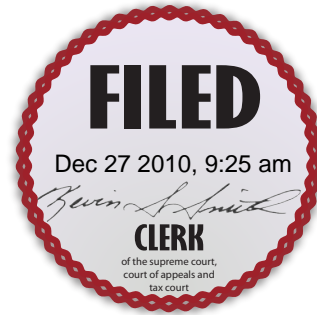


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSHUA BEAL, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. ) No. 49A02-1003-CR-347  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Linda E. Brown, Judge  
Cause No. 49F10-0908-CM-75068

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**December 27, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Joshua Beal challenges his conviction of Class A misdemeanor battery<sup>1</sup> and the order that he pay restitution to his victim. Because the record contains evidence and reasonable inferences therefrom supporting the judgment, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On August 23, 2009, Beal was in his car waiting to turn left at an intersection when a truck driven by Porfiro Mendosa rear-ended Beal's car. Mendosa's vehicle pushed Beal's car forward and straight thru the intersection, while Mendosa's truck completed its left turn onto the new street. Beal drove his car around the block to find the vehicle that struck his.

Both vehicles parked and the men exited their vehicles. Beal wanted \$660 to \$700 from Mendosa and demanded Mendosa's wallet. Mendosa had only \$300 and was driving uninsured. When Mendosa could not pay the amount Beal wanted, Beal pulled out a gun and hit Mendosa on the forehead above his right eye with it. Beal then demanded Mendosa sign over the title to Mendosa's truck.

Mendosa's uncle arrived at the scene. He noticed Beal was angry and Beal had a gun tucked in his waistband. When Mendosa's uncle called the police to report Beal's possession of a gun, Beal walked to a nearby home<sup>2</sup> and then returned without the gun. When police arrived they found Beal in a "very agitated" state. (Tr. at 30.) Beal was angry, and he was yelling and cursing at the officers, which led to his being handcuffed for officer safety. Mendosa, on the other hand, was "physically shaken up," (*id.* at 33), and on his forehead was a knot that, as the officers talked to Mendosa, was growing larger and turning black and blue.

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<sup>1</sup> Ind. Code § 35-42-2-1.

The knot also had a vertical line running through it.

The officers arrested Beal.<sup>3</sup> The State charged him with battery and with operating a vehicle without receiving a license.<sup>4</sup> Both officers who had been at the scene testified the injury was inconsistent with hitting one's head a steering wheel, but consistent with having been hit with a hard object. Officer Cooper also testified the damage to the cars was very minor, which suggested to him the force of the crash was insufficient to have caused the injury to Mendosa's forehead. The court found Beal guilty of battery. The court suspended a portion of Beal's sentence and ordered him to serve probation. As a condition of probation, the court ordered Beal to pay \$80 in restitution to Mendosa.

## **DISCUSSION AND DECISION**

### 1. Battery Conviction

When reviewing the sufficiency of evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, and not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to convict. *Id.* To preserve this structure, when confronted with conflicting evidence, we consider it most favorably to the trial court's ruling. *Id.* We affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

Beal asserts the evidence is insufficient to convict him of battery because "it is just as

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<sup>2</sup> The record indicates the home belonged to Beal or one of his relatives.

<sup>3</sup> The officers also arrested Mendosa, who was driving without a license.

<sup>4</sup> Ind. Code § 9-24-18-1.

likely the head injury happened when the complaining witness hit his head on the steering wheel during the auto accident.” (Br. of Appellant at 5.) However, it is not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if we reasonably may draw an inference from the evidence that supports the verdict. *Drane*, 867 N.E.2d at 147.

The record contains multiple pieces of evidence that support finding Beal knowingly or intentionally touched Mendosa in a rude, insolent, or angry manner, and Beal’s touching caused bodily injury to Mendosa. *See* Ind. Code § 35-42-2-1 (defining battery). Mendosa testified Beal hit him on the forehead with a gun. Mendosa’s uncle testified Beal initially had a gun in his waistband, but did not have it after going inside the nearby house. Mendosa testified he was wearing his seatbelt when the crash occurred, which would have helped protect Mendosa from hitting his head on the steering wheel. Both police officers opined Mendosa’s injury was more consistent with being struck with a hard object than with hitting one’s forehead on a steering wheel. Beal demanded money from Mendosa, and Beal was so agitated and angry when the police officers arrived that they handcuffed him for officer safety. These facts support finding Beal caused the large knot on Mendosa’s forehead by striking him with a gun. *See, e.g., Treadway v. State*, 924 N.E.2d 621, 640 (Ind. 2010) (victim’s statements to others on the night of the crime and her in-court testimony were sufficient to convict defendant). Therefore, we may not reverse his conviction of battery.

## 2. Restitution

Beal asserts the court’s order that he pay restitution to Mendosa is erroneous on two

grounds: (1) Beal was not responsible for Mendosa's loss of earnings; and (2) the court failed to inquire into Beal's ability to pay restitution. We address each in turn.

The statute controlling restitution provides in pertinent part: "the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased." Ind. Code § 35-50-5-3(a). The purpose of restitution is to impress upon defendants the magnitude of the loss caused by crimes and to defray the costs of crimes for the victims. *Henderson v. State*, 848 N.E.2d 341, 346 (Ind. Ct. App. 2006). Thus, one loss for which the legislature provided compensation is: "earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime." Ind. Code § 35-50-5-3(a)(4).

We review for an abuse of discretion a trial court's decision whether to impose restitution under that statute. *Id.* An abuse of discretion occurs if the court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Id.*

The court ordered Beal to pay restitution to Mendosa for the one day of work that Mendosa testified that he missed as a result of his injury. Beal again argues the court's order is unsupported because some other causation for Mendosa's "injury" was "just as likely." (Appellant's Br. at 10.) Beal claims Mendosa's arrest for driving without a license, not the knot on his forehead, was probably what caused Mendosa's absence from work for one day, and Beal asserts he therefore should not have to pay restitution.

However, again, there was evidence before the trial court that supports the trial court's decision to hold Beal responsible. Mendosa testified he missed one day of work as a roofer because of his injury. He also testified it was not the day of the accident, it was the "next day." (Tr. at 19.) Whether to believe Mendosa was a decision for the trial court to make, and we may not second-guess that determination on appeal. *See, e.g., Drane*, 867 N.E.2d at 146 (trial court assesses witness credibility and weighs evidence).

Beal also asserts the trial court violated statutory authority by failing to inquire into his ability to pay the restitution as a condition of probation. *See* Ind. Code § 35-38-2-2.3(a)(5) ("When restitution . . . is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay . . ."). Trial courts are required to inquire into a probationer's ability to pay because we should not imprison indigent persons for failing to pay restitution. *Pearson v. State*, 883 N.E.2d 770, 772 (Ind. 2008), *reh'g denied*.

Beal states: "Here, the trial court erred in failing to inquire into Mr. Beal's ability to pay when ordering restitution as a condition of probation [Tr. 81]." (Appellant's Br. at 10.) Beal is correct the court did not inquire about Beal's income or obligations on that specific page of the transcript; however, as the State notes, Beal had already answered a number of questions about his employment history, his obligation to support others, and his future plans for employment. Beal had been working twenty hours a week at a minimum wage job, and he did not have to support anyone aside from himself. Thus, the court very well may have determined Beal would be capable of paying \$80 in restitution over the 35 weeks he would

be on probation, as it would be less than \$2.30 per week.

In addition, we note the court was not releasing Beal to probation at the time of that sentencing hearing. Rather, Beal first had to serve 108 executed days, which could end up being 54 days or 365 days, depending on Beal's behavior. Because the court was not releasing Beal to probation immediately, it is unclear whether any analysis the court may have conducted regarding Beal's ability to pay restitution would have been pertinent to whether Beal would be able to pay restitution when released. *See Whedon v. State*, 765 N.E.2d 1276, 1279 (Ind. 2002) (declaring in the context of ability to pay fines or costs, "a defendant's financial resources are more appropriately determined not at the time of initial sentencing but at the conclusion of incarceration, thus allowing consideration of whether the defendant may have accumulated assets through inheritance or otherwise"). Thus, we remind the trial court that, when the Department of Correction releases Beal to probation, "the court shall fix the amount [of restitution], which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance." Ind. Code § 35-38-2-2.3(a)(5)<sup>5</sup>.

For all these reasons, we affirm the Beal's conviction and the order that he pay restitution of \$80 to Mendosa.

Affirmed.

ROBB, J., and VAIDIK, J., concur.

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<sup>5</sup> The trial court also has the option to enter a judgment lien against Beal for the amount of restitution, *see* Ind. Code § 35-50-5-3(b), should it decide not to require payment of restitution as a portion of Beal's probation.