

Case Summary

Timmy Todd Zieman (“Zieman”) appeals his conviction for Attempted Murder, as a Class A felony,¹ raising the single issue of whether there was sufficient evidence of his intent to kill.

We affirm.

Facts and Procedural History

Zieman and his wife, Nicole Zieman (“Nicole”), had been experiencing marital difficulties, and Nicole decided to seek a divorce. On December 4, 2008, one of Nicole’s relatives contacted the Schererville Police Department and requested that police escort Nicole from her home. Nicole declined the offer because she wished to pack her belongings before leaving, and asked the police to return the next day.

That day, December 5, 2008, Nicole informed Zieman that she was leaving. The two argued, and Nicole called her mother, who called the Schererville Police Department. Zieman also called the police, informed them that nothing was wrong, and eventually left the home, got into his white Chevrolet S-10 pickup truck, and drove away.

In response to the phone calls and their prior visit to the Zieman home, several police officers drove to the home to ensure Nicole’s welfare. Other officers were alerted that Zieman had driven away from the home. One of these officers, Adam Biella (“Officer Biella”) saw Zieman’s truck and followed him for a brief period until dispatch informed him that Zieman’s driver’s license had been suspended. Another officer, Timothy Mele (“Officer

¹ See Ind. Code §§ 35-42-1-1 & 35-41-5-1.

Mele”), had dealt with Zieman before and informed Officer Biella that Zieman was likely “in the process of fighting or fleeing.” (Tr. 149.)

Officer Biella initiated a traffic stop. Zieman pulled over, but then sped away as Officer Biella was walking from his patrol car to Zieman’s truck. Officer Biella got back into his patrol car and gave chase, radioing to dispatch that Zieman appeared to be driving back toward his home.

Officer Biella was later joined in his pursuit by Officer Mele and Corporal Marcus Handley (“Corporal Handley”). The three pursued Zieman through Schererville with lights and sirens activated. At various points in the pursuit, Zieman was driving very rapidly, without using turn signals or stopping at stop lights. During portions of the pursuit, Zieman appeared to be reaching underneath the seat of his car, and at other times appeared to be holding an object against his neck. It was later determined that Zieman had been stabbing his legs and chest and had cut his own neck in an attempt to kill himself.

The officers continued to follow Zieman, but once Zieman’s driving posed a danger not only to the public but also to himself, Corporal Handley terminated the pursuit. The officers turned off their lights and sirens, ceased their pursuit, and headed to other calls. Other Schererville officers continued to follow Zieman outside of Schererville’s jurisdiction and into Crown Point, though they did not actively pursue him. Once active pursuit ceased, Zieman reduced his speed, though his driving remained somewhat erratic, including rolling stops rather than complete stops at stop signs.

Zieman eventually crossed from Schererville to Merrillville and then into Crown

Point. Deputy Joseph Kraus (“Deputy Kraus”), of the Lake County Sheriff’s Office, had heard about the Schererville pursuit, saw Zieman’s truck, and initiated a second pursuit. He was eventually joined by Officer Airren Nylen of the Crown Point Police Department and Trooper Roa² of the Indiana State Police. The three officers pursued Zieman through portions of Crown Point, with Zieman reaching speeds of more than seventy-five miles per hour and swerving through heavy daytime traffic, all the while continuing to accelerate his truck.

Also apprised of the pursuits over police radio was Crown Point Sergeant John Allendorf, Jr. (“Sergeant Allendorf”). Though close to the end of his work day, Sergeant Allendorf was close to the area of the pursuit in Crown Point—near the intersection of 93rd Avenue and Broadway Avenue—and set out to assist Deputy Kraus, Officer Nylen, and Trooper Roa. Entering the intersection of 93rd Avenue and Broadway Avenue, Sergeant Allendorf observed Zieman’s truck with police cars in pursuit, with Zieman headed east in the southernmost of two west-bound lanes on 93rd Avenue and the police cars following in the east-bound lanes. Sergeant Allendorf maneuvered his car into the northernmost of the west-bound lanes, leaving sufficient space on the road for Zieman to drive past the patrol car without a collision. Zieman, however, drove his truck into the northernmost lane and steered the vehicle directly at Sergeant Allendorf’s car.

Sergeant Allendorf attempted to avoid a collision with Zieman by gunning his engine and jumping the curb with two tires, but had no chance of escape. Travelling at least sixty-

² The transcript does not provide Trooper Roa’s first name.

eight miles per hour, Zieman slammed his truck into the front driver's side of Sergeant Allendorf's slow-moving patrol car, at or just in front of the driver's door. The force of the collision rammed Sergeant Allendorf's car completely over the curb, pinning Sergeant Allendorf inside the patrol car and severely injuring him. Zieman's truck was sent airborne down 93rd Avenue toward Broadway Avenue, eventually landing upside down with flames briefly alight on the vehicle's undercarriage.

Both Zieman and Sergeant Allendorf were extracted from their cars and were rushed to separate emergency rooms. Sergeant Allendorf suffered from an open fracture of his femur; bruised kidney, liver, and lung; and numerous broken ribs, and was required to undergo two surgeries and extensive physical therapy from shortly after the crash until January 2010.

On December 9, 2008, the State charged Zieman with Attempted Murder; Aggravated Battery, as a Class B felony³; two counts of Battery, each as Class C felonies⁴; and Resisting Law Enforcement, as a Class C felony.⁵ On March 30, 2009, the State filed its Amended Information, adding charges of Criminal Recklessness, as a Class D felony⁶; Criminal Recklessness, as a Class A misdemeanor⁷; and Reckless Driving, as a Class B misdemeanor.⁸ On April 7, 2009, Zieman filed his Notice of Insanity Defense.

A jury trial was conducted from March 1, 2010, to March 5, 2010. After the State and

³ See I.C. § 35-42-2-1.5.

⁴ See I.C. § 35-42-2-1.

⁵ See I.C. § 35-44-3-3.

⁶ See I.C. § 35-42-2-2.

⁷ See *id.*

⁸ See I.C. § 9-21-8-52.

Zieman concluded their presentation of evidence, three court-appointed experts—two psychiatrists and a psychologist—testified as to Zieman’s sanity at the time of the police pursuit and collision with Sergeant Allendorf. The experts testified that prior medical records they had reviewed were consistent with Zieman’s claim that he had been diagnosed with bipolar disorder. Two experts, Doctors R. Bawai Prasad and Douglas William Caruana, concluded that Zieman was able to determine right from wrong at the time of the pursuit and collision. The third expert, Doctor J. Jerry Rodos, concluded that Zieman was not able to determine right from wrong, but conceded that his conclusion might change in the face of additional evidence regarding Zieman’s conduct earlier that day.⁹ At the trial’s conclusion, the jury returned verdicts of guilty but mentally ill for all of the charged offenses except for Reckless Driving, for which the jury found Zieman guilty.

On April 12, 2010, to obviate double jeopardy concerns the trial court entered judgments of conviction against Zieman for Attempted Murder, Resisting Law Enforcement, and one count of Criminal Recklessness. The trial court then sentenced Zieman to thirty years imprisonment for Attempted Murder, four years imprisonment for Resisting Law Enforcement, and one year imprisonment for Criminal Recklessness, all running consecutively for an aggregate sentence of thirty-five years.

This appeal followed.

⁹ Such evidence was unknown to Dr. Rodos, but had been presented to the jury. Zieman does not contend in this appeal that there was insufficient evidence as to the jury’s determination of his sanity, and thus we do not directly address that matter in our opinion today.

Discussion and Decision

Zieman challenges the sufficiency of the evidence as to his intent to commit murder. When reviewing the sufficiency of the evidence, we 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 the credibility of witnesses or reweigh evidence. Id. We will 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)). “The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” Id. (quoting Pickens v. State, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001)).

To convict Zieman of attempted murder, the State was required to prove beyond a reasonable doubt that Zieman intentionally attempted to kill Sergeant Allendorf while acting with intent to kill. Ind. Code 35-42-1-1(a) & 35-41-5-1(a); App. 10. While it is not sufficient that a defendant have knowingly attempted to kill another human being without specific intent to kill, Booker v. State, 741 N.E.2d 748, 751 (Ind. Ct. App. 2000), specific intent to kill may be inferred from the nature of the attack and the circumstances surrounding the crime. Kiefer v. State, 761 N.E.2d 802, 805 (Ind. 2002). Thus our supreme court “has on very rare occasion overturned murder and attempted murder convictions because of insufficient evidence establishing an intent to kill.” Id.

Zieman’s actions here do not compare favorably with the reversal of the attempted murder conviction in cases like Kiefer. In Kiefer, the defendant acted in a manner both

before and after firing a gun at another individual that led only to an inference that Kiefer did not intend to kill another person. 761 N.E.2d at 806 (noting that there was no motive to attempt to kill, Kiefer's conduct was inconsistent with an intent to kill because he was standing in a well-lit area with four witnesses nearby, did not fire additional rounds, behaved casually after the shooting, and expressed an intent only to frighten another person).

Here, the State introduced the eyewitness testimony of Deputy Kraus, Trooper Roa, and Officer Nysten, all of whom testified that Zieman, while already in a west-bound lane of 93rd Avenue, changed his truck's course to put it on a collision course with Sergeant Allendorf's car by jerking the truck in the direction of the patrol car. Trooper Roa testified that "as soon as [Zieman] saw [Allendorf's] car" he "slowed down...toted his car a little bit" and steered the truck "more towards the sidewalk" where Allendorf had placed his car in order to avoid Zieman's truck. (Tr. 441-42.) Officer Nysten testified that Zieman "took a hard forty-five degree angle" toward Sergeant Allendorf's car. (Tr. 500.) Another eyewitness, Donald Blum, testified that Zieman's truck headed "straight for the driver's door...the center of mass of the squad car" (Tr. 407) and that Zieman never changed course.

Nor do the broader circumstances of Zieman's offense run in his favor. Zieman rammed into Sergeant Allendorf's car after two high-speed pursuits. During the first of these pursuits, Zieman attempted to flee the pursuing officers by entering a Dairy Queen parking lot and then, rather than striking Corporal Handley's car, which was blocking one of the exits from the parking lot, evaded capture by driving over curbs and grass to escape. During the second pursuit, however, Trooper Roa testified that Zieman had attempted to strike his patrol

car, and that Zieman reached speeds in excess of seventy-five miles per hour based upon Trooper Roa's own speed during the pursuit. Accident reconstruction calculations from Trooper Tom Quinn of the Indiana State Police determined that Zieman's truck could have been travelling no less than 86 miles per hour at the time of the collision. Tim Tully, Chief of the Crown Point Fire Department, indicated that Zieman neither mentioned nor inquired about Sergeant Allendorf after the crash.

Zieman's conduct leading directly to the collision and his behavior leading up to and immediately after the crash provide ample evidence from which a reasonable trier of fact could infer that he intended to kill Sergeant Allendorf. Zieman's requests that we reexamine his mental status, suicidal impulses and conduct at the time of the offense, or the absence of tire marks on the road just before the point of collision are all requests that we reweigh evidence, which we cannot do.¹⁰ We therefore conclude that the State produced sufficient evidence to support the jury's decision that Zieman specifically intended to kill Sergeant Allendorf.

Affirmed.

RILEY, J., and BARNES, J., concur.

¹⁰ We note in passing that the State contends that a theory of transferred intent supports Zieman's conviction, namely that Zieman intended to kill himself and intended that the instrumentality of that suicide be his truck, and Zieman's intent to kill was thus transferred to any individual harmed by that instrumentality during the attempted suicide. The trial court refused to instruct the jury on this theory and we need not, and do not, address this theory here.