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IN THE
COURT OF APPEALS OF INDIANA

A.V.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

August 23, 2022

Court of Appeals Case No.
22A-JV-753

Appeal from the Marion Superior
Court

The Honorable Geoffrey Gaither,
Judge

Trial Court Cause No.
49D09-2112-JD-10779

Pyle, Judge.

Statement of the Case

[1] A.V. (“A.V.”) appeals her juvenile adjudications that she committed acts that would constitute Level 6 felony intimidation and Class B misdemeanor

criminal mischief if committed by an adult. A.V. argues that there is insufficient evidence to support these juvenile adjudications. Concluding that there is sufficient evidence to support A.V.’s criminal mischief adjudication but insufficient evidence to support her intimidation adjudication, we affirm A.V.’s criminal mischief adjudication and reverse her intimidation adjudication.

[2] We affirm in part and reverse in part.

Issue

Whether there is sufficient evidence to support A.V.’s juvenile adjudications for intimidation and criminal mischief.

Facts

[3] In December 2021, seventeen-year-old A.V. and her daughter (“Daughter”) lived with A.V.’s mother (“Mother”) and younger sister (“Sister”) in an apartment. On December 16, 2021, A.V. got into an argument with Sister because Sister was doing e-learning, but A.V. wanted to sleep. Mother told A.V. to leave Sister alone and that “it was not time to be asleep” because it was “almost eight o’clock in the morning.” (Tr. Vol. 2 at 7). A.V. became “very, very angry like she was out of control” and “cussed” at Mother. (Tr. Vol. 2 at 7). Sister stepped in between A.V. and Mother, and “hugged” A.V. to “contain[]” her. (Tr. Vol. 2 at 7-8). Mother locked herself, along with Daughter and Sister, in a bedroom. A.V. banged on the door and told Mother to open the door so that she could see Daughter. Mother refused and called the police. A.V. then “broke the Christmas tree,” “made a hole in the wall next to

the front door[,]” and “grabbed eggs that [Mother] had in [her] fridge and . . . threw [the eggs] . . . against [Mother’s] car. (Tr. Vol. 2 at 8). At some “point . . . before the police arrived,” A.V. told Mother, “[S]ometimes I feel like I want to kill you.” (Tr. Vol. 2 at 8).

[4] Thereafter, the State filed a petition alleging that A.V. was a delinquent child for committing acts that would constitute Level 6 felony intimidation and Class B misdemeanor criminal mischief if committed by an adult.¹ In regard to the intimidation allegation, the State alleged that A.V. had “communicate[d] a threat [to] kill” Mother with the intent to place Mother in fear of retaliation for the prior lawful act of “enforcing a CHINS order[.]” (App. Vol. 2 at 18). For the criminal mischief allegation, the State alleged, in relevant part, that A.V. had damaged Mother’s property, including the “apartment floors and wall[.]” (Tr. Vol. 2 at 19).

[5] In February 2022, the juvenile court held a fact-finding hearing, and Mother testified as to the facts as set forth above. At the conclusion of the hearing, the juvenile court determined that A.V. had committed the acts of intimidation and criminal mischief as alleged and entered true findings for these offenses. Following a dispositional hearing, the juvenile court placed A.V. on probation.

¹ The State also alleged that A.V. was a delinquent child for committing acts that would constitute two counts of Class A misdemeanor domestic battery, but the State dismissed those allegations at the end of the fact-finding hearing.

[6] A.V. now appeals.

Decision

[7] A.V. argues that there is insufficient evidence to support her juvenile adjudications for intimidation and criminal mischief. “In juvenile delinquency adjudication proceedings, the State must prove every element of the offense beyond a reasonable doubt.” *C.D.H. v. State*, 860 N.E.2d 608, 610 (Ind. Ct. App. 2007), *trans. denied*. When we review a challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* “We will affirm the adjudication if we conclude that evidence of probative value exists so that a reasonable factfinder could find the elements of the underlying crime proven beyond a reasonable doubt.” *Id.*

[8] We first review A.V.’s challenge to her criminal mischief adjudication. The criminal mischief statute, INDIANA CODE § 35-43-1-2, provides that “[a] person who recklessly, knowingly, or intentionally damages or defaces property of another person without the other person’s consent commits criminal mischief, a Class B misdemeanor.” I.C. § 35-43-1-2(a). To support a true finding for criminal mischief as alleged, the State was required to establish beyond a reasonable doubt that A.V. recklessly, knowingly, or intentionally damaged or defaced Mother’s property, specifically, Mother’s “apartment floors and wall[,]” without Mother’s consent. (Tr. Vol. 2 at 19).

[9] A.V. contends that the evidence was insufficient to support her criminal mischief adjudication because the State presented evidence that A.V. damaged

property was not alleged in the delinquency petition and because the State did not prove that the damaged property did not belong to A.V. We disagree.

[10] Here, Mother testified that she lived in an apartment and that A.V., A.V.'s daughter, and Sister lived with her. Mother also testified that after she refused to let A.V. into the locked bedroom to see her daughter, A.V. "made a hole in the wall next to the front door[.]" (Tr. Vol. 2 at 8). Additionally, Mother testified that A.V. "broke the Christmas tree" and "grabbed eggs that [Mother] had in [her] fridge and . . . threw [the eggs] . . . against [Mother's] car." (Tr. Vol. 2 at 8). A.V.'s challenge to Mother's ownership of the damaged property is simply a request to reweigh the evidence, which we will not do. *See C.D.H.*, 860 N.E.2d at 610. Because there is sufficient evidence to support the juvenile court's entry of a true finding for criminal mischief, we affirm A.V.'s criminal mischief adjudication.

[11] Next, we turn to A.V.'s challenge to her intimidation adjudication. The intimidation statute, INDIANA CODE § 35-45-2-1, provides that "[a] person who communicates a threat with the intent . . . that another person be placed in fear of retaliation for a prior lawful act" commits intimidation as a Class A misdemeanor. I.C. § 35-45-2-1(a)(2). The offense is a Level 6 felony when the threat is to commit a forcible felony.² I.C. § 35-45-2-1(b)(1)(A). The intimidation statute defines "threat" as an "expression, by words or action, of

² 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.

an intention to . . . unlawfully injure the person threatened . . . [or] commit a crime[.]” I.C. § 35-45-2-1(d)(1), (d)(3).³ Thus, to support a true finding for Level 6 felony intimidation as alleged in the delinquency petition, the State was required to prove beyond a reasonable doubt that A.V. communicated a threat to commit a forcible felony against Mother, i.e., threatened to kill Mother with the intent to place her in fear of retaliation for the prior lawful act of “enforcing a CHINS order[.]” (App. Vol. 2 at 18).

[12] A.V. argues that the evidence was insufficient to show that she communicated a threat to Mother or that she intended Mother be placed in fear of retaliation for a prior lawful act. Specifically, A.V. asserts that the State presented “no evidence” that A.V.’s statement—that she sometimes felt like she wanted to kill Mother—constituted a threat or that it was made with the intent to put Mother in fear of retaliation for a prior lawful act of enforcing a CHINS order as alleged in the delinquency petition. (A.V.’s Br. 7). On the other hand, the State contends that A.V.’s statement was a threat to kill Mother and that the “statement could have reasonably been interpreted as intending to place her mother in fear of retaliation for the prior lawful act of being a mother who was trying to keep the peace in her own household.” (State’s Br. 13).

³ 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.

[13] Even if we were to assume that A.V.'s statement constituted a threat, we conclude that there was insufficient evidence that any threat was made with the intent that Mother be placed in fear of retaliation for a prior lawful act. To establish intimidation, the State must identify a legal act by the victim and "establish that the legal act occurred prior to the threat and that the defendant intended to place the victim in fear of retaliation for that act." *Casey v. State*, 676 N.E.2d 1069, 1072 (Ind. Ct. App. 1997).

[14] Here, the State specifically alleged that the prior lawful act was Mother's act of "enforcing a CHINS order[.]" (App. Vol. 2 at 18). However, during the fact-finding hearing, the State presented no testimony or other evidence regarding a CHINS order or the enforcement thereof. Instead, Mother testified that A.V. had made the statement following an argument that A.V., Mother, and Sister had had about A.V.'s desire to sleep. When A.V. got angry, Mother locked herself, Sister, and Daughter in a bedroom. A.V. banged on the door and told Mother to open the door so that she could see Daughter, but Mother refused and called the police. At some "point . . . before the police arrived," A.V. told Mother, "[S]ometimes I feel like I want to kill you." (Tr. Vol. 2 at 8). Mother testified that she believed that A.V. had made the statement "because [A.V.] was angry." (Tr. Vol. 2 at 8). However, "anger, without proof of intent to retaliate, is not enough to satisfy the requirements of the [intimidation] statute." *Ransley v. State*, 850 N.E.2d 443, 447 (Ind. Ct. App. 2006), *trans. denied*. Because there was insufficient evidence that A.V. acted with the intent that Mother be placed in fear of retaliation for the prior lawful act of enforcing a

prior CHINS order, we reverse A.V.'s intimidation adjudication. *See, e.g., Blackmon v. State*, 32 N.E.3d 1178, 1182-83 (Ind. Ct. App. 2015) (concluding the evidence was insufficient to show that the defendant had threatened the victim with the intent to place victim in fear of retaliation for the prior lawful act, as specified in the charging information, of catching the defendant stealing water where there was no evidence presented that the victim caught the defendant stealing water); *Ransley*, 850 N.E.2d at 446-47 (holding that there was insufficient evidence to support an intimidation conviction where the victim provided no testimony that the defendant had threatened to kill or harm the victim for the prior lawful act of arguing as alleged in the charging information); *Casey*, 676 N.E.2d at 1072-73 (concluding that there was insufficient evidence to support an intimidation conviction where the State had not specified which of victim's prior lawful acts led to the threats and there was no evidence that the threat was directed toward victim's prior actions).

[15] Affirmed in part and reversed in part.

Robb, J., and Weissmann, J., concur.