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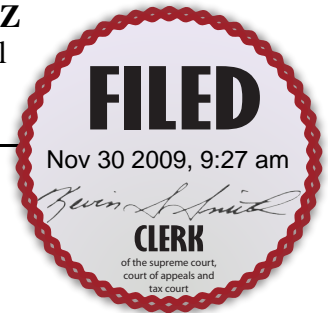
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**IN THE
COURT OF APPEALS OF INDIANA**

ERIC TATE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A05-0906-CR-311

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark Rogers, Judge
The Honorable Melissa H. Kramer, Master Commissioner
Cause No. 49G17-0903-CM-32564

November 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Eric Tate appeals his misdemeanor battery conviction. We affirm in part and reverse in part.

Issues

Tate raises two issues, which we restate as:

- I. whether the trial court erred by entering his conviction on the abstract of judgment as a Class A misdemeanor rather than as a Class B misdemeanor; and
- II. whether the evidence is sufficient to sustain his conviction for battery as a Class B misdemeanor.

Facts

In March 2009, Tate was living with his girlfriend, Brenda Brown. On March 15, 2009, Brown was driving Tate's vehicle on Eagle Creek Parkway near 46th Street in Marion County. They started to argue, and Brown stopped the vehicle and refused to drive any further. Brown got out of the vehicle, and Tate grabbed Brown by the shoulders or the shoulder area of her jacket.

Sarah Hale was driving past the scene and saw Tate and Brown arguing along the side of the road. She ran an errand and drove past again ten or fifteen minutes later. Hale saw that the couple was still arguing. She stopped and asked Brown if she needed a ride, and Brown got in Hale's vehicle. Hale took Brown to a nearby church, where they called the police. After Tate was found and read his Miranda rights, he told the officer, "[sic] I grabbed her but it wasn't hard enough to hurt her." Tr. p. 25.

The State charged Tate with battery as a Class A misdemeanor and domestic battery as a Class A misdemeanor. After a bench trial, the trial court found Tate guilty of battery as a Class B misdemeanor and sentenced him to 180 days with 170 days suspended to probation. The chronological case summary also indicates that the trial court found Tate guilty of battery as a Class B misdemeanor. However, the abstract of judgment indicates that Tate was convicted of battery as a Class A misdemeanor.

Analysis

I. Abstract of Judgment

Tate argues that the trial court erred by entering his conviction as a Class A misdemeanor on the abstract of judgment rather than as a Class B misdemeanor. The State concedes that Tate is correct. Although the trial court stated that it was entering judgment as a Class B misdemeanor and the CCS reflects that the trial court entered judgment as a Class B misdemeanor, the abstract of judgment indicates that a conviction for Class A misdemeanor battery was entered. See generally Neff v. State, 888 N.E.2d 1249, 1251 (Ind. 2008) (noting that Marion County courts routinely issue only abstracts of judgment instead of formal judgments of conviction). As a result, we reverse in part and remand for the issuance of a corrected abstract of judgment.

II. Sufficiency of the Evidence

Tate argues that the evidence is insufficient to sustain his conviction for battery as a Class B misdemeanor. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not

assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. Id.

The offense of battery as a Class B misdemeanor is governed by Indiana Code Section 35-42-2-1(a), which provides: "A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor." The State presented evidence that, while arguing with Brown, Tate grabbed her shoulders or the shoulder area of her jacket. Tate admitted to the officer that he "grabbed her but it wasn't hard enough to hurt her." Tr. p. 25. Although Tate argues that he did not intend to touch Brown in a rude, insolent, or angry manner, Tate's argument amounts to a request that we reweigh the evidence, which we cannot do. We conclude that the evidence is sufficient to sustain Tate's conviction for battery as a Class B misdemeanor.¹

Conclusion

The evidence is sufficient to sustain Tate's conviction for battery as a Class B misdemeanor. However, because the abstract of judgment incorrectly lists Tate's

¹ Because we have considered only testimony given by Brown, Hale, and Tate, and admissions made by Tate to the police officer, we need not address Tate's argument that we should not consider the police officer's testimony regarding Brown's statement to him.

conviction as battery as a Class A misdemeanor, we remand to the trial court to issue a corrected abstract of judgment. We affirm in part, reverse in part, and remand.

Affirmed in part, reversed in part, and remanded.

MATHIAS, J., and BROWN, J., concur.