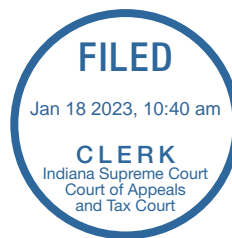


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Deandre Dixon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 18, 2023

Court of Appeals Case No.
22A-CR-1121

Appeal from the Madison Circuit
Court

The Honorable David A. Happe,
Judge

Trial Court Cause No.
48C04-2105-F6-1242

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Deandre Dixon (Dixon), appeals his conviction for battery by bodily waste on a public safety official, a Level 6 felony, Ind. Code §§ 35-42-2-1(c)(2), (e)(2).
- [2] We affirm.

ISSUE

- [3] Dixon presents this court with one issue, which we restate as: Whether the State proved beyond a reasonable doubt that he committed battery by bodily waste on a public safety official.

FACTS AND PROCEDURAL HISTORY

- [4] On March 2, 2021, Dixon was serving a sentence at the Pendleton Correctional Facility (Pendleton), a unit of the Indiana Department of Correction. Around 3:30 p.m., Dixon asked correctional officer Jacob Pratt (Officer Pratt) to bring a trash receptacle to his cell so that he could throw away some trash. Officer Pratt complied. Following Pendleton's standard operating procedure, before Dixon was allowed to discard his trash, Officer Pratt asked Dixon to step back from the cell door and to show his hands. As Dixon did so, Officer Pratt observed Dixon through the two narrow vertical windows of Dixon's closed cell door. Officer Pratt had placed the trash receptacle close to the small, waist-high cuff port of Dixon's cell door. Dixon began tossing trash into the receptacle. Officer Pratt then observed Dixon turn away from his cell door. Dixon retrieved a cup with urine in it and threw the urine on Officer Pratt

through the opening of the cuff port. Officer Pratt immediately reported the incident to his supervisors.

[5] On May 6, 2021, the State filed an Information, charging Dixon with Level 6 felony battery by bodily waste on a public safety officer. On March 30, 2022, the trial court conducted Dixon’s one-day jury trial. The State introduced into evidence surveillance video of the incident recorded from two separate angles. Officer Pratt related to the jury that, after Dixon successfully deposited several items of trash into the receptacle, “[Dixon] turned towards his toilet and grabbed a cup. I assumed it was more trash and then he, uh, tossed liquid on me.” (Transcript p. 75). Officer Pratt stated that he knew the liquid was urine because “it smelled of urine and was warm and yellow.” (Tr. p. 75). According to Officer Pratt, Pendleton inmates do not have access to yellow liquids. Images taken after the incident were admitted into evidence which showed a yellow stain on Officer Pratt’s uniform around his midriff. The white Styrofoam cup Dixon used was also admitted into evidence, and it bore a visibly yellow stain on its interior and exterior. Dixon testified on his own behalf that the liquid made contact with Officer Pratt accidentally. Dixon denied that the cup contained urine and testified that it contained a blend of coffee and cold water.

[6] At the conclusion of the evidence, the jury found Dixon guilty as charged. On April 19, 2022, the trial court held Dixon’s sentencing hearing. The trial court sentenced Dixon to two and one-half years.

[7] Dixon now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[8] Dixon challenges the evidence supporting his conviction. When reviewing such claims, we consider only the probative evidence and reasonable inferences supporting the fact-finder's determination, without reweighing the evidence or reassessing the credibility of the witnesses. *Fix v. State*, 186 N.E.3d 1134, 1138 (Ind. 2022). We will affirm unless no reasonable fact-finder could find that the elements of the offense were proven beyond a reasonable doubt. *Id.*

[9] The offense of Level 6 felony battery by bodily waste on a public safety officer occurs where “a person [] knowingly or intentionally . . . in a rude, insolent, or angry manner places any bodily fluid on . . . a public safety official while the official is engaged in the official's official duty.” I.C. §§ 35-42-2-1(c)(2), (e)(2). Here, the State alleged that Dixon had knowingly or intentionally thrown urine on Officer Pratt. On appeal, Dixon challenges the evidence supporting the jury's conclusion that he acted knowingly or intentionally and its determination that the liquid he threw on Officer Pratt was urine.

[10] A person acts “‘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). A person acts “‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” I.C. § 35-41-2-2(b). In addition, for purposes of sustaining a battery conviction “the requisite intent may be presumed from the voluntary

commission of the act.” *Mishler v. State*, 660 N.E.2d 343, 348 (Ind. Ct. App. 1996).

[11] Here, Dixon does not contend that his act of throwing the liquid was involuntary, and, therefore, his knowing or intentional intent may be presumed. *See id.* Other evidence admitted at trial buttressed this presumption, including the surveillance footage showing the angle and velocity of the liquid, the location of the trash receptacle, and Officer Pratt’s location as Dixon threw the urine, from which the jury could draw its own conclusion regarding Dixon’s intent. (Exh. 1). The jury could have reasonably inferred from the fact that Dixon had successfully tossed other trash into the receptacle that proper disposal of the cup and liquid was within Dixon’s capability and that this was no mere accident, as Dixon claims on appeal. In addition, Officer Pratt’s testimony that he observed Dixon throwing liquid on him supports a reasonable inference that Officer Pratt was equally visible to Dixon during the commission of the offense, which further supported the jury’s conclusion that Dixon’s throwing of the urine was knowing or intentional. *See Pacheo v. State*, 444 N.E.2d 343, 343-44 (Ind. Ct. App. 1983) (finding the requisite intent for attempted battery based partially on evidence that the officer was visible to Pacheo when three gun shots were fired). Dixon’s contention that the offense was an accident is simply a request that we reweigh the evidence that supports the jury’s verdict, something that we will not do as part of our review. *Fix*, 186 N.E.3d at 1138.

[12] Dixon next argues that “the State also failed to prove that the substance was a bodily fluid.” (Appellant’s Br. p. 9). In *Coleman v. State*, 149 N.E.3d 313, 315 (Ind. Ct. App. 2020), *trans. denied*, the defendant was charged with battery by bodily fluid on a public safety official based on an allegation that he spat on a correctional officer. At trial, he argued that the State had failed to present DNA evidence or any other evidence showing that the fluid at issue was saliva and not perspiration. *Id.* at 317. This court affirmed Coleman’s conviction, concluding that the jury could have reasonably concluded that the substance was saliva, and not perspiration, where the evidence showed that Coleman was observed spitting on the officer, the officer testified that the fluid on his face was saliva, the officer described the substance as a “warm and thick and bubbly” fluid on his face, and photographs showing saliva on the officer’s face were admitted. *Id.* at 321-22.

[13] Here, the jury could have similarly reached a reasonable conclusion that the liquid that Dixon threw on Officer Pratt was urine and not diluted coffee as Dixon argued at trial, where Officer Pratt testified that he had no doubt that the liquid was urine based on the fact that “it smelled of urine and was warm and yellow[,]” and images were admitted at trial of a yellow stain on the officer’s pants and in the Styrofoam cup collected from the scene. (Tr. p. 75). Although *Coleman* is distinguishable in that no one observed the source of the liquid in this case, the fact that evidence was provided that Pendleton inmates do not have access to yellow fluids further supported the jury’s reasonable inference that the liquid at issue here was indeed urine. Dixon’s contention that the

State's case was inadequate because it failed to provide any test results scientifically identifying the liquid is the same type of reweighing argument that we rejected in *Coleman*. See *Coleman*, 149 N.E.2d at 321-22. As such, we do not disturb the jury's verdict.

CONCLUSION

[14] Based on the foregoing, we conclude that the State proved beyond a reasonable doubt that Dixon knowingly or intentionally threw urine on Officer Pratt sufficient to sustain his conviction for battery by bodily fluid on a public safety official.

[15] Affirmed.

[16] Bailey, J. and Vaidik, J. concur