

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Olelkan Jubril,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 28, 2021

Court of Appeals Case No.  
20A-CR-2172

Appeal from the Marion Superior  
Court

The Honorable Mark D. Stoner,  
Judge

Trial Court Cause No.  
49G06-1910-F3-41183

**Bradford, Chief Judge.**

## Case Summary

- [1] Following a bench trial, Olelkan Jubril was convicted of Class A misdemeanor domestic battery. In challenging the sufficiency of the evidence to sustain his conviction, Jubril essentially argues that the trial court should have credited his account of the events in question, rather than the victim's account. We affirm.

## Facts and Procedural History

- [2] In 2018, H.H. met Jubril at The Hermitage, an apartment complex in Speedway. At some point thereafter, H.H. and Jubril started a romantic relationship, with H.H. soon becoming pregnant. After their child was born in January of 2019, H.H. and Jubril married on February 26, 2019. Jubril filed for divorce approximately two months later and their divorce was finalized in August of 2019. H.H. and Jubril engaged in consensual sex on at least one occasion following their divorce.
- [3] On October 18, 2019, Jubril contacted H.H. and asked her to come meet him at a bar called JD's. H.H. declined but, because she wanted to speak to Jubril about child-visitation issues, offered to meet him at his apartment. Once inside his apartment, Jubril questioned H.H. about her sex life. At some point, he positioned his body with his chest against H.H.'s back and his legs around her, making H.H. uncomfortable and prompting her to retreat to the bathroom.
- [4] When H.H. emerged from the bathroom, Jubril reached for her hand and attempted to pull her close and dance with her to music that he had turned on

while she was in the bathroom. H.H. told Jubril that she was “not going to have sex with” him and he responded by telling her “to relax, that [they didn’t] have to have sex. He just wants to cuddle, he misses [her].” Tr. Vol. II p. 13. At some point, H.H. and Jubril entered Jubril’s bedroom and H.H. sat down on the edge of the bed.

[5] Jubril pushed H.H. down on the bed and began talking about “what he misses about [their] sex life.” Tr. Vol. II p. 14. Jubril rolled over and got on top of H.H. before grabbing and holding her arms down. H.H. struggled to get away from Jubril as he “started trying to take [her] pants off,” eventually managing to pull both her pants and underwear off. Tr. Vol. II p. 16. The struggle continued as Jubril attempted to touch H.H.’s female organs. Jubril eventually stopped but re-engaged when H.H. attempted to pick her pants up off the floor. Jubril then “jumped off the bed and started again, started grabbing [H.H.]. That’s when his anger was getting worse. He was getting more aggressive with [H.H.].” Tr. Vol. II p. 18. H.H. continued to struggle until Jubril “sat [her] up” and “tapped [her] on [her] mouth to tell [her] to be quiet.” Tr. Vol. II p. 20.

[6] At some point, Jubril went to get H.H. some water. When he returned, Jubril “started again trying to rip [H.H.’s] shirt off of [her].” Tr. Vol. II p. 21. Jubril eventually managed to remove H.H.’s shirt and sports bra, bruising her arm in the process. Jubril threatened to flush H.H.’s clothes down the toilet after H.H. asked him to give them to her. H.H. fled the apartment, completely naked, when Jubril turned towards the bathroom. She retreated to her car, drove away, and called 911. H.H. parked by a dumpster at a nearby apartment

complex, where she put on a pair of pants and a jacket that she found in her car, and waited for police. H.H. told the responding officer what had happened and filed a formal report a few days later.

- [7] On October 23, 2019, Jubril was charged with Level 3 felony attempted rape, Level 3 felony rape, Level 6 felony sexual battery, Level 6 felony criminal confinement, Level 6 felony strangulation, Level 6 felony intimidation, Class A misdemeanor domestic battery, and Class A misdemeanor battery resulting in bodily injury. Following a bench trial, the trial court found Jubril not guilty of attempted rape, rape, sexual battery, criminal confinement, strangulation, and intimidation, but guilty of Class A misdemeanor domestic battery and Class A misdemeanor battery resulting in bodily injury. The trial court merged the battery resulting in bodily injury conviction into the domestic battery conviction and sentenced Jubril to time served, *i.e.*, 340 days in the Marion County Jail.

## Discussion and Decision

- [8] Jubril contends that the evidence is insufficient to sustain his conviction for Class A misdemeanor domestic battery.<sup>1</sup>

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<sup>1</sup> Although Jubril challenges the sufficiency of the evidence to support both his Class A misdemeanor domestic battery conviction and the finding of guilt for Class A misdemeanor battery resulting in bodily injury, we need only review the sufficiency of the evidence to support the domestic battery conviction because the trial court merged the battery causing injury offense into the domestic battery conviction and there is no judgment on that charge. *See Cardosi v. State*, 128 N.E.3d 1277, 1284 (Ind. 2019) (“[W]hen a trial court merges a felony-murder and murder conviction, we don’t need to address the sufficiency of the evidence supporting the felony-murder conviction because there is no judgment on that charge.”); *Cutter v. State*, 725 N.E.2d 401, 407 n.2 (Ind. 2000) (“Because the trial court merged the felony murder and criminal

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. 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. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, “[w]e affirm the judgment unless no reasonable factfinder could find the defendant guilty.” *Mardis v. State*, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)).

[9] In order to prove that Jubril committed Class A misdemeanor domestic battery, the State was required to prove that he knowingly or intentionally touched a family or household member in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1.3. It is undisputed that H.H. qualified as a family or household member, given that Jubril and H.H. were previously married, had a child together, and had continued to engage in a sexual relationship following their

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confinement convictions into the murder conviction, here we address only the sufficiency of the evidence with regard to the murder and rape convictions.).

divorce. The question, therefore, is whether the evidence proves that Jubril knowingly or intentionally touched H.H. in a rude, insolent, or angry manner. We conclude that it does.

[10] While Jubril and H.H. provided fairly consistent accounts of what happened prior to their entry into Jubril's bedroom, their testimony greatly differs regarding what happened next. In finding Jubril guilty of Class A misdemeanor domestic battery, the trial court credited H.H.'s version of the events relating to the battery. H.H. testified that Jubril forcefully held her down, removed her clothing, and grabbed her arm with sufficient force to cause it to bruise. She further testified that Jubril became angry and aggressive as the altercation progressed. For his part, Jubril denies that he touched H.H. in an angry or insolent manner, there was a struggle in the bedroom, he forcibly removed H.H.'s clothes, or touched H.H. with enough force to cause her to bruise. He argues that given his vastly different account of what happened in the bedroom, the trial court should not have credited H.H.'s account of the altercation. Jubril's arguments on appeal, however, amount to nothing more than an invitation to reweigh the evidence, which we will not do.<sup>2</sup> See *Bell v. State*, 31 N.E.3d 495, 499 (Ind. 2015) ("We do not reweigh the evidence or assess the credibility of witnesses in reviewing a sufficiency of the evidence claim.").

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<sup>2</sup> Because we affirm Jubril's conviction for Class A misdemeanor domestic battery, we need not address Jubril's argument relating to the sufficiency of the evidence to sustain the trial court's guilty finding for Class A misdemeanor battery resulting in bodily injury.

[11] The judgment of the trial court is affirmed.

Mathias, J., and Brown, J., concur.