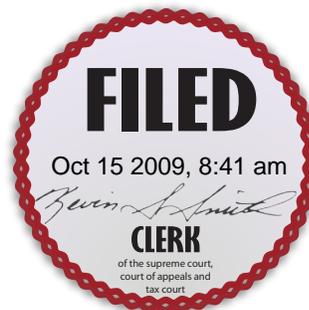


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

KAREN CELESTINO-HORSEMAN
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

KARL M. SCHARNBERG
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

M.M.,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-0903-JV-160
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0812-JD-4025

October 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

M.M. appeals his adjudication as a delinquent child for committing an act that would be intimidation¹ as a Class D felony if committed by an adult. Specifically, M.M. contends that the evidence is insufficient to support the juvenile court's true finding.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the true finding reveal that, in December 2008, Adam Crickmore was an employee of Scarborough Lake Apartments ("Scarborough") in Marion County, Indiana. Crickmore had worked for Scarborough for about a year and knew of M.M., a minor who lived with his mother in one of the Scarborough apartments. Crickmore also knew the friends that M.M. would "hang out with" at the apartment complex. *Tr.* at 23. In September 2008, "[M.M.] was some how [sic] involved with what [Crickmore] believed to be a theft of a cell phone." *Id.* at 16, 30. M.M.'s friend was also involved in the incident and "[got] in trouble" for it after Crickmore "pointed [those on the tape] out to a courtesy officer" that worked at Scarborough.² *Id.* at 21, 33, 34. Following that incident, and for months thereafter, M.M. called Crickmore a "snitch," and threatened him. *Id.* at 27. While none of these incidents resulted in Crickmore being physically harmed, M.M. said that Crickmore "was going to get his ass beat," and told Crickmore, "[D]on't let me catch you slipping [i.e., by yourself]." *Id.* at 27, 32.

On December 16, 2008, M.M. and his friends approached Crickmore and his two co-workers outside a maintenance shed at the rear of the Scarborough property. As the

¹ See Ind. Code § 35-45-2-1.

² A courtesy officer usually performs functions comparable to those performed by a security officer. <http://www.crimedocter.com/apartmen5.htm>.

employees tried to pass, M.M. and one of his friends came within four feet of Crickmore, and the friend asked M.M., “[Y]ou want me to hit him?” *Tr.* at 25. M.M. said, “[N]ah forget this,” and as M.M. started to leave, he said to one of Crickmore’s co-workers, “[D]on’t be mad when your head, when your boy gets his head blown off” *Id.* Crickmore understood that M.M. was referring to him “[b]ecause [they] had an altercation before that . . . incident.” *Id.* at 25. Crickmore reported the threat to his property manager, and took a few days off because he was in “[f]ear of [his] life.” *Id.* at 25, 28.

On December 22, 2008, the State filed a petition alleging that M.M. was a delinquent child by committing acts that would have been intimidation as a Class D felony if committed by an adult. *Appellant’s App.* at 13. The juvenile court held a denial hearing on February 23, 2009, at which Crickmore was the only witness. Following the hearing, the juvenile court adjudicated M.M. a delinquent. M.M. now appeals.

DISCUSSION AND DECISION

M.M. contends that the evidence is insufficient to support the true finding that he committed intimidation as a Class D felony. When reviewing a claim of insufficient evidence, we consider only the evidence that supports the verdict and draw all reasonable inferences therefrom. *Johnson v. State*, 743 N.E.2d 755, 757 (Ind. 2001). “When a conviction is based on circumstantial evidence, we will not disturb the verdict if the factfinder could reasonably infer from the evidence presented that the defendant is guilty beyond a reasonable doubt.” *Herron v. State*, 808 N.E.2d 172, 176 (Ind. Ct. App. 2004), *trans. denied*. “We need not find the circumstantial evidence overcomes every

reasonable hypothesis of innocence; rather, there must merely be a reasonable inference from the evidence supporting the verdict for us to find the evidence sufficient.” *Id.*

“When the State seeks to have a juvenile adjudicated to be delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of that crime beyond a reasonable doubt.” *Al-Saud v. State*, 658 N.E.2d 907, 908 (Ind. 1995). To support the true finding for intimidation as charged, the State had to prove that M.M. communicated to Crickmore a threat to commit a forcible felony with the intent that Crickmore be placed in fear of retaliation for a prior lawful act. Ind. Code § 35-45-2-1.

Citing to *Casey v. State*, 676 N.E.2d 1069 (Ind. Ct. App. 1997), M.M. insists that there was no evidence pertaining to Crickmore’s “prior lawful act.” *Appellant’s Br.* at 7. In *Casey*, the defendant threatened the victim with a baseball bat after hitting another individual in the back of the head with the same bat. Casey was charged with and convicted of intimidation. *Id.* On appeal, Casey argued that there was insufficient evidence of what prior lawful act led to the retaliatory threat. *Id.* at 1073. Casey’s charging information alleged that he communicated a threat to the victim with the intent that she be placed in fear of retaliation for “a prior lawful act to wit: threatened to kill her while armed with a deadly weapon to wit: a baseball bat.” *Id.* at 1072-73. Neither the charging information nor the evidence at trial revealed “a prior lawful act” for which the defendant was seeking retaliation. Our court reversed Casey’s intimidation conviction, noting that the State had failed to meet its burden of showing that a prior lawful act was the trigger for Casey’s threats.

Based on *Casey*, M.M. argues that we should reverse his true finding for intimidation because the statements themselves do not demonstrate the reasons for the threat. He argues that, like *Casey*, the evidence here is insufficient to show that M.M. made the statements to Crickmore in retaliation for a prior lawful act. We disagree.

M.M.'s reliance on *Casey* is misplaced. Here, the prior lawful act was set out in M.M.'s delinquency petition; M.M. was charged with placing Crickmore "in fear of retaliation for a prior lawful act, that is: having reported to law enforcement an incident involving one of said child's friends." *Appellant's App.* at 13. The evidence most favorable to the true finding reveals that, while looking at a Scarborough surveillance tape, Crickmore saw what he believed to be M.M. and his friends stealing a cell phone. Recognizing these individuals, Crickmore informed a Scarborough courtesy officer of the identity of those involved. One of M.M.'s friends was identified by Crickmore and "[got] in trouble for [what] was on that tape." *Tr.* at 17, 34, 39. Soon after Crickmore's identification, M.M. told Crickmore that he was a "snitch" and that he was "going to get" Crickmore. *Id.* at 27. M.M. also warned Crickmore that he better not be caught by himself on Scarborough property. *Id.* at 27. M.M.'s threats continued over a number of months. *Id.* On December 16, 2008, M.M. made a threat to Crickmore by addressing the following statement to one of Crickmore's co-workers in Crickmore's presence: "[D]on't be mad when . . . your boy gets his head blown off . . ." *Id.* at 25. Crickmore understood that this threat was being communicated toward him. *See S.D. v. State*, 847 N.E.2d 255, 259 (Ind. Ct. App. 2006) (threat made and intended to reach ears of target of threat is communicated under I.C. § 31-45-2-1), *trans. denied*. The factfinder could

reasonably infer that this threat was part of the pattern of threats M.M. had been making in connection with Crickmore's prior report to the courtesy officer. Crickmore told his property manager about M.M.'s threat and was concerned enough about his safety that he took off the following two days from work. *Tr.* at 28.

M.M. communicated to Crickmore a threat to commit a forcible felony with the intent that Crickmore be placed in fear of retaliation for the prior lawful act of having reported M.M.'s friend to the courtesy officer. M.M.'s words and actions following Crickmore's report were sufficient to show M.M.'s retaliatory intent. Based on these circumstances and facts, we conclude there was sufficient evidence to support the juvenile court's true finding. We affirm the juvenile court's adjudication of M.M. as a delinquent child for committing an act that would be intimidation as a Class D felony if committed by an adult.

Affirmed.

NAJAM, J., and BARNES, J., concur.