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IN THE
COURT OF APPEALS OF INDIANA

KARA DAY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1102-CR-104
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-1007-CM-59126

September 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Kara Day appeals her conviction of Battery[1] as a class B misdemeanor challenging the sufficiency of the evidence as the sole issue on appeal.

We affirm.

The facts favorable to the conviction are that on July 29, 2010, Day was in a Shoe Carnival store in Indianapolis shopping for shoes. There was another woman shopping in the store at that time with whom Day was acquainted. After monitoring their activities for several minutes, Johnny Ross, Shoe Carnival's loss prevention manager, believed that the two women were stealing merchandise. As the women prepared to exit the store, he positioned himself in front of the store's only exit and identified himself. Before he said anything else, the women denied taking anything. Ross informed them that they would have to accompany him to the office, where they would discuss the matter. The three started toward the back of the store. They had proceeded about forty-five feet when the two women suddenly fled in different directions. The unidentified woman ran out the front door, while Day ran toward the back of the store. Ross eventually blocked Day's escape from the store by returning to the exit and waiting for her. When she again approached the front door, Ross reiterated that she would have to accompany him to the office. At that point, Day "became violent." *Transcript* at 19. She "shoved" Ross's "upper body" in an attempt to get past him. *Id*. at 20. Ross was able to overpower Day and take her to the store's office, where he called police.

Day was arrested and charged with conversion as a class A misdemeanor and battery as a class B misdemeanor. Following a bench trial, Day was found not guilty of conversion,

[1] Ind. Code Ann. § 35-42-2-1 (West, Westlaw through end of 2011 1st Regular Sess.).

but guilty of battery.

Day challenges the sufficiency of the evidence supporting her conviction.

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id*. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id*.

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009).

Pursuant to I.C. § 35-42-2-1(a), in order to convict Day of battery as a class B misdemeanor, the State was required to prove that she knowingly or intentionally touched Ross in a rude, insolent, or angry manner. Day claimed that Ross began manhandling her before she touched him. On the other hand, Ross claimed that Day began shoving him before he attempted to physically subdue her. As indicated above, deciding which is more credible is beyond our purview upon appellate review. That task fell upon the trial court and we cannot second-guess its determinations in that regard. *See Bailey v. State*, 907 N.E.2d 1003.

We also note Day's claim that even if we were to believe Ross's description of the incident, his testimony did not establish that she intentionally touched him in a rude, insolent, or angry manner. The testimony in question was as follows:

> Q When you say she became violent, describe what she did?
>
> A By pushing and shoving. Trying to shove me out of the way.
>
> Q And so who -- either you or her -- who made contact with whom first?
>
> A She made contact with me first. I'm trying to get her to come back.

Q And that contact was what? What did she do?

A By shoving.

Q Okay. And where did she shove you?

A Towards my upper body.

Transcript at 19-20. Contrary to Day's assertion on appeal, the foregoing testimony is sufficient to establish that she touched Ross in an insolent or angry manner, which is sufficient to establish the elements of class B misdemeanor battery.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.