MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Victoria P. Akers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 30, 2023

Court of Appeals Case No. 22A-CR-2714

Appeal from the Marion Superior Court

The Honorable Clark Rogers, Judge

Trial Court Cause No. 49D25-2111-CM-33985

Memorandum Decision by Judge Tavitas
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

[1] Victoria Akers appeals her conviction for criminal trespass, a Class A misdemeanor. Akers argues that, due to her mental status, there was insufficient evidence presented to prove that she knowingly or intentionally entered a Fed-Ex facility after having been repeatedly removed from the property. We find that the State provided sufficient evidence to establish intent for criminal trespass and that any affirmative defense based on Akers's mental illness has been waived because she failed to provide evidence of an insanity defense. Accordingly, we affirm.

Issue

[2] Akers raises one issue on appeal, which we revise and restate as whether the State provided sufficient evidence to sustain Akers's conviction for criminal trespass.

Facts

[3] Akers is a former employee of Fed-Ex Ground based in Indianapolis. Akers was terminated from her employment in September 2020. At the time of her termination, Akers was informed by Warren Berry, the former assistant hub manager of Fed-Ex Ground, that she was not allowed to return to the facility.

[4] From her termination in September 2020 until November 2021, Akers returned to the property "more than ten" times. Tr. Vol II p. 34. Each time that she returned, Berry informed her that she had been terminated, asked her to leave, and told her that "she was not welcome there." *Id.* Berry also observed that

Akers appeared to be "confused." *Id*. at 36. On one occasion when security informed Berry that Akers had returned to the property, Akers responded by "throwing things at [Berry]." *Id.* at 35. The police were called, but Akers left before they arrived.

[5] In August 2021, Indianapolis Metropolitan Police Department ("IMPD") Officer David Carney was dispatched to the Fed-Ex facility. When he arrived, he found Akers by the security guard shack located on the driveway of the Fed-Ex property. Officer Carney described Akers's demeanor as "fine." *Id.* at 40. Akers told Officer Carney that "she worked there." *Id.* Akers was not arrested for trespassing at that time but was told by Fed-Ex staff that she no longer worked there.

[6] On November 4, 2021, Akers returned to the facility, and Berry, again, called IMPD. Officer Carney responded to the call and found Akers near the security guard shack. Akers showed Officer Carney a Fed-Ex employee identification badge. Officer Carney then handcuffed and arrested Akers for trespassing. The State charged Akers with criminal trespass, a Class A misdemeanor.

[7] On April 18, 2022, the trial court declared Akers incompetent to stand trial and committed her to the Indiana Department of Mental Health. On September 12, 2022, the trial court held a competency hearing and found Akers to be competent to stand trial. On October 24, 2022, the trial court held a bench trial and found Akers guilty of criminal trespass, a Class A misdemeanor.

Discussion and Decision

[8] Akers challenges the sufficiency of the evidence to support her conviction for criminal trespass. Sufficiency of evidence claims, "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). "It is for the trier of fact to resolve conflicts in the evidence and to decide which witnesses to believe or disbelieve." *Murray v. State*, 761 N.E.2d 406, 409 (Ind. 2002) (quoting *Kilpatrick v. State,* 746 N.E.2d 52, 61 (Ind. 2001)). "On appeal, we consider only the probative evidence and the reasonable inferences supporting the conviction and will affirm 'unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.'" *Bailey v. State*, 202 N.E.3d 485 (Ind. Ct. App. 2023) (quoting *Fix v. State*, 186 N.E.3d 1134, 1138 (Ind. 2022)), *trans. denied*. "It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[9] Akers was convicted under Indiana Code Section 35-43-2-2(b)(1), which provides that "a person who . . . not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent . . . commits criminal trespass, a Class A misdemeanor."

[10] "The criminal trespass statute's purpose is to punish those who willfully or without a bona fide claim of right commit acts of trespass on the land of another." *Willis v. State*, 983 N.E.2d 670, 671 (Ind. Ct. App. 2013) (citing *Semenick v. State*, 977 N.E.2d 7 (Ind. Ct. App. 2012)). Accordingly, to convict Akers for criminal trespass, the State was required to prove beyond a reasonable doubt that Akers, without having a contractual interest in the Fed-Ex property, knowingly or intentionally entered Fed-Ex's property on November 4, 2021, after being denied entry by Fed-Ex or one of its agents.

[11] Akers claims that the State failed to prove beyond a reasonable doubt that she "knowingly or intentionally returned to a place from which she had [been] previously trespassed . . . [due to her] mental competency issues" and that Akers "did not understand that she had trespassed [onto] the facility." Appellant's Br. p. 6. Akers seems to argue that, because she was found incompetent during the proceedings, she did not have the mental intent to commit criminal trespass. While we acknowledge that Akers was found to be incompetent at one point in the proceedings but later found to be competent, her argument conflates the standards for competency to stand trial, the insanity defense, and the *mens rea* required for commission of trespass.

A. Competency

[12] Indiana Code Section 35-36-3-1(a) "protect[s] a defendant's due process right not to be placed on trial while incompetent." *State v. Davis*, 898 N.E.2d 281, 284 (Ind. 2008). Our Supreme Court has determined that competency to stand trial is based on "whether the defendant has sufficient present ability to consult

with defense counsel with a reasonable degree of rational understanding, and whether the defendant has a rational as well as a factual understanding of the proceedings against him." Adams v. State, 509 N.E.2d 812, 814 (Ind. 1987). If a person has been found incompetent, his or her custody is transferred to the Department of Mental Health.[1] Ind. Code § 35-36-3-1(b). Although Akers was found incompetent to stand trial during the proceedings, she was later found to be competent and subsequently participated in her defense at the bench trial. Akers did not challenge her competency to stand trial during the bench trial and is not raising the issue on appeal. Akers's earlier incompetency is irrelevant at this stage of the proceedings.

B. Insanity Defense

[13] A defendant can avoid criminal responsibility by successfully raising and establishing an insanity defense. *Myers v. State*, 27 N.E.3d 1069, 1075 (Ind. 2015). Under the insanity defense statutes,"[the] defendant bears the burden of establishing the insanity defense by a preponderance of the evidence." *Galloway v. State,* 938 N.E.2d 699, 708 (Ind. 2010). The defendant must prove both: (1) that he or she suffers from a mental illness and (2) that the mental illness rendered him or her unable to appreciate the wrongfulness of his or her conduct **at the time of the offense**. *Id.* (emphasis added); *see also* Ind. Code § 35-41-3-6.

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[1] Under Indiana Code Section 35-36-3-2, "[w]henever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense," the superintendent of the state institution or a third-party contractor "shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant."

[14] "Whether a defendant appreciated the wrongfulness of his or her conduct at the time of the offense is a question for the trier of fact." *Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004). Our courts have consistently emphasized that, if a defendant claims on appeal that the insanity defense should have prevailed, a conviction will be set aside only "when the evidence is without conflict and leads only to the conclusion that the defendant was insane when the crime was committed." *Id.*

[15] Here, Akers did not raise the insanity defense at trial. Akers did not present any evidence showing that she suffered from a mental illness at the time of her offense or that such an offense prevented her from appreciating the wrongfulness of entering the Fed-Ex facility. Akers's earlier incompetency to stand trial does not establish an insanity defense. It is well established we will not entertain an argument that is raised for the first time on appeal. *Leatherman v. State*, 101 N.E.3d 879, 885 (Ind. Ct. App. 2018), *as corrected* (Aug. 24, 2018). For these reasons, the insanity defense is not available to Akers.

C. Mens Rea

[16] We conclude that, on appeal, Akers challenges **only** the sufficiency of evidence relating to the *mens rea* element of the criminal trespass statute. Specifically, Akers argues that the State did not establish that her actions were undertaken intentionally or knowingly. "Knowledge and intent are both mental states and absent an admission by the defendant, the [fact finder] must resort to the reasonable inferences from both direct and circumstantial evidence to determine whether the defendant has the requisite knowledge or intent to commit the

offense in question." *Stubbers v. State*, 190 N.E.3d 424 (Ind. Ct. App. 2022)*, trans. denied*. "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2. A person acts knowingly if, "when he engages in the conduct, he is aware of a high probability that he is doing so." *Id.* We have previously acknowledged that a defendant's "fair and reasonable" belief that they have a right to be present on the property of another will preclude liability for trespass. *Woods v. State,* 703 N.E.2d 1115 (Ind. Ct. App. 1998) (citing *Olsen v. State*, 663 N.E.2d 1194, 1196 (Ind. Ct. App. 1996)).

[17] Here, the State presented evidence that Akers was told that she could not return to the property after her termination but that she repeatedly did so. Berry testified that he informs employees who have been terminated that they are not allowed to return. Berry testified that, following Akers's termination in September 2020, Akers returned to the Fed-Ex property "over ten" times before she was arrested in November 2021. Tr. Vol II p. 34. Berry also acknowledged that Akers was, at first, confused at the beginning; however, "[she] did progressively get more aggressive and out of hand." *Id.* at 35. Officer Carney testified that, in August 2021, he responded to a call regarding Akers trespassing on the property and that, on the day she was arrested, Berry informed Akers that she had been terminated and had to leave.

[18] The trier of fact, here the trial court, found Akers guilty of criminal trespass. Based on the probative evidence and reasonable inferences supporting the conviction, we conclude that sufficient evidence was presented for the fact

finder to find beyond a reasonable doubt that Akers knowingly or intentionally committed criminal trespass. We view Akers's argument as a request to reweigh the evidence, which we will not do.

Conclusion

[19] The State presented sufficient evidence to support Akers's conviction of criminal trespass, a Class A misdemeanor. Accordingly, we affirm.

[20] Affirmed.

Bailey, J., and Kenworthy, J., concur.