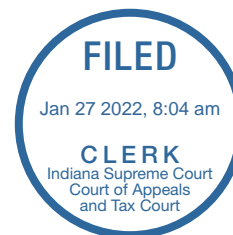


MEMORANDUM DECISION

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

Mark D. Altenhof
Elkhart, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Moussa I. Dahab,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 27, 2022

Court of Appeals Case No.
21A-CR-1155

Appeal from the Elkhart Superior
Court

The Honorable Kristine A. Osterday,
Judge

Trial Court Cause No.
20D01-1503-F5-77

Kirsch, Senior Judge.

Statement of the Case

- [1] Moussa I. Dahab appeals his conviction of battery by means of a deadly weapon, a Level 5 felony, after a bench trial.¹ We affirm.

Issues

- [2] Dahab raises two issues, which we restate as:
- I. Whether the trial court erred in allowing the State to present evidence at Dahab's bench trial despite the State's alleged violation of a local procedural rule.
 - II. Whether there is sufficient evidence to sustain Dahab's conviction.

Facts and Procedural History

- [3] Dahab was a machine operator at Chassix, an Elkhart County company that manufactured auto parts. Among other assigned tasks, he periodically used a metal pipe to brush metal shavings off of the machine he managed.
- [4] Rafed Alsaad was Dahab's co-worker. Alsaad's duties included ensuring that machines in several areas of the factory were running correctly, collecting data from machines, and reporting breakdowns to a supervisor.
- [5] In the past, Dahab and Alsaad were involved in several conflicts, including an incident in which Dahab had accused Alsaad of wrongly blaming production

¹ Ind. Code § 35-42-2-1 (2014).

problems on him. After several incidents, the factory's human resources office ("H.R.") became involved. The two men were directed to stay away from one another. In addition, Alsaad was moved to a different shift, but he was occasionally required to work overtime during Dahab's shift.

- [6] On the afternoon of January 22, 2015, Alsaad worked late, during Dahab's shift. He approached Dahab's work area while the employees assigned to that department were on break, expecting that no one would be there. As Alsaad collected data from the machine, he was hit on the back of his head. When he turned around, he saw Dahab holding a metal pipe. Dahab hit him on the head a second time with the pipe. Alsaad felt pain and began to bleed.
- [7] Alsaad grabbed the pipe and, as the two men struggled, contacted his supervisors via radio for help. Next, other employees separated Dahab and Alsaad. When supervisor Gustavo Pineda arrived, Alsaad was crying and bleeding from a head injury. Dahab stood nearby, calm and uninjured. He also held a metal pipe. Pineda took the pipe and delivered it to H.R.
- [8] Another employee took Alsaad to an office for an examination, and he later went to the hospital by ambulance. Alsaad told the emergency room doctor that he had been hit on the head with a metal pipe and had experienced unconsciousness. The doctor saw two cuts on Alsaad's head, one of which had an underlying hematoma, or collection of blood. He closed both wounds with staples.

- [9] Shortly after Alsaad arrived at the emergency room, Deputy Justin Yoder of the Elkhart County Sheriff's Office was dispatched to the hospital to investigate. He spoke with Alsaad and observed several lacerations on his head. Alsaad was discharged from the hospital after several hours, but he was off work for a week. He continues to have headaches and trouble sleeping as a result of Dahab's attack.
- [10] Meanwhile, a Chassix supervisor took Dahab to another office. Dahab admitted hitting Alsaad with a pipe, and he was fired. Other employees took photographs of the scene before cleaning it up and resuming production.
- [11] On January 28, 2015, Detective Kenneth Saeger of the ECS was dispatched to Chassix, where he collected the metal pipe from H.R. One of the sheriff's department's evidence technicians noticed a red and brown stain on the pipe, and he took a swab of the stain for DNA testing. Detective Saeger later collected buccal swabs from Alsaad. A forensic biologist generated a DNA profile from the material found on the pipe and determined that it was consistent with Alsaad's DNA profile.
- [12] On March 30, 2015, the State charged Dahab with battery by means of a deadly weapon, a Level 5 felony, and battery resulting in moderate bodily injury, a Level 6 felony. Ind. Code § 35-42-2-1. The trial court issued a warrant for Dahab's arrest, but he was not taken into custody until December 31, 2015.
- [13] In 2017, the case went to trial, and a jury determined Dahab was guilty as charged. Dahab appealed, and a panel of this Court reversed the trial court's

judgment and remanded for a new trial. *Dahab v. State*, Case No. 20A03-1706-CR-1369 (Ind. Ct. App. March 27, 2018), *trans. denied*.

[14] On remand, Dahab waived his right to a jury trial. In April 2021, the trial court presided over a bench trial. At the beginning of the trial, Dahab moved the court to bar the State from presenting any witnesses or exhibits, claiming the State had failed to comply with a local rule setting deadlines for disclosure of final witness and exhibit lists. The trial court denied Dahab's motion and proceeded with the trial.

[15] After the trial, the court concluded Dahab was guilty as charged. At sentencing, the court determined the Level 6 felony battery charge merged with the Level 5 felony battery charge and imposed a sentence on the Level 5 felony conviction. This appeal followed.

Discussion and Decision

I. Admission of Evidence

[16] Dahab first argues the trial court erred in allowing the State to present any evidence at trial, claiming the prosecutor violated a local rule. In general, the evidentiary rulings of a trial court are afforded great deference on appeal and are overturned only upon a showing of an abuse of discretion. *Larry v. State*, 716 N.E.2d 79, 80 (Ind. Ct. App. 1999). A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Vanryn v. State*, 155 N.E.3d 1254, 1264 (Ind. Ct. App. 2020). As a rule, errors in the admission or

exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party. *Redding v. State*, 844 N.E.2d 1067, 1069 (Ind. Ct. App. 2006).

[17] Indiana’s judicial system encourages parties to timely exchange lists of witnesses and exhibits that they intend to present at trial. *See, e.g.*, Indiana Trial Rule 16 (describing processes for parties in civil cases to exchange information). Elkhart County’s Local Rule 9 establishes deadlines for exchanging information in “any criminal case or a civil case which is a first or second setting” Ten days prior to the commencement of trial:

- 1) Each attorney shall provide opposing counsel an opportunity to inspect and copy all exhibits which that party intends to introduce into evidence during the trial. All documents stipulated to be admissible shall be prepared so that the court and each juror shall have a packet of stipulated exhibits at the beginning of the trial; and
- 2) Each party shall provide the court and each opposing counsel a final written list of names and addresses of that party’s witnesses, as well as, a written list of exhibits. If without just cause the exhibits and lists are not exchanged, stipulated to, or provided, then the exhibits or witnesses shall not be allowed to be used during the trial.

Id.

[18] There is no dispute that the prosecutors timely provided final exhibit and witness lists to Dahab prior to his first trial. There is also no dispute that the prosecutors did not provide final exhibit and witness lists to Dahab prior to his retrial. Dahab argues that the State, by not complying with Local Rule 9’s

deadline prior to retrial, required him to guess what evidence the State would offer at retrial. The State responds that it complied with the rule by presenting its final witness and exhibit lists prior to the first trial and that, in the absence of any alterations to those lists, the prosecutor was not obligated to supplement them.

[19] When considering a rule or regulation, we give words their common and ordinary meaning without unduly emphasizing a strict literal or selective reading of individual words. *Elliott v. State*, 690 N.E.2d 774, 777 (Ind. Ct. App. 1998). In Dahab’s case, the trial court denied Dahab’s request to exclude the State’s witnesses and exhibits, concluding that in a case that involves a retrial, Local Rule 9 does not require a party to refile final witness and exhibit lists. In effect, the prosecution’s previous delivery of final witness and exhibit lists provided “just cause” under Local Rule 9 for not providing them again prior to retrial. The trial court’s decision, based on its reading of the local rule, was within its discretion.

[20] In any event, even if the prosecutor violated Local Rule 9 by failing to again provide final witness and exhibit lists prior to Dahab’s retrial, Dahab has not shown that his substantial rights were affected by the State’s noncompliance. At the beginning of the retrial, the prosecutor told Dahab and the trial court that she intended to present the same witnesses and exhibits from the first trial. On appeal, Dahab has not demonstrated that he was surprised by any of the State’s evidence or otherwise unable to effectively defend against the State’s case. Therefore, the error, if any, by the trial court on this issue was harmless.

See Beal v. State, 453 N.E.2d 190, 195 (Ind. 1983) (trial court did not abuse its discretion by allowing State to file proposed jury instructions after deadline set by local rule; Beal failed to prove he was prejudiced by late filing or that instructions were inaccurate).

II. Sufficiency of the Evidence

- [21] Dahab claims there is insufficient evidence to sustain either his Level 5 felony battery conviction or the Level 6 felony battery charge. When an appellant challenges the sufficiency of the evidence to support a guilty verdict, we consider only the evidence and reasonable inferences most favorable to the judgment, neither reweighing evidence nor reassessing witness credibility. *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016). We will reverse only if no reasonable factfinder could have found Dahab guilty. *See Taylor v. State*, 86 N.E.3d 157, 163-64 (Ind. 2017).
- [22] To obtain a conviction of battery by means of a deadly weapon, a Level 5 felony, the State was required to prove beyond a reasonable doubt that: (1) Dahab (2) knowingly or intentionally (3) touched Alsaad in a rude, insolent, or angry manner (4) with a deadly weapon. Ind. Code § 35-42-2-1. For purposes of this offense, the term “deadly weapon” is defined, in relevant part, as:

A destructive device, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it:

(A) is used;

- (B) could ordinarily be used; or
 - (C) is intended to be used;
- is readily capable of causing serious bodily injury.

Ind. Code § 35-31.5-2-86 (2012). And the General Assembly has defined the phrase “serious bodily injury as follows:

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 (2012).

[23] Alsaad testified that Dahab struck him twice on the head with a metal pipe, resulting in two painful, bleeding cuts. After the attack, a supervisor saw Alsaad crying and bleeding from his head, while Dahab was uninjured and holding a pipe. Soon thereafter, Dahab told another employee that he had hit Alsaad with a pipe. Subsequent DNA testing of the pipe resulted in a DNA profile that matched Alsaad’s profile.

[24] At the hospital, Alsaad told the doctor the circumstances of his injuries, including loss of consciousness. The doctor explained that head wounds “lead often to significant disability or death.” Tr. Vol. 2, p. 193. He further stated that the types of injuries that Alsaad had typically cause pain. Finally, the

doctor opined that Alsaad's head injuries were serious, stating "Any time, you know, you have a hematoma in your scalp and you have staples put in I would say that's a serious injury." *Id.* at 215.

[25] Dahab claims the evidence is insufficient to sustain the Level 5 felony conviction because Chassix staff cleaned up the scene immediately after the attack. Further, six days elapsed before an officer retrieved the pipe from Chassix's H.R. department, during which the pipe could have been compromised, and it was never dusted for fingerprints. These claims are, in essence, a request to reweigh the evidence, which our standard of review forbids. There is sufficient evidence to sustain the Level 5 felony battery conviction. Accordingly, we do not need to address Dahab's challenge to the evidence supporting the Level 6 felony battery charge.

Conclusion

[26] For the reasons stated above, we affirm the judgment of the trial court.

[27] Affirmed.

Mathias, J., and Brown, J., concur.