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# IN THE COURT OF APPEALS OF INDIANA

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|---|---|---|
| MICHAEL NUNEZ, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 41A01-0701-CR-7 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Richard L. Tandy, Magistrate
Cause No. 41C01-0605-CM-164

**May 30, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Following a bench trial, Michael Nunez appeals his conviction of battery by bodily waste. On appeal, Nunez raises the sole issue of whether sufficient evidence supports his conviction. Concluding that sufficient evidence exists, we affirm.

## Facts and Procedural History

On April 19, 2006, Nunez went to Med Check to complete a drug screen for employment. LuAnn Kempf, a Med Check employee, filled out paperwork with Nunez, gave him a cup, and instructed Nunez to enter the bathroom and produce a urine sample. The sample Nunez provided was not warm enough for Kempf to accept,[1] and she informed Nunez that he would have to wait at least forty-five minutes and provide another sample or he would be considered to have failed the test. Nunez was upset with this news and asked, "Do you mean to tell me that after waiting for thirty (30) minutes to take a piss that I will have to do this again and that this is not acceptable?" Transcript at 13. Kempf replied affirmatively and sealed the original sample in a bag.

Approximately fifty minutes later, Kempf retrieved Nunez from the waiting area. Nunez saw a bag with a sample sitting on the counter, and asked Kempf if that was his original sample. When Kempf indicated that it was, Nunez said, "I don't think so" and grabbed the bag off the counter. Id. at 15. Kempf told Nunez that the sample belonged to Med Check and that it had to be sent to the lab with his second sample. Nunez replied, "Oh, I don't think so," and ripped open the sealed bag. Id. Kempf testified that she then "turned

[1] Kempf testified that a sample must be between 90 and 100 degrees Fahrenheit to be acceptable.

to try to take the bag, or the bottle, he said no and had the bottle out. And by then he had it in his hand and he flung it around and urine went on my pants, my shoes and my arm." Id. at 16. At this point, Kempf informed Nunez that his test was over and summoned the police, who arrested Nunez. Police recovered a "one-hitter," a device used for smoking marijuana, and a small amount of marijuana in the vehicle that Nunez drove to Med Check. The State charged Nunez with battery by bodily waste, possession of paraphernalia, and possession of marijuana, all Class A misdemeanors. Following a bench trial, the trial court found Nunez guilty of battery by bodily waste, and not guilty of the remaining charges. The trial court sentenced Nunez to sixty days executed. Nunez now appeals.

## Discussion and Decision

When reviewing a claim of insufficient evidence, we will not reweigh evidence or judge witnesses' credibility. Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). We will consider only the evidence favorable to the judgment and the reasonable inferences drawn therefrom. Id. We will affirm a conviction if the lower court's finding is supported by substantial evidence of probative value. Id.

In order to sustain a conviction for battery by bodily waste, the State must prove beyond a reasonable doubt that the defendant "knowingly or intentionally in a rude, an insolent, or an angry manner place[d] human . . . urine . . . on another person." Ind. Code § 35-42-2-6. Nunez argues that the State did not introduce sufficient evidence to prove that his conduct was knowing or intentional or that he acted in a rude, insolent, or angry manner. We disagree.

In order to demonstrate that one acted knowingly, the State must prove that "when he engage[d] in the conduct, he [was] aware of a high probability that he [was] doing so." Ind. Code § 35-41-2-2(b). "The element of intent may be proven by circumstantial evidence alone, and it is well-established that knowledge and intent may be inferred from the facts and circumstances of each case." Lykins v. State, 726 N.E.2d 1265, 1270 (Ind. Ct. App. 2000). Here, the State introduced evidence that during a verbal altercation, Nunez grabbed the bag off the counter and ripped open a bag that "you can't very easily at all pull . . . open." Tr. at 15. Nunez then flung the sample around causing urine to land on Kempf. Nunez testified that no urine landed on Kempf and that Kempf grabbed his arm. However, considering only the evidence favorable to the judgment, we conclude that sufficient evidence indicates that when Nunez removed the sample from the bag and "flung it around," he was aware of a high probability that his urine would land on Kempf.

The common meaning of "rude" is "offensive in manner or action," Merriam-Webster OnLine Dictionary, www.m-w.com/dictionary/rude (last visited May 10, 2007), or "[i]ll-mannered; discourteous," The American Heritage Dictionary of the English Language 1521 (4th ed. 2000). A reasonable trier of fact could certainly infer that Nunez's behavior in grabbing and ripping open the bag and flinging around a sample of urine was offensive, ill-mannered, or discourteous.

The common meaning of "insolent" is "insultingly contemptuous in speech or conduct" or "exhibiting boldness or effrontery." Merriam-Webster OnLine Dictionary, www.m-w.com/dictionary/insolent (last visited May 10, 2007). The term has also been

defined as "[l]acking usual or proper respect for rank or position." K.D. v. State, 754 N.E.2d 36, 41 (Ind. Ct. App. 2001) (quoting Webster's Third New International Dictionary Unabridged 1170 (1967)). Here, the evidence indicates that Nunez grabbed the sample off the counter, and after Kempf informed him that the sample was property of Med Check and attempted to retrieve the bag, Nunez replied "Oh, I don't think so," and flung around the sample, causing urine to spill on Kempf. This evidence, when considered in the light most favorable to the judgment, supports a finding that Nunez exhibited boldness, contempt, and a lack of respect for Kempf's position at Med Check. Cf. id. (student's act of grabbing police officer's belt demonstrated that student was "boldly disregarding the authority of the school police officer").

The circumstantial evidence also permits the inference that Nunez was angry with Kempf for refusing to either accept or allow him to keep his first sample. A reasonable trier of fact could infer from the circumstances that Nunez was acting in an angry manner when he caused his urine to land on Kempf.

## Conclusion

We conclude that sufficient evidence exists from which the trial court could have found that Nunez acted knowingly and in a rude, insolent, or angry manner.

Affirmed.

SULLIVAN, J., and VAIDIK, J., concur.