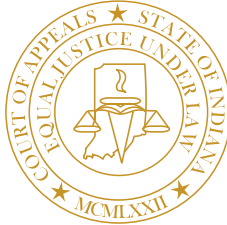


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

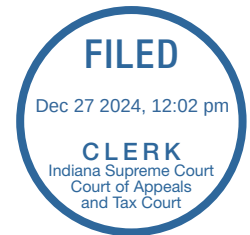


IN THE Court of Appeals of Indiana

Glen Michah Beaven,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



December 27, 2024

Court of Appeals Case No.
24A-CR-660

Appeal from the Boone Superior Court

The Honorable Bruce E. Petit, Judge

Trial Court Cause No.
06D02-2203-F6-339

Memorandum Decision by Judge Bradford
Judges Bailey and Foley concur.

Bradford, Judge.

Case Summary

- [1] In early-March of 2022, Glen Michah Beaven became embroiled in an argument with his then-girlfriend. During the course of the argument, Beaven placed his arm around his then-girlfriend's neck in a manner that impeded her normal breathing. As a result of the incident, Beaven was charged with Level 6 felony strangulation and Class A misdemeanor domestic battery. After a jury found him guilty as charged, the trial court sentenced Beaven to concurrent terms of two-and-one-half-years of incarceration for the Level 6 felony conviction and one-year for the Class A misdemeanor conviction.
- [2] On appeal, Beaven contends that the trial court abused its discretion in admitting certain evidence, the evidence is insufficient to sustain his conviction, and the trial court's entry of judgment of conviction and imposition of sentences for both strangulation and domestic battery violate the prohibitions against double jeopardy. For its part, the State contends that the trial court acted within its discretion in admitting the challenged evidence and that the evidence is sufficient to sustain Beaven's conviction for Level 6 felony strangulation. The State concedes, however, that the entry of a judgment of conviction and sentence for both strangulation and domestic battery violate the prohibitions against double jeopardy and, as a result, remand is appropriate with instructions for the trial court to vacate Beaven's domestic-battery conviction. Because we agree with the State on all points, we affirm in part,

reverse in part, and remand to the trial court with instructions to vacate Beaven's domestic-battery conviction.

Facts and Procedural History

- [3] In March of 2022, Beaven visited his then-girlfriend Lauren English at her parents' home in Zionsville. At some point during Beaven's visit, he began acting "really aloof ... kind of like something was wrong or he was upset by something." Tr. Vol. II p. 27. When English asked "what's going on," Beaven became "aggressive[.]" Tr. Vol. II pp. 27, 28. Beaven shared "his dissatisfaction with the relationship[.]" claiming that "he was upset that he was putting all the work into the relationship[.]" Tr. Vol. II p. 29. The conversation became tense and "eventually escalated into an argument." Tr. Vol. II p. 28.
- [4] After Beaven called English a "b[****]," English asked Beaven to leave. Tr. Vol. II p. 30. Beaven, however, did not leave. The argument continued for some time before Beaven became "really belligerent, really aggressive towards" English after she again asked him to leave. Tr. Vol. II p. 33. English threatened, and actually dialed, 911, but disconnected before speaking to the 911 operator. The disconnected call, on which voices could be heard arguing, prompted the 911 operator to dispatch officers to the scene.
- [5] The argument continued and, at some point, English fell to her hands and knees. While English was "still on her hands and knees[.]" Beaven came up behind her and placed her in a choke hold with his right arm around her neck. Tr. Vol. II p. 45. Beaven "squeezed [English's] neck and picked [her] up off the

ground like so [her], like, feet were off the ground[,] and he just held [her] there basically strangling [her] for about four or five seconds.” Tr. Vol. II p. 45.

English described feeling absolute panic and a great deal of pain. English “couldn’t breathe” and “felt like [she] was about to pass out.” Tr. Vol. II p. 46.

[6] When responding officers arrived, they encountered English as she exited the home through the front door. The responding officers described English as being distraught, struggling to speak, coughing, having a raspy voice, and exhibiting a shortness of breath. They also observed red marks and bruising on her neck.

[7] Beaven was arrested and, on March 9, 2022, was charged with Level 6 felony strangulation and Class A misdemeanor domestic battery. English, the responding officers, and Beaven each testified at trial, after which the jury found Beaven guilty as charged. On February 28, 2024, the trial court sentenced Beaven to two-and-one-half-years of incarceration for the Level 6 felony conviction, one-year of incarceration for the Class A misdemeanor conviction, and ordered that the sentence for domestic battery be served “concurrent with” the sentence for strangulation. Appellant’s App. Vol. II p. 182.

Discussion and Decision

[8] In challenging his convictions, Beaven contends that the trial court abused its discretion in admitting certain evidence, that the evidence is insufficient to sustain his conviction for Level 6 felony strangulation, and that his convictions

for both Level 6 felony strangulation and Class A misdemeanor domestic battery violate the prohibitions against double jeopardy.

I. Admission of Evidence

[9] “A trial court has discretion regarding the admission of evidence and its decisions are reviewed only for abuse of discretion.” *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). “We will reverse only if the trial court’s ruling was clearly against the logic and effect of the facts and circumstances before it and errors affect a party’s substantial rights.” *Id.*

[10] Beavens asserts that it amounted to “drumbeat” repetitious evidence to allow four officers to testify about their encounters with English. Appellant’s Br. p. 19. Beavens claims that “the drumbeat repetitions were less about what [English] said and instead more focused on the sound of her voice.” Appellant’s Br. p. 19. Specifically, Beavens argues that

[t]he effect of allowing four separate officers to testify what they heard when the [victim] spoke was effectively a statement [English] was making without actually verifying the cause of her distress.... The repetitive testimony garnered from the officer[s] based on observations rather than words effectively provided as much of a statement as if [English] had uttered a statement that she was strangled.

Appellant’s Br. p. 19.

[11] After the first two officers had testified, Beaven raised the following objection to the admission of the testimony of the other two officers:

Yes, Judge. With all due respect, Judge, I am afraid I am gonna have to move for exclusion of any additional police officer testimony. We have already had two police officers testify about their observations and investigation of this case. I don't have any particular case law handy, but I know the case law is rife with holdings that drumbeat repetition of testimony over and over and over to the jury is improper. It serves as vouching for the witness. It also, I believe, runs afoul of—or—it—it might not runs afoul, but it invokes rule four point—rule four zero three of the Indiana Rules of Evidence where evidence can—even though relevant can be excluded for other reasons. Again, Judge, I believe that their testimony is—might be probative, but the probative value is substantially outweighed by the danger of one or more of the following unfair prejudice to the defendant, confusing the issues at—at hand here, misleading the jury, undue delay, or needlessly presenting cumulative evidence. And that—that last one there, I believe, is going to be a big issue because it is just going to be saying over and over and over here is what we saw, here is what we saw. Potentially even here is what we heard, if there is any sort of hearsay exceptions. Furthermore, I would submit that it would be a violation of my client's right to a fair trial under the fifth and fourteenth amendments to the Constitution of the U.S.A. and Article One, Section Twelve of the Indiana constitution and also the due process clauses, Judge.

Tr. Vol. II pp. 129–30. The trial court “den[ied]” Beaven’s objection, stating “[q]uite frankly, on a Level 6 Felony case, to have four officers testify is certainly not an excessive number of officers.” Tr. Vol. II p. 131. Beavens did not raise a continuing objection to the additional officer’s testimony or make any other objections regarding the officers’ observations about English’s condition.

[12] With regard to objections to the admission of witness testimony, we have concluded as follows:

To preserve an admissibility challenge for appeal, a defendant must make a contemporaneous objection at the time the evidence is introduced at trial. *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). As a general rule, “a party must continue to object and obtain a ruling for each individual instance of inadmissible evidence.” *Hayworth v. State*, 904 N.E.2d 684, 692 (Ind. Ct. App. 2009). The purpose of the rule is to allow the trial judge to consider the issue in light of any fresh developments and also to correct any errors. *Brown*, 929 N.E.2d at 207. Failure to raise a contemporaneous objection results in waiver. *Id.*

That being said, Indiana recognizes continuing objections as a way to avoid the futility and waste of time inherent in requiring repetition of the same unsuccessful objection each time a party offers evidence of a given character. *Hayworth*, 904 N.E.2d at 691–92. The decision whether to grant a continuing objection is a matter for the discretion of the trial court, and objecting counsel must ensure that the continuing objection fully and clearly advises the trial court of the specific grounds for objection. *Id.* at 692. If “the trial court does not specifically grant the right to a continuing objection, it is counsel’s duty to object to the evidence *as it is offered* in order to preserve the issue for appeal.” *Id.* (emphasis added) (citation omitted).

Hutcherson v. State, 966 N.E.2d 766, 770 (Ind. Ct. App. 2012), *trans. denied*.

Because Beaven did not attempt to make a continuing objection or object to the third or fourth officer’s testimony on this ground, Beaven has waived his challenge to the admission of the challenged testimony on appeal.

[13] “An exception to the doctrine of waiver arises when errors are so blatant and serious that to ignore them would constitute a denial of fundamental due process, *i.e.*, fundamental error.” *Sanders v. State*, 764 N.E.2d 705, 709 (Ind. Ct. App. 2002), *trans. denied*. Beaven, however, has not argued, much less established, that the admission of the challenged testimony resulted in fundamental error.¹

[14] Waiver notwithstanding, we conclude that, in this case, the trial court’s admission of the officer’s testimony regarding their observations of English at the time each arrived on the scene was not error, much less fundamental error. Each of the responding officers testified to his individual observations of English’s condition. Beaven does not claim that, individually, the officers’ testimony regarding their personal observations was inadmissible. He merely claims that when considered together, the testimony of the second, third, and fourth officers was cumulative of the first officer’s testimony.

[15] Cumulative evidence may be admitted so long as it is competent and relevant. Relevant evidence will not be rejected simply because it is cumulative, although it should be excluded if its potential to prejudice the jury improperly outweighs its probative value. The admission or rejection of cumulative evidence lies within the sound discretion of the trial court and its ruling will

¹ “Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy burden of showing that the alleged errors are so prejudicial to the defendant’s rights as to make a fair trial impossible.” *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014) (*internal quotation omitted*). “Fundamental error is meant to permit appellate courts a means to correct the most egregious and blatant trial errors that otherwise would have been procedurally barred, not to provide a second bite at the apple for defense counsel who ignorantly, carelessly, or strategically fail to preserve an error.” *Id.*

not constitute reversible error unless abuse of discretion is clearly shown.

Stone v. State, 536 N.E.2d 534, 537 (Ind. Ct. App. 1989), *trans. denied*. While acknowledging that the officers' testimony was relevant, Beaven argues that the repetitious nature of the testimony was unduly prejudicial. Beaven cites to this court's decision in *Stone* in support. *Stone*, however, is distinguishable from this case. In *Stone*, numerous witnesses essentially repeated the victim's testimony, effectively strengthening the victim's testimony. 536 N.E.2d at 540–41. In this case, the officers' testimony was not a repeat of English's testimony but rather reflected each officers' individual observations about English's demeanor and condition when each first encountered her. Beaven has failed to convince us that the admission of testimony relating to each of the four responding officer's observations of English's condition was unduly prejudicial to him. The trial court did not abuse its discretion in admitting the officers' testimony.

II. Sufficiency of the Evidence

[16]

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.” *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005).... 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. *Wright v. State*, 828 N.E.2d 904[, 906] (Ind. 2005). To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it “most favorably to the trial court's ruling.” *Id.* Appellate courts affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a

reasonable doubt.” *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000).... It is therefore not necessary that the evidence “overcome every reasonable hypothesis of innocence.” *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995). “[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001).

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (emphasis and footnote omitted, last set of brackets in original). Stated differently, in reviewing the sufficiency of the evidence, “we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility” and “affirm the judgment unless no reasonable factfinder could find the defendant guilty.” *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016).

[17] In challenging the sufficiency of the evidence to sustain his conviction for Level 6 felony strangulation,² Beaven argues that English’s testimony was incredibly dubious. “Appellate courts may impinge upon a jury’s function to judge the credibility of a witness [...] by applying the ‘incredible dubiousity’ rule.” *Smith v. State*, 34 N.E.3d 1211, 1221 (Ind. 2015). “Application of the incredible dubiousity rule is limited to cases with very specific circumstances because we are extremely hesitant to invade the province of the jury.” *Id.* “[T]o warrant

² Beaven also challenges the sufficiency of the evidence to sustain his conviction for Class A misdemeanor domestic battery. However, given our conclusion that this conviction must be vacated due to double-jeopardy concerns, we will not review the sufficiency of the evidence to sustain the domestic-battery conviction.

application of the incredible dubiousity rule, there must be: ‘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.’” *Id.* (quoting *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015)). Applying this rule to evidentiary challenges on appeal, “[w]e will reverse a conviction if the sole witness presents inherently improbable testimony and there is no circumstantial evidence of the defendant’s guilt.” *Feyka v. State*, 972 N.E.2d 387, 392 (Ind. Ct. App. 2012), *trans. denied*. “Application of the incredible dubiousity rule ‘is rare and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it.’” *Id.* (quoting *Fajardo v. State*, 859 N.E.2d 1201, 1208 (Ind. 2007)).

[18] Indiana Code section 35-42-2-9(c) provides that

A person who, in a rude, angry, or insolent manner, knowingly or intentionally:

- (1) applies pressure to the throat or neck of another person;
- (2) obstructs the nose or mouth of another person; or
- (3) applies pressure to the torso of another person;

in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Level 6 felony.

In charging Beaven, the State alleged that Beaven “in a rude, insolent, or angry manner, did knowingly or intentionally apply pressure to the throat or neck of [English] in a manner that impeded [the] normal breathing or blood circulation of” English. Appellant’s App. Vol. II p. 25.

[19] English testified at trial that during her argument with Beaven on the night in question, Beaven strangled her. Specifically, English testified that

I was still on my hands and knees like right in front of the staircase and he came behind me as I, as I was sitting there and he put his right arm from behind around my neck, I guess you'd call it a choke hold and, um, he, he squeezed my neck and picked me up off the ground like so my, like, feet were off the ground and he just held me there basically strangling me for about four or five seconds.

Tr. Vol. II p. 45. English described feeling

[a]bsolute, like, panic and obviously a lot of pain. It was, I mean he was strangling me very hard and, um, it was obviously very, very painful and just like an absolute, like, panic and kind of terror but I remember, um, so first I, I couldn't breathe and, and I know because I tried to scream but I couldn't. I couldn't vocalize at all and I couldn't breathe but about two seconds into him strangling me, I started to feel kind of light-headed, um, it felt like I was about to pass out and that made me think, oh my gosh, like you know, circulation to my head is being cut off 'cause he's, has his arm around my neck so tight. And so that's when I started to really panic 'cause I felt like I was about to pass out if he had been, uh, stayed strangling me that much longer.

Tr. Vol. II pp. 45–46. Beaven does not indicate what makes English's testimony inherently contradictory or equivocal. Likewise, he does not claim that her testimony was the result of coercion. In arguing that English's testimony was incredibly dubious, Beaven focuses on the fact that he and English gave differing versions of the incident at trial. For example, at trial, Beaven denied placing English in a choke hold. The jury, however, was not

required to credit Beaven's self-serving testimony, and apparently did not. *See Sallee v. State*, 51 N.E.3d 130, 135 (Ind. 2016) (providing that the jury was entitled to credit or discredit a particular witness's testimony).

[20] Moreover, English was not the sole witness at trial. English's testimony regarding the incident with Beaven was corroborated by the testimony of the four Zionsville police officers who responded to the scene. Officer James Stiles testified that when he encountered English, she was having difficulty speaking, stating that "her voice sounded raspy at the time, um, she was having difficulty breathing in terms of trying to catch her breath[.]" Tr. Vol. II p. 84. Officer Stiles further observed that English "had red marks around her neck[.]" Tr. Vol. II p. 84. Likewise, Officer Brandon Pounds observed that English had a "very faint" voice and exhibited "a shortness of breath." Tr. Vol. II pp. 101, 102. English also had a "reddish" spot and what appeared to be "some bruising" on "the side of her neck and kind of down to her collar bone area." Tr. Vol. II p. 104. Lieutenant Bryan Sauer testified that English had spoken softly with officers and "[i]t sounded like she was having trouble when she was talking with" officers. Tr. Vol. II p. 141. English exhibited "a lot of throat clearing" and had "a raspy voice sound." Tr. Vol. II p. 142. Finally, Officer Andrew Raiford testified that English "appeared distraught[.]" and "was struggling to talk." Tr. Vol. II pp. 160, 161. English's voice was "quite hoarse" and "[i]t appeared that she was struggling to catch her breath." Tr. Vol. II p. 161. Officer Raiford also observed bruising and red marks on the right side of English's neck. The responding officers' testimony corroborates English's

version of the events. Given that English's testimony was not inherently contradictory or equivocal and was corroborated by other circumstantial evidence, we conclude that English's testimony was not incredibly dubious.

[21] English's testimony established that Beaven, acting in an angry manner, applied pressure to her neck in a manner that impeded her normal breathing. The evidence, as reflected by English's testimony, is sufficient to sustain Beaven's conviction for Level 6 felony strangulation. Beaven's claim to the contrary amounts to nothing more than a request for this court to reweigh the evidence, which we will not do. *See Griffith*, 59 N.E.3d at 958.

III. Double-Jeopardy

[22] The jury convicted Beaven of both strangulation and domestic battery. The trial court entered concurrent sentences on each of these convictions. Beaven argues that his convictions for both strangulation and domestic battery violate the prohibitions against double jeopardy. The State concedes, noting that while "[d]omestic battery is not an inherently included offense of strangulation[,] ... given the face of the charging information, domestic battery here was a factually lesser-included offense of strangulation." Appellee's Br. p. 23. Thus, based on the facts of this case, "the State agrees a double-jeopardy violation occurred." Appellee's Br. p. 23. Given the State's concession, we reverse the trial court's entry of a judgment of conviction and a sentence on the domestic-battery count and remand with instructions for the trial court to vacate Beaven's conviction for Class A misdemeanor domestic battery.

[23] The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions to vacate Beaven's conviction for Class A misdemeanor domestic battery.

Bailey, J., and Foley, J., concur.

ATTORNEY FOR APPELLANT

Deborah K. Smith
Thorntown, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Tyler G. Banks
Supervising Deputy Attorney General
Indianapolis, Indiana