MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Leon Rucker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 13, 2021

Court of Appeals Case No. 20A-CR-2356

Appeal from the Marion Superior Court

The Honorable Christina R. Klineman, Judge

Trial Court Cause No. 49G17-2010-CM-32440

Najam, Judge.

Statement of the Case

[1] Leon Rucker appeals his conviction for invasion of privacy, as a Class A misdemeanor, following a bench trial. Rucker raises one issue for our review, namely, whether the State presented sufficient evidence to support his conviction.

Facts and Procedural History

[2] Rucker and S.H. were in a relationship, and they have one young child together, who resides with S.H. On October 20, 2020, Indianapolis Metropolitan Police Officer Nicolas Modesto responded to a report of a "disturbance" between a male and a female at S.H.'s residence. Tr. at 6. When he arrived, Officer Modesto spoke with S.H., who was "upset" and "angry." *Id*. at 7. S.H. told Officer Modesto that she "was having an argument" with Rucker. *Id*. While he was speaking with S.H., Officer Modesto saw Rucker exit S.H.'s house, and he observed Rucker to be "pretty cool, calm and collected." *Id*. at 10. Officer Modesto then learned that S.H. had a no-contact order against Rucker.

[3] The State charged Rucker with invasion of privacy, as a Class A misdemeanor. At his ensuing bench trial, the State presented as evidence the no-contact order the court had issued on September 3, 2020, prohibiting Rucker from contacting S.H. *See* Ex. at 14. The State also presented the testimony of Officer Modesto that Rucker had been at S.H.'s house while S.H. was home on October 20.

[4] Rucker then testified in his defense. Rucker testified that he had received a phone call from the woman who was watching his child. The woman told Rucker that the child was "having trouble breathing" and that she was unable to reach S.H. Tr. at 17. Rucker testified that, following that phone call, he "dropped everything and went straight" to S.H.'s house to check on the child. *Id*. Rucker then stated that he was able to speak with the caregiver but that he "realized" that his child was not there. *Id*. at 18. And he testified that he did not encounter S.H. until he left the house.

[5] On cross-examination, the State asked Rucker if he had considered calling 9-1-1 instead of going to S.H.'s house himself. Rucker responded that he had not. *See* Tr. at 19. At the conclusion of the bench trial, the court found that Rucker had committed invasion of privacy, as a Class A misdemeanor, and entered judgment of conviction accordingly. The court then sentenced Rucker to eighty-eight days. This appeal ensued.

Discussion and Decision

[6] Rucker asserts that the State presented insufficient evidence to support his conviction. Our standard of review on a claim of insufficient evidence is well settled:

> For a sufficiency of the evidence claim, we look only at the probative evidence and reasonable inferences supporting the [judgment]. *Drane v. State*, 687 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh the evidence. We will affirm the conviction unless no reasonable fact-finder

> could find the elements of the crime proven beyond a reasonable doubt. *Id*.

Love v. State, 73 N.E.3d 693, 696 (Ind. 2017).

[7] In order to convict Rucker of invasion of privacy, the State was required to prove that Rucker had knowingly or intentionally violated an order issued under Indiana Code Section 35-33-8-3.2. Ind. Code § 35-46-1-15.1(a)(11) (2020). On appeal, Rucker does not dispute the fact that there was a no-contact order in place prohibiting him from having any contact with S.H. Nor does he dispute that he went to her house on October 20, 2020, despite that order. Rather, Rucker asserted that he "established the defense of necessity" and that the State failed to present sufficient evidence to rebut that defense. Appellant's Br. at 7.

[8] In order to prevail on a claim of necessity, the defendant must show:

> (1) the act charged as criminal must have been done to prevent a significant evil, (2) there must have been no adequate alternative to the commission of the act, (3) the harm caused by the act must not be disproportionate to the harm avoided, (4) the accused must entertain a good faith belief that his act was necessary to prevent greater harm, (5) such belief must be objectively reasonable under all the circumstances, and (6) the accused must not have substantially contributed to the creation of the emergency.

Dozier v. State, 709 N.E.2d 27, 29 (Ind. Ct. App. 1999). To negate a claim of necessity, the State must disprove at least one element of the defense beyond a

reasonable doubt. *Clemons v. State*, 996 N.E.2d 1282, 1285 (Ind. Ct. App. 2013). Where a defendant has been convicted despite his claim of necessity, this Court will reverse the conviction only if no reasonable person could say that the defense was negated by the State beyond a reasonable doubt. *Id*.

[9] Here, Rucker asserts that he was legally justified in going to S.H.'s house that night because he had "received a phone call from [his] child's caregiver that his one[-]year[-]old baby was having trouble breathing" and that the caregiver was unable to reach S.H. Appellant's Br. at 8. He maintains that, during this Covid-19 pandemic, "the information that his one[-]year[-]old daughter suffered from breathing problems would require . . . him to see his daughter immediately." *Id*. at 9. Thus, he maintains that he proved all of the elements of the defense.

[10] But that argument is simply a request for this Court to reweigh the evidence, which we cannot do. The evidence most favorable to the trial court's judgment demonstrates that the child was not present at S.H.'s house when Rucker went there. *See* Tr. at 18. The evidence further demonstrates that, despite a no-contact order, Rucker went to S.H.'s house and proceeded to argue with S.H. to the point that officers received a call about a disturbance. And, when Officer Modesto observed Rucker exit S.H.'s home, Rucker's demeanor was "pretty cool, calm and collected[.]" Tr. at 10. Based on that evidence, a reasonable fact-finder could conclude that Rucker had not gone to S.H.'s house in violation of the no-contact order in order to check on his ill daughter. In other words, the

State presented evidence to rebut Rucker's claim that he had gone to S.H.'s house to prevent a significant evil. *Dozier*, 709 N.E.2d at 29.

[11] But even if we were to agree with Rucker that he only went to S.H.'s house because he believed that his daughter was there and experiencing a medical emergency, that does not support his defense of necessity. Rucker could have called 9-1-1 and had trained medical professionals check on the health and welfare of his child without violating the no-contact order. *See Davis v. State*, 74 N.E.3d 1215, 1221 (Ind. Ct. App. 2017) (holding that a defendant's argument that he drove at a high rate of speed to prevent his car from overheating did not support his defense of necessity where the defendant could have called a tow truck or pulled over to the side of the road). Indeed, on appeal, Rucker acknowledges that "he could have called 911." Appellant's Br. at 9. As such, Rucker did not show that there was no adequate alternative to him violating the no-contact order.

[12] In sum, a reasonable person could conclude that the State presented sufficient evidence to disprove beyond a reasonable doubt Rucker's claim that he had acted out of necessity. We therefore hold that there was sufficient evidence to support his conviction for invasion of privacy, as a Class A misdemeanor.

[13] Affirmed.

Pyle, J., and Tavitas, J., concur.