MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Keith Collins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 24, 2021

Court of Appeals Case No. 20A-CR-1313

Appeal from the Marion Superior Court

The Honorable Angela Dow Davis, Judge

The Honorable Hugh Patrick Murphy, Magistrate

Trial Court Cause No. 49G16-1910-F6-040976

May, Judge.

[1] Keith Collins appeals following his two convictions of Level 6 felony intimidation.[1] Collins raises two issues, which we consolidate and restate as whether the State presented sufficient evidence to sustain his convictions. We affirm.

Facts and Procedural History

[2] On October 17, 2019, J.C. was at her home in Indianapolis with her son M.B. and her grandchildren. While J.C. was getting ready to go to work, Collins, her boyfriend, arrived at her house. Collins roamed through the house talking loudly and "disrespecting [J.C.'s] grandchildren[.]" (Tr. Vol. II at 66.) J.C. called the police. After J.C. called the police, Collins grabbed J.C.'s keys and walked outside.

[3] Officer Austin Hedden of the Indianapolis Metropolitan Police Department ("IMPD") and another officer responded to the dispatch. When Officer Hedden arrived, he saw Collins walking down the driveway with J.C.'s keys. Collins was "belligerent" and started cursing at Officer Hedden. (*Id*. at 81.) J.C. and M.B. walked outside, and J.C. asked Collins to return her keys. Collins refused to give J.C. her keys, and he used his forearm to push J.C. against a vehicle parked in the driveway. Officer Hedden then handcuffed Collins. Collins and M.B. "kept yelling back and forth at each other, so

[1] Ind. Code § 35-45-2-1.

[Officer Hedden] could tell that most of the aggression was towards M.B." (*Id.* at 87.) Collins looked toward both J.C. and M.B. and, as Officer Hedden testified, yelled something "along the lines of, I'm going to shoot you girl and your son." (*Id.* at 86.) Collins then told the responding officers that he respected them, but he was "going to come back down to this house and damage it, he needs to burn this motherfucker down and shoot everyone in this bitch." (*Id.* at 87-88.)

[4] On October 22, 2019, the State charged Collins with two counts of Level 6 felony intimidation, one count of Class A misdemeanor domestic battery,[2] and one count of Class A misdemeanor battery resulting in bodily injury.[3] The court held a jury trial on February 26, 2020. Collins moved for judgment on the evidence following the State's case-in-chief. The trial court granted the motion regarding Class A misdemeanor battery resulting in bodily injury,[4] but the court otherwise denied Collins' motion. The jury returned guilty verdicts on both counts of intimidation. The jury was unable to reach a verdict on the domestic battery count, so the court declared a mistrial on that count. The trial court imposed concurrent 545-day sentences with 529 days suspended to probation.

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[2] Ind. Code § 35-42-2-1.3.

[3] Ind. Code § 35-42-2-1.

[4] The trial court granted judgment on the evidence regarding the battery resulting in bodily injury count because J.C. testified that she did not experience any discomfort when Collins pushed her against the vehicle.

Discussion and Decision

[5] Our standard of review for a challenge to the sufficiency of the evidence is well-settled.

> We neither reweigh the evidence nor judge the credibility of the witnesses. We consider only the probative evidence and reasonable inferences supporting the trial court's decision. A conviction will be affirmed 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.

Ervin v. State, 114 N.E.3d 888, 895 (Ind. Ct. App. 2018) (internal citations and quotation marks omitted), *trans. denied*. "On appeal, circumstantial evidence may be sufficient to support a conviction and it is not necessary that every reasonable hypothesis of innocence has been overcome; rather, it is only necessary that an inference which supports the verdict may be reasonably drawn." *Perry v. State*, 585 N.E.2d 715, 717 (Ind. Ct. App. 1992). Collins does not dispute threatening M.B. and J.C., but he argues the State did not prove that he did so in retaliation for the lawful act of contacting the police because M.B. did not contact the police and because there is no evidence that Collins knew J.C. had called the police when he threatened her.

[6] Indiana Code section 35-45-2-1 provides:

> (a) A person who communicates a threat with the intent:
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> * * * * *

> (2) that another person be placed in fear of retaliation for a prior lawful act;
>
> * * * * *
>
> commits intimidation, a Class A misdemeanor.
>
> (b) However, the offense is a:
>
> (1) Level 6 felony if:
>
> (A) the threat is to commit a forcible felony[.]

Collins likens the facts in his case to those in *Blackmon v. State*, 32 N.E.3d 1178 (Ind. Ct. App. 2015). In *Blackmon*, Donald Courtway noticed that water was running from a spigot at his daughter's house into a bucket and that the spigot's locking device had been broken. *Id*. at 1180. Courtway knew his daughter's neighbor, Winifred Hale, did not have running water, so Courtway went to Hale's house to confront her. *Id*. Blackmon, who was visiting Hale at the time, pulled out an open pocket-knife and held it above himself. *Id*. The State charged Blackmon with intimidation, alleging that Blackmon threatened Courtway in retaliation for the lawful act of catching Blackmon stealing water. *Id*. at 1181. Blackmon later admitted stealing the water, but we reversed his conviction for intimidation. *Id*. at 1183.

[7] We noted that while Blackmon's confession "tends to establish that Blackmon took the water, it does not tend to establish that *Courtway caught* Blackmon

taking the water, as specified in the charge." *Id*. at 1182 (emphasis in original). Courtway testified that he did not know who had taken the water when he went to confront Hale and Blackmon. *Id*. We held that because "there is no evidence indicating that Courtway knew who took the water, there is no evidence that Courtway caught anyone taking the water. Consequently, we find that the State failed to present sufficient evidence that Courtway committed the prior lawful act as specified in the charging information." *Id*. We further held that, even if Courtway had caught Blackmon stealing water, "we believe that the evidence presented by the State was insufficient to allow the jury to reasonably conclude that Blackmon acted with the intent to place Courtway in fear of retaliation for this act." *Id*. We noted there was no evidence that Blackmon believed he had been caught stealing water. *Id*. at 1183.

[8] However, unlike *Blackmon*, there is evidence that Collins deduced J.C. and M.B. were responsible for contacting the police and that Collins threatened them because this contact resulted in Collins' arrest. Absent a confession, the State is almost always required to rely on circumstantial evidence to prove the defendant possessed the requisite mens rea for intimidation. *Brewington v. State*, 7 N.E.3d 946, 964 (Ind. 2014), *reh'g denied*, *cert. denied*, 574 U.S. 1077 (2015), *reh'g denied*. We can infer intent from a defendant's actions and the natural and usual sequence of events such conduct logically follows. *Merriweather v. State*, 128 N.E.3d 503, 515 (Ind. Ct. App. 2019), *trans. denied*. An intimidation conviction "should not depend upon a precise parsing of the threatening language used by a defendant or a detailed timeline of when a threat was issued

in relation to a prior lawful act." *Chastain v. State*, 58 N.E.3d 235, 241 (Ind. Ct. App. 2016), *trans. denied*. It is enough that the State show "a clear nexus between the prior lawful act and the defendant's threat." *Merriweather*, 128 N.E.3d at 516.

[9] J.C. testified that when Collins arrived at her house he acted "[c]razy," talked loudly, disrespected her grandchildren, and did not behave like he normally did. (Tr. Vol. II at 65.) Collins had trouble maintaining a steady balance, and J.C. testified that Collins appeared intoxicated. Collins behaved belligerently throughout the entire episode, but he did not threaten to shoot J.C., M.B., and the others inside J.C.'s house or threaten to burn down J.C.'s house until after Officer Hedden handcuffed him. Collins issued his threats only after he realized that he was being arrested. In his closing argument, Collins argued his threats did not constitute retaliation because for all he knew, "another household member could have called the police. A neighbor could have called the police. A passerby could have called the police." (*Id.* at 104.) However, given that the police arrived shortly after J.C. and M.B. witnessed Collins' behavior inside J.C.'s house, a reasonable juror could infer Collins blamed J.C. and M.B. for summoning law enforcement and threatened them as a result. Therefore, we affirm Collins' convictions of intimidation.[5] *See Merriweather*,

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[5] Collins argues for the first time in his reply brief that the charging information was constitutionally deficient. However, this argument is waived because a party cannot present a new argument for the first time in its reply brief. *See Chupp v. State*, 830 N.E.2d 119, 126 (Ind. Ct. App. 2005) ("An issue not raised in an appellant's brief may not be raised for the first time in a reply brief.").

128 N.E.3d at 517 (holding defendant threatened victim in retaliation for her lawful refusal of his suggestion that they attempt to reconcile their marriage); *see also Fleming v. State*, 85 N.E.3d 626, 632 (Ind. Ct. App. 2017) (holding defendant intended to place victim in fear in retaliation for the victim's lawful act of stepping out onto his porch).

Conclusion

[10] The State presented sufficient evidence to sustain Collins' convictions of intimidation. Collins blamed J.C. and M.B. for calling the police, a lawful act, and he threatened J.C. and M.B. because the police officers arrested him after they arrived on the scene. Therefore, we affirm the trial court's judgment.

[11] Affirmed.

Kirsch, J., and Bradford, C.J., concur.