MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew Dwight Dickerson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 4, 2022

Court of Appeals Case No. 21A-CR-1769

Appeal from the Marion Superior Court

The Honorable Mark D. Stoner, Judge

The Honorable Jeffrey Marchal, Magistrate

Trial Court Cause No. 49D32-1902-F5-7652

Vaidik, Judge.

Case Summary

[1] Andrew Dwight Dickerson appeals his conviction for Level 5 felony domestic battery, arguing the evidence is insufficient to support it. We affirm.

Facts and Procedural History

[2] The evidence most favorable to the conviction is as follows. In February 2019, Dickerson and K.C. were going through a divorce. They lived together in an apartment in Indianapolis but had separate bedrooms. On the evening of February 21, Dickerson and K.C. went to dinner and had "a couple of drinks." Tr. Vol. II p. 60. When they returned home, Dickerson "continued to drink" and got "mouthy." *Id.* K.C. went to sleep in her bedroom but was later awakened by Dickerson "urinat[ing] on her bookshelf." *Id.* K.C. yelled at Dickerson to get out, and he ran out of her bedroom, laughing as he "continued to urinate." *Id.* at 61. In addition, Dickerson "urinated on a sketch of [K.C.'s late] grandfather." *Id.* K.C. took the sketch to the kitchen to clean it. As K.C. cleaned it, Dickerson "taunt[ed]" and "cuss[ed]" at her and got in her face. *Id.* K.C. yelled at Dickerson "to get out of [her] face" and went to her bedroom to get her cell phone to call 911. *Id.* As K.C. got her cell phone, Dickerson threatened to "F-ing kill [her]." *Id.* at 62. K.C. called 911, reported Dickerson had urinated on her bookshelf and threatened her, and asked for the police to come. *See* Ex. 1 (911 call).

[3] After the call, Dickerson took K.C. to the ground, put her in a "choke hold," and started choking her, saying "if he was going down, he was going to . . . make it worth it." Tr. Vol. II p. 65. K.C. couldn't breathe; she "claw[ed]" at Dickerson and tried to scream for help but couldn't. *Id.* K.C. then "blacked out." *Id.* The next thing she remembered was "waking up in a puddle of [her] own urine." *Id.* at 66. Dickerson was gone, and she called 911 a second time.

[4] During the second call, K.C.—who was crying and hyperventilating and could barely speak—said Dickerson had urinated on her bookshelf and choked her. *See* Ex. 2 (911 call). At the end of the call, officers from the Indianapolis Metropolitan Police Department arrived on the scene. According to a responding officer, K.C. was "frantic" and "crying" and claimed Dickerson had urinated on her wall and strangled her. Tr. Vol. II p. 95.

[5] The State charged Dickerson with Level 5 felony domestic battery resulting in serious bodily injury (loss of consciousness) and Level 6 felony strangulation.[1] At the bench trial, K.C. testified to the above version of events. In addition, the 911 calls and photographs taken of K.C. the morning after the incident were admitted into evidence. Andrew Troxell, an IMPD domestic-violence detective who investigated the case, testified that signs of strangulation include "loss of consciousness" and "urination." *Id.* at 106.

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[1] The State also charged Dickerson with Level 6 felony kidnapping and Class A misdemeanor domestic battery (for throwing or pulling K.C.), but the trial court found him not guilty of those charges.

[6] Dickerson took the stand and testified to a different version of events, claiming he acted in self-defense. Specifically, Dickerson testified K.C. tried to punch him when he declined her sexual advances, she threatened to get a gun and shoot him (although he never saw a gun and didn't know for sure if she had one), he "tackled" her to protect himself, and although he might have "h[e]ld[] her down" in the neck "area," he didn't strangle her and she was "conscious the whole time." *Id.* at 123, 124, 130, 132. After Dickerson testified, K.C. was recalled as a witness. K.C. testified she had a gun that night but Dickerson didn't know about it (he only knew about her prior gun, which had been stolen), she never threatened to get her gun or shoot Dickerson, and she never got her gun. The trial court found Dickerson guilty of Level 5 felony domestic battery and Level 6 felony strangulation:

> It's not surprising that in a case like this, you're going to get two versions of what happened which may be diametrically opposed. Obviously, [K.C.'s] version of what took place is substantially different in many respects from what Mr. Dickerson told me. So, in those circumstances, you're looking very closely to the other evidence that is presented in this case. And I've considered the testimony of both of the officers as well as reviewed the pictures, and listened very attentively to the 911 call. **I think out of the all the evidence that I heard, the evidence that's really the strongest and most persuasive and corroborates a lot of what [K.C.] has testified to is the second 911 call.**
>
> Now, I do want to make a specific finding on this, since self-defense has been raised. I am finding that the State has proven beyond a reasonable doubt that the defendant did not act in self-defense in this case.

Id. at 159-60 (emphasis added).

[7] At the sentencing hearing, Dickerson asked the trial court to consider a different copy of the photos that had been admitted at trial, as he believed those photos depicted injuries to K.C. that didn't really exist. The court looked at the different copy of the photos but said they didn't matter because it "believed [K.C.'s] testimony" and the photos didn't "sway[]" its decision. *Id.* at 169, 170. The court entered judgment of conviction on only Level 5 felony domestic battery because of double-jeopardy concerns and sentenced Dickerson to three years, with one year of community-corrections home detention, two years suspended, and one year of probation.

[8] Dickerson now appeals.

Discussion and Decision

[9] Dickerson contends the evidence is insufficient to support his conviction for Level 5 felony domestic battery. When reviewing such claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We only consider the evidence supporting the judgment and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[10] First, Dickerson argues "the State failed to prove beyond a reasonable doubt that any touching of K.C. resulted in serious bodily injury, specifically a loss of consciousness." Appellant's Amended Br. p. 8. To convict Dickerson of Level 5 felony domestic battery as charged here, the State had to prove he knowingly or intentionally touched K.C. in a rude, insolent, or angry manner, resulting in serious bodily injury, i.e., loss of consciousness. *See* Ind. Code § 35-42-2-1.3(a)(1), (c)(1); Appellant's App. Vol. II p. 26. Dickerson acknowledges K.C.'s testimony that Dickerson choked her and she "blacked out" and urinated on herself and Detective Troxell's testimony that strangulation can cause loss of consciousness and urination. However, he claims the evidence is insufficient to "prove unconsciousness beyond a reasonable doubt" because the officers did not see any visible injury to K.C.'s neck and Detective Troxell testified intoxication can also cause urination. Appellant's Amended Br. p. 10. This is a request for us to reweigh the evidence and judge witness credibility, which we cannot do. The evidence is sufficient to support the trial court's conclusion that Dickerson strangled K.C., causing her to lose consciousness.

[11] Next, Dickerson argues that "[e]ven if this Court concludes that the State proved the elements beyond a reasonable doubt, the domestic battery conviction cannot stand because the State failed to rebut Dickerson's self-defense claim." Appellant's Amended Br. p. 11. If a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating the claim beyond a reasonable doubt. *Wilson v. State*, 770 N.E.2d 799, 800-01 (Ind. 2002). "The State may meet this burden by rebutting the defense directly,

by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief." *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999). When a defendant challenges the sufficiency of the State's evidence in this regard, we will not reweigh the evidence or judge the credibility of witnesses. *Wilson*, 770 N.E.2d at 801. We will reverse "only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt." *Id.* In other words, a trier of fact's decision on a claim of self-defense is generally entitled to considerable deference on appeal. *Taylor v. State*, 710 N.E.2d 921, 924 (Ind. 1999).

[12] A claim of self-defense requires that the defendant "(1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm." *Wilson*, 770 N.E.2d at 800. Dickerson argues all three elements were satisfied because he "reasonably believed that K.C. was going to get a gun when he tackled her." Appellant's Amended Br. pp. 12-13. He says that even if he didn't know for sure that K.C. had a gun that night, it was a "pretty normal thing for [her] to own a gun." Appellant's Reply Br. p. 5 (quoting Tr. Vol. II p. 145).

[13] Dickerson's argument fails for two reasons. First, his argument assumes that all he did was "tackle" K.C. to restrain her. *See* Appellant's Amended Br. pp. 7, 8, 13; Appellant's Reply Br. p. 4. But as we just discussed, there is evidence that Dickerson did more than just tackle K.C. We found the evidence is sufficient to support the trial court's conclusion that Dickerson strangled K.C., causing her to lose consciousness. Dickerson makes no argument that he was legally

entitled to choke K.C. to the point of unconsciousness. Second, the trial court wasn't required to believe Dickerson's self-serving testimony that he thought K.C. had a gun and was going to get it. Dickerson's focus on that testimony is another request for us to reweigh the evidence and judge witness credibility, which we cannot do. We therefore affirm Dickerson's conviction for Level 5 felony domestic battery.

[14] Affirmed.

Najam, J., and Weissmann, J., concur.