MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Daniel Mckimmie,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

May 1, 2024

Court of Appeals Case No.
23A-CR-2443

Appeal from the Marion Superior Court

The Honorable Linda Brown, Judge

Trial Court Cause No.
49D36-2202-F6-4137

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

[1] Daniel Mckimmie appeals his convictions of two counts of Class A misdemeanor criminal mischief[1] and one count of Level 6 felony domestic battery.[2] He presents two issues for our review, which we restate as:

> 1. Whether the State presented sufficient evidence that he committed two counts of Class A misdemeanor criminal mischief; and
>
> 2. Whether the State presented sufficient evidence of a prior conviction of domestic battery to elevate the new conviction from a Class A misdemeanor to a Level 6 felony.

We affirm.

Facts and Procedural History

[2] On February 3, 2023, I.M. invited Mckimmie, her estranged husband, over for dinner because she hoped to reconcile. Mckimmie arrived at approximately 8:00 p.m. After he arrived, I.M. went to take a shower. When I.M. exited the shower, Mckimmie was standing across the hall from the bathroom in the doorway of the bedroom yelling "you whore, you whore, you fucking whore." (Tr. Vol. II at 35.) I.M. moved toward the front door. Mckimmie followed her and was "still screaming you're a whore and swinging on [I.M.]." (*Id.* at 46.)

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[1] Ind. Code § 35-43-1-2(a)(1).

[2] Ind. Code § 35-42-2-1.3(b)(1).

I.M. was "ducking and . . . moving" to avoid Mckimmie's punches. (*Id.*) Eventually, Mckimmie punched her in the head about "five, six" times. (*Id.*)

[3] While Mckimmie was punching her, I.M. asked him to stop and yelled for help. I.M.'s two daughters, who lived with her, ran into the room. I.M.'s daughter, R.G., saw Mckimmie hit I.M. "[o]n the top of the head." (*Id.* at 63.) I.M.'s other daughter, Ra.G., also came into the room. She told Mckimmie to leave and that she was calling the police. Mckimmie left I.M.'s house before Ra.G. could call the police.

[4] Sometime in the early hours of February 4, 2022, Mckimmie returned to I.M.'s house. The home's security camera captured Mckimmie returning to the property, and R.G. later saw his footprints in the snow. He sliced all four tires on cars belonging to R.G. and Ra.G. Later that morning, I.M. called the police. She spoke with officers who photographed her injuries. I.M. suffered bruises on her cheek, forehead, and arm as well as swelling on the back of her head.

[5] On February 14, 2022, the State charged Mckimmie with one count of Level 6 felony domestic battery, two counts of Class A misdemeanor criminal mischief, and one count of Class A misdemeanor battery resulting in bodily injury.[3] The domestic violence charge was elevated from a misdemeanor to a felony based

[3] Ind. Code § 35-2-2-1(c).

on the State's allegation that Mckimmie had a prior conviction for domestic violence.

[6] Mckimmie waived his right to a jury trial, and the trial court held a bench trial on July 25, 2023. During the trial, Mckimmie testified he had a "prior conviction for domestic battery" against another woman "back in 2019." (*Id*. at 79.) The trial court found Mckimmie guilty as charged. On September 29, 2023, the trial court held a sentencing hearing. During that hearing, the trial court merged the domestic battery and battery resulting in bodily injury charges. The trial court sentenced Mckimmie to 543 days for Level 6 felony domestic battery and 178 days for each count of Class A misdemeanor criminal mischief. The court ordered all three sentences served concurrently for an aggregate sentence of 543 days. The trial court ordered the sentences suspended to probation and entered a no contact order between Mckimmie and I.M.

Discussion and Decision

[7] Mckimmie contends the State presented insufficient evidence to support his convictions. We apply a well-settled standard of review to such challenges:

> Sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262 (Ind. 2020).

1. Class A Misdemeanor Criminal Mischief

[8] Mckimmie argues the State presented insufficient evidence to prove that he was the person who slashed the tires on R.G.'s and Ra.G.'s vehicles, and he asks us to reverse his two Class A misdemeanor criminal mischief convictions. To prove Mckimmie committed Class A misdemeanor criminal mischief, the State had to prove he recklessly, knowingly, or intentionally "damage[d] or deface[d] property of another person without the other person's consent" and the "pecuniary loss is at least seven hundred fifty dollars ($750) but less than fifty thousand ($50,000)[.]" Ind. Code § 35-43-1-2(a)(1).

[9] At trial, the State presented security camera footage of Mckimmie returning to I.M.'s house after the domestic violence incident. Ra.G. testified she saw Mckimmie's footprints in the snow leading to her vehicle as well as R.G.'s vehicle. R.G. testified she also saw the footprints and testified they were "the work boots [Mckimmie] wears[.]" (Tr. Vol. II at 69.) Mckimmie acknowledges he was caught on the security camera returning to I.M.'s house, but he contends the State did not present evidence the footprints leading to the vehicles were his footprints and no one saw him slash the vehicles' tires.

[10] A conviction may be sustained on circumstantial evidence alone. *Sallee v. State*, 51 N.E.3d 130, 134 (Ind. 2016). As we recently stated in *Cobb v. State*:

> Circumstantial evidence is evidence "based on inference and not on personal knowledge or observation." . . . "Circumstantial

> evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn." For example, "footprints or fingerprints that place an accused at the scene of a crime may be direct evidence of the accused's presence at some point in time but only circumstantial proof that the accused committed the charged offense."

222 N.E.3d 373, 389 (Ind. Ct. App. 2023) (internal citations omitted), *reh'g denied*, *trans. denied*. Here, while there is no direct evidence of Mckimmie slashing the vehicles' tires, there is circumstantial evidence that he did so based on the security camera footage and his footprints at the scene. Mckimmie's argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Powell*, 151 N.E.3d at 262 (appellate court cannot reweigh evidence or judge the credibility of witnesses). The circumstantial evidence presented was sufficient to support his convictions. *See Sallee*, 51 N.E.3d at 135 (circumstantial evidence was sufficient to support convictions of murder, despite Sallee's "alternate theories").

2. Level 6 Felony Domestic Battery

[11] Mckimmie also argues the State presented insufficient evidence to prove he committed Level 6 felony domestic battery because it did not present evidence that Mckimmie had a prior, unrelated conviction of domestic battery. To prove Mckimmie committed Level 6 felony domestic battery, the State had to prove he knowingly or intentionally touched I.M., who was his family member, "in a rude, insolent, or angry manner" and had a "previous, unrelated conviction"

for, as is relevant here, a battery conviction, including domestic battery. Ind. Code § 35-42-2-1.3(a)(1) & (b)(1).

[12] During trial, Mckimmie admitted he committed domestic battery against another woman in 2019. Mckimmie asserts his admission is insufficient to prove he had a previous unrelated conviction of domestic battery. He notes our Indiana Supreme Court has rejected several different types of evidence provided by the State to prove a defendant had a prior conviction to support a habitual offender sentencing enhancement. *See*, *e.g.*, *Dexter v. State*, 959 N.E.2d 235, 239-40 (Ind. 2012) (unsigned judgment and testimony from probation officer were not sufficient to prove Dexter committed a prior crime); *Hall v. State*, 524 N.E.2d 1279, 1281 (Ind. 1988) (certified documents, including copies of the order book entry, charging information, and incarceration commitment papers, as well as the police officer's testimony regarding the prior conviction was not sufficient to prove Hall committed a prior crime); *Driver v. State*, 467 N.E.2d 1186, 1187-88 (Ind. 1984) (prosecutor's testimony insufficient to prove Driver committed a prior crime).

[13] However, unlike in those cases, Mckimmie - not the prosecutor, a probation officer, or a police officer - testified he committed domestic battery against a woman in 2019. His admission alone is sufficient to prove the element of Level 6 felony battery requiring that the State present evidence that he had a prior conviction of domestic battery. *See, e.g., Evans v. State,* 209 N.E.3d 472, 476 (Ind. Ct. App. 2023) (trial court adjudicated Evans a habitual offender based on

Evans's admission of prior convictions alleged in habitual offender information).

Conclusion

[14] The State presented sufficient evidence that Mckimmie committed Class A misdemeanor criminal mischief and Level 6 felony domestic battery. Accordingly, we affirm Mckimmie's convictions thereof.

[15] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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