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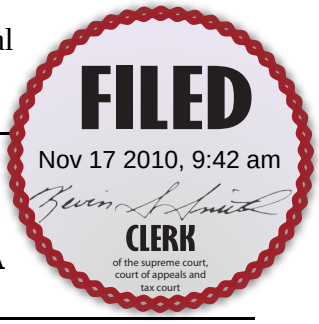

IN THE COURT OF APPEALS OF INDIANA

TRACY TRIMBLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1003-CR-163
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
The Honorable Israel N. Cruz, Master Commissioner
Cause No. 49G16-0909-FD-82837

November 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Tracy Trimble ("Trimble") appeals his convictions for domestic battery as a Class D felony[1] and strangulation as a Class D felony,[2] claiming the evidence was not sufficient to prove that he placed his hands on his wife in a rude, insolent, or angry manner.

We affirm and remand with instructions.

FACTS AND PROCEDURAL HISTORY

Trimble and Melanie Trimble ("Melanie") have been married for more than seven years. In 2004, Melanie underwent brain surgery, and since that time, she suffers from periodic seizures.

In August 2009, Trimble and Melanie lived next door to Adam and Kathy McCarty. On the evening of August 22, 2009, thirteen-year-old R.R., who lived across the street from the Trimbles' residence, was playing with Melanie's ten-year-old daughter, D. At first, the two girls were at R.R.'s home, but after a time, the girls walked over to the Trimbles' residence, where Trimble and Melanie were having drinks with friends, including neighbors Adam and Kathy. After being at the Trimbles' house for a short time, the girls asked and received permission to go next door to the McCartys' home to play video games. At some point while at the McCartys' house, D. saw a man enter or attempt to enter the home, so the two girls ran back to the Trimble household to report the situation to the adults. Trimble and others, including Melanie, left on foot to find the man, who they believed was staying at a home down the street. R.R. and D. stayed at the Trimble home during this time.

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[1] *See* Ind. Code §35-42-2-1.3.

[2] *See* Ind. Code §35-42-2-9.

When Melanie returned, R.R. saw that she was crying. After a time, Trimble came running into the house, cussing and yelling at Melanie, who was sitting on a stool in the kitchen. He put his hands around Melanie's throat, at the front of her lower neck, and choked her. She was gasping for air. He also slapped Melanie and knocked her off the stool. Kathy entered the home and stepped between Trimble and Melanie, and Melanie was able to flee to the McCartys' home. R.R. ran with Melanie to the McCartys' home, where Adam was present and led them to the basement. R.R. observed that Melanie was gasping for air and unable to speak. Melanie's body curled into a ball, and her eyes rolled back in her head. An ambulance arrived and took Melanie to the hospital, where she stayed for at least four days.

The State charged Trimble with: Count I, Class D felony domestic battery; Count II, Class D felony battery; Count III, Class D felony strangulation; Count IV, Class D felony criminal recklessness; Count V, Class A misdemeanor domestic battery; and Count VI, Class A misdemeanor battery. Trimble waived his right to a jury trial. During the bench trial, R.R. testified that she saw Trimble choke and strike Melanie, as described above. Trimble testified that R.R. was mistaken about what she saw that night. He explained that Melanie was suffering a seizure, and he was holding her head and neck in order to help her and prevent her from hitting her head or injuring herself. He denied choking her or slapping her. Melanie likewise testified that Trimble did not choke or hit her and that he was assisting her by holding her head and neck.

The trial court found Trimble not guilty of Count IV, criminal recklessness, but otherwise guilty as charged. The court merged Counts I, II, V, and VI (the battery and

domestic battery charges) into Count I, domestic battery. Trimble now appeals.

DISCUSSION AND DECISION

Trimble claims that the State did not present sufficient evince to support his convictions for domestic battery and strangulation. In order to convict Trimble of Class D felony domestic battery, the State was required to prove that Trimble knowingly or intentionally touched Melanie, his wife, in a rude, insolent, or angry manner that resulted in bodily injury to Melanie, and that he did so while in the physical presence of minor children D. and/or R.R. Ind. Code § 35-42-2-1.3(b). In order to convict Trimble of strangulation, as charged, the State was required to establish that he knowingly or intentionally applied pressure to Melanie's throat or neck or obstructed her nose or mouth in a rude, insolent, or angry manner, and that he impeded her normal breathing or blood circulation. Ind. Code § 35-42-2-9.

In a trial before the bench, the trial court, as the trier of fact, is responsible for weighing the evidence and judging the credibility of witnesses, and we do not interfere with this function on appeal. *Sargent v. State*, 875 N.E.2d 762, 768 (Ind. Ct. App. 2007). When confronted with conflicting evidence, we must consider it "'most favorably to the trial court's ruling.'" *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (quoting *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005)). In reviewing a claim of insufficient evidence, we look only to the evidence most favorable to the judgment and all reasonable inferences that support the judgment. *Winn v. State*, 748 N.E.2d 352, 357 (Ind. 2001). We will affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a

reasonable doubt. *Drane*, 867 N.E.2d at 146; *Winn*, 748 N.E.2d at 357; *Street v. State*, 911 N.E.2d 654, 656 (Ind. Ct. App. 2009), *trans. denied*. The uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *Gleaves v. State*, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

At trial, R.R. testified that Melanie was crying when she returned to the Trimbles' house. According to R.R., Trimble came running into the house shortly thereafter, and he was yelling and cussing at Melanie. R.R. watched Trimble put both hands around Melanie's neck and choke Melanie, so that she was gasping for air. He slapped Melanie and knocked her off the stool where she was sitting. When neighbor Kathy stepped between Trimble and Melanie, Melanie escaped, and R.R. ran with her to the McCartys' house, located next door. R.R. stated that Melanie was still gasping and unable to speak. While at the McCartys' house, Melanie curled into a ball, and her eyes rolled back. R.R. was in the basement with Melanie until the ambulance came and took her to the hospital.

Trimble also testified at trial. He denied that he choked or hit Melanie that night. Trimble explained that R.R., a thirteen-year-old, did not understand what she saw and that he was helping Melanie as she was beginning to fall into a seizure. He said that the seizure at their home was very brief, and then Melanie recovered and walked over to the McCartys' house, where she lapsed into a full-blown seizure.

Mindful of our standard of review, we conclude that the State presented evidence sufficient to support Trimble's convictions. Although R.R. was the only witness who testified that Trimble choked and slapped Melanie, the uncorroborated testimony of one

witness may be sufficient by itself to sustain a conviction on appeal. *Gleaves*, 859 N.E.2d at 769. The trial court found R.R.'s eyewitness testimony more credible than Trimble's or Melanie's, and on appeal, we will not judge witness credibility. *Cox v. State*, 774 N.E.2d 1025, 1028 (Ind. Ct. App. 2002). Insofar as Trimble argues that we should credit his testimony over R.R.'s, that is a request for this court to reweigh the evidence, which we will not do. *Id*. The State presented sufficient evidence of probative value from which a reasonable trier of fact could have found Trimble guilty beyond a reasonable doubt of domestic battery and strangulation, each as a Class D felony.

Finally, Trimble argues that the abstract of judgment erroneously reflects conviction on three counts, domestic battery, battery, and strangulation, when it should be two, since the trial court merged Counts I, II, V, and VI into Count I. The State concedes this error. *Appellee's Br*. at 1, n.1. We agree and remand with instructions for the trial court to correct the abstract of judgment to list Trimble's convictions as Count I, Class D felony domestic battery, and Count II, Class D felony strangulation.

Affirmed and remanded with instructions to amend the abstract of judgment.

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