

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kelly Jo Marshall,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 18, 2021

Court of Appeals Case No.
20A-CR-2314

Appeal from the Vanderburgh
Circuit Court

The Honorable Ryan C. Reed,
Magistrate

Trial Court Cause No.
82C01-1906-F6-4386

Brown, Judge.

[1] Kelly Jo Marshall appeals her conviction for leaving the scene of an accident with serious bodily injury as a level 6 felony. Marshall raises one issue, which we restate as whether the evidence is sufficient to sustain her conviction. We affirm.

Facts and Procedural History

[2] Marshall and Undray Moody were dating and had a five-year-old child, K. On May 11, 2019, Moody returned from an afternoon graduation ceremony for his niece in Bowling Green, Kentucky, and arrived at Marshall's house to find a "big bottle on the table," Marshall and two of her friends drinking, and Marshall "super drunk." Transcript Volume II at 52. He asked if K. and the other children had eaten, and Marshall answered in the negative and indicated "they're starving." *Id.* He drove to Taco Bell, called Marshall and told her that he was not going to purchase food for the children so that her guests could eat it, and called again in the restaurant line. Marshall indicated during the phone calls that her friends were leaving, yet when Moody returned, everybody was still partying, and he drove with the food to his home. Anthony Rucker, who cuts Moody and K.'s hair, arrived at Moody's home shortly afterwards to cut his hair, and he overheard a phone conversation between Moody and Marshall during which there "was some tension," Moody explained he was not going to pay for everybody's food, and he told her to "quit acting like a B." *Id.* at 84.

[3] Moody and Rucker were examining Moody's vehicle in his attached garage when Marshall arrived uninvited with K. and her seven-year-old child, E., Marshall pulled up in her vehicle "pretty fast," exited the vehicle, and said,

“call me a B again, apologize for calling me a B.” *Id.* at 85. Moody observed Marshall was very intoxicated. Moody and Marshall argued, she cursed and pushed him and they went “back and forth” while “a few feet apart,” and he apologized and told her to leave the driveway and property. *Id.* The confrontation continued inside the house, Marshall “wipe[d] stuff off [Moody’s] counter,” including lit candles, threw a glass candleholder across the room, and “knocked everything everywhere.” *Id.* at 55. At some point, E. entered the house, grabbed a knife from a drawer, and prepared to stab Moody in the back. Rucker grabbed the knife and would later remove it a second time.

[4] After Moody eventually removed Marshall from the house, E. attempted to throw a “big ole brick” at Moody, who grabbed it from him and threw it in the woods behind the garage, and Moody made the children enter Marshall’s vehicle. *Id.* at 66. Marshall grabbed a hammer, said “apologize, apologize” and she would “bust out every MF’g window in the house,” and “counted down or . . . up to ten and before she got to ten she busted his window, his back window on his Audi.” *Id.* at 87-88. He followed her as she returned to her vehicle and closed the door. Moody opened the door and attempted to remove the hammer from her, a struggle ensued, and Marshall started kicking him “so hard he fell out.” *Id.* at 182. She located the keys, started the vehicle, placed it in gear, “backed up pulling him with the door open, and as she turned to go out [] ran his leg over and his ankle.” *Id.* at 87. Rucker witnessed the wheel of Marshall’s vehicle run over Moody’s leg and her vehicle strike his vehicle as she exited the driveway. The mother of Moody’s niece eventually took Moody to

the hospital emergency room, where x-rays of his injuries were taken. Also at the hospital, Evansville Police Officer Mark Decamps observed Moody's right leg "hanging down off of the edge of the bed," with an "obvious disfigurement on his right ankle lower leg area." *Id.* at 110. Because of the crush fracture to his ankle, Moody was referred to Dr. Tyler Kelly, a foot and ankle surgeon at Tri-State Orthopedics, who determined the injury was consistent with being run over by a tire on a vehicle.

[5] On June 25, 2019, the State charged Marshall with Count I, leaving the scene of an accident with serious bodily injury as a level 6 felony; and Count II, criminal mischief as a class B misdemeanor. On November 6, 2020, the court held a jury trial, at which Moody's neighbor who lived across the street, Dr. Kelly, Officer Decamps, Moody, Rucker, and Marshall testified. The court admitted video recordings taken from security cameras on the neighbor's house that faced Moody's driveway and home. The court also admitted hospital and emergency room records and photographs of Moody which Officer Decamps took at the hospital.

[6] Moody testified that, at the same time he was in Marshall's vehicle trying to remove the hammer, Marshall

throws the truck in reverse with the door open, hits the gas. The door hits me. I'm hanging on to the door and there's cars lined all up in my driveway. So, she cuts the wheel like this while I'm holding on to the door, hit [Rucker's] car. I come off the door, my legs are under the truck now, backed right over me and just kept going.

Id. at 60. He answered affirmatively when asked whether he was standing outside of the driver's side of the vehicle, she threw "it in reverse, she accelerates, the vehicle goes backwards and it causes you to, it comes into contact with you," and he went to the ground. *Id.* When asked if there was a moment when he was on the ground that he could have removed himself from under the vehicle, he stated: "the cars w[ere] too close together, it [sic] was nowhere I could go." *Id.* He further explained that he "kind of went underneath the . . . driver's side front tire, and it ran over [his] big toe on [his] left foot and it ran[] completely over [his] ankle on [his] right leg crushing it backwards." *Id.* at 61. He indicated that, after her vehicle door made contact with him and he had fallen to the ground, Marshall continued to pull out of the driveway, and that the driveway was "pretty lengthy, . . . about from me probably to middle ways in the seating there." *Id.*

[7] Rucker indicated he was present for the "whole incident," which he remembered "like it was yesterday," *id.* at 92, and when asked to describe Marshall's speed, he stated, "[i]n a hurry because it threw rocks whenever the car backed up," and answered affirmatively when asked to clarify if he meant there was gravel kicking up. *Id.* at 90. He indicated that she "nipped" his vehicle, "but it was probably a couple hundred dollars' worth of damage, but I had to sell the car." *Id.* He indicated he went over to Moody as he had "seen his leg," and he was not worried about his car. *Id.* He answered in the negative when asked if, after Marshall had struck Moody, she stopped to check on him, leave her vehicle, or call 911. During cross-examination, he indicated that,

when Marshall placed the vehicle in gear, she “then mowed him down,” and that, until the time she pulled out of the driveway, he did not view any blood on her face or clothing. *Id.* at 102.

[8] Marshall answered that Moody “was on” her when asked his location when she placed the vehicle into gear, and she testified she “smashed the gas back trying to get him off of” her and that “the impact of that door hit him so hard it hit my arm too when it finally came back on me.” *Id.* at 183-184. When asked to describe when the vehicle is in gear and clarify her statement that he grabbed onto the door and ran along with it, she testified that she “just punched it hard one time and let off and then the whole door went, it was like the door flew him in” *Id.* at 195. During redirect examination, Marshall indicated that she learned about Moody’s injuries “[p]robably about thirty, forty-five minutes later, because my phone was blowing up,” and when asked if she did not call the police, she stated she was “in the bathroom, my phone was dead.” *Id.* at 205. When asked if anyone else had a phone, she stated: “Yeah, his sister had a phone, his cousin had a phone, [her friend] had a phone, but everybody was trying to fight everybody when I’m sitting in the bathroom trying to put my face back together.” *Id.* at 206.

[9] The jury found Marshall guilty of both counts, and the court sentenced her to two years on the first count and 180 days on the second count to be served concurrently and suspended the entire sentence to probation.

Discussion

[10] The issue is whether the evidence is sufficient to sustain Marshall’s conviction for leaving the scene of an accident with serious bodily injury as a level 6 felony. Marshall argues the statute under which she was convicted requires a knowing or intentional level of culpability, asserts that the accident occurred under “unique conditions: during a domestic violation [sic] altercation, at night, on a complicated driveway, with children in her car, and in the course of only 20-30 seconds,” and contends that her conduct on this set of facts does not demonstrate proof of personal culpability. Appellant’s Brief at 7. Without citation, she contends that the statute seeks to avoid situations where a person is left without aid or where a vehicle operator is unknown for follow-up, and that remaining in a domestic altercation would have undermined the purposes of the statute by placing everyone at risk of further violence.

[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*. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

[12] At the time of the offense, Ind. Code § 9-26-1-1.1 provided:

(a) The operator of a motor vehicle involved in an accident shall do the following:

(1) Except as provided in section 1.2 of this chapter, the operator shall immediately stop the operator's motor vehicle:

(A) at the scene of the accident; or

(B) as close to the accident as possible;

in a manner that does not obstruct traffic more than is necessary.

(Subsequently amended by Pub. L. No. 184-2019, § 3 (eff. July 1, 2019)). An operator of a motor vehicle who knowingly or intentionally fails to comply with Ind. Code § 9-26-1-1.1(a) commits leaving the scene of an accident, which is a level 6 felony if the accident results in serious bodily injury to another person. Ind. Code § 9-26-1-1.1(b) (subsequently amended by Pub. L. No. 184-2019, § 3 (eff. July 1, 2019)).

[13] “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” Ind. Code § 35-41-2-2. “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” *Id.* “Where conditions were such that the driver should have known that an accident occurred or should have reasonably anticipated that the accident resulted in injury to a person, the requisite knowledge is present.” *Barton v. State*, 936 N.E.2d 842, 849 (Ind. Ct. App. 2010), *trans. denied*. A jury may infer a driver’s knowledge based on circumstantial evidence. *Hudson v. State*, 20 N.E.3d 900, 905 (Ind. Ct. App. 2014).

[14] The record reveals that, following an encounter where Marshall arrived uninvited to Moody's residence, confronted him in his garage and house, and grabbed a hammer to then break the window of his vehicle, Moody attempted to remove the hammer when she retreated to her own vehicle. A struggle ensued, during which Marshall located her keys and started and placed the vehicle into gear. Rucker testified that he observed the entire encounter and indicated that, as Marshall drove her vehicle in reverse, she pulled Moody with the door open; in turning, she ran over his leg and ankle; she backed the vehicle up so quickly that it threw rocks; and that she did not stop to check on him, leave her vehicle, or call 911. Marshall confirmed that she "smashed the gas back" and "punched it hard one time" such that the impact of that door "flew him in," or hit him "so hard" it returned to hit her arm as well. Transcript Volume II at 184, 195.

[15] We conclude that, based on the evidence presented at trial, the jury could infer that Marshall as a driver should have known that an accident occurred or should have reasonably anticipated that the accident resulted in injury to Moody. The State presented evidence of a probative nature from which a reasonable trier of fact could have determined beyond a reasonable doubt that Marshall committed leaving the scene of an accident with serious bodily injury as a level 6 felony.

[16] For the foregoing reasons, we affirm Marshall's conviction.

[17] Affirmed.

Bradford, C.J., and Vaidik, J., concur.