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ATTORNEY FOR APPELLANT:

CARA SCHAEFER WIENEKE
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

WADE JAMES HORNBACHER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

WILLIAM BAXTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0905-CR-461
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kurt Eisgruber, Judge
Cause No. 49G01-0810-FA-249149

February 16, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

William Baxter appeals his conviction for Class A felony rape. We affirm and remand.

Issues

Baxter raises the following two issues:

I. whether there is sufficient evidence to support his conviction for rape as a Class A felony; and

II. whether the abstract of judgment entered by the trial court must be corrected.

Facts

In the early morning hours of September 29, 2007, T.R. was walking down a street in Indianapolis when she came into contact with three men: Baxter, Dion Stewart, and a third person known only as "Slim." Tr. p. 63. The three men began walking with T.R., and Stewart eventually offered some cocaine to T.R., which she sniffed off of his driver's license. T.R. then accompanied the three men to an abandoned house, although she was expecting to go to one of the three men's house. Stewart and T.R. began kissing at the side of the house, and then he removed his penis from his pants and asked T.R. to touch it. T.R. refused and said she wanted to go home.

When T.R. said this, the three men accused her of stealing their "stuff" (i.e., cocaine). Id. at 71. T.R. began walking away, and one of the men directed her to a purported "shortcut" to her residence down an alley. When she reached the alley,

someone said, "Now," and Stewart put his arm around T.R.'s neck from behind and began choking her. Id. at 78. Baxter and Stewart then began hitting her about the head with closed fists, trying to knock her out. They then pulled her pants down, while Slim stood watch. Slim forced T.R. to perform oral sex on him while either Baxter or Stewart had vaginal intercourse with her. Baxter and Stewart then alternated forcing T.R. to submit to oral, vaginal, and anal intercourse with them. After about thirty minutes, the three men began to leave and took T.R.'s cell phone and keys from her pants pocket. When T.R. protested that they were taking her house keys, Stewart punched her in the mouth. The punch caused a laceration to T.R.'s lip that required plastic surgery and left a scar. T.R. was able to summon help after the three men left. When taken to the hospital, T.R. was given morphine for her pain.

The State charged Baxter with two counts of Class A felony rape, four counts of Class A felony criminal deviate conduct, one count of Class A felony robbery, one count of Class C felony battery, and one count of Class D felony theft. After a jury trial held on April 15-16, 2009, Baxter was found guilty as charged on all counts. At the sentencing hearing on May 1, 2009, the trial court entered judgments of conviction for the following: one count of Class A felony rape, two counts of Class B felony criminal deviate conduct, one count of Class C felony robbery, and one count of Class A misdemeanor battery. The trial court then sentenced Baxter accordingly. The abstract of judgment, however, reflects convictions for one count of Class A felony rape, two counts of Class A felony criminal deviate conduct, one count of Class A felony robbery, and one count of Class C

felony battery. Baxter now appeals only his Class A felony rape conviction, and he also seeks correction of the abstract of judgment.

Analysis

I. Sufficiency of the Evidence

Baxter contends there is insufficient evidence to support his conviction for rape as a Class A felony. When we review the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

Baxter specifically argues that there was insufficient evidence of "serious bodily injury" to T.R. In order to elevate rape from a Class B to a Class A felony, as charged by the State in this case, it was required to prove that the rape resulted in "serious bodily injury" to T.R. See Ind. Code § 35-42-4-1(b)(3). "Serious bodily injury" is defined by statute as: "bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus." I.C. § 35-41-1-25. Although appellate courts exercise "considerable

deference" when reviewing whether there is sufficient evidence of serious bodily injury, such deference is not absolute. Fuller v. State, 875 N.E.2d 326, 333 (Ind. Ct. App. 2007) (quoting Davis v. State, 813 N.E.2d 1176, 1178 (Ind. 2004)), trans. denied. "There is, however, no bright line between what is 'bodily injury' and what is 'serious bodily injury.'" Id.

In Davis, our supreme court held there was insufficient evidence of "serious bodily injury" where a victim of criminal recklessness suffered from a lacerated lip, abrasion to the knee, and a broken pinky finger, but the victim was not given any prescription-strength pain medication. See Davis, 813 N.E.2d at 1178. As in Davis, the primary visible physical injury T.R. sustained was a lacerated lip.[1] However, while the lacerated lip in Davis was "very superficial," T.R.'s laceration required the services of a plastic surgeon and left a permanent scar. We also know from T.R.'s medical records that she was given morphine upon admittance to the hospital after she was attacked. We conclude this evidence is sufficient proof from which a reasonable fact-finder could find that T.R. suffered "extreme pain," and hence "serious bodily injury," as a result of the attack. We affirm T.R.'s conviction for Class A felony rape.

[1] The State on appeal also wishes to rely on evidence related to T.R.'s forced sodomization as evidence of "extreme pain" and, thus, "serious bodily injury." We do not believe we can rely upon such evidence. Baxter was convicted of criminal deviate conduct for this act, separate and apart from his rape conviction. It likely would violate double jeopardy principles to elevate Baxter's rape conviction from a B to an A felony based on another crime—criminal deviate conduct—for which he was separately convicted. See Guyton v. State, 771 N.E.2d 1141, 1143 (Ind. 2002) (noting that double jeopardy principles preclude "'[c]onviction and punishment for an enhancement of a crime where the enhancement is imposed for the very same behavior or harm as another crime for which the defendant has been convicted and punished.'") (quoting Richardson v. State, 717 N.E.2d 32, 56 (Ind. 1999) (Sullivan, J., concurring)).

II. Abstract of Judgment

Baxter also requests that we remand for the trial court to issue a corrected abstract of judgment that accurately reflects the offenses of which he was convicted. The State concedes that the abstract incorrectly lists Baxter's convictions for two counts of criminal deviate conduct and one count of robbery as Class A felonies when in fact they were entered as Class B felonies and a Class C felony respectively, and the Class A misdemeanor battery conviction is incorrectly listed as a Class C felony. Despite this concession, the State argues that remand for the issuance of a corrected abstract is unnecessary because it correctly informs the Department of Correction of Baxter's sentence. See Robinson v. State, 805 N.E.2d 783, 792, 794 (Ind. 2004) (holding that an abstract of judgment is simply "a form issued by the Department of Correction and completed by trial judges for the convenience of the Department" and is not itself the "judgment of conviction").

Regardless, we believe it would be prudent to remand this case for the trial court to enter a correct abstract of judgment. Baxter asserts that Marion County trial courts do not issue any judgment of conviction or sentencing order separate from the abstract of judgment. Indeed, we see no such documents in the record before us, only the trial court's oral entry of judgment at the beginning of the sentencing hearing. In any event, it is not too much to ask that abstracts of judgment accurately reflect a defendant's conviction(s), so as to avoid any potential for confusion in the future regarding the defendant's criminal history.

Conclusion

There is sufficient evidence to support Baxter's conviction for rape as a Class A felony. We remand for the trial court to issue a corrected abstract of judgment that accurately reflects the judgments of conviction it entered against Baxter.

Affirmed and remanded.

MATHIAS, J., and BROWN, J., concur.