

STATEMENT OF THE CASE

Appellant-Defendant, Lanetta Y. Jackson (Lanetta), appeals her conviction for intimidation, a Class A misdemeanor, Ind. Code § 35-45-2-1.

We affirm.

ISSUE

Lanetta raises one issue for our review, which we restate as: Whether there was sufficient evidence to prove beyond a reasonable doubt her conviction of intimidation.

FACTS AND PROCEDURAL HISTORY

Lanetta had been married to Eric Jackson (Eric), and they had a daughter together. Lanetta had recently become upset with Eric about a custody determination because he had received custody of their daughter. On November 12, 2008, Reginald Shelt (Shelt), a mutual acquaintance of both Eric and Lanetta, received a text message from Lanetta on his cell phone. The text message stated, “[Shelt]! U (sic) gotta make sure u (sic) see after [my son]. I’m goin (sic) away for a long time.” (Defendant’s Exhibit A). After receiving this text, Shelt became worried about Lanetta, so he attempted to call her three times but she did not answer the phone. Shelt decided to go to Lanetta’s home. On the way there, he called Eric and told him about the text message he had received from Lanetta. When Shelt got to Lanetta’s house, Lanetta told him that Eric had ruined her life by winning custody of their daughter and that she planned to murder Eric. She went on to say that she had prepared by going over to Eric’s house the previous day to see who would answer the door. Shelt talked

with Lanetta for about thirty-five minutes and tried to talk her out of her plan. He told her that he was “not going to let [her] go away for a long time.” (Transcript p. 25).

After Shelt left Lanetta’s house, he called Eric again and told him what Lanetta had said because he was “very concerned.” (Tr. p. 24). He cautioned Eric by telling him to “take [Lanetta’s statements] seriously.” (Tr. p. 26). Then, Shelt called 911 to report Lanetta’s statements. Officers Brian Lucas (Officer Lucas) and Erica Schneider (Officer Schneider) of the Lawrence Police Department went to Lanetta’s home to investigate Shelt’s allegations. Officer Lucas asked Lanetta if she knew why the Officers had come to her house, and she responded affirmatively. He then asked her whether she had gone to Eric’s house the prior day to prepare. He stated, “So, you’re – you went over to the door, knocked on it, saw who was going to answer and then you were going to kill [Eric] and then call the police afterwards, turn around, walk back to the car and call the police?” She said, “Yes.” (Tr. p. 37). Lanetta started crying and stated that Eric had ruined her life. The Officers then took Lanetta to Gallahue Mental Health Facility for an evaluation. Officer Lucas then informed Eric about Lanetta’s threats.

On November 19, 2008, the State filed an Information, charging Lanetta with intimidation, a Class D felony, I.C. § 35-45-2-1. On May 18, 2009, the trial court conducted a bench trial. At the close of evidence, the trial court found Lanetta guilty. On August 4, 2009, at the sentencing hearing, the trial court entered judgment of her conviction as a Class A misdemeanor. Lanetta was sentenced to three hundred-sixty-five days, with three hundred

fifty-nine days suspended, probation for three hundred fifty-nine days, issued a no-contact order, and ordered a mental health evaluation and treatment.

Lanetta now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Lanetta argues that the evidence presented by the State was insufficient to support a conviction for intimidation. Specifically, she argues that she did not communicate the threat directly to Eric and never intended for the statement to reach Eric. Our standard of review in such cases is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Rohr. v. State*, 866 N.E.2d 242, 248 (Ind. 2007). This court will consider only evidence most favorable to the verdict and will draw all reasonable inferences therefrom. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable fact-finder could find the defendant guilty beyond a reasonable doubt. *Id.*

Indiana Code section 35-45-2-1 provides, in relevant part, that a person commits intimidation when she “communicates a threat to another person, with the intent that the other person be placed in fear of retaliation for a prior act[.]” The offense is a Class D felony if, the threat is to commit a forcible felony. Even though the communication may be indirect, a defendant must have known or had reason to know that her communication will reach the victim. *J.T. v. State*, 718 N.E.2d 1119, 1123 (Ind. Ct. App. 1999).

Lanetta directs us to *Ajabu v. State*, 677 N.E.2d 1035, 1037 (Ind. Ct. App. 1997), *trans. denied*, for the proposition that in order to ‘communicate’ within the meaning of I.C. § 35-42-2-1(a), one must have reason to believe that the other person will hear the threat. In

that case, Ajabu made public threats to media threatening to kill the attorney prosecuting his son's case. *Id.* at 1036-37. Ajabu argued that when he made those comments to the media, he was not communicating his threat to the prosecutor within the meaning of I.C. § 35-42-2-1(a). *Id.* at 1042. This court made a distinction between comments meant to remain private and Ajabu's comments, which were "messages which he repeatedly and emphatically sought to convey through the news media" and had reason to believe that the prosecutor would hear his threats. *Id.* Essentially, we stated that the communication element of the offense is met if the defendant knew or had reason to believe that the communication would reach its intended target. *Id.* at 1043.

Despite the fact that Lanetta argues that she never asked anyone to communicate her threats to Eric, she knew or should have known that Shelt would share her comments with Eric. Though Shelt testified that he and Eric were acquaintances rather than close friends, Lanetta knew that Shelt and Eric talked to each other. In fact, Shelt testified that he was "pretty sure" that Lanetta knew he and Eric had each other's cell phone numbers. (Tr. p. 27). While Shelt was at Lanetta's, he attempted to convince her not to go through with her plan. In fact, he told her that he was "not going to let [her] go away for a long time." (Tr. p. 25). Thus, Lanetta was not only aware that Shelt disapproved of her plan, but also that it was probable Shelt would inform Eric because she knew they were acquaintances. Moreover, there was no evidence in the record that Lanetta told Shelt to keep their conversation private or that Shelt told Lanetta that he would not inform Eric.

Additionally, Lanetta knew or should have known that by confirming her plan to the Officers, they would be obligated to inform Eric. As Officer Lucas testified, while he was questioning Lanetta, he

then asked her that [was] when she went over [to Eric's house] and knocked on the door [as if] she practicing what she was going to do. She said, 'Yes.' I said, 'So, you're- you went over to the door, knocked on it, saw who was going to answer and then you were going to kill [Eric] and then call the police afterwards, turn around, walk back to the car and call the police?' She said, 'Yes.'

(Tr. p. 37). To the extent that Lanetta argues that she did not actually state she was going to kill Eric but just confirmed the Officer's questions, Officer Schneider testified, "in a [] conversation that we had she indicated that she was going to kill [Eric]." (Tr. p. 50). Based on this, Lanetta not only communicated her plan but also knew that Eric would hear about it.

CONCLUSION

Based on the foregoing, we find that the State presented sufficient evidence beyond a reasonable doubt to support a conviction of intimidation.

Affirmed.

CRONE, J., concurs.

VAIDIK, J., concurs in result.