



ATTORNEY FOR APPELLANT

William T. Myers
Marion, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Jeffery Allen Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 30, 2021

Court of Appeals Case No.
20A-CR-2066

Appeal from the
Huntington Circuit Court

The Honorable
Davin G. Smith, Judge

Trial Court Cause No.
35C01-2004-F5-134

Kirsch, Judge.

[1] Following a jury trial, Jeffery Allen Smith (“Smith”) was convicted of Level 6 felony domestic battery resulting in moderate bodily injury¹ and admitted to

¹ See Ind. Code § 35-42-2-1.3(a); Ind. Code § 35-42-2-1.3(b)(3).

being an habitual offender.² Smith appeals his Level 6 felony domestic battery conviction and raises one issue on appeal, which we restate as whether the evidence was sufficient to support the conviction.

[2] We affirm.

Facts and Procedural History

[3] On the night and early morning of April 21-22, 2020, Tiffany Smith (“Tiffany”) was at her house in Huntington, Indiana with Smith, her husband, as well as Erica Robbins (“Erica”), Christopher Robbins (“Christopher”), and Dustin Fields (“Fields”). *Tr. Vol. II* at 34. Erica and Christopher, who were also married, rented the house, and Tiffany and Smith were living with them at the time. *Id.* at 63. Fields was Christopher’s best friend and was visiting for the night. *Id.* at 35, 103-04. The group was at the home playing video games and talking that night. *Id.* at 35. Erica and Tiffany left the home at some point that night to pick up food at Taco Bell. *Id.* at 35. When they returned, Tiffany and Smith began to argue over Tiffany’s children. *Id.* at 35-36.

[4] The argument between Tiffany and Smith began in the living room. *Id.* at 36. As the argument continued, they eventually went upstairs to their bedroom. *Id.* at 36. While they argued, their raised voices were audible to Christopher and Fields who were in the living room downstairs. *Id.* at 99, 104. At some point

² See Ind. Code § 35-50-2-8.

during the argument, Tiffany attempted to walk out of the bedroom and leave, and Smith wrapped a phone charger cord around her neck to pull her back toward him. *Id.* at 36. Smith wrapped his arm around Tiffany’s neck, and, as he tightened his hold, Tiffany had difficulty breathing. *Id.* at 37. Tiffany and Smith fell to the ground, and Smith put his hand over her mouth as Tiffany struggled and attempted to scream. *Id.* at 37-38. At one point, Smith’s hands were around Tiffany’s neck, and he told her, “I’ll kill you, bitch.” *Id.* at 42. Tiffany lost consciousness for an unknown amount of time, and when she regained consciousness, Smith was playing a video game in their bedroom and “didn’t even act like I was there.” *Id.* at 38. She went downstairs but did not tell Christopher, Erica, or Fields what had happened, but Fields thought that Tiffany appeared confused and disoriented when she came downstairs. *Id.* at 38-39, 104. Tiffany was not able to talk very well, her head was throbbing, and her side hurt. *Id.* at 39. Tiffany later described her pain from that night’s incident as a seven or eight out of ten, with ten being the highest level of pain. *Id.* at 39.

[5] On April 23, 2020, Tiffany woke up around eight or nine in the morning, went to visit her children who lived at a different address, and returned home at around 3:00 p.m. *Id.* Approximately five minutes later, Tiffany went upstairs to her and Smith’s bedroom, and she told Smith that she wanted a divorce. *Id.* Smith was “[n]ot very happy” but said that he would take his things and leave, and Tiffany then went downstairs to the kitchen to make coffee. *Id.* at 40. Smith went downstairs and began arguing with her about why she wanted a

divorce and shoved Tiffany against the kitchen sink. *Id.* Tiffany shoved Smith away and went outside and began to walk away when she saw Fields pulling up in his car. *Id.* Tiffany spoke briefly with Fields, returned to the house, and removed Smith’s possessions that were in her car. *Id.*; *Ex. Vol. III* at 9. Tiffany also gave Smith his wallet and her wedding ring. *Tr. Vol. II* at 40. As Tiffany began to leave, Smith punched the back window of Tiffany’s car. *Id.* Tiffany decided that if Smith would not pack and leave as he had promised, then she would do so, and she went to enter the house to pack her belongings and leave. *Id.* at 41.

[6] When Tiffany went to enter the house to pack her belongings, Smith began to argue with her at the front door. *Id.* at 41, 78-80, 105. During the argument, which turned physical, Smith grabbed Tiffany, using her “as a battering ram,” and repeatedly hit Tiffany’s head against the doorframe of the front door. *Id.* at 41. Fields saw Smith hit Tiffany’s head against the door from his car parked nearby, where he and Christopher were talking. *Id.* at 105. Erica also observed Smith hit Tiffany’s head against the doorframe from inside the house and saw Smith “on top of [Tiffany] . . . hitting her . . . and kicking her in the ribs.” *Id.* at 80. During the attack, Tiffany’s left eye “started to go black,” and she saw “stars” and “little red dots” when Smith hit her head against the doorframe. *Id.* at 41-42, 49.

[7] After hitting Tiffany’s head against the doorframe, Smith shoved Tiffany into the house, and she fell against a dog cage. *Id.* at 41, 105. Erica, who was pregnant and in the living room, came over to the entryway and told Smith to

stop; Smith responded by lunging at Erica, but Tiffany grabbed the pocket of Smith's hoodie to prevent him from reaching Erica. *Id.* at 41-42. Smith responded by kicking Tiffany twice in the face and once on the left side of her ribs. *Id.* Smith also "repeatedly" told Tiffany that he was going to kill her before they would divorce. *Id.* at 42. When Tiffany grabbed Smith's hoodie, two phones fell out of Smith's pocket, and Tiffany picked up one of the phones that had fallen and told Smith "the cops [were] on their way and he left." *Id.* Tiffany then called 911. *Id.*

[8] Huntington police officers later found Smith a short distance away from the home and took him to the Huntington Police Annex. *Id.* at 117-18. Huntington City Police Department Patrolman Jordan Corral ("Officer Corral") also responded to dispatch and arrived at the house. *Id.* at 124-25. When he arrived, Officer Corral first spoke with Tiffany to see if she needed emergency medical attention and then began taking preliminary statements as another officer took photographs of the house and of Tiffany's injuries. *Id.* at 125-26. Officer Corral observed that Tiffany had scrapes and a bruise beginning to form on her left jawline. *Id.* at 126; *Ex. Vol. III* at 6. There was a lump beginning to form behind Tiffany's ear and areas where there were scratches and redness underneath her left cheekbone. *Tr. Vol. II* at 126-27; *Ex. Vol. III* at 6-7. Tiffany also had scrapes or rug burns on her knee, and she complained of lumps on her head and above her hairline. *Tr. Vol. II* at 127; *Ex. Vol. III* at 8. As a result of Smith's attack on Tiffany, the doorframe to the front door of the house was dented and a piece of the siding was loose. *Tr. Vol. II* at 45-46; *Ex.*

Vol. III at 5. Tiffany did not go to the hospital following the attack and described the pain to her head and neck from the attack as an eight or nine out of ten. *Tr. Vol. II* at 43, 48-49. In the week after the incident, she described the effects of the attack as follows:

[M]y head and my neck [were] throbbing. Um, I had massive migraines. I kept seeing stars. Um, I would throw up here and there and a lot of that is from moving my neck and too quickly. I would see the stars and that would cause me to puke.

Id. at 49.

[9] On April 24, 2020, the State charged Smith as follows: (1) Count I, Level 5 felony domestic battery resulting in serious bodily injury; (2) Count II, Level 6 felony domestic battery with a prior conviction; (3) Count III, Level 6 felony domestic battery resulting in moderate bodily injury; and (4) Count IV, strangulation as a Level 6 felony. *Appellant's App. Vol. 2* at 19-22. The State also filed an information alleging that Smith was an habitual offender. *Id.* at 23. The trial court held a two-day jury trial on October 20-21, 2020, in which the jury found Smith guilty of Counts II and III and acquitted him of the remaining charges. *Id.* at 13; *Tr. Vol. II* at 190-91. Smith also admitted to being an habitual offender. *Tr. Vol. II* at 193-200. On November 2, 2020, the trial court merged Count II with Count III due to double jeopardy concerns, sentencing Smith only on Count III to two and one-half years with one and one-half years suspended to probation and an additional five years executed on the habitual

offender enhancement for an aggregate sentence of seven and one-half years. *Id.* at 211; *Appellant's App. Vol. 2* at 14-15, 126-27, 130-31. Smith now appeals.

Discussion and Decision

[10] Smith argues that the State's evidence was insufficient to prove that Tiffany suffered moderate bodily injury. When reviewing a claim of insufficient evidence to sustain a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. *Jackson v. State*, 50 N.E.3d 767, 770 (Ind. 2016). It is the fact-finder's role, not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, 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, 147 (Ind. 2007).

[11] To convict Smith of Level 6 felony domestic battery resulting in moderate bodily injury, the State was required to prove that Smith knowingly or intentionally touched Tiffany, a family or household member,³ in a rude, insolent, or angry manner and that Tiffany suffered moderate bodily injury as a result. *See* Ind. Code § 35-42-2-1.3(a); Ind. Code § 35-42-2-1.3(b)(3).

³ Family or household member is also a defined term. *See* Ind. Code § 35-31.5-2-128.

“Moderate bodily injury” is defined as “any impairment of physical condition that includes substantial pain.” Ind. Code § 35-31.5-2-204.5. Smith does not argue that the State failed to meet its evidentiary burden as to whether he knowingly or intentionally touched Tiffany, a family or household member, in a rude, insolent, or angry manner, and challenges only whether the State’s evidence was sufficient to prove by beyond a reasonable that Tiffany suffered moderate bodily injury.

[12] Smith argues that moderate bodily injury is a “subjective term and is dependent upon how the alleged victim would describe her pain level, but leaves the jury to interpret the difference in pain levels.” *Appellant’s Br.* at 10. He contends that:

Tiffany’s testimony that she experienced pain to the level of an 8 on a scale of 10 was sufficient to support a finding of “bodily injury” because this only requires some form of pain, her testimony did not provide enough information to prove beyond a reasonable doubt that she experienced the “substantial pain” required to support a finding of “moderate bodily injury” as charged.

Id. at 11. He requests that because the State failed to prove that Tiffany’s pain met the threshold for moderate bodily injury that we should reduce his conviction to a Class A misdemeanor and reverse his habitual offender adjudication.

[13] Indiana Code section 35-42-2-1.3, which defines the crime of domestic battery, establishes that the basic level of the offense is a Class A Misdemeanor. *See*

Ind. Code § 35-42-2-1.3(a). The base, Class A misdemeanor form of the offense requires, in the case of subsection (a)(1), only a touch of a family or household member and, in the case of subsection (a)(2), the placement of any bodily fluid or waste on a family or household member. Ind. Code § 35-42-2-1.3(a)(1)-(2). As relevant here, Smith was charged with and convicted of an elevated form of the offense – Level 6 felony domestic battery resulting in moderate bodily injury to Tiffany. In contrast to moderate bodily injury, “serious bodily injury” – required for further elevation of a domestic battery offense – is defined as bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus.” Ind. Code § 35-31.5-2-292. In turn, “bodily injury” is defined as “any impairment of physical condition, including physical pain.” Ind. Code § 35-31.5-2-29.

[14] To show bodily injury the Indiana Supreme Court has explained that no particular level of pain is required to rise to the level of impairment of physical condition; rather, physical pain is an impairment of physical condition. *Bailey v. State*, 979 N.E.2d 133, 138 (Ind. 2012). Thus, “any degree of physical pain may constitute a bodily injury” *Id.* at 142. Serious bodily injury is “reserved for [] extreme conduct” while “any degree of physical pain may constitute a bodily injury” *Id.* at 140, 142. *See also Toney v. State*, 961 N.E.2d 57, 60 (Ind. Ct. App. 2012) (describing the threshold for showing serious bodily injury as “rather high”). Our Supreme Court has also

acknowledged that “there is no bright-line test to distinguish between pain and extreme pain—between bodily injury and serious bodily injury.” *Bailey*, 979 N.E.2d at 142, n.17 (citations omitted).

[15] As to moderate bodily injury, neither party directs us to a case in which we have directly addressed the sufficiency of the evidence required to prove moderate bodily injury for purposes of a charge of Level 6 felony battery, and our own research uncovered none. While not dispositive of the sufficiency of the evidence issue in this case, in *Garner v. State*, we affirmed the trial court’s determination on a charge of battery resulting in moderate bodily injury that a jury instruction on the lesser-included offense of battery with bodily injury was not merited where the victim’s injuries would have justified an instruction on serious bodily injury. 59 N.E.3d 355, 358-59 (Ind. Ct. App. 2016). In *Garner*, the injuries included stitches on the victim’s lip and a small fracture to the nose, and the victim described the resulting pain from the attack as a ten on a scale of one to ten. *Id.* at 358.

[16] Viewing the evidence from the events of April 23, 2020 most favorably to the verdict, the evidence showed that Smith hit Tiffany’s head multiple times against the doorframe of the front door, threw her through the front door, and kicked Tiffany in the face and ribs. *Tr. Vol. II* at 41-43, 80, 105. The State also presented evidence that, following the attack, the doorframe to the front door of the house was dented and a piece of the siding was loose as a result of Smith’s hitting Tiffany’s head against it, and that Tiffany had a lump behind her ear, scratches and redness on her cheek, and a bruise along her jawline. *Id.* at 45-46,

126-27; *Ex. Vol. III* at 5-8. As a result of the attack, Tiffany also suffered scratches or rug burns on her knee, complained of bruising and pain to her hip, ribs, and the back of her head. *Tr. Vol. II* at 41-42, 126-27; *Ex. Vol. III* at 6-8 . In addition, in the week following the incident, Tiffany testified that the pain in her head and neck was “throbbing,” that she had “massive migraines,” and could not move her neck too quickly or she would “see stars” and vomit. *Tr. Vol. II* at 49. She also testified at trial that the pain she experienced in her head and neck was an eight or nine on a scale one to ten. *Id.* at 43.

[17] With respect to a victim’s pain tolerance in a prosecution for domestic battery, our Supreme Court has repeated the “long-standing rule of both criminal and tort law” that “a defendant takes his victim as he finds [her].” *Bailey*, 979 N.E.2d at 142 (citations omitted). We have also explained that evaluating a degree of pain is a concept that jurors can understand. *See Vaillancourt v. State*, 695 N.E.2d 606, 608, 610 (Ind. Ct. App. 1998) (holding that the term “extreme pain” in the statutory definition of serious bodily injury is one that jurors of “average intelligence” can understand), *trans. denied*. Indeed, we entrust to the jury the task of applying its “experiences in life” and “common sense” as it “takes into account all of the facts and circumstances” in a given case. *McAlpin v. State*, 80 N.E.3d 157, 163 (Ind. 2017) (internal quotations and brackets omitted).

[18] While there may be no bright line to differentiate levels of pain, the State’s evidence demonstrated that Tiffany’s pain was above the threshold to show bodily injury. *See Bailey*, 979 N.E.2d at 138, 142, n.17. As discussed above, the

State presented evidence that Tiffany described her pain at around an eight or nine out of ten after the attack, that she saw stars and little red dots as the attack was happening, and that, in the week following the attack, her physical condition was impaired because she suffered from “massive migraines,” could not move her neck quickly without pain or vomiting, and continued to see stars. *Tr. Vol. II* at 43, 48-49; *Ex. Vol. III* at 5-8. See *Buckner v. State*, 857 N.E.2d 1011, 1018 (Ind. Ct. App. 2006) (concluding the evidence was sufficient to support a finding that the defendant had caused his victim serious bodily injury where the evidence showed the defendant had “repeatedly struck [his victim] with his hands and fists, causing her severe pain and leaving marks on her body” and affirming defendant’s conviction for Class C felony battery). The evidence presented was sufficient to show that the result of Smith’s attack on Tiffany was an “impairment of physical condition that include[d] substantial pain.” Ind. Code § 35-31.5-2-204.5.

[19] Smith’s argument is an invitation to reweigh Tiffany’s testimony as to the level of pain that she experienced and to judge witness credibility in violation of our standard review. See *Bailey*, 979 N.E.2d at 143 (declining to reweigh the evidence and judge witness credibility that the defendant’s actions of shoving and repeatedly poking the victim on her forehead with his finger caused physical pain sufficient to show bodily injury and affirming defendant’s conviction for Class D felony domestic battery). We conclude that the State presented sufficient evidence of probative value from which a reasonable jury could find beyond a reasonable doubt that Tiffany suffered an impairment of

physical condition that included substantial pain amounting to moderate bodily injury. The State's evidence was sufficient to support Smith's conviction for Level 6 felony domestic battery resulting in moderate bodily injury.

[20] Affirmed.

Altice, J., and Weissmann, J., concur.

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