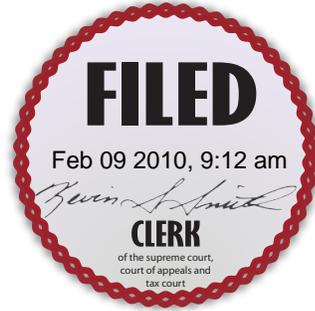


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JEREMY JAMISON,)
)
Appellant-Defendant,)
)
vs.) No. 88A01-0902-CR-79
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE WASHINGTON SUPERIOR COURT
The Honorable Frank Newkirk, Jr., Judge
Cause No. 88D01-0711-FD-421

February 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Jeremy Jamison was convicted after a bench trial of two counts of intimidation,¹ each as a Class D felony, and was found to be an habitual offender. He was sentenced to concurrent terms of one and a half years on the Class D felonies enhanced by four and a half years on the habitual offender determination, for an aggregate sentence of six years executed. He appeals, raising several issues, which we restate as:

- I. Whether sufficient evidence was presented to support Jamison's convictions for two counts of Class D felony intimidation;
- II. Whether Jamison improperly asserted an ineffective assistance of counsel claim;
- III. Whether his convictions were based on an insufficient charging information;
- IV. Whether the trial court erred in allowing testimony regarding other crimes, wrongs, or acts in violation of Indiana Evidence Rule 404(b); and
- V. Whether the trial court properly allowed the State to amend the habitual offender information.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 30, 2007, Jamison unexpectedly came to the school where his mother, Cheryl Baker ("Cheryl"), worked as a custodian. Prior to that date, Cheryl had not had any personal contact with Jamison for over a year and was therefore surprised when he came to see her. Cheryl met Jamison in the cafeteria, and after discussing some financial matters, they agreed to meet at 1:30 p.m. that afternoon at the home of Cheryl's mother. They met as

¹ See Ind. Code § 35-45-2-1.

planned, and Jamison asked Cheryl to drop him off at a location so that he could pick up his truck. On the way to this location, he asked Cheryl to stop at National City Bank, where he spent a few minutes. When he returned to the car, he told Cheryl that he wanted to speak with her and her husband, Andreas Baker (“Andy”), about a financial matter. When Cheryl told Jamison that there was no reason to involve her husband in a financial discussion, Jamison insisted that there was and that he wanted Cheryl to give him \$25,000. Jamison then told her that if he did not receive the money by 8:00 p.m., “501 East Homer Street and the people who live in it will no longer exist.” *Tr.* at 38. This address was the residence of Jamison’s sister, who lived with her husband and young child. This threat made Cheryl nervous and scared.

Jamison then told Cheryl to drive to the landfill, where Andy worked. When they arrived there, Jamison exited the vehicle. Andy saw them and approached. Andy asked Jamison “what was going on,” and Jamison replied that he wanted \$25,000 and that he would blow up his sister’s house with her family inside if he did not receive the money. *Id.* at 72-73. Andy then walked over to his vehicle, grabbed his gun, and told Jamison not to move until the police arrived. *Id.* at 73. Andy radioed another employee of the landfill and asked him to call the police. Jamison then reached inside his shirt, pulled out a cell phone, and talked on the phone. He asked, “are the wires hooked up so everything’s ready,” stated, “good,” and hung up the phone. *Id.* at 73-74. Cheryl motioned for Andy to approach her car and asked him to remove some duffle bags from the car because she was concerned they may contain bombs.

Washington County Deputy Sheriff James Strange arrived at the landfill in response to a radio call regarding an altercation. He observed Jamison standing outside of Cheryl's car, along with Andy. Cheryl, who had locked herself inside of her car, rolled down her window and told the deputy that Jamison had demanded \$25,000 or he was going to blow up his sister's house. *Id.* at 10. Andy told Deputy Strange that Jamison had made the same threat to him. Deputy Strange handcuffed Jamison and called the bomb squad. The bomb squad checked both the sister's house and the landfill and found no explosives.

On August 31, 2007, the State charged Jamison with two counts of intimidation, each as a Class D felony and filed an information alleging Jamison to be a habitual offender. The habitual offender information alleged that Jamison had been convicted of three counts of Class D felony theft in Washington Circuit Court on May 25, 1995 and two counts of theft and one count of forgery in the District Court of Maryland for Baltimore County on July 4, 2001. *Appellant's App.* at 14. On October 15, 2007, the State filed a motion to amend the habitual offender information, replacing the allegation of the prior Maryland convictions with an allegation of a prior conviction of Class D felony theft in Washington Circuit Court on May 16, 2001. *Id.* at 37-38. After a hearing, the trial court granted the motion.

On November 6, 2007, a bench trial was held, during which Jamison represented himself. At the conclusion of the trial, Jamison was found guilty as charged. The trial court sentenced Jamison to concurrent terms of one and a half years on each Class D felony intimidation conviction, enhanced by four and a half years for the habitual offender finding. Jamison now appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

I. Sufficient Evidence

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Gomez v. State*, 907 N.E.2d 607, 611 (Ind. Ct. App 2009), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Gomez*, 907 N.E.2d at 611; *Williams*, 873 N.E.2d at 147.

Jamison argues that the State failed to present sufficient evidence to support his two convictions for intimidation as Class D felonies. He specifically contends that there was not sufficient evidence to prove he communicated a threat to commit a forcible felony. He also claims that the only evidence supporting his convictions was the testimony of Cheryl and Andy and that they were biased against him. Further, Jamison alleges that the evidence presented at trial was insufficient to support two separate convictions for intimidation.

In order to convict Jamison of intimidation as a Class D felony, the State was required to prove that he communicated a threat to commit a forcible felony to another person with the intent that the other person engage in conduct against the other person's will. Ind. Code § 35-45-2-1(a)(1),(b)(1)(A). A forcible felony is defined as "a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being." Ind. Code § 35-41-1-11. In this case, the State charged Jamison with two

counts of Class D felony intimidation for communicating threats to both Cheryl and Andy. The State charged that Jamison communicated a threat to both Cheryl and Andy with the intent that they engage in conduct against their will and that the threat communicated was to commit a forcible felony, “to wit: to kill using an explosive device.” *Appellant’s App.* at 10, 12.

The evidence presented at trial showed that Jamison told Cheryl that he wanted her to give him \$25,000 and that if he did not receive the money, “501 East Homer Street and the people that live there will no longer exist.” *Tr.* at 37. This was the address where Jamison’s sister lived with her husband and young child. After Cheryl drove him to the landfill, Jamison told Andy that he wanted \$25,000 and was going to blow up his sister’s house if he did not receive it. *Id.* at 72-73. This evidence clearly showed that Jamison communicated a threat of his intent to blow up his sister’s house with her family inside of it to both Andy and Cheryl with the intent that Andy and Cheryl engage in conduct against their will, namely give him \$25,000.

Contrary to Jamison’s contention, it is irrelevant that he did not have a weapon when he communicated these threats to Andy and Cheryl. The threat that he was charged with communicating was to kill his sister and her family at their house with an explosive device, which did not require that he have any weapon on his person. We have previously determined that other threats of potential, nonspecific violence constituted a threat to commit a forcible felony. In *Huber v. State*, 805 N.E.2d 887 (Ind. Ct. App. 2004), the defendant’s statement to the victim that, if she or her agency did not stop working with his soon to be ex-

wife, “things were not going to be real pretty” was found to be sufficient to sustain a conviction for Class D felony intimidation. *Id.* at 891. Likewise, in *Williams v. State*, 677 N.E.2d 1077 (Ind. Ct. App. 1997), the defendant’s statement to a State’s witness that “[you] better not testify against [me]” was found sufficient to sustain a conviction for intimidation as a Class D felony. *Id.* at 1079.

Additionally, Jamison’s argument regarding the bias of Cheryl and Andy against him essentially is asking that we judge witness credibility and reweigh the evidence, which we cannot do. *Gomez*, 907 N.E.2d at 611. We therefore conclude that sufficient evidence was presented to support Jamison’s two convictions for intimidation as Class D felonies.

II. Ineffective Assistance of Counsel

Jamison argues that he received ineffective assistance of counsel during his trial proceedings because he represented himself and failed to make several objections and to properly present issues. “[A] defendant who chooses to proceed pro se must accept the burdens and hazards of self-representation and may not assert a Sixth Amendment claim of ineffective assistance of counsel.” *Warr v. State*, 877 N.E.2d 817, 823 (Ind. Ct. App. 2007) (citing *Carter v. State*, 512 N.E.2d 158, 162 (Ind. 1987) (citing *Faretta v. California*, 422 U.S. 806, 835 n.46, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975))), *trans. denied* (2008). Jamison represented himself during his bench trial. Therefore, he cannot now claim ineffective assistance of counsel.

III. Deficient Charging Information

Jamison contends that the charging information against him was deficient. Generally, any challenge to the sufficiency of a charging information must be made by motion to dismiss prior to the arraignment. *Stevens v. State*, 913 N.E.2d 270, 278-79 (Ind. Ct. App. 2009). Failure to assert error in an indictment or information results in waiver of that error. *Id.* at 279. Here, Jamison did not challenge the sufficiency of the charging information prior to trial. He has therefore waived any error.

Waiver notwithstanding, because Jamison failed to challenge the information prior to trial, he must assert that any error was fundamental. The fundamental error rule is very narrow. *Boesch v. State*, 778 N.E.2d 1276, 1279 (Ind. 2002). “Fundamental error occurs only when the error ‘constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process.’” *Kimbrough v. State*, 911 N.E.2d 621, 634 (Ind. Ct. App. 2009).

Jamison argues that the State’s charging information was insufficient under Article 1, section 13 of the Indiana Constitution and the Sixth Amendment to the United States Constitution. He contends that the information was deficient because it failed to allege that his threats to Cheryl and Andy involved the use of threat of force against a human being. He asserts this is because the language did not specify what or who he was alleged to have threatened to kill using an explosive device and nothing in the information indicated what conduct Cheryl and Andy were to engage in against their will.

Assuming without deciding that the information was deficient, we conclude that Jamison did not suffer any prejudice. It has previously been held that no prejudice occurs when the probable cause affidavit, but not the charging information, apprises the defendant of the charges against him. *See Clemens v. State*, 610 N.E.2d 236, 244 (Ind. 1993) (holding that no prejudice occurred when probable cause affidavit, but not information apprised defendant of means and manner of death); *Patterson v. State*, 495 N.E.2d 714, 719 (Ind. 1986) (holding that defendant was sufficiently apprised of charges against him by probable cause affidavit supporting information); *Williams*, 677 N.E.2d at 1080 n.4 (finding that probable cause affidavit attached to information, which specifically identified content of threats, was sufficient to prevent prejudice to defendant). Here, the trial court found that the probable cause affidavit was provided to Jamison and adequately advised him of the allegations against him. Jamison therefore suffered no prejudice and has shown no fundamental error.

IV. Admission of 404(b) Evidence

The admission of evidence is within the sound discretion of the trial court. *Cox v. State*, 774 N.E.2d 1025, 1026 (Ind. Ct. App. 2002). We will not reverse the trial court's decision to admit evidence absent an abuse of discretion. *Boney v. State*, 880 N.E.2d 279, 289 (Ind. Ct. App. 2008), *trans. denied*. An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court. *Id.*

Indiana Evidence Rule 404(b) states:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may,

however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pre-trial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Jamison argues that the trial court abused its discretion when it allowed Cheryl's testimony regarding other crimes, wrongs, or acts by Jamison to be admitted into evidence. He first contends that testimony elicited from Cheryl by him on re-cross examination regarding previous violent conduct was admitted in error. He next claims that further testimony given by Cheryl in response to questions by the State regarding violence directed at a past girlfriend should not have been allowed.

A party may not invite error at the trial level and then argue on appeal that the error supports reversal. *Dumas v. State*, 803 N.E.2d 1113, 1121 (Ind. 2004). Because Cheryl's testimony on re-cross examination was in response to Jamison's own questions, any error was invited error. As to the testimony elicited by the State about violence against a prior girlfriend, we conclude that Jamison has waived this argument. Failure to object at trial to the admission of evidence results in waiver of that issue on appeal. *Roberts v. State*, 894 N.E.2d 1018, 1026 (Ind. Ct. App. 2008), *trans. denied*. Because Jamison did not make a contemporaneous objection when this testimony was given by Cheryl, he has waived any error.

V. Amendment of Habitual Offender Information

Jamison argues that the trial court abused its discretion when it allowed the State to amend the habitual offender charging information. Indiana Code section 35-34-1-5 provides in pertinent part:

(b) The indictment or information may be amended in matters of substance and the names of material witnesses may be added, by the prosecuting attorney, upon giving written notice to defendant at any time:

(1) up to:

(A) thirty (30) days if the defendant is charged with a felony;
or

(B) fifteen (15) days if the defendant is charged only with one or more misdemeanors;

before the omnibus date; or

(2) before the commencement of trial;

if the amendment does not prejudice the substantial rights of the defendant. When the information or indictment is amended, it shall be signed by the prosecuting attorney or a deputy prosecuting attorney.

(c) Upon motion of the prosecuting attorney, the court may, at any time before, during, or after the trial, permit an amendment to the indictment or information in respect to any defect, imperfection, or omission in form which does not prejudice the substantial rights of the defendant.

Ind. Code § 35-34-1-5(b), (c).

Here, the State filed an information for an habitual offender enhancement on August 31, 2007, which alleged that Jamison had been convicted of three counts of Class D felony theft in Washington Circuit Court on May 25, 1995. *Appellant's App.* at 14. The information further alleged that he had been convicted of two counts of theft and one count

of forgery in the District Court of Maryland for Baltimore County on July 4, 2001. *Id.* On October 15, 2007, the State filed a motion to amend the information, replacing the allegation of the prior Maryland convictions with an allegation that he had been convicted of theft as a Class D felony in Washington Circuit Court on May 16, 2001. *Id.* at 37-38. In this motion, the State explained it was moving to amend the information pursuant to Indiana Code section 35-34-1-5(c). *Id.* at 37. The trial court granted the State's motion on October 31, 2007, and a bench trial was held on November 6, 2007. Therefore, the State moved to amend the information twenty-two days prior to trial.

Under Indiana Code section 35-34-1-5(c), a trial court may allow the amendment of an information as to any defect, imperfection, or omission in form at any time before, during, or after the trial as long as the amendment does not prejudice the substantial rights of the defendant. Under Indiana Code section 35-34-1-5(b), the information may be amended in matters of substance at any time before commencement of trial if the amendment does not prejudice the substantial rights of the defendant. Ind. Code § 35-34-1-5(b)(2). Under either subsection, the State's motion to amend was timely filed as it was done prior to the commencement of trial. Thus, the only consideration is whether the amendment prejudiced Jamison's substantial rights.

“A defendant's substantial rights include a right to sufficient notice and an opportunity to be heard regarding the charge; and, if the amendment does not affect any particular defense or change the positions of either of the parties, it does not violate these rights.” *Gomez*, 907 N.E.2d at 611 (quoting *Ramon v. State*, 888 N.E.2d 244, 252 (Ind. Ct.

App. 2008)). Ultimately, the question is whether the defendant had a reasonable opportunity to prepare for and defend against the charges. *Id.* In the present case, the time period between the motion to amend the information and the bench trial was twenty-two days. Additionally, the amendment to the habitual offender information replaced an allegation of prior convictions in Maryland with an allegation of a prior conviction in Washington Circuit Court, which was also the location of the second allegation in the habitual offender information. This made it easier for Jamison to obtain documentation regarding the alleged prior convictions to assist in his defense as they were from Washington County, which was located in the same jurisdiction as the present charges. We therefore conclude that the amendment did not prejudice Jamison's substantial rights, and the trial court did not abuse its discretion in allowing the amendment.

Affirmed.

DARDEN, J., and MAY, J., concur.