

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jermaine Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 17, 2022

Court of Appeals Case No.
21A-CR-1712

Appeal from the Marion Superior
Court

The Honorable Angela Dow
Davis, Judge

Trial Court Cause No.
49D27-1802-F1-6850

Robb, Judge.

Case Summary and Issue

- [1] Following a jury trial, Jermaine Davis was convicted of attempted murder, a Level 1 felony. Davis now appeals, raising one issue for our review which we restate as whether the evidence is sufficient to support his attempted murder conviction. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

- [2] In 2018, Davis and Ashley Smith ended their romantic relationship. On February 21, 2018, Davis and Smith arranged a meeting at McDonald's so that Smith could return some of Davis' personal belongings. During the meeting, Davis and Smith got into a physical altercation. *See* Transcript of Evidence, Volume 2 at 228. After Davis left, Smith called the police, made a report, and then drove to a liquor store where her cousin was working. After leaving McDonald's, Davis went to his friend Willie Reynolds' house and had some drinks. Subsequently, Davis and Reynolds were driving past the liquor store when Davis recognized Smith's car in the parking lot and pulled in next to it. Smith was still in her vehicle and when she saw that it was Davis pulling up next to her, she began yelling for her cousin to call the police.
- [3] Davis remained parked next to Smith for a few seconds before beginning to back up. *See* Exhibit Index, Volume 2, State's Exhibit 14 (Video 02:45-02:52);

Ex., Vol. 2, Defendant's Exhibit A (Video 00:00-00:08).¹ While backing up, Davis leaned over Reynolds, who was in the passenger seat, and began shooting a firearm out of the passenger side window toward Smith's vehicle. *See* Tr., Vol. 3 at 145. Davis fired three to four shots before driving away. The entire event was captured on video by surveillance cameras.

[4] When the police arrived at the scene, they found three bullet holes on the driver's side in the rear of Smith's vehicle, the back windshield was shattered, and there was a bullet shell casing recovered inside the vehicle. *See* Tr., Vol. 2 at 244-46; Tr., Vol. 3 at 2; Ex., Vol. 1 at 32-36.

[5] On February 27, 2018, the State charged Davis with attempted murder, a Level 1 felony; robbery resulting in bodily injury, a Level 3 felony; unlawful possession of a firearm by a serious violent felon, a Level 4 felony; and battery resulting in bodily injury, a Class A misdemeanor. A jury found Davis guilty of attempted murder and battery resulting in bodily injury.² The trial court then sentenced Davis to an aggregate of thirty-one years. Davis now appeals. Additional facts will be provided as necessary.

¹ Exhibit A contains two videos. One is the same as introduced by the State in Exhibit 14, the other is of a different angle of the shooting. This second video is taken from much further away and appears to be sped-up. All citation references to Exhibit A will be in reference to this second video.

² The jury found Davis not guilty of the robbery resulting in bodily injury charge and the trial court vacated the guilty finding of possession of a firearm because the State chose not to proceed to phase two on that charge.

Discussion and Decision

I. Standard of Review

[6] When reviewing the sufficiency of the evidence required to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Instead, we consider only the evidence supporting the verdict and any reasonable inferences that can be drawn therefrom. *Morris v. State*, 114 N.E.3d 531, 535 (Ind. Ct. App. 2018), *trans. denied*. We consider conflicting evidence most favorably to the verdict. *Silvers v. State*, 114 N.E.3d 931, 936 (Ind. Ct. App. 2018). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). The evidence need not overcome every reasonable hypothesis of innocence; it is sufficient if an inference may reasonably be drawn from the evidence to support the verdict. *Silvers*, 114 N.E.3d at 936.

II. Sufficiency of the Evidence

[7] To convict Davis of attempted murder, the State was required to prove beyond a reasonable doubt that Davis, acting with specific intent to commit murder, engaged in an act that constituted a substantial step toward the commission of the crime. *See* Ind. Code §§ 35-41-5-1(a), 35-42-1-1(1); *Majors v. State*, 735 N.E.2d 334, 339 (Ind. Ct. App. 2000). Davis contends the State presented insufficient evidence that he “acted with the specific intent to kill.” Brief of

Appellant at 11. Intent may be proven by circumstantial evidence alone, and it may be inferred from the facts and circumstances of the case. *Lykins v. State*, 726 N.E.2d 1265, 1270 (Ind. Ct. App. 2000). Specifically, the “intent to kill may be inferred from the deliberate use of a deadly weapon in a manner likely to cause death or serious injury.” *Bethel v. State*, 730 N.E.2d 1242, 1245 (Ind. 2000).

[8] Here, Davis fired his gun at the vehicle Smith was sitting in. Further, Smith testified that Davis’ gun “was pointed right at [her].” Tr., Vol. 2 at 242. There is sufficient evidence of intent to kill to support a conviction when the evidence indicates that a weapon was fired in the direction of the victim. *See, e.g., Shelton v. State*, 602 N.E.2d 1017, 1021 (Ind. 1992) (defendant pointed handgun at victim and shot at him twice from distances of twelve and thirty feet); *Owens v. State*, 544 N.E.2d 1375, 1377 (Ind. 1989) (defendants fired in direction of occupied vehicle and shots passed through windshield). However, Davis argues the jury’s determination that his gun was pointed at Smith when he fired it is indisputably contradicted by the video evidence.

[9] As stated above, when reviewing the sufficiency of evidence, we will not reweigh evidence. *Drane*, 867 N.E.2d at 146. However, our supreme court has stated that in instances where video evidence “indisputably contradicts” the jury’s findings, relying on such evidence and reversing the jury’s findings do not constitute reweighing. *Love v. State*, 73 N.E.3d 693, 699 (Ind. 2017). For video evidence to indisputably contradict the jury’s findings, “it must be such that no reasonable person could view the video and conclude otherwise.” *Id.* To determine whether video evidence is indisputable, we must:

assess the video quality including whether the video is grainy or otherwise obscured, the lighting, the angle, the audio and whether the video is a complete depiction of the events at issue, among other things.

Id. In cases where the video evidence is not clear or complete or is subject to different interpretations, we defer to the fact finder's interpretation. *Id.* at 699-700.

[10] Davis claims the video evidence in Exhibit A indisputably contradicts any possibility that his gun was pointed at Smith when he fired at her vehicle. Davis contends that based on the location of his vehicle in the video, when the gunfire occurred "it would have been impossible for him to point his gun at [Smith] while leaning over [Reynolds] and firing out of the front passenger window." Br. of Appellant at 14. Davis' contention relies on assuming the angle of the vehicle when he fired upon Smith's vehicle; however, due to the distance at which the video is taken and its increased speed, it is impossible to indisputably determine where he is pointing his firearm when he fires it. *See Ex.*, Vol. 2, Exhibit A (Video at 00:00-00:08). Further, the exact angle at which he backed out of the parking spot cannot be determined from the video and we cannot conclusively determine that he could not point his firearm out of the passenger window at Smith.³ *See id.*

³ We also note that the video shows that a bullet entered Smith's vehicle from the rear window on the driver's side which, depending on how far Davis had backed his vehicle up, could indicate that his gun was pointed at Smith. *See Ex.*, Vol. 2, Exhibit A (Video at 00:00-00:08).

[11] We conclude the video evidence does not indisputably contradict Smith's testimony that Davis' gun was pointed at her. A reasonable person could look at the video and conclude that it was possible for Davis' gun to be pointed at Smith. Accordingly, we defer to the jury's factual determinations regarding the weight of the evidence and credibility of the witnesses.

Conclusion

[12] We conclude the State presented sufficient evidence to support Davis' attempted murder conviction. Accordingly, we affirm.

[13] Affirmed.

Pyle, J., and Weissmann, J., concur.