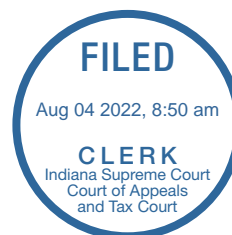


## MEMORANDUM DECISION

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.



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## IN THE COURT OF APPEALS OF INDIANA

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Earl Moore,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

August 4, 2022

Court of Appeals Case No.  
21A-CR-2408

Appeal from the La Porte Circuit  
Court

The Honorable Thomas Alevizos,  
Judge

Trial Court Cause No.  
46C01-2002-F3-271

**Crone, Judge.**

## Case Summary

- [1] Following a jury trial, Earl Moore was convicted of level 3 felony rape, level 5 felony battery, and level 6 felony battery. He appeals only the rape conviction, arguing that the State presented insufficient evidence to support his conviction. Finding the evidence sufficient, we affirm.

## Facts and Procedural History

- [2] On December 6, 2019, L.C. went to two different bars and consumed several alcoholic drinks, including Captain Morgan and Sprite, Coors Light, and Fireball Whiskey. While at the second bar, Mickey's, L.C. sat three to four feet away from Moore, whom she did not know. L.C. and Moore talked casually, and L.C. agreed to do a shot with him but insisted on paying for her own drink. Eventually Moore began to make L.C. feel "uneasy" and "uncomfortable." Tr. Vol. 2 at 93. She moved her chair away from him and also made sure that her jacket pocket, containing her cash and passport, was zipped. At one point she went outside to take a phone call, and Moore eventually followed her outside. When Moore tried to get her to come back inside, L.C. "shoo[ed]" him away and felt that Moore's behavior was very "off-putting." *Id.* at 94. Moore put his hands up and backed away. However, Moore came back outside approximately five minutes later. He again approached L.C., and L.C. put her hand up and shook her head "no." State's Ex. 35. Moore went back inside.
- [3] When L.C. finished her phone call, she went back inside the bar. She finished her drink and went to the restroom. She "suddenly" felt unwell and knew that

something was not “right[,]” and that she felt more intoxicated “than [she] should have been feeling” based upon her consumption. Tr. Vol. 2 at 94. That was the last thing L.C. could remember before she woke up in the hospital.

[4] Video surveillance from Mickey’s revealed Moore sitting next to L.C. at the end of the bar. Moore moved his chair closer to L.C., and she pointed at him. He put his hands up and moved his chair back. L.C. grabbed her lighter out of Moore’s hand, and he again put his hands up. Moore then put his arms around L.C., and she did not move. Moore backed away with his arms in the air. Shortly thereafter, Moore reached down into L.C.’s shirt. *Id.* at 165; State’s Ex. 34. Moore “manipulat[ed] [L.C.’s] breasts” and appeared to be aggressively “rubbing” her thigh. Tr. Vol. 2 at 202; State’s Ex. 34. He also kissed her lips while she put her hand up as if trying to resist. At one point L.C. sat with her head almost completely down on the bar while Moore held her head in the crux of his arm. State’s Ex. 34.

[5] At approximately 11:12 p.m., Moore and L.C. left Mickey’s together. Moore’s “arm was around her” as they left. *Id.* L.C. had to lean into the wall to stay upright, and she then “trip[ped]” down the stairs. Tr. Vol. 2 at 204. Moore “caught her” and “cradled her. She didn’t fall to the ground.” *Id.*

[6] At around 11:50 p.m., Moore’s neighbor, Jeffrey Beal, was watching television when he heard some commotion outside his apartment. Someone then “pounded on” his door and was shaking his doorknob as if “trying [to] enter” his apartment. *Id.* at 234. When he opened the door, he saw L.C. standing there

looking down at the ground. L.C. looked up at him and appeared confused. She “was just mumbling something[,]” and Beal could not “make out what she was saying[.]” *Id.* at 236. Beal noticed that L.C.’s face was bleeding, and she was “not making any sense[,]” so Beal believed she was intoxicated or “obviously something” was wrong with her. *Id.* at 237. Beal closed his door and called 911.

[7] When police arrived, they found L.C. with her pants unzipped and pulled down around her knees. Her zip-up sweater was “torn apart[,]” and she was wearing only a bra underneath. *Id.* at 60. Her bra was broken in the middle between the cups, and her breasts were exposed. “She was slurring her speech and highly intoxicated.” *Id.* at 43. Blood was “covering” her head and face, and she had an “extremely swollen lip that was split open.” *Id.* at 44-45. L.C. was transported to LaPorte Hospital by ambulance.

[8] Upon arrival at the hospital, L.C. was treated by a sexual assault nurse examiner. L.C. was “[i]nconsolable” for the first ten minutes and “didn’t remember much.” *Id.* at 57. She smelled strongly of alcohol and was “falling asleep” and “appear[ed] intoxicated” while the nurse was talking to her. *Id.* at 58.<sup>1</sup> Her face was extremely swollen below her left eye all the way down to her chin, and her lip was bruised and cut, causing her to need to hold “her lip up” just so she could talk. L.C.’s teeth felt loose on the lower left side, and she also

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<sup>1</sup> The nurse testified that no blood alcohol or drug tests were performed on L.C. and that LaPorte Hospital does not routinely perform such tests on sexual assault victims. Tr. Vol. 2 at 59-60.

complained of severe vaginal pain. The nurse let L.C. rest for a bit before doing a physical examination.

[9] The physical examination revealed that L.C. had “bleeding at the cervix, and she had petechiae present as well, which are little pinpoint areas of bleeding.” *Id.* at 61-62. The injuries were “fresh” and “had to have been caused by trauma.” *Id.* at 62. Because the cervix is at the back of the vagina, “something would have had to penetrate with some degree of force” to cause those injuries. *Id.* In addition to the visible injuries to L.C.’s face, a CT scan indicated that the swelling “went all the way through the tissues.” *Id.* at 63.

[10] When L.C. finally “came to” and hospital staff told her that they had performed several tests on her, she had no memory of any of it. *Id.* at 98. She asked if she had been in a car accident due to the pain she felt all over her body. L.C. had no “visual memory” of what had happened to her and could only remember “feeling the pain and [her] reaction to it.” *Id.* at 99. She explained to hospital staff the feeling of being “pinned and not being able to move tummy-down and crying out and being told to ‘shush’ and ‘shut up.’ And then ... it was disorienting, but a bash—like a bashing.” *Id.* She remembered “trying to be quiet to stop the bashing” and biting her own arm “to stop from yelling out and crying.” *Id.* “Because she was intoxicated” and had been “physically assaulted” with “a head injury[,]” the nurse who treated L.C. did not think it was out of the ordinary for her “not to have a short-term memory of what exactly happened.” *Id.* at 74-75. Eventually realizing that she had been physically

assaulted, L.C. indicated that her ex-husband could have been the perpetrator because he had abused her in the past.

[11] Hours later, police came to the hospital to continue their investigation. L.C. was missing her cell phone, her money, and her passport. L.C.'s employer was able to ping her cell phone, and it was located in Moore's duplex. Detective Victor Aguilar knocked on Moore's apartment door and saw blood on the screen. Moore answered the door and let Detective Aguilar in. Moore admitted to being at Mickey's bar the prior night but claimed that he was alone, that he talked to no one while there, and that he did not bring any females back home with him because his girlfriend was there. Moore refused to give a recorded statement to Detective Aguilar. As the detective was leaving, he observed blood spatter on the wall inside Moore's apartment.

[12] Detective Aguilar went to speak to Moore's girlfriend at her place of employment, and she stated that she had spent the night at her mother's house and had not been home the prior night. When Detective Aguilar then returned to Moore's apartment to check on this detail with him, Moore's story "got kind of confused ... kind of shaky." *Id.* at 126. Detective Aguilar asked Moore if he could search his vehicle, and Moore told the detective to get a warrant.

[13] Detective Aguilar obtained a search warrant for Moore's apartment, his vehicle, and his DNA. L.C.'s passport was found in Moore's vehicle, and Moore's DNA "came back positive for being in several parts of [L.C.'s] body." *Id.* 132. Moore was arrested and taken to the La Porte County Jail. Moore called his

girlfriend on a recorded line from the jail. He admitted to having sex with L.C. in his vehicle. He claimed that they were going to have sex again inside the apartment but that he changed his mind, causing L.C. to “go crazy[,]” so he had to “elbow her” and push her “out of the apartment.” *Id.* at 134-35.

[14] The State charged Moore with level 3 felony rape. The State later amended the charging information to add charges of level 5 and level 6 felony battery. A jury trial was held in July 2021. During trial, Moore testified and claimed that he had consensual sexual intercourse with L.C. and that he did not believe she was suffering from “any ill-effects of alcohol whatsoever” other than being “buzzed up” at the time. *Id.* at 204. The jury found Moore guilty as charged. The trial court merged the battery convictions and sentenced Moore to concurrent terms of fourteen years for rape and five years for level 5 felony battery. This appeal ensued.

## Discussion and Decision

[15] Moore challenges the sufficiency of the evidence supporting his level 3 felony rape conviction. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is “not necessary that the evidence ‘overcome every reasonable hypothesis of innocence.’” *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). “We will affirm if there is substantial

evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey*, 907 N.E.2d at 1005.

[16] To convict Moore of level 3 felony rape as charged in this case, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally had sexual intercourse with L.C. or knowingly or intentionally caused L.C. to perform or submit to other sexual conduct when she was unaware that sexual intercourse or other sexual conduct was occurring. Ind. Code § 35-42-4-1(a)(2). Moore’s sole challenge is that the State failed to prove that L.C. was unaware that sexual intercourse was occurring.

[17] Based upon the ample testimonial and video evidence of L.C.’s extreme intoxication and impairment on the night in question, we have little difficulty concluding that L.C. was unaware that sexual intercourse was occurring when Moore had sexual intercourse with her. “Unaware” has been understood to mean “not aware: lacking knowledge or acquaintance; Unconscious.” *Gliva v. State*, 178 N.E.3d 321, 324 (Ind. Ct. App. 2021) (citation omitted). In claiming insufficiency of the evidence on this issue, Moore continually emphasizes that there is no evidence that L.C. ever lost consciousness. However, it is well settled that in the prosecution of a sexual conduct crime, the term “unaware” includes, but is not limited to, unconsciousness. *Filice v. State*, 886 N.E.2d 24, 33-34 (Ind. Ct. App. 2008), *trans. denied*. Indeed, “[o]ur supreme court has suggested that a victim’s illness and intoxication may lead to her being sufficiently ‘unaware’ for the rape statute to apply, even if the victim never loses



consciousness.” *Nolan v. State*, 863 N.E.2d 398, 402 (Ind. Ct. App. 2007) (citing *Bryant v. State*, 644 N.E.2d 859, 860 n.1 (Ind. 1994)), *trans. denied*.

[18] Here, even assuming that L.C. never lost consciousness, L.C. displayed signs of severe impairment from which the jury could have reasonably inferred that she was unaware that sexual intercourse was occurring. Video evidence demonstrated L.C.’s inability to leave the bar unassisted, and three witnesses who encountered L.C. after the rape all testified that L.C. was highly confused, slurring her words, and appeared extremely intoxicated. Given the ample evidence of L.C.’s extreme intoxication and impairment, it was reasonable for the jury to conclude that she was unaware that sexual intercourse was occurring when Moore raped her.

[19] To the extent that L.C.’s testimony suggests that she must have become aware that sexual intercourse was occurring during the rape because she explained to healthcare providers that she remembered the feeling of being “pinned” and wanting “the bashing” to stop, *see* Tr. Vol. 2 at 99, the crime was chargeable and complete at that point even though it was still occurring. *Birari v. State*, 968 N.E.2d 827, 835 (Ind. Ct. App. 2012) (evidence sufficient to sustain rape conviction based on fact that “A.J. was asleep during the time that Birari removed his clothes and her sweatpants and only woke up when Birari was on top of her and attempting to insert his erect penis in her vagina.”), *trans. denied*; *see also Becker v. State*, 703 N.E.2d 696, 698 (Ind. Ct. App. 1998) (finding sleeping victim unaware when victim awoke to defendant’s finger in her vagina, meaning the crime was complete and chargeable before she awoke, though the

touching was still occurring). Sufficient evidence supports Moore's level 3 felony rape conviction, and therefore we affirm it.

[20] Affirmed.

Vaidik, J., and Altice, J., concur.