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IN THE
COURT OF APPEALS OF INDIANA

CHARLES MOORE, JR.	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 49A05-0812-CR-751
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Annie Christ-Garcia, Judge
Cause No. 49G17-0909-FD-209492

August 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Charles Moore, Jr. appeals his convictions, following a bench trial, of strangulation, a Class D felony; criminal confinement, a Class D felony; and domestic battery; a Class A misdemeanor. For our review, Moore raises a single issue, whether sufficient evidence supports his strangulation conviction. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

On September 9, 2008, Kathy Turner was visiting a woman named Helen, who lived in the same apartment building as Moore. Turner and Moore had known each other for ten years and had several children together. In the early morning, Moore began banging on Helen's door. Helen then told Turner to leave because she did not want any trouble from Moore. As Turner left the apartment, Moore attacked her from behind. Moore held Turner in a headlock, bit her on the back, and punched her. The attack took place in a stairwell of the apartment building, which had large windows facing the street. When the police arrived, they shined spotlights into the stairwell and witnessed a portion of the attack. Moore saw the lights, dragged Turner down the stairs, bit her on the face, and released her.

On September 15, 2008, the State charged Moore with strangulation and criminal confinement, both Class D felonies, and battery and domestic battery, both Class A misdemeanors. On November, 13, 2008, the State amended the charges to add an habitual offender allegation. A bench trial was held on November 19, 2008, at which Turner testified that Moore squeezed her neck "hard enough where I couldn't, I couldn't move … I was trying [sic] to pass out a little bit that's how it felt … seeing black spots."

Transcript at 27. Turner also testified that she felt pressure in her neck. On two other occasions, Turner testified that Moore was choking her. Id. at 43-44 ("… he released me from choking me."), 76 ("Q. So the only thing he did was bit you is that right? … A. And choke me.").

The trial court found Moore guilty as charged and entered convictions for strangulation, criminal confinement, and domestic battery. The trial court also found that Moore was an habitual offender. On December 3, 2008, the trial court held a sentencing hearing, after which it sentenced Moore to an aggregate term of ten and one-half years, with eight and one-half years executed and two years suspended to probation. Moore now appeals.

Discussion and Decision

I. Standard of Review

In reviewing sufficiency of the evidence claims:

> [we] must consider only the probative evidence and reasonable inferences supporting the verdict. 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. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. [T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations and quotations omitted) (emphasis in original).

II. Strangulation

To sustain a conviction for strangulation, the State must prove beyond a

reasonable doubt that Moore, in a rude or insolent manner, knowingly or intentionally applied pressure to Turner's throat or neck or obstructed her mouth or nose in a manner that impeded her normal breathing or blood circulation. See Ind. Code § 35-42-2-9. Moore argues the State failed to establish that he applied pressure to Turner's throat or neck or obstructed her mouth or nose. Rather, Moore argues the only evidence was that he held Turner in a headlock, implying that this action did not involve pressure to her throat or obstruction of her mouth or nose.

The State asked Turner on direct examination, "Did you, did you feel pressure in your head?" and Turner replied, "No it was just mostly in my neck going down my back." Tr. at 28. The State confirmed, "The pressure was in your neck?" and Turner replied, "Yeah." Id. Turner also repeatedly testified Moore's attack caused her to feel dizzy as though she would black out, see black spots, and have difficulty breathing.[1] In addition, on two occasions, Turner testified that Moore was choking her. Turner's testimony provides sufficient evidence that Moore either applied pressure to her neck or obstructed her breathing causing her to have difficulty breathing and to experience symptoms of impending unconsciousness. Therefore, there is sufficient evidence to support Moore's strangulation conviction.

Conclusion

Sufficient evidence supports Moore's strangulation conviction.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.

[1] Turner also assisted the prosecutor in physically demonstrating the positions of her and Moore's bodies during the headlock; however, the record does not provide a sufficient verbal description of the demonstration to be useful in our review.