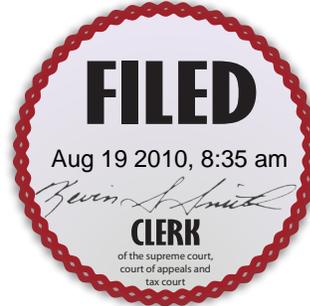


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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DENISE DIGGINS, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 71A03-1001-CR-119

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable J. Jerome Frese, Judge  
Cause No. 71D03-0806-FD-637

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**August 19, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Denise Diggins was convicted in St. Joseph Superior Court of Class D felony battery. She appeals her conviction and argues that the State failed to present evidence that she touched the six-month old victim in a rude, insolent, or angry manner. Concluding that the evidence is sufficient, we affirm.

### **Facts and Procedural History**

Diggins and her husband, Charles, operated a licensed day care in South Bend, Indiana. Richard and Tracy Davis placed their child, I.D., in Diggins' day care on March 12, 2008. On that date, Richard took six-month-old I.D. to the day care. Upon their arrival, Diggins undressed I.D. and performed a "head-to-toe" check of the child. Nothing unusual was noted about I.D.'s physical appearance that morning. Richard returned to the day care at approximately 4:30 p.m. to pick I.D. up. Charles placed I.D. in her car seat and partially removed I.D.'s clothing showing Richard the child's chest and thighs. Richard did not observe anything unusual about I.D.'s appearance, and they proceeded to return to their home.

Later that evening, Tracy undressed I.D. so that she could give I.D. a bath. At that time, Tracy observed that I.D.'s buttocks were bruised. Richard and Tracy took I.D. to the Memorial Hospital Emergency Room where I.D. was examined by medical personnel. No other physical injuries were discovered. Police officers were called to the hospital, and the officers examined I.D. and took photographs of I.D.'s bruised buttocks.

Diggins was interviewed by Detective Dean Francis on March 19, 2008. During the interview, Diggins admitted to repeatedly "patting" I.D. Diggins told the detective that she was patting I.D. to calm her down and to get her to stop crying. Tr. p. 188. But,

Diggins also admitted to “patting” I.D. “too many times and too hard.” Tr. p. 189. Diggins stated that she observed redness and bruising on I.D.’s buttocks before Richard arrived to pick her up. Tr. p. 190.

On June 26, 2008, Diggins was charged with Class D felony battery. On October 19, 2009, a three-day jury trial began. The jury found Diggins guilty as charged. Diggins was ordered to serve two and one-half years in the Department of Correction. The trial court then suspended that sentence and ordered Diggins to serve three years of supervised probation. Diggins now appeals. Additional facts will be provided as necessary.

### **Discussion and Decision**

Diggins argues that the evidence is insufficient to sustain her conviction for Class D felony battery. When we consider a challenge to the sufficiency of evidence to support a conviction, we respect the jury’s exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the conviction, and “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” Id. at 126 (quoting Tobar v. State, 740 N.E.2d 109, 111-12 (Ind. 2000)).

To convict Diggins of Class D felony battery, the State was required to prove that Diggins knowingly or intentionally touched another person in a rude, insolent or angry manner. The offense is elevated to a Class D felony if it results in bodily injury to a child

less than fourteen years of age and is committed by a person at least eighteen years of age. See Ind. Code § 35-42-2-1 (2004); Appellant’s App. p. 81.

Diggins argues that the evidence is insufficient to support her conviction because “[t]here is no credible evidence that the Appellant had the intent to cause injury to the child or that she touched the child in a rude, insolent or angry manner.” Appellant’s Br. at 13. Diggins’ argument is merely a request to reweigh the evidence and the credibility of the witnesses, which our court will not do. See McHenry, 820 N.E.2d at 126.

Detective Francis testified that Diggins admitted to repeatedly “patting” I.D. Diggins told the detective that she was patting I.D. to calm her down and to get her to stop crying. Tr. p. 188. Diggins admitted to “patting” I.D. “too many times and too hard” and to trying to inflict pain on I.D. Tr. pp. 189, 196. Diggins stated that she observed redness and bruising on I.D.’s buttocks before Richard arrived to pick her up. Tr. p. 190. Also, the photographs taken of I.D. show significant bruising to her buttocks. Ex. Vol., State’s Exs. 2, 3, and 4. Finally, Emergency Room Physician Mark Monahan, who examined I.D., testified that the bruising to I.D.’s buttocks could not be caused by mere “patting,” but “it would probably take a pretty severe strike and force of spanking in that area to cause that extensive and significant bruising” in a six-month old child. Tr. pp. 217-18. This evidence is sufficient to support Diggins’ Class D felony battery conviction.

Affirmed.

BAKER, C.J., and NAJAM, J., concur.