

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Joshua McCarty,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

May 17, 2023

Court of Appeals Case No.  
22A-CR-2904

Appeal from the Marshall Superior  
Court

The Honorable Matthew E. Sarber,  
Judge

Trial Court Cause No.  
50D03-2111-F6-302

**Memorandum Decision by Judge May**  
Judges Mathias and Bradford concur.

**May, Judge.**

[1] Joshua McCarty appeals his conviction of Level 6 felony battery on a public safety official.<sup>1</sup> McCarty argues the State presented insufficient evidence to support his conviction because no reasonable jury could have found beyond a reasonable doubt that he knowingly or intentionally touched Officer David Finn (“Officer Finn”). We affirm.

## Facts and Procedural History

[2] On November 10, 2021, Pastor Matthew Elliott (“Pastor Elliott”) was driving home when he saw a man, later identified as McCarty, laying on the side of the road next to a bicycle. Concerned that McCarty had been hit by a car, Pastor Elliott stopped his vehicle and yelled out of his window to McCarty. Pastor Elliott determined McCarty was unresponsive and called 911. The 911 dispatcher instructed Pastor Elliott to exit his vehicle and attempt to “get a response.” (Tr. Vol. 1 at 22.) Pastor Elliott tapped his foot against McCarty’s foot while “yelling and asking if he was okay.” (*Id.*) He got no response, so per dispatcher instructions, Pastor Elliott grabbed McCarty at his “hip and waist area” and shook him “to try to rouse him.” (*Id.*) Plymouth police officers, including Officer Finn, and an ambulance arrived to care for McCarty.

[3] Officer Finn noted McCarty smelled of alcohol, and he performed a sternum rub on McCarty before turning him over to the EMTs. Officer Finn found a

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<sup>1</sup> Ind. Code § 35-42-2-1.

half-empty bottle of gin in the cupholder of McCarty's bicycle. Officer Finn determined McCarty was "intoxicated and had fallen off his bike" so Officer Finn placed McCarty under arrest for public intoxication. (*Id.* at 27.)

[4] While en route to the jail, McCarty's "demeanor was up and down." (*Id.* at 28.) McCarty yelled slurs and accusations at Officer Finn. McCarty told Officer Finn that "he's battered 15 other officers" and Officer Finn is "lucky to be coming out alive." (*Id.* at 35-6.) McCarty's angry tone lessened when he asked to be released, but he "was not in a state of mind that he was sober and knew what was currently happening." (*Id.* at 28.)

[5] Sergeant Seth Crawford ("Sgt. Crawford") handled McCarty's booking at the jail. McCarty was verbally abusive toward Officer Finn and required de-escalation during the intake process. Sgt. Crawford had to use "a minimal amount of restraint to put him – sit him back down in the chair." (*Id.* at 39.) Police removed McCarty's handcuffs so that the officers could search him, and while his handcuffs were off, McCarty grabbed the intake paperwork out of Sgt. Crawford's hands.

[6] Officers then placed McCarty back in handcuffs and moved him to a padded cell to "have time to calm down" without risking harm to others. (*Id.* at 40.) Sgt. Crawford, Officer Finn, and two jailors escorted McCarty into the padded cell.

[W]hen someone goes into the padded cell, we walk to the far corner, we have them kneel in the corner so that when we take those mechanical restraints off of the handcuffs, there's not going

to be any type of struggle, they're in the position to where they stay in that corner and stay safe while we exit the room, we can close the door, and everyone's okay and everyone's safe.

(*Id.*) McCarty refused to kneel, “moved away from the corner, and then used his right leg to kick backwards, which ended up striking Officer Finn.” (*Id.*)

[7] On November 18, 2021, the State charged McCarty with Level 6 felony battery against a public safety official. The trial court held a jury trial on October 5, 2022. A jury found McCarty guilty, and the trial court entered a conviction accordingly. On November 3, 2022, the trial court held a sentencing hearing and imposed a two-and-one-half-year sentence.

## Discussion and Decision

[8] McCarty contends the State failed to present sufficient evidence to support his felony conviction because the State did not prove he knowingly or intentionally battered a public safety official. We review such claims pursuant to a well-settled standard of review:

Sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

*Powell v. State*, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

[9] To convict McCarty of battery, the State had to prove he “knowingly or intentionally touche[d] another person in a rude, insolent, or angry manner.” Ind. Code § 35-42-2-1(c)(1). The statute also provides that the offense is a Level 6 felony if it “is committed against a public safety official while the official is engaged in the official’s official duty.” Ind. Code § 35-42-2-1(e)(2)

[10] McCarty contends he did not intentionally touch Officer Finn. McCarty testified at trial:

They took me in the corner. I was still handcuffed, I mean, my face was inches from the wall, I couldn’t see – even my peripheral vision was blocked and blind sighted due to – I couldn’t even see the officers next to me because I was that close to the wall. Last I knew – they was the only ones in the room, last I knew [Officer] Finn was by the door, still, and I was goofing around with [Sgt.] Crawford, and they lifted me up – the officer on the left side of me lifted me up and would shift my weight, so Crawford lifted and my feet came off the ground, my face planted the wall, and that’s when my feet came out. In the laws of physics, if something comes up, something’s got to come down. If something’s in motion, it stays in motion. I mean, I had nowhere else to go.

(Tr. Vol. 1 at 79.)

[11] Our Indiana Supreme Court has held that “a person’s intent may be determined from their conduct and the natural consequences” and “may be inferred from circumstantial evidence.” *Coleman v. State*, 546 N.E.2d 827, 831 (Ind. 1989), *reh’g denied*. Here, McCarty was angry on the way to the jail, shouting threats and slurs at Officer Finn. McCarty yelled at Officer Finn that “he’s battered 15

other officers” and Officer Finn is “lucky to be coming out alive.” (Tr. Vol. 1 at 35-6.) Once at the jail, McCarty’s rude behavior not only continued, it escalated until staff decided to place him in a padded cell to calm down. Once inside the cell, McCarty did not comply with instructions to kneel for his handcuffs to be removed and instead looked over his right shoulder and “donkey kick[ed]” Officer Finn in the upper groin and thigh area. (*Id.* at 52; Ex. 1 at 1:08 – 1:11.) McCarty’s argument concerning his version of the events is an invitation to reweigh evidence and judge witness credibility, which we cannot do. *See Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (appellate court does not reweigh evidence or judge the credibility of witnesses). Thus, the State presented sufficient evidence for the jury to infer that McCarty knowingly and intentionally touched Officer Finn in a rude, insolent, or angry manner. *See, e.g., Perry v. State*, 78 N.E.3d 1, 9-10 (Ind. Ct. App. 2017) (holding trier of fact could infer from surrounding circumstances that defendant’s touching occurred knowingly and intentionally).

## Conclusion

[12] There was sufficient evidence to support that McCarty knowingly or intentionally touched Officer Finn, in a rude, insolent, or angry manner, while Officer Finn was engaged in his official duties. Thus, the State proved McCarty committed Level 6 felony battery on a public safety official. Accordingly, we affirm McCarty’s conviction.

[13] Affirmed.

Mathias, J., and Bradford, J., concur.