. She also told Officer Braun that when she regained

consciousness, she was on the floor “bloody and bruised.” Tr. Vol. II p. 8. Officer Braun took photographs of Cramer’s injuries and felt a lump on her head. The case was then transferred to Allen County Sheriff’s Detective Sean Kelly, who met with Cramer on May 28, 2019. Detective Kelly observed that Cramer’s injuries, including bruising around her eye and abrasions under and above her nose, were still “quite visible” nine days after the battery. Tr. Vol. II 19.

[11] On May 29, 2019, ten days after the battery, Cramer went to see Dr. Philip Chase. Dr. Chase observed that Cramer’s nose looked like it was broken and deviated to the side; Cramer had substantial bruising on her face, including both above and below her eye; and Cramer’s TMJ² joints were inflamed and making it difficult for her to open her mouth or chew. Dr. Chase noted that Cramer’s primary complaints were “that she felt like her nose was broken, that her jaw was causing her pain, so she was only able to eat soft foods. She had some cuts on the inside of her mouth. She was having nightmares from the trauma, traumatic experience.” Tr. Vol. I p. 231.

² TMJ stands for the temporomandibular joint, which “is hinge that connects your jaw to the temporal bones of your skull, which are in front of each ear. It lets you move your jaw up and down and side to side, so you can talk, chew, and yawn.” <https://www.webmd.com/oral-health/guide/temporomandibular-disorders-tmd> (last visited May 5, 2021).

[12] On August 13, 2019, the State charged Lacey with Level 5 felony domestic battery. The State subsequently amended the charge to Level 5 felony battery. On July 23, 2020, the State charged Lacey Level 3 felony aggravated battery.

[13] A jury trial was held on July 21 through July 23, 2020. Detective Kelly recalled at trial that Cramer had reported that she was in an enormous amount of pain and had discomfort in her jaw. Detective Kelly testified that while he did not observe an injury to Cramer's neck, it "is not uncommon ... [and] [t]hat somebody being choked with the bicep and forearm isn't necessarily going to have any bruising." Tr. Vol. II p. 32. He further testified that he had noted that Lacey is a "pretty big guy," who Cramer had indicated was a boxer and that the injuries sustained by Cramer seemed to him to have been inflicted by someone who "knew what they were doing." Tr. Vol. II p. 33. Detective Kelly also testified that he would not have expected someone who had been rendered unconscious to be able to explain their injuries because they would not have been aware of what was happening. Detective Kelly stated that based on his training and experience, it was common for victims of domestic violence to delay in reporting the abuse. Detective Kelly testified that he found Cramer's explanation of the battery to be credible, stating:

[B]ased on all of the evidence I learned, she talked about a violent encounter, she had injuries on her face, she had injuries on her arms, I have a couple witnesses that said that she was fine before going to the bar that night, the next day [Nania] sees her severely beaten, looked like she got hit by a bus, I talked to a bouncer at Flashbacks who said she was fine, observed her

leaving visibly upset to the point where he sent her a text the following day to see how she was, he was that concerned.

Tr. Vol. II p. 27. Detective Kelly also stated that after speaking with Cramer, Nania, and the other witnesses, he had no indication that anyone other than Lacey had battered Cramer.

[14] Likewise, Dr. Chase testified at trial that although he did not see bruising or swelling around Cramer's neck when he examined her, one "wouldn't necessarily see swelling or bruising" after someone is placed in a headlock. Tr. Vol. I p. 232. Dr. Chase also indicated that he believed Cramer's injuries to be consistent with being thrown on the floor. Dr. Chase further indicated that based on Cramer's "description of a violent assault from [Lacey] when he was drunk, and being thrown to the floor, [he thought] that her injuries were a result of that assault." Tr. Vol. I p. 241.

[15] At the conclusion of trial, the jury found Lacey guilty of the Level 5 felony battery charge but not guilty of the Level 3 felony aggravated battery charge. On August 24, 2020, the trial court sentenced Lacey to a term of four years, with two years executed and two years suspended to probation.

Discussion and Decision

[16] Lacey contends that the evidence is insufficient to sustain his conviction for Level 5 felony battery.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, “[w]e affirm the judgment unless no reasonable factfinder could find the defendant guilty.” *Mardis v. State*, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)).

[17] Indiana Code section 35-42-2-1(c)(1) provides that a person who knowingly or intentionally “touches another person in a rude, insolent, or angry manner” commits battery. The offense is a Level 5 felony if it “results in serious bodily injury to another person.” Ind. Code § 35-42-2-1(g)(1). Thus, in order to convict Lacey of Level 5 felony battery, the State was required to prove that he knowingly or intentionally touched Cramer in a rude, insolent, or angry manner resulting in serious bodily injury to Cramer. Serious bodily injury is defined as “bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4)

permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus.” Ind. Code § 35-31.5-2-292.

[18] In challenging the sufficiency of the evidence, Lacey “is mindful that when confronted with conflicting evidence, the Court must consider it most favorably to the trial court’s ruling,” but argues that the evidence is insufficient to sustain the jury’s determination that he battered Cramer. Appellant’s Br. p. 21.

Contrary to Lacey’s argument, we conclude that the evidence is sufficient to sustain his conviction.

[19] Cramer testified that during the early morning hours of May 19, 2019, she and Lacey argued, and Lacey left their apartment. They continued to argue when Lacey returned, with Cramer asking Lacey where he had been and Lacey telling her that “it was none of [her] f[***]ing business.” Tr. Vol. I p. 157. Lacey then shoved Cramer into the wall, wrapped his bicep and forearm around Cramer’s neck in a chokehold, and told her to “sleep, b[****], sleep.” Tr. Vol. I p. 157. As a result of being placed in a chokehold, Cramer lost consciousness and Lacey threw her onto the floor. When she regained consciousness, Cramer was bruised and bleeding.

[20] Cramer suffered a number of injuries, which both Detective Kelly and Dr. Chase indicated were consistent with Cramer’s account of the altercation. Detective Kelly also stated that after speaking with Cramer and a number of other witnesses, he had no indication that anyone other than Lacey had battered Cramer. In addition, Nania testified that prior to the altercation with

Lacey, Cramer had not had any visible injuries but that afterward, she had looked horrible, “like she had just gotten hit by a bus.” Tr. Vol. I p. 220. The evidence further established that Lacey texted Cramer multiple times apologizing for his actions and that Lacey became angry when he came home and found Nania at the apartment, telling Cramer that “he doesn’t care if [Nania] knew that he choked the sh[**] out of” Cramer. Tr. Vol. I p. 221.

[21] We conclude that the evidence is sufficient to sustain the jury’s determination that Lacey battered Cramer, causing her to suffer serious bodily injury. Lacey’s argument to the contrary, including his assertion that Cramer’s testimony was not credible, amounts to nothing more than an invitation for this court to both reweigh the evidence and reassess the jury’s determination as to credibility, which we will not do. *See Mardis*, 72 N.E.3d at 938 (providing that in challenging the State’s evidence proving his identity as the person who shot and killed the victim, Mardis “simply seeks to have this court reweigh [the witness’s] testimony and reassess his credibility, which we will not do.”).

[22] The judgment of the trial court is affirmed.

Vaidik, J., and Brown, J., concur.