MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Cori Clay-Lee Gentry
Appellant/Defendant

v.

State of Indiana,
Appellee/Plaintiff

July 17, 2024

Court of Appeals Case No.
23A-CR-3048

Appeal from the Grant Circuit Court

The Honorable Mark E. Spitzer, Judge

Trial Court Cause No.
27C01-2002-F1-2

Memorandum Decision by Judge Bradford
Judges Crone and Tavitas concur.

Bradford, Judge.

Case Summary

[1] After police attempted to stop a vehicle being driven by Kathryn Wainscott and in which Wainscott's infant daughter and Cori Gentry were passengers, Gentry moved to the driver's seat and led them on a twenty-minute chase. At one point, Gentry opened the front door of the vehicle, leaned out, and shot twice at pursuing officers. The chase ended when Gentry crashed into a tree, which also caused injury to Wainscott and her daughter. The State charged Gentry with many crimes, including Level 1 felony attempted murder. At trial, one of the police officers who had pursued Gentry testified, over objection, regarding his belief that Gentry had been shooting at him during the chase. Gentry was convicted of ten crimes altogether, and the trial court sentenced him to an aggregate sentence of forty years of incarceration, enhanced by fifteen years due to his habitual-offender status, with four years suspended to probation. Gentry contends that the trial court abused its discretion in allowing a police officer to opine that Gentry was shooting at him and that the State failed to produce sufficient evidence to sustain his convictions for Level 1 felony attempted murder and Level 6 felony neglect of a dependent. Because we disagree, we affirm.

Facts and Procedural History

[2] On January 22, 2020, Gentry called Wainscott, with whom he had, on occasion, been romantically involved, and asked her if she could come and pick

him up. (Tr. Vol. II p. 84–88). After Wainscott drove with her infant daughter to pick Gentry up, the trio drove around Marion and Gas City. (Tr. Vol. II p. 86–87). Wainscott was stopped at an intersection in Marion when she noticed that the vehicle in front of her, which turned out to be a police vehicle, was not moving. (Tr. Vol. II p. 88). By the time Gentry told Wainscott to go around the police vehicle, she had been boxed in by three additional police vehicles. (Tr. Vol. II p. 88). As officers approached on foot, Gentry rolled the window down and told them that they were going to "have to come get him or kill him[.]" Tr. Vol. II p. 89. Gentry asked Wainscott to "get him out of the situation[,]" but she refused and climbed into the back seat with her daughter; Gentry drove away after striking vehicles behind and in front. Tr. Vol. II p. 89.

[3] Several Marion Police officers pursued Gentry, and, at one point, he opened the driver's side door of the vehicle, leaned his upper body out, and twice fired a gun at Marion Police Detective Shawn Sizemore. (Tr. Vol. II p. 29–30, 146, 152, 156). The chase continued for approximately twenty minutes, during which Gentry disregarded stop signs, collided with at least one other vehicle, and drove through front yards where individuals were standing. When Gentry finally crashed into a tree, Wainscott was thrown into her daughter, injuring both. (Tr. Vol. II 92, 122).

[4] On February 19, 2020, the State charged Gentry with Level 1 felony attempted murder, Level 2 felony criminal confinement, Level 3 felony criminal confinement, Level 5 felony neglect of a dependent, Level 5 felony intimidation, Level 5 felony carrying a handgun without a license, Level 6

felony criminal recklessness, Level 6 felony resisting law enforcement, Class A misdemeanor reckless driving, and two counts of Class B misdemeanor leaving the scene of an accident. (App. Vol. II 24–27). The State also filed a notice of intent to seek firearm and habitual-offender enhancements. (App. Vol. II 29–30). On October 1, 2023, Gentry filed a motion *in limine*, in which he stated his belief that the State intended to have Detective Sizemore testify that, in his opinion, Gentry had intended to kill him and argued that such testimony would constitute an improper legal conclusion. (Appellant's App. Vol. II pp 94–95). The trial court granted Gentry's motion *in limine*. At trial, when the prosecutor asked Detective Sizemore, "Did you think that [Gentry] was shooting at you [during the chase]?", he responded, "I did." Tr. Vol. II p. 157. The trial court overruled Gentry's objection to this testimony. (Tr. Vol. II p. 157).

[5] On October 4, 2023, a jury found Gentry guilty of attempted murder, criminal confinement as Level 3 and Level 5 felonies, neglect of a dependent resulting in bodily injury, carrying a handgun without a license, criminal recklessness, resisting law enforcement, reckless driving, and two counts of leaving the scene of an accident. (Tr. Vol. II 210). On November 29, 2023, the trial court sentenced Gentry to an aggregate term of forty years of incarceration with four years suspended to probation, enhanced by fifteen years by virtue of his habitual-offender status. (App. Vol. II 207–08).

Discussion and Decision

I. Evidence

[6] Gentry contends that the trial court abused its discretion in admitting Detective Sizemore's testimony that he thought Gentry had been shooting at him during the police chase. The trial court has broad discretion in ruling on the admission or exclusion of evidence. *Salle v. State*, 785 N.E.2d 645, 650 (Ind. Ct. App. 2003), *trans. denied*. A ruling on the admissibility of evidence will be disturbed only upon showing an abuse of discretion. *Id*. A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it. *Smith v. State*, 754 N.E.2d 502, 504 (Ind. 2001).

[7] Indiana Rule of Evidence 704(b) prohibits testimony concerning guilt or innocence in a criminal case. It is also true, however, that witnesses may testify to their opinion of the facts and circumstances if the opinion is rationally based on the witness's perception and it is helpful to achieving a clear understanding of the witness's testimony or the determination of a fact in issue. Ind. Evidence Rule 701. Such an opinion is admissible even if "it embraces an ultimate issue." Evid. R. 704(a). Rule 704(b) does not prohibit presentation of evidence that leads to an inference, even if no witness could state an opinion with respect to that inference. *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015). Opinion testimony may include evidence that leads to an incriminating inference so long as the opinion "stop[s] short of the question of guilt." *Id*.

[8] We conclude that the trial court did not abuse its discretion in admitting Detective Sizemore's testimony. Detective Sizemore's opinion that Gentry was

shooting at him was based on his personal perception of "a handgun com[ing] out of the vehicle [that Gentry was driving,] two shots being fired and a muzzle flash." Tr. Vol. II p. 157. While this testimony arguably touches on whether Gentry acted in such a way that could have been perceived as an attempt to kill Detective Sizemore, it stopped short of being an opinion that he was guilty of attempted murder. At the very least, the jury still had to decide if Gentry had had the requisite intent to kill Detective Sizemore. This is distinguishable from the opinion testimony that was found improper in *Williams*, 43 N.E.3d at 581–82, in which the Indiana Supreme Court concluded that an officer's testimony that he had seen a "transaction for cocaine" was improper because the testimony went beyond a mere description of the officer's observation of the defendant's actions and extended to the ultimate issue of guilt by stating that the officer had believed that the defendant's conduct satisfied every element of the dealing offense for which he was convicted. *Id*.

[9] In any event, Detective Sizemore's testimony was merely cumulative of other admitted evidence, and where there is substantial independent evidence of guilt such that there is no substantial likelihood that the challenged evidence contributed to the conviction, a defendant's conviction will not be overturned. *Wilkes v. State*, 7 N.E.3d 402, 406 (Ind. Ct. App. 2014). On Marion Police Officer Gregg Melton's body camera footage, which was admitted without objection, Detective Sizemore can be heard asking if "he shot at you too[,]" Tr. Vol. II p. 37, which, just as effectively as his testimony, demonstrated his belief that Gentry had been shooting at him. Because the testimony at issue was

merely cumulative of other admitted evidence, any error the trial court may have made in admitting Detective Sizemore's testimony can only be considered harmless. *King v. State*, 985 N.E.2d 755, 757 (Ind. Ct. App. 2013), *trans. denied*.

II. Sufficiency of the Evidence

[10] Gentry contends that the State produced insufficient evidence to sustain his convictions for Level 1 felony attempted murder and Level 5 felony neglect of a dependent. In reviewing a challenge to the sufficiency of the evidence to support a criminal conviction, we do not reweigh the evidence or assess the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). The evidence, even if conflicting, and all reasonable inferences drawn therefrom are viewed in a light most favorable to the conviction. *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012). The evidence need not overcome every reasonable hypothesis of innocence but is sufficient if a reasonable inference may be drawn from it to support the verdict. *Stubbers v. State*, 190 N.E.3d 424, 429 (Ind. Ct. App. 2022), *trans. denied*. We will affirm the conviction unless no reasonable fact-finder could find the elements of the offense proven beyond a reasonable doubt. *Delagrange v. State*, 5 N.E.3d 354, 356 (Ind. 2014).

A. Attempted Murder

[11] A person attempts to commit murder when he intentionally engages in conduct that constitutes a substantial step toward the killing of another human being. Ind. Code §§ 35-41-5-1(a), 35-42-1-1. The crime of attempted murder requires proof of a specific intent to kill. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). A defendant's state of mind must be determined by a consideration of

their conduct and the "natural and usual consequences of such conduct." *Metzler v. State*, 540 N.E.2d 606, 609 (Ind. 1989). The intent to commit murder may be inferred from the deliberate use of a deadly weapon in a manner likely to cause death or serious bodily injury. *Booker v. State*, 741 N.E.2d 748, 755 (Ind. Ct. App. 2000). Discharging a weapon in the direction of a potential victim is substantial evidence from which a jury can infer intent to kill. *Leon v. State*, 525 N.E.2d 331, 332 (Ind. 1988).

[12] We have little hesitation in concluding that evidence of Gentry's act of firing at pursuing officers during a high-speed chase is sufficient to sustain his conviction for attempted murder. *See Davis v. State*, 558 N.E.2d 811, 812 (Ind. 1990) (concluding that there was sufficient evidence to support a conviction for attempted murder where a defendant fled from police and fired shots at the pursuing officer); *see also Beadin v. State*, 533 N.E.2d 144, 146 (Ind. 1989) (concluding that there was sufficient evidence to support attempted-murder conviction where defendant leveled a shotgun at a police officer). Gentry's argument amounts to nothing more than an invitation to reweigh the evidence, which we will not do. *See, e.g.*, *McHenry*, 820 N.E.2d at 126.

B. Neglect of a Dependent

[13] To convict Gentry of Level 5 felony neglect of a dependent, the State was required to prove that Gentry, having the care of a dependent, assumed either voluntarily or due to a legal obligation, knowingly or intentionally placed the dependent in a situation that endangered her life or health and resulted in bodily injury. Ind. Code § 35-46-1-4. The danger to the dependent must be

actual and appreciable. *Perryman v. State*, 80 N.E.3d 234, 250 (Ind. Ct. App. 2017). The defendant must also be subjectively aware of a high probability that he placed the dependent in a dangerous situation. *Hastings v. State*, 560 N.E.2d 664, 666–67 (Ind. Ct. App. 1990), *trans. denied*.

[14] Gentry does not dispute that he put Wainscott's daughter in a situation that endangered her health and safety or that bodily injury resulted, arguing only that the State failed to prove that she was his dependent. (Def. Br. 26). To support his argument, Gentry argues only that he was neither a parent, guardian, nor custodian of Wainscott's child. The State, however, was under no obligation to prove any of these things because "dependent" is defined only as "an unemancipated person who is under eighteen (18) years of age[.]" Ind. Code § 35-46-1-1(1). Whether a child is a "dependent" of a defendant is a question to be resolved by the jury. *State v. Springer*, 585 N.E.2d 27, 30 (Ind. Ct. App. 1992).

[15] Gentry voluntarily placed Wainscott's infant daughter in a dangerous situation when he led police on a high-speed chase that involved gunfire and ended in a wreck. Gentry seems to argue that he could not have assumed care of Wainscott's child because Wainscott had still been in the vehicle. We fail to see how Wainscott's presence in the vehicle during the chase was relevant. Gentry assumed responsibility for and complete control over the dependent in the vehicle when he drove off with her in it. Gentry cites no authority, and we are aware of none, for the proposition that only one person can have assumed care of a particular dependent at any given moment. The State produced sufficient

evidence to sustain Gentry's conviction for Level 5 felony neglect of a dependent.

[16] We affirm the judgment of the trial court.

Crone, J., and Tavitas, J., concur.

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