



Gregory C. Holmes appeals his conviction of Domestic Battery,<sup>1</sup> a class D felony.

Holmes presents the following restated issues for review:

1. Was the evidence sufficient to support the conviction?
2. Was the sentence appropriate in light of Holmes's character and the nature of his offense?

We affirm.

The facts favorable to the conviction are that prior to January, 2008, Holmes had lived with Christina Jackson and her two children in her home for approximately six months. In the early morning hours of January 11, 2008, Jackson placed a 911 call from a pay phone to the Fort Wayne Police Department to report that Holmes, who had moved out of the house approximately two weeks before, had kicked in the door of her house and choked her in front of her two children. While speaking to the 911 operator, Jackson identified her attacker as both "my ex-boyfriend" and "Greg Holmes". Audio tape: 911 call, State's Exhibit 1, *Exhibit Volume*. Officers arrived on the scene a short time later and observed muddy footprints outside near the front door, a muddy footprint on the front door of Jackson's home and damage to the doorplate. Upon entering, the officers observed that Jackson was "very distraught ... crying, almost hysterical". *Transcript* at 118. Jackson had "lots of abrasion type redness marks to her throat, chest area, and some swelling to her lip." *Id.* at 116. According to an officer on the scene, these injuries looked "very fresh." *Id.* They observed muddy footprints in the house leading straight from the front door to Jackson's bedroom.

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<sup>1</sup> Ind. Code Ann. § 35-42-2-1.3 (West, PREMISE through 2008 2nd Regular Sess.).

After a brief investigation, police called Holmes's residence and asked to speak with him about the incident. Holmes called Detective Christopher McCarty and stated that he did not wish to make a statement. McCarty could hear Jackson's voice in the background during Holmes's call and Holmes confirmed that Jackson was present in his residence. According to Detective McCarty, Holmes told McCarty that Jackson was with him "and told him the charges were still being filed – even though she didn't want anything to be done." *Id.* at 149. Ultimately, Holmes denied any involvement in the attack upon Jackson. At a subsequent deposition, Jackson changed her story and claimed that an unknown white woman kicked in her door, went to Jackson's bedroom, and started fighting with Jackson. Jackson claimed she "kind of figured it had something to do with Greg", but claimed not to know who the woman was or what caused her to attack Jackson. *Id.* at 80.

Holmes was arrested and charged with domestic battery as a class D felony. He was convicted as charged following a jury trial.

- 1.

Holmes contends the evidence was not sufficient to support the conviction. Our standard of review for challenges to the sufficiency of evidence is well settled.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id.* at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

*Gleaves v. State*, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

Holmes claims there was not sufficient evidence to identify him as the person who attacked Jackson. In support of this claim, Holmes notes that the only eyewitnesses to the attack, Jackson and her two sons, testified that the attacker was an unknown white woman, and that Holmes was not present at the time of the attack. Of course, this contradicted at least Jackson's account of the attack on the night it occurred.<sup>2</sup> We note, however, that the tape of the 911 call was placed into evidence without objection and thus properly considered by the jury. On that tape, Jackson identified Holmes by name and her relationship with him as her attacker. Also, Jackson acknowledged during her testimony that she told police officers on the scene that Holmes was the person who attacked her. It would seem that Holmes is arguing that in the face of Jackson's recantation, there is no evidence implicating him. This assumes that Jackson's previous statements cannot be used against him. Such is not the case.

It is for the jury to decide which witnesses are telling the truth, and when. In this case, the jury was fully apprised of Jackson's initial explanation of what happened and of her later recantation and explanation therefore. The physical evidence found at the scene corroborated her initial account. Namely, (1) Jackson's front door was broken in and there was a muddy footprint on the door; (2) those same muddy footprints led straight from the front door to Jackson's room, and (3) marks on Jackson's face and neck were consistent with the account

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<sup>2</sup> We say "at least" because Jackson's sons apparently implicated Holmes while talking to police shortly after the incident. At trial, however, neither child would implicate Holmes, and one even claimed not to know who Holmes was.

she gave of the physical assault. It was within the jury's province to credit her properly admitted, original account of what had occurred and to discount the recantation and alternate explanation. *See, c.f., Cox v. State*, 774 N.E.2d 1025 (Ind. Ct. App. 2002) (the court convicted the defendant of domestic battery notwithstanding the defendant's denial of involvement and the fact the victim, who originally implicated the defendant, refused to testify at trial). The evidence was sufficient to support the conviction.

2.

Holmes contends the three-year sentence, the maximum sentence for a class D felony, was inappropriate in light of his character and the nature of his offense. We have the constitutional authority to revise a sentence if, after considering the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Holmes bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

We note that Holmes devotes one paragraph to this issue in his appellate brief. Those five sentences note: (1) his criminal history (including the fact that the last conviction before the instant one occurred in 1998), (2) the mitigating factor found by the trial court (i.e., his imprisonment would be a hardship on Jackson and her two children), (3) he was employed at

the time of sentencing, and (4) Jackson's testimony that she does not wish Holmes to be incarcerated. In this section, Jackson does not include a single citation to authority, much less provide independent analysis in support of his claim based on that authority. The claim is thus waived. *Dunlop v. State*, 724 N.E.2d 592 (Ind. 2000).

Even were it not waived, we perceive no basis upon which to adjust the sentence. Holmes kicked in the door of his ex-girlfriend's home while she and her children were still sleeping and, with her children present, choked her. The record reveals that Holmes has a history of violent behavior. Holmes acknowledges that his lengthy criminal history includes seven adjudications of juvenile delinquency, five misdemeanor convictions, and two felony convictions. His ongoing propensity for violent behavior is reflected not only in the length of his criminal record, but also in the fact that his probation from a reckless homicide conviction was revoked for a weapons offense, as well as the fact that he was arrested for a separate offense after he was arrested for the instant offense. Perhaps most illustrative of his inability to control his anger was his reaction to the pronouncement of the three-year sentence, as reflected in the following:

**MR. HOLMES:** Your Honor, I'm going to say this, man. A lot of people tell us not to judge people, you know what I'm saying, not to do this or not to do that; but when the white people killed all them black people back then, you all – I mean, it was hard for me to get a job, and I'm going to tell you something. When I do get out, man, I ain't going to (inaudible) the three I'm going to do, but fuck you Tasha,<sup>[3]</sup> and fuck you bitches, you see what I'm saying?

**[DEFENSE COUNSEL]:** Greg. Greg.

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<sup>3</sup> "Tasha" refers to the deputy prosecutor in his case, who was in attendance at the sentencing hearing.

**UNIDENTIFIED WOMAN IN THE AUDIENCE:** G.G.

**MR. HOLMES:** Suck my dick.

**[DEFENSE COUNSEL]:** Greg.

**SAME UNIDENTIFIED WOMAN:** GG.

**[DEFENSE COUNSEL]:** Greg.

**BAILIFF:** (inaudible)

**MR. HOLMES:** Yeah.

**THE COURT:** I guess that's pretty indicative --

**MR. HOLMES:** I ain't doing three.

**UNIDENTIFIED WOMAN:** (inaudible)

**THE COURT:** -- of the violence that they have to be afraid of with Mr. --

**MR. HOLMES:** No. That's foolish shit, man.

*Sentencing Transcript* at 14-15 (footnote supplied). In view of the unprovoked nature of his attack upon Jackson, which began when he kicked in her door and was perpetrated in front of her children, and in view of his inability or unwillingness to restrain his violent tendencies, as reflected in his criminal history and his behavior at sentencing, we conclude that the three-year sentence was appropriate.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.