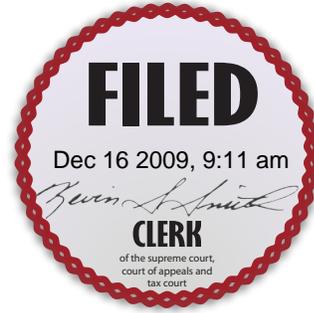


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

L.M.,)
)
Appellant-Defendant,)
)
vs.) No. 65A01-0907-JV-335
) No. 65A01-0907-JV-336
) No. 65A05-0907-JV-386
STATE OF INDIANA,) No. 65A04-0907-JV-388
)
)
Appellee-Plaintiff.)

APPEAL FROM THE POSEY CIRCUIT COURT
The Honorable James M. Redwine, Judge
Cause No. 65C01-0808-JD-186; Cause No. 65C01-0812-JD-254
Cause No. 65C01-0902-JD-026; Cause No. 65C01-0901-JD-012

December 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

L.M. appeals her adjudication as a juvenile delinquent, upon the State's allegations that she committed Illegal Consumption of an Alcoholic Beverage, a Class C misdemeanor,¹ and also committed acts that would be, if committed by an adult, Resisting Law Enforcement, as a Class D felony,² Battery, as a Class D felony, and Battery, as a Class A misdemeanor.³ We affirm.

Issues

L.M. presents three issues for review:

- I. Whether the State failed to prove the delinquent acts occurred within the State of Indiana;
- II. Whether the State presented sufficient evidence to establish the offense of battery upon a law enforcement officer; and
- III. Whether the juvenile court abused its discretion by ordering L.M.'s commitment to the Indiana Department of Correction.

Facts and Procedural History

The facts most favorable to the adjudication of delinquency are as follows. On August 21, 2008, at approximately 6:24 p.m., Mount Vernon Police Officers Brian Angel and Darrin Lemberg were dispatched to a residence at the intersection of Third and Barter Streets in Mount Vernon, Posey County. Sixteen-year-old L.M. was rolling around the front lawn of the residence, screaming. When the officers attempted to assist L.M., who was visibly

¹ Ind. Code § 7.1-5-7-7(a)(2).

² Ind. Code § 35-44-3-3.

³ Ind. Code § 35-42-2-1.

intoxicated, L.M. responded, “f*** off and leave [me] alone” and “f*** you.” (Tr. 32.) The officers handcuffed L.M. and put her in the police vehicle. L.M. attempted to bite Officer Angel, but succeeded only in getting “a big mouthful” of his uniform. (Tr. 33.) The officers called for an ambulance and attempted to assist paramedics in getting L.M. into the ambulance. During the process, L.M. was combative and bit Officer Lumberg on the arm. The State alleged that L.M. had committed two acts that would be battery if committed by an adult, and further alleged that L.M. had illegally consumed an alcoholic beverage.

On November 25, 2008, Officer Angel responded to a report that L.M. was intoxicated and pounding on the door of a residence on Third Street in Mount Vernon. L.M. was given a portable breath test, which indicated that she had consumed alcohol. The State again alleged that L.M. had illegally consumed an alcoholic beverage.

During the early morning hours of January 1, 2009, Mount Vernon Police Officer Thomas Reuger was dispatched to L.M.’s residence, where L.M.’s mother reported that L.M. was in an apartment across the hall. Police officers located L.M. in a bedroom of the neighbor’s apartment. She was intoxicated and semi-conscious, prompting the officers to summon a medical unit from New Harmony. L.M. roused and began “banging her head against things.” (Tr. 22.) As the officers handcuffed L.M., she struggled and kicked. Officer Reuger was kicked multiple times on his shin. After the Posey County Medical Service arrived to transport L.M. to the hospital, she attempted to bite one of the emergency medical technicians. After these events, the State alleged that L.M. had illegally consumed alcohol and that she had committed acts that would be battery and resisting law enforcement,

if committed by an adult.

On January 16, 2009, at Mount Vernon Senior High School, L.M. followed classmate J.D., grabbed her by the hair, struck her in the face, and shoved her head into a locker. J.D. was bruised and some of her hair was pulled out. Consequently, the State alleged that L.M. had committed an act that would be battery, if committed by an adult.

On May 18, 2009, the Posey County Circuit Court conducted hearings on each of the allegations against L.M., and found L.M. to be a juvenile delinquent. At a dispositional hearing conducted on June 22, 2009, the juvenile court committed L.M. to the Indiana Department of Correction. L.M. appeals.

Discussion and Decision

I. Commission of Acts in Indiana

At the outset, L.M. claims that the State failed to prove that L.M. committed any delinquent acts in Indiana. She does not expressly deny that her conduct took place in Indiana, but rather points out that other states have cities named Mount Vernon.

In Coates v. State, 518 N.E.2d 1086 (Ind. 1988), our supreme court addressed a claim that the State had failed to establish that a defendant had committed his crime in the State of Indiana:

The trial took place in Delaware County and the State's evidence showed that the residence burglarized was located at R.R. #1, Alexandria, in Delaware County. This Court will take judicial knowledge that Delaware County is located in Indiana. Under the circumstances, it would be wholly illogical to reverse this case and place the citizens of Delaware County at the expense of a retrial because the word "Indiana" was not used when describing the location of the burglarized residence.

518 N.E.2d at 1086-87. Here, the State’s evidence showed that L.M.’s conduct took place in Mount Vernon in Posey County. We, in accordance with our supreme court’s example in Coates, will take judicial notice that Posey County is located in Indiana. Moreover, L.M. was not charged with a crime; the issue before the Posey Circuit Court was whether L.M. is a delinquent. Indeed, L.M. requests that we remand this juvenile case to the Posey Circuit Court, thus implicitly agreeing with the State that the Posey Circuit Court is the appropriate court for making a delinquency determination with regard to L.M. The grant of her request to remand the matter to the same court to permit a hearing with inclusion of the word “Indiana” would not constitute a wise use of judicial resources.

II. Sufficiency of the Evidence

L.M. claims that the State failed in its burden of proof with regard to the allegation of battery upon Officer Angel because the evidence showed that L.M. did not bite Officer Angel’s flesh but instead bit into his uniform.

When the State seeks to have a juvenile adjudicated a delinquent, it must prove every element of the offense beyond a reasonable doubt. D.B. v. State, 842 N.E.2d 399, 401 (Ind. Ct. App. 2006). Upon review, we neither reweigh the evidence nor judge the credibility of the witnesses. Id. Rather, we look only to the evidence and the reasonable inferences therefrom that support the true finding, and will affirm the finding of delinquency if a reasonable factfinder could find the elements of the offense proven beyond a reasonable doubt. Id. at 401-02.

A person who knowingly or intentionally touches another person in a rude, insolent, or

angry manner commits battery. Ind. Code § 35-42-2-1. The offense is a Class A misdemeanor if it is committed against a law enforcement officer while the officer is engaged in the execution of the officer's official duty. Ind. Code § 35-42-2-1(1)(B).

A person may commit the "touching" necessary for battery by touching another person's apparel. Impson v. State, 721 N.E.2d 1275, 1285 (Ind. Ct. App. 2000). This is so because a person's wearing apparel is so intimately connected with the person so as to be regarded as a part of the person. Stokes v. State, 233 Ind. 10, 13, 115 N.E.2d 442, 443 (1953). L.M. concedes that this is the law, but asks that we "reconsider both [Impson and Stokes] decisions." Appellant's Brief at 5. We are not at liberty to do so, as the precedent our supreme court establishes is binding upon us until it is changed either by that court or by legislative enactment. Horn v. Hendrickson, 824 N.E.2d 690, 694 (Ind. Ct. App. 2005).

The State presented evidence that L.M., intoxicated and angry, bit into Officer Angel's uniform as he attempted to execute his duties. This is sufficient to establish that L.M. committed an act that would be battery, as a Class A misdemeanor, if committed by an adult.

III. Disposition

Finally, L.M. argues that the juvenile court abused its discretion when it ordered her commitment to the Indiana Department of Correction. Dispositional decrees are intended to promote rehabilitation. R.J.G. v. State, 902 N.E.2d 804, 806 (Ind. 2009). The choice of a specific disposition of a juvenile adjudicated a delinquent child is generally within the discretion of the juvenile court, subject to the statutory considerations of the welfare of the

child, the community's safety, and the policy of favoring the least-harsh disposition. D.P. v. State, 783 N.E.2d 767, 769 (Ind. Ct. App. 2003). A juvenile disposition will not be reversed absent a showing of an abuse of discretion. Id. An abuse of discretion occurs when the trial court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or against the reasonable, probable, and actual deductions to be drawn therefrom. Id.

L.M.'s Pre-Dispositional Report advised the juvenile court as follows. L.M. first became involved with the juvenile justice system in January of 2005. At age thirteen, she was adjudicated a delinquent and placed in Hillcrest Youth Center. L.M. then ran away from that facility and was placed at Southwest Indiana Regional Youth Village. She was released onto probation, which she completed successfully. In June of 2008, L.M. entered into an Informal Adjustment Agreement after the State alleged she had committed a delinquent act of consuming alcohol. Less than two months later, she committed the first of the acts at issue here.

The juvenile court determined that it was in the best interests of L.M. and society to "give [L.M.] an opportunity in a highly structured setting to modify her behavior." (Tr. 51.) In light of L.M.'s failure to respond to several less restrictive alternatives already afforded her, we cannot say that the juvenile court abused its discretion by committing L.M. to the Department of Correction.

Conclusion

There is an adequate record from which we can ascertain that L.M.'s conduct took

place in Indiana. The State presented sufficient evidence that L.M. committed an act against Officer Angel that would constitute battery if committed by an adult. The juvenile court did not abuse its discretion by committing L.M. to the Department of Correction.

Affirmed.

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