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ATTORNEY FOR APPELLANT:

JULIE ANN SLAUGHTER
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY JERRELLS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

RASHAD HASSAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0903-CR-247
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0811-FD-267392

October 1, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a bench trial, Rashad Hassan was convicted of two counts of Intimidation,[1] both as class D felonies. Hassan presents two issues for our review:

1. Is the evidence sufficient to sustain his convictions?

2. Do Hassan's convictions violate double jeopardy principles?

We affirm and remand with instructions.

The facts most favorable to the convictions follow. At approximately 2:15 p.m. on November 18, 2008, Hassan approached Trina Gossett, the receptionist for the Marion County Prosecutor's office, and indicated that he had a 3:00 p.m. appointment with the elected prosecutor, Carl Brizzi. As Ms. Gossett attempted to verify the appointment, Hassan left the receptionist window and headed for the elevator. Hassan told Ms. Gosset that he was going to the sixth floor and then he corrected himself and indicated that he was going to the seventh floor, where the Child Support office is located. Hassan returned approximately ten minutes later and slid some paperwork through the receptionist's window. Hassan then told Ms. Gossett that she "needed to evacuate the building because he was here to execute Carl Brizzi." *Transcript* at 7. Hassan repeated the statement and Ms. Gossett pressed the "panic switch." *Id*. Hassan then left the building. Shortly thereafter, Indianapolis Metropolitan Police Officer Zachary Petro responded to the panic alarm and observed that Ms. Gossett was visibly shaken and concerned about the threat.

Marion County Deputy Sheriff David Coonce was working security for the

[1] Ind. Code Ann. § 35-45-2-1 (West, PREMISE through Public Laws approved and effective through 4/20/2009).

Indianapolis, Marion County City-County Building when, through the building's security system, he observed Hassan in the middle of Market Street. Deputy Coonce exited the building and observed that Hassan had taken off his shirt to "show . . . [his] guns"[2] and overheard Hassan yell that he "was going to blow Carl Brizzi's brains out" and that he was going "to kill Detective Charles Martin." *Id*. at 17. Hassan was unarmed, but testified that he planned to kill Carl Brizzi with his hands. Deputy Coonce immediately placed Hassan under arrest.

On November 24, 2008, the State charged Hassan with two counts of intimidation, both as class D felonies. A bench trial was held on February 2, 2009, at the conclusion of which the trial court found Hassan guilty as charged. Hassan was subsequently sentenced to concurrent 730-day sentences. Hassan now appeals.

1.

Hassan argues that the evidence is insufficient to support his convictions. When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh the evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the conviction, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (*quoting Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

[2] Hassan's reference to "show 'em my guns" meant that Hassan was showing his muscular arms. *Id*. at 17.

To convict Hassan of intimidation, the State was required to prove that Hassan (1) communicated a threat to another person; (2) with the intent that the other person engage in conduct against the other person's will or that the other person be placed in fear of retaliation for a prior lawful act. *See* I.C. § 35-45-2-1(a) (1), (2). The offense is a class D felony if the threat is to commit a forcible felony or if the threat is communicated to a law enforcement officer.[3] A threat includes an expression, by words or action, of an intention to unlawfully injure a person or cause the evacuation of a building. *See* I.C. § 35-45-2-1(c)(1), (8). The State alleged two counts of intimidation as follows:

> **COUNT I**
>
> On or about November 18, 2008, RASHAD HASSAN did communicate a threat to another person, that is: TRINA L. GOSSETT, with intent of causing a building, that is: 251 E. OHIO STREET, INDIANAPOLIS, MARION COUNTY, to be evacuated, and the threat was to commit a forcible felony, that is: TO PHYSICALLY HARM OR KILL CARL J. BRIZZI.
>
> **COUNT II**
>
> On or about NOVEMBER 18, 2008, RASHAD HASSAN did communicate a threat, that is: TO KILL OR PHYSICALLY HARM CARL J. BRIZZI, to a law enforcement officer, that is: CARL J. BRIZZI, PROSECUTING ATTORNEY OF THE 19TH INDIANA JUDICIAL CIRCUIT, with intent that CARL J. BRIZZI be placed in fear of retaliation for a prior lawful act, that is: PROSECUTING CRIMINAL CHARGES AGAINST RASHAD HASSAN.

Appellant's Appendix at 21.

Hassan's specific challenge to the sufficiency of the evidence is that the State did not prove that he had the requisite intent to cause the building to be evacuated as charged in

[3] A prosecutor is a law enforcement officer. Ind. Code Ann. § 35-41-1-17(a)(1) (West, PREMISE through Public Laws approved and effective through 4/20/2009).

Count I or that he acted with the requisite intent that Carl Brizzi be placed in fear of retaliation for a prior lawful act as charged in Count II. Hassan's argument in this regard is simply a request that we reweigh the evidence and credit his defense that he did not intend to cause evacuation of the building, but rather made the threat to harm Carl Brizzi based upon his delusional theory that a third party would harm him or his mother if he did not execute Carl Brizzi. In essence, Hassan claims his intent was "the protection of innocent persons not involved in his command to harm Mr. Brizzi." *Appellant's Brief* at 7. We will not entertain Hassan's request in this regard.

The evidence set forth above is more than sufficient to prove intimidation as charged in Count I. Hassan clearly threatened to kill Carl Brizzi, the elected prosecutor of Marion County. Hassan communicated this threat to Ms. Gossett and told her that she needed to evacuate the building. Although Hassan was unarmed, he threatened to kill Carl Brizzi with his hands. A threat to kill someone is a threat to commit a forcible felony. We therefore conclude that the State presented sufficient evidence to sustain Hassan's conviction for Count I. We need not address the sufficiency of the evidence for Count II because as we conclude *infra*, Hassan's convictions violate double jeopardy principles.

2.

Hassan also argues that his convictions violate double jeopardy. The double jeopardy clause in the Indiana Constitution is embodied in article 1, section 14, and provides, "No person shall be put in jeopardy twice for the same offense." Our Supreme Court has concluded this provision was intended to prohibit, among other things, multiple punishments

for the same actions. *Richardson v. State*, 717 N.E.2d 32 (Ind. 1999). Our analysis under this provision involves dual inquiries under what have come to be known as the "statutory elements test" and the "actual evidence test." *Davis v. State*, 770 N.E.2d 319, 323 (Ind. 2002). Under the actual evidence test, multiple convictions are prohibited if there is "'a reasonable possibility that the evidentiary facts used by the fact-finder to establish the elements of one offense may also have been used to establish the essential elements of a second challenged offense.'" *Davis v. State*, 770 N.E.2d at 323 (quoting *Richardson v. State*, 717 N.E.2d at 53). In determining whether the trier of fact used the same evidence to establish the essential elements of each offense, it is appropriate to consider the charging information and arguments of counsel. *See Lee v. State*, 892 N.E.2d 1231 (Ind. 2008) (citing *Richardson v. State*, 717 N.E.2d at 54 n.48).

The State concedes, and we agree, that Hassan's conviction for Count II as charged, proven, and argued was likely based on the same evidence. *See Richardson v. State*, 717 N.E.2d 32. We must therefore vacate Hassan's conviction under Count II on double jeopardy grounds. We remand this cause to the trial court with instructions to vacate Hassan's conviction for Count II.

Judgment affirmed and remanded.

BAKER, C.J., and RILEY, J., concur.