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**IN THE
COURT OF APPEALS OF INDIANA**

FRANK CASTILLO,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A05-0910-CR-564

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara A. Collins, Judge
Cause No. 49F08-0904-CM-39059

May 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Frank Castillo appeals his conviction for intimidation as a class A misdemeanor.¹ Castillo raises one issue, which we revise and restate as whether the evidence is sufficient to sustain his conviction for intimidation as a class A misdemeanor. We affirm.

The relevant facts follow. On April 10, 2009, Castillo was taken by ambulance to the emergency room at Wishard Hospital. When Castillo, who was on a gurney, arrived at “the communications desk for the triage,” he was “in a rage” and he “was yelling and cursing at the medics and nursing staff that were attempting to triage him” Transcript at 4, 24, 26. The staff at the communications desk “called overhead page for a disturbance,” and Marion County Deputy Sheriff Ryan Farrell responded to the call. Id. at 4-5. Deputy Farrell approached Castillo and asked him to be quiet multiple times and told him that he “need[ed] to calm down while [he was] here.” Id. at 6. Castillo told Deputy Farrell: “F--- you motherf---er, what you going to do.” Transcript at 15, 28. Deputy Farrell then placed Castillo under arrest. At some point after Deputy Farrell placed handcuffs on Castillo, Castillo stated that “if he had a weapon he would shoot [Deputy Farrell] in the head.” Id. at 10. Castillo also stated to Deputy Farrell: “you’re such a big man because you’ve got a gun” Id. at 29.

On April 11, 2009, the State charged Castillo with intimidation as a class A misdemeanor, disorderly conduct as a class B misdemeanor, and public intoxication as a class B misdemeanor. After a bench trial, the trial court found Castillo guilty of intimidation as a class A misdemeanor and disorderly conduct as a class B misdemeanor,

¹ Ind. Code § 35-45-2-1 (Supp. 2006).

and not guilty of public intoxication. The court sentenced Castillo to a total term of 365 days for the intimidation conviction, with two days executed for time served and 363 days suspended to probation. The court also sentenced Castillo to 180 days for the disorderly conduct conviction, with two days executed for time served and 178 days suspended to probation, to be served concurrently with the sentence for the intimidation conviction.

The sole issue is whether the evidence is sufficient to sustain Castillo's conviction for intimidation as a class A misdemeanor.² When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

The offense of intimidation is governed by Ind. Code § 35-45-2-1, which provides in pertinent part that "[a] person who communicates a threat to another person, with the intent . . . that the other person be placed in fear of retaliation for a prior lawful act . . .

² Castillo does not appeal his conviction for disorderly conduct as a class B misdemeanor.

commits intimidation, a Class A misdemeanor.” Ind. Code § 35-45-2-1(a). A “threat” is “an expression, by words or action, of an intention to . . . unlawfully injure the person threatened or another person [or] commit a crime” Ind. Code § 35-45-2-1(c). To convict Castillo of intimidation as a class A misdemeanor, the State was required to prove beyond a reasonable doubt that Castillo communicated a threat to Deputy Farrell with the intent that Deputy Farrell be placed in fear for “placing Castillo under arrest and/or telling him to stop yelling.” Appellant’s Appendix at 17; see Ind. Code § 35-45-2-1.

Castillo argues that “the evidence adduced at trial does not meet the elements [of intimidation], not to mention that his testimony was that he did not make the threat.” Appellant’s Brief at 6. Castillo argues that “[t]his case was presented by only two witnesses, appellant and Deputy Farrell.” Id. Castillo argues that “[h]e described himself as possibly suffering from a heart attack or a panic attack” and that “[i]t is within this context that the evidence must be viewed.” Id. Castillo further argues that he “stated he was upset and scared of the deputy, but did not threaten him as alleged,” and that “appellant believes that the expressed lack of fear by Deputy Farrell illuminates the encounter and shows it to be a statement that was not intended to create fear for the act of arresting Mr. Castillo.” Id. Castillo also argues that “the circumstances of this encounter, involving an individual in need of psychiatric care in an emergency room who was somewhat ‘out of it’ does not rise to the level of a threat to create fear for lawful

activity.” Id. Castillo’s argument is merely a request that we reweigh the evidence, which we cannot do. See Drane, 867 N.E.2d at 146.

We also note that because intent is a mental function, it must be determined from a consideration of the defendant’s conduct and the natural and usual consequences of such conduct, absent an admission from the defendant. Hendrix v. State, 615 N.E.2d 483, 484-485 (Ind. Ct. App. 1993) (citing Metzler v. State, 540 N.E.2d 606, 609 (Ind. 1989)). To determine whether the defendant intended to commit the conduct, the trier of fact must usually resort to reasonable inferences based upon an examination of the surrounding circumstances. Id.

Here, the evidence most favorable to the conviction shows that Castillo told Deputy Farrell that “if he had a weapon he would shoot [Deputy Farrell] in the head.” Transcript at 10. There was testimony at trial regarding the extent to which Castillo exhibited signs of being impaired; however, Castillo’s Rule 41(B) motion for involuntary dismissal was granted as to the public intoxication count, and sufficient evidence existed for the trier of fact to determine that Castillo’s mental faculties were not sufficiently impaired to negate intent when he made the threat and that he intended to place Deputy Farrell in fear of retaliation for arresting him. Based upon our review of the record, we conclude that evidence of probative value exists from which the trial court could reasonably have found beyond a reasonable doubt that Castillo committed intimidation as a class A misdemeanor. See Hendrix, 615 N.E.2d at 484-485 (holding that the evidence was sufficient to sustain the defendant’s conviction for intimidation where the evidence

most favorable to the verdict showed that the defendant, after being handcuffed and placed in the back of a squad car, made threats to two police officers that “when he got the chance he would blow [one of the officer’s] head off” and that “if he ever saw either of the officers on the street again, he would shoot them”); see also Earlywine v. State, 847 N.E.2d 1011, 1015 (Ind. Ct. App. 2006) (holding that the evidence was sufficient to sustain the defendant’s conviction for intimidation as a class A misdemeanor where the defendant stated that anyone standing in his way would “get it”); Slayton v. State, 755 N.E.2d 232, 237 (Ind. Ct. App. 2001) (holding that the evidence was sufficient to sustain the defendant’s conviction for intimidation where the defendant repeatedly told a police officer that he “was going to get” him and that he “better watch [his] back”).

For the foregoing reasons, we affirm Castillo’s conviction for intimidation as a class A misdemeanor.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.