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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF D.T., )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0807-JV-602  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn A. Moores, Judge  
The Honorable Beth Jansen, Magistrate  
Cause No. 49D09-0707-JV-2218

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**April 7, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issue

D.T. appeals from his adjudication as a juvenile delinquent for committing an act that if committed by an adult would be the crime of battery resulting in serious bodily injury, a Class C felony. On appeal, D.T. raises the sole issue of whether sufficient evidence supports a finding that the victim suffered “serious bodily injury” within the meaning of Indiana Code section 35-41-1-25. Concluding that there was sufficient evidence to support a finding of serious bodily injury, we affirm D.T.’s adjudication.

### Facts and Procedural History

In April 2007, A.W. was at a friend’s house. At some point during the afternoon, D.T. arrived at the house while A.W. and others were in the driveway. D.T. asked, “Who is [A.W.]?,” transcript at 15, and A.W. identified himself. D.T. then struck A.W. in the face with his fist. A.W. testified that, as a result of the strike, he “blanked out.” Id. A.W. did not know how long he “blanked out” and stated that when he woke up, he was in the back of an ambulance.

When Officer David Carney of the Indianapolis Metropolitan Police Department arrived on the scene, A.W. was standing in the front yard wearing a white t-shirt covered in “quite a bit” of blood. Id. at 48. A.W. appeared “delusional and dazed.” Id. at 49. Based on his experience as a police officer in responding to fights and other assaults, Officer Carney believed A.W.’s dazed condition was consistent with someone who had been unconscious. When paramedics arrived on scene, they performed minor first aid to the injuries on A.W.’s face and head. A.W.’s mother did not witness her son unconscious, but upon arrival at the scene found him in a dazed state and took him to the hospital.

A.W. received five stitches above his right eye, had x-rays taken, and was released from the hospital after approximately two hours.

On May 27, 2008, following a denial hearing, the juvenile court entered a true finding as to D.T.'s delinquency for committing an act that if committed by an adult would be the crime of battery resulting in serious bodily injury, a Class C felony. At the disposition hearing on June 24, 2008, the juvenile court ordered D.T. to be placed on probation, complete a teen responsibility awareness program, complete anger management counseling, complete fifty hours of community service work, and obtain and maintain part-time employment. D.T. now appeals.

### Discussion and Decision

#### I. Standard of Review

In juvenile delinquency adjudication proceedings, the State must prove every element of the offense beyond a reasonable doubt. D.B. v. State, 842 N.E.2d 399, 401 (Ind. Ct. App. 2006). When reviewing a claim challenging the sufficiency of the evidence, we will neither reweigh the evidence nor judge witnesses' credibility. Id. We will affirm the adjudication if we conclude that evidence of probative value exists so that a reasonable fact-finder could find the elements of the underlying crime proven beyond a reasonable doubt. Id.

We also note that the State has failed to file an appellee's brief. When an appellee fails to submit a brief, we need not undertake the burden of developing an argument for the appellee. State v. Suggs, 755 N.E.2d 1099, 1102 (Ind. Ct. App. 2001). Hence, we

may reverse the trial court if an appellant establishes prima facie error. Id. Prima facie error is error “at first sight, on first appearance, or on the face of it.” Id.

## II. Sufficiency of the Evidence

D.T was alleged to have violated Indiana Code section 35-42-2-1(a)(3), battery resulting in serious bodily injury. He contends, however, that A.W.’s injuries constitute at most “bodily injury.” The battery statute reads, in pertinent part:

(a) A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if:

(A) it results in bodily injury to any other person;

...

(3) a Class C felony if it results in serious bodily injury to any other person.

Ind. Code § 35-42-2-1.

The legislature has defined “serious bodily injury” and “bodily injury” by statute. Bodily injury is defined as “any impairment of physical condition, including physical pain.” Ind. Code § 35-41-1-4. Serious bodily injury is defined 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.” Ind. Code § 35-41-1-25.

There was no evidence that A.W. suffered permanent disfigurement, extreme pain, or permanent or protracted loss or impairment of a bodily member or organ. The only injury sustained by A.W. that fits the statutory definition of “serious bodily injury”

is unconsciousness. D.T. contends that “momentary loss of consciousness is insufficient to sustain a true finding for Battery as a Class C Felony.” Brief of the Appellant at 4.

In Ricks v. State, 446 N.E.2d 648 (Ind. Ct. App. 1983), on which D.T. relies in framing his issue, this court affirmed the defendant’s conviction for battery causing serious bodily injury where the victim lay motionless for a few minutes and appeared to be unconscious after the defendant struck him. The victim also suffered a laceration to his forehead and a black eye, and he complained of neck, shoulder, and back pain that continued until the time of trial. In considering the statutory definition of “serious bodily injury,” the court stated:

Whether pain is “extreme” or impairment is “protracted” is, of course, a matter of degree. We think the same is to be said of “unconsciousness” in the context of the statute. Momentary unconsciousness without more does not necessitate a finding of serious bodily injury. The purpose of the definitional statute is to provide meaning to the requirement that the injury be “serious.” It is not its purpose to distort the meaning.

Id. at 650 (emphasis in original). The court then acknowledged that, “within the framework provided by the definition,” determining the degree of an injury is a matter for the factfinder. Id. at 650-51. Because the victim was elderly, suffered unconsciousness, substantial pain, and impaired function of his back, neck, and shoulders, and because a reasonable fact finder would not have been bound to arrive at a contrary conclusion, we affirmed the defendant’s conviction. Id. at 651. We noted, however, that we could not “ignore that the resultant consequences of these injuries to an eighty-three year old man may be reasonably factually more ‘serious’ than they would be to a young athlete.” Id. (emphasis in original).

More recently, our supreme court considered whether the injuries sustained by the victim in a criminal recklessness prosecution were “serious.” Davis v. State, 813 N.E.2d 1176 (Ind. 2004). The defendant pushed the victim down and punched her in the mouth. The victim suffered a lacerated lip, abrasion to the knee, and a broken pinky. She was not prescribed any pain medication and said little at trial about her level of pain due to the incident. Although acknowledging that the appellate courts’ “commitment to the role of fact-finders tends to produce considerable deference on a matter as judgmental as whether a bodily injury was ‘serious,’” id. at 1178, the difficulty in describing a bright line test for “bodily injury” versus “serious bodily injury,” and that “appellate courts have sometimes been willing to sanction convictions resting on rather slim levels of injury,” id., the court reversed the defendant’s conviction of criminal recklessness as a Class D felony due to lack of evidence that the victim suffered “serious bodily injury.” The court cited Hollins v. State, 790 N.E.2d 100 (Ind. Ct. App. 2003) (victim’s arm left useless and likely to be amputated following incident) and Judy v. State, 470 N.E.2d 380 (Ind. Ct. App. 1984) (victim’s leg broken in four places, requiring hospitalization for four days and a cast for three months, and leaving a lingering limp at the time of trial), as cases that “plainly reflect the sort of serious infliction of damage suggested by the statutory definition of ‘serious bodily injury.’” Davis, 813 N.E.2d at 1178. Measured against those cases and the statutory definition, the Davis court concluded that the victim’s injuries “do not make the grade,” id., and reversed the trial court’s finding of serious bodily injury supporting a Class D felony criminal recklessness conviction.

Although Ricks affirmed a conviction resting on a finding of serious bodily injury where the victim had been unconscious, it is distinguishable from this case in that the victim in Ricks also suffered additional injuries which fall within the statutory definition of “serious bodily injury.” See also Hurst v. State, 890 N.E.2d 88, 97 (Ind. Ct. App. 2008) (victim suffered unconsciousness and “intolerable, severe, and very sharp” pain for which she was given substantial pain medication at hospital and prescribed additional pain medication when released), trans. denied. And although Davis reversed a conviction resting on a finding of serious bodily injury, it too is distinguishable from this case because the court on appeal determined the victim therein suffered no injuries which fall within the statutory definition. As the court in Ricks noted, “serious” permanent disfigurement, “extreme” pain, and “protracted” impairment are imprecise definitions, see 446 N.E.2d at 650; however, “unconsciousness” is not qualified by any such vague term.<sup>1</sup> Thus, whether disfigurement, pain, or impairment constitute serious bodily injury may be subject to a degree of discretion, see Davis, 813 N.E.2d at 1178, unconsciousness is a verifiable standard and the statute as written does not support a discretionary decision based on the length or severity of the unconsciousness.

In this case, the juvenile court determined that D.T. had committed a battery that resulted in serious bodily injury. The evidence at trial showed that A.W. was briefly unconscious after D.T. hit him. A.W. testified that he blacked out and woke up some time later. Officer Carney testified that although A.W. was conscious and standing when he arrived within five minutes of receiving the dispatch, A.W. acted in a manner consistent with someone who had been unconscious and had recently regained

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<sup>1</sup> Loss of a fetus is also an unqualified injury constituting serious bodily injury. Ind. Code § 35-41-1-25.

consciousness. A.W.'s mother testified that when she arrived at the scene, A.W. was "in a daze." Tr. at 38. Considering the uncontradicted evidence regarding the injuries A.W. sustained at D.T.'s hands, we hold that A.W.'s injuries are sufficient to sustain a finding of battery resulting in serious bodily injury.<sup>2</sup>

### Conclusion

We conclude that the evidence was sufficient to sustain D.T.'s adjudication for committing an act that, if committed by an adult, would constitute battery resulting in serious bodily injury, a Class C felony. Accordingly, we affirm the delinquency adjudication.

Affirmed.

CRONE, J. concurs.

BROWN, J. concurs with opinion.

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<sup>2</sup> Although we are compelled by the terms of the statute to find there was sufficient evidence of unconsciousness to support a finding of battery causing serious bodily injury, we note that the evidence shows A.W. was unconscious for, at most, five minutes, see tr. at 48 (Officer Carney testifying he arrived on the scene within five minutes and A.W. was conscious and standing), and there was no evidence that he has suffered lingering effects from the unconsciousness. In construing a statute, our primary goal is to determine and give effect to the intent of the legislature, but we presume the legislature intended the language used in the statute "to be applied logically and not to bring about an unjust or absurd result." Sales v. State, 723 N.E.2d 416, 420 (Ind. 2000). Unconsciousness for less than five minutes hardly seems an injury on par with loss of a limb or a fetus, or with being permanently disfigured. We leave it to the Indiana Supreme Court or the Indiana Legislature, however, to clarify if necessary whether a case like this one that seems to stretch the outer boundaries of the statutory definition of serious bodily injury was intended to be covered by the statute.

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**BROWN, Judge concurring**

I concur with the majority and would note evidence in addition to the victim’s unconsciousness which support the decision, including the photographs admitted at the hearing and the testimony of the victim, police officer, and victim’s mother.

The photos, taken three days after the incident, show the victim’s battered, bruised, and swollen face, and the stitches in his right eyelid. The victim testified the blow hurt and felt “terrible”, that he blacked out and the next thing he remembered he was waking up in the ambulance, and that he received stitches in his eyelid. His mother testified that both eyes were bleeding and swollen, his ear and temple were swollen, and that it took him about two weeks to recover. The police officer testified that when he arrived at the scene, the victim was wearing a white t-shirt “covered in quite a bit of blood” and that the victim was very delusional and dazed and did not know what had happened. Given the language of IC 35-41-1-25 and the evidence presented, there was sufficient evidence to support the trial court’s adjudication of D. T. for committing an act

that if committed by an adult, would constitute battery resulting in serious bodily injury, a class C felony.