

STATEMENT OF THE CASE

Joshua J. Smedley appeals his conviction for Battery, as a Class C felony, following a bench trial. Smedley presents a single issue for review: whether the evidence is sufficient to support his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

In the early hours of November 2, 2007, Smedley entered the Indianapolis home of Jose and Veronica Cruz and their children. Carrying a tire iron, Smedley went to the couple's bedroom, where Jose and Veronica were sleeping. Smedley struck Jose several times in the face and head, but Jose fought back and attempted to subdue Smedley. When Veronica tried to help her husband, Smedley struck her as well. The struggle continued from the bedroom to the living room, where the Cruzes were finally successful in restraining Smedley. The Cruzes' teenage son then called police.

When police arrived, they found that Jose was bleeding from the mouth and had broken teeth and a lacerated lip. Police interviewed the rest of the Cruz family and determined that Smedley had entered the home without permission. They found pry marks on the outside of an open kitchen window, which had been shut before the Cruzes went to bed. In the kitchen they found the radio from the Cruzes' truck, which was usually parked in the garage, as well as stereo equipment that was usually in the home's basement.

The State charged Smedley with burglary, as a Class A felony; battery, as a Class C felony; attempted theft, as a Class D felony; theft, as a Class D felony; and attempted

auto theft, as a Class D felony. After a bench trial, the court found Smedley guilty on all charges and entered a judgment of conviction on burglary, as a Class A felony, and battery, as a Class C felony.¹ The court sentenced Smedley to twenty years for burglary and two years for battery, to be served concurrently. Smedley now appeals his conviction for battery, as a Class C felony.

DISCUSSION AND DECISION

Smedley contends that the evidence is insufficient to support his conviction for battery, as a Class C felony. When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment 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.

To prove the offense of battery, as a Class C felony, the State was required to show that Smedley, “by means of a deadly weapon, that is: a tire iron, did knowingly touch Jose Cruz in a rude, insolent, or angry manner, that is: struck Jose Cruz in the face with said deadly weapon.” Appellant’s App. at 19. On appeal, Smedley argues that there was “insufficient evidence to show that that battery was done with a tire iron or any other deadly weapon.” Appellant’s Brief at 3. We cannot agree.

¹ The court did not enter a judgment of conviction on the attempted theft, theft, and attempted auto theft counts, concluding that those were lesser included offenses to burglary.

Smedley testified at trial that he had hit Cruz with the tire iron:²

Q [by defense counsel]: And you say you guys struggled?

A: Yeah, we struggled for a while.

Q: Okay. What did you do—how did you—how did you get the tire iron?

A: It was on the couch still. I pushed him off of me, and I ain't got into [sic] shoes on, so I'm sliding on—as I was falling to the floor, it's like this, so I'm just—I just slid off—I pushed him off and grabbed it and ran right back in there.

Q: Okay. So you went back out to the living room area?

A: Yeah.

Q: And then that's—and then grabbed the tire iron that you had left there earlier

A: Yes, sir.

Q: And then do you deny hitting Mr. Cruz with the tire iron?

A: No, I don't. I do not deny anything, not at all. Matter of fact, I'm sorry for hitting him. I didn't know who he was.

Transcript at 80-81. Later, Smedley testified again that he had used the tire iron to hit Cruz:

Q [by the State]: So you were the first one who hit him, right?

A: Pretty much, yeah.

Q: And you hit him a number of times in the face, right?

² Smedley testified at trial that Veronica had invited him to come to the Cruz house, had given him keys to use the Cruzes' truck, and had offered him some stereo equipment. Smedley further testified that he did not know that Veronica was married and, when he came back with the truck keys, was surprised that she was not alone in bed. Smedley stated that the struggle with Jose ensued as a result of that surprise.

A: No. No. No. I hit him at least twice.

Q: At least twice in the face?

A: Grabbed him and I pushed off of him—

Q: Okay.

A: —and then I grabbed the tool and I hit him.

Q: So you—the fight started in the bedroom, right?

A: Yes.

Q: He doesn't hit you, right?

A: (The witness nodded.)

Q: You hit him a couple of times?

A: Uh-huh.

Q: By this point he still hadn't hit you?

A: Huh-uh.

Q: And you have enough time to run into the living room, grab that tire iron, right?

A: I grabbed it and then hit him, yes.

Q: You run out into the living room and grab that tire iron?

A: Yes, it's right here. It's not even like—you're—you're acting like it's way over here. It's just right here.

* * *

Q: You had—you knew the layout of the house by then because you have [sic] free reign, you didn't run out to the garage?

A: Well, yeah. I mean I just came in the house.

Q: So you weren't going to leave?

A: Yeah—I was going to leave eventually, yes.

Q: You were going to fight this man after you got the tire iron?

A: No, I didn't. I grabbed the tire—that's wasn't [sic] what I—I grabbed it because I was going to hit him. . . .

* * *

Q: So you grab—you grab the tire iron?

A: Yeah.

Q: And then you hit him with the tire iron?

A: (The witness nodded.)

Transcript at 98-100. Given Smedley's own testimony, his contention that the evidence is insufficient to show that he hit Cruz with the tire iron is baseless.

Affirmed.

ROBB, J., and MAY, J., concur.