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IN THE  
COURT OF APPEALS OF INDIANA

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Noah Peterson,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 29, 2022  
Court of Appeals Case No.  
21A-CR-1329  
Appeal from the Marion Superior  
Court  
The Honorable Shatrese M.  
Flowers, Judge  
Trial Court Cause No.  
49D28-2008-F3-25076

**Pyle, Judge.**

### Statement of the Case

[1] Noah Peterson (“Peterson”) appeals, following a jury trial, his two felony intimidation convictions, one as a Level 5 felony and the other as a Level 6

felony.<sup>1</sup> Peterson argues that there is insufficient evidence to support his two felony intimidation convictions. Concluding that there is sufficient evidence to support Peterson’s Level 6 felony intimidation conviction and that there is insufficient evidence to support Peterson’s Level 5 felony intimidation conviction, we affirm Peterson’s Level 6 felony intimidation conviction and reverse his Level 5 felony intimidation conviction.<sup>2</sup>

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

### **Issue**

Whether there is sufficient evidence to support Peterson’s two felony intimidation convictions.

### **Facts**

[3] The facts most favorable to the jury’s verdicts and judgment follow. In August 2020, Peterson was living with his sister, R.B. (“R.B.”), and R.B.’s two-year-old daughter (“R.B.’s daughter”). On August 5, 2020, Peterson, R.B., and their sister, N.P. (“N.P.”), were at R.B.’s apartment. As N.P. held her cell phone, Peterson asked N.P. if she was recording him. N.P. denied that she was recording Peterson. Nevertheless, Peterson “got mad[.]” (Tr. Vol. 3 at 77). Peterson asked N.P. for her phone, and she refused to give it to him. The

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<sup>1</sup> IND. CODE § 35-45-2-1. We note that the legislature recently amended the intimidation statute, which has an effective date of July 1, 2022.

<sup>2</sup> Peterson also argues that the trial court committed fundamental error when instructing the jury on the Level 5 felony intimidation charge. Because we reverse Peterson’s Level 5 felony intimidation conviction, we need not address Peterson’s jury instruction challenge.

disagreement about the phone escalated to the point that Peterson eventually pulled out two guns and threatened to kill N.P. and R.B. Eventually, Peterson told N.P. that she could leave the apartment and that he would give her a “head start.” (Tr. Vol. 3 at 82). N.P. ran out of the apartment, and Peterson followed her. After Peterson ran out of R.B.’s apartment, R.B. heard gunshots. R.B. did not call 911. Shortly thereafter, N.P. returned to R.B.’s apartment. R.B. sent N.P. away and told N.P. that it was not safe for her at the apartment because Peterson could return. N.P. then called 911. Police officers responded to the apartment complex and spoke with N.P. about the events that had occurred between herself and Peterson.

[4] Later that evening, Peterson phoned R.B. During their conversation, Peterson asked R.B. if she had called the police, and R.B. told Peterson that she had not. When Peterson asked if N.P. had called the police, R.B. suggested that a neighbor may have called.

[5] The following day, on August 6, R.B. saw Peterson when she went to another sister’s home. Peterson apologized to R.B. Peterson also told R.B. that, when she talked to the police, she should tell the police that “N.P. was crazy” and that she had lied. (Tr. Vol. 3 at 92). R.B. informed Peterson that she was not comfortable with him living in her apartment with her and her daughter, and Peterson “got angry” with R.B. (Tr. Vol. 3 at 92). Tensions between Peterson and R.B. escalated, and R.B. and her niece called 911. Police officers were dispatched to the scene and talked to R.B.

[6] The next day, on August 7, R.B. was at her apartment with her daughter. R.B. had had the locks changed on her door so that Peterson could no longer get into her apartment. Peterson arrived at R.B.'s apartment and was unable to enter the apartment. Peterson shook the doorknob, called R.B. "the B word[,] " and told her "to open the effing door." (Tr. Vol. 3 at 99). R.B. refused and told Peterson that she would not open the door. Peterson then "continued to call [her] out by name and sa[id] he was going to shoot through the door." (Tr. Vol. 3 at 99). Specifically, Peterson told R.B. that if she did not open the door then he would "shoot through this effing door." (Tr. Vol. 3 at 99). R.B. was "really scared" and called 911. (Tr. Vol. 3 at 99). Police officers were dispatched to the scene and talked to R.B.

[7] The State subsequently charged Peterson with thirteen counts relating to his encounter with R.B. and N.P. on August 5 and his encounters with R.B. on August 6 and 7. Relevant to this appeal, the State charged Peterson, in Count 8, with Level 5 felony intimidation and, in Count 13, with Level 6 felony intimidation. For the Level 5 felony intimidation charge in Count 8, the State alleged that, on August 5, 2020, Peterson had "communicate[d] a threat to [R.B.] and/or [N.P.]," specifically the threat "to kill [R.B.] and/or [N.P.] and/or the police, with the intent that [R.B.] and/or [N.P.] . . . engage in conduct against their will by forcing [R.B.] and/or [N.P.] to refrain from calling the police for assistance[.]" (App. Vol. 2 at 42). For the Level 6 felony intimidation charge in Count 13, the State alleged that, on August 7, 2020, Peterson had "communicate[d] a threat to [R.B.] to commit a forcible felony,"

specifically the threat “to kill [R.B.] and/or her child, with the intent that [R.B.] engage in conduct against her will by seeking to force [R.B.] to open the door to her home[.]” (App. Vol. 2 at 43).<sup>3</sup>

[8] The trial court held a two-day jury trial in May 2021. R.B. testified to the facts as set forth above that related to Counts 8 and 13. The State also presented testimony from the police officers who responded to the scene on August 5, 6, and 7. N.P. did not testify.

[9] Peterson’s theory of defense was to challenge R.B.’s credibility and the State’s ability to meet its burden of proof. During opening statements, Peterson’s counsel stated that R.B. was going to be the only witness to testify about the alleged offenses. Peterson’s counsel pointed out that the State would neither provide testimony from N.P. or any other witness to corroborate R.B.’s testimony nor would the State present any photographs, medical records, or phone records to corroborate R.B.’s testimony.

[10] During the trial, R.B. provided no testimony that Peterson had told her or N.P. not to call the police when he had threatened to kill them on August 5. In regard to using her phone on August 5, R.B. testified during direct examination

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<sup>3</sup> The remaining eleven charges against Peterson included the following: Count 1, Level 3 felony criminal confinement; Count 2, Level 5 felony battery by means of a deadly weapon; Count 3, Level 5 felony domestic battery by means of a deadly weapon; Count 4, Level 5 felony intimidation; Count 5, Level 6 felony criminal recklessness; Count 6, Level 6 felony pointing a firearm; Count 7, Class A misdemeanor theft; Count 9, Level 6 felony criminal recklessness; Count 10, Level 6 felony pointing a firearm; Count 11, Level 5 felony intimidation; and Count 12, Level 6 felony pointing a firearm. Counts 1-7 and 9-10 related to events that were alleged to have occurred on August 5. Count 11 and 12 related to events that that were alleged to have occurred on August 6.

that she had been “scared to make any phone calls because [she] didn’t know how close [Peterson] was or when he could come back.” (Tr. Vol. 3 at 83).

R.B. further testified that she had instead texted a friend and told her friend not to call her cell phone because she did not know if Peterson “[wa]s around” the apartment. (Tr. Vol. 3 at 83).

[11] During cross-examination, Peterson’s counsel asked R.B. about her failure to call 911 when she had heard gunshots outside after N.P. and Peterson had left R.B.’s apartment on August 5. R.B. acknowledged that when she heard the gunshots, she “didn’t know if [N.P.] [had been] shot[.]” (Tr. Vol. 3 at 110). R.B. explained that she had not called 911 because she “was worried about leaving” and “was in shock.” (Tr. Vol. 3 at 110).

[12] The jury found Peterson guilty of Level 5 felony intimidation in Count 8 and Level 6 felony intimidation in Count 13. The jury entered verdicts of not guilty on Counts 2, 3, and 5, and the jury was hung on Counts 1, 4, 6, 7, 9, 10, 11, and 12.

[13] At Peterson’s subsequent sentencing hearing, the trial court imposed a four (4) year executed sentence for Peterson’s Level 5 felony intimidation conviction and a two (2) year suspended sentence for his Level 6 felony intimidation conviction, and the trial court ordered that these sentences be served consecutively. Peterson now appeals.

## Decision

[14] Peterson argues that there is insufficient evidence to support his Level 5 felony intimidation conviction and his Level 6 felony 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.

[15] The intimidation statute, INDIANA CODE § 35-45-2-1, provides that “[a] person who communicates a threat with the intent . . . that another person engage in conduct against the other person’s will . . . commits intimidation, a Class A misdemeanor.” I.C. § 35-45-2-1(a)(1). However, the offense of intimidation is a Level 6 felony if “the threat is to commit a forcible felony[,]” and the offense is a Level 5 felony if “while committing [the offense], the person draws or uses a deadly weapon[.]” I.C. § 35-45-2-1(b)(1)(A), (b)(2)(A). A “threat” is defined, in part, as “an expression, by words or action, of an intention to . . . unlawfully injure the person threatened or another person, or damage property[.]” I.C. § 35-45-2-1(d)(1).

[16] Peterson first argues that there is insufficient evidence to support his Level 5 felony intimidation in Count 8. The State’s charging information for Level 5 felony intimidation alleged that Peterson had “communicate[d] a threat to [R.B.] and/or [N.P.],” specifically the threat “to kill [R.B.] and/or [N.P.] . . . and/or the police, with the intent that [R.B.] and/or [N.P.] engage in conduct against their will by forcing [R.B.] and/or [N.P.] to refrain from calling the police for assistance[.]” (App. Vol. 2 at 42).

[17] Peterson acknowledges that the State presented evidence that he, while armed with a gun, had threatened to kill R.B. and N.P. Peterson argues, however, that the State failed to present sufficient evidence regarding the intent element. Specifically, he asserts that the State failed to prove beyond a reasonable doubt that Peterson had the intent that R.B. or N.P. engage in conduct against their will, that is, to refrain from calling the police for assistance.

[18] “For purposes of felony intimidation, the specific intent which must coincide with the threat, that the other person engage in conduct against his will, includes an intent that the other person refrain from conduct as well as affirmatively engage in conduct.” *Johnson v. State*, 605 N.E.2d 762, 766 n.1 (Ind. Ct. App. 1992), *trans. denied*. A defendant’s “intent may be proven by circumstantial evidence.” *McCaskill v. State*, 3 N.E.3d 1047, 1050 (Ind. Ct. App. 2014). “Intent can be inferred from a defendant’s conduct and the natural and usual sequence to which such conduct logically and reasonably points.” *Id.* “We will not reverse a conviction that rests in whole or in part on circumstantial evidence unless we can state as a matter of law that reasonable



persons could not form inferences with regard to each material element of the offense so as to ascertain a defendant's guilt beyond a reasonable doubt." *Id.*

[19] In support of Peterson's insufficiency argument, he relies on *McCaskill*, in which this Court reversed McCaskill's intimidation conviction where the State had failed to provide sufficient evidence of the intent element. In *McCaskill*, the State's intimidation charge alleged that McCaskill, who had been having a sexual relationship with the victim's husband, "had communicated a threat to [the victim] with the intent that [the victim] engage in conduct against her will, namely to 'leave her husband and/or cause her husband to leave her.'" *Id.* at 1049. During a bench trial, the victim testified that McCaskill had threatened to "beat [the victim's] ass[,]" but the victim admitted that McCaskill had never stated why she had made such a threat. *Id.* The trial court, however, found McCaskill guilty of intimidation. *Id.*

[20] When McCaskill challenged the intent element of her intimidation conviction on appeal, the State argued that the evidence was sufficient based on the circumstantial evidence presented. *Id.* at 1049-50. The State contended that McCaskill's relationship with the victim's husband had created an inference that was sufficient to show that McCaskill had threatened the victim with the intent that the victim leave her husband. *Id.* This Court disagreed with the State and reversed McCaskill's conviction because the State had failed to present evidence showing the reason for McCaskill's threat to the victim. *Id.* at 1050.

[21] Here, like in *McCaskill*, we conclude that the State failed to present sufficient evidence to prove the intent element beyond a reasonable doubt. Our review of the record reveals that the State did not present any evidence to show that Peterson’s communicated threat to kill R.B. or N.P. was made with the intent that they engage in conduct against their will of refraining to call the police for assistance. R.B. was the only witness to testify about Peterson’s threat made while in her apartment during the August 5 encounter. R.B. did not testify that Peterson had threatened to kill her and N.P. with the intent that they not call the police or 911. Instead, during R.B.’s cross-examination testimony, she specified that she had not called 911 that evening because she “was worried about leaving” and “was in shock.” (Tr. Vol. 3 at 110). Because the State did not provide sufficient evidence to prove beyond a reasonable doubt that Peterson had committed Level 5 felony intimidation as charged in Count 8, we reverse Peterson’s conviction.<sup>4</sup> See *McCaskill*, 3 N.E.3d at 1050.

[22] Next, Peterson argues that there is insufficient evidence to support his Level 6 felony intimidation in Count 13. For the Level 6 felony intimidation charge, the State alleged that Peterson had “communicate[d] a threat to [R.B.] to commit a forcible felony,” specifically the threat “to kill [R.B.] and/or her

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<sup>4</sup> We reject the State’s suggestion that there was sufficient evidence to support Peterson’s Level 5 felony conviction in Count 8 because, “[a]t the very least,” the State had presented evidence that Peterson had intended to prevent N.P. from using her cell phone to record him. (State’s Br. 23). The State charged Peterson with Level 5 felony intimidation based on his intent to prevent N.P. from using her cell phone and to give her phone to him, and the jury was hung on this count.

child, with the intent that [R.B.] engage in conduct against their will by seeking to force [R.B.] to open the door to her home[.]” (App. Vol. 2 at 43).

[23] Peterson acknowledges that the State presented sufficient evidence that he had communicated a threat to R.B.— a threat to shoot through R.B.’s apartment door—and that he did so with the intent that R.B. engage in conduct against her will of opening her apartment door. Peterson contends, however, that the State failed to present sufficient evidence that his threat was to commit a forcible felony. Specifically, he argues that the State failed to prove beyond a reasonable doubt that Peterson had specifically threatened to kill R.B. or her daughter as the State had alleged in Count 13.

[24] For purposes of the intimidation statute, a “forcible felony” is defined as “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. “[T]hreats of potential, nonspecific violence constitute a threat to commit a forcible felony.” *Laughlin v. State*, 101 N.E.3d 827, 830 (Ind. Ct. App. 2018) (quoting *Huber v. State*, 805 N.E.2d 887, 891 (Ind. Ct. App. 2004)).

[25] Here, the State presented evidence that, on August 7, 2020, R.B. was inside her apartment with her daughter. R.B. had had the locks changed on her door so that Peterson could no longer gain access to her apartment. When Peterson arrived at R.B.’s apartment and was unable to enter the apartment, he became angry with R.B., shook the doorknob, yelled at R.B., called R.B. “the B word[.]” and told her “to open the effing door.” (Tr. Vol. 3 at 99). R.B. refused

and told Peterson that she was not going to open the door. In response, Peterson told R.B. that if she did not open the door then he would “shoot through this effing door.” (Tr. Vol. 3 at 99). R.B. testified that Peterson’s threat made her “really scared” and that she then called 911. (Tr. Vol. 3 at 99).

[26] Thus, the jury heard evidence that Peterson, who was standing outside the apartment door, and R.B., who was inside, were communicating through the locked apartment door. After R.B. told Peterson that she “wasn’t opening the door[,]” Peterson threatened to “shoot through” the door. (Tr. Vol. 3 at 99). Peterson’s threat to shoot through R.B.’s apartment door involved a threat “in which there [wa]s imminent danger of bodily injury to a human being.” *See* I.C. § 35-31.5-2-138 (defining forcible felony). Because there was probative evidence from which the jury could have found Peterson guilty of Level 6 felony intimidation, we affirm his conviction. *See, e.g., Huber*, 805 N.E.2d at 891 (affirming a defendant’s intimidation conviction where his threat to commit a forcible felony involved the defendant calling a domestic violence advocate and stating that “things were not going to be real pretty” if the advocate continued working with the defendant’s wife). *See also Laughlin*, 101 N.E.3d at 830-31 (affirming a defendant’s Level 6 felony intimidation conviction where his threat to commit a forcible felony involved the defendant calling in a bomb threat to the county courthouse during the weekend).

[27] Affirmed in part and reversed in part.

May, J., and Brown, J., concur.