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IN THE
COURT OF APPEALS OF INDIANA

B.P.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-0904-JV-315
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0812-JD-4050

October 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

B.P. appeals having been adjudicated a juvenile delinquent for committing an act that would be battery, a class D felony, if committed by an adult.

We affirm.

ISSUE

Whether sufficient evidence sustains the delinquency judgment.

FACTS

In December of 2008, B.P. was a student at the Pacer Academy in the Indianapolis Public School system; Michael Chisley was the principal. From hallway remarks he overheard, Chisley learned that two students were going to confront B.P. in his classroom. Chisley and Mr. Gray, the custodian, went to the classroom and removed the two students. Instead of remaining in the classroom, B.P. followed Chisley from the classroom. To avert "a fight," which is "probably gonna happen" when young "men . . . confront one another," Chisley stopped, faced, and stood "in front of [B.P.]" to "stop him," while Gray stood "in front of the other student." (Tr. 4). B.P. "decided that he was gonna go through [Chisley] to get to the other young man" and "swung over [Chisley] to the other student," striking Chisley. (Tr. 4-5). "At that point, . . . to restrain [B.P.]," Chisley "took him to the floor." (Tr. 5). Chisley told B.P. "to stop," but B.P. did not comply; Chisley attempted to further restrain B.P. by "sit[ting] on his legs until [they] could get th[e] situation under control." *Id.* B.P. "told [Chisley] to get off of him," and "squirm[ed]" and kicked Chisley "trying to get away from [him]." (Tr. 6, 7). Chisley suffered abrasions to his hands and leg that required medical attention.

On December 4, 2008, the State filed a petition alleging that B.P. was a delinquent child for committing acts that would constitute battery, as a class D felony, if committed by an adult. On March 3, 2009, the trial court held a denial and dispositional hearing at which Chisley testified to the foregoing. At the conclusion of the hearing, it found the allegations against B.P. to be true and adjudicated him a delinquent.

DECISION

In reviewing the sufficiency of the evidence in a juvenile adjudication, the appellate court neither reweighs the evidence nor judges the credibility of witnesses. *K.S. v. State*, 849 N.E.2d 538, 543 (Ind. 2006). We look only to the evidence most favorable to the trial court's judgment and to reasonable inferences to be drawn from that evidence. *Id.* We affirm if there is substantial probative evidence to support the trial court's conclusion. *Id.*

B.P. argues that the evidence does not establish beyond a reasonable doubt that he "intentionally or knowingly touched Chisley," but only that "Chisley sustained injuries when he interfered with B.P.'s attempts to free himself from Chisley's restraints." B.P.'s Br. at 4. We are not persuaded.

To establish the commission of battery as a class D felony, the State was required to prove that B.P. "knowingly or intentionally touche[d]" Chisley "in a rude, insolent, or angry manner"; that the touching "result[ed] in bodily injury" to Chisley; and that it occurred while Chisley was "an employee of a school corporation . . . engaged in the execution of the employee's official duty." Ind. Code § 35-42-2-1(a)(2)(G). As to intent, as B.P. correctly notes,

> Intent is a mental function. Absent an admission by the defendant, it must be determined from a consideration of the defendant's conduct and the natural and usual consequences thereof. The trier of fact must resort to reasonable inferences based upon an examination of the surrounding circumstances to determine whether, from the person's conduct and the natural consequences that might be expected from that conduct, a showing or inference of the intent to commit that conduct exists.

James v. State, 755 N.E.2d 226, 230 (Ind. Ct. App. 2001), *trans. denied*. Put another way, the State is not required to prove intent by direct and positive evidence, and the element of intent may be proven by circumstantial evidence alone. *Shuger v. State*, 859 N.E.2d 1226, 1236 (Ind. Ct. App. 2007), *trans. denied*.

In *K.D. v. State*, 754 N.E.2d 36, 40 (Ind. Ct. App. 2001), the juvenile argued that his adjudication for battery was erroneous because there was a lack of proof that he "knowingly or intentionally" touched the school police officer. After noting K.D.'s admission that he touched the officer's gun belt and other testimony consistent therewith, we found such sufficient to allow the trial court to "reasonably infer[] that K.D. knowingly or intentionally committed battery upon" the officer. *Id.* at 41, citing *Mischler v. Mischler*, 660 N.E.2d 343, 348 (Ind. Ct. App. 1996). In *Mischler*, we held that a conviction for battery will be affirmed "so long as there is evidence of touching, however slight," and that the "requisite intent" for the offense of battery "may be presumed from the voluntary commission of the act." *Id.* Similarly in *Carty v. State*, 421 N.E.2d 1151, 1155 (Ind. Ct. App. 1981), the defendant had argued that he was only "flail[ing] about with his legs to avoid being taken to the police station," conduct which "shows neither a conscious objective to kick [the officer] nor shows he was aware of a high probability that he was doing so." We found his argument unavailing because "the voluntary

commission" of the act allows the inference that "the conduct was 'knowingly' and 'intentionally' performed." *Id.*

B.P.'s conduct was a series of acts directed toward a confrontation with another student while in school, and after Chisley – the school's principal – physically blocked his access to the student, B.P. then threw a punch that struck Chisley. When Chisley restrained his attack and told him to stop, B.P. "told [Chisley] to get off of him," and "squirm[ed]" and kicked Chisley. (Tr. 6). Chisley suffered injuries as a direct result of B.P.'s actions.

The evidence supports the inference that B.P.'s squirming and kicking was done knowingly and intentionally, and that it injured Chisley. Accordingly, sufficient evidence supports the trial court's conclusion that B.P. committed battery against Principal Chisley while he was engaged in the execution of his official duty.

Affirmed.

ROBB, J., and MATHIAS, J., concur.