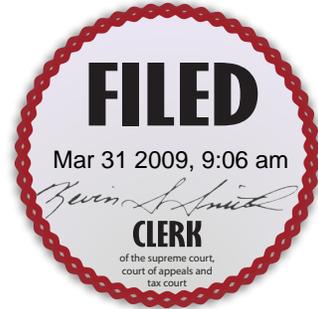


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MAUREEN SCHMIDT,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0810-CR-939
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-0801-CM-020096

MARCH 31, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

Maureen A. Schmidt (Schmidt) appeals her conviction for Battery Against a Law Enforcement Officer, as a Class A misdemeanor.¹ Under the applicable statute, a person who commits a battery “against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of his official duty” commits a Class A misdemeanor.

The sole issue presented is whether the State’s evidence adequately established that the law enforcement officer was “engaged in the execution of his official duties” at the time of the alleged battery. Appellant’s Brief at 1.

At the outset, it is important to note that determinations of fact are within the prerogative of the trier of fact—in this instance the trial court. The trier of fact is entitled to determine which version of an incident to credit, and we are not permitted to reweigh the evidence. Scott v. State, 867 N.E.2d 690 (Ind. Ct. App. 2007, transfer denied).

The evidence most favorable to the judgment as adduced in the bench trial reflects that Officer Jason Bockting responded to a call from Schmidt to the Indianapolis Police Department reporting a theft of some vases from her residence. Bockting entered Schmidt’s residence but refused to take a police report upon the belief that she was attempting to defraud her insurance company. Schmidt became belligerent and in ordering the officer to leave her house, grabbed his arm and

¹ I.C. § 35-42-2-1 (a) (1) (B)

pushed him toward the door.² Bockting pushed back and placed her under arrest.

It is Schmidt's position that when Officer Bockting refused to take her theft report she ordered him to leave, but he refused to do so, and the physical altercation ensued. She contends that the Officer became a trespasser when he refused to leave after being requested to do so and that accordingly he was no longer engaged in the execution of his official duties.

Schmidt relies solely upon Casselman v. State, 472 N.E.2d 1310 (Ind. Ct. App. 1985). In that case, an officer went to the defendant's residence to serve a civil body attachment, and in attempting to serve the writ, prevented the defendant from closing the door to his home. The defendant retreated into the house and the officer followed and took him into custody. The Casselman court noted that a citizen no longer has a right to resist a peaceful arrest but that an arrest is not peaceful if it is "accomplished by forcibly preventing a person from closing the door to his house or by entering the house without permission." Id. at 1317. The court went on to hold that, "Just as the judicial authorization of the writ does not give an officer the right to use excessive force in effecting an arrest, it does not give the officer the right to interfere unlawfully with a citizen's right to be secure in his home." Id.

In that regard, the court observed that Casselman had the right to close the

² Schmidt testified that she ordered Officer Bockting to leave her house, but he did not do so, and he "grabbed [her] and threw her down." She denied ever shoving the officer. Officer Bockting testified that Schmidt manifested her desire for him to leave when she grabbed his arm and pushed him and at that time ordered him to leave her home.

door and that the scuffle arose only after the officer unlawfully entered the doorway to prevent Casselman from closing the door. In the case before us, Schmidt analogizes Bockting's refusal to leave the premises with the Casselman officer's unlawful entry. This argument appears to have support in an ancient case from this court. In Manning v. State, 6 Ind. App. 259, 33 N.E. 253 (Ind. App. 1893), the court held that although a person at the request of the owner may enter the premises lawfully, if thereafter he is directed to leave but refuses to do so, he becomes a trespasser.

Under a different scenario in which the defendant was the alleged trespasser, this court said in Lemon v. State, 868 N.E.2d 1190, 1197 (Ind. Ct. App. 2007) that “[t]he simple act of trespass, without the threat of imminent violence or destruction of property, or actual violence or destruction of property on the part of the trespasser, does not sanction the use of unreasonable force by a landowner or his agent to terminate the trespass.”

This suggests that even if Officer Bockting became a trespasser in refusing to leave the house when requested by Schmidt, such did not, of itself, authorize her to grab his arm and push him toward the door.

Be that as it may, the trial court concluded that “[Officer Bockting] was called there to the home and I’m also finding that simultaneously, as she’s asking him to leave, she’s battering him. Therefore, he did not have an opportunity to leave before he was battered and the crime was committed on him.” (Tr. at 44).

Once again, given our standard of review and the prerogative of the trier of fact to determine which version of an incident to credit, we are unable to find that the judgment of the court is contrary to the law or to the evidence.

The judgment is affirmed.

MAY, J., and BARNES, J., concur.