

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

K.H.,
Appellant-Petitioner,

v.

State of Indiana,
Appellee-Respondent.

March 31, 2021

Court of Appeals Case No.
20A-JV-1987

Appeal from the Lawrence Circuit
Court

The Honorable Nathan G. Nikirk,
Judge

Trial Court Cause Nos.
47C01-1911-JD-390
47C01-2005-JS-183

Brown, Judge.

- [1] K.H. appeals his adjudication as delinquent for committing an act that would be domestic battery as a level 6 felony if committed by an adult. K.H. raises one issue, which we restate as whether the evidence is sufficient to sustain the adjudication. We affirm.

Facts and Procedural History

- [2] K.H., who was born on January 13, 2005, lived with his grandmother and legal guardian, J.H. On November 7, 2019, K.H. injured his right hand, and he and J.H. drove in her vehicle to First Care to have a doctor attend to the injury. K.H., who sat in the seat beside J.H., was upset about things that had happened at school and became “very mouthy and started calling” her names, including “[t]he B word.” Transcript Volume II at 58. J.H. told him to stop, became agitated when he would not stop, and “reached over, like, stop it” and “[s]watted” at K.H. *Id.* at 59, 62. When J.H. reached over to K.H., she “tap[ped] him on the mouth,” which “wasn’t that hard,” but K.H. “could feel it.” *Id.* at 61, 73.
- [3] K.H. responded by “just back-hand[ing]” J.H. with a closed fist using his left hand and “hit [J.H.’s] right eye.” *Id.* at 59. The strike was “very powerful” and “really, really hurt” J.H. *Id.* J.H. pulled her vehicle beside a nearby police vehicle, and the officer saw what had happened. J.H. held her eye “because it really, really hurt,” and she “could not believe how hard, how much it hurt.” *Id.* at 60. Bedford Police Officer Ryan Sorrells was at the scene and did not observe any sign of any impact or injury on K.H. whatsoever, and K.H. was

taken into custody. J.H. went to the emergency room afterwards to ensure she did not have a concussion, and she had a “black eye for a long time.” *Id.*

- [4] The State alleged K.H. committed an act of domestic battery on his guardian and family member which would have been a level 6 felony if committed by an adult. At the factfinding hearing, J.H., Officer Sorrells, and K.H. testified, and the court admitted photographs of J.H. at the time she reported to Officer Sorrells and the morning after the incident.

Discussion

- [5] The issue is whether the evidence is sufficient to sustain K.H.’s adjudication as delinquent for committing an act that would be domestic battery as a level 6 felony if committed by an adult. When the State seeks to have a juvenile adjudicated as a delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. *J.S. v. State*, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), *trans. denied*. In reviewing a juvenile adjudication, we will consider only the evidence and reasonable inferences supporting the judgment and will neither reweigh evidence nor judge the credibility of the witnesses. *Id.* If there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the juvenile was guilty beyond a reasonable doubt, we will affirm the adjudication. *Id.*
- [6] K.H. argues the State failed to prove beyond a reasonable doubt that J.H. suffered more than just physical pain that would rise to the level of

“substantial,” contends the degree and duration of the pain experienced by J.H. was neither considerable nor long-lasting, and asserts the adjudication should be reduced to a class A misdemeanor domestic battery. Appellant’s Brief at 8.

[7] Ind. Code § 35-42-2-1.3(a)(1) provides in part that a person who knowingly or intentionally touches a family or household member in a rude, insolent, or angry manner commits domestic battery. The crime is gradated based on the injury endured by the victim. *See* Ind. Code § 35-42-2-1.3(a)-(f). Although domestic battery is generally a class A misdemeanor, *see* Ind. Code § 35-42-2-1.3(a), the offense becomes a level 6 felony if it results in moderate bodily injury to a family or household member. Ind. Code § 35-42-2-1.3(b)(3). “Moderate bodily injury” is defined as “any impairment of physical condition that includes substantial pain.”¹ Ind. Code § 35-31.5-2-204.5. To the extent he does not challenge the remaining elements of the offense, those arguments are waived. *See* Ind. Appellate Rule 46(A)(8)(a) (“The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes . . .”).

¹ The Indiana Code also defines “Bodily injury” as “any impairment of physical condition, including physical pain.” Ind. Code § 35-31.5-2-29. The offense of domestic battery becomes a level 5 felony if it resulted in serious bodily injury to a family or household member. Ind. Code § 35-42-2-1.3(c). “Serious bodily injury” means 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.

[8] The record reveals that J.H. described the close-fisted strike to her face as “very powerful” and testified that “it really, really hurt.” Transcript Volume II at 59. She “could not believe how hard, how much it hurt.” *Id.* at 60. K.H. hit J.H. with such force J.H. went to the emergency room afterwards to ensure she did not have a concussion, and she had a “black eye for a long time.” *Id.* J.H. and Officer Sorrells testified at the hearing, and photographs of J.H. at the time of and the morning after the incident were admitted as evidence. Based upon our review of the evidence and in light of the reasonable inferences which support the judgment, we conclude the State presented evidence of probative value from which a reasonable factfinder could find beyond a reasonable doubt that J.H. suffered an impairment of physical condition that included substantial pain amounting to moderate bodily injury and K.H. was delinquent for committing an act that would be domestic battery as a level 6 felony if committed by an adult.

[9] For the foregoing reasons, we affirm the juvenile court’s adjudication of K.H. as delinquent.

[10] Affirmed.

Bradford, C.J., and Vaidik, J., concur.