MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jermond A. King,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 8, 2023

Court of Appeals Case No. 22A-CR-1234

Appeal from the St. Joseph Superior Court

The Honorable Jeffrey L. Sanford, Judge

Trial Court Cause Nos.
71D03-0905-FB-52
71D03-0905-FA-29
71D03-2112-F6-1121

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Jermond A. King appeals his conviction for domestic battery as a level 6 felony. He claims the trial court erred in denying his motion for directed verdict and the evidence is insufficient to sustain his conviction. We affirm.

Facts and Procedural History

[2] A.T. lived in a house with her daughters who were five and almost two years old. A.T. met King in October 2021, and they started dating. On December 15, 2021, A.T. received a call from King while she was at work, and King indicated that he had been arrested and was calling from jail. King bonded out and met A.T. at her house. At about 5:30 p.m., King and A.T. went to a birthday party at the restaurant where A.T. worked. While at the party, A.T. received a text from another man, King saw the message, King and A.T. argued, and they returned to A.T.'s house around 9:00 or 10:00 p.m. A.T. put her children to bed.

[3] A.T. took a bath, and King "kept coming into the bathroom and asking [her] questions." Transcript Volume II at 34. A.T. went to her room to change and left her phone in the bathroom. A.T. "heard smashing in the kitchen," walked to the kitchen, and saw King "smashing [her] phone on the ground," and King said "[y]ou're not going to be texting him anymore. You're not going to break my heart." *Id*. at 35. A.T. said she was calling the police, King struck her with a closed fist on her face, and she fell to the ground and "started seeing stars." *Id*. at 36. King was "screaming at [A.T.], 'You made me do this. You're threatening my freedom. If I go to jail tonight, I'm going to make it worth it.

I'm going to kill you.'" *Id.* King was "yelling" and "threatening." *Id.* He said he was "going to kill [A.T.] and [her] kids" and "[t]here's going to be three body bags being drug out of [her] house, and nobody is leaving alive tonight." *Id.* A.T. "begged and pleaded for him to change his mind," and they went "back and forth for a really long time." *Id.* At one point, A.T. tried to escape out the back door of the kitchen, and King punched her in the neck. King and A.T. eventually went to bed.

[4] At about 6:00 a.m. the next morning, A.T. dressed her two children. A.T. and King dropped off one of her children at school and went to Walmart so that A.T. could replace her phone. When she saw an opportunity, she asked store employees to call the police. South Bend Police Officers Alan Delinski and James Sweeney arrived at the Walmart and located King in the parking lot, Officer Sweeney ordered King to stop, King "went into a full sprint across the parking lot," and the officers pursued and ultimately apprehended him. *Id.* at 62.

[5] The State charged King with: Count I, domestic battery as a level 6 felony; and Count II, resisting law enforcement as a class A misdemeanor. In April 2022, the court held a jury trial at which the State called A.T., Officer Delinski, and Officer Sweeney. After the State rested, King moved for a directed verdict as to the domestic battery charge and argued that the State did not present evidence the offense was committed in the presence of the children. The court denied King's motion. The jury found King guilty as charged.

Discussion

I.

[6] King first claims the trial court erred in denying his motion for directed verdict with respect to the charge of domestic battery as a level 6 felony.[1] He argues there was "a complete absence of any evidence that the children might be able to see or hear the offense." Appellant's Brief at 10.

[7] Ind. Trial Rule 50(A) governs motions for a directed verdict. *Pavlovich v. State*, 6 N.E.3d 969, 980 (Ind. Ct. App. 2014), *trans. denied*. When a defendant moves for a directed verdict, the trial court is required to grant the motion if: (1) the record is devoid of evidence on one or more elements of the offense; or (2) the evidence presented is without conflict and subject to only one inference, which is favorable to the defendant. *Id.* Our review of the denial of a motion for directed verdict is essentially the same as review of a claim of insufficient evidence. *Id*. We will neither reweigh evidence nor judge witness credibility and must consider only the evidence supporting the conviction and any reasonable inferences to be drawn therefrom. *Id.* We will affirm if there is substantial evidence of probative value from which a reasonable trier of fact could have concluded beyond a reasonable doubt that the defendant was guilty of the charged crime. *Id*.

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[1] King does not challenge his conviction for resisting law enforcement.

[8] Ind. Code § 35-42-2-1.3 provides that a person who knowingly or intentionally touches a family or household member in a rude, insolent, or angry manner commits domestic battery as a class A misdemeanor and the offense is a level 6 felony if "[t]he person who committed the offense is at least eighteen (18) years of age and committed the offense against a family or household member in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense." In *Manuel v. State*, this Court stated:

> We addressed the meaning of "presence" under I.C. § 35-42-2-1.3 in *Boyd v. State*, 889 N.E.2d 321 (Ind. Ct. App. 2008), *trans. denied*, and *True v. State*, 954 N.E.2d 1105 (Ind. Ct. App. 2011). Neither case is directly on point because in both cases a child was located in the room where the battery occurred. However, in *Boyd* we held that "presence" under I.C. § 35-42-2-1.3(b)(2) does not require that a child actually sense the battery; it is sufficient that the child *might* see or hear the battery. *Boyd*, 889 N.E.2d at 325. In *True* we further clarified that "presence" for purposes of I.C. § 35-42-2-1.3(b)(2) is "defined as knowingly being within either the possible sight or hearing of a child." *True*, 954 N.E.2d at 1111. From this precedent, we conclude that the critical question in determining whether a child is "present" for purposes of the statute is whether a reasonable person would conclude that the child might see or hear the offense; not whether the child is in the same room as where the offense is taking place.

971 N.E.2d 1262, 1269-1270 (Ind. Ct. App. 2012).

[9] The record reveals that A.T. put her children to bed and took a bath, King went into the bathroom, and they argued. King left her phone in the bathroom, went to her room to change, "heard smashing in the kitchen," went to the kitchen,

and saw King "smashing [her] phone on the ground." Transcript Volume II at 35. When A.T. said she was calling the police, King struck her, and she fell to the ground. King was "screaming at [A.T.]," said "I'm going to kill you," and was "yelling" and "threatening." *Id*. at 36. When A.T. tried to escape out the back door of the kitchen, King punched her in the neck. King and A.T. went "back and forth for a really long time." *Id*. Based on the record, and in light of the testimony regarding the location of the children relative to King and A.T. when he assaulted A.T., we conclude the trial court did not err in denying King's motion for a directed verdict. *See Manuel*, 971 N.E.2d at 1269-1270 (rejecting the defendant's argument that he committed the battery outside the presence of the children because the children were in their bedroom).

II.

[10] King next claims the evidence is insufficient to sustain his conviction for domestic battery as a level 6 felony. He argues that none of the witnesses testified as to his age and no documentation was introduced establishing his age at the time of the offense.

[11] When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh'g denied*. We look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* The conviction will be affirmed if there exists evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.* Ind. Code § 35-

42-2-1.3 provides in part that the offense of domestic battery is a level 6 felony if the person who committed the offense "is at least eighteen (18) years of age."

[12] The record reveals that, when asked about her first date with King, A.T. testified "[w]e actually went out to a bar, and we had a few drinks, played a few games . . . ." Transcript Volume II at 30-31. She indicated that she took King places to obtain job applications. She testified that, on December 15, 2021, she received a call from King while she was at work, King indicated that he had been arrested and was calling from jail, and he later bonded out. When asked to identify King in the courtroom, Officer Sweeney testified that King had a beard. King was in the courtroom before the jury. We conclude a reasonable jury could have found that King was at least eighteen years of age when he struck A.T. and was guilty of domestic battery as a level 6 felony.

[13] For the foregoing reasons, we affirm King's conviction for domestic battery as a level 6 felony.

[14] Affirmed.

Bailey, J., and Weissmann, J., concur.