

Case Summary

Ismael Leonardo appeals his convictions for Class C felony battery and Class D felony domestic battery. We affirm in part and reverse in part.

Issues

Leonardo raises two issues, which we restate as:

- I. whether his convictions violate double jeopardy; and
- II. whether there is sufficient evidence to support his battery conviction.

Facts

Leonardo is the father of R.D.'s two children.¹ In August 2007, Leonardo and R.D. were separated. At that time, R.D. shared an apartment with her two children, her two brothers, and her sister-in-law.

At approximately 7:00 a.m. on August 17, 2007, R.D. returned to her apartment after spending the night at a friend's house. When R.D. arrived at her apartment, Leonardo was waiting for her. As R.D.'s brother opened the apartment door, Leonardo pushed R.D. into the apartment. Leonardo followed R.D. into her bedroom, where the children were. Leonardo angrily questioned R.D. about where she had been and who she had been with. Leonardo left the room and R.D. began getting one of the children dressed for school. Leonardo returned and questioned R.D. again. R.D. told Leonardo it was none of his business. Leonardo then pulled a kitchen knife out of his pocket and cut R.D. on the neck. R.D. moved her hands toward Leonardo, and he cut her hands.

¹ R.D. has since had a third child. She claims Leonardo is the child's father but paternity has not been established.

Leonardo then pushed R.D. into a closet. At that point, one of R.D.'s brothers came into the room and removed Leonardo from the room. Although Leonardo was still in the apartment, R.D. eventually left the bedroom, went to a neighbor's apartment, and called the police.

On October 1, 2007, the State charged Leonardo with Class B felony criminal confinement, Class C felony battery, Class D felony criminal confinement, Class D felony battery, Class D felony domestic battery, Class A misdemeanor battery, and Class A misdemeanor domestic battery. Immediately prior to the bench trial, the State moved to dismiss the Class B felony criminal confinement charge, the Class D felony criminal confinement charge, and the Class D felony battery charge. Leonardo was found guilty of the remaining charges. The trial court only entered judgments of conviction on the Class C felony battery charge and the Class D felony domestic battery charge. Leonardo now appeals.

Analysis

I. Double Jeopardy

Leonardo argues that his convictions for Class C felony battery and Class D felony domestic battery are based on the same injuries and violate double jeopardy. The State agrees.² Accordingly, we vacate Leonardo's conviction for Class D felony domestic battery.

² In the conclusion section of its brief the State requests that we "affirm the trial court in every respect." Appellee's Br. p. 8. This is inconsistent with the argument section of its brief, in which the State concedes, "Under this Court's double jeopardy jurisprudence, it appears that the Defendant's conviction for domestic battery must be vacated." *Id.* at 7. We agree with the concession in the argument section of the brief.

II. Sufficiency of the Evidence

Leonardo argues that there is insufficient evidence to support his battery conviction because he did not intend to cut R.D. and because any other contact he had with R.D. was in self-defense. When reviewing the sufficiency of the evidence to support a conviction, we must 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, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” Id. We construe conflicting evidence most favorably to the trial court’s ruling and affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

As for his claim that he unintentionally cut R.D. on the neck, Leonardo testified at trial, “I was there with her brother drinking beer. And I had gone to the kitchen to get a knife to open the beer. And when we started arguing, she moved her head and she cut herself.” Tr. p. 83. However, R.D. testified that Leonardo followed her into her bedroom questioning her about where she had been. R.D. stated that Leonardo left the bedroom and when he returned he “pulled a knife” and cut her. Tr. p. 30. It was for the fact finder to weigh the conflicting evidence and judge witness credibility. We will not reweigh the evidence as Leonardo requests.

As for his claim of self-defense, Leonardo argues that he was responding to R.D. hitting him. “A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the

imminent use of unlawful force.” Ind. Code § 35-41-3-2(a). When the defendant has raised a self-defense claim, the State must disprove at least one of the following elements beyond a reasonable doubt: 1) the defendant was in a place where he or she had a right to be; 2) the defendant was without fault; and 3) the defendant had a reasonable fear or apprehension of bodily harm. Boyer v. State, 883 N.E.2d 158, 162 (Ind. Ct. App. 2008). The State may disprove one of these elements by affirmatively showing the defendant did not act in defense or by relying on evidence elicited in its case-in-chief. Id.

Leonardo testified that R.D. was arguing with him, that she started hitting him, and that he just pushed her to the side. He also testified that he was in the apartment drinking with R.D.’s brothers when she returned home that morning. This testimony directly conflicts with R.D.’s testimony that Leonardo was waiting in the hall when she returned and that he pushed her into the apartment, questioned where she had been, cut her with the knife, and pushed her into the closet. The State presented sufficient evidence to rebut Leonardo’s claim of self-defense. It was for the fact-finder to determine which witness was credible. We will not disturb the conviction.

Conclusion

Because the State concedes a double jeopardy violation we vacate Leonardo’s Class D felony domestic battery conviction. Nevertheless, there is sufficient evidence to sustain the Class C felony battery conviction. We affirm in part and reverse in part.

Affirmed in part and reversed in part.

BAILEY, J., and MATHIAS, J., concur.