

MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Kelly Starling
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Brandon Gillihan,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 14, 2021

Court of Appeals Case No.
21A-CR-747

Appeal from the Marion Superior
Court

The Honorable Christina R.
Klineman, Judge

The Honorable Ian Stewart,
Magistrate

Trial Court Cause No.
49D17-2003-F6-12212

Robb, Judge.

Case Summary and Issue

- [1] Following a bench trial, Brandon Gillihan was convicted of domestic battery committed in the presence of a child less than sixteen years old, a Level 6 felony, and criminal mischief, a Class B misdemeanor. Gillihan now appeals, raising one issue, which we restate as whether there was sufficient evidence to support his conviction of criminal mischief. Concluding there was sufficient evidence of criminal mischief, we affirm.

Facts and Procedural History

- [2] On the evening of March 13, 2020, Dajashia Downs, the mother of Gillihan's child, went to his apartment to watch their two-year-old daughter while he went out for the evening. Gillihan did not return and the next morning Downs received permission from the Department of Child Services ("DCS") to leave the apartment with their daughter.¹
- [3] Later that day, Gillihan and Downs arranged to meet at Downs' house at 7:00 p.m. to exchange their daughter. Gillihan and Downs arrived at Downs' house at approximately the same time with Downs pulling into her driveway first. Gillihan pulled up next to Downs with his passenger side front door aligned

¹ At the time of the incident, Gillihan had sole custody of their daughter. In order to leave with their daughter without causing concern, Downs testified that she contacted the police department and the police department contacted DCS. *See* Transcript of the Record, Volume 2 of 2 at 9. The child was assessed by DCS and Downs was given permission to leave.

with Downs' driver side rear door. While Downs placed their daughter in Gillihan's vehicle, the two began arguing and an altercation ensued. Gillihan attempted to shove Downs into the vehicle, but Downs escaped and fled to her house. Gillihan caught up to Downs at her front door and punched her in the head multiple times. Gillihan then retreated to his vehicle and Downs entered her home.

[4] Once inside her home, Downs called the authorities and observed Gillihan enter his vehicle and then quickly jump out. Gillihan walked to the rear of Downs' vehicle and bent down to the driver side rear tire. Gillihan then returned to his vehicle and left. Although her view of Gillihan was obscured by the body of the vehicles, Downs observed that after Gillihan walked to the rear of her vehicle, her tire began rapidly deflating.

[5] The State charged Gillihan with two counts of domestic battery in the presence of a child less than sixteen years old, each a Level 6 felony; one count of battery resulting in bodily injury, a Class A misdemeanor; and one count of criminal mischief, a Class B misdemeanor. A bench trial was conducted on March 2, 2021. In his defense, Gillihan testified that the argument did not turn physical, that he never touched Downs, and that he did not deflate her tire. The State admitted into evidence photographs taken by the police of Downs' bleeding forehead exhibiting a large knot, Downs' face exhibiting bruising under her left eye, and the deflated tire with a puncture in the side of the tire. The State also presented Downs' testimony of the entire incident. Downs testified that her tire was fully inflated upon arrival in her driveway, during the altercation, and

before Gillihan went to her tire. She further testified that she observed Gillihan walk to the rear of her vehicle toward her tire and subsequently her tire was “losing air by the second.” Tr., Vol. 2 of 2 at 17. Although Downs testified on cross-examination that she did not check the tire upon arriving in her driveway and that she was unable to see Gillihan physically deflate or puncture her tire, the trial court determined Downs to be a credible witness and gave weight to her account of events.

- [6] The trial court found Gillihan guilty of one count of domestic battery in the presence of a child less than sixteen years old and criminal mischief and sentenced Gillihan to 365 days in the Marion County Jail with 361 days suspended to probation on each count, to be served concurrently. Gillihan now appeals only his conviction of criminal mischief.

Discussion and Decision

I. Standard of Review

- [7] When reviewing the sufficiency of the evidence needed to support a criminal conviction, we do not assess witness credibility or reweigh the evidence. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Rather, we consider only the probative evidence supporting the judgment and reasonable inferences therefrom. *Id.* We consider conflicting evidence most favorably to the judgment. *Madden v. State*, 162 N.E.3d 549, 556 (Ind. Ct. App. 2021). We will affirm the 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 (quotation omitted).

II. Evidence of Criminal Mischief

[8] To sustain a conviction of criminal mischief, the State must have proved beyond a reasonable doubt that Gillihan recklessly, knowingly, or intentionally damaged or defaced Downs’ tire without her consent. Ind. Code § 35-43-1-2(a). On appeal, Gillihan does not argue that the damage to the tire was not done recklessly, knowingly, or intentionally. Rather, he only argues that the State offered insufficient evidence to show beyond a reasonable doubt that he defaced Downs’ tire.

[9] Gillihan contends that the trial court relied solely on circumstantial evidence to show that Gillihan ultimately defaced the tire. He argues that such evidence is insufficient in that the State only showed that Gillihan was in proximity to the tire and not that he caused any harm to the tire, that he made any movements indicative of defacing the tire, or that he was in possession of an instrument capable of puncturing a tire. He further argues that the State failed to demonstrate which tire was damaged, there was no alternative source of the puncture, or the rate of speed that a tire can deflate. However, when circumstantial evidence is involved, our goal is not to determine whether the evidence overcomes every reasonable hypothesis of innocence. *Maxwell v. State*, 731 N.E.2d 459, 463 (Ind. Ct. App. 2000), *trans. denied*. Rather, we must determine whether the inferences drawn from the evidence support the

judgment beyond a reasonable doubt. *Id.* Indeed, if reasonable minds could reach those inferences, then the evidence is sufficient. *Id.* at 462.

[10] Here, Downs testified that she drove to her house, her tire was fully inflated when she arrived in her driveway, and Gillihan parked next to the tire in question. She further testified that following a heated, physical altercation with Gillihan, she observed him get into his vehicle, quickly jump out, and go to the rear of her vehicle. She then observed her fully inflated tire rapidly deflate. Further, photographs admitted into evidence by the State showed the punctured, deflated tire. Downs testified that the photographs accurately depicted the state of her tire after Gillihan left. The trial court determined Downs to be a credible witness and gave weight to her testimony. Therefore, it was not simply Gillihan's proximity to the tire, but a number of factors that allowed the trial court to reasonably infer that Gillihan deflated Downs' tire. We conclude that the inferences reasonably drawn from the evidence support the conviction beyond a reasonable doubt and that the State presented sufficient evidence to support Gillihan's conviction of criminal mischief.

Conclusion

[11] We conclude the State presented sufficient evidence to support Gillihan's criminal mischief conviction. Accordingly, we affirm.

[12] Affirmed.

Bradford, C.J., Altice, J., concur.