

Case Summary

Michael P. Singh appeals his conviction for Class D felony intimidation. Singh contends that the evidence is insufficient to sustain his conviction. Concluding that the evidence is sufficient, we affirm.

Facts and Procedural History

In October 2008, Joseph Fox and Terrance Ciesielski were employed as auto technicians at Sears Auto Center in St. Joseph County. Fox and Ciesielski were test-driving a customer's vehicle around the mall parking lot to identify a rattling noise. Fox was driving, and Ciesielski was in the front passenger seat. As they were driving, they saw a black Ford Focus "flying up from the Grape Road entrance into the mall," Tr. p. 13, "trying to pass people," *id.* at 38, and driving "kind of crazy for the mall parking lot," *id.* As the Focus sped around a curve, it came "no more than a foot away" from hitting a pedestrian. *Id.* at 30.

Fox and Ciesielski decided to drive out of the mall area to determine if the vehicle would make a rattling noise at a higher speed. As they pulled up to a red light to exit the mall area, they noticed that the Focus was on their left side already waiting at the light. Fox, whose window was down to listen for the rattling noise, motioned to the driver of the Focus, later identified as Singh, and told him, "[H]ey, you're driving like a nut and you about hit that woman back there, you better just slow it down." *Id.* at 39. Fox saw Singh's lips move and then saw Singh point a gun at him. Although Fox could not hear what Singh said because Singh's front passenger side window was up, Fox "thought [he]

could have been killed” and “was pretty scared.” *Id.* at 16. Fox made a right-hand turn, drove away from Singh, and told Ciesielski that Singh pulled a gun on him.

Fox called 911. The police arrested Singh outside of a nearby Pizza Hut, where Singh was employed as a delivery driver. Before Singh’s vehicle was searched, Singh told Officer Steve Headley of the Mishawaka Police Department that there was a pellet gun in his vehicle because he has a problem with squirrels at his house. Officer Headley recovered a pellet gun from Singh’s vehicle. It resembled a semiautomatic handgun with a laser sight.

The State charged Singh with Class D felony intimidation. Ind. Code § 35-45-2-1(b)(1)(A). Before the jury trial, Singh went to Sears Auto Center and apologized to Fox for the incident. At the jury trial, Fox, Ciesielski, and Officer Headley testified for the State. Singh testified in his own defense that Fox yelled at him, “[Y]ou f’in n*gger, driving like that somebody is going to beat your ass.” Tr. p. 77. Singh admitted that he pointed the pellet gun at Fox but claimed that he did so because he feared for his life. The jury found Singh guilty of Class D felony intimidation. The trial court sentenced him to eighteen months in the Indiana Department of Correction.

Singh now appeals.

Discussion and Decision

Singh contends that the evidence is insufficient to sustain his conviction.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 925 N.E.2d 773, 781 (Ind. Ct.

App. 2010), *reh'g denied, trans. denied*. We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the verdict. *Id.* A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable people would not be able to form inferences as to each material element of the offense. *Id.*

In order to convict Singh as charged here, the State had to prove that he communicated to Fox a threat to commit the forcible felony of battery with a deadly weapon with the intent that Fox be placed in fear of retaliation for Fox's prior lawful act of telling Singh to drive more carefully. I.C. § 35-45-2-1(a)(2), (b)(1)(A); Appellant's App. p. 8. A "threat" is defined as an expression, by words or action, of an intent to unlawfully injure the person threatened. I.C. § 35-45-2-1(c)(1); *Johnson v. State*, 743 N.E.2d 755, 757 (Ind. 2001).

Singh first argues that he merely "displayed a pellet gun, and therefore did not communicate any threat." Appellant's Br. p. 5. Our Supreme Court has agreed with the general proposition that the mere display of a handgun does not express an intention to unlawfully injure a person or his property. *Johnson*, 743 N.E.2d at 756 (citing *Gaddis v. State*, 680 N.E.2d 860, 862 (Ind. Ct. App. 1997)). The evidence, however, shows that Singh did not merely display the gun but actually pointed it at Fox. Fox testified on direct:

A I saw [Singh's] lips move and all of a sudden -- I just kind of shook my head out of disgust. Then I saw a pistol raised up . . . from the passenger seat, I'm assuming, is where it was sitting. And out of fear, I just took off

Q Did you hear anything that he said?
A No, ma'am.
Q And can you describe the gun?
A It was black and silver or along that area from what I can remember.
It was pretty quick.
Q Do you see the person in the courtroom today that pointed that gun
at you?
A Yes, ma'am.

Tr. p. 15. At that point, Fox identified Singh in the courtroom. Moreover, Singh himself admitted on cross that he pointed the gun at Fox:

Q . . . No dispute that you were the person in the car.
A Yes, I was the person in the car.
Q That you were the one that pointed the gun at Mr. Fox.
A I pointed a pellet gun, yes.
* * * * *
Q Mr. Singh, you pointed the gun to keep somebody away from you, --
A Exactly.
* * * * *
Q . . . You pointed the gun to keep somebody away from you, correct?
That's been your testimony --
A I pointed a gun to keep the person from further acting upon their
actions, yes.

Id. at 87-88, 90, 90-91. This testimony is sufficient to show that Singh pointed the gun at Fox and, by that action, communicated a threat.

Singh then argues that the State failed to prove that the threat was intended to place Fox in fear of retaliation for his prior lawful act of telling Singh to drive more carefully. The State must prove that the victim engaged in a prior act which was not contrary to law and that the defendant intended to repay the victim for the prior lawful act. *Casey v. State*, 676 N.E.2d 1069, 1072 (Ind. Ct. App. 1997). Mere proof that the victim is engaged in an act which is not illegal at the time the threat is made is not

sufficient. *Id.* The State must establish that the legal act occurred before the threat and that the defendant intended to place the victim in fear of retaliation for that act. *Id.*

Singh cites *Ransley v. State*, 850 N.E.2d 443 (Ind. Ct. App. 2006), *trans. denied*, for support. In *Ransley*, the defendant and his neighbor had argued for nearly two years about a six-foot wide strip of land running along their shared property line. *Id.* at 444. They had multiple verbal confrontations, and each engaged in overt actions attempting to demonstrate ownership of the disputed land. *Id.* One day, the neighbor was mowing the grass when he found various items, such as planking, cinder blocks, and assorted wooden stakes, on the contested strip of land. *Id.* Another verbal altercation ensued, which resulted in the defendant pointing a handgun at the neighbor. *Id.* The State alleged that the defendant had threatened the neighbor with the intent to keep the neighbor off the defendant's property and/or to place the neighbor in fear for the prior lawful act of arguing. *Id.* at 445.

This Court explained that the evidence was insufficient to support the defendant's conviction based on keeping the neighbor off the defendant's property because the alleged threat was intended to prevent future action rather than repay the neighbor for a prior act and because the neighbor entering the defendant's property without permission would constitute an unlawful rather than lawful act. *Id.* at 447. In addition, we determined that the evidence was insufficient to support the defendant's conviction based on the prior act of arguing because there was no evidence linking the defendant's threat to the act of arguing. *Id.* at 447-48. We therefore reversed his conviction. *Id.* at 448.

Likewise, here, Singh argues that “[t]here was no evidence proving any reason for any threat.” Appellant’s Br. p. 6. Specifically, Singh argues that neither Fox nor Ciesielski heard Singh say anything, that he was defending himself from racial epithets, and that he was not threatening Fox but wanted to keep Fox away from him because he was in fear.

The evidence most favorable to the verdict shows that Fox and Ciesielski were driving around the mall parking lot when they saw Singh, a man they did not know, speeding carelessly through the lot and nearly hitting a pedestrian. When they pulled up next to Singh at a red light, Fox cautioned him to drive more carefully. In response, Singh pointed a pellet gun resembling a semiautomatic handgun with a laser sight at Fox. From this evidence, the jury could reasonably infer that Singh’s threat was intended to place Fox in fear of retaliation for his prior lawful act of telling Singh to drive more carefully. The evidence is thus sufficient to sustain Singh’s conviction. Singh invites us to reweigh the evidence, which we may not do.

Affirmed.

BAKER, J., and BARNES, J., concur.