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**IN THE
COURT OF APPEALS OF INDIANA**

JESSE BRANDON,)
)
Appellant-Petitioner,)
)
vs.) No. 49A02-0612-CR-1099
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gaughan, Commissioner
Cause No. 49G16-0609-CM-176399

August 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jesse Brandon appeals his conviction of Battery,¹ a class A misdemeanor. Upon appeal, Brandon challenges the sufficiency of the evidence supporting the conviction.

We affirm.

The facts favorable to the judgment are that on the evening of September 14, 2006, Brandon asked Khristian Kemp to transport him from a friend's house to his mother's house, and she agreed. Kemp and Brandon knew one another, and in fact had dated approximately five years earlier. When they arrived at his mother's house, Brandon asked Kemp to remain and talk with him. She agreed, and turned off the car. The two sat in the car and soon began quarreling. Kemp started her car in preparation for leaving. Brandon turned off the car and took the keys from the ignition. When Brandon refused Kemp's request to return her keys, she called her mother on her cell phone. Brandon attempted to grab the phone away from Kemp. In the process of doing so, he scratched Kemp's ear and her eye was struck and reddened. At that point, Brandon returned the keys to Kemp and got out of the car. Kemp called her mother again and her mother and stepfather arranged to meet her at a friend's house. Her mother called police, who went to the friend's house and photographed Kemp's injuries. On September 22, 2006, Brandon was charged with domestic battery as a class A misdemeanor. He was convicted following a bench trial.

¹ Ind. Code Ann. § 35-42-2-1 (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007).

Brandon contends the evidence was not sufficient to support the conviction. Specifically, he contends he did not knowingly touch Kemp in a rude and angry manner, but was simply trying to pull the phone out of her hand.

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). This review “respects ‘the [trier of fact]’s exclusive province to weigh conflicting evidence.” *Id.* at 126 (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). Considering only the probative evidence and reasonable inferences supporting the verdict, we must affirm “‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *McHenry v. State*, 820 N.E.2d at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

The offense of battery is governed by I.C. § 35-42-2-1, which provides, in relevant part: “A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is ... a Class A misdemeanor if ... it results in bodily injury to any other person[.]” I.C. § 35-42-2-1(a)(1)(A). In this case, the State charged Brandon with “knowingly” touching Kemp in a rude and angry manner. Brandon claims the State did not prove the mental element of the charged offense, i.e., that he “knowingly” touched her. “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” Ind. Code Ann. § 35-41-2-2 (West,

PREMISE through 2007 Public Laws, approved and effective through April 8, 2007). Thus, to sustain the verdict, the evidence must show, among other things, that Brandon was aware of a high probability that he would touch Kemp as a result of his actions. Because knowledge is the mental state of the actor, the trier of fact must resort to reasonable inferences of its existence. *Young v. State*, 761 N.E.2d 387 (Ind. 2002).

In the middle of a heated argument, Brandon attempted to wrest Kemp's cell phone from her control while she was using it. In using the phone, Kemp held it pressed against her ear. From this, the trier of fact could reasonably infer that Brandon was aware of a high probability that he would touch Kemp's hand, ear, and/or face in the process. Moreover, the situation in which the incident occurred, i.e., in the midst of a heated argument and attempting to take the phone against Kemp's will, permitted the trial court to conclude that the touching was done in a rude and angry manner. This evidence was sufficient to prove the contested element of battery as charged.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.