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FILED
Nov 19 2009, 9:22 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

D.S.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-0905-JV-463
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0812-JD-3934

November 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent D.S. appeals his delinquent child adjudication for Battery upon an officer, an offense that would be a Class D felony if committed by an adult.[1] We affirm.

Issue

D.S. raises the issue of whether there is sufficient evidence to support the delinquency adjudication for Battery.

Facts and Procedural History

On December 13, 2008, police responded to a 9-1-1 call reporting a theft at a convenience store in Marion County. The investigation of the theft led police to a particular nearby house on South Sherman. When the door to the residence was opened in response to the police knocking, the police immediately observed a group of male juveniles sitting around a kitchen table that had open beer containers on it. After they entered the house, the police also discovered marijuana on the table.

The officers placed several juveniles in handcuffs, including D.S. As one of the officers was instructing a juvenile to stand up so that he could be placed in handcuffs, that officer felt something from behind him bump his gun belt. The officer turned around to find D.S., already in handcuffs, standing up from the chair where he had been placed. The officer told D.S. to sit down and pushed him back into his seat. D.S. immediately popped back up out of his chair in an aggressive manner, pushing his chest and shoulder into the officer's chest. The impact caused the officer pain and discomfort to his chest area. The officer again

[1] Ind. Code § 35-42-2-1(a)(2)(A).

told D.S. to sit down but D.S. failed to follow the instruction. Two officers then attempted and eventually were able to restrain D.S. on the ground but D.S. fought this effort by flailing his arms and shoulders and kicking his legs.

On December 15, 2008, the State alleged that D.S. was a delinquent child for committing acts that would constitute battery upon a police officer resulting in bodily injury and resisting law enforcement, if committed by an adult. The juvenile court conducted a denial hearing on February 25, 2009, and then entered true findings as to both allegations.[2] After a dispositional hearing, the juvenile court awarded wardship of D.S. to the Indiana Department of Correction but suspended the placement to probation for sixty days with the special condition of home confinement as well as requiring the completion of the Thinking for a Change program, thirty hours of community service, urine drug screens and writing an apology to the injured officer. D.S. now appeals his delinquency adjudication only as to the true finding for Battery.

Discussion and Decision

In juvenile delinquency adjudication proceedings, the State must prove every element of the offense beyond a reasonable doubt. A.B. v. State, 885 N.E.2d 1223, 1226 (Ind. 2008). In reviewing an adjudication, we do not reweigh the evidence or judge the credibility of the witnesses. Id. We look solely to the probative evidence supporting the adjudication and the reasonable inference that may be drawn therefrom to determine whether a reasonable trier of

[2] The juvenile court entered a true finding as to the lesser included offense of resisting law enforcement, as a Class A misdemeanor, as opposed to the allegation as a Class D felony. D.S. does not challenge this true finding on appeal.

fact could conclude the juvenile was guilty beyond a reasonable doubt. D.W. v. State, 903 N.E.2d 966, 968 (Ind. Ct. App. 2009), trans. denied. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the juvenile was guilty beyond a reasonable doubt, we will affirm the adjudication. E.D. v. State, 905 N.E.2d 505, 506-07 (Ind. Ct. App. 2009).

Here, the State was required to prove as alleged that D.S. knowingly and intentionally, in a rude, insolent or angry manner, touched a law enforcement officer that was lawfully engaged in executing his official duty and that the touching resulted in bodily injury to the officer. See Ind. Code § 35-42-2-1(a)(2)(A). D.S. only disputes whether the evidence supports that D.S. had the intent to commit the offense. However, this argument simply is a request to judge the credibility of the witnesses and reweigh the evidence favoring the testimony of D.S. and his cousin as opposed to that of four other witnesses whose testimony supports the adjudication. The evidence reflects that, after D.S. was told to sit down and the officer pushed him into his seat, D.S. immediately stood up in an aggressive manner, ramming his chest and shoulders into the officer. This evidence is sufficient to support the conviction. Mishler v. State, 660 N.E.2d 343, 348 (Ind. Ct. App. 1996) (The requisite intent for battery may be presumed from the voluntary commission of the act.).

Affirmed.

BAKER, C.J., and ROBB, J., concur.