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IN THE COURT OF APPEALS OF INDIANA

Paul Carmouche,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 17, 2022

Court of Appeals Case No. 21A-CR-1666

Appeal from the Marion Superior Court

The Honorable Mark D. Stoner, Judge
The Honorable James K. Snyder, Magistrate

Trial Court Cause No. 49D32-2010-CM-30528

Weissmann, Judge.

[1] Paul Carmouche appeals his conviction for Class A misdemeanor battery resulting in bodily injury, arguing that his jury trial waiver was invalid and the evidence was insufficient to support the conviction. We agree with Carmouche on both issues and reverse his conviction. Because the State failed to prove that he committed the battery as alleged by the State, Carmouche is discharged.

Facts

[2] While incarcerated in a Marion County jail on an unrelated charge, Carmouche became embroiled in a dispute with Medinah Brown, the jail's mail clerk. The jail is run by a private company, which has a policy that required Brown to return to sender mail that was missing its recipient inmate's gallery number. In accordance with this policy, Brown returned legal mail intended for Carmouche on several occasions. Carmouche objected to Brown's administration of the policy and filed a formal grievance against her.

[3] In September 2020, Brown again rejected Carmouche's legal mail because it did not display his gallery number. Brown went to Carmouche's dormitory to tell him so. She held the dormitory door open as she spoke with him. Carmouche became "irate" and began cursing and calling Brown derogatory names. Tr. Vol. II, p. 55. He then kicked the door, which Brown said hit her right knee. *See* State's Exh. 2, Exh. Vol. I, p. 5. Brown testified that "a little bit of pain and a little bit of swelling" set in later that day. Tr. Vol. II, p. 56.

[4] The State charged Carmouche with Class A misdemeanor battery resulting in bodily injury. The charging information alleged that he "knowingly touch[ed]

Medinah Brown in a rude, insolent, or angry manner by kicking a door at and against the person of Medinah Brown, striking her in the knee, resulting in bodily injury, that is: physical pain." App. Vol. II, p. 21. The trial court advised Carmouche of his rights at his initial hearing, stating in relevant part, "You have the right to a public and a speedy trial. You can request a jury trial but at this point you're charged with a misdemeanor." Tr. Vol. II, p. 4.

[5] At later hearings, there was a lot of chatter about Carmouche's "jury trial." *E.g.*, *id.* at 10 (trial court stating, "So we're set for a jury trial on the 19th and again we're not able to go"); *see also id.* at 12, 18, 36-37, 44. Despite this chatter, the docket only ever refers to a bench trial. App. Vol. II, p. 12. And a bench trial is what Carmouche received. Before issuing its verdict, the trial court reviewed surveillance footage of jailhouse incident between Carmouche and Brown. The court then found Carmouche guilty of Class A misdemeanor battery. Carmouche now appeals, arguing that his jury trial waiver was invalid and the evidence was insufficient to support the conviction.

Discussion and Decision

I. Jury Trial Waiver

[6] The Sixth Amendment of the United States Constitution and Article 1, Section 13 of the Indiana Constitution guarantee all criminal defendants the right to a jury trial. *Dadouch v. State*, 126 N.E.3d 802, 804 (Ind. 2019). This right is automatic for people charged with felonies. *Id.* But people charged with misdemeanors waive the right unless they affirmatively assert it. *Id.*; Ind. Crim.

Rule 22. Waiver "must be made in a knowing, intelligent, and voluntary manner, with sufficient awareness of the surrounding circumstances and the consequences." *Dadouch*, 126 N.E.3d at 804. For waiver to be knowing, a defendant must be advised of their rights either on the record or in writing. *See Duncan v. State*, 975 N.E.2d 838, 844 (Ind. Ct. App. 2012) (finding defendant's waiver was invalid "because he was not adequately informed of his rights and obligations as set out in Criminal Rule 22").

[7] Carmouche argues that he was never advised of his rights, invalidating his waiver. The State conceded the point, and we agree. The record contains no evidence that Carmouche was ever informed that his jury trial right was not automatic, let alone how to assert it. And the recurring references to a jury trial were likely misleading in this regard. Accordingly, we reverse Carmouche's conviction. *See Dadouch*, 126 N.E.3d at 805.

II. Sufficiency of the Evidence

[8] When reviewing the sufficiency of the evidence to support a conviction, our role is to consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We affirm unless no reasonable factfinder could find each element of the crime proven beyond a reasonable doubt. *Id.* We will not reassess witness credibility or reweigh the evidence. *Id.* We afford video evidence this same deference unless it indisputably contradicts the trial court's findings. *Love v. State*, 73 N.E.3d 693, 700 (Ind. 2017). "A video indisputably contradicts the trial court's

findings when no reasonable person can view the video and come to a different conclusion." *Id.*

[9] The State alleged that Carmouche knowingly touched Brown "in a rude, insolent, or angry manner by kicking a door at and against" her, "striking her in the knee, resulting in bodily injury, that is: physical pain." App. Vol. II, p. 21. Carmouche argues the video footage clearly shows that the door did not touch Brown's knee, indisputably contradicting the State's case. The State urges us to defer to the trial court, arguing both that the video footage is partially obstructed, meaning that we cannot see if the door hit Brown's knee, and that the video footage corroborates Brown's testimony. We agree with Carmouche.

Figure 1 : State's Exh. 2 at 00:24 (cropped)

Figure 2: State's Exh. 2 at 00:24 (cropped and marked)

[10] Although full view of Brown's body is partially obstructed in the video, view of the door is not. The video footage reveals that the door never contacted Brown's right knee, though it did hit her left foot. Figures 1 and 2, *supra*, show

the only contact the door made with Brown's body. Though the door hits her foot, there is always daylight between the door and Brown's knee. Other relevant factors support our conclusion that the video indisputably contradicts the trial court's findings: the video may be grainy, but it is well-lit, the angle affords a good view of the altercation, and the entire incident is recorded. *See Love*, 73 N.E.3d at 699. The State did not offer evidence to explain how the contact with Brown's left foot would cause her right knee to ache. The evidence is therefore insufficient to show that Carmouche's kick to the door caused Brown bodily injury. *See id.*

[11] In light of this finding, Carmouche cannot be retried for Class A misdemeanor battery. *See Vest v. State*, 621 N.E.2d 1094, 1096-97 (Ind. 1993) (citing *Burks v. State*, 437 U.S. 1 (1978)) ("The Double Jeopardy Clause of the United States Constitution bars retrial in cases of reversal for insufficient evidence."). The trial court is reversed, and Carmouche is discharged.

[12] Robb, J., and Pyle, J., concur.