



**FILED**

Jun 02 2010, 9:44 am

*Kevin L. Smith*

**CLERK**  
of the supreme court,  
court of appeals and  
tax court

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Allen M. Parker (Parker), appeals his convictions for two counts of battery, as Class B misdemeanors, Ind. Code § 35-42-1-2.

We affirm.

## ISSUE

Parker raises one issue for our review, which we restate as: Whether the State presented evidence sufficient to prove beyond a reasonable doubt that he knowingly or intentionally touched the two victims in a rude, insolent, or angry manner.

## DISCUSSION AND DECISION

On August 6, 2009, Parker was a resident at the Duvall Resident Center (Center) for Marion County Community Corrections in Indianapolis, Indiana. Major David Mackey (Major Mackey) was working at the Center and was in charge of getting the residents who were not leaving to perform outside work to clean and care for the Center's facilities. Cleanup time was announced over the Center's intercommunication system. However, Major Mackey noticed that Parker was not getting out of bed and approached Parker's bunk to instruct Parker to get up and go to the janitor's closet. Parker refused by loudly and belligerently saying "f--- you," and Major Mackey informed Parker that he would be placed in handcuffs if he did not comply. (Transcript p. 7). Parker told Major Mackey that he would kick his "f---ing ass" if Major Mackey touched him. (Tr. p. 8). An assisting officer called for backup and two officers arrived, including Sergeant David Gann (Sergeant Gann). Major Mackey told Parker to turn around so he could handcuff him, but Parker refused.

Major Mackey reached to take hold of Parker, and Parker reached out and placed his hand at Major Mackey's throat. Sergeant Gann responded by grabbing Parker and pulling him back. Together the three officers were able to handcuff Parker. Sergeant Gann's sunglasses had fallen to the floor, and he reached down to retrieve them. As he did so, Parker stomped on Sergeant Gann's hand.

That same day, the State filed an Information charging Parker with two counts of battery, as Class B misdemeanors, I.C. § 35-42-2-1. On October 8, 2009, the trial court conducted a bench trial. At the close of evidence, the trial court found Parker guilty of both counts of battery.

Parker now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Parker contends that the State failed to present sufficient evidence to prove beyond a reasonable doubt that he knowingly or intentionally touched Major Mackey or Sergeant Gann in a rude, insolent, or angry manner. Specifically, Parker contends that he only inadvertently touched Major Mackey while attempting to pull away, and he accidentally stepped on Sergeant Gann's hand when he was hopping around due to the pain he was experiencing from the tightness of the handcuffs on his wrists.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. [] Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material evidence of the offense.

*Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*.

In order to prove that Parker committed the batteries, the State was required to present sufficient evidence demonstrating that Parker knowingly, or intentionally, touched Major Mackey and Sergeant Gann in a rude, insolent, or angry manner. I.C. § 35-42-2-1(a). Major Mackey testified that Parker was acting in an angry and belligerent manner by cursing and yelling. In addition, Parker told Major Mackey that if Major Mackey touched him, he would kick his “f---ing ass.” (Tr. p. 8). Sergeant Gann testified that Parker grabbed Major Mackey “right at his throat and would not let go.” (Tr. p. 17). Further, Sergeant Gann testified that Parker “stomped” on his hand. (Tr. p. 17). The testimony regarding Parker’s demeanor and actions is substantial evidence of probative value supporting the reasonable inference that Parker was acting knowingly or intentionally when he touched both Major Mackey and Sergeant Gann. Parker directs us to his own testimony, essentially asking us to reweigh the evidence and find his testimony to be more credible. However, our standard of review prevents us from reweighing the evidence and judging the credibility of the witnesses. *Perez*, 872 N.E.2d at 212-13. Therefore, we conclude that the State presented sufficient evidence to

prove beyond a reasonable doubt that Parker committed two battery offenses, as Class B misdemeanors.

### CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to prove beyond a reasonable doubt that Parker committed two counts of battery, as Class B misdemeanors.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.