MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Charles Cross,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

February 26, 2024

Court of Appeals Case No.
23A-CR-1973

Appeal from the Wayne Superior Court

The Honorable Gregory A. Horn, Judge

Trial Court Cause No.
89D02-2303-F4-16

Memorandum Decision by Judge Tavitas
Judges Mathias and Weissmann concur.

Tavitas, Judge.

Case Summary

[1] Charles Cross was convicted of unlawful possession of a firearm by a serious violent felon, a Level 4 felony; possession of methamphetamine, a Level 5 felony; possession of a controlled substance, a Level 6 felony; and intimidation, a Level 6 felony. Cross appeals and claims that: (1) the trial court abused its discretion by admitting evidence allegedly obtained in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution; and (2) the State failed to present sufficient evidence to support Cross's conviction for intimidation. We disagree and, accordingly, affirm.

Issues

[2] Cross presents two issues, which we restate as:

I. Whether the trial court abused its discretion by admitting evidence allegedly obtained in violation of the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution.

II. Whether the State presented sufficient evidence to support Cross's conviction for intimidation.

Facts

[3] Sometime before March 6, 2023, Richmond Police Department ("RPD") Officer Amanda Thackrey-Toole checked the Department's reporting system to

familiarize herself with individuals with outstanding warrants and saw that Cross had three outstanding felony warrants[1] for his arrest. Officer Thackrey-Toole was already familiar with Cross. Officer Thackrey-Toole also received information from a confidential informant that Cross was staying at a particular house on 13th Street in Richmond. Officer Thackrey-Toole sought to corroborate this information and searched Facebook, where she found a recent photo of Cross holding a young child. Officer Thackrey-Toole recognized the child as being that of Melana Fletcher, who Officer Thackrey-Toole knew lived at the house on 13th Street.

[4] On March 6, Officer Thackrey-Toole, RPD Officer Matt Smith, RPD Officer David Christie, and several other officers went to the 13th Street house to arrest Cross on the warrants. The officers first formed a perimeter around the house to prevent Cross from fleeing. Through a window, Officer Smith could see Cross sitting on a bed in a bedroom. Officer Thackrey-Toole knocked on the front door, and Fletcher answered. Fletcher was carrying her young son, who was the same child Officer Thackrey-Toole had seen with Cross in the Facebook photo. Officer Thackrey-Toole asked Fletcher if Cross was in the home, and Fletcher nodded her head, indicating that Cross was there. Officer Thackrey-Toole informed Fletcher of the outstanding warrants for Cross's arrest and asked if Fletcher would allow them to enter the home to arrest Cross.

---

[1] The first warrant was for burglary, a Level 5 felony. The second was for theft of motor vehicle components, a Level 6 felony. And the third was for counterfeiting, forgery, and identity deception, all Level 6 felonies, and two counts of misdemeanor theft.

Fletcher said, "Yes, give me a minute," and went to put her dogs away. Tr. Vol. II p. 46.[2] After Fletcher did so, the officers entered the house.

[5] Once inside, Officer Thackrey-Toole asked Fletcher where Cross was located. Fletcher pointed to a door off the main room and stated that Cross was in the room behind the door. Officer Thackrey-Toole knocked on the door and identified herself. After waiting about ten seconds without a response, Officer Thackrey-Toole opened the door, which was unlocked, and entered the bedroom. There, she saw Cross sitting on his bed. The officers quickly handcuffed Cross and searched his person. The officers found a loaded .22 caliber handgun in the front pocket of Cross's sweatshirt and two clear plastic baggies in his front pants' pocket. One of the baggies contained five pills that were later identified as Buprenorphine, a controlled substance, and the other contained .15 grams of what was later determined to be methamphetamine. A box of .22 caliber ammunition was found close to where Cross was sitting.

[6] Officer Christie transported Cross to the jail. On the way to the jail, Cross asked Officer Christie to drop the firearm charge. Officer Christie told Cross that this "was not going to happen." Tr. Vol. III p. 60. Cross also "offered to exchange information for the charge to be dropped." *Id.* Officer Christie declined Cross's offer. At the jail, Cross became belligerent, used profanity,

---

[2] Cross claims that Fletcher did not verbally give consent, citing Fletcher's testimony. Officer Thackrey-Toole, however, testified at the suppression hearing and at trial that Fletcher did verbally consent. Tr. Vol. II p. 46; Tr. Vol. III p. 134.

and refused to sit in a chair as ordered. Officer Thackrey-Toole placed her hands on Cross and sat him in the chair. Immediately after this, Cross looked Officer Thackrey-Toole in the eyes and said, "You're hit, bitch. You're hit." Tr. Vol. II p. 209; Tr. Vol. III p. 61. Officer Thackrey-Toole took this as a threat to her physical safety or a threat to have her killed.

[7] The day after Cross's arrest, the State charged him with unlawful possession of a firearm by a serious violent felon, a Level 4 felony; possession of methamphetamine, a Level 5 felony; possession of a controlled substance, a Level 6 felony; and intimidation, a Level 6 felony. The State also alleged that Cross was an habitual offender. Cross declined counsel and represented himself.

[8] On April 3, 2023, Cross filed a motion to suppress the evidence seized during his arrest and claimed that his arrest violated the Fourth Amendment. The trial court held a suppression hearing on May 15, 2023, at which Cross again claimed that his Fourth Amendment rights were violated when the police entered the 13th Street house without a search warrant and arrested him. The trial court denied the motion to suppress from the bench. Cross filed a motion to reconsider, but the trial court also denied this motion.

[9] A four-day jury trial commenced on June 13, 2023. At no point did Cross object to the admission of any of the evidence seized during his arrest. The jury found Cross guilty as charged and also found that he was an habitual offender.

On July 26, 2023, the trial court sentenced Cross to an aggregate term of twenty-five years executed.[3] Cross now appeals.

Discussion and Decision

I. Admission of Evidence

[10] Cross first argues that the trial court abused its discretion by admitting evidence seized as a result of his arrest, which he claims violated his rights under the Fourth Amendment and Article 1, Section 11. We review challenges to the admission of evidence for an abuse of the trial court's discretion. *Combs v. State*, 168 N.E.3d 985, 990 (Ind. 2021), *cert. denied*. We will reverse only where the decision is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Clark v. State*, 994 N.E.2d 252, 259-60 (Ind. 2013).

A. Cross failed to preserve his claims of evidentiary error

[11] It is axiomatic that to preserve a claim of evidentiary error for appeal, "a defendant must make a contemporaneous objection at the time the evidence is introduced.'" *Woodward v. State*, 187 N.E.3d 311, 317 (Ind. Ct. App. 2022) (quoting *Shoda v. State*, 132 N.E.3d 454, 460 (Ind. Ct. App. 2019)). "'[A] contemporaneous objection at the time the evidence is introduced at trial is

[3] Specifically, the trial court sentenced Cross to ten years executed on the Level 4 felony conviction, three years executed on the Level 5 felony conviction, and one year each on the two Level 6 felony convictions. The trial court ordered all the sentences to run concurrently and enhanced the sentence by fifteen years as a result of the habitual offender determination.

required to preserve the issue for appeal, whether or not the appellant has filed a pretrial motion to suppress.'" *Id*. (quoting *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010)). This contemporaneous-objection rule "'is no mere procedural technicality; instead, its purpose is to allow the trial judge to consider the issue in light of any fresh developments and also to correct any errors.'" *Id.* (quoting *Shoda*, 132 N.E.3d at 461).

[12] Here, although Cross filed a pretrial motion to suppress, he failed to object at trial to any of the testimony he now claims was improperly admitted.[4] Accordingly, Cross failed to properly preserve any evidentiary error, and the issue is waived.[5]

B. Cross's claims would not succeed on their merits

[13] Even if we were to consider Cross's arguments on their merits, waiver notwithstanding, he would not succeed.

1. Fourth Amendment

[14] The Fourth Amendment to the United States Constitution provides:

---

[4] We recognize that Cross represented himself below—both during the motion to suppress and at trial. But it is well settled in Indiana that "'a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.'" *Stark v. State*, 204 N.E.3d 957, 963 (Ind. Ct. App. 2023) (quoting *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014)), *trans. denied*. "'This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Id*. (quoting *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018), *trans. denied*).

[5] "Ordinarily, the failure to object to the admission of evidence at trial would consign an appellant to the doctrine of fundamental error." *Woodward*, 187 N.E.3d at 317. Cross, however, makes no argument that the admission of the evidence seized during his arrest constituted fundamental error.

> The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no [w]arrants shall issue, but upon probable cause, supported by [o]ath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[15] In *Duran v. State*, 930 N.E.2d 10 (Ind. 2010), our Supreme Court explained:

> [T]he police may not enter a home by force to make a "routine" arrest without a warrant. *Payton v. New York*, 445 U.S. 573, 576 (1980). An arrest warrant founded on probable cause gives the police "limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." *Id*. at 603. The belief is judged on the information available to the officers at the time of entry and need not prove to have been correct in hindsight. *United States v. Lovelock*, 170 F.3d 339, 343 (2d Cir.1999). As one leading treatise summarized, it is "generally accepted" that reason to believe "involves something less than" probable cause. 3 Wayne R. LaFave, *Search and Seizure* § 6.1(a), at 265 (4th ed. 2004).

Id. at 14-16 (footnote omitted).[6]

---

[6] Cross claims that the police needed a search warrant to enter the 13th Street house because it was not his residence, but the home of Fletcher. *See* Appellant's Br. p. 10 ("[W]hen the home that officers seek to enter is not that of the subject of the arrest warrant, officers must obtain a search warrant absent consent or exigent circumstances.") (citing *Steagald v. United States*, 451 U.S. 204, 216, 101 S. Ct. 1642, 1649-50 (1981)). Fletcher, however, testified that Cross had been renting the bedroom for three months. Thus, the 13th Street house, or at least the bedroom, was also Cross's residence. If the house was not Cross's residence, this would raise the question of whether Cross has standing to challenge the police entry into the home of a third party. Regardless, Fletcher consented to the police entry into the home. *See Steagald*, 451 U.S. at 216, 101 S. Ct. at 1649 (holding that police cannot enter the home of a third party to arrest subject of an arrest warrant absent exigent circumstances or consent). Although Cross suggests that Fletcher's consent was not voluntary, there is nothing in the record to support this claim. To the contrary, Officer Thackrey-Toole testified that Fletcher verbally consented to their entry into the house.

[16] Here, there were three outstanding warrants for Cross's arrest, and Cross makes no challenge to the validity of these warrants. These warrants by themselves gave the police limited authority to enter a dwelling where Cross lived if there was reason to believe that Cross was within. *See id*.

[17] The police officers also had reason to believe that Cross lived at the 13th Street house and was located inside at the time of the arrest. Officer Thackrey-Toole received a tip from a confidential informant that Cross was living at the 13th Street house. An anonymous tip, standing alone, does not support a "reason to believe" the subject of an arrest warrant is inside a particular residence. *Duran*, 930 N.E.2d at 17. Here, however, Officer Thackrey-Toole corroborated this tip by locating a photo of Cross on his social media account, which photo depicted Cross holding a child belonging to Fletcher, whom the officer knew to live at the 13th Street house. When the police went to the 13th Street house, one of them saw Cross sitting on a bed inside the house. When Fletcher answered the door, Officer Thackrey-Toole asked Fletcher if Cross was in the home. Fletcher indicated affirmatively and directed the officers to the door of Cross's room. Thus, the police officers had reason to believe that Cross resided at and was located inside the 13th Street house.

[18] In short, the officers had valid warrants for Cross's arrest and had reason to believe he would be at the 13th Street house, where he lived. This gave the officers the limited authority to enter the 13th Street house to arrest Cross. *See Stickrod v. State*, 108 N.E.3d 385, 389-90 (Ind. Ct. App. 2018) (officer had reason to believe that defendant, who was the subject of an arrest warrant,

would be in the house the officer entered because the officer knew that defendant lived at the home, having arrested him at the home a few weeks prior, and the light was on in defendant's room); *Carpenter v. State*, 974 N.E.2d 569 (Ind. Ct. App. 2012) (officers had reason to believe that the subject of an arrest warrant would be at a particular house because the arrest warrant listed an approximate last known address, which was confirmed by another officer, there were vehicles in the driveway, and lights were on inside the home), *trans. denied*; *cf. Duran*, 930 N.E.2d at 16-17 (where officers only had reason to believe that the subject of an arrest warrant would be inside an apartment building, they lacked reason to believe that he was inside the apartment the police forcibly entered as such belief was based solely on the statement of an unidentified man on the street).[7] In short, Cross's Fourth Amendment argument fails.

2. Article 1, Section 11

[19] We would reach the same result under Article 1, Section 11. "'Although Article 1, Section 11 contains language nearly identical to the Fourth Amendment, Indiana courts interpret Article 1, Section 11 independently.'" *McKinney v. State*, 212 N.E.3d 697, 707 (Ind. Ct. App. 2023) (quoting *Parker v.*

[7] Cross claims that the actions of the police officers here are similar to entering every apartment in an apartment building based on reason to believe that the suspects lived in the apartment building, which is impermissible. *See Duran,* 930 N.E.2d at 16 ("It is well established that a reasonable belief that a suspect lives in an apartment building does not give the police the authority to enter every apartment in that building."). Here, however, the police had consent to enter the main area of the house and only entered Cross's bedroom, which was identified by Fletcher as Cross's, after knocking.

State, 196 N.E.3d 244, 257 (Ind. Ct. App. 2022)). "If a search is challenged under Article 1, Section 11, 'the State must show that the challenged police action was reasonable based on the totality of the circumstances.'" *Id*. (citing *Robinson v. State*, 5 N.E.3d 362, 368 (Ind. 2014)). When determining the reasonableness of an officer's actions, we consider: (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. *Carpenter*, 974 N.E.2d at 574 (citing *Litchfield v. State*, 824 N.E.2d 356, 360 (Ind. 2005)).

[20] In addressing Cross's Article 1, Section 11 claim, we find our Supreme Court's opinion in *Duran*, *supra*, instructive. In that case, the police had a warrant for the arrest of Nelson Hernandez. When the officers went to the address listed on the arrest warrant, however, Hernandez's mother told them that Hernandez was staying with his aunt "in the Harbor." 930 N.E.2d at 12. Later that same day, the police spoke with an individual who told them that he had, a few days prior, dropped Hernandez off at an apartment building, "which might colloquially be identified as in 'the Harbor.'" *Id*. at 13. This same individual told the police that he had taken Hernandez from the hospital to the apartment, where an older woman helped Hernandez move his belongings inside. *Id*. After midnight, the police went to serve the arrest warrant at the apartment building. The outer door was locked, and the police had no information regarding which apartment Hernandez was in. The police asked a man leaving

the building if he knew where Hernandez was. The man directed the police to an upstairs apartment with a green door.

[21] The officers knocked on the green door, but no one answered. After several minutes with no response, and hearing some noises inside the apartment, the police broke down the door, entered the apartment and held the occupant at gunpoint. Hernandez, however, was not in the apartment. Instead, the occupant was the defendant, Duran. The police saw cocaine in plain view and arrested and charged Duran for possession of cocaine. After arresting Duran, the officers knocked on another door and located Hernandez, whom they also arrested. Duran objected to the introduction of any evidence regarding what the police found in his apartment. The trial court overruled the objection, and Duran appealed.

[22] On appeal, our Supreme Court analyzed Duran's Article 1, Section 11 claim using the *Litchfield* factors. With regard to the degree of suspicion, the Court rejected the State's claim that this relates to the degree of the officers' suspicion that Hernadez had committed the crime for which he was wanted. *Duran*, 930 N.E.2d at 18. Instead, the degree of suspicion "focuses on the reasonable belief as to the residence and presence of the subject, not whether a crime was committed." *Id.* "The reasonableness of an entry into a home to execute an arrest warrant requires a reasonable belief that there is a valid warrant, a reasonable belief that the residence is that of the suspect, and a reasonable belief that the suspect will be found in the home." *Id.* Thus, although the police clearly had a high degree of suspicion that Hernandez had committed the crime

for which he was wanted, "they had an insufficient basis to conclude he was residing in the apartment with the green door." *Id*.

[23] The degree of intrusion, the Court emphasized, is evaluated from the view of the occupant, in that case Duran. Duran had no reduced expectation of privacy in his own apartment in the middle of the night, and the police intrusion was "of the highest order." *Id*. Lastly, the Court held that "law enforcement needs were not pressing. Hernandez was not a flight risk, and nothing prevented the officers from verifying Hernandez's aunt's address or embargoing the apartment until either someone emerged or a search warrant could be obtained." *Id*. at 19. Accordingly, the Court held that the trial court should have excluded the evidence and reversed Duran's conviction.

[24] Although we find guidance from the analysis in *Duran*, applying it to the facts of the present case leads us to a different conclusion. Applying the *Litchfield* test here, the officers had reason to believe that Cross lived at the 13th Street house, as discussed above, and even saw him inside the residence. Thus, the degree of suspicion was high. The officers received Fletcher's permission to enter the residence, knocked on the bedroom door,[8] and announced their presence before opening the door to Cross's room. Therefore, the degree of intrusion was, at most, moderate, and a far cry from the highly-intrusive door breaking that occurred in *Duran*. Lastly, the police had three felony warrants for Cross's

[8] Although Cross testified that Officer Thackrey-Toole did not knock on his door, the trial court was not obligated to credit his testimony.

arrest, thus the extent of law enforcement needs was relatively high. And, unlike Duran, Cross was known to be a flight risk because he had previously fled from officers. *See* Tr. Vol. III pp. 37, 83-84. Accordingly, even if we considered Cross's argument under Article 1, Section 11 on its merits, the actions of the police officers here, in contrast to those in *Duran*, were reasonable under the totality of the circumstances. Cross's argument under the Indiana Constitution also fails.

II. Sufficient Evidence of Intimidation

[25] Cross also argues that the State failed to present sufficient evidence to support his conviction for intimidation, a Level 6 felony. Claims of insufficient evidence "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). "When there are conflicts in the evidence, the jury must resolve them." *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We 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." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[26] To convict Cross of intimidation as charged, the State was required to prove that Cross communicated a threat to Officer Thackrey-Toole with the intent that Officer Thackrey-Toole be placed in fear that the threat would be carried out. Ind. Code § 35-45-2-1(a)(4). "'Threat' means an expression, by words or action, of an intention to: (1) unlawfully injure the person threatened . . . ." *Id.* § 1(c)(1). The offense is elevated to a Level 6 felony if "the threat is communicated because of the occupation, profession, employment status, or ownership status of a person or the threat relates to or is made in connection with the occupation, profession, employment status, or ownership status of a person." *Id.* § 1(b)(1)(C).

[27] Here, Cross was belligerent before being booked into the jail. When instructed to sit down, he refused. And after Officer Thackrey-Toole physically sat Cross in the chair, he looked her in the eye and stated, "You're hit, bitch. You're hit." Tr. Vol. II p. 209. Officer Thackrey-Toole testified that she took this statement seriously because she understood "hit" to mean physical injury or

death and knew that others had attempted to carry out similar threats in the past.[9]

[28] This evidence is sufficient to support Cross's conviction for intimidation, a Level 6 felony. *See Holloway v. State*, 51 N.E.3d 376, 378-79 (Ind. Ct. App. 2016) (affirming defendant's conviction for intimidation where defendant, while handcuffed, threatened to kill a police officer).[10]

Conclusion

[29] Cross's arguments under the Fourth Amendment and Article 1, Section 11 are waived because Cross failed to object to the admission of the evidence he now claims should have been excluded. Waiver notwithstanding, his arguments fail on their merits. Lastly, the State presented sufficient evidence to support

---

[9] Cross claims that Officer Thackrey-Toole never testified that Cross's statement caused her fear, but this is not an element of intimidation. Instead, the statute required the State to show that Cross threatened the officer with the **intent** that she would be placed in fear that the threat will be carried out. *Brewington v. State*, 7 N.E.3d 946, 963 (Ind. 2014) ("The intent that matters is not whether the speaker really means to carry out the threat, but only whether he intends it to place the victim in fear of bodily harm or death."); *see also K.Y. v. State*, 175 N.E.3d 820, 825 (Ind. Ct. App. 2021) (quoting *Brewington*, 7 N.E.3d at 963).

[10] Cross cites to Judge Bailey's dissent in *Holloway* in support of the proposition that the State must prove that a statement constituted a "true threat" before it can be criminalized. *See Holloway*, 51 N.E.3d at 379 (Bailey, J., dissenting). Even if we agreed with Judge Bailey's dissent, Cross's statements qualify as a true threat. To constitute a true threat, the speaker must "intend his communications to put his targets in fear for their safety" and the communication must have been "'likely to actually cause such fear in a reasonable person similarly situated to the target.'" *Holloway*, 51 N.E.3d at 376 (quoting *Brewington*, 7 N.E.3d at 964. Cross claims that the second requirement is missing, but we disagree. Cross looked Officer Thackrey-Toole in the eyes and said, "You're hit, bitch. You're hit." Tr. Vol. II p. 209. Officer Thackrey-Toole took the statement seriously based on her experience with similar threats. The jury could reasonably conclude that Cross's statement would likely cause fear in a reasonable person in Officer Thackrey-Toole's position.

Cross's conviction for intimidation, a Level 6 felony. Accordingly, we affirm the judgment of the trial court.

[30] Affirmed.

Mathias, J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

Michael Frischkorn
Brand & Morelock
Greenfield, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana