



## **Case Summary**

Kemper Harris appeals his convictions for three counts of Class D felony battery. We affirm.

### **Issue**

The sole issue before us is whether there is sufficient evidence to support Harris's convictions.

### **Facts**

On March 20, 2009, Officer Terry Moore of the Bedford Police Department went to a tavern to investigate a complaint regarding a person refusing to leave the establishment. After finding that the person had left, Officer Moore and Officer Brian Cartwright obtained a description of the man and went looking for him on foot to check on his welfare. Officers Moore and Cartwright found the man, Harris, behind a building. Harris smelled of alcohol and showed several indicia of intoxication, so Officer Moore arrested him for public intoxication. Harris initially cooperated with being arrested and handcuffed.

Officer Jeremy Crane then arrived to transport Harris to the police station. Harris, however, refused to get in Officer Crane's vehicle. When Officers Moore and Crane attempted to force Harris into the vehicle, Harris kicked Officer Crane in the face. After the officers finally managed to put Harris into the vehicle and close the doors, he kicked out the vehicle's back passenger window. Captain Raquel Turner arrived on the scene,

and she ordered the other officers to remove Harris from the vehicle because he was rolling around in the broken glass. Harris fought with Officers Cartwright and Crane and another officer, Cory Thomas, as they attempted to pull him from the vehicle. During the melee, Officer Cartwright sustained a cut to his arm; Officer Thomas also sustained a cut to his arm; and Officer Crane sustained an abrasion to his eye, blows to his chin, and a hand injury. After being removed from the vehicle, Harris continued to yell loudly and roll about on the ground. After Captain Turner warned Harris several times to calm down, she tazered him and he finally calmed down.

The State charged Harris with three counts of Class D felony battery, one count of Class A misdemeanor resisting law enforcement, one count of Class A misdemeanor criminal mischief, one count of Class B misdemeanor disorderly conduct, and one count of Class B misdemeanor public intoxication. After a jury trial held on June 16, 2009, Harris was found guilty as charged. He now appeals only his three convictions for Class D felony battery.

### **Analysis**

Harris challenges the sufficiency of the evidence supporting his battery convictions. When we review the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). “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.” Id. When confronted with

conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

Harris's sole argument with respect to sufficiency is that the State failed to prove the requisite mens rea for battery, i.e. that he knowingly touched the officers in a rude, insolent, or angry manner. See Ind. Code § 35-42-2-1(a). He specifically contends that he was so intoxicated and "out of control" at the time of the incident that he was incapable of acting knowingly. Appellant's Br. p. 6.

Harris's argument, however, fails to acknowledge that our legislature "has declared that intoxication is not a defense, with two narrow exceptions." Davidson v. State, 849 N.E.2d 591, 594 (Ind. 2006). Specifically, Indiana Code Section 35-41-3-5 states:

It is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the intoxication resulted from the introduction of a substance into his body:

- (1) without his consent; or
- (2) when he did not know that the substance might cause intoxication.

(Emphasis added). Harris presented no evidence and makes no argument that his intoxication on the evening of March 20, 2009, was in any way "involuntary" as defined by this statute.

Our supreme court has explained that this statute “eliminates the requirement that the voluntarily intoxicated defendant acted ‘knowingly’ or ‘intentionally’ as to those crimes that include those elements.” Sanchez v. State, 749 N.E.2d 509, 517 (Ind. 2001). As for the general requirement that a defendant act “voluntarily,” “the legislature has decreed that the intoxication, if voluntary, supplies the general requirement of a voluntary act.” Id. “The statute redefines the requirement of mens rea to include voluntary intoxication, in addition to the traditional mental states, i.e., intentionally, knowingly, and recklessly.” Id. at 520. Thus, Harris’s argument that he was too intoxicated to knowingly batter the officers is precluded by Sanchez and Indiana Code Section 35-41-3-5. Even if we were to assume Harris could not have acted “knowingly” on the night in question, that failure was purely a result of his voluntary intoxication, and as such by law he is criminally responsible for his actions.

### **Conclusion**

There is sufficient evidence to support Harris’s three Class D felony battery convictions. We affirm.

Affirmed.

MATHIAS, J., and BROWN, J., concur.