

## 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.



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## IN THE COURT OF APPEALS OF INDIANA

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Aryanna Armstrong,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

November 18, 2022  
Court of Appeals Case No.  
22A-CR-1063  
  
Appeal from the  
Marion Superior Court  
  
The Honorable  
Charnette Garner, Judge  
  
Trial Court Cause No.  
49D35-2107-CM-22583

**Vaidik, Judge.**

## Case Summary

- [1] Aryanna Armstrong appeals her conviction for Class B misdemeanor battery, arguing that the evidence is insufficient to support the conviction and that she received ineffective assistance of counsel. We disagree and affirm.

## Facts and Procedural History

- [2] The evidence most favorable to the judgment is as follows. In June 2021, Armstrong was living in an apartment in Indianapolis. As a condition of her residency, Armstrong was required to submit to U.S. Department of Housing and Urban Development inspections, which were conducted by the apartment complex's management. On June 23, Shuntell King, Konica Butler, and two maintenance workers went to Armstrong's apartment to conduct an inspection. The employees "had problems with [Armstrong] in the past," and she "did not want to let [them] in her apartment[.]" Tr. pp. 34, 39. After they told her "that's an automatic fail," she said they could enter. *Id.* at 34. Armstrong was "very upset," and as King walked in, Armstrong "stopped in front of [her] – face to face – [Armstrong] opened up her mouth, [] and coughed on [her] three times, and spit was flying on [her] face[.]" *Id.* at 34, 45. One of the maintenance workers said, "[O]h my God, she spit on you!" *Id.* at 34. Armstrong also coughed on the back of a maintenance worker's neck. King left the apartment to call the police. Armstrong eventually joined King outside and continued spitting in King's direction.

[3] The State charged Armstrong with Class B misdemeanor battery, alleging she knowingly touched King in a rude, insolent, or angry manner by “coughing and/or spitting” on her. Appellant’s App. Vol. II p. 21. The case proceeded to a bench trial. King and Butler testified to the facts set forth above. On cross-examination, defense counsel showed them a video Armstrong had recorded during the incident and asked them about alleged discrepancies between their testimony and what the video shows. Defense counsel identified the video as “Defendant’s Exhibit A” and said she “wish[ed]” to admit it, Tr. p. 38, but she never moved to have the video admitted into evidence, and the court didn’t say it was admitted. Armstrong testified in her own defense and said she coughed during the incident because she was sick.

[4] During closing arguments, the prosecutor noted that Armstrong’s video “shows [a] very brief clip of the interaction” and in any event “[w]as never admitted as evidence in this case.” *Id.* at 58. Defense counsel said she “thought that [she] did admit the video” and then proceeded to talk about what the video shows. *Id.* at 59. Before announcing its decision, the court stated, “The video has not been admitted into evidence, [so] the Court has not seen the video.” *Id.* The court found Armstrong guilty as charged and sentenced her to 180 days in jail, all suspended except time already served.

[5] Armstrong now appeals.

# Discussion and Decision

## I. Sufficiency of the Evidence

[6] Armstrong first contends the evidence is insufficient to support her conviction. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We will only consider the evidence supporting the judgment and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[7] Armstrong does not dispute that she coughed on King or that spit ended up on King's face. Instead, she argues she didn't "knowingly" cough on King. Specifically, she claims she "was ill and her coughing was involuntary due to her illness and any fluid excreted was a result of her involuntary coughing." Appellant's Br. p. 9. But the State presented substantial evidence to the contrary: the employees had "problems" with Armstrong in the past; she was "very upset" and didn't want to let them in; she stopped in front of King and coughed in her face; one of the maintenance workers remarked that Armstrong had spit on King; Armstrong also coughed on a maintenance worker; and after King left the apartment, Armstrong went outside and continued spitting in her direction. This evidence is more than sufficient to support the trial court's conclusion that Armstrong knowingly coughed on King in a rude, insolent, or

angry manner. Armstrong's argument is a request for us to reweigh the evidence, which we do not do.

## II. Ineffective Assistance of Counsel

[8] Armstrong also argues she received ineffective assistance of counsel because her attorney failed to have Armstrong's video of the incident admitted into evidence. A petition for post-conviction relief is the preferred mechanism for raising such a claim, but when the claim can be evaluated on the trial record alone, direct appeal is an appropriate alternative. *Lewis v. State*, 929 N.E.2d 261, 263 (Ind. Ct. App. 2010). When evaluating a defendant's ineffective-assistance-of-counsel claim, we apply the well-established, two-part test from *Strickland v. Washington*, 466 U.S. 668 (1984). *Bobadilla v. State*, 117 N.E.3d 1272, 1280 (Ind. 2019). The defendant must prove (1) counsel rendered deficient performance, meaning counsel's representation fell below an objective standard of reasonableness as gauged by prevailing professional norms, and (2) counsel's deficient performance prejudiced the defendant, i.e., but for counsel's errors, there is a reasonable probability the result of the proceeding would have been different. *Id.*

[9] Having reviewed the video, we readily conclude that counsel's failure to move for its admission into evidence did not amount to deficient performance and that there is not a reasonable probability it would have made a difference in the outcome. In fact, it probably would have hurt Armstrong's case. The camera was angled downward, so the video doesn't show the participants' heads or

faces. However, it makes clear that Armstrong was upset and wasn't coughing until King walked near her, at which point she coughed loudly in King's direction. Armstrong has not established ineffective assistance of counsel.

[10] Affirmed.

Riley, J., and Bailey, J., concur.