MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Cecil Lee Smith,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

December 12, 2022

Court of Appeals Case No. 22A-CR-1930

Appeal from the St. Joseph Superior Court

The Honorable John Marnocha, Judge

Trial Court Cause No. 71D02-2109-F6-827

Pyle, Judge.

Statement of the Case

[1] Cecil Lee Smith ("Smith") appeals, following a jury trial, his conviction for Level 6 felony intimidation.[1] Smith argues that there was insufficient evidence to support his conviction. Concluding that the evidence was sufficient, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether there is sufficient evidence to support Smith's conviction.

Facts

[3] The facts most favorable to the verdict follow. In late-August and early-September 2021, a construction company was working on a sewer main project in South Bend. On September 1, 2021, the construction company, including construction worker Mark Schindler ("Schindler") and his foreman, Jason Owren ("Owren"), were working on a block area on Smith's street. Smith, who was standing in his yard where another construction company had left some cones, "holler[ed]" at Schindler to ask him how long the construction project was going to take. (Tr. Vol. 2 at 22). Schindler responded that the project would take about one week, and Smith "shout[ed]" to Schindler, "don't come [o]n my property." (Tr. Vol. 2 at 24). Schindler informed Smith that it was

[1] IND. CODE § 35-45-2-1.

"[n]o problem" and that his construction company had no reason to go onto Smith's property. (Tr. Vol. 2 at 22, 24). Smith then stated, "Yeah, I got a gun[,]" and "I'll shoot your ass." (Tr. Vol. 2 at 24).

[4] Owren, who was standing nearby, noticed the interaction between Schindler and Smith and walked over to talk to Smith. Owren told Smith, "We're not here to inconvenience anybody." (Tr. Vol. 2 at 34). Smith, who "seemed aggravated and frustrated" then "got up in [Owren's] face" and said, "I'm going to blow your f'ing head off, and I'll kill everybody out here on your crew[.]" (Tr. Vol. 2 at 34). As Smith spoke to Owren, Smith gestured by making a "finger gun" towards Owren. (Tr. Vol. 2 at 36). Owren told Smith that they would not come onto his property. Owren walked away and informed his construction crew of the situation. Owren also reported the incident to his office and called the police.

[5] The State charged Smith with Level 6 felony intimidation.[2] Specifically, the State alleged that Smith had communicated a threat to Owren to commit battery with a deadly weapon, a forcible felony, with the intent that Owren be placed in fear that the threat would be carried out. The trial court held a one-day jury trial in June 2022. The jury heard the facts as set forth above and

[2] The State initially charged Smith under subsection (a)(2) of INDIANA CODE § 35-45-2-1 but later amended the charging information and charged him under subsection (a)(4).

found Smith guilty as charged. The trial court imposed an executed sentence of two and one-half (2½) years.

[6] Smith now appeals.

Decision

[7] Smith argues that the evidence was insufficient to support his intimidation conviction. Our standard of review for sufficiency of the evidence claims is well settled. We "consider only the probative evidence and reasonable inferences *supporting* the verdict." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (emphasis in original). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[8] The intimidation statute, INDIANA CODE § 35-45-2-1, provides that "[a] person who communicates a threat with intent . . . that another person be placed in fear that the threat will be carried out" commits intimidation as a Class A misdemeanor. *See* I.C. § 35-45-2-1(a)(4). The offense is a Level 6 felony when the threat is to commit a forcible felony.[3] The intimidation statute, in part, defines "threat" as an "expression, by words or action, of an intention to . . .

[3] A "forcible felony" is "a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being." I.C. § 35-31.5-2-138.

unlawfully injure the person threatened . . . [or] commit a crime[.]" I.C. § 35-45-2-1(d)(1), (d)(3).[4] To convict Smith of Level 6 felony intimidation as charged, the State was required to prove beyond a reasonable doubt that Smith had communicated a threat to Owren to commit battery with a deadly weapon, a forcible felony, with the intent that Owren be placed in fear that the threat would be carried out. *See* I.C. § 35-45-2-1.

[9] Smith does not challenge that he made a threat towards Owren. Instead, Smith asserts that the evidence is insufficient to prove that he had the necessary intent for Owren to be placed in fear that the threat would be carried out. Specifically, he contends that "no reasonable jury could find that Mr[.] Smith intended Mr[.] Owren to believe [that] Mr[.] Smith would actually shoot him with a gun[.]" (Smith's Br. 7). We disagree.

[10] There was sufficient evidence to show that Smith made the threat with intent that Owren be placed in fear that the threat would be carried out. "A defendant's intent may be proven by circumstantial evidence." *Peterson v. State*, 187 N.E.3d 305, 309 (Ind. Ct. App. 2022) (cleaned up). "Intent can be inferred from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points." *Id.* (cleaned up). *See also Gates v. State*, 192 N.E.3d 222, 226 (Ind. Ct. App. 2022) (explaining that a "defendant's

[4] We note that, effective July 1, 2022, the definition of "threat" is now located in subsection (c) of INDIANA CODE § 35-45-2-1. Because the alleged offense occurred prior to July 1, 2022, we will refer to the subsection of the statute in effect at the time of the offense.

intent may be proven by circumstantial evidence alone, with the fact-finder inferring intent from the facts and circumstances of the case").

[11] Here, Smith, who was upset by the construction being done on his street, initially yelled at Schindler and warned him not to come onto his property. When Schindler assured Smith that the construction company had no reason to go onto Smith's property, Smith responded by saying that he had a gun and would "shoot [his] ass." (Tr. Vol. 2 at 24). Owren then tried to explain to Smith that the construction crew was "not [t]here to inconvenience anybody." (Tr. Vol. 2 at 34). Smith, who "seemed aggravated and frustrated" then "got up in [Owren's] face" and said, "I'm going to blow your f'ing head off, and I'll kill everybody out here on your crew[.]" (Tr. Vol. 2 at 34). As Smith spoke to Owren, Smith gestured by making a "finger gun" towards Owren. (Tr. Vol. 2 at 36).

[12] Smith's argument that he lacked the necessary intent because he was unarmed is nothing more than a request to reweigh the evidence. He made that argument to the jury, and it found him guilty as charged of Level 6 felony intimidation. We will not reweigh the evidence or second-guess the jury's conclusion that Smith made the threat with intent that Owren be placed in fear that the threat would be carried out. *See Drane*, 867 N.E.2d at 146. From Smith's conduct and the natural and usual sequence to which such conduct logically and reasonably pointed, the jury could have reasonably inferred that Smith made the threat to Owren with the intent that Owren be placed in fear that the threat would be carried out. Accordingly, we affirm Smith's

intimidation conviction. *See Gates*, 192 N.E.3d at 227 (concluding that there was sufficient evidence to support the intent element of intimidation where the defendant's threat to blow up the victim's car was made with the intent that the victim be placed in fear that the threat would be carried out.)

[13] Affirmed.[5]

Bradford, C.J., and Foley, J., concur.

[5] Smith also argues about the sufficiency of evidence to prove subsection (a)(2) of the intimidation statute, but we will not address that argument where he was charged and found guilty under subsection (a)(4).