

## ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR09-1335

JOHN MARK COX

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** JUNE 2, 2010

APPEAL FROM THE HOWARD  
COUNTY CIRCUIT COURT  
[NO. CR-09-89-1]

HONORABLE TOM COOPER,  
JUDGE,

AFFIRMED

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### KAREN R. BAKER, Judge

Appellant John Mark Cox challenges his Howard County jury conviction for domestic battering in the second degree asserting that no substantial evidence existed to support a finding that appellant’s mother suffered a “serious physical injury” as required to sustain a conviction for battery in the second degree. In the alternative, he argues that the facts at trial fit more squarely within the definition of third degree domestic battering and urges us to amend the conviction. We find no error and affirm.

Domestic battering in the third degree occurs when a person, “[w]ith the purpose of causing physical injury to a family or household member . . . causes physical injury to a family or household member.” Ark. Code Ann. § 5-26-305(a)(2) (Repl. 2006). A person also

commits domestic battering in the third degree if he or she recklessly causes physical injury to a family or household member. Ark. Code Ann. § 5-26-305(a)(2) (Repl. 2006). A person commits domestic battering in the second degree if “with the purpose of causing physical injury to a family or household member, the person causes serious physical injury to a family or household member.” Ark. Code Ann. § 5-26-304 (a)(1) (Repl. 2006). “Serious physical injury” is defined as “physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.” Ark. Code Ann. § 5-1-102(21) (Repl. 2006). See *Butler v. State*, 2009 Ark. App 695, 371 S.W.3d 699.

We treat a motion for directed verdict as a challenge to the sufficiency of the evidence. In our review of the evidence, we seek to determine whether the verdict is supported by substantial evidence. *Turbyfill v. State*, 92 Ark. App. 145, 211 S.W.3d 557 (2005). However, we consider only the evidence that supports the conviction without weighing it against other evidence that is favorable to the accused. *Id.* If the evidence is of sufficient certainty and precision to compel a conclusion and pass beyond mere suspicion and conjecture, the evidence is substantial. *Id.* Further, we do not weigh the credibility of the witnesses on appeal; such matters are left to the fact-finder. *Id.* A jury is not required to believe the defendant’s version of events because he is the person most interested in the outcome of the trial. *Id.* Also, because of the difficulty in ascertaining intent, it is presumed that a person intends the natural and probable consequences of his acts, and the fact-finder may draw upon common knowledge and experience to infer the defendant’s intent from the circumstances. *Id.*

Appellant's mother testified, and appellant conceded, that appellant head-butted her twice with his forehead across the bridge of her nose, which resulted in a fractured nose. He then grabbed her by her throat and threw her over the couch causing her to hit the back of her head so hard on the floor that she urinated on herself. She sought emergency medical care for her broken nose, could receive no medical treatment to repair it, and was forced to deal with the pain as best she could with over-the-counter medication. Officer Greg Parker of the City of Nashville Police Department described appellant's mother's nose as "badly disfigured." He further described the nose as "pushed all the way to the side" of her face when he arrived on the scene, with blood, swelling, discoloring, and a large knot along the bridge of the nose. The mother testified that she had tried to clean herself up before the officer arrived.

Appellant argues that an untreatable, broken nose with no prolonged impairment or protracted disfigurement does not constitute a serious physical injury. Despite his insistence, whether a victim has sustained serious physical injury, as well as the question of temporary or protracted impairment, are issues for the jury to decide. *Id.* In determining whether a physical injury exists, a jury may consider the severity of the attack and may rely on its common knowledge, experiences, and observations in life to make this determination. *Id.* The jury observed the witnesses, their demeanor, and the victim's physical appearance. We hold that substantial evidence supports the jury's finding that appellant's mother suffered a serious physical injury. *See Enoch v. State*, 37 Ark. App. 103, 826 S.W.2d 291 (1992)(victim

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who suffered a bruised shoulder, nerve damage in his arm, and wore a brace for a week suffered serious physical injuries).

Affirmed.

KINARD and BROWN, JJ., agree.