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ATTORNEY FOR APPELLANT:

**DAVID A. HAPPE**  
Lockwood Williams & Happe  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**SHELLEY JOHNSON**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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C.C., )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 49A04-0808-JV-491  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Scott B. Stowers, Judge Pro Tempore  
Cause No. 49D09-0805-JD-1544

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**April 8, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Respondent C.C. appeals his delinquent child adjudication for Battery upon a police officer, an offense that would be a Class A misdemeanor if committed by an adult.<sup>1</sup> We affirm.

## **Issue**

C.C. presents a single issue for review: whether there is sufficient evidence to support the delinquency adjudication.

## **Facts and Procedural History**

On May 21, 2008, Indianapolis Metropolitan Police Officer William Cincebox, driving an unmarked police car, turned from Meridian Street onto Georgia Street. In so doing, Officer Cincebox nearly struck a young male who was walking in the middle of the street. Officer Cincebox called out to the youth “that he needed to be on the sidewalk.” (Tr. 9.) In response, C.C., who had been walking beside the unidentified youth, threw a cinnamon bun into Officer Cincebox’s vehicle. The bun struck Officer Cincebox and the interior of his vehicle.

Officer Cincebox got out of his vehicle and the young men started running. Officer Cincebox was unable to overtake C.C. immediately. However, Officer Cincebox later walked down Meridian Street, saw C.C., and placed him under arrest.

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<sup>1</sup> Ind. Code § 35-42-2-1(a)(1)(B).

On May 22, 2008, the State alleged C.C. was a delinquent child for committing acts that would be battery upon a police officer and resisting law enforcement, if committed by an adult. On July 23, 2008, the juvenile court conducted a hearing and found C.C. delinquent for having committed an act that would be battery upon a police officer, if committed by an adult. C.C. was placed on six months probation. He now appeals the juvenile adjudication.

## **Discussion and Decision**

### I. Standard of Review

When the State seeks to have a juvenile adjudicated a delinquent, it must prove every element of the offense beyond a reasonable doubt. D.B. v. State, 842 N.E.2d 399, 401 (Ind. Ct. App. 2006). When reviewing a juvenile delinquency adjudication, we will consider only the evidence and the reasonable inferences supporting the judgment. B.R. v. State, 823 N.E.2d 301, 306 (Ind. Ct. App. 2005). We neither reweigh the evidence nor judge the credibility of witnesses. Id. We will affirm if there is substantial evidence of probative value from which a reasonable trier of fact could conclude beyond a reasonable doubt that the juvenile committed the delinquent act alleged. Id.

### II. Analysis

C.C. contends that the evidence is insufficient to support his adjudication as a delinquent for battery upon a police officer. More specifically, he argues that the State was required to prove that he knew Officer Cincebox was a police officer and failed to do so. We affirm the adjudication for two reasons: first, the State was not required to show that C.C.

knew Officer Cincebox was a police officer and, second, regardless of his victim's profession, C.C. committed an act of delinquency, i.e., battery.

The State alleged that C.C. violated Indiana Code Section 35-42-2-1(a)(1)(B), which provides in relevant part:

A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a class B misdemeanor. However the offense is:

(1) a class A misdemeanor if:

(B) it is committed against a law enforcement officer[.]

Officer Cincebox testified that C.C. struck him with a cinnamon bun after Officer Cincebox directed C.C.'s companion to move to the sidewalk. The State presented sufficient evidence that C.C. knowingly or intentionally touched Officer Cincebox in a rude or insolent manner, and thus the trier of fact could conclude beyond a reasonable doubt that C.C. committed an act that would be battery, if committed by an adult. Because Officer Cincebox is a police officer, the act would have been battery upon a police officer, a Class A misdemeanor, if committed by an adult.

C.C. nevertheless argues that his delinquency adjudication must be set aside because the evidence demonstrates that he did not know Officer Cincebox was a police officer. Officer Cincebox testified that he was in an unmarked car, with red and blue lights at the front and back. He was not wearing his uniform and had his badge and gun on his waist. In Officer Cincebox's opinion, C.C. did not know he was a police officer until after the incident. Tr. 12.

The State responds that the battery statute does not provide for a specific culpability as to an officer's professional identity; rather, our Legislature chose to elevate the underlying offense because of a police officer's greater exposure to harm.

In Owens v. State, 742 N.E.2d 538, 542 (Ind. Ct. App. 2001), trans. denied, this Court addressed a claim similar to C.C.'s. Appellant Owens argued that the evidence was insufficient to convict him of battery of a law enforcement officer because the State failed to prove that he knew that he was striking a police officer. To convict Owens of battery of a law enforcement officer as a Class D felony, the State was required to establish that he knowingly or intentionally touched Officer Hamner in a rude, insolent, or angry manner, resulting in bodily injury to Officer Hamner, and Officer Hamner was a law enforcement officer engaged in the execution of his official duties. See id.

In addition to considering the battery statute, the Owens Court considered Indiana Code Section 35-41-2-2(d), which provides that "if a kind of culpability is required for commission of an offense, it is required with respect to every material element of the prohibited conduct." Id. at 543 (emphasis added.) The Court found the element of "bodily injury to a law enforcement officer" was an aggravating circumstance, which, if proven beyond a reasonable doubt, increased the penalty for the offense committed without proof of any culpability separate from the culpability required for the conduct elements of the offense. See id. Because "bodily injury to a law enforcement officer" was a result, rather than prohibited conduct, the State was not required to prove beyond a reasonable doubt that

Owens knew that Officer Hamner was a law enforcement officer. See id.

We find this rationale to be applicable here, although we review a juvenile adjudication instead of a criminal conviction. The prohibited conduct was the knowing or intentional touching in a rude, insolent, or angry manner. The victim's role as a police officer is a circumstance supporting the elevation of the offense where appropriate, i.e., in a criminal case. If the prohibited conduct had been committed by an adult against a police officer, the crime would have been elevated from a Class B misdemeanor to a Class A misdemeanor.

Here, however, C.C. is a juvenile and does not stand convicted of a crime; nor is he subject to a greater criminal sentence because the victim is a police officer. Rather, C.C. was adjudicated a delinquent for his conduct. He committed a delinquent act regardless of the profession of his victim.<sup>2</sup> Because the State presented evidence that C.C. knowingly or intentionally touched Officer Cincebox in a rude, insolent, or angry manner, the adjudication is supported by sufficient evidence.

Affirmed.

DARDEN, J., and ROBB, J., concur.

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<sup>2</sup> We note that, even if Officer Cincebox had been a civilian, C.C. committed an act that would be battery, a lesser-included offense of battery upon a police officer, if committed by an adult. A juvenile adjudication can rest upon proof of what would have constituted a lesser-included offense of the charged offense if committed by an adult. See Graddy v. State, 176 Ind. App. 518, 527, 376 N.E.2d 506, 511 (1978).