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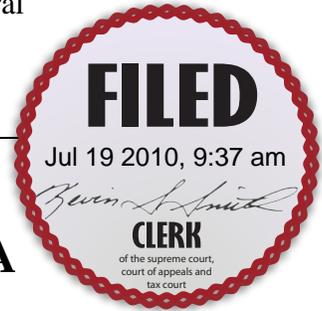
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**IN THE
COURT OF APPEALS OF INDIANA**

REMON DUKE PHILLIPS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 02A04-0912-CR-723

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0904-FD-410

July 19, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Remon Duke Phillips (“Phillips”) was convicted in Allen Superior Court of Class D felony strangulation and Class D felony domestic battery. The trial court sentenced Phillips to two concurrent sentences of three years. Phillips appeals and argues that the evidence was insufficient to support his convictions.

We affirm.

Facts and Procedural History

On April 17, 2009, police officers responded to a 911 call from Valerie Brown. She reported that her daughter, Tonika Brown (“Tonika”), had been involved in a physical altercation with Phillips at Tonika’s residence. One of the officers, Officer Delonzo Myles (“Officer Myles”), arrived and spoke with Tonika who appeared angry and upset. Tr. p. 108. Officer Myles recalled that Tonika had told him that “[m]y boyfriend just beat me up and ran out [sic] the house.” Tr. p. 107. Tonika told Officer Myles she had an argument with Phillips, that she had been head butted by him, and Phillips had thrown an X-Box console that struck her on the head. *Id.* at 109. Tonika then tried to hit Phillips with a toy truck but failed. *Id.* at 110. Phillips threw the toy truck back at Tonika but missed her and struck her ten-year-old son. *Id.* Tonika’s sister, Ronique Brown, told officers that she had seen Phillips with his hands around Tonika’s neck. Tr. p. 83. A knot was visible on Tonika’s head and strangulation marks were visible on her neck. Phillips was not at Tonika’s residence, but was later arrested at his mother’s house. At the time of his arrest, Phillips stated, “I can’t believe she had me arrested.” Tr. p. 116.

The State charged Phillips on April 23, 2009 with Class D felony strangulation and Class D felony domestic battery. After his arrest, Phillips made several calls to Tonika from the Allen County Jail. Phillips asked Tonika to tell the Prosecuting Attorney's office and the victim's assistance agency that she made up her report to police. Phillips told Tonika that there would be no more Supplemental Security Income ("SSI") for her if he was convicted and sentenced. He also stated that he had "head-but[ted]" Tonika during their argument. Ex Vol. State's Exh. 8 and 9.

During the last taped phone call, Phillips threatened to beat Tonika if she did not recant. Shortly thereafter, Tonika told the prosecutor that her report to police was false. The bruise on her head and the marks on her neck were still visible when she gave her new story to a detective.

On July 23, 2009, following a jury trial, Phillips was found guilty as charged. On August 21, 2009, Phillips was sentenced to two concurrent terms of three years. Phillips now appeals.

Discussion and Decision

Phillips argues that the evidence is insufficient to support his convictions for Class D felony strangulation and Class D felony domestic battery, specifically, that Tonika recanted the statement she originally gave to police. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty

beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt, then circumstantial evidence will be sufficient. Id.

A. Strangulation

Indiana code section 35-42-2-9(b) states: “A person who, in a rude, angry, or insolent manner, knowingly or intentionally . . . applies pressure to the throat or neck of another person . . . in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Class D felony.”

Phillips contends that Tonika recanted her statement to police and provided other reasons for her injuries. However, Ronique Brown testified that she saw Phillips with his hands around Tonika’s throat and that she saw her sister’s face turn a different color. Tr. pp. 84-85. The police also saw marks on Tonika’s neck. Although Tonika recanted her earlier statement and testified to another version of events, we do not reweigh the evidence or judge the credibility of the witnesses. Despite Tonika’s recantation, the evidence admitted is sufficient to support Phillips’s conviction for Class D felony strangulation.

B. Domestic Battery

Indiana code section 35-42-2-1.3(a)(3) states: “A person who knowingly or intentionally touches an individual who . . . has a child in common with the other person . . . in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or (3) commits domestic battery, a Class A misdemeanor.” This

offense is a Class D felony “if the person who committed the offense . . . committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.”

Phillips argues that Ronique Brown did not see any battery and that Tonika withdrew her statement and testified that Phillips had not battered her. However, Phillips admitted in taped phone calls to “head butting” Tonika. Ex. Vol. State’s Exh. 8 and 9. When police responded, Tonika told them that Phillips had struck her with his head. Tr. p. 109. The large bruise on Tonika’s head supported this version of events. Additionally, Tonika’s statement indicated that her young son was present during the battery and had been struck by a toy truck thrown by Phillips. Once again, Phillips’s argument asks that we reweigh the evidence and judge the credibility of the witnesses, which we will not do. The evidence supports Phillips conviction for Class D felony domestic battery.

Conclusion

The evidence presented at trial is sufficient to support Phillips’s convictions for Class D felony strangulation and Class D felony domestic battery.

Affirmed.

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