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**IN THE
COURT OF APPEALS OF INDIANA**

DANIEL FUGATE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 71A04-0611-CR-657

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable John M. Marnocha, Judge
Cause No. 71D02-0507-FD-761

July 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Daniel Fugate appeals his convictions for class A misdemeanor and class D felony battery by body waste. We affirm.

Issue

We restate the issue as whether the State presented sufficient evidence to convict Fugate of class A misdemeanor and class D felony battery by body waste.

Facts and Procedural History

The facts most favorable to the jury's verdict indicate that on July 24, 2005, Fugate and his girlfriend Regina Stuart went out to lunch in Mishawaka, Indiana. Fugate became intoxicated. When they returned home, Fugate severely cut his right hand when he knocked on the door of the neighbor's apartment, shattering the glass in the door. Stuart asked the neighbor to call the police because she was afraid that Fugate would hurt himself. When the police arrived, they saw blood on the steps, on the porch, and in the house. The police tried to calm Fugate down, but he was belligerent and used profanity, telling the police to get out of his house. Once the police noticed the cut on Fugate's right hand, they called the paramedics. Fugate continued to yell and refused to cooperate with the police, but he finally agreed to allow the paramedics to take him to the hospital for treatment.

At the hospital, Fugate was loud and cussed at the police and the nurse. The police continued to ask Fugate to calm down, so that the nurse could clean his wound, but he failed to do so. The nurse began irrigating the wound, and Fugate kept taking his hand out of the basin of solution and yelling at the officers. Corporal Brandon Ruth told Fugate to lie back on the bed, and Fugate grabbed Corporal Ruth with his bloody hand. Sergeant Bryon Fox

handcuffed Fugate's left hand to the bed, and as the nurse tried to clean the wound, Fugate shouted out profanities and flicked blood on the nurse and Sergeant Fox at least twice.

The State charged Fugate with class A misdemeanor battery by body waste as to the nurse, and class D felony battery by body waste as to Sergeant Fox. The State also charged Fugate with disorderly conduct and intimidation, but dismissed the intimidation charge before trial. On March 9, 2006, the jury found Fugate guilty as charged. Fugate now appeals his battery convictions.

Discussion and Decision

Class A misdemeanor battery by body waste is committed when a person knowingly or intentionally in a rude, insolent, or angry manner places human blood on another person. Ind. Code § 35-42-2-6(d). Class D felony battery by body waste is committed when a person knowingly or intentionally in a rude, insolent, or angry manner places blood on a law enforcement officer identified as such and while engaged in the performance of official duties. Ind. Code § 35-42-2-6(c). Fugate alleges that the State's evidence was insufficient to establish that he had the requisite intent to place blood on the nurse or on Sergeant Fox.

When reviewing sufficiency of the evidence claims, "an appellate court must consider only the probative evidence and reasonable inferences supporting the judgment, without weighing evidence or assessing witness credibility, and determine therefrom whether a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Miller v. State*, 770 N.E.2d 763, 774 (Ind. 2002). The function of weighing witness credibility lies with the finder of fact, not this Court. *Newman v. State*, 677 N.E.2d 590, 593 (Ind. Ct. App. 1997). "It is well-established that knowledge and intent may be inferred from

the facts and circumstances of each case.” *Johnson v. State*, 837 N.E.2d 209, 214 (Ind. Ct. App. 2005), *trans. denied* (2006).

The record indicates that Fugate was intoxicated,¹ angry, belligerent, and uncooperative at his home and when he was being treated at the hospital. Under such circumstances, a reasonable trier of fact could infer that Fugate intentionally flicked his bloody hand at the nurse and Sergeant Fox to place his blood onto them. The evidence is sufficient to establish that Fugate committed battery by body waste against Sergeant Fox and the nurse. *See Newman*, 677 N.E.2d at 593 (holding that evidence was sufficient to support defendant’s conviction of battery by body waste where officers testified that while attempting to place her under arrest, she intentionally swung her head around, causing saliva to land on them). We therefore affirm Fugate’s convictions.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.

¹Fugate suggests that voluntary intoxication is a defense to battery by body waste. Appellant’s Br. at 6 (citing Ind. Code § 35-41-3-5). However, the jury was instructed that voluntary intoxication is not a defense to battery. Appellant’s App. at 29. Fugate did not dispute this instruction at trial, nor does he specifically contend that he was so intoxicated that he lacked the requisite intent to commit battery.