

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Marcus Ternet,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 6, 2021

Court of Appeals Case No.
21A-CR-535

Appeal from the Jay County
Circuit Court

The Honorable Brian D.
Hutchison, Judge

Trial Court Cause No.
38C01-1108-FB-7

May, Judge.

[1] Marcus Ternet appeals his conviction of Class B felony battery resulting in serious bodily injury to a person less than fourteen years of age.¹ Ternet argues the State’s evidence was insufficient to support his conviction. We affirm.

Facts and Procedural History

[2] In May 2011, Ternet was married to K.M., who had two children from a prior relationship – five-year-old M.M. and four-year-old C.M. – who lived with the couple in a trailer. The trailer had two bathrooms, and the children were not allowed to use the front bathroom because the water heater was nearby and the water at the sink in that bathroom would be too hot. K.M. and Ternet did not keep hand soap at that sink because it was not to be used.

[3] On May 31, 2011, while K.M. was at work, Ternet was caring for the children at home. M.M. was outside playing and he picked up a toad, which urinated on his hands. Ternet and M.M. went inside to wash M.M.’s hands. Ternet held M.M.’s hands under scalding water at the front bathroom sink as M.M. screamed and cried because “the water was really hot[.]” (Tr. Vol. 2 at 33.) Ternet called K.M. to tell her that M.M. had scalded his hands, and K.M. rushed home and found M.M. terrified and “skin was hanging off of his hands.” (*Id.*) When K.M. said she was taking M.M. to the hospital, Ternet said M.M. did not need to go to a hospital. Ternet suggested just wrapping

¹ Ind. Code § 35-42-2-1 (2009).

M.M.'s hands in gauze. K.M. took M.M. to the hospital, where the Department of Child Services ("DCS") became involved. M.M. had second-degree burns, had to have skin grafted to his hands from his thigh, and has permanent scars.

[4] Before they went to the hospital, Ternet told K.M. that he had sent M.M. into the house alone to wash his hands and that M.M. had scalded his own hands in the front bathroom. Ternet gave the same explanation to Todd Penrod, an investigator for the Jay County Sheriff's Office when Penrod subsequently came to the trailer to investigate. Penrod felt the water at the sink in the front bathroom and he "pulled [his] hands out right away. It was too hot." (*Id.* at 51.) Ternet explained to Penrod that he was "having trouble with the water heater and sometimes it would get very hot. He couldn't regulate it." (*Id.* at 50.) A few days later, when K.M. was cleaning the trailer for a DCS visit, Ternet said "if [M.M.] would've just kept his mouth shut we wouldn't be in this situation." (*Id.* at 38.)

[5] On August 25, 2011, the State charged Ternet with Class B felony battery resulting in serious bodily injury to a person under fourteen years of age. The court released Ternet on bond and he disappeared until his arrest in December of 2019. A jury then found Ternet guilty as charged, and the trial court imposed a thirteen-year sentence.

Discussion and Decision

[6] Ternet challenges the sufficiency of the State’s evidence to support his conviction.

The standard of review for sufficiency-of-evidence claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses, and respect “the jury’s exclusive province to weigh conflicting evidence.” We “consider only the probative evidence and reasonable inferences supporting the verdict.” We affirm “if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.”

Jackson v. State, 925 N.E.2d 369, 375 (Ind. 2010) (internal citations omitted), *reh’g denied*.

[7] Ternet was convicted of Class B felony battery resulting in serious bodily injury to a person less than fourteen years of age. Battery occurs when one person “knowingly or intentionally touches another person in a rude, insolent, or angry manner.” Ind. Code § 35-42-2-1(a) (2009). One way that touching becomes a Class B felony is “if it results in serious bodily injury to a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.” Ind. Code § 35-42-2-1(a)(4). Serious bodily injury is injury to the body that “creates 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 § 35-41-1-25 (1997).

[8] Ternet first asserts the State failed to prove that he touched M.M. at all, because “M.M. testified that he was ‘pretty sure’ Ternet had his hand around his wrist” and “equivocal testimony . . . is not sufficient to show beyond a reasonable doubt that Ternet touched M.M.” (Appellant’s Br. at 10.) While we agree with Ternet that a conviction cannot be supported by equivocal testimony about an element of the crime, *see Hmurovic v. State*, 43 N.E.3d 685, 687-88 (Ind. Ct. App. 2015) (ambiguous statement about when intercourse began was insufficient to find age element of molest crime), we disagree with Ternet about the relevance of M.M.’s equivocation.

[9] On direct examination, M.M. was asked to tell the jury about how his hands were burned, and he testified as follows:

A I was outside playing with my sister and I don’t remember why but I went inside to wash my hands and I—he was behind me and . . .

Q I’m going to stop you there. When you say he, who?

A Marcus [Ternet].

Q Okay.

A Was behind me and the—I don’t completely remember I just remember the water was really hot and my hands were under the water and I was crying and I was screaming and that’s all I remember before being in the car on the way to the hospital.

Q He was behind you you said. The Defendant?

A Yes.

Q Did he have ahold of you in some way?

A He—I'm pretty sure it was around my wrist right here so that he wasn't burned as well.

(Tr. Vol. 2 at 20.) While Ternet reads that equivocation as about “whether” Ternet held his hands under the water, we read M.M.’s equivocation to be only about “how” Ternet held him. Moreover, to the extent M.M.’s testimony could be read to indicate Ternet perhaps had not touched M.M., that inference is refuted by the testimony of the State’s expert medical witness.

[10] Doctor Tara Holloran reviewed the hospital medical records regarding M.M.’s injury, and she identified his injuries as “immersion burns to both of his hands to the wrists.” (*Id.* at 75.) “An immersion burn means we can see a pattern of where the skin was immersed into a liquid that scalded it.” (*Id.*) She diagnosed his injuries as “inflicted[,]” meaning “they would’ve had to be caused by someone else.” (*Id.*) She further explained why M.M.’s burns were not consistent with an instantaneous burn that he could have done to himself:

[W]hen you—when your skin [is] contacted by hot water it hurts immediately. Most of us have probably had the experience of the water being hotter than you realized it was coming out of the faucet. As soon as your hand touches it you jerk it back. It’s less than a second that you have that contact. So would that happen that hot water may contact just a very small part of your skin, you usually jerk back so fast it doesn’t burn at all. If the water was a hundred and eighty degrees and did burn it would just be

that spot where you first touched it. If the water was so hot it was scalding on contact you wouldn't push the rest of the hand in up to the wrist and then also put the other hand in up to the wrist. That's just not how our pain reflexes work. Thankfully when something hurts we jerk back fast so you wouldn't have immersion burns of both hands to the wrists from scalding water on your own or by accident.

(*Id.* at 78.) We therefore reject Ternet's assertion that the record did not contain evidence of his touching M.M.

[11] Second, Ternet asserts that, if he did touch M.M., the State failed to prove his touching of M.M. was "rude, insolent, or angry" as required for a battery conviction. Ternet hypothesizes he "could have been attempting to help the child wash his hands, and he was not aware that the child's hands were getting burned." (Appellant's Br. at 11.) We, however, do not find that hypothesis to be a reasonable inference from the evidence most favorable to the judgment. Ternet knew that sink was not safe to use for washing hands because the water was too hot to be safe. (*See* Tr. at 42 (K.M. testified she and Ternet had told the children not to use the front bathroom because the water got too hot and "[w]e didn't even put like hand soap or anything in there.")) M.M. testified the water was too hot and he was screaming and crying. Doctor Holloran testified that, if the water had been 120 degrees, M.M.'s hands would have needed to be in the water for several minutes to have the second-degree burns he received. We find it inconceivable that Ternet could be other than "rude, insolent, or angry" while holding five-year-old M.M.'s hands under hot water for the length

of time necessary to cause the skin to peel off. The reasonable inferences from the evidence support the jury's finding of his guilt.

Conclusion

[12] Because the State presented sufficient evidence to support Ternet's conviction of Class B felony battery of a child under age fourteen resulting in serious bodily injury, we affirm.

[13] Affirmed.

Kirsch, J., and Vaidik, J., concur.