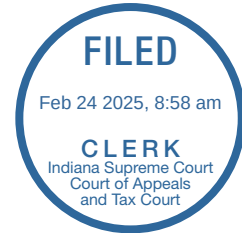
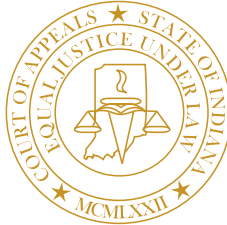


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Johnny D. Lee,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 24, 2025

Court of Appeals Case No.
24A-CR-2029

Appeal from the Elkhart Superior Court
The Honorable Kristine A. Osterday, Judge
Trial Court Cause No.
20D01-2212-F3-53

Memorandum Decision by Judge Tavitas
Chief Judge Altice and Judge Brown concur.

Tavitas, Judge.

Case Summary

- [1] Johnny Lee appeals his conviction for rape, a Level 3 felony. He argues that insufficient evidence supports his conviction. We disagree and, accordingly, affirm.

Issue

- [2] Lee raises one issue, which we restate as whether sufficient evidence supports Lee's conviction for rape, a Level 3 felony.

Facts

- [3] On the evening of June 11, 2021, eighteen-year-old J.B. and her cousin, B.D., went to a party in Goshen hosted by their friend, Gavin Hodges. Lee, Gavin's roommate, was also at the party. At the party, J.B. and B.D. smoked marijuana and drank alcohol, and J.B. became intoxicated. Lee showed interest in J.B., but J.B. was not interested in Lee.
- [4] Around four o'clock in the morning, J.B. and B.D. wanted to leave the party, but they were unable to get a ride. Gavin allowed them to stay the night in Lee's bedroom. Gavin claimed Lee would not be staying there. J.B. and B.D. lay down together in the twin bed with their legs hanging off the side and went to sleep.
- [5] J.B. and B.D. were awoken at some point later by Lee, who asked them to take a shot of alcohol. J.B. took the shot, and she and B.D. went back to sleep.

Sometime later, B.D. awoke to a hand grabbing the inside of her thigh. The bed was “moving[.]” Tr. Vol. III p. 36. She saw that Lee was standing “[o]ver J.B.” with his hands on the bed. *Id.* at 39. J.B.’s legs were “spread,” and Lee was “[i]n between” them. *Id.* at 40. Lee’s pants were down by his ankles, and his erect penis was exposed. It appeared that Lee was “having sex with J.B.,” although B.D. could not see whether Lee’s penis was inside J.B. *Id.* at 41.

[6] J.B. was “in and out of sleep.” Tr. Vol. IV p. 33. She recalled feeling “[w]etness” on her neck and “pressure” on her chest “[l]ike a body.” *Id.* at 32, 35. She felt “pressure” inside her vagina that felt like “a penis.” *Id.* at 32. She then felt a “wiping on [her] leg” with a black material. *Id.* at 33.

[7] B.D. confronted Lee, who left the room. B.D. told Gavin what she saw, and Gavin told her and J.B. to leave the house. The two went to their grandmother’s house. J.B. felt “soreness” in her vagina and told B.D. that she “felt dirty.” Tr. Vol. III p. 49; Tr. Vol. IV p. 35.

[8] B.D.’s mother drove J.B. and B.D. to the hospital. A nurse performed a sexual assault examination on J.B. The nurse noted an abrasion and redness around the top of J.B.’s vagina. J.B. also had a red mark on her neck. DNA swabs of J.B.’s vagina were not indicative of Lee’s DNA; however, two DNA swabs of

other parts of her body resulted in “very strong support for the inclusion” of Lee’s DNA.¹ Ex. Vol. VI p. 147.

- [9] On December 21, 2022, the State charged Lee with rape, a Level 3 felony. A jury trial was held in June 2024. J.B. and B.D. both testified, and the DNA evidence was admitted. Lee did not testify. The jury found Lee guilty as charged. The trial court sentenced Lee to twelve years in the Department of Correction, with one of those years executed in community corrections, and two years suspended to probation. Lee now appeals.

Discussion and Decision

- [10] Lee argues that the State presented insufficient evidence to support his conviction for rape, a Level 3 felony. We disagree. Sufficiency of the evidence claims warrant a deferential standard of review in which we “neither reweigh the evidence nor judge witness credibility, instead reserving those matters to the province of the jury.” *Hancz-Barron v. State*, 235 N.E.3d 1237, 1244 (Ind. 2024). A conviction is supported by sufficient evidence if “there is substantial evidence of probative value supporting each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.” *Id.* In conducting this review, we consider only the evidence that supports the jury’s determination, not evidence that might undermine it. *Id.* We affirm the

¹ The record does not reveal the locations these DNA swabs were taken from J.B.’s body; however, one appears to be from the red mark on J.B.’s neck.

conviction “‘unless no reasonable fact-finder 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.’” *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[11] Lee was convicted of rape pursuant to Indiana Code Section 35-42-4-1(a)(2), which provides:

(a) Except as provided in subsection (b), a person who knowingly or intentionally has **sexual intercourse** with another person . . . when:

* * * * *

(2) the other person is unaware that the **sexual intercourse** . . . is occurring;

* * * * *

commits rape, a Level 3 felony.

(Emphasis added). Indiana Code Section 35-31.5-2-302 defines “sexual intercourse” as “an act that includes any penetration of the female sex organ by the male sex organ.”

[12] Lee argues that the State presented insufficient evidence that he penetrated J.B. We, however, conclude that the evidence is sufficient. B.D. testified that she

awoke to Lee standing over J.B. with Lee between J.B.'s spread legs, and the bed was moving. Lee's erect penis was exposed, and it looked like Lee was "having sex with" an unconscious J.B. Tr. Vol. III p. 41. J.B. testified that she felt pressure in her vagina that felt like a penis. After the women left, J.B.'s vagina was sore, and she "felt dirty." *Id.* at 49. A sexual assault examination revealed an abrasion and redness around the top of J.B.'s vagina. This was sufficient evidence of penetration. *See Sizemore v. State*, 395 N.E.2d 783, 785 (Ind. 1979) (affirming rape conviction based on injury to the victim's genitals); *Barger v. State*, 339 N.E.2d 811, 813 (Ind. Ct. App. 1976) (affirming rape conviction based on injury to victim's genitals and victim's testimony that she "experienced pain in the vaginal area and felt something inside her").

- [13] Lee argues that the DNA evidence did not indicate that Lee's DNA was present in J.B.'s vagina and that B.D. did not testify that she saw Lee's penis inside J.B. Lee essentially asks us to reweigh the evidence, which we cannot do. Sufficient evidence supports Lee's conviction for rape, a Level 3 felony.

Conclusion

- [14] Sufficient evidence supports Lee's conviction for rape, a Level 3 felony. Accordingly, we affirm.
- [15] Affirmed.

Altice, C.J., and Brown, J., concur.

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