

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sauntio Carter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 20, 2023
Court of Appeals Case No.
22A-CR-2812
Appeal from the Marion Superior
Court
The Honorable Matthew E.
Symons, Magistrate
Trial Court Cause No.
49D26-2001-F6-1830

Memorandum Decision by Judge Crone
Judge Kenworthy and Senior Judge Robb concur.

Crone, Judge.

Case Summary

- [1] Sauntio Carter appeals his conviction for level 6 felony intimidation. He raises concerns regarding the charging instrument and the sufficiency of the evidence. We affirm.

Facts and Procedural History

- [2] K.M. was in a relationship with Carter that lasted from 2015 until she ended it sometime during 2017. In 2019, K.M. testified against Carter in a criminal case stemming from an incident that occurred in 2017. Carter was convicted in that case in 2019.
- [3] In November 2019, a few months after K.M. testified against Carter, she was driving her children to daycare and stopped at a gas station to pick up food for them. K.M. was talking on her phone when she entered the line to pay for her items and noticed Carter in line ahead of her. To the person on the phone, K.M. exclaimed, “Sauntio Carter is standing in front of me.” Tr. Vol. 2 at 84. Carter turned around and stated that she “was going to pay for what [she] did.” *Id.* His statement made K.M. “afraid for [her] life.” *Id.* Carter then stated that he was going to kill K.M. *Id.* at 85. He walked out the door and continued looking at K.M. through the gas station windows. K.M. felt so “distressed and shocked and afraid” that she collected her purchases, returned to her vehicle, drove her children to daycare, and was unable to go to work. *Id.* at 90. Instead, K.M. went home and called the police to report the disturbing encounter.

- [4] A probable cause affidavit, filed in early December 2019, states that K.M. was asked what she had done to Carter that could have prompted his threats. She replied that she “went [to] court on the previous stalking case” in which Carter “went to jail for stalking her.” Appellant’s App. Vol. 2 at 21. She further opined that Carter might want to kill her “because she does not want to be with him anymore.” *Id.* at 22. In January 2020, the State charged Carter with level 6 felony intimidation. Carter waived his right to trial by jury.
- [5] In October 2022, the court held a trial and found Carter guilty. The following month, the court ordered a two-year sentence, all suspended except for 180 days executed in the Marion County Jail. The sentence was to run consecutive to a sentence in a different case. Carter appeals his conviction.

Discussion and Decision

- [6] Though phrased as a challenge to the sufficiency of evidence, Carter’s appeal actually raises two related issues. He asserts that the subsection of the statute under which he was charged does not match the evidence presented at trial, and he contends that the evidence does not support a conviction for intimidation. We disagree on both points.
- [7] The charging information cited both Indiana Code Section 35-45-2-1(a)(1) and Indiana Code Section 35-45-2-1(b)(1)(A) and alleged that Carter communicated “a threat to commit Murder, a forcible felony, to [K.M.], another person, with the intent that [K.M.] be placed in fear of retaliation for a prior lawful act, to

wit: ending her relationship with” Carter “and/or testifying against” Carter. *Id.* at 23. The relevant statute provides:

(a) A person who communicates a threat with the intent:

(1) that another person engage in conduct against the other person’s will; [or]

(2) that another person be placed in fear of retaliation for a prior lawful act; ...

commits intimidation, a Class A misdemeanor.

(b) However, the offense is a:

(1) Level 6 felony if:

(A) the threat is to commit a forcible felony[.]

Ind. Code § 35-45-2-1.

[8] Carter is correct that the information’s caption cited subsection (a)(1), while both the body of the information and the evidence presented at trial tracked subsection (a)(2). However, it has long been held that it is the allegation in the body of the information that defines the crime and not the cited statute. *See Hestand v. State*, 491 N.E.2d 976, 980 (Ind. 1986) (finding no error where information’s language adequately informed defendant of charges but listed incorrect citation). Although the wrong subsection was included in the caption of the instrument charging Carter, the body of the charge clearly alleged

conduct that traced the language of Indiana Code Section 35-45-2-1(a)(2). Thus, we fail to see how a typographical error in the caption of the charging information could have misled or otherwise prejudiced Carter. This is particularly true where Carter did not raise this variance at trial and makes no argument on appeal that his defense at trial was somehow impaired. Because the language in the charging information put Carter on notice that he was being charged under Indiana Code Section 35-45-2-1(a)(2), we are unpersuaded by his argument. *See also Grimes v. State*, 84 N.E.3d 635, 640 (Ind. Ct. App. 2017) (finding due process satisfied where information enables accused and court to determine crime for which conviction sought), *trans. denied*.

[9] Turning to Carter’s sufficiency challenge, he seems to take issue with the fact that he did not explicitly state that he was going to kill K.M. *because* she broke up with him and/or because she recently testified against him, leading to a conviction and jail time. He focuses on the intent element. We reiterate our oft-quoted standard of review. “When a defendant challenges the sufficiency of the evidence supporting a conviction, ‘we neither reweigh evidence nor judge witness credibility.’” *Cardosi v. State*, 128 N.E.3d 1277, 1283 (Ind. 2019) (quoting *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018)). Instead, “we consider only the evidence and reasonable inferences most favorable to the conviction[.]” *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016). “We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021).

[10] “There is nothing in the intimidation statute that requires a defendant to expressly state what the victim’s prior lawful act was for which a defendant intends to retaliate.” *Chastain v. State*, 58 N.E.3d 235, 240 (Ind. Ct. App. 2016), *trans. denied*. It is well settled that in criminal cases, the State “is not required to prove intent by direct and positive evidence.” *Johnson v. State*, 837 N.E.2d 209, 214 (Ind. Ct. App. 2005), *trans. denied*. “Intent may be proved by circumstantial evidence.” *Lee v. State*, 973 N.E.2d 1207, 1210 (Ind. Ct. App. 2012), *trans. denied*. Intent can be inferred from a defendant’s conduct, the “natural and usual sequence to which such conduct logically and reasonably points,” and surrounding circumstances. *Id.* “On appeal, 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.” *Merriweather v. State*, 128 N.E.3d 503, 515-16 (Ind. Ct. App. 2019), *trans. denied*.

[11] To prove that Carter committed level 6 felony intimidation, as charged within the body of the information, the State was required to show that he communicated a threat to commit a forcible felony with the intent that another person be placed in fear of retaliation for a prior lawful act. Here, K.M. testified that she and Carter had been in a relationship for more than a year when she broke up with him. She further explained that she testified against him in 2019, just a few months before the encounter at the gas station that led to the current case. Carter was convicted in the prior case. Carter testified that he served jail

time due to K.M. and was clearly upset by how, from his perspective, her actions negatively affected his life. Tr. Vol. 2 at 105-06. The evidence showed that upon seeing his ex-girlfriend for the first time after she had testified against him, Carter told her that she was going to pay for what she did and that he was going to kill her. Ex-girlfriend K.M. was afraid for her life. She was so distressed and shocked that she could not go to work but rather went home and contacted authorities.

[12] Given the evidence gleaned during the bench trial, it was hardly a stretch for the court to determine that Carter's statements regarding killing K.M. were meant to place her in fear of retaliation (her death) for having broken up with him and/or recently testified against him. Without reweighing the evidence or judging witness credibility, we conclude that the trial court could form inferences regarding each element of intimidation so as to ascertain Carter's guilt beyond a reasonable doubt. That is to say, the State presented sufficient evidence to support Carter's conviction for intimidation.¹

¹ We are not convinced that *McCaskill v. State*, 3 N.E.3d 1047 (Ind. Ct. App. 2014), dictates a different result. Unlike the present case, *McCaskill* involved the subsection of the intimidation statute that prohibits a threat to attempt to cause a person to engage in conduct against her will. Further, in reversing the intimidation conviction on grounds of insufficient evidence, the *McCaskill* court noted that the only evidence of intent was a loose connection through the victim's husband. Here, the State's evidence regarding Carter's intent constituted more than a "loose connection." Moreover, *Blackmon v. State*, 32 N.E.3d 1178 (Ind. Ct. App. 2015), and *Casey v. State*, 676 N.E.2d 1069 (Ind. Ct. App. 1997), are distinguishable because the State had failed to provide sufficient evidence of a prior lawful act. Here, the State alleged and proved two lawful acts: ending a relationship and testifying against a person in a prior case.

[13] Affirmed.

Kenworthy, J., and Robb, Sr.J., concur.