

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Christopher Kozelichki
The Law Offices of Christopher
Kozelichki
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Courtney Staton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Omar Greg Lewis,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

October 6, 2023

Court of Appeals Case No.
23A-CR-1055

Appeal from the St. Joseph
Superior Court

The Honorable Jeffrey L. Sanford,
Judge

Trial Court Cause No.
71D03-2209-F6-746

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

- [1] Omar Greg Lewis (“Lewis”) appeals, following a jury trial, his conviction for Level 6 felony sexual battery.¹ Lewis contends that there was insufficient evidence to support his conviction. Concluding that the evidence was sufficient to support Lewis’ conviction, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether there is sufficient evidence to support Lewis’ conviction.

Facts

- [3] In September 2022, S.A. (“S.A.”) was driving part-time for Uber. Around 2:00 a.m., S.A. picked up Lewis from a bar. The ride started out “normally,” but eventually, Lewis “got aggressive.” (Tr. at 19). Lewis told S.A., “What the f*** are you listening to? Turn that s*** off.” (Tr. at 19). S.A. was scared and turned off her radio. She told Lewis that he did not have to be aggressive with her and if he kept doing that, she would ask him to get out of her car.
- [4] Later during the ride, Lewis aggressively asked S.A. “[w]here the f*** are you taking me?” and “[y]ou f***ing Chinese girl, where are you taking me?” (Tr. at 20). S.A. explained that she was taking Lewis to the address that he had inputted into the Uber app. Lewis continued “cussing . . . out” S.A. and

¹ IND. CODE § 35-42-4-8.

“calling [her] names.” (Tr. at 20). In response, S.A. told Lewis to get out of her car or she was going to call the police. Lewis told S.A., “[n]o, b****, you’re not calling no one. You’re not calling the police on me. I’m going to rape you and kill you before they get here.” (Tr. at 21). S.A. was scared and kept driving.

[5] When S.A. reached the destination address that Lewis had inputted into the Uber app, Lewis told her, “[t]his is not my home, b****[.]” (Tr. at 22). S.A. explained that this was the address that Lewis had inputted and told him to get out of her car or she would call the police. In response, Lewis then put his hands up S.A.’s shirt and grabbed her breasts. S.A. told Lewis to stop. Instead, Lewis leaned forward from the backseat and began licking the right side of S.A.’s face. Lewis then began kissing S.A. on the mouth. Sometime during this interaction, Lewis reiterated that he was going to rape S.A.

[6] Sometime while S.A. was stopped at the destination, the Uber app sent an automated message to her asking if everything was alright. S.A. managed to hit no as a response, and the Uber app told S.A. to call the police. Also, while stopped, S.A. received a text message from her boyfriend, who was checking in with her. S.A. texted the word “help” to her boyfriend, and he called the police. When police arrived at S.A.’s car, S.A. noticed that Lewis had unbuttoned and unzipped his pants. Police officers removed Lewis from S.A.’s car.

[7] The State charged Lewis with Level 6 felony sexual battery and Class A misdemeanor interference with the reporting of a crime. In February 2023, the trial court held a jury trial, and the jury heard the facts as set forth above. At the conclusion of the jury trial, the jury found Lewis guilty as charged. At a March 2023 sentencing hearing, the trial court sentenced Lewis to two-and-one-half (2½) years for his Level 6 felony sexual battery conviction and one (1) year for his Class A misdemeanor interference with the reporting of a crime conviction. The trial court ordered that Lewis' sentences be served concurrently at the Indiana Department of Correction ("the DOC").

[8] Lewis now appeals.

Decision

[9] Lewis argues that there was insufficient evidence to support his Level 6 felony sexual battery conviction. Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[10] INDIANA CODE § 35-42-4-8(a)(1)(A) provides that:

a person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person . . . touches another person when that person is . . . compelled to submit to the touching by force or the imminent threat of force . . . commits sexual battery, a Level 6 felony.

“Although an element of sexual battery is that the victim was compelled to submit to the touching by force or the imminent threat of force, the force need not be physical or violent, but may be implied from the circumstances.” *Perry v. State*, 962 N.E.2d 154, 157-58 (Ind. Ct. App. 2012). In a sexual battery prosecution, it is the victim's perspective, not the assailant's, from which the presence or absence of forceful compulsion is to be determined. *Id.* at 158. This test is subjective and looks to the victim's perception of the circumstances surrounding the incident in question. *Id.* Therefore, the issue is whether the victim perceived the aggressor's force or imminent threat of force as compelling her compliance. *Id.*

[11] Here, Lewis' sole argument on appeal is that “while there is evidence of both aggression and a specific threat with regards to S.A. calling the police, there was no evidence to show that Lewis made any threat to compel submission to the unwanted sexual touching.” (Lewis' Br. 7-8). We disagree.

[12] Our review of the record reveals that S.A. was driving Lewis to his destination address sometime around 2:00 a.m. S.A. testified multiple times that Lewis had been acting aggressively and calling her names and that she had been scared. S.A. was scared to get out of her car and could not get Lewis to leave her car. When S.A. threatened to call the police, Lewis responded by

threatening to rape and kill her. During the time that Lewis started grabbing S.A.'s breast, licking her face, and kissing her mouth, S.A. told Lewis to stop. Instead of stopping, Lewis reiterated his intent to rape S.A. We hold that S.A.'s fear of Lewis due to his multiple threats of rape and murder, racial slurs, and name calling were sufficient to satisfy the force or imminent threat of force required by the statute. *See Perry*, 962 N.E.2d at 158. Lewis' arguments are no more than a request to reweigh the evidence, which we will not do. *See Drane*, 867 N.E.2d at 146.

[13] Based on our review of the evidence presented at trial, we conclude that there was sufficient evidence from which a reasonable jury could have found Lewis guilty of sexual battery. Accordingly, we affirm Lewis' conviction.

[14] Affirmed.

Tavitas, J., and Foley, J., concur.