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IN THE
COURT OF APPEALS OF INDIANA

TINA PORTER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0703-CR-217
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jose Salinas, Judge
Cause No. 49G17-0602-CM-19607 and 49G17-0605-FD-84473

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

In this consolidated appeal, Tina Porter challenges her convictions for Battery[1] and Invasion of Privacy,[2] both class A misdemeanors, arguing that the evidence is insufficient to support her convictions as the sole issue on appeal.

We affirm.

The facts most favorable to the battery conviction reveal that on January 28, 2006, Porter accused her then fourteen-year-old daughter, J.W., of shoplifting a pair of tennis shoes from a local retail store. Porter ordered J.W. to undress because she was "getting ready to put [J.W.] in some water and she was getting ready to whoop [J.W.] with the extension cords." *Transcript* at 41. Porter, however, struck J.W. on the head with a telephone, hit her naked body several times with the buckle end of a belt, and then "whacked" her on the head with a broomstick. *Id*. at 29. With regard to the hits inflicted with the belt, J.W. testified that Porter was "whipping [her] everywhere", *Id*. at 26, and hitting "everything . . . but [her] butt." *Id*. at 42. After J.W. managed to get away from Porter, she ran naked to a neighbor's house, where the police were called. The responding officer observed that J.W. was shaking and nervous, that her hands were red and swollen, and that she had a knot on her head. J.W. sustained bruises, welts, and/or punctured skin on her head, back, forearm, and hand.

The facts most favorable to the invasion of privacy conviction reveal that on April 4, 2006, Lentine Porter, Porter's mother, obtained an *ex parte* protective order against

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[1] Ind. Code Ann. § 35-42-2-1(a)(1) (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

[2] Ind. Code Ann. § 35-46-1-15.1 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

Porter because she was receiving harassing and threatening phone calls from Porter. On May 6, 2006, Porter drove to Lentine's house, stopped out front, honked the car horn, and yelled, all while staying in the car.

On February 6, 2006, the State filed an information under Cause No. 49G17-0602-CM-19607 charging Porter with battery as a class A misdemeanor, which charge arose out of the incident on January 28, 2006. On May 24, 2006, the State filed a two-count information under Cause No. 49G17-0605-FD-84473 charging Porter with intimidation as a class D felony and invasion of privacy as a class A misdemeanor, which charges arose out of incidents occurring on May 6 and 8, 2006. The two causes were consolidated for purposes of a bench trial held on February 5, 2007. At the conclusion of the evidence, the trial court found Porter guilty of battery and invasion of privacy, but not guilty of intimidation. The trial court sentenced Porter to one year with ten days executed and the balance suspended to probation on each count and ordered the sentences to run concurrently.

Upon appeal, Porter argues that the evidence is insufficient to support her convictions for battery and invasion of privacy. When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the convictions, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond

a reasonable doubt.'" *Id*. at 126 (*quoting Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)). The uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004), *trans. denied*.

Porter argues that the evidence is insufficient to support her battery conviction. Specifically, Porter contends that by reference to the exhibits entered at trial, it is difficult to detect any injury to J.W. Porter, however, does not deny that J.W. suffered pain as a result of the "licks" she claims she inflicted as discipline. *Transcript* at 89.

Porter's conviction for battery was based primarily upon the testimony of the victim. J.W. testified that Porter came into her room, accused her of shoplifting, and then struck her over the head with a telephone, hit her repeatedly with the buckle end of a belt, and finally hit her on the head with a broomstick. As a result, J.W. suffered redness and swelling to her hand, bruises and welts on various parts of her body, and a knot on her head. J.W. also testified that she experienced pain. This evidence clearly establishes that Porter intentionally touched J.W. in a rude, insolent, or angry manner, resulting in bodily injury (i.e., physical pain). *See* I.C. § 35-42-2-1 (battery); Ind. Code Ann. § 35-41-1-4 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007) (defining bodily injury as including physical pain).

Porter also argues that her conviction for battery should be reversed because she had legal authority to discipline her daughter. I.C. § 35-41-3-1 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007) provides that "[a] person is justified in engaging in conduct otherwise prohibited if he has legal authority to

do so." This statute has been interpreted to mean that a parent may engage in reasonable discipline even if such conduct would otherwise constitute battery. *Dyson v. State*, 692 N.E.2d 1374 (Ind. Ct. App. 1998) (*citing Smith v. State*, 489 N.E.2d 140 (Ind. Ct. App. 1986), *trans. denied*). In order to qualify as a defense, the parent's conduct must be reasonable and not cruel or excessive. *Smith v. State*, 489 N.E.2d 140.

Porter maintains that "she was imposing parental discipline upon her wayward daughter", *Appellant's Brief* at 6, after she discovered her daughter "straddled on top of a boy . . . with [her] lingerie on" when she went to confront her daughter about a pair of shoes. *Transcript* at 85-86. Although J.W. denied any sexual encounter with a boy, Porter claims that the evidence corroborates her version of what happened that day and that her version of events justified her conduct as reasonable parental discipline.

We decline Porter's invitation that we reweigh the evidence with regard to her claimed defense that her actions were justified as reasonable parental discipline. The record demonstrates that for whatever reason, Porter attacked her fourteen-year-old daughter with a telephone, a belt buckle, and a broomstick about the child's head and body. A reasonable trier of fact could have concluded that Porter's conduct was excessive (i.e., going beyond the bounds of reasonable parental discipline) and thus rejected her claimed defense. We will not second-guess the trier of fact's determination in this regard. We therefore conclude that the evidence is sufficient to support Porter's conviction for battery.

Porter also argues that her invasion of privacy conviction is not supported by sufficient evidence. Here, in response to threatening and harassing phone calls being

made by Porter to Lentine, the trial court issued an *ex parte* protective order[3] that ordered Porter "to stay away from the residence, school, and/or place of employment of the Petitioner [Lentine]." *Exhibits* at 9.

To convict Porter of invasion of privacy the State was required to prove beyond a reasonable doubt that Porter knowingly or intentionally violated an *ex parte* protective order by "coming to Lentine's residence." *Appendix* at 46.

Porter attempts to argue that she did not knowingly or intentionally violate the protective order, asserting that she did not know about the protective order until her arrest in July. Porter acknowledges, however, that the record demonstrates she was aware of the protective order shortly after it was served given Lentine's testimony that Porter called her after receiving a copy of the protective order from Porter's boyfriend. Porter makes no other argument in this regard and cites no authority to support her position. We therefore conclude that the evidence in the record sufficiently establishes that Porter was aware of the protective order at the relevant time.

Porter also argues that pulling up in front of Lentine's house, honking her horn, and yelling did not constitute a violation of the protective order. Porter notes that she was on the street, she did not pull into Lentine's driveway, and she did not exit her car. Thus, she argues that she cannot be said to have gone to Lentine's house. Porter also argues that the protective order did not provide that she was required to stay a certain number of feet from Lentine's home. Thus, without a specific description of the exact distance to be honored, the protective order was not proven to be violated. In sum, Porter

[3] The protective order was effective April 4, 2006 and was to continue for a period of two years.

claims that the State did not prove she went to the home of Lentine, as forbidden by the protective order (which ordered Porter to "stay away" from Lentine's residence). *Exhibits* at 9.

The evidence demonstrated that Porter intentionally drove to Lentine's residence, stopped in the street in front of Lentine's residence, yelled from inside the car, and repeatedly honked her horn. From this evidence, a reasonable trier of fact could have concluded that Porter did not "stay away" from Lentine's residence as ordered by the court through its issuance of the protective order. Moreover, Porter's conduct clearly violates the spirit of the protective order. It cannot be said that Porter was permitted to drive to Lentine's residence, harass her from the street, and leave without being in violation of the protective order.

Judgment affirmed.

RILEY, J., and SHARPNACK, J., concur.