

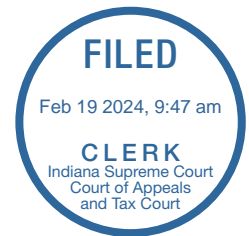
MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Christopher Bradley Covey,
Appellant-Defendant



v.

State of Indiana,
Appellee-Plaintiff

February 19, 2024
Court of Appeals Case No.
23A-CR-2268

Appeal from the Hamilton Superior Court
The Honorable William J. Hughes, Judge
Trial Court Cause No.
29D03-2210-F5-7536

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Christopher Bradley Covey appeals his conviction for Level 6 felony battery.

Covey raises two issues for our review, which we restate as follows:

1. Whether Covey can demonstrate reversible error in the trial court's exclusion of certain testimony.
2. Whether the State presented sufficient evidence to support Covey's conviction.

[2] We affirm.

Facts and Procedural History

[3] In the evening hours of October 21, 2022, Patrick Nostrant, his sister, Dawn, and their friend, Francisca, were walking through Noblesville. As they approached a gas station, Covey approached them and began "bothering" the group. Tr. Vol. 2, p. 119. The group told Covey to "back off" as they kept walking. *Id.* Covey, however, "kept following" the group. *Id.* Covey then "just came over" to Nostrant and punched Nostrant in the face. *Id.* The attack caused Nostrant to "black[] out," and, when he came to, he was "on the ground bleeding." *Id.*

[4] Dawn called emergency responders and an ambulance arrived on the scene shortly thereafter. Nostrant, who was still bleeding, reported that his vision was blurry, that he had a sharp pain in his nose, and that his pain was a ten out of ten. He later recalled the experience being “one of the most painful experiences” he had “ever” had. *Id.* at 121. Law enforcement then arrived on the scene and apprehended Covey, whom Nostrant identified as his attacker.

[5] The State charged Covey with Level 5 felony battery. At his ensuing jury trial, Covey told the jury that he did not dispute that he had committed the battery. Instead, he argued only that he had not caused Nostrant “serious bodily injury” as required for the charge of a Level 5 felony. *Id.* at 113. The State called Nostrant as a witness, and, in addition to the above facts, Nostrant stated that his nose had yet to fully heal and continued to cause him pain at a level of three or four out of ten. *Id.* at 125. The State also called Dawn and Francisca as witnesses, and they each corroborated Nostrant’s testimony.

[6] During Covey’s cross-examination of Dawn, the following exchange occurred:

Q Okay. Was Fran’s boyfriend not there on the scene when law enforcement arrived?

A He came when they were there, yes.

Q Okay. And who is that?

A . . . Kaden.

Q Okay. Does he know [Covey]?

A As far as I know he has had, encountered [sic] him before.

Q Okay. And is there a reason that Kaden left the scene before law enforcement wrapped up their investigation?

[Prosecution]: Your Honor, I'm going to object. . . . It's a request for speculation or hearsay

[Defense counsel]: There was discussion in all of the video evidence^[1] that there was some sort of beef going on between the parties, some sort of dispute[] between Fran and this boyfriend and my client and the fact that it wasn't brought up and I think it's relevant for bias . . . and impeachment testimony

THE COURT: I'm going to . . . sustain the objection based on hearsay. . . . If you want to ask preliminary questions you can.

Id. at 141-42. However, Covey did not ask follow-up questions or otherwise make an offer to prove his underlying assertions. Instead, he closed out his cross-examination of Dawn, and he rested his defense immediately after the State closed its case.

[7] The jury found Covey guilty of Level 6 felony battery. The court entered its judgment of conviction and sentenced Covey accordingly. This appeal ensued.

¹ There was no video evidence submitted during Covey's trial.

1. Covey cannot demonstrate reversible error in the trial court’s decision to not permit Dawn to testify as to why Kaden had left the scene.

[8] We first address Covey’s argument on appeal that the trial court abused its discretion when it sustained the State’s hearsay objection to Covey’s question to Dawn about why Kaden had left the scene of the attack. But we need not determine whether Dawn’s response necessarily would have been hearsay or inadmissible for another reason. Regardless, Covey’s question to Dawn had nothing to do with the issues before the jury.

[9] As our Supreme Court has held:

When an appellate court must determine whether a non-constitutional error is harmless, [Rule 66\(A\)](#)’s “probable impact test” controls. Under this test, the party seeking relief bears the burden of demonstrating how, in light of all the evidence in the case, the error’s probable impact undermines confidence in the outcome of the proceeding below. Importantly, this is not a review for the sufficiency of the remaining evidence; it is a review of what was presented to the trier of fact compared to what should have been presented. And when conducting that review, we consider the likely impact of the improperly admitted or excluded evidence on a reasonable, average jury in light of all the evidence in the case. Ultimately, the error’s probable impact is sufficiently minor when—considering the entire record—our confidence in the outcome is not undermined.

Hayko v. State, 211 N.E.3d 483, 492 (Ind. 2023) (citations omitted).

[10] Here, Covey conceded the elements of the battery to the jury. He disputed only the degree of pain that Nostrant had suffered because of the battery. Whatever

answer Dawn may have provided in response to Covey’s question about Kaden, the probable impact of her answer on the issue of the degree of Nostrant’s pain is nil. Accordingly, there is no reversible error here.

2. The State presented sufficient evidence to support Covey’s conviction for Level 6 felony battery.

- [11] We thus turn to Covey’s argument that the State failed to present sufficient evidence to support his conviction. For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We will neither reweigh the evidence nor judge witness credibility. *Id.* We will affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*
- [12] The jury found Covey guilty of Level 6 felony battery. In relevant part, that offense required the State to show that Nostrant had suffered “moderate bodily injury” as a result of Covey’s attack. *Ind. Code § 35-42-2-1(e)(1) (2022)*. “Moderate bodily injury,” in turn, “means any impairment of physical condition that includes substantial pain.” *I.C. § 35-31.5-2-204.5 (2022)*.
- [13] The essence of Covey’s argument is that Nostrant was the only witness who could have testified as to his pain, and his testimony on that issue was incredibly dubious. For the incredible dubiousity rule to apply, there must have been “1) a sole testifying witness; 2) testimony that is inherently contradictory,

equivocal, or the result of coercion; and 3) a complete absence of circumstantial evidence.” *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015).

[14] The incredible dubiousity rule is not available to Covey. First, Nostrant may have been the only person competent to testify as to his own pain, but he was not a sole testifying witness and his testimony was not provided in a complete absence of circumstantial evidence. Rather, Dawn and Francisa testified and corroborated Nostrant’s testimony aside from his measure of his own pain. Second, Covey’s assertions aside, nothing in Nostrant’s testimony was inherently contradictory, equivocal, or the result of coercion. Nostrant’s description of the attack and his ensuing pain was imminently reasonable and within the fact-finder’s discretion to rely upon.

[15] And Nostrant’s testimony was readily sufficient to show moderate bodily injury. He testified that he momentarily lost consciousness, that his pain immediately after the attack was a ten out of ten and, some ten months later, still at a three or four out of ten, and his nose remains disfigured because of the attack. *See, e.g., Smith v. State*, 167 N.E.3d 378, 383-84 (Ind. Ct. App. 2021). Covey’s argument simply seeks to have this Court reweigh the evidence, which we will not do.

Conclusion

[16] For all of these reasons, we affirm Covey’s conviction for Level 6 felony battery.

[17] Affirmed.

Tavitas, J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

Eugene A. Kress
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ian A. T. McLean
Supervising Deputy Attorney
Indianapolis, Indiana