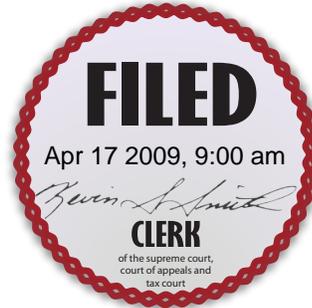


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KRISTIN NAVAL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0809-CR-828

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah F. Pierson-Treacy, Judge
Cause No. 49F19-0806-CM-146416

April 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Kristin Naval challenges her convictions, following a bench trial, for Class A misdemeanors Battery¹ and Resisting Law Enforcement.² Upon appeal, Naval challenges the sufficiency of the evidence to support her convictions. We affirm.

FACTS AND PROCEDURAL HISTORY

On June 14, 2008, Naval engaged in an altercation with her mother's boyfriend, Clifford Albert, at their residence on Golden Leaf Way in Indianapolis. According to Albert, Naval followed him into a bedroom and verbally threatened him because she wanted him to give her something. Following Naval's mother's reporting the incident to authorities, Indianapolis Metropolitan Police Officer Michael Wright responded to the scene. Officer Wright spoke to the parties until he believed the issue to be resolved, then left the residence.

Shortly thereafter, Naval attempted to seize from Albert an apparent "evidentiary tape" he had recorded. Naval, who was angry, "grabb[ed]" and "attack[ed]" Albert by "tackl[ing]" him from the back and grabbing his arms. Tr. pp. 16-17. At some point Naval scratched Albert across his face. Officer Wright, who at the time was in the driveway of the residence talking to Naval's mother, heard this "commotion" occurring inside the residence. Tr. p. 26. Upon re-entering, Officer Wright observed Naval screaming and yelling, and he found scratch marks and a bleeding cut on Albert's body and face. Naval continued to scream and yell despite Officer Wright's request that she calm down. Officer Wright attempted to place Naval in handcuffs, but she refused to

¹ Ind. Code § 35-42-2-1 (2007).

² Ind. Code § 35-44-3-3 (2007).

place her hands behind her back as requested. Officer Wright grabbed Naval's right arm and tried to turn her around, causing Naval to use the force of her body to pull away from him and struggle against his efforts to handcuff her. According to Officer Wright, Naval's pulling away from him interfered with his law enforcement duties.

On June 15, 2008, the State charged Naval with Class A misdemeanors battery and resisting law enforcement. On August 18, 2008, the trial court held a bench trial, after which it found Naval guilty as charged. The trial court subsequently sentenced Naval to concurrent sentences of 365 days, with 361 days suspended, 180 to probation, on the battery conviction, and 180 days, with 176 days suspended, for the resisting law enforcement conviction. This appeal follows.

DISCUSSION AND DECISION

Naval challenges the sufficiency of the evidence to support her convictions. Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

I. Battery

Under Indiana Code section 35-42-2-1, a person who knowingly or intentionally touches another person in a rude, insolent, or angry manner resulting in bodily injury³ to another person commits Class A misdemeanor battery. Naval claims that Albert's testimony against her is inadequate to establish her battery conviction beyond a reasonable doubt. Naval cites two cases in support of her position, *Gaddis v. State*, 253 Ind. 73, 251 N.E.2d 658 (1969), and *Vest v. State*, 621 N.E.2d 1094 (Ind. 1993).

In *Gaddis*, the Indiana Supreme Court reversed a defendant's conviction which rested solely upon an eyewitness's "vacillating, contradictory and uncertain" identification testimony. 253 Ind. at 79, 251 N.E.2d at 660-61. This eyewitness had been threatened with prison if he refused to testify against the defendant, and there was no circumstantial evidence to support the conviction. *Id.* Because the only evidence identifying the defendant as the perpetrator was "at best equivocal" and the result of coercion, the *Gaddis* court reversed upon incredible dubiousity grounds. *Id.* at 80-81, 251 N.E.2d at 662-63.

In *Vest*, the Supreme Court reversed a defendant's battery conviction for allegedly burning a three-year-old child with a cigarette because the conviction similarly rested upon insufficient identification grounds. 621 N.E.2d at 1095-96. Although testimony by a treating nurse referred to a statement by the child identifying the defendant as the perpetrator, a limiting instruction pursuant to Indiana Rule of Evidence 803(4) precluded

³ "Bodily injury" means any impairment of physical condition, including physical pain. Ind. Code § 35-41-1-4 (2007).

the jury's use of this statement as substantive identification evidence. *Id.* at 1096. The jury's determination that the defendant was the perpetrator, therefore, was based upon the mere facts that he was a smoker, that the child was often in his company, that she had walked past his house two days before the injury was reported, and that he had altered his initial denial when asked if he may have accidentally burned the child while flipping his cigarette a month before the alleged battery. *Id.* The Supreme Court concluded that this evidence was insufficient. *Id.*

Neither *Gaddis* nor *Vest* is analogous to the instant case. Here, Albert, who was the victim, identified Naval as the perpetrator. A conviction may rest upon the uncorroborated testimony of the victim. *Ludy v. State*, 784 N.E.2d 459, 461 (Ind. 2003). Albert's testimony was neither equivocal nor allegedly coerced. Further, additional witness testimony and circumstantial evidence support Naval's conviction for battering Albert. Officer Wright, who had just responded to a heated dispute between Naval and Albert, heard a "commotion" occurring inside the house after he left and was outside talking to Naval's mother. Tr. p. 26. Upon re-entering the house, he found Albert injured and Naval "still" screaming and yelling, supporting the reasonable inferences that Naval and Albert were the persons participating in this "commotion" and that Naval, who was admittedly angry, had knowingly or intentionally inflicted Albert's injuries. Tr. p. 26. Accordingly, we reject Naval's challenge to the sufficiency of the evidence to support her conviction for battery.

II. Resisting Law Enforcement

Naval additionally challenges the sufficiency of the evidence to support her conviction for resisting law enforcement on the grounds that she did not exert adequate force to sustain this conviction.

Indiana Code section 35-44-3-3 provides that a person commits the crime of resisting law enforcement if he knowingly or intentionally “forcibly resists, obstructs, or interferes with a law enforcement officer” who is lawfully engaged in the execution of his duties. In *Spangler v. State*, 607 N.E.2d 720, 722-25 (Ind. 1993), the Indiana Supreme Court, interpreting section 35-44-3-3, held that a defendant’s “uncooperative state” which involved neither “strength, power, or violence directed towards the law enforcement official” nor “movement or threatening gesture made in the direction of the official” did not constitute resisting law enforcement. In *Ajabu v. State*, 704 N.E.2d 494, 495 (Ind. Ct. App. 1998), this court, following the reasoning in *Spangler*, determined that a defendant’s slight twisting and turning, unaccompanied by force, threats, or violence, similarly did not constitute resisting law enforcement. *Ajabu*, 704 N.E.2d at 496.

Unlike the actions at issue in *Spangler* and *Ajabu*, Naval’s actions were forceful and physical. Naval, while yelling and screaming, used the strength and force of her body to actively pull away from Officer Wright and resist his attempts to turn her around, impeding his efforts to handcuff her. We are convinced that Naval’s actions were of sufficient force to constitute resisting law enforcement. Naval’s challenge to this conviction is similarly without merit.

The judgment of the trial court is affirmed.

CRONE, J., and BROWN, J., concur.