ATTORNEY FOR APPELLANT:

BRYAN LEE CIYOU
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

THOMAS CARTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0606-CR-467
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
49G05-0510-FC-173054

March 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Thomas Carter appeals his conviction for Battery,[1] a class C felony. Specifically, Carter argues that the evidence was insufficient to establish that the victim's broken nose constituted serious bodily injury. Finding that the evidence was sufficient, we affirm the judgment of the trial court.

FACTS

On October 3, 2005, Nicole Williams was at her apartment in Lawrence. At approximately ten or eleven that night, Williams heard a knock on her door and opened it to find Carter—Williams's ex-boyfriend against whom she had a no-contact order—standing at the door. Carter and Williams had previously dated for three to four years but had not been in a relationship for at least six months. Carter entered Williams's apartment and Williams "told [Carter] that he shouldn't be here." Tr. p. 8. Carter began to call Williams names such as "bitch" and "whore" and sat on Williams's couch and said that he "was not leaving." Id. at 8, 9-10. Williams again asked Carter to leave and began to look for her phone to call for help. Williams walked toward the couch to look for her phone, and Carter grabbed her arm and pulled her onto the couch. When Williams resisted, Carter struck her "in the face very, very, very hard." Id. at 13. As Williams's nose began to bleed, Carter grabbed her phone from the table next to the couch and took the phone to the bathroom. While Carter was in the bathroom, Williams pleaded with him through the door to give her the phone because she needed help. As Carter exited the bathroom, he dropped the phone and a towel near Williams—who was lying on the floor—and left the apartment. Williams immediately called

[1] Ind. Code § 35-42-2-1.

her sister, who summoned an ambulance to take Williams to the hospital.

At the hospital, Williams received Morphine for her pain. A doctor examined her nose, analyzed x-rays, and determined that Williams's nose was broken. Williams remained in the hospital for a few hours and was sent home with the pain medication Percocet. On October 14, 2005, Williams had surgery on her nose to restore her impaired breathing.

On October 6, 2005, the State charged Carter with class C felony battery, class A misdemeanor invasion of privacy, class A misdemeanor interference with reporting crime, and class D felony invasion of privacy. A bench trial was held on April 24, 2006, and Carter testified, admitting his guilt to the class A misdemeanor invasion of privacy charge. In response to Carter's testimony, the State dismissed the class D felony invasion of privacy charge. After the bench trial, the trial court found Carter guilty of class C felony battery and class A misdemeanor invasion of privacy and not guilty of class A misdemeanor interference with reporting crime. A sentencing hearing was held on May 12, 2006, and the trial court sentenced Carter to seven years for the class C felony battery conviction and to one year for the class A misdemeanor invasion of privacy conviction. The trial court ordered the two sentences to run concurrently, for an aggregate term of seven years imprisonment. Carter now appeals.

DISCUSSION AND DECISION

Carter argues that there was insufficient evidence to convict him of class C felony battery because Williams's injuries did not amount to a "serious bodily injury" within the

meaning of the battery statute. I.C. 35-42-2-1(a)(3).[2] We initially note that the standard of review for sufficiency claims is well settled. In addressing Carter's challenge we neither reweigh the evidence nor reassess the credibility of witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we consider the evidence most favorable to the verdict and draw all reasonable inferences that support the ruling below. Id. We affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. O'Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001).

For purposes of a class C felony battery conviction, "serious bodily injury" means "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. Whether bodily injury is "serious" is a question of degree and, therefore, appropriately reserved for the finder of fact. Sutton v. State, 714 N.E.2d 694, 697 (Ind. Ct. App. 1999). While Carter argues that Williams's injury was not a serious bodily injury within the meaning of the statute, the State argues that Carter's actions caused Williams extreme pain and that sufficient evidence of her extreme pain was presented at trial.

Williams testified at trial that Carter struck her "in the face very, very, very hard" and that "after I got struck in the face I believe I lost consciousness, things sort of turned white, there was a ringing in my ear and blood came out of my nose . . . [the blood] was going down

---

[2] Indiana Code section 35-42-2-1(a)(3) provides "[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 . . . a Class C felony if it results in serious bodily injury to any other person . . . ."

in my lungs and I couldn't breathe and was in extreme pain." Tr. p. 13-14. On a scale of one to ten with ten being the highest, Williams described her pain as a "ten." Id. at 17. After arriving at the hospital, the doctor gave Williams Morphine, but she "couldn't even feel [the medication's effects because], it hurt so bad." Id. Upon her release from the hospital, Williams was prescribed the pain medication Percocet. Williams was still in pain when she had surgery on October 14, 2005—eleven days after the injury. Id. at 44. Following the surgery, Williams continued to be in pain for approximately one month. Id. at 22.

Carter argues that Williams's "belief and testimony was wholly subjective in that one can easily imagine a host of scenarios where her noted ten (10) out of ten (10) pain level would have been exceeded by Ms. Williams: a severe burn or an amputation." Appellant's Br. p. 12. However, Carter's argument is merely an invitation for us to reweigh the evidence and assess the credibility of witnesses—a practice in which we do not engage as the reviewing court. Sanders, 704 N.E.2d at 123. Furthermore, simply because Williams had never experienced pain greater than her broken nose and, therefore, rated the injury high on a personal scale of pain does not mean that the pain was not extreme. See Schweitzer v. State, 552 N.E.2d 454, 458 (Ind. 1990) (holding that a victim's testimony that she had never before been so painfully injured is sufficient to establish extreme pain for purposes of serious bodily injury).

Carter directs us to Davis v. State to support his argument that Williams's broken nose did not cause her extreme pain; however, we find Davis to be distinguishable. 813 N.E.2d 1176 (Ind. 2004). In Davis, our Supreme Court held that evidence of the victim's slightly

lacerated lip, knee abrasion, and broken pinky was insufficient to support a serious bodily injury finding. Id. at 1179. However, the victim in Davis "said little at trial by way of describing her level of pain," was not prescribed pain medication upon leaving the hospital, and did not require further treatment or surgery after the date of the injury. Id. at 1178-79. Here, Williams described the extreme nature of her pain in great detail at trial, was given prescription pain medication both at the hospital and upon her release, was still in pain before her surgery—eleven days after the attack—and continued to be in pain for one month after the surgery. In light of the abundant evidence presented at trial regarding Williams's extreme pain, it was reasonable for the jury to conclude that Williams's broken nose was a serious bodily injury sufficient to convict Carter of class C felony battery.

Carter also invites us to judicially clarify the term extreme pain, "perhaps by adoption of a standard." Appellant's Br. p. 13. He suggests that we formulate an "objective standard" to prevent possible "miscarriages of justice." Id. at 16. We initially note that it would be extremely difficult—if not impossible—to formulate an objective standard for the term because many feel that "pain is subjective: what one [person] deems as intolerable, another might very well find manageable." Rima J. Oken, Curing Healthcare Providers' Failure to Administer Opioids in the Treatment of Severe Pain, 23 Cardozo L. Rev. 1917, 1973 (2002) (citing Rebecca A. Drayer et al., Barriers to Better Pain Control in Hospitalized Patients, 17 J. Pain & Symptom Mgmt. 434, 438 (1999)). Furthermore, we have previously held that "a person of ordinary intelligence understands the term 'extreme pain.'" Vaillancourt v. State, 695 N.E.2d 606, 610 (Ind. Ct. App. 1998). In Davis, our Supreme Court provided that,

"[a]s with all matters of degree, it is difficult to describe in words a bright line between what is 'bodily injury' and what is 'serious bodily injury.'" 813 N.E.2d at 1178. Because "extreme pain" is a type of "serious bodily injury," we extend the Davis logic and conclude that it is difficult to describe in words a bright line between what is pain and what is extreme pain. Therefore, we decline Carter's invitation for us to adopt a specific standard for the term.[3]

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.

[3] While Carter does not explicitly argue that the term "extreme pain" is unconstitutionally vague, we note that we have previously rejected that argument. Vaillancourt, 695 N.E.2d at 610 (holding that "the term 'extreme pain' is not one which persons of average intelligence cannot understand" and, therefore, "is not unconstitutionally vague").