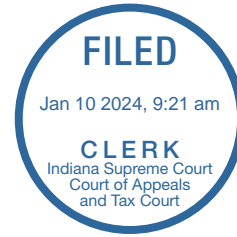


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Jeff L. Roach, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 10, 2024

Court of Appeals Case No.
23A-CR-1858

Appeal from the Boone Circuit
Court

The Honorable Lori N. Schein,
Judge

Trial Court Cause No.
06C01-2208-CM-1450

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

- [1] Jeff L. Roach, Jr., appeals his conviction for intimidation as a class A misdemeanor and claims the evidence is insufficient to sustain his conviction. We affirm.

Facts and Procedural History

- [2] In July 2022, Michelle Huff, a human resources manager at Green Rabbit, had a discussion with Roach, who had worked for Green Rabbit for a few months, regarding his pay and told him that she needed documentation from his supervisor. On August 3, 2022, Huff deactivated Roach's badge because Green Rabbit was terminating him due to attendance issues. On the morning of August 4, 2022, Huff brought Roach and his girlfriend, another employee, to her office. Huff informed Roach that Green Rabbit was "letting him go," and he "seemed okay with the let go but he got upset about his pay" and said they "were shorting him pay." Transcript Volume II at 9. Huff informed him that she had not received the documentation from his supervisor, and Roach was "upset." *Id.* Roach raised his voice and started leaning forward, and his girlfriend attempted to calm him down.
- [3] Suzanne Babalola and DeAnna Woods, who were outside Huff's office, entered the office and told Roach he needed to leave the building. Huff "tried to get them all out of [her] office cause it's very small." *Id.* at 10. The group "made it to the hallway eventually" and "[t]here was a lot of yelling." *Id.* When the yelling started, Huff's recruiter called the police.

- [4] Roach “yelled something about going to get his gun and it was just you know he – he was mad about the pay; he wanted his pay.” *Id.* When Roach’s girlfriend drove Roach away with Roach in the passenger seat, the passenger side door “opened and [Roach] pointed his fingers like a gun and then [Huff and the other employees] all got in the building, [Roach] shut the door, and they drove off.” *Id.*
- [5] On August 19, 2022, the State charged Roach with intimidation as a class A misdemeanor. The charging information alleged that Roach “did communicate a threat to Michelle Huff, another person, with the intent that [she] be placed in fear that the threat will be carried out contrary to the form of the statutes in such cases made and provided by I.C. 35-45-2-1(a)(4)” Appellant’s Appendix Volume II at 7.
- [6] On June 5, 2023, the court held a bench trial. Huff testified to the foregoing. She stated “[Roach] yelled something about going to get his gun and it was just you know he – he was mad about the pay; he wanted his pay.” Transcript Volume II at 10. When asked how she felt when he yelled “about getting a gun,” she answered: “I just wanted him out of my building.” *Id.* When asked if she recalled if Roach “said anything else threatening to [her] aside from the gun, or getting a gun, or pointing at you, anything else,” she answered: “No, I do not.” *Id.* at 11. On cross-examination, Huff acknowledged that she never saw a firearm. On redirect examination, Huff indicated that Roach said things about retrieving a gun more than one time. When the court asked if she remembered the exact words Roach said, Huff answered: “I don’t. I just know

it was along the lines of I'm gonna go get my gun." *Id.* at 16. When asked if Roach directed the comment at her or "just general people" or if he wanted her to hear it, she answered "I think he just wanted us to hear it um yeah." *Id.* at 17-18.

[7] The State also presented the testimony of Woods and Babalola. Woods testified that Roach was "arguing and being aggressive and bein[g] loud" when she stepped into Huff's office and that Roach was yelling at Huff. *Id.* at 22. She stated that, after Babalola told him to leave, Roach "started saying he was gonna shoot the place up, he had something for all of us." *Id.* She testified that Roach ran towards his car saying "he's gonna go get his gun." *Id.* at 23. She stated that Roach was "loud, cussing, and sayin' he was going to shoot us up, he was gonna come back and shoot the building up, he had something in his car so." *Id.* at 24. When asked if she was concerned about Roach retrieving something out of the car, she answered:

Yeah, cause you don't know, especially now a days you don't know whether to take people seriously or not, so I took it as a threat and then when he drives past he has his door kinda open like he was gonna shoot out or do something but at that time the police were called.

Id. at 25. When the court asked if she recalled Roach specifically saying he was "coming back to shoot this place up," she answered affirmatively. *Id.* at 31.

[8] Babalola testified that Roach told Huff that "you can call the f----- police, I'm not leaving." *Id.* at 36. She testified she heard Roach tell Huff that "he was

gonna flip the desk over on her.” *Id.* She also stated that as Roach was “finally leaving out the door, he made the statement that he was gonna come back when he got off work and shoot all of us.” *Id.* at 38.

[9] The court found Roach guilty as charged and sentenced him to one year suspended with six months supervised probation.

Discussion

[10] Roach argues there was no indication from Huff that he ever indicated why he was going to obtain his gun or what he was going to do if he did. He points out that, when she was asked how she felt when he yelled about obtaining his gun, she said that she “just wanted him out of [her] building.” Appellant’s Brief at 11 (quoting Transcript Volume II at 10). He contends that Huff “did not recall or support the statement that [he] indicated he was going to get a gun and shoot up the building.” *Id.* at 12. He asserts that Huff did not hear him make a threat to harm her. He also argues that Huff was not placed in fear that the threat would be carried out against her and that the mere statement that he was going to obtain a gun did not meet the definition of a threat.

[11] When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting evidence most favorably to the trial court’s ruling. *Id.* We affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven

beyond a reasonable doubt.” *Id.* (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)). “[I]t is well established that ‘circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt.’” *Pratt v. State*, 744 N.E.2d 434, 437 (Ind. 2001) (quoting *Bonds v. State*, 721 N.E.2d 1238, 1242 (Ind. 1999)).

[12] Ind. Code § 35-45-2-1(a)(4) provides that “[a] person who communicates a threat with the intent . . . that another person be placed in fear that the threat will be carried out, if the threat is a threat described in . . . subsection (c)(1) through (c)(5) . . . or . . . subsection (c)(7) through (c)(8) . . . commits intimidation, a Class A misdemeanor.” Ind. Code § 35-45-2-1(c) provides in part:

“Threat” means an expression, by words or action, of an intention to:

- (1) unlawfully injure the person threatened or another person, or damage property;
- (2) unlawfully subject a person to physical confinement or restraint;
- (3) commit a crime;
- (4) unlawfully withhold official action, or cause such withholding;
- (5) unlawfully withhold testimony or information with respect to another person’s legal claim or defense, except for a reasonable claim for witness fees or expenses;

* * * * *

(7) falsely harm the credit or business reputation of a person; or

(8) cause the evacuation of a dwelling, a building, another structure, or a vehicle. For purposes of this subdivision, the term includes an expression that would cause a reasonable person to consider the evacuation of a dwelling, a building, another structure, or a vehicle, even if the dwelling, building, structure, or vehicle is not evacuated.

[13] Whether a communication is a threat is an objective question for the trier of fact. *Newell v. State*, 7 N.E.3d 367, 369 (Ind. Ct. App. 2014), *trans. denied*. “A threat is punishable if the speaker ‘intend[s] his communications to put his targets in fear for their safety, and that the communications were likely to actually cause such fear in a reasonable person similarly situated to the target.’” *McBride v. State*, 128 N.E.3d 531, 537 (Ind. Ct. App. 2019) (citing *Brewington v. State*, 7 N.E.3d 946, 964 (Ind. 2014), *reh’g denied, cert. denied*, 574 U.S. 1077, 135 S. Ct. 970 (2015), *reh’g denied, trans. denied*). “The ‘intent’ that matters is not whether the speaker really means to carry out the threat, but only whether he intends it to ‘plac[e] the victim in fear of bodily harm or death.’” *Brewington*, 7 N.E.3d at 963. We note that intent is a mental function which must be determined from a consideration of the defendant’s conduct and the natural and usual consequences of such conduct, and the trier of fact must usually resort to reasonable inferences based upon an examination of the surrounding circumstances. *Hendrix v. State*, 615 N.E.2d 483, 485 (Ind. Ct. App. 1993).

Threats, particularly veiled threats, “are heavily dependent on all of the contextual factors.” *See Brewington*, 7 N.E.3d at 964 (citation and quotations omitted). In determining whether a statement is a true threat, we may consider the content of the statement, its context, and the reaction of the listeners. *See Newell*, 7 N.E.3d at 369 (citing *Watts v. United States*, 394 U.S. 705, 708, 89 S. Ct. 1399 (1969)). “[T]o communicate a threat for purposes of the offense of intimidation, the statement must be transmitted in such a way that the defendant knows or has good reason to know the statement will reach the victim.” *E.B. v. State*, 89 N.E.3d 1087, 1092 (Ind. Ct. App. 2017) (citing *Ajabu v. State*, 677 N.E.2d 1035, 1043 (Ind. Ct. App. 1997), *trans. denied*).

[14] The record reveals that Huff testified that Roach was “upset,” and that “[t]here was a lot of yelling” and her recruiter called the police. Transcript Volume II at 9, 10. She also testified that Roach “yelled something about going to get his gun and it was just you know he – he was mad about the pay; he wanted his pay.” *Id.* When asked how she felt when he yelled “about getting a gun,” she answered: “I just wanted him out of my building.” *Id.* She also testified that Roach “pointed his fingers like a gun and then we all got in the building, he shut the door, and they drove off.” *Id.*

[15] We also note that Woods testified that Roach was “arguing and being aggressive and bein[g] loud” and was yelling at Huff. *Id.* at 22. She further testified that Roach “started saying he was gonna shoot the place up, he had something for all of us” and “he’s gonna go get his gun.” *Id.* at 23. Babalola testified that Roach told Huff that “you can call the f----- police, I’m not

leaving.” *Id.* at 36. She also heard Roach tell Huff that “he was gonna flip the desk over on her.” *Id.* She testified that, as Roach was “finally leaving out the door, he made the statement that he was gonna come back when he got off work and shoot all of us.” *Id.* at 38.

[16] Based upon the record, we conclude that evidence of probative value exists from which the court as the trier of fact could have found Roach guilty beyond a reasonable doubt of intimidation as a class A misdemeanor.¹

[17] For the foregoing reasons, we affirm Roach’s conviction.

[18] Affirmed.

Vaidik, J., and Bradford, J., concur.

¹ To the extent Roach relies upon *Gaddis v. State*, 680 N.E.2d 860 (Ind. Ct. App. 1997), we find that case distinguishable. In *Gaddis*, Donald Carver, while driving, exchanged hand gestures and “spoke toward” Duane Gaddis, another driver. 680 N.E.2d at 861. Neither could hear what the other was saying, and “[t]he hand gestures were incomprehensible.” *Id.* Gaddis removed his handgun from the glove box, displayed it by the window at a 45-degree angle, and placed it near the console. *Id.* Gaddis was convicted of intimidation. *Id.* On appeal, the Court observed that “the parties attempted but failed to communicate through words or gestures.” *Id.* at 861-862. It stated that “[t]he facts show only that Gaddis raised his handgun to the window at a forty-five degree angle for Carver to view” and that, “[a]lthough Carver was shown the profile of the handgun for a few seconds, the weapon was not pointed at him or his vehicle.” *Id.* at 862. It held that “Carver may have been frightened by the encounter, but he was not threatened within the meaning of the intimidation statute as there was no evidence of an intent to injure.” *Id.* It also observed that Carver himself told the trial court that, “I don’t think he [Gaddis] had any intent, I mean, of ever shooting . . . cause I don’t believe he pointed it directly at us.” *Id.* In light of the testimony of Huff, Woods, and Babalola regarding the statements and actions Roach made in Huff’s presence, we do not find that *Gaddis* requires reversal.