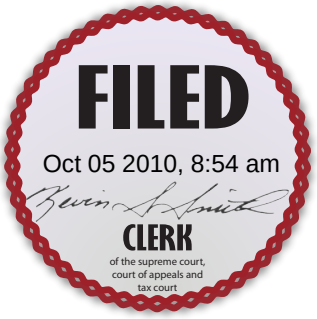

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IN THE COURT OF APPEALS OF INDIANA

DAVID LIKENS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1003-CR-360
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Judge
Cause No. 49G02-0908-FB-76307

October 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

David Likens ("Likens") was convicted after a bench trial of battery,[1] as a Class B felony and sentenced to ten years executed. He appeals raising the following restated issue: whether sufficient evidence was presented to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

Likens and Dina Williams ("Williams") were married on July 30, 2008, and their daughter, S.L., was born on December 3, 2008. On the morning of Saturday, August 8, 2009, Likens put S.L. on the floor in the living room of the couple's townhouse. Jazmine Sanchez, a friend who was temporarily staying with the couple, saw Likens and S.L. from the doorway. S.L. raised her head to look around and then slammed it on the floor and began to cry. Likens yelled at S.L., "Shut up. Be quiet or I'm going to pop you." *Tr*. at 17. S.L. did not stop crying. Likens then sat at the edge of the bed, which was located in the living room, leaned forward, and grabbed S.L. by the ankles. Likens jerked or yanked S.L. toward him and dragged her by her ankles across the floor approximately two or three feet. S.L. began to cry even more. Likens grabbed the baby under the arms and put her in the middle of the bed. Williams entered the room and was mad because S.L. was crying. Williams grabbed S.L. under her arm, picked her up, and put her in a bassinet to feed her a bottle. Williams then went upstairs to get ready to leave.

That evening, Williams and Likens took S.L. to the emergency room because the baby was running a fever, and Williams thought that she may be having a seizure. A doctor saw S.L. at 6:59 p.m. and observed no evidence of seizure activity. The doctor

[1] *See* Ind. Code § 35-42-2-1(a)(4).

noted that S.L. was "awake, alert, appropriate." *Def't's Ex*. B. On the emergency room report, the doctor wrote "negative" with regard to extremities. *Id*. S.L. was discharged with an order to take Tylenol. *Id*.

That night, S.L. cried "on and off every five, ten minutes." *Tr*. at 23. On Sunday morning, Williams noticed that S.L.'s left leg was swollen. The swelling went from her foot almost up to her knee. Several days later, on August 13, 2009, Williams took S.L. to Riley Hospital for Children because the leg was still swollen. On that day, Dr. Tara Harris, a child abuse pediatrician, saw S.L. An x-ray of S.L.'s lower left leg showed that she had a metaphyseal or corner fracture of the left ankle. A corner fracture can be caused by accidental injury, bone disease, or inflicted injury. Through questions to the parents, physical examination, and a series of lab studies, Dr. Harris ruled out an accidental injury or bone disease. She therefore determined that S.L.'s injury was caused by inflicted injury, which occurred on Saturday or Sunday morning.

On August 28, 2009, Likens was charged with battery as a Class B felony. At Likens's bench trial, Dr. Harris testified that there was only one mechanism for a fracture like S.L.'s to occur and that was "a jerking on that extremity." *Id*. at 60. Dr. Harris ruled out the possibility that the fracture happened as the result of a kicking motion or S.L. hitting her foot on a bathtub. *Id*. at 61. The doctor also explained that even though the emergency room doctor had noted "negative" regarding S.L.'s extremities, this did not necessarily mean that her leg had not already been broken. *Id*. at 72-73. She stated this was because doctors in the emergency room often only looked at finger tips and toes to make sure they were "well perfused" and did not check the motion unless the reason for

the visit was an injury to the extremities. *Id*. at 72. Dr. Harris also testified that swelling due to a corner fracture often maximized around twenty-four to forty-eight hours after an injury. *Id*. at 67. The trial court found Likens guilty as charged and sentenced him to ten years executed. Likens now appeals.

DISCUSSION AND DECISION

Our standard of reviewing claims of sufficiency of the evidence is well settled. When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. *Mork v. State*, 912 N.E.2d 408, 411 (Ind. Ct. App. 2009) (citing *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007)). We do not reweigh the evidence or assess witness credibility. *Id*. We consider conflicting evidence most favorably to the trial court's ruling. *Id*. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id*. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id*. In order to convict Likens of battery as a Class B felony, the State was required to prove that he knowingly or intentionally touched S.L. in a rude, insolent, or angry manner, which resulted in serious bodily injury to S.L., who was less than fourteen years of age and that Likens was at least eighteen years of age. Ind. Code § 35-42-2-1(a)(4).

Likens argues that the State failed to present sufficient evidence to support his conviction for Class B felony battery. He specifically contends that there was insufficient evidence on the element of identity to support his conviction because the evidence did not

prove that Likens was the one who injured S.L. He claims that the State could not pinpoint when the injury occurred, and therefore someone else could have inflicted the injury.

The evidence most favorable to Likens's conviction was that S.L. was crying on the morning of Saturday, August 8, 2009, and Likens told her, "Shut up. Be quiet or I'm going to pop you." *Tr*. at 17. S.L. continued to cry, and Likens grabbed her by the ankles and yanked her across the floor about two or three feet toward him. S.L. cried off and on all Saturday night, and on Sunday morning, her left leg was swollen from the ankle almost up to the knee. X-rays taken on August 13 showed she had a corner fracture of the left ankle. Dr. Harris testified that the injury was caused by a jerking motion to that extremity and that swelling from this sort of injury often maximizes around twenty-four to forty-eight hours after the injury occurs. *Id*. at 60, 67. Dr. Harris also stated that, although S.L. was taken to the emergency room on the night of August 8 and the examination did not show a fracture, this did not necessarily mean that the leg had not already been broken. *Id*. at 72-73. We therefore conclude that the State presented sufficient evidence to support Likens's conviction for battery as a Class B felony. Likens's arguments are merely an invitation to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. *Mork*, 912 N.E.2d at 411.

Affirmed.

RILEY, J., and BAILEY, J., concur.