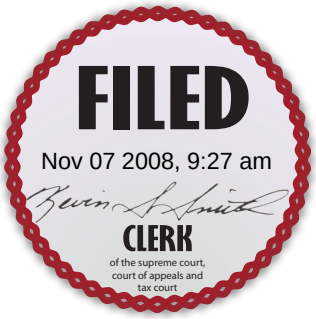

ATTORNEY FOR APPELLANT:

ANNA E. ONAITIS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SHELLEY M. JOHNSON
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JACK W. FERMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 21A01-0805-CR-212
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FAYETTE SUPERIOR COURT
The Honorable Ronald T. Urdal, Judge
Cause No. 21D01-0508-CM-544

November 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Jack Ferman appeals following his conviction for Battery, a Class B misdemeanor.[1] On appeal, Ferman contends that the evidence is insufficient to support his conviction and that his sentence is inappropriate in light of the nature of his offense and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

On June 8, 2005, Ferman met up with his now ex-wife, Deborah, at the Parkview Restaurant in Connersville. Charlene Eldridge, who was Deborah's friend, was working as a waitress. Ferman and Deborah sat at the counter facing Charlene. Ferman ordered a glass of water and ordered Charlene to refill Deborah's cup of coffee. Ferman told Charlene, "My wife needs more coffee. It's a good thing I'm not your boss … you wouldn't be here.… You need to refill my wife's coffee." Tr. p. 25. Charlene replied, "Jack when you sign my paycheck, I guess I will have to do what you say." Tr. p. 25. Charlene then began talking to Deborah.

At some point during the course of Charlene and Deborah's conversation, Charlene refilled Ferman's water and asked him whether he wanted anything to eat. Ferman took a drink of water, shaped his lips like a "squirt gun," and spat water onto Charlene's forehead. Tr. p. 26. The water dripped down Charlene's face into her eyes and on her lips. Charlene wiped her face off with a towel and ordered Ferman to leave the restaurant. As Ferman was leaving, he told Deborah, "Well, you don't have to worry about her coming to our house no more." Tr. p. 40.

[1] Ind. Code § 35-42-2-1(a) (2004).

The State charged Ferman with Class B misdemeanor battery, and on January 14, 2008, a jury found Ferman guilty as charged. On February 8, 2008, the trial court sentenced Ferman to a 180-day suspended sentence and one year of probation. Ferman now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

In reviewing a sufficiency of the evidence claim, this Court neither reweighs the evidence nor assesses the credibility of the witnesses. *Overstreet v. State*, 783 N.E.2d 1140, 1152 (Ind. 2003). Instead, we consider only the evidence most favorable to the verdict and any reasonable inferences to be drawn therefrom. *Casey v. State*, 676 N.E.2d 1069, 1072 (Ind. Ct. App. 1997). We will affirm the conviction if substantial evidence of probative value supports the conclusion of the trier of fact. *Id*.

In order to sustain Ferman's conviction for Class B misdemeanor battery, the State was required to prove that he knowingly or intentionally touched another person in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1(a). Ferman asserts that the evidence was insufficient to prove that he knowingly or intentionally spit the water on Charlene.

Intent is a mental function. *Lush v. State*, 783 N.E.2d 1191, 1196 (Ind. Ct. App. 2003). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a) (2004). "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b). Absent an admission by the defendant, intent must be determined from a consideration of the defendant's conduct and the natural and

usual consequences thereof. *Lush*, 783 N.E.2d at 1196. "The trier of fact must resort to reasonable inferences based upon an examination of the surrounding circumstances to determine whether, from the person's conduct and the natural consequences of what might be expected from that conduct, a showing or inference of the intent to commit that conduct exists." *Id*.

Here, the evidence established that upon his entering the restaurant, Ferman initiated a contentious interaction with Charlene by demanding service and demeaning her performance. Minutes later, Ferman, who was sitting roughly four feet from Charlene, took a drink of water, shaped his lips like a "squirt gun," and spat water onto Charlene's forehead. Tr. p. 26. Ferman did not apologize to Charlene until approximately two years after the incident occurred, at which time he claimed that he had "got choked up." Tr. p. 29. Additionally, as Ferman and Deborah were leaving the restaurant following the incident, Ferman commented to Deborah that, "Well, you don't have to worry about her coming to our house no more." Tr. p. 40.

Upon review of Ferman's actions surrounding the incident, we conclude that the jury could have reasonably inferred that Ferman knowingly or intentionally spat the water at Charlene. Ferman's claims relating to the sufficiency of the evidence effectively amount to an invitation to reweigh the evidence and to reassess the credibility of the witnesses, which we decline to do.

II. Appropriateness of Sentence

Ferman also challenges his 180-day suspended sentence, claiming that it is

inappropriate in light of the nature of his offense and his character. Indiana Appellate Rule 7(B) provides that "[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

> Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied. The defendant has the burden of persuading us that his or her sentence is inappropriate.

Fonner v. State, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007) (citations and quotation marks omitted).

Ferman claims that his sentence in inappropriate in light of the nature of his offense because his offense cannot be characterized as "the worst." The trial court sentenced Ferman to a 180-day suspended sentence and one year of probation, which Ferman asserts is the maximum sentence that the trial court could impose in the instant matter. *See* Ind. Code §§ 35-50-3-3 (2004), 35-50-3-1 (2004). Ferman asserts that the nature of his offense, although unpleasant, is relatively benign because he did nothing to frighten Charlene and also because his actions did not place her in any danger. We disagree. Ferman spat water into Charlene's face without provocation and without regard for the possible spread of disease. Despite Ferman's claim that his actions did not frighten Charlene, the evidence established that Ferman's actions placed Charlene in fear of communicable diseases. We therefore conclude that Ferman's 180-day suspended sentence was entirely appropriate in light of the nature of his offense.

Ferman also claims that his sentence is inappropriate in light of his good character. Ferman asserts that despite the fact that he has a criminal history, including two prior battery convictions, several of his prior charges were either related to his contentious divorce or were subsequently dismissed. Ferman also asserts that he is very active in his local veterans' organization, serving as both the post's chaplain and a judge advocate, and that he has played a role in a Connersville charitable fund drive. Additionally, at sentencing, Ferman introduced the testimony of three friends who all attested to his good character. We are unconvinced, however, that Ferman's sentence is inappropriate despite his friends' positive opinions regarding his character. Ferman has a lengthy criminal history consisting of both felony and misdemeanor convictions, including two convictions for criminal recklessness, one conviction for theft, two convictions for battery, and two convictions for disorderly conduct, which we believe is indicative of poor character. Therefore, we conclude that Ferman's 180-day suspended sentence was appropriate in light of his character.

Having concluded that the evidence was sufficient to support the jury's inference of intent and that Ferman's sentence is appropriate in light of the nature of his offense and his character, we affirm Ferman's 180-day suspended sentence.

The judgment of the trial court is affirmed.

RILEY, J. and BAILEY, J. concur.