

Russell Ralston (“Ralston”) was convicted in Marion Superior Court of Class B felony aggravated battery. Ralston appeals his conviction and raises three issues, which we restate as:

- I. Whether Ralston was denied his right to present a complete defense when the trial court refused to admit evidence of the victim’s drug and alcohol use;
- II. Whether the evidence is sufficient to support his conviction; and,
- III. Whether the trial court erred when it ordered Ralston to pay a public defender fee without determining whether Ralston had the ability to pay the fee.

Concluding that Ralston was not denied the right to present a complete defense and his conviction is supported by sufficient evidence, but that the court erred when it ordered Ralston to pay the public defender fee without determining his ability to pay, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Facts and Procedural History

On July 30, 2008, Sherwood Jackson (“Jackson”) was at Kevin Crouch’s (“Crouch”) residence in Indianapolis. Ralston was also present that evening. At some point, Crouch asked Ralston to leave his residence. Jackson, Ralston, and Kelly Andrews left Crouch’s residence in Jackson’s vehicle. Jackson agreed to take Ralston to his home, which was nearby.

When they arrived at Ralston’s residence, Jackson and Ralston began arguing. Both men got out of Jackson’s vehicle and the confrontation escalated. Ralston punched Jackson five times, and Jackson fell to the ground after the last punch. Ex. Vol., State’s

Ex. 21, pp. 6-7. Ralston then ran back to Crouch's residence, and he appeared to be panicked and in shock.

Indianapolis Metropolitan Police Officer Jeffery Scott was dispatched to Ralston's residence shortly after 1:30 a.m. on July 31, 2008. The officer found Jackson unresponsive and bleeding. Jackson was diagnosed with a broken nose, a "blown-out" eye socket, and extensive bleeding on his brain, all of which were caused by blunt force trauma. Jackson's brain injuries have caused him to remain in a persistent vegetative state.

On January 5, 2009, Ralston was charged with Class A felony attempted murder and Class B felony aggravated battery. A jury trial commenced on August 24, 2009. The jury acquitted Ralston of the charge of attempted murder, but found him guilty of aggravated battery. Ralston was ordered to serve a fifteen-year sentence for his Class B felony aggravated battery conviction. Ralston now appeals. Additional facts will be provided as needed.

I. Ralston's Defense

Ralston presented two defense theories at trial. Ralston argued that either Crouch also battered Jackson ultimately causing his injuries and/or that Ralston acted in self-defense when he repeatedly punched Jackson. Our court has observed that "[w]hether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Allen v. State, 813 N.E.2d 349, 361 (Ind. Ct. App. 2004), trans. denied

(quoting Kubsch v. State, 784 N.E.2d 905, 924-25 (Ind. 2003) (quoting Crane v. Kentucky, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986))). Ralston argues that

trial counsel was prevented from establishing a complete defense on Ralston's behalf when counsel was denied the opportunity to elicit testimony from the victim's treating physician that the victim tested positive for cocaine and was above the legal limit for alcohol when the victim arrived at the hospital.

Appellant's Br. at 9-10.

At trial, Ralston made an offer to prove that Jackson had cocaine in his system. Ralston also attempted to elicit testimony from Jackson's trauma surgeon that cocaine causes a person to act aggressively. However, the physician testified that it "is hard to predict on how it will affect a patient given their own personality" and it depends on the amount and the rate at which the patient ingested the drug. Tr. p. 147. Ralston also asked whether ingesting cocaine and alcohol could cause someone to be aggressive. The doctor responded, "[t]here is a spectrum of affects that range from relatively whatever the baseline personality is, to being more aggressive." Tr. pp. 148-49. Ralston asserts that if the jury had been allowed to consider the doctor's testimony "it would have seen Ralston's claim of self-defense in an entirely different light." Appellant's Br. at 12.

Contrary to Ralston's claims, the physician's testimony would have established only that it is *possible* that someone under the influence of alcohol and cocaine would act aggressively. Furthermore, the jury heard evidence that Jackson had consumed alcohol at

Crouch's house, and that individuals at the house were using crack cocaine. Tr. pp. 276, 280.

Ralston's own statement to the police was the only evidence presented to establish what occurred between Ralston and Jackson that led to Jackson's debilitating injuries. Ralston stated that Jackson was the initial aggressor during their argument, and Jackson attempted to hit Ralston first. Ralston then admitted to punching Jackson five times until Jackson fell to the ground. Ex. Vol., State's Ex. 21, p. 6.

Ralston has not established how the evidence of Jackson's cocaine and alcohol use raises anything more than speculation that Jackson may have acted aggressively towards Ralston. Finally, the jury heard and weighed Ralston's evidence that Jackson was the initial aggressor during their argument. For these reasons, we cannot conclude that Ralston was not able to present a complete defense when the trial court refused to allow the physician's testimony concerning the speculative effect of Jackson's cocaine and alcohol use.

II. Sufficient Evidence

Ralston argues that the evidence is insufficient to sustain his conviction for Class B felony aggravated battery. When we consider a challenge to the sufficiency of evidence to support a conviction, we respect the jury's exclusive province to weigh the 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 conviction, 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)).

To convict Ralston of Class B felony aggravated battery, the State was required to prove that Ralston knowingly or intentionally inflicted injury on Jackson that created a substantial risk of death. See Ind. Code § 35-42-2-1.5; Appellant’s App. pp. 26-27.

Ralston claims the evidence is insufficient to support his conviction because “Crouch had both the motive and the opportunity to attack and injure the victim in this case.” Appellant’s Br. at 13. Ralston’s argument is simply an invitation to reweigh the evidence, which we will not do. Further, Ralston admitted to striking Jackson five times until he fell to the ground. As a result, Jackson suffered severe brain injuries, and on the date of trial, Jackson had been in a coma for over a year. This evidence is sufficient to support Ralston’s aggravated battery conviction.

III. Public Defender Fee

Indiana Code section 35-33-7-6 provides that the trial court “shall order” a person convicted of a felony to pay a fee of \$100 “[i]f the court finds that the person is able to pay part of the cost of representation by the assigned counsel[.]” The trial court is required to make an explicit finding that the defendant has the ability to pay the costs of representation before it can order him or her to pay a \$100 public defender fee for a felony action. See Banks v. State, 847 N.E.2d 1050, 1052 (Ind. Ct. App. 2006), trans. denied; May v. State, 810 N.E.2d 741, 745-46 (Ind. Ct. App. 2004).

The State concedes that the trial court made no specific finding concerning Ralston’s ability to pay the public defender fee. Appellee’s Br. at 8. Accordingly, we

reverse the trial court's imposition of the \$100 public defender fee and remand this case to the trial court with instructions to reconsider the \$100 public defender fee in light of the statutory limitations. See Banks, 847 N.E.2d at 1052.

Conclusion

Ralston was not denied the right to present a complete defense and the evidence is sufficient to support his Class B felony aggravated battery conviction. However, we reverse the trial court's imposition of the \$100 public defender fee and remand with instructions to determine whether Ralston has the ability to pay the costs of representation.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

RILEY, J., and BRADFORD, J., concur.