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IN THE
COURT OF APPEALS OF INDIANA

FERNANDO B. EGUIA, SR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 01A05-1010-CR-627
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ADAMS CIRCUIT COURT
The Honorable Frederick A. Schurger, Judge
Cause No. 01C01-0902-FD-58

June 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Fernando B. Eguia, Sr. ("Eguia") was convicted after a jury trial of intimidation[1] as a Class D felony, resisting law enforcement[2] as a Class D felony, and disorderly conduct[3] as a Class B misdemeanor. He appeals, raising the following restated issues for our review:

I. Whether sufficient evidence was presented to support his conviction for intimidation because his statements did not meet the legal definition of a threat; and

II. Whether his three-year sentence for intimidation is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 8, 2008, Officer Kevin Gerber ("Officer Gerber") and Officer Jonathan Wenzel ("Officer Wenzel") of the Decatur Police Department received a dispatch concerning a complaint of loud music coming from Eguia's residence at 1015 Shirmeyer Street in Adams County. At the time of the initial dispatch, the officers were on their dinner break, and before they could leave to respond to the complaint, they received another dispatch that the music had been turned off. When they finished their break, the two officers decided to investigate the complaint anyway because they had received several previous complaints from the area.

They arrived near Eguia's residence at approximately 1:00 a.m. About a block

[1] *See* Ind. Code § 35-45-2-1.

[2] *See* Ind. Code § 35-44-3-3.

[3] *See* Ind. Code § 35-45-1-3.

from the address, the officers could hear very loud guitar music coming from Eguia's residence. When they arrived at the address, the officers were met outside by Eguia's fourteen-year-old daughter and Nathan Beer ("Beer"). Beer and Eguia's daughter told Officer Gerber that they had just turned the music off and that Eguia was inside using the restroom and would be going to bed soon as he had to get up early the next morning. Officer Gerber explained that he was going to give Eguia a ticket for the loud music because of the prior complaints.

At that time, Eguia, who was very angry that the police were at his residence, came out of the house shouting profanities at the officers. Eguia walked quickly toward Officer Gerber with clenched fists and loudly inquired as to why the officers were there. Officer Gerber pushed Eguia back twice and told him to back away. Officer Gerber also told Eguia several times to quiet down and to stop yelling. Eguia continued to yell and told Beer to turn the music back on. Eguia then sat down in a chair near a large metal pole. While Officer Gerber explained to Beer that he would be arrested if he turned the music back on, Eguia continued to scream profanities at Officer Gerber.

As Eguia refused to quiet down and persisted in his confrontation with the officers, they decided to arrest him. Because of the proximity of the metal pole and Eguia's aggressive behavior, Officer Gerber attempted to tip Eguia out of his chair in order to arrest him. As he tried to do so, Eguia struggled and landed on his side on the ground. Officer Gerber straddled him and struggled to get Eguia's hands out from under him. During the struggle, Officer Gerber repeatedly told Eguia to stop resisting and to give the officers his hands. Officer Gerber and Officer Wenzel applied pressure points to

subdue Eguia and eventually were able to handcuff him. Eguia had to be shackled because he kicked at the officers and continued to resist after being handcuffed.

Several officers escorted Eguia to the patrol car. Eguia had to be forcibly placed inside because he would not enter the car willingly. He then tried to prevent the officers from buckling his seatbelt. In the patrol car, a camera recorded both audio and video of the interior of the car. On the trip to the jail, Eguia stated, "Good thing I'm getting out of here in a little bit" and then made over twenty statements to Officer Gerber that Eguia was "gonna f*ck [his] old lady, presumably meaning the officer's wife." *State's Ex*. 1, in-car video. Eguia repeated this statement over the entire trip to the jail, variously saying, "I'm gonna f*ck your old lady," "I'm still f*cking your old lady," and "I'm f*cking your old lady." *Id*. At one point, Eguia stated, "You f*cking did that in front of my kid, I'm gonna f*ck your old lady." *Id*. He later said, "And all it takes is bail." *Id*.

The State charged Eguia with battery as a Class D felony, intimidation as a Class D felony, battery as a Class A misdemeanor, resisting law enforcement as a Class D felony, and disorderly conduct as a Class B misdemeanor. After two jury trials, Eguia was found guilty of Class D felony intimidation, Class D felony resisting law enforcement, and Class B misdemeanor disorderly conduct. The trial court sentenced him to three years for the intimidation conviction, 545 days for the resisting law enforcement conviction, and 180 days for the disorderly conduct, with the sentences to run concurrently for a total of three years executed. Eguia now appeals.

DISCUSSION AND DECISION

I. Sufficient Evidence

Our standard of review for sufficiency claims is well-settled. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *Parahams v. State*, 908 N.E.2d 689, 691 (Ind. Ct. App. 2009) (citing *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003)). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id*. If there is substantial evidence of probative value to support the conviction, it will not be set aside. *Id*. It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Yowler v. State*, 894 N.E.2d 1000, 1002 (Ind. Ct. App. 2008).

Eguia argues that the State failed to present sufficient evidence to support his conviction for intimidation as a Class D felony because his "disjointed ramblings about Officer Gerber's 'old lady'" did not constitute a threat. *Appellant's Br*. at 7. He contends that there was insufficient evidence as to the element of communicating a threat because his statements in the patrol car were not threatening. Eguia asserts that he was just blowing off steam and taunting Officer Gerber, and that, although the statements were "rude, crass, and highly disrespectful," Eguia did not threaten the officer in the legal sense required by the statute. *Id*.

In order to convict Eguia of intimidation as a Class D felony, the State was

required to prove that he (1) communicated a threat to Officer Gerber, (2) with the intent to place Officer Gerber in fear of retaliation for a prior lawful act, and (3) Officer Gerber was a law enforcement officer. Ind. Code § 35-45-2-1(a), (b)(1)(B)(i). "Threat" is defined as "an expression, by words or action, of an intention to unlawfully injure the person threatened or another person." Ind. Code § 35-45-2-1(c)(1).

Here, the evidence presented showed that, after the officers arrested Eguia and placed him in the patrol car, he was very angry and yelled profanities at Officer Gerber several times. He stated, "Good thing I'm getting out of here in a little bit." *State's Ex*. 1, in-car video. Eguia then repeatedly told Officer Gerber, "I'm gonna f*ck your old lady," "I'm still f*cking your old lady," and "I'm f*cking your old lady." *Id*. At one point, Eguia stated, "You f*cking did that in front of my kid, I'm gonna f*ck your old lady." *Id*. He later said, "And all it takes is bail." *Id*. Officer Gerber also testified that Eguia told him that "all it took was bail and he'd see [him] real soon." *Tr*. at 406. Based upon Eguia's agitated and angry demeanor and his taunting of Officer Gerber, the evidence was sufficient for a reasonable jury to infer that Eguia's statements were meant as an expression of his intention to sexually assault Officer Gerber's wife after Eguia posted bail and was released from jail and not to engage in consensual sexual relations. His arguments to the contrary are merely requests to reweigh the evidence, which we cannot do. *Parahams*, 908 N.E.2d at 691. We conclude that the State presented sufficient evidence to support Eguia's conviction for intimidation as a Class D felony.

II. Inappropriate Sentence

"This court has authority to revise a sentence 'if, after due consideration of the

trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.'" *Spitler v. State*, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009) (quoting Ind. Appellate Rule 7(B)), *trans. denied*. "Although Indiana Appellate Rule 7(B) does not require us to be 'extremely' deferential to a trial court's sentencing decision, we still must give due consideration to that decision." *Patterson v. State*, 909 N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009) (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Id*. at 1063. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Id*.

Eguia argues that his three-year sentence for intimidation was inappropriate in light of the nature of the offense and the character of the offender. He contends that the nature of his intimidation offense was "relatively benign." *Appellant's Br*. at 10. As to his character, he claims that he did not receive his first criminal conviction until age forty-seven, he has sought and participated in alcohol treatment, and at the time he committed the instant offenses, his "painful and traumatic divorce appeared to be a catalyst for his downward spiral." *Id*. Eguia therefore asserts that his sentence should be reduced significantly.

As to the nature of the offense, the evidence showed that, after being arrested and placed in the patrol car, Eguia repeatedly made threats to Officer Gerber that Eguia was going to sexually assault the officer's wife after he was released from jail. As to Eguia's character, the record shows that he had a criminal history consisting of one felony conviction and one misdemeanor conviction and was on probation at the time of the

present offense. He had also recently violated his probation in both July and August 2008. Eguia's conduct in the instant offense and in repeatedly violating his probation demonstrates an unwillingness to respect authority and a disregard for the law. Although the nature of Eguia's offense was not particularly egregious, his criminal history and disrespect for the law show that his enhanced sentence was appropriate. We therefore conclude that his sentence was not inappropriate in light of the nature of his offense and the character of the offender.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.