ATTORNEY FOR APPELLANT

Jennifer L. Koethe
Raleigh, North Carolina

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Myriam Serrano
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Lamar J. Wilson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 3, 2022

Court of Appeals Case No.
21A-CR-1088

Appeal from the
LaPorte Circuit Court

The Honorable
Thomas J. Alevizos, Judge

Trial Court Cause No.
46C01-2008-F4-1018

Molter, Judge.

[1] Lamar Wilson was charged with criminal recklessness for firing his shotgun into the bed of a pickup truck. At the time, not only was a person inside the vehicle, but there were also people directly behind it. Shooting a firearm into a place where people are likely to gather makes criminal recklessness a Level 5 felony, and our prior precedent holds that an automobile is a place where

people gather. Wilson does not challenge that precedent, but argues it does not apply here because he shot at the bed of the pickup truck rather than its internal passenger compartment. In other words, he acknowledges people are likely to gather in the front of a truck, but not the back.

[2] We do not read the statute or our prior precedent so narrowly, and we affirm the trial court's denial of Wilson's directed verdict motion.

Facts and Procedural History

[3] Jacinda Allen visited her daughter, Kaitlyn Buksar, after having a fight with her boyfriend, Brian Hoops. At the time, Allen and Hoops lived together, and, the following day, Hoops drove his pickup truck to Buksar's apartment. Hoops spoke to the women and asked Allen to return home with him. But Wilson, who lived in Buksar's apartment building, heard Hoops speaking to the women and told him to leave them alone. The two men then argued, with Wilson first retrieving a pipe or bar to confront Hoops with. Eventually, Allen deescalated the situation, and Wilson went back to his apartment. However, Wilson later returned with a shotgun and demanded that Hoops get off his property.

[4] Hoops reversed his truck into an alley near the apartment building. He then got out of his vehicle and continued to try to talk to Allen. But Wilson again told Hoops to leave his property and fired a firearm into the air. After Hoops returned to his truck, Wilson fired a shot into the side of the truck and near the gas tank, showering Allen and Buksar with debris. The two men continued to

argue, and Hoops tried to persuade Allen to return home with him. Instead, she asked Hoops to leave, and he complied.

[5] The State charged Wilson with Count I, possession of a firearm by a violent felon as a Level 4 felony; Count II, criminal recklessness as a Level 5 felony; and Count III, pointing a loaded firearm as a Level 6 felony. At the start of Wilson's jury trial, the State moved to dismiss Count I, and the trial court granted the State's motion. After the presentation of evidence, Wilson's counsel moved for directed verdict on Wilson's criminal recklessness charge. After taking it under advisement, the trial court denied Wilson's motion. The jury then found Wilson guilty of only criminal recklessness, and the trial court sentenced Wilson to a term of three years, to be served in the community corrections GPS Program. Wilson now appeals his conviction.

Discussion and Decision

[6] Wilson argues that the trial court erred when it denied his motion for directed verdict on the Level 5 felony criminal recklessness charge. Indiana Trial Rule 50(A) governs motions for directed verdict (*i.e.*, motions for judgment on the evidence), and provides:

> Where all or some of the issues in a case tried before a jury . . . are not supported by sufficient evidence or a verdict thereon is clearly erroneous as contrary to the evidence because the evidence is insufficient to support it, the court shall withdraw such issues from the jury and enter judgment thereon or shall enter judgment thereon notwithstanding a verdict.

When a defendant moves for judgment on the evidence, the court is required to withdraw the issues from the jury if: (1) the record is devoid of evidence on one or more elements of the offense; or (2) the evidence presented is without conflict and subject to only one inference, which favors the defendant. Ind. Trial Rule 50 (A); *Garcia v. State*, 979 N.E.2d 156, 157 (Ind. Ct. App. 2012).

[7] On appeal, we use the same standard of review as the trial court in determining the propriety of a judgment on the evidence. *Garcia*, 979 N.E.2d at 157.

> We must view the evidence in a light most favorable to the party against whom judgment on the evidence would be entered, and we may not invade the province of the jury by weighing the evidence presented or the credibility of witnesses. A defendant's motion for judgment on the evidence should not be granted if the State presents a prima facie case.

Herron v. State, 61 N.E.3d 1246, 1248–49 (Ind. Ct. App. 2016).

[8] The relevant portions of the criminal recklessness statute, Indiana Code section 35-42-2-2, provide that "[a] person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits criminal recklessness." The offense is a Level 5 felony if "[i]t is committed by shooting a firearm into an inhabited dwelling or other building *or place where people are likely to gather*." Ind. Code § 35-42-2-2(b)(2)(A) (emphasis added). In the charging information, the State alleged that the pickup truck which Hoops occupied was a place where people were likely to gather. On appeal, Wilson argues that the portion of the truck that he shot was not a place

where people were likely to gather. Wilson fired the shot at the driver's side of the truck and near the gas tank. The bullet went into the bed of the vehicle.

[9] In *Garcia v. State*, our court held that a vehicle is a place where people are likely to gather. 61 N.E.3d at 158–59. We reasoned that "place" is a broad term, and dictionaries specifically include a space where a passenger may sit among the term's definitions. *Id.* at 158. Because a vehicle transports people, it "is clearly a location where people could congregate and gather." *Id.*

[10] Wilson does not argue that *Garcia* was wrongly decided. Instead, he reads *Garcia* as limited to cases in which the defendant shoots directly into the internal passenger compartment of a vehicle, and he contends that the bed of a pickup truck falls outside of *Garcia*'s purview because that is not the area of a pickup truck in which passengers travel. We do not read *Garcia* so narrowly.

[11] For starters, it is difficult to imagine why the statute would distinguish between parts of a vehicle. Shooting into the bed of a truck hardly seems less dangerous or culpable than aiming the gun at a slightly higher trajectory so that the bullet passes through the rear or side window. In this case in particular, Wilson shot near the gas tank, and potentially exploding the vehicle does not seem materially less dangerous than shooting into the passenger compartment. Even absent that risk, Wilson's shot was so close to gathered bystanders that they were hit with debris. He responds to this concern by arguing "close calls" are not sufficient under the statute, Reply Br. at 6, but that misses the point. It is not that he nearly violated the statute, but that by shooting near bystanders

gathered at a vehicle, he violated the statute (or at least the jury could reach that conclusion).

[12] In short, Wilson cannot point to anything in the text, structure, or purpose of the criminal recklessness statute which suggests that certain parts of a vehicle are subject to the statute while others are not, and we do not see any sound basis for such a distinction. Accordingly, the trial court properly denied Wilson's motion for directed verdict.

[13] Affirmed.

Robb, J., and Riley, J., concur.