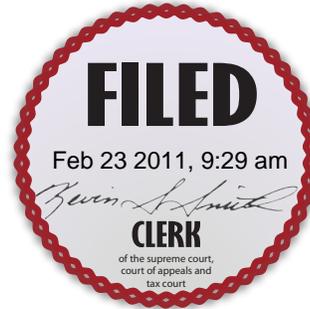


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT BEELER,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A04-1007-CR-456

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kurt M. Eisgruber, Judge
The Honorable Steven Rubick, Commissioner
Cause No. 49G01-1003-FC-21376

February 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

After being dispatched to a fight in progress at an Indianapolis apartment complex, officers attempted to subdue a combative participant. The officers arrested the man and attempted to search him before placing him in the paddy wagon. When one officer forced the man's mouth open to conduct a mouth search, the man looked the officer in the eye and said, "I'm going to kill you, punk ass nigger." Tr. at 30, 57, 83.

The man, Robert Beeler, was subsequently charged with and convicted of class D felony intimidation. On appeal, he challenges the sufficiency of evidence to support his conviction for class D felony intimidation. Finding the evidence to be sufficient, we affirm.

Facts and Procedural History

The facts most favorable to the verdict indicate that on February 23, 2010, Indianapolis Metropolitan Police Officers Marvin Bankhead and Tracy Dobbs were dispatched to the scene of a fight in progress at an Indianapolis apartment complex. When they arrived, they spoke to several bystanders and determined that probable cause existed to arrest Beeler, who was combative and uncooperative. Before they placed him in the paddy wagon, the officers attempted to search him. Deputy Russell Stilwell, the driver of the wagon, struggled to conduct a mouth search of Beeler. Thereafter, Officer Bankhead used his thumb to force open Beeler's mouth. When he had completed the mouth search, Officer Bankhead released Beeler's mouth, and Beeler looked directly at Officer Bankhead and said, "I'm going to kill you, punk ass nigger." *Id.* at 30, 57, 83.

On March 19, 2010, the State charged Beeler with one count of class C felony intimidation, two counts of class D felony intimidation, and one count of class A misdemeanor battery. Before trial, the State dismissed all counts except one count of class D felony intimidation. On June 16, 2010, Beeler was tried by jury and convicted on that charge. He now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Beeler challenges the sufficiency of evidence to support his conviction. When reviewing a sufficiency claim, we neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the verdict. *Huber v. State*, 805 N.E.2d 887, 890 (Ind. Ct. App. 2004). We affirm the conviction unless no reasonable trier of fact could find the elements of the crime proven beyond a reasonable doubt. *Id.*

Indiana Code Section 35-45-2-1 states that a person who communicates a threat to another person, with intent to place the person in fear of retaliation for a prior lawful act, commits intimidation. Intimidation is a class D felony “if the threat is to commit a forcible felony.” *Id.*¹ To establish intimidation, the State must specifically identify a legal act by the victim and establish that the legal act occurred prior to the threat that placed the victim in fear

¹ Indiana Code Section 35-41-1-11 defines forcible felony 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.”

of retaliation for that act. *Casey v. State*, 676 N.E.2d 1069, 1072 (Ind. Ct. App. 1997).²

Here, Beeler asserts that the evidence is insufficient to show that his threat was directly aimed at Officer Bankhead to place him in fear of retaliation for a prior lawful act. First, we note that the charge clearly identified Officer Bankhead as the victim and the prior lawful act as being “assisting in a search of Robert Beeler.” Appellant’s App. at 20. Moreover, the evidence supports a reasonable inference that Beeler’s threat was made specifically to place Officer Bankhead in fear of retaliation for a prior lawful act. The search was a lawful search incident to arrest, as Beeler was being placed under arrest and was about to be placed in the paddy wagon to be transported to the jail. *See VanPelt v. State*, 760 N.E.2d 218, 222 (Ind. Ct. App. 2001) (stating that officer may conduct warrantless search incident to a lawful arrest where search is contemporaneous and limited to area within arrestee’s immediate control), *trans. denied* (2002). Finally, the record indicates that Beeler made the threat to Officer Bankhead immediately after Officer Bankhead removed his thumbs from Beeler’s mouth. All three officers on the scene testified that Beeler’s threat was a direct response to Officer Bankhead’s mouth search. To the extent Beeler argues that he was merely hurling general insults and threats throughout the incident, we decline his invitation to reweigh evidence and conclude that the evidence most favorable to the verdict is

² To the extent Beeler relies on *Casey v. State*, 676 N.E.2d 1069 and *Ransley v. State*, 850 N.E.2d 443 (Ind. Ct. App. 2006), *trans. denied*, we find both cases to be distinguishable. *See Casey*, 676 N.E.2d at 1072 (holding that evidence was insufficient to establish intimidation where the State failed to identify a specific prior legal act by the victim for which defendant placed her in fear of retaliation); *see also Ransley*, 850 N.E.2d at 447 (holding that evidence was insufficient to establish intimidation where defendant’s threat was aimed at victim’s *future*, not prior, act).

sufficient to support his intimidation conviction. Accordingly, we affirm.

Affirmed.

KIRSCH, J., and BRADFORD, J., concur.