MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Leonard Varcadipane,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 22, 2022

Court of Appeals Case No. 22A-CR-1035

Appeal from the La Porte Superior Court

The Honorable Richard R. Stalbrink, Jr., Judge

Trial Court Cause No. 46D02-1910-F3-1399

Weissmann, Judge.

[1] To settle a prison debt, Leonard Varcadipane threw a mystery liquid at a correctional officer's face. The liquid caused the officer burns, blisters, and eyesight problems. Varcadipane was tried and convicted of aggravated battery. On appeal, he argues that the State failed to prove the officer's injuries justified an aggravated battery conviction. We disagree and affirm.

Facts

[2] Izonia Chism, Jr., worked as a correctional officer at the Indiana State Prison. His duties include overseeing a block of prisoners that included Varcadipane. One night, near the end of his shift, Officer Chism heard an inmate behind him say his name. As Officer Chism turned around, the inmate threw a hot liquid at his face and ran away. The liquid splashed onto Officer Chism's face and neck and then landed on his right forearm when he tried to wipe it off.

[3] Although the liquid first felt only warm, it quickly transformed into a burning sensation. Immediately, with his face beginning to swell and his vision fading, Officer Chism was rushed to a prison medical services unit. He later received further treatment at a local hospital for the burns and blisters that rapidly developed. The blisters took between two weeks and a month to heal and, along with the burn marks, left behind visible scarring. Tr. Vol. II, p. 28; Exs. 1-8. Officer Chism still suffers from vision problems, which multiple doctor's visits have been unable to fix. *Id.* at 19-20.

[4] Prison officials quickly detained Varcadipane as a suspect in the attack. In an interview with the prison's investigator, Varcadipane admitted that he threw the

liquid and specifically targeted Officer Chism. When asked to identify the mystery liquid, Varcadipane maintained it was only water and honey. He denied mixing in bleach or other chemicals but suggested that black paint on his hands may have made its way into the liquid. Varcadipane stated he threw the liquid at Officer Chism to settle a debt owed to another inmate, though prison investigators never identified any accomplices.

[5] The State charged Varcadipane with aggravated battery, a Level 3 felony. After finding Varcadipane guilty in a bench trial, the trial court sentenced him to nine years imprisonment, with the last three years suspended to probation.

Analysis & Discussion

[6] On appeal, Varcadipane contends the State failed to prove the elements of aggravated battery beyond a reasonable doubt. The relevant elements of aggravated battery are straightforward. The State must prove that the defendant "knowingly or intentionally inflict[ed] injury on a person that create[d] a substantial risk of death or causes: (1) serious permanent disfigurement; [or] (2) protracted loss or impairment of the function of a bodily member or organ." Ind. Code § 35-42-2-1.5. Varcadipane concedes he acted knowingly and intentionally. And the State makes no argument on appeal that Officer Chism ever faced a substantial risk of death. Thus, Varcadipane must show the State failed to prove that Officer Chism suffered either serious permanent disfigurement or the protracted loss or impairment of a bodily organ.

[7] The standard of review for sufficiency of the evidence claims is well settled. "When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility." *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). And "[w]e will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt." *Bailey*, 907 N.E.2d at 1005.

Serious Permanent Disfigurement

[8] Sufficient evidence shows that Officer Chism suffered serious permanent disfigurement. Although the legislature has never supplied a definition of the term, this Court has long defined a serious permanent disfigurement as an injury that "continu[es] or endur[es]" so that it "mar[s] or deface[s] the appearance or physical characteristics of a person." *James v. State*, 755 N.E.2d 226, 230 (Ind. Ct. App. 2001). "The degree of injury is a question" for the factfinder. *Gebhart v. State*, 525 N.E.2d 603, 604 (Ind. 1988).

[9] At Varcadipane's bench trial, Officer Chism testified that the mystery liquid created burn marks and blisters on his face, neck, and forearm. Though the blisters healed in about a month, the burn marks and scars left behind were still visible. The trial court judge personally viewed them at trial.

[10] Varcadipane tries to paint Officer Chism's injuries as being less than a "serious permanent disfigurement," directing us to a case in which an aggravated assault victim suffered from a scar on his face "approximately twelve inches long and almost one inch deep." *Cornelius v. State*, 988 N.E.2d 280, 283 (Ind. Ct. App. 2013). All serious permanent disfigurement cases need not be similarly gruesome. Indeed, the opposite is often true. *See, e.g.*, *Jones v. State*, 159 N.E.3d 55, 63 (Ind. Ct. App. 2020) (third-degree burns from hot water thrown on victim held to be serious permanent disfigurement); *James*, 755 N.E.2d at 229-30 (loss of several teeth and "large hole in his gum line" held to be serious permanent disfigurement).

[11] Varcadipane's claim that Officer Chism's injuries do not qualify as a serious permanent disfigurement is simply a request to reweigh the evidence which we will not do. *Drane v. State*, 867 N.E.2d 144, 146-48 (Ind. 2007).

Protracted Loss or Impairment

[12] Sufficient evidence also shows that Officer Chism suffered protracted loss or impairment. Officer Chism still suffers from vision problems. Varcadipane does not dispute the extent of these injuries or symptoms themselves or even that they qualify as a protracted loss or impairment. Rather, he argues "the State presented no evidence proving beyond a reasonable doubt that those issues were *caused* by Varcadipane's action of throwing the unknown liquid onto Chism." Appellant's Br., p. 16. We disagree and find that the evidence—viewed in the light most favorable to upholding the verdict—establishes causation.

[13] Like "serious permanent disfigurement," the phrase "protracted loss or impairment" does not have a statutory definition. But we have long recognized that the "plain meaning" of the phrase is a "prolonged . . . state of being damaged, weakened, or diminished." *Fleming v. State*, 833 N.E.2d 84, 89 (Ind. Ct. App. 2005) (citing *Neville v. State*, 802 N.E.2d 516, 518 (Ind. Ct. App. 2004)). Expert medical testimony is not required when the factfinder can "reasonably infer" that the battery caused protracted loss or impairment of a bodily member or organ. *Id.* at 90.

[14] At trial, Officer Chism testified that his eyesight has been weakened from the assault. He continues to suffer from blurry vision, "extreme" dryness in his eyes, and has trouble focusing on faraway objects. Tr. Vol. II, pp. 19-20. And medical experts have been unable to alleviate his symptoms or estimate when they might abate. *Id.* at 20, 42. This is sufficient evidence to support the trial court's verdict. Indeed, similar injuries, and even some less serious, have qualified as a protracted loss or impairment. *See, e.g.*, *Grundy v. State*, 38 N.E.3d 675, 683 (Ind. Ct. App. 2015) (numbness, headaches, neck pain, degraded vision in one eye, and loss of sleep qualifies as protracted loss or impairment); *Smith v. State*, 881 N.E.2d 1040, 1045-46 (Ind. Ct. App. 2008) (tooth loss with ongoing nerve damage qualifies as protracted loss or impairment); *Fleming*, 833 N.E.2d at 90 (losing "half" of one's sense of smell and general congestion is a protracted loss or impairment).

[15] Varcadipane does not directly contest that Officer Chism has decreased vision. Rather, he argues that Officer Chism's vision impairment is a "subjective"

injury, the cause of which may not be traced to the assault absent expert medical testimony.[1] Appellant's Br., pp. 16-17. Without weighing in on whether Officer Chism's injury is subjective or objective, we find as a threshold matter that Varcadipane misstates the law by saying "when an injury is subjective in nature, expert medical testimony is *required* to prove causation." Appellant's Reply Br., p. 7.

[16] Expert medical testimony is typically required only when the causal connection between the act and the resulting injury is a "complicated medical question." *Topp v. Leffers*, 838 N.E.2d 1027, 1033 (Ind. Ct. App. 2008*)* (citing *Daub v. Daub*, 629 N.E.2d 873, 877-78 (Ind. Ct. App. 1994)). Here, and in many aggravated assault cases, the causal connection is straightforward. Varcadipane threw a mystery liquid at Officer Chism's face. Officer Chism's eyesight then quickly began to worsen. It does not take expert testimony to prove Varcadipane caused Chism's injuries. *See Wilcher v. State*, 771 N.E.2d 113, 117 (Ind. Ct. App. 2002) (holding expert witness testimony is unnecessary in an aggravated assault case when "common knowledge bears out the conclusion").

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[1] Subjective injuries are injuries "perceived or experienced by a patient and reported to the patient's doctor but not directly observable by the doctor." *Topp v. Leffers*, 838 N.E.2d 1027, 1033 (Ind. Ct. App. 2008). In contrast, objective injuries can be directly observed by medical personnel. *Id.* at 1022. This distinction often arises in negligence or personal injury cases. *See Daub v. Daub*, 629 N.E.2d 873, 876-78 (Ind. Ct. App. 1994) (discussing whether expert medical testimony was required for proof of a subjective injury in a slip-and-fall negligence case).

[17] Sufficient evidence convicted Varcadipane of aggravated assault. We affirm the trial court's judgment.

May, J., and Crone, J., concur.