

## MEMORANDUM DECISION

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

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Coby L. Fifer

*Appellant-Defendant,*

v.

State of Indiana,

*Appellee-Plaintiff.*

March 9, 2022

Court of Appeals Case No.  
21A-CR-2248

Appeal from the Hamilton  
Superior Court

The Honorable David K. Najjar,  
Judge

Trial Court Cause No.  
29D05-2011-F6-7035

**Bailey, Judge.**

# Case Summary

- [1] Coby Fifer (“Fifer”) appeals his conviction for Intimidation, as a Class A misdemeanor.<sup>1</sup> He presents the issue of whether his conviction is supported by sufficient evidence. We affirm.

## Facts and Procedural History

- [2] During the early evening of November 3, 2020, Khayyana Brewer (“Brewer”) traveled to the Hamilton County neighborhood where her friend, Emily Owen (“Owen”) lived. Brewer was relying upon her GPS, because she had not previously visited Owen there. Brewer parked her vehicle, approached a door, rang the doorbell, and waited. After receiving no response at the door, Brewer returned to her vehicle and called Owen. Once Brewer learned that she was at the wrong address, she backed out of the driveway.
- [3] When Brewer pulled her vehicle into the roadway, she was confronted by Fifer, who sometimes stayed at the house that Brewer had mistaken for Owen’s house. Fifer came “running out” and began to act in a “very aggressive” manner. (Tr. Vol. II, pgs. 8, 10.) Fifer banged on Brewer’s windshield; she lowered the window and apologized to Fifer for the mistaken entry into the driveway. Nonetheless, Fifer continued yelling. Owen came out of her residence in time to hear Fifer threaten to burn down Owen’s house. Brewer

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<sup>1</sup> Ind. Code § 35-45-2-1(a)(4).

and Owen took shelter inside Owen's residence. Once inside the residence, the women heard Fifer banging on the residence door and continuing to yell.

Owen called 9-1-1 to report the incident. In so doing, she advised the 9-1-1 operator that Fifer had threatened to burn down her residence three months earlier.

- [4] On November 13, 2020, the State charged Fifer with Intimidation, as a Level 6 felony. A bench trial was held on August 20, 2021, and the trial court pronounced Fifer guilty as charged. On September 20, 2021, at the sentencing hearing, the trial court entered a judgment of conviction as a Class A misdemeanor. Fifer was sentenced to 365 days in the Hamilton County Jail, with 363 days suspended to probation. Fifer now appeals.

## Discussion and Decision

- [5] To convict Fifer of Intimidation, as a Class A misdemeanor, the State was required to prove beyond a reasonable doubt that Fifer "communicated a threat with the intent that another person be placed in fear that the threat will be carried out." I.C. § 35-45-2-1(a)(4). A "threat" is defined to include: "an expression, by words or action, of an intention to: unlawfully injure the person threatened or another person, or damage property." Fifer contends that there is insufficient evidence that he conveyed a threat and insufficient evidence of his intent to place Brewer and Owen in fear that the threat would be carried out.

- [6] When reviewing the evidence in support of a conviction, we consider only the probative evidence and reasonable inferences most favorable to the trial court's judgment. *Binkley v. State*, 654 N.E.2d 736, 737 (Ind. 1995). The decision comes before us with a presumption of legitimacy, and we do not substitute our judgment for that of the fact-finder. *Id.* We do not assess the credibility of the witnesses and we do not reweigh the evidence. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Reversal is appropriate only when no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*
- [7] “[I]ntent is a mental function and without a confession, it must be determined from a consideration of the conduct, and the natural consequences of the conduct.” *Duren v. State*, 720 N.E.2d 1198, 1202 (Ind. Ct. App. 1999), *trans. denied*. Accordingly, intent often must be proven by circumstantial evidence. *Id.* The trier of fact may infer the requisite intent from an examination of the surrounding circumstances. *White v. State*, 772 N.E.2d 408, 413 (Ind. 2002).
- [8] Brewer testified that Fifer ran out of his house, banged on her windshield, and threatened to “shoot us and burn the house down.” (Tr. Vol. II, pg. 16.) Owen testified that Fifer “threatened to hurt us and burn down the house.” (*Id.* at 24.) Owen further testified that she had believed Fifer and was frightened. Both women testified that, once they were inside Owen’s residence, Fifer continued to yell and bang on the door. The State presented sufficient evidence to permit a reasonable fact-finder to conclude that Fifer had communicated a threat to Brewer and Owen, acting with the requisite intent. Fifer asserts that he was

fearful for his family's safety and intended only to obtain Brewer's license plate number. He points out that other neighbors did not hear Fifer threaten anyone. These are merely requests to reweigh the evidence, and we decline that invitation.

## Conclusion

[9] Fifer's conviction for Intimidation, as a Class A misdemeanor, is supported by sufficient evidence.

[10] Affirmed.

Mathias, J., and Altice, J., concur.