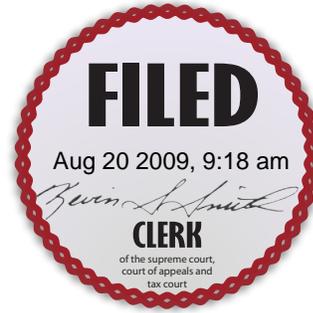


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JASON R. BARTON,)
)
Appellant-Defendant,)
)
vs.) No. 02A05-0901-CR-7
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Jr., Judge
Cause No. 02D04-0801-FB-4

AUGUST 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

A jury convicted Jason Barton of rape, a Class B felony, and battery, a Class A misdemeanor. On appeal Barton contends that the evidence was insufficient to sustain the convictions.¹

When a challenge is made to the sufficiency of the evidence, the court on appeal will neither reweigh the evidence nor redetermine the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We must affirm if there is evidence of probative value, together with reasonable inferences that may be drawn therefrom, favoring the verdict that would allow a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.* That is so because the constitution makes the jury the exclusive determiner of the facts. *Meeks v. State*, 759 N.E.2d 1126, 1129 (Ind. Ct. App. 2001) (citing Article I, Section 19 of the Indiana Constitution).

In December, 2007, Barton had been living at the residence of his former girlfriend, N. On December 31st, Barton and N. went to a bar to celebrate the New Year. While there they met an old friend of Barton's, Kirk Lecount, and the three had a number of drinks. Eventually, there was an argument between Barton and N., and she told him to leave. Barton left the bar and went to N.'s home.

¹ Barton presents no argument concerning the battery conviction. That contention is therefore waived.

N. returned home with Lecount. Barton became angry and knocked Lecount down. When N. attempted to intervene Barton knocked her down and hit her in the face three or four times. This caused N. to feel ill, and she went into the bathroom, closed the door and began vomiting.

Barton kicked open the door to the bathroom, grabbed N.'s legs, flipped her over and attempted to take off her pants. She struggled against this and told Barton to stop. He told her to shut up and hit her in the face when she struggled. Barton eventually pulled off N.'s pants and underwear. When N. turned over to vomit into the toilet, Barton penetrated her vagina with his penis. Barton left the bathroom but later returned and kicked the door in. N. told Barton to leave and kicked him. He then kicked her in the face, and she blacked out.

When Barton left the bathroom the second time, N. called her mother, and her mother called the police. Officer Gordon Allen responded and encountered N. screaming and crying hysterically. Michelle Ditton, a nurse examiner at the Fort Wayne Sexual Assault Treatment Center, examined N. and testified to her injuries. Photographs taken at the time showed N.'s injuries and were introduced into evidence at trial.

Barton contends that the evidence failed to establish that he knowingly or intentionally had intercourse with N. against her will. To support this contention he relies on his testimony that N. initiated the sexual contact by fondling him and did not ever tell him she did not want to engage in intercourse. He argues the admitted intercourse was consensual. The argument essentially asks us to redetermine the credibility of the

witnesses and reweigh the evidence. As stated at the outset, this we may not do. The evidence favoring the verdict amply sustained the conviction for rape.

Affirmed.

BAILEY, J., and MAY, J., concur.