MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Johnnie Tyrone Prude,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 30, 2021

Court of Appeals Case No. 21A-CR-745

Appeal from the Marion Superior Court

The Honorable Helen W. Marchal, Judge

Trial Court Cause No. 49D26-2006-CM-18769

Pyle, Judge.

Statement of the Case

[1] Johnnie Prude ("Prude") appeals his conviction, following a bench trial, for Class A misdemeanor battery.[1] Prude argues that there was insufficient evidence to support his conviction. Concluding that the evidence was sufficient to support Prude's battery conviction, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether there is sufficient evidence to support Prude's battery conviction.

Facts

[3] During the afternoon of May 10, 2020, Doris Pinner ("Doris") returned to her home where she lived with her brother, Sonny Pinner ("Sonny"). As Doris drove up to the house, she saw an unknown man, later identified as Prude, who was standing in front of her house and knocking on her front door. From her car, Doris asked Prude if she could help him. Prude told Doris that he was looking for Sonny. As Doris phoned Sonny to tell him that a man was outside their house, Prude walked away from the door. Doris parked her car and walked toward the house, and Sonny came to the front door looking for the man. Prude, who was then at his car, saw Sonny outside the house. As Doris walked towards her brother, she then saw Prude "start[] running towards

[1] IND. CODE § 35-42-2-1.

[them]." (Tr. Vol. 2 at 10). Neither Doris nor Sonny knew Prude, and they did not know what he wanted. Prude had "his hands balled up" in "fists" out "in front of him," and he looked "angry" and "seemed . . . agitated." (Tr. Vol. 2 at 10, 12, 28). Sonny asked Prude, "who are you" and "what's going on?" (Tr. Vol. 2 at 11).

[4] As Prude quickly moved towards Sonny, Doris "jumped in the middle" of the two men. (Tr. Vol. 2 at 13). Prude "physically tr[ied] to grab [Sonny]" and tried "to get to him[,]" and Doris "tr[ied] to stop it[.]" (Tr. Vol. 2 at 13). Prude, who was taller than Doris, reached over her and swung towards Sonny but hit Doris in the head "more than once[,]" knocking her to the ground and causing her pain. (Tr. Vol. 2 at 14). Doris "begg[ed]" Prude to "please stop[.]" (Tr. Vol. 2 at 14). Ultimately, Doris and Sonny entered their house and called the police. Doris and Sonny spoke with a police officer that day and later identified Prude from a photo array.

[5] The State charged Prude with Class A misdemeanor battery against Doris. In April 2021, the trial court held a bench trial. Doris and Sonny testified regarding the facts of the offense. After the State rested, Prude moved for a directed verdict, arguing that the State had failed to prove "all" of the elements of battery. (Tr. Vol. 2 at 48). The trial court denied Prude's motion. Prude testified on his own behalf, but he did not testify regarding the facts of the offense.

[6] During closing arguments, the State argued that the evidence showed that Prude had touched Doris in a rude, insolent, or angry manner resulting in pain. The State acknowledged that the evidence showed that Prude had been attempting to strike Sonny when he struck Doris. The State cited to *D.H. v. State*, 932 N.E.2d 236 (Ind. Ct. App. 2010) and argued that, under the doctrine of transferred intent, a defendant "charged with battery need only . . . the intent to commit the battery, not to commit battery on a specific person." (Tr. Vol. 2 at 52). In Prude's closing argument, he generally challenged the credibility of Doris and Sonny. He made no argument regarding transferred intent.

[7] The trial court found Prude guilty as charged. The trial court imposed a 365-day sentence with all 365 days suspended to probation. Prude now appeals.

Decision

[8] Prude argues that the evidence was insufficient to support his Class A misdemeanor battery conviction. Prude contends that he "did not knowingly strike" Doris because she had "entered the foray by her own accord as Prude intended to strike Sonny." (Prude's Br. 6).

[9] Our standard of review for sufficiency of the evidence claims is well settled. We "consider only the probative evidence and reasonable inferences *supporting* the verdict." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (emphasis in original). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The

evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[10] The battery statute, INDIANA CODE § 35-42-2-1, provides that "a person who knowingly or intentionally . . . touches another person in a rude, insolent, or angry manner" and that touching "results in bodily injury to any other person" commits battery as a Class A misdemeanor. IND. CODE § 35-42-2-1(c)(1), (d)(1). "'Bodily injury' means any impairment of physical condition, including physical pain." I.C. § 35-31.5-2-29. To convict Prude as charged, the State was required to prove beyond a reasonable doubt that Prude knowingly touched Doris in a rude, insolent, or angry manner, resulting in the bodily injury of pain. "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." I.C. § 35-41-2-2(b).

[11] During closing argument of the bench trial, the State acknowledged that the evidence showed that Prude had been attempting to strike Sonny when he struck Doris, and it explained that it was relying upon the doctrine of transferred intent on this battery charge. Transferred intent is a doctrine where a "'defendant's intent is transferred from the person against whom it was directed to the person actually injured.'" *D.H. v. State*, 932 N.E.2d 236, 238 (Ind. Ct. App. 2010) (quoting *Tucker v. State*, 443 N.E.2d 840, 842 (Ind. 1983)). "It has long been held that '[t]he fact that [the defendant] did not strike his intended victim but instead injured another is not a defense.'" *D.H.*, 932 N.E.2d at 238 (quoting *Tucker*, 443 N.E.2d at 842). "Where one seeks to injure a

person, but mistakenly or accidentally injures another, he is nevertheless guilty of assault with intent under the law." *Barnett v. State*, 256 Ind. 303, 306, 268 N.E.2d 615, 617 (1971) (citing *Matthews v. State*, 237 Ind. 677, 148 N.E.2d 334 (1958)).

[12] Here, the State presented sufficient evidence to support Prude's battery conviction. Prude does not dispute that he intended to strike at Sonny. The evidence that Prude directed his attack at Sonny but actually struck and injured Doris was sufficient to support Prude's battery conviction. *See D.H.*, 932 N.E.2d at 238 (affirming a juvenile's battery finding for knowingly or intentionally striking a teacher where the juvenile intended to hit another student but instead struck a teacher). Prude's challenge to the evidence supporting his battery conviction is nothing more than an invitation to reweigh the evidence and judge the credibility of the witnesses, which we will not do. *See Drane*, 867 N.E.2d at 146. Because there was probative evidence from which the trial court, as finder of fact in the bench trial, could have found that Prude committed battery against Doris, we affirm his conviction for Class A misdemeanor battery.[2]

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[2] We also reject Prude's argument that the State should have specifically charged the doctrine of transferred intent in the charging information. Prude suggests that the State's failure to include it in the charging information or amend the charging information prior to trial precludes the State's ability to rely upon transferred intent at trial. Prude essentially argues that there was a fatal variance between the charging information and the evidence at trial. However, Prude has waived this argument because he failed to raise it to the trial court. *See Crittendon v. State*, 106 N.E.3d 1100, 1103, n.3 (Ind. Ct. App. 2018) (holding that a defendant waives a fatal-variance claim by failing to raise it to the trial court). Waiver notwithstanding, our supreme court has already rejected such an argument that the State is required to include transferred intent in

[13] Affirmed.

Bailey, J., and Crone, J., concur.

a charging information. *See Taylor v. State*, 260 Ind. 264, 272–73, 295 N.E.2d 600, 605-06 (1973), *cert. denied*; *Matthews*, 237 Ind. At 680-81, 148 N.E.2d at 335.