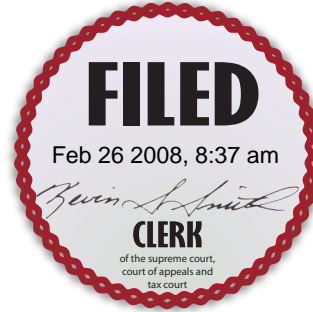


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DELNO DALTON,)
)
 Appellant-Defendant,)
)
 vs.) No. 27A02-0711-CR-926
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Natalie R. Conn, Judge
Cause No. 27D03-0612-FD-1076

February 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Delno Dalton (“Dalton”) appeals his conviction for Domestic Battery, as a Class D felony.¹ We affirm.

Issue

Whether there was sufficient evidence to support the conviction.

Facts and Procedural History

Dalton and Linda Denham (“Denham”) have lived together for ten or eleven years in Grant County. On December 22, 2006, they had been drinking and a verbal and then physical fight ensued. Responding to the report of a battery at the Dalton/Denham house, Marion Police Officer Rick Estes (“Officer Estes”) interviewed Denham, whose right eye was red and swollen. Denham told Officer Estes that she and Dalton had a fight, resulting in Dalton striking her and knocking her out. She also said that later that evening Dalton had threatened to hurt her with an axe. Officer Estes took pictures of Denham’s injuries as well as the axe in the bedroom.

The State charged Dalton with two counts of Domestic Battery, one as a Class A misdemeanor and one as a Class D felony due to a prior conviction. After a bench trial, Dalton was found guilty of the misdemeanor charge that was enhanced to a Class D felony upon Dalton admitting his prior domestic battery conviction. Dalton was sentenced to two years imprisonment.

Discussion and Decision

In our review, we consider only the probative evidence and reasonable inferences supporting the judgment and will affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” Brown v. State, 868 N.E.2d 464, 470 (Ind. 2007) (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)).

To obtain a conviction for domestic battery as a Class D felony, the State was required to prove that Dalton: (1) knowingly or intentionally; (2) touched an individual who was living as if a spouse; (3) in a rude, insolent, or angry manner; (4) resulting in bodily injury; and (5) has a previous, unrelated conviction. See Ind. Code § 35-42-2-1.3.

The evidence presented was that Dalton and Denham had a verbal fight that turned physical when Dalton struck Denham in the face, knocking her out. The blow caused redness and swelling around Denham’s right eye. Dalton does not challenge that he and Denham were living together as if they were spouses or that he has a previous unrelated conviction. This evidence and the reasonable inferences that can be drawn therefrom are sufficient to support Dalton’s conviction.

Affirmed.

NAJAM, J., and CRONE, J., concur.

¹ Ind. Code § 35-42-2-1.3.