MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Christopher Steven Pullin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 23, 2022

Court of Appeals Case No. 22A-CR-1283

Appeal from the Decatur Superior Court

The Honorable Matthew D. Bailey, Judge

Trial Court Cause No. 16D01-2104-CM-399

Bailey, Judge.

Case Summary

[1] Christopher Pullin ("Pullin") appeals his conviction for Domestic Battery, as a Class A misdemeanor.[1] He presents the sole issue of whether sufficient evidence supports his conviction. We affirm.

Facts and Procedural History

[2] In April of 2021, Pullin and Haley Ralston ("Ralston") were in a relationship. They frequently stayed together overnight, and they co-parented their eight-month-old child, L.R. On April 22, 2021, the couple went out to dinner and returned to the home of Ralston's father, Danny Ralston ("Danny"), to watch a movie. Ralston's sister, Elizabeth, was also present.

[3] Ralston sat down in a recliner, holding L.R. in one hand and a television remote control in the other hand. L.R. began to fidget; he moved around so that he escaped the confines of Ralston's arm and fell to the floor. L.R. began to cry and both Pullin and Ralston reached for him. Ralston reached L.R. first. Pullin began yelling at Ralston, "you want to take him, you haven't even checked to see if his head's hurt, when you're not a doctor." (Tr. Vol. II, pg. 5.) Ralston handed the infant to Elizabeth and attempted to stand up and exit the

[1] Ind. Code § 35-42-2-1.3(a)(1).

recliner. Pullin "lunge[d] forward" and pushed Ralston back down into the recliner. (*Id.* at 19.)

[4] Elizabeth confronted Pullin, saying: "Don't touch my sister. Get away from her." (*Id.* at 16.) Danny, in response to the "commotion," entered the living room and asked, "what was going on." (*Id.*). Pullin then started yelling at Danny and brushed past him, bumping Danny's shoulder. Danny told Pullin to leave, and he did so. Elizabeth called a friend, who then called police.

[5] On April 22, 2021, the State filed two battery charges against Pullin, Count I related to his conduct involving Ralston and Count II related to his conduct involving Danny. On May 5, 2022, Pullin was tried in a bench trial. He was convicted for battering Ralston and acquitted of the charge of battering Danny. The trial court sentenced Pullin to 360 days of imprisonment, all suspended to probation. Pullin now appeals.

Discussion and Decision

[6] In order to convict Pullin of Domestic Battery, as charged, the State was required to prove beyond a reasonable doubt that Pullin knowingly or intentionally touched Ralston, a family or household member, in a rude, insolent, or angry manner. I.C. § 35-42-2-1.3(a)(1). A family or household member includes a person who has a child in common with the defendant. I.C. § 35-31.5-2-128. Pullin concedes that he knowingly or intentionally touched Ralston, a member of his family or household. According to Pullin, "the only

issue was whether [he] had a rude, angry, or insolent intent." Appellant's Brief at 8.

[7] When reviewing the evidence in support of a conviction, we consider only the probative evidence and reasonable inferences most favorable to the trial court's judgment. *Binkley v. State*, 654 N.E.2d 736, 737 (Ind. 1995). The decision comes before us with a presumption of legitimacy, and we do not substitute our judgment for that of the fact-finder. *Id*. We do not assess the credibility of the witnesses and we do not reweigh the evidence. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Reversal is appropriate only when no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*. Any touching, however slight, may constitute battery. *Impson v. State*, 721 N.E.2d 1275, 1285 (Ind. Ct. App. 2000).

[8] Pullin asserts that there "was no evidence that [he] had behaved in an aggressive or antagonizing manner in the time leading up to Ralston dropping the infant child and [his] seeking to check the child for injury." Appellant's Brief at 8. But, as the State points out, the relevant time period is post-fall, because this is when Pullin pushed Ralston. The State presented evidence from which the fact-finder could infer that Pullin became upset at what he perceived to be an inadequate response to the fall and pushed Ralston in a rude, insolent, or angry manner. Ralston testified that Pullin repeatedly told her "you're not a doctor," before "he shoved [her] back down into the recliner as [she] was trying to get up." (Tr. Vol. II, pg. 5.) Elizabeth described the encounter immediately prior to the shove as Pullin "standing over [Ralston] yelling." (*Id.* at 16.)

Danny testified that Pullin had lunged toward Ralston. Pullin's assertions that he had no history of antagonizing behavior and that he was merely worried about his child are invitations to reweigh the evidence. This we cannot do. *Drane*, 867 N.E.2d at 146.

Conclusion

[9] Sufficient evidence supports Pullin's conviction for Domestic Battery.

[10] Affirmed.

Vaidik, J., concurs.
Riley, J., dissents with opinion.

IN THE
COURT OF APPEALS OF INDIANA

Christopher Steven Pullin, *Appellant-Defendant,* v. State of Indiana, *Appellee-Plaintiff.*	Court of Appeals Case No. 22A-CR-1283

Riley, J., dissenting.

[11] I respectfully dissent from the majority's opinion, which affirms Pullin's conviction for domestic battery, as a Class A misdemeanor. As pointed out by the majority, in order to convict Pullin of domestic battery, the State was required to establish beyond a reasonable doubt that he knowingly and intentionally touched Ralston in a rude, insolent, or angry manner. *See* I.C. § 35-42-2-1.3(a)(1). Reviewing the evidence in support of the trial court's judgment and without reweighing said evidence, I conclude that the State failed to carry its burden and I would reverse Pullin's conviction.

[12] The sole, uncontested evidence before us reflects that, after Ralston dropped his infant son on the floor, Pullin rushed towards the infant, and pushed Ralston back into the recliner as she was trying to get up. The State did not present any evidence as to what exactly made this push "rude, insolent, or angry." *See* I.C.

§ 35-42-2-1.3(a)(1). Although evidence was presented that Pullin was angry with Ralston and yelled at her, the statute requires the *touching* to be performed in a rude, insolent, or angry manner. Pullin's outburst that Ralston is "not a doctor" merely evinces his concern for the infant and is unrelated to his charge of domestic battery. (Transcript Vol. II, p. 5).