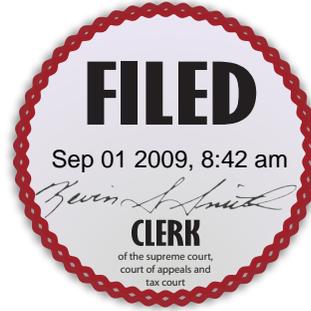


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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PHILANDRA MCMURTHY-YOUNG, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A05-0811-CR-685

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Heather A. Welch, Judge  
Cause No. 49F09-0711-FD-238357

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**SEPTEMBER 1, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

Philandra McMurthy-Young (“Young”) appeals her convictions after a bench trial for battery<sup>1</sup> as a Class D felony, battery<sup>2</sup> as a Class A misdemeanor, and intimidation<sup>3</sup> as a Class D felony. Young presents the following restated issues for our review:

- I. Whether the trial court improperly entered judgment on Young’s convictions of battery as a Class A misdemeanor and battery as a Class D felony where there was only one victim, one contact, and one injury.
- II. Whether sufficient evidence was presented to support Young’s convictions of battery and intimidation.
- III. Whether Young’s sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm in part and remand in part.

### **FACTS AND PROCEDURAL HISTORY**

Young went to Indianapolis Public School 61 to discuss arrangements for her children to participate in an extra-curricular activity. Lisa Sackman, the principal of the school, had completed the process of barring Young from the premises for threatening a teacher that year, as she had the previous year. When Sackman confronted Young about being barred from the premises, Young became irate and stomped down the hallway, cursing.

Sackman followed Young toward the kindergarten classroom where Young entered and removed her daughter. Young was yelling and cursing as she walked through the school, and Sackman repeatedly asked Young to quietly leave the building.

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

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

<sup>3</sup> See Ind. Code § 35-45-2-1(b)(1)(B)(iv).

At one point, Young turned to Sackman and said, “If you touch me, I’m going to mess you up.” *Tr.* at 9. Sackman told Young that that was the farthest thing from her mind. Young stopped near the door to the school and helped her daughter get ready to go outside. Young turned and told Sackman that she was going to come back and kill Sackman as soon as possible. Sackman opened the front door for Young and stood behind the door. Young exited the building, but then turned and stomped on Sackman’s foot.

The State charged Young with one count of intimidation as a Class D felony, one count of battery as a Class A misdemeanor, and one count of battery as a Class D felony. At the conclusion of Young’s bench trial the trial court found her guilty as charged and sentenced Young to serve 365 days concurrently for each of the Class D felony convictions and to time served for the misdemeanor conviction. The trial court then entered an order suspending the sentences, imposed eighty hours of community service, anger control counseling and a mental health evaluation and treatment. Young now appeals.

## **DISCUSSION AND DECISION**

### **I. Improper Judgment**

Young alleges and the State concedes that the trial court improperly entered a judgment of conviction on both the Class A misdemeanor and Class D felony battery counts. The charging informations identified one victim, Sackman; one contact, Young’s stomping of Sackman’s foot; and one injury, the pain to Sackman’s foot from the stomping. The misdemeanor offense was elevated to a Class D felony due to Sackman’s

status as an administrator of Indianapolis Public School 61. *See* Ind. Code § 35-45-2-1(b)(1)(B)(iv). Accordingly, this matter is remanded to the trial court to vacate Young's Class A misdemeanor conviction.

## II. Sufficiency of the Evidence

Our standard of review for a challenge to the sufficiency of the evidence is well-settled. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). "It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). "To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it 'most favorable to the trial court's ruling.'" *Id.* (quoting *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005)). Appellate courts will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Drane*, 867 N.E.2d at 146. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may be reasonably drawn from it in support of the verdict. *Id.* The jury is free to believe or disbelieve witnesses as it sees fit. *McClendon v. State*, 671 N.E.2d 486, 488 (Ind. Ct. App. 1996).

In order to support Young's conviction of battery the State was required to prove beyond a reasonable doubt that Young knowingly or intentionally touched Sackman in a rude, angry, or insolent manner, that caused bodily injury to Sackman in her duties as an

employee of the school. *See* Ind. Code § 35-42-2-1. Bodily injury includes physical pain. Ind. Code § 35-41-1-4.

The record reveals that Young was very upset as Sackman followed Young through the school. Sackman, the school principal, repeatedly asked Young to stop talking and leave the building. At one point, Young turned to Sackman and made a threat. Sackman held the door open for Young and her daughter as they were exiting the building, when Young came back to attack Sackman, stomping on Sackman's foot, and causing her pain. To the extent that Young emphasizes other contradictory evidence, this is an attempt to have this Court engage in reweighing of the evidence, a task we will not do. There was sufficient evidence to support Young's conviction of battery as a Class D felony.

In order to support Young's conviction of intimidation as a Class D felony, the State was required to prove beyond a reasonable doubt that Young communicated a threat to commit a forcible felony against Principal Sackman with the intent that Sackman be placed in fear of retaliation for the prior lawful act of removing Young from school property. *See* Ind. Code § 35-45-2-1(b)(1)(B)(iv).

The record reveals that after Sackman informed Young that she was not allowed on school property, Young became very upset. When Sackman repeatedly asked Young to stop talking and leave the building, Young turned to Sackman and said, "If you touch me, I'm going to mess you up." *Tr.* at 9. Sackman replied that that was the farthest thing from her mind. When Young stopped to help her daughter put on her coat before leaving the building, Young told Sackman that she was going to come back and kill Sackman as

soon as possible.

Young does not concede that she threatened Sackman. Young argues, however, that assuming that threat was made, the words do not reveal the motivation behind them. In other words, Young argues that there is an insufficient nexus between the threat made to Sackman and Sackman's prior lawful act. The record reveals, nonetheless, that Sackman's first contact with Young on that date was to explain why Young had been barred from the school property. Young questioned the propriety of her being barred from the school since her children attended school there. Sackman offered to explain the matter to Young in Sackman's officer, but Young became irate and stormed through the school yelling and cursing. Young became upset after she was told by Sackman that she was barred from the school. The trial court, as trier of fact, could infer the motivation for the threat from this evidence. *See H.J. v. State*, 746 N.E.2d 400, 403-04 (Ind. Ct. App. 2001) (motivation for threat was not stated but reasonable inference was that defendant threatened victim for speaking to school officials). Based upon the circumstances and facts viewed in the light most favorable to the judgment, we find that sufficient evidence supports Young's conviction for intimidation as a Class D felony.

### **III. Inappropriate Sentence**

Last, Young claims that her sentence is inappropriate in light of the nature of the offense and the character of the offender. Young was convicted of two Class D felonies. The sentencing range for a Class D felony is a fixed term of between six months and three years with the advisory sentence being one and one-half years. Ind. Code § 35-50-2-7. Young received concurrent sentences of one year suspended for the two Class D

felony convictions.

Indiana Appellate Rule 7(B) provides that the court may revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Assuming without deciding that the nature of Young's crimes were not remarkable, the record reveals that the trial court took Young's character into consideration when imposing sentence. The trial court noted that Young is thirty-five years old and has no prior criminal arrests or convictions, has four children, and is the victim of domestic abuse. However, the trial court emphasized that Young's response to the situation was inappropriate and that she exercised this poor judgment in a school building and in her kindergarten-aged daughter's presence. The trial court then imposed less than the advisory sentence for the Class D felony convictions, ordered the sentences to be served concurrently, suspended the sentences, and provided that upon the successful completion of probation, Young's convictions would be reduced to Class A misdemeanors. Based upon the foregoing, we cannot say that Young's sentence is inappropriate in light of the nature of the offenses and the character of the offender.

Affirmed and remanded.

MAY, J., and CRONE, J., concur.