MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Carter, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 29, 2021

Court of Appeals Case No. 21A-CR-799

Appeal from the Marion Superior Court

The Honorable Elizabeth Christ, Judge

Trial Court Cause No. 49D24-2101-CM-885

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, James Carter, Jr. (Carter), appeals his conviction for invasion of privacy, a Class A misdemeanor, Ind. Code § 35-46-1-15.1(a)(12).

[2] We affirm.

ISSUE

[3] Carter presents this court with one issue, which we restate as: Whether the State proved by a preponderance of the evidence that the offense occurred in Marion County, establishing proper venue.

FACTS AND PROCEDURAL HISTORY

[4] On February 26, 2019, the Marion Superior Court 4, Criminal Division, entered a no-contact order prohibiting Carter from contacting I.D., his former girlfriend. No-contact orders were also entered prohibiting Carter from contacting I.D.'s mother and daughter. On January 9, 2021, I.D. was awakened by Carter screaming and pounding on the door to her apartment. I.D.'s mother and daughter were at home with her at the time. I.D. called 911. The police arrived and removed Carter from the premises. After Carter was removed, damage was found on the door to I.D.'s apartment which she had to pay to repair.

[5] On January 9, 2021, the State filed an Information, charging Carter with three counts of Class A misdemeanor invasion of privacy and one count of Class B misdemeanor criminal mischief. On April 12, 2021, the trial court convened

Carter's bench trial. I.D. was the State's sole witness, and she testified regarding the events which formed the basis of the charges. After that testimony, the following exchange took place:

> Deputy Prosecutor: Okay. All of these events occurred at your apartment, correct?
>
> I.D.: Yes.
>
> Deputy Prosecutor: Do you live in Marion County, Indiana?
>
> I.D.: Yes.
>
> Deputy Prosecutor: Can you give us the nearest major intersections?
>
> I.D.: Michigan Road.
>
> Deputy Prosecutor: And that's in Indianapolis?
>
> I.D.: Yes.

(Transcript p. 9). After the State rested, Carter moved for dismissal, arguing that the State had merely shown that I.D. currently lived in Marion County but not that she lived in Marion County at the time of the offenses sufficient to establish proper venue. The trial court denied Carter's motion. The trial court found Carter to be guilty of invasion of privacy against I.D. but not guilty as to the remaining charges. The trial court sentenced Carter to 180 days, which he had already served.

[6] Carter now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[7] Carter argues that the State did not present adequate evidence to establish venue in Marion County. A defendant has both a statutory and a constitutional right to be tried in the county where the charged crime was committed. *Mullins v. State*, 721 N.E.2d 335, 337 (Ind. Ct. App. 1999) (citing IND. CONST. Art. I, § 13 and a previous version of the venue statute, I.C. § 35-32-3-1, now at I.C. § 35-32-2-1(a)), *trans. denied*. Although it is not an element of a criminal offense, the State must nevertheless prove venue by a preponderance of the evidence by showing that all or part of a crime occurred in the county where the charges were brought. *Jones v. State*, 967 N.E.2d 549, 551 (Ind. Ct. App. 2012). The State may establish venue by circumstantial evidence. *Peacock v. State*, 126 N.E.3d 892, 897 (Ind. Ct. App. 2019). The State meets its burden if the facts and circumstances permit the fact-finder to infer that the crime occurred in the given county. *Perry v. State*, 78 N.E.3d 1, 11 (Ind. Ct. App. 2017). We review the evidence supporting venue in the same manner that we review other sufficiency of the evidence claims: We neither reweigh the evidence nor judge the credibility of witnesses and look only to the evidence and the reasonable inferences therefrom that support the judgment. *Mullins*, 721 N.E.2d at 337.

[8] Here, I.D. testified that the events occurred at "my apartment building" and at "my specific apartment." (Tr. p. 7). I.D. responded in the affirmative when asked, "Do you live in Marion County, Indiana?" (Tr. p. 9). I.D. also

confirmed that she lived in Indianapolis. I.D. did not testify that Carter had come to her previous or former apartment. I.D. used the possessive pronoun "my" in referring to her apartment building and specific apartment, and she affirmed the deputy prosecutor's use of the present tense when asked if she was living in Marion County. (Tr. p. 7). Thus, I.D.'s possession of the apartment in question and the location of her domicile were both referred to in the present tense, supporting a reasonable inference that she still lives where the offense occurred—in Marion County. In the absence of any testimony that I.D. had moved during the three months between the filing of the Information and Carter's trial, we conclude that this testimony supported the trial court's reasonable inference that the offense occurred in Marion County. Although the evidence could be susceptible to the interpretation that Carter urges us to accept on appeal, our standard of review does not permit us to engage in reweighing of the evidence. *See Mullins*, 721 N.E.2d at 337. Rather, we must affirm if the evidence supports the fact-finder's inference, and here, we conclude that it does. *See Perry*, 78 N.E.3d at 11.

CONCLUSION

[9] Based on the foregoing, we conclude that the State proved proper venue by a preponderance of the evidence sufficient to sustain Carter's conviction for invasion of privacy.

[10] Affirmed.

[11] Najam, J. and Brown, J. concur