

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ricardo Lewis, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 12, 2021

Court of Appeals Case No.
20A-CR-1782

Appeal from the St. Joseph
Superior Court

The Honorable John M.
Marnocha, Judge

Trial Court Cause No.
71D02-1812-F6-1192

Tavitas, Judge.

Case Summary

- [1] Ricardo Lewis, Jr. appeals his conviction, following a jury trial, for domestic battery, a Class A misdemeanor. Lewis challenges the sufficiency of the State's evidence to support a single element of the charged offense; however, because we find sufficient evidence supports the conviction and because we regard the claim as an improper invitation to reweigh the evidence, we affirm.

Issue

- [2] The sole issue on appeal is whether sufficient evidence supports the conviction.

Facts

- [3] On the evening of December 18, 2018, Lewis, his girlfriend, Tenea O'Neal, and O'Neal's then-teenaged daughter, H., were in their South Bend residence. Lewis and O'Neal were upstairs in a room together, and H. was in a different part of the residence. Lewis argued with O'Neal and punched O'Neal in the face, injuring her. O'Neal sent a text message to H., wherein O'Neal asked H. to call the police. H. complied.
- [4] Officers Briar Johnston and Samuel Chaput of the South Bend Police Department were dispatched to investigate a domestic disturbance at Lewis' residence. H. admitted the officers into the residence and identified herself as the 9-1-1 caller. The officers called for O'Neal, who came downstairs to speak with them. O'Neal was crying, "very upset[,] " visibly shaking, and "actively bleeding" from a laceration "on her forehead above her right eye." Tr. Vol. II

p. 33. Officer Johnston asked O’Neal if Lewis was responsible for her injuries. O’Neal responded affirmatively.

[5] The officers then asked Lewis to come downstairs to speak with them. Based on Lewis’ demeanor, the officers suspected he was intoxicated.¹ Officer Chaput handcuffed Lewis, placed him into a squad car, and read Lewis the *Miranda* advisements; Lewis agreed to speak to Officer Chaput. Lewis stated that he argued with O’Neal about oral sex, but he denied that he punched O’Neal. In the meantime, Officer Johnston photographed O’Neal, who was still crying and actively bleeding. *See State’s Exhibit 2.*

[6] On December 26, 2018, the State charged Lewis with strangulation, a Level 6 felony, and domestic battery, a Class A misdemeanor. On June 7, 2019, the State filed a sentencing enhancement that elevated the domestic battery count to a Level 6 felony because Lewis had a prior battery conviction. On January 13, 2020, Lewis filed a motion in limine to exclude, as hearsay, O’Neal’s statements to the police; the trial court later denied Lewis’ motion.

[7] At the outset of the re-set² jury trial on January 30, 2020, the State dismissed the strangulation count. Neither O’Neal nor H. appeared for the jury trial. The officers testified to the foregoing facts regarding their interactions with H.,

¹ The officers observed that Lewis held onto the walls on his way downstairs. Lewis mumbled and his speech was slurred; he also smelled of alcohol. Lewis was “being very loud and more or less uncooperative[,]” “stumbling back and forth[,]” and was unsteady on his feet. Tr. Vol. II p. 39.

² Lewis failed to appear for his jury trial on September 10, 2019.

O’Neal, and Lewis. Most notably, Officer Johnston testified that a crying and actively bleeding O’Neal stated that Lewis injured her; and Officer Chaput testified that Lewis stated that he argued with O’Neal about oral sex. Also, Lewis took the stand in his defense. The crux of Lewis’ testimony was that: (1) O’Neal argued with Lewis over Lewis’ ex-girlfriend; (2) Lewis had no reason to be angry with O’Neal on the evening of the incident; and (3) O’Neal’s injury resulted from Lewis’ “playful” or “clumsy” roughhousing with O’Neal in bed, when Lewis fell and his head hit O’Neal’s forehead. Tr. Vol. III pp. 75, 77.

[8] The jury found Lewis guilty of domestic battery, a Class A misdemeanor; however, following Lewis’ admission that he had a prior battery conviction, the trial court entered judgment of conviction for domestic battery, as a Level 6 felony. The trial court sentenced Lewis to: (1) twelve months executed as a direct commitment to community corrections; (2) a suspended sentence of eighteen months; and (3) twelve months of formal probation. Lewis filed a motion for modification of his sentence on June 17, 2020, which was granted. The trial court modified Lewis’ sentence to thirty months suspended, including twelve months on probation. Lewis now appeals.

Analysis

[9] Lewis challenges the sufficiency of the evidence to sustain his conviction. Sufficiency of the evidence claims “warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility.” *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* We will

affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt. *Id.*

[10] To convict Lewis of domestic battery, a Level 6 felony, the State was required to prove beyond a reasonable doubt that Lewis knowingly or intentionally touched O’Neal, who was a family or household member, in a rude, insolent, or angry manner; and that Lewis had a previous, unrelated conviction for battery. Ind. Code §§ 35-42-2-1.3(a)(1), -(b)(1)(A). Lewis does not dispute that: (1) O’Neal was a family or household member; (2) Lewis had a prior conviction for battery; or (3) that Lewis touched O’Neal. Lewis only argues that the touching did not occur in a rude, insolent, or angry manner.

[11] Specifically, Lewis maintains that, because “[n]either O’Neal [n]or ‘H’ testified at the trial[,]” and Lewis testified that the injury resulted from a “playful moment,” the State failed to prove, beyond a reasonable doubt, that “the action occurred in a ‘rude, insolent, or angry manner.’” Lewis’ Br. pp. 6, 7.

[12] As this Court has previously opined: “The State need not present direct evidence to support each element of a crime, and it has long been held that circumstantial evidence will support a conviction.” *Perry v. State*, 78 N.E.3d 1, 8-9 (Ind. Ct. App. 2017).

Direct evidence is “[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” Circumstantial evidence is “[e]vidence based on inference and not on personal knowledge or

observation” or as “[a]ll evidence that is not given by eyewitness testimony.” “A conviction may rest on circumstantial evidence alone. Circumstantial evidence need not overcome every reasonable hypothesis of innocence. It is sufficient if an inference drawn from the circumstantial evidence reasonably tends to support the conviction.”

Id. at 9 (internal citations omitted). We are mindful, however, as our Supreme Court has cautioned, that: “[a]ny consideration and determination of the jury is to be made on the evidence presented to them. Imagination or speculation is not a proper basis for presenting evidence nor for analyzing it or reaching conclusions based on it.” *Id.* at 8-9 (quoting *Hoskins v. State*, 441 N.E.2d 419, 426 (Ind. 1982)).

[13] The officers testified that, after the incident, O’Neal induced H. to call the police, and H.’s 911 call triggered the police investigation into the domestic disturbance at Lewis’ residence. After H. admitted the officers into the home, the officers spoke with O’Neal, who came downstairs from the room she was in with Lewis. O’Neal was shaking, crying, upset, and actively bleeding from the fresh gash above her eye. When the police asked O’Neal whether Lewis injured her, O’Neal responded affirmatively. Under questioning by the police, Lewis acknowledged that he argued with O’Neal about oral sex.

[14] We find, based on direct evidence and circumstantial evidence, that a reasonable factfinder could find beyond a reasonable doubt that Lewis knowingly or intentionally touched O’Neal in a rude, insolent, or angry manner. *See Perry*, 78 N.E.3d at 9-10 (upholding defendant’s conviction for

domestic battery, a Level 6 felony, “[b]ased on both direct evidence . . . Lydia’s eyewitness statements to the officer and the detective . . . and circumstantial evidence. . . the 911 call, the officer’s testimony, [and] Lydia’s bloody lip”). Lewis’ renewed contention that O’Neal suffered the laceration during a playful incident is merely an invitation that we should reweigh the evidence, which we cannot do. We conclude that sufficient evidence supports Lewis’ conviction.

Conclusion

[15] Sufficient evidence supports Lewis’ conviction. We affirm.

[16] Affirmed.

Bailey, J., concurs.

Robb, J., concurs in result without opinion.