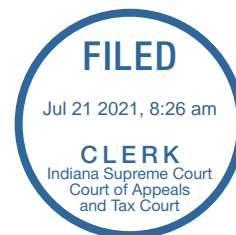


MEMORANDUM DECISION

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

Sean Hendrix,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 21, 2021

Court of Appeals Case No.
21A-CR-192

Appeal from the Hamilton
Superior Court

The Honorable Gail T.Z. Bardach,
Judge

Trial Court Cause No.
29D06-2009-CM-5678

Mathias, Judge.

- [1] Sean Hendrix was convicted in Hamilton Superior Court of Class A misdemeanor domestic battery. He appeals, challenging the sufficiency of

evidence supporting his conviction. Concluding that the State presented sufficient evidence to convict Hendrix, we affirm.

Facts and Procedural History

- [2] On September 15, 2020, Thomas Hendrix and Sean Hendrix—father and son, respectively—lived together in Thomas’s apartment when an argument ensued. It began when Thomas confronted Hendrix about \$500 that he had stolen from Thomas the day before. After the initial confrontation, Hendrix went into his room and played music loudly. Fearing the noise would bother his neighbors, Thomas, from his room, cut the power to Hendrix’s room. This enraged Hendrix. So, he kicked down Thomas’s locked door and attempted to turn the circuit breaker back on. Thomas called the police.
- [3] Thomas told the 911 operator, “I’ve got a son that’s out of control” and reported that Hendrix had “a pistol.” Tr. p. 11.¹ As a safety measure, the operator instructed Thomas to find somewhere safe to continue their conversation. Thomas left his apartment and went to the parking lot. During the midst of the call, however, Thomas stopped replying. A few moments later Thomas returned to the line, telling the operator that Hendrix had “just hit me and threw my phone.” *Id.* at 16. The operator asked if Thomas needed medical

¹ The 911 call was admitted during trial as State’s Exhibit 2B. Tr. p. 12. We cite to the transcript because relevant portions of the call were played in open court and dictated accordingly.

attention but he declined, explaining, “[h]e did punch me, but I’m okay.” *Id.* at 17. Thomas entered his vehicle and waited there until officers arrived.

[4] Officer Robert Simmons responded and investigated the reports of firearms and domestic battery. The officer eventually spoke with Thomas, who described the altercation. Thomas recalled that “once he was outside,” he was “struck in the back of the head, causing pain, and then [Hendrix] took his phone and threw it on the grass.” *Id.* at 40. Though Officer Simmons did not notice a visible injury, he offered Thomas medical attention. Shortly thereafter, Officer Simmons placed Hendrix under arrest for domestic battery, and he was subsequently charged with the offense as a Class A misdemeanor.

[5] On the night of Hendrix’s arrest, and over the next two days, Hendrix called Thomas several times from jail. During these calls, Hendrix continuously asked Thomas why he was in jail. Thomas repeatedly told Hendrix that he was in jail because he had hit Thomas in the back of the head. *Id.* at 49, 53–54, 60, 62–63, 77–78.² One of the times Hendrix denied hitting his father, Thomas responded, “I’ve got a knot on the back of my head that says you did.” *Id.* at 62–63. Also, during the calls, Hendrix consistently threatened Thomas. Referring to Thomas’s granddaughters, Hendrix told his father, “My girls are dead to you. I don’t want you to ever see them unless you can [] fix this[.]” *Id.* at 56. On another occasion, Hendrix told Thomas, “Pick me up or you’ll never see your

² The jail calls were admitted during trial as State’s Ex. 1B. Tr. p. 47. We cite to the transcript because relevant portions of the calls were played in open court and dictated accordingly.

grandkids ever again.” *Id.* at 73. In a subsequent call, after Hendrix again told Thomas to find a way to get him out of jail, Thomas replied, “I just called the prosecutor and told her I’m not sure that you hit me, maybe you just grabbed the phone.” *Id.* at 80.

[6] Hendrix’s bench trial was held on January 5, 2021. At trial, Thomas testified that he had trouble remembering the altercation with his son. *Id.* at 29. And Thomas’s trial testimony concerning that altercation differed from the statements he made during the 911 call, to Officer Simmons, and in the jail phone calls. Thomas testified, “I know something hit me, but I think it was my phone.” *Id.* at 30. He also indicated that he never saw a pistol and that the knot on the back of his head predated the altercation. *Id.* at 31, 84. Nevertheless, at the conclusion of the bench trial, the court found Hendrix guilty of Class A misdemeanor domestic battery. In making that determination, the court observed that Thomas “was insistent. He was insistent on the day that it occurred that” Hendrix hit him. *Id.* at 89. Hendrix now appeals arguing that the evidence is insufficient to support his conviction.

Standard of Review

[7] In reviewing claims of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We respect the fact-finder’s exclusive province to weigh conflicting evidence. *Id.* We therefore look to the favorable evidence supporting the judgment and draw all reasonable inferences from that evidence. *Id.* If we

conclude that from this evidence a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt, we will affirm. *Id.*

Discussion and Decision

- [8] Hendrix argues that the evidence is insufficient to support his domestic-battery conviction. More specifically, he maintains that “the sworn testimony of the sole witness has been found not credible, and [] the court relied on unsworn, out-of-court statements to support its verdict.” Appellant’s Br. at 5. We disagree.
- [9] To convict Hendrix of Class A misdemeanor domestic battery, the State was required to prove that Hendrix knowingly or intentionally touched Thomas in a rude, insolent, or angry manner. *See Ind. Code § 35-42-2-1.3(a)(1)*. The State made that showing here through Officer Simmons’s testimony, Thomas’s 911 call, and Thomas’s statements in the jail phone calls.
- [10] Officer Simmons’s trial testimony supports Hendrix’s conviction. The officer recounted what Thomas told him after arriving on scene: “[Thomas] said he got struck in the back of the head, causing pain, and then [Hendrix] took his phone and threw it on the grass.” Tr. p. 40. We acknowledge Hendrix’s argument that Officer Simmons’s testimony is inadmissible hearsay, however, that argument is both unavailing and not dispositive. Though Thomas’s statement to Officer Simmons is hearsay, it was admissible during trial as an excited utterance because Thomas described the violent altercation immediately after it occurred.

See [Ind. Evid. R. 803\(2\)](#); see also [Jones v. State](#), 800 N.E.2d 624, 627–28 (Ind. Ct. App. 2003).

[11] However, even if Thomas’s statement to Officer Simmons should have been excluded, the 911 call and the jail phone calls are sufficient to support Hendrix’s conviction. Thomas explicitly told the 911 operator, “[Hendrix] just hit me and threw my phone.” Tr. p. 16. Then, when the 911 operator asked if Thomas needed medical attention, he replied, “He did punch me, but I’m okay.” *Id.* at 17. Hendrix’s conviction is further supported by Thomas’s and Hendrix’s communication in the jail calls. In those calls, Thomas, on at least seventeen occasions, confirmed that Hendrix hit him. *Id.* at 49, 53–54, 60, 62–63, 77–78. And Thomas only changed his story after Hendrix repeatedly told Thomas he would never see his grandchildren again unless he could “fix this.”³ *Id.* at 52, 56, 73–74, 76, 80. In short, Thomas’s statements in both the 911 call and the jail calls support Hendrix’s conviction.

[12] For all of these reasons, the State’s evidence supports the trial court’s conclusion that Hendrix knowingly or intentionally touched Thomas, his father, in a rude, insolent, or angry manner. See [Ind. Code § 35-42-2-1.3\(a\)\(1\)](#).

³ Hendrix also argues that by not crediting Thomas’s trial testimony the trial court found “Thomas to be incredibly dubious,” and thus his conviction is not supported by sufficient evidence. Appellant’s Br. at 7–8. This argument fails. Hendrix’s reference to the incredible-dubiosity rule is misplaced as it is well settled that “witness testimony that contradicts [a] witness’s earlier statements does not make such testimony ‘incredibly dubious.’” [Stephenson v. State](#), 742 N.E.2d 463, 498 (Ind. 2001); see also [Smith v. State](#), 34 N.E.3d 1211, 1222 (Ind. 2015). And the court was free to disregard Thomas’s trial testimony and accord greater weight to Thomas’s unequivocal pre-trial statements confirming that Hendrix hit him. See, e.g., [Moore v. State](#), 27 N.E.3d 749, 754–759 (Ind. 2015).

Hendrix's contrary arguments amount to nothing more than a request that we reweigh the evidence and come to a different conclusion, which we will not do. *See, e.g., Shorter v. State*, 144 N.E.3d 829, 837 (Ind. Ct. App. 2020), *trans. denied*.

Conclusion

[13] Hendrix's conviction for Class A misdemeanor domestic battery is supported by sufficient evidence.

[14] Affirmed.

Riley, J., and Crone, J., concur.