MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Bawi Ram Hngak,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 17, 2023

Court of Appeals Case No.
22A-CR-2919

Appeal from the
Marion Superior Court

The Honorable
Jeffrey L. Marchal, Judge

Trial Court Cause No.
49D31-1901-F1-2473

Memorandum Decision by Senior Judge Robb
Judges Pyle and Weissmann concur.

Robb, Senior Judge.

Case Summary

[1] Bawi Ram Hngak appeals his conviction of rape, a Level 1 felony,[1] challenging the sufficiency of the evidence. Having reviewed the evidence most favorable to the verdict, we find the evidence sufficient and affirm.

Facts and Procedural History

[2] Hngak and V.K. dated "on and off for about five to six years[,]" eventually splitting up in 2017. Tr. Vol. III, p. 67. They continued to see each other periodically until V.K. began dating someone else, which displeased Hngak.

[3] On January 16, 2019, Hngak broke into V.K.'s home through the locked front door and confronted V.K. in her upstairs bedroom. When V.K. tried to call her boyfriend for help, Hngak took her cell phone. Hngak pushed V.K. to the floor, held her down by positioning himself on top of her, and inserted his fingers into her vagina. At some point, Hngak released V.K. so he could retrieve food and water. V.K. used this as an opportunity to escape and ran down the stairs. Hngak followed her, pushed her into the downstairs bathroom, and again put his fingers in her vagina. Hngak then dragged V.K. back upstairs to her bedroom and pushed her to the floor. There, Hngak retrieved a pair of scissors from V.K.'s desk and cut her leggings and underwear. Gripping the scissors in

[1] Ind. Code § 35-42-4-1 (2014).

one hand, Hngak placed his arm around V.K.'s head while he inserted the fingers of his other hand into her vagina once more.

[4] During at least one of the altercations, Hngak attempted to insert his penis into V.K.'s vagina but failed to do so because he was unable to achieve an erection. Hngak also repeatedly slapped V.K.'s face, arms, and legs over the course of the incidents. To end the assaults, V.K. told Hngak she would get back together with him. Hngak stopped what he was doing and moved with V.K. onto her bed. V.K. then convinced Hngak to fix the damaged front door. After Hngak exited her room, V.K. retrieved her cell phone and texted her boyfriend to "[s]end someone to [her] house." Ex. Vol. I, pp. 139-140. The police arrived shortly thereafter and separated Hngak from V.K.

[5] Based on these events, the State charged Hngak with rape, a Level 1 felony; two counts of rape, Level 3 felonies; attempted rape, a Level 3 felony; burglary, a Level 3 felony; criminal confinement, a Level 5 felony; and interference with the reporting of a crime, a Class A misdemeanor. Following a two-day bench trial, the trial court found Hngak guilty on all counts, entered judgment of conviction on all counts except for the attempted rape, and imposed a thirty-year aggregate sentence.

Discussion and Decision

[6] Hngak appeals, claiming there is insufficient evidence to sustain his conviction for Level 1 felony rape. When we review a sufficiency of the evidence challenge, we do not assess witness credibility, nor do we reweigh the evidence.

Pugh v. State, 52 N.E.3d 955, 966 (Ind. Ct. App. 2016), *trans. denied*. We consider only the evidence favorable to the judgment and draw reasonable inferences therefrom. *Id.* If the trial court could have found the defendant guilty beyond a reasonable doubt based on the probative value of the evidence, we will affirm the conviction. *Id.* Furthermore, the conviction may rest solely on the uncorroborated testimony of the victim. *Lamb v. State*, 462 N.E.2d 1025, 1028 (Ind. 1984).

[7] To sustain a conviction for rape as a Level 1 felony, the State must prove beyond a reasonable doubt that Hngak knowingly or intentionally had other sexual conduct[2] with V.K. when V.K. was compelled by force or the imminent threat of force while Hngak was armed with scissors, a deadly weapon. *See* Appellant's App. Vol. II, pp. 41-42; *see also* Ind. Code § 35-42-4-1. The point of contention here is the elevating element of the scissors. Hngak maintains that the scissors were not a deadly weapon and, even if they were, their use was not contemporaneous with the other elements of the offense. We disagree.

[8] The term "deadly weapon" is defined, in part, as "[a] destructive device, weapon, device, taser [] or electronic stun weapon [], equipment, chemical substance, or other material that in the manner it: (A) is used; (B) could

[2] The term "other sexual conduct" is defined, in part, as "the penetration of the sex organ . . . of a person by an object." Ind. Code § 35-31.5-2-221.5 (2014).

ordinarily be used; or (C) is intended to be used; is readily capable of causing serious bodily injury." Ind. Code § 35-31.5-2-86 (2012).

[9] Whether or not an object is a deadly weapon depends on how the object was used during the commission of the offense. *Lamb*, 462 N.E.2d at 1028. And even if the object is classified as a deadly weapon, it need not be displayed in order to establish a threat of deadly force, nor must it be held to the victim at all times. *Id.* In a sufficiency of the evidence claim where the issue is whether the defendant was armed with a deadly weapon, we must examine the following factors: "whether there was an initial show of deadly force with the weapon, whether the intent was to intimidate the victim with the weapon, and whether the weapon was at least constructively under defendant's control at all times." *Potter v. State*, 684 N.E.2d 1127, 1137 (Ind. 1997).

[10] The object used here was a pair of scissors. V.K. testified that the scissors were located on the desk in her room and that Hngak retrieved them, used them to cut her leggings and underwear, and held them in his hand when he placed his arm around her head. This Court has long held that scissors are a deadly weapon. *See Johnson v. State*, 409 N.E.2d 699, 701 (Ind. Ct. App. 1980). Furthermore, the scissors here easily could have been used in such a manner that would have caused serious bodily injury, such as a poke in the eye or a fatal jab to her skin. *See Lamb*, 462 N.E.2d at 1028.

[11] Hngak's argument that the scissors are not a deadly weapon hinges on whether the scissors were used in a threatening manner. The element of threat is not

included in the elevated offense as charged and therefore need not be proven by the State. Hngak's argument is merely an invitation to reweigh the evidence, which we may not do. *See Pugh*, 52 N.E.3d at 966.

[12] V.K. further testified that while Hngak was holding the scissors in his hand with his arm around her neck, he inserted his fingers into her vagina. Thus, the elements of the offense as charged occurred contemporaneously. Hngak's argument otherwise is meritless. The evidence here is sufficient to support the trial court's conclusion that Hngak was armed with a deadly weapon in the commission of the rape.

Conclusion

[13] We conclude the evidence is sufficient to support Hngak's conviction of Level 1 felony rape.

[14] Affirmed.

Pyle, J., and Weissmann, J., concur.