MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Walter Thomas Orndorff,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 28, 2023

Court of Appeals Case No. 22A-CR-2696

Appeal from the Vigo Superior Court

The Honorable John T. Roach, Judge

Trial Court Cause No. 84D01-2106-F5-1867

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

[1] In June of 2021, Walter Orndorff watched eleven-year-old L.C. from behind a tree before chasing her through her yard, placing her in fear of being kidnapped. Orndorff was subsequently charged with and found guilty of Level 6 felony intimidation. On appeal, Orndorff contends that the evidence is insufficient to sustain his conviction. We affirm.

Facts and Procedural History

[2] On June 2, 2021, eleven-year-old L.C. went to retrieve her brother's baseball hat out of her father's truck, which was parked behind the family's Terre Haute residence. While L.C. was in the backyard, she saw a man, later identified as Orndorff, watching her from behind a tree. Orndorff made L.C. feel "really uncomfortable" and "scared." Tr. Vol. II p. 15. At some point, Orndorff began to walk towards L.C. L.C. attempted to get away from Orndorff but he followed her and ran "straight at" her. Tr. Vol. II p. 118. L.C. "was terrified" and "thought [she] was going to end up getting kidnapped." Tr. Vol. II p. 117. L.C. ran towards her mother, who was in front of the home, because she did not believe that she had time to get inside the home and lock the back door before Orndorff overtook her. Orndorff did not stop his pursuit of L.C. until she had entered her front yard and had attracted her mother's attention.

[3] L.C.'s mother observed L.C. running toward her. L.C. appeared to be "terrified" and her "face was just white as a ghost and her eyes was [sic] like

welled up with tears and you could just see the fear over her face." Tr. Vol. II p. 61. L.C.'s mother observed Orndorff following behind L.C. When L.C. approached her mother, Orndorff turned and ran in a different direction. L.C. told her mother that the man had been "chasing" or "trying to get" her. Tr. Vol. II p. 64.

[4] L.C. did not know Orndorff but had observed him walking near her home on at least three prior occasions and had described his appearance to both her parents and police. L.C.'s father went outside, saw Orndorff, and yelled before Orndorff ran away. Although L.C.'s father did not initially recognize Orndorff, he subsequently realized that he had previously seen Orndorff walking around the family's neighborhood "[t]hree or four times." Tr. Vol. II p. 97.

[5] The State charged Orndorff with Level 6 felony intimidation. Following trial, a jury found Orndorff guilty as charged. On October 12, 2021, the trial court sentenced Orndorff to a two-year suspended sentence.

Discussion and Decision

[6] Orndorff contends that the evidence is insufficient to sustain his conviction for Level 6 felony intimidation.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure,

> when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. 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.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, "'we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility'" and "'affirm the judgment unless no reasonable factfinder could find the defendant guilty.'" *Mardis v. State*, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)).

[7] In order to prove that Orndorff committed Level 6 felony intimidation, the State was required to prove that he "communicate[d] a threat with the intent: … that another person be placed in fear that the threat will be carried out" and that the "threat is to commit a forcible felony." Ind. Code § 35-45-2-1(a)(4) & (b)(1). "'Threat' means an expression, by words or action, of an intention to: (1) unlawfully injure the person threatened or another person, or damage property [or] (2) unlawfully subject a person to physical confinement or restraint[.]" Ind. Code § 35-45-2-1(c). Whether a communication constitutes a threat is an objective question for the trier-of-fact. *Ajabu v. State*, 677 N.E.2d 1035, 1041 (Ind. Ct. App. 1997), *trans. denied*. It was not necessary for the State

to prove that Orndorff actually intended to injure or confine L.C., only that he communicated a threat with the intention of placing L.C. in fear of being injured or confined. *See Holloway v. State*, 51 N.E.3d 376, 378–79 (Ind. Ct. App. 2016) (providing that a speaker need not be capable of inflicting injury for words to constitute a threat), *trans. denied*.

[8] The Indiana Supreme Court has held "that 'true threats' under Indiana law depend on two necessary elements: that the speaker intend[ed] his communications to put his targets in fear for their safety, and that the communications were likely to actually cause such fear in a reasonable person similarly situated to the target." *Brewington v. State*, 7 N.E.3d 946, 964 (Ind. 2014). A defendant's intent "may be proven by circumstantial evidence" and "can be inferred from a defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points." *McCaskill v. State*, 3 N.E.3d 1047, 1050 (Ind. Ct. App. 2014). "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.*

[9] The evidence most favorable to the jury's finding of guilt establishes that Orndorff stood across the street from eleven-year-old L.C.'s residence and stared at her from behind a tree before walking toward her and entering her backyard. Orndorff made L.C. feel "really uncomfortable" and "scared." Tr. Vol. II p. 15. When L.C. attempted to get away from Orndorff, he followed

and ran "straight at" her. Tr. Vol. II p. 118. L.C. "was terrified" and "thought [she] was going to end up getting kidnapped." Tr. Vol. II pp. 117. In the moment, L.C. decided to run towards her mother, who was in front of the home, because she did not believe that she had time to get inside the home and lock the back door before Orndorff overtook her. Orndorff did not stop his pursuit until L.C. had entered her front yard and had attracted her mother's attention.

[10] In challenging the sufficiency of the evidence to sustain his conviction, Orndorff asserts that "[t]he State failed to satisfy its burden to show that Orndorff, who did not say anything to L.C., communicated a threat to kidnap L.C." Appellant's Br. p. 9. A threat, however, can be made by "words or action," meaning that it is possible for Orndorff to have communicated a threat to L.C. without speaking to her. *See* Ind. Code § 35-45-2-1(c). Orndorff also asserts that "[t]he fact that L.C. 'thought' that Orndorff was trying to kidnap her was irrelevant to whether the State proved that Orndorff in fact communicated a threat to do so." Appellant's Br. p. 9. Orndorff describes his actions as "simply" walking in her direction "on the grass in [her] yard." Appellant's Br. p. 9. Based on the facts most favorable to the jury's determination, we cannot agree that Orndorff "simply" walked in L.C.'s direction. Likewise, we cannot agree that L.C.'s interpretation of the situation was completely irrelevant. Rather, we agree with the State that "[t]here are few, if any, legitimate reasons for a [fifty]-year-old man to chase a young girl into her backyard, and a reasonable child in L.C.'s position would fear she would be restrained or

confined when chased onto her property by a strange man." Appellee's Br. p. 8.

[11] The jury was not required to ignore common sense when drawing inferences from the evidence, but rather "may rely on its collective common sense and knowledge acquired through everyday experiences." *Halsema v. State*, 823 N.E.2d 668, 673 (Ind. 2005). After assessing the evidence and witness credibility, the jury determined that the circumstantial evidence was sufficient to prove both that Orndorff communicated a threat to L.C. and that the communications were likely to actually cause a fear of kidnapping in a reasonable eleven-year-old similarly situated to L.C. Orndorff's claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See Drane*, 867 N.E.2d at 146.

[12] The judgment of the trial court is affirmed.

May, J., and Mathias, J., concur.