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**IN THE  
COURT OF APPEALS OF INDIANA**

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WAYLON SADLER, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 85A02-0704-CR-337  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE WABASH CIRCUIT COURT  
The Honorable Robert R. McCallen III, Judge  
Cause No. 85C01-0610-FC-144

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**July 6, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Waylon Sadler was convicted of battery,<sup>1</sup> as a Class C felony. On appeal, Sadler raises two issues, which we restate as:

- I. Whether there was sufficient evidence to support his battery conviction as a Class C felony.
- II. Whether the trial court erred in finding, without holding a hearing, that Sadler was not indigent for the purpose of imposing a fine.

We affirm and remand.

### **FACTS AND PROCEDURAL HISTORY**

Sadler and Nicholas Boyd shared a cell in the Wabash County Jail. Sadler was upset because his can of tobacco had disappeared and thought Boyd had taken it. On September 25, 2006, while Boyd was stepping out of the shower, Sadler struck Boyd on the side of the head with a hollow metal bedpost. When Boyd tried to take the bedpost from Sadler, Sadler struck him on the top of the head. The wound on the side of Boyd's head required ten staples, and the wound on the top of his head required three staples. After hearing testimony and examining the bedpost, the jury found Sadler guilty as charged.

Sadler was sentenced to four years incarceration, with one year suspended to probation. Although the trial court had found Sadler indigent for the purpose of trial, without further hearing, it found that he was not indigent for the purpose of fines and fees and imposed a \$7500 fine with the alternative of paying \$2500 into the Wabash County Public Defender Fund. Sadler now appeals.

### **DISCUSSION and DECISION**

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<sup>1</sup> See Ind. Code § 35-42-2-1(a)(3).

Our standard of review for sufficiency of the evidence is well settled. *Altes v. State*, 822 N.E.2d 1116, 1121 (Ind. Ct. App. 2005), *trans. denied*. We will neither reweigh the evidence nor assess the credibility of witnesses. *Id.* We will consider only the evidence most favorable to the judgment together with all reasonable and logical inferences to be drawn therefrom. *Id.* If there is substantial evidence of probative value to support the judgment of the trier of fact, we will affirm. *Id.*

The Information states that Sadler was charged, pursuant to Ind. Code § 35-42-2-1(a)(3), with:

knowingly or intentionally touch[ing] Nicholas Boyd in a rude, insolent or angry manner: (a) that resulted in serious bodily injury to Nicholas Boyd; or (b) it was committed by means of a deadly weapon[.]

Sadler concedes that he hit Boyd twice with the bedpost causing two injuries which required a total of thirteen staples. He contends, however, that the evidence is insufficient to convict him of battery as a Class C felony because a hollow metal bedpost is not included in the definition of a deadly weapon set forth in Ind. Code § 35-41-1-8 and that, while there was evidence that he intended to inflict injury, there was no evidence that he intended to inflict serious bodily harm.

Ind. Code § 35-41-1-8(2) includes in its definition of “deadly weapon”

*other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.*

(Emphasis added.)

Whether an object is a deadly weapon is a question of fact for the jury to determine based on the manner of its use and circumstances of the specific case. *Timm v. State*, 644

N.E.2d 1235, 1238-39 (Ind. 1994). It is the manner in which the instrument was used, not its originally intended use that determines whether something is a deadly weapon. *Id.* We look to the capacity of the object to inflict serious bodily injury under the factual circumstances of the case. *Id.* Although a hollow metal bedpost is not specifically set forth in the statutory definition of deadly weapon, there is no question that when used as a weapon it is readily capable of causing serious bodily injury. Sadler himself acknowledged that Boyd required thirteen staples to close the wounds. The jury could reasonably have concluded from these facts that the bedpost was capable of causing serious bodily injury and therefore qualified as a deadly weapon.

The language of the Information followed the language of the statute and thus charged Sadler with a Class C felony battery for either the use of a deadly weapon or causing serious bodily injury. Because we find the evidence sufficient to support a finding that the bedpost was a deadly weapon, we need not determine whether the jury could have concluded that Boyd suffered “serious bodily injury.”

The evidence is sufficient to support the jury’s verdict that Sadler committed battery as a Class C felony under the deadly weapon option. Thus, we affirm his conviction.

Sadler also contends and the State concedes that the trial court erred in imposing fines and costs without holding an indigency hearing. Accordingly, we remand this case with instructions to hold a hearing for the purpose of determining whether Sadler is indigent for the purpose of paying fines and fees. *See* Ind. Code § 35-38-1-18(a).

Affirmed and remanded.

DARDEN, J., and MATHIAS, J., concur.