

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brody A. Gilmore,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 13, 2023

Court of Appeals Case No.
22A-CR-1273

Appeal from the Tippecanoe
Superior Court

The Hon. Steven Meyer, Judge

Trial Court Cause No.
79D02-2106-F1-11

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] In June of 2021, after a night of drinking, Brody Gilmore kicked Matthew Ryker approximately thirty times in the head and chest, apparently because Ryker had become interested in Jennifer Shelton, in whom Gilmore was also interested. Ryker lost consciousness and suffered multiple fractures, including to his orbital socket, sternum, clavicle, nose, and jaw and to several ribs. The State charged Gilmore with Level 1 felony attempted murder, Level 3 felony aggravated battery, and Class A misdemeanor battery. A jury convicted Gilmore of aggravated battery and battery, and the trial court imposed an aggregate sentence of fourteen years of incarceration, with four years suspended to probation. Gilmore contends that the State produced insufficient evidence to sustain his conviction for aggravated battery. Because we disagree, we affirm.

Facts and Procedural History

- [2] On the night of June 21, 2021, Gilmore, Ryker, Shelton, and Kyle Shuck drank alcohol at a couple of Lafayette bars, including the Checkerboard Tavern. Although Shelton and Gilmore had kissed during the evening, she told him that she was not interested in him; later, Gilmore saw Ryker and Shelton kissing. Around 2:30 a.m., Shelton, Shuck, and Gilmore left the Checkerboard and walked to the car, followed by Ryker some time later. Gilmore appeared “very irritable, annoyed” and he told Shelton that she did not “want to make an enemy of [him] and [Ryker] was his friend.” Tr. Vol. II p. 79. When Ryker walked out to the car, Gilmore pulled him to the ground and began kicking him repeatedly in the head and the ribs. When Shelton tried to intervene, Gilmore

pushed her to the ground, causing her some injuries to a finger, a right toe, and her arms. All told, Gilmore kicked Ryker in the head and chest approximately thirty times.

[3] Upon Ryker's arrival at the hospital, treating physician Dr. David Farman observed that Ryker had been "significantly injured" and was confused, and he had concerns about his stability. Tr. Vol. II p. 145. Ryker had suffered a complicated sinus fracture, an orbital socket fracture of his right eye, and jaw, nose, sternum, rib, and clavicle fractures. Due to the severity of his injuries, Ryker was transported to St. Vincent hospital in Indianapolis for the purpose of being treated by a specialist and stayed in the hospital approximately three or four days. Ryker's injuries were consistent with "moderate to severe energy injuries" that had resulted in "severe" injuries. Tr. Vol. II p. 150. Had Ryker's injuries gone untreated, "there was a potential for significant morbidity meaning a potential loss of quality of life or mortality, meaning a potential loss of life." Tr. Vol. II p. 151.

[4] The next month, Ryker had surgeries to put a metal plate on his eye socket and to repair his broken jaw, which required five screws to be inserted through the inside of his mouth and also that his jaw be wired shut for approximately a month and a half. Dr. Taha Shipchandler noted that Ryker's zygoma, a bone that provides protection to the eye, had been pushed inward, and the surgery had helped to minimize any future effects of the eyes. The jaw surgery had helped to prevent malalignment of his teeth and trismus, a difficulty opening his

mouth. Even with the surgical interventions, Dr. Shipchandler later testified that typically an individual with these injuries would not fully recover:

[L]ingering effects could be kind of chronic pain, numbness to those areas of the face because nerves that give us sensation to the face are typically involved in these fractures. Therefore, those nerves can be impinged upon and there's not really much we can do to improve upon that unless the body takes care of itself in, in those situations and helps the numbness kind of on its own. So those types of things can be kind of long term, kind of pain issues.

Tr. Vol. II pp. 164–65. Ryker also had a fractured nasal septum, which Dr. Shipchandler repaired in October of 2021. Due to his eye injury, Ryker was unable to return to work because it required him to look at a computer screen. While Ryker did have an additional surgery on his orbital socket, he chose not to have any further surgery to repair his broken jaw, because he had been advised that he had an 85% to 90% chance that the right side of his face would become paralyzed during the surgery.

[5] The State ultimately charged Gilmore with Level 1 felony attempted murder, Level 3 felony aggravated battery, and Class A misdemeanor battery. At the time of Gilmore's jury trial in March of 2022, Ryker still suffered from short-term memory loss and migraines as a result of his injuries and had continued follow-up visits with his doctors to address ongoing medical issues. The jury found Gilmore guilty of battery and aggravated battery, and the trial court imposed an aggregate sentence of fourteen years of incarceration with four years suspended to probation.

Discussion and Decision

[6] Gilmore contends that the State produced insufficient evidence to sustain his conviction for aggravated battery.

When reviewing the sufficiency of the evidence to support a conviction, “appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict.” *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005)[.] It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Wright v. State*, 828 N.E.2d 904 (Ind. 2005). To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it “most favorably to the trial court’s ruling.” *Id.* Appellate courts affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)[.] It is therefore not necessary that the evidence “overcome every reasonable hypothesis of innocence.” *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995). “[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001).

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (emphases omitted).

[7] In order to convict Gilmore of Level 3 felony aggravated battery, the State was required to prove that he “knowingly or intentionally inflict[ed] injury on a person that create[d] a substantial risk of death or cause[d] serious permanent disfigurement [or] protracted loss or impairment of the function of a bodily member or organ[.]” Ind. Code § 35-42-2-1.5. It is well-settled that the degree of harm caused by a battery is a question of fact, which must be resolved by the

fact-finder. *See, e.g., Gebhart v. State*, 525 N.E.2d 603, 604 (Ind. 1988) (“The degree of injury is a question of fact for the jury.”); *see also Mendenhall v. State*, 963 N.E.2d 553, 569 (Ind. Ct. App. 2012), *trans. denied*. This is the case because the fact-finder is in the best position to make close factual determinations after “sift[ing] through subtle contextual factors” presented in a given case and relying on “its ‘experiences in life,’ ‘common sense,’ and the ‘conscience of our society’ as it ‘take[s] into account all the facts and circumstances.’” *McAlpin v. State*, 80 N.E.3d 157, 163 (Ind. 2017) (quoting *Wilson v. State*, 697 N.E.2d 466, 477–78 (Ind. 1998)).

[8] Gilmore argues that the State produced insufficient evidence that he inflicted injuries on Ryker that caused a substantial risk of death, serious permanent disfigurement, protracted loss or impairment of a bodily member or organ. We conclude, however, that the State, at the very least, produced ample evidence to establish that the injuries Gilmore inflicted on Ryker caused a protracted loss or impairment of the function of a bodily member or organ. To prove that a victim suffered an impairment as a result of a battery, the State must show that the victim was left in a “state of being damaged, weakened, or diminished.” *Fleming v. State*, 833 N.E.2d 84, 89 (Ind. Ct. App. 2005) (quoting BLACK’S LAW DICTIONARY (7th ed. 1999)). For the impairment to be protracted, it must be drawn out, lengthened in time, or prolonged. *Neville v. State*, 802 N.E.2d 516, 518 (Ind. Ct. App. 2004) (citation omitted), *trans. denied*. Here, Dr. Shipchandler testified that, typically, an individual with Ryker’s injuries will never be the same as they were before, with lingering effects such as “chronic

pain [and] numbness to those areas of the face[.]” Tr. Vol. II p. 164.

Approximately nine months after Gilmore’s battery of him, Ryker testified that he still suffered from double vision, daily migraines, and memory loss requiring continued follow-up appointments with his doctor. This evidence is more than sufficient to sustain a finding of prolonged impairment. *See, e.g., Grundy v. State*, 38 N.E.3d 675, 683 (Ind. Ct. App. 2015) (concluding that numbness, headaches, neck pain, degraded vision in one eye, and loss of sleep qualifies as protracted loss or impairment), *trans. denied*; *Smith v. State*, 881 N.E.2d 1040, 1045–46 (Ind. Ct. App. 2008) (concluding that tooth loss with ongoing nerve damage qualifies as protracted loss or impairment); *Fleming*, 833 N.E.2d at 90 (concluding that losing “half” of one’s sense of smell and general congestion is a protracted loss or impairment). Gilmore’s argument is nothing more than an invitation to reweigh the evidence, which we will not do. *See Drane*, 867 N.E.2d at 146.

[9] We affirm the judgment of the trial court.

May, J., and Mathias, J., concur.