ATTORNEY FOR APPELLANT:

ROBERT D. KING, JR.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

CYNTHIA L. PLOUGHE
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DEWAYNE CHANEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0611-CR-664
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben Hill, Judge
Cause No. 49F18-0603-FD-51436

July 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Dewayne Chaney ("Chaney") appeals his conviction of Intimidation as a Class D felony.[1] We affirm.

Issue

The single issue Chaney raises is whether there is sufficient evidence to sustain his conviction.

Facts and Procedural History

On the afternoon of March 18, 2006, Chaney ate at the Steak n' Shake restaurant located at 6360 East 82nd Street in Indianapolis. When it was time to pay his $4.72 bill, Cheney laid seventeen or eighteen cents on the counter and said, "This is all I've got." (Tr. p. 8.) The cashier called the manager, who noticed that Chaney was intoxicated. The manager discussed the situation with Chaney for about ten minutes after which Chaney walked out of the restaurant without further payment.

The manager then alerted police. Marion County Deputy Chad Melloh responded, found Chaney, handcuffed him, and walked him back to the restaurant, at which time Deputy Paul Ziliak and Deputy Patrick Bragg arrived. When Deputy Bragg attempted to talk to Chaney, he noticed that Chaney had slurred speech, "bloodshot glassy eyes," and poor balance. (Tr. p. 24.)

At some point, Deputy Bragg searched Chaney and discovered $16.00 in his right front pocket. Bragg told Chaney he was going to pay his bill, and Chaney responded, "I don't give a f---." (Tr. p. 25.) After he paid for Chaney's food, Deputy Bragg placed the

change and receipt in Chaney's property bag.

Deputy Bragg then attempted to place Chaney in the back seat of the squad car, but Chaney was "hesitant." (Tr. p. 30.) When Bragg asked him to sit down, Chaney tensed up and jerked back. From the front passenger seat, Deputy Ziliak turned around and said, "You can just sit down now." (Tr. p. 34.) Chaney looked directly at Ziliak and declared, "Bitch, I'll kill you, mother-f-----." Id. During the drive to the processing center, Chaney remained uncooperative, mumbling "I'm going to kill you" and "I'll f--- you guys up," until he eventually fell asleep. (Tr. p. 28.)

The State charged Chaney with intimidation, a Class D felony, and public intoxication, a Class B misdemeanor.[2] Later, the State added a habitual offender allegation. The jury found Chaney guilty of intimidation and public intoxication; Chaney admitted his status as a habitual offender. Chaney now appeals.

Discussion and Decision

1. Standard of Review

Chaney contends there is insufficient evidence to support his intimidation conviction. When we review a claim that a conviction is not supported by sufficient evidence establishing the defendant's guilt, we may not reweigh the evidence or assess the credibility of witnesses. Weis v. State, 825 N.E.2d 896, 905 (Ind. Ct. App. 2005). We affirm a conviction if the jury heard evidence of probative value from which it could have inferred the defendant's guilt beyond a reasonable doubt. Id. When making this determination, we

[1] Ind. Code § 35-45-2-1.
[2] Ind. Code § 7.1-5-1-3.

consider only the evidence favorable to the verdict and all reasonable inferences to be drawn from that evidence. Id.

2. Analysis

To obtain a conviction for intimidation, the State was required to establish that Chaney (1) with the intent to place another person in fear of retaliation for a prior lawful act, (2) communicated a threat, (3) to another person, (4) who was a police officer. Ind. Code § 35-45-2-1; see Dennis v. State, 736 N.E.2d 300, 303 (Ind. Ct. App. 2000). Chaney does not contest the jury's necessary determinations that he communicated a threat to a police officer, but he claims that the State failed to prove he intended to place the officer in fear of retaliation for a prior lawful act. He argues that there is a "very reasonable possibility supported by the evidence" that he made the threat "to protest officers illegal appropriation of his money to pay a bill he disputed." Appellant's Br. at 6.

First, we observe that, in closing argument, Chaney made the same claim to the jury that he presents today. Obviously, the jury rejected that argument. Nevertheless, he now claims in essence that the jury got it wrong, and he likens his case to Casey v. State, 676 N.E.2d 1069 (Ind. Ct. App. 1997). There, our Court reversed the defendant's intimidation conviction because the State failed to allege or prove that the defendant threatened another in order to place her in fear of retaliation for a prior lawful act. Id. at 1072-73. In particular, the information did not specify the prior lawful act that led to the threats, the threats themselves did not indicate that they were made because of any specific prior act, and the record did not show that the defendant was retaliating for prior lawful acts later proposed by

the State. Id. But Casey is unavailing.

Unlike the charging information in Casey, here the information expressly alleges that Chaney communicated a threat to Deputy Ziliak with the intent that the officer be placed in fear of retaliation for a prior lawful act, "to wit: having arrested DeWayne Chaney." (App. p. 16.) The trial court's Preliminary Instruction Number 2 reiterates that language, and Preliminary Instruction Number 6 explains that the State was required to prove beyond a reasonable doubt "every material allegation of the Information." (App. 52.) App. 47. It is presumed that the jury followed these instructions. See Harris v. State, 824 N.E.2d 432, 440 (Ind. Ct. App. 2005).

Further, the evidence in this case supports that presumption. When Deputy Bragg told Chaney he was going to pay his bill, Chaney was vulgar but somewhat noncommittal, saying, "I don't give a f---." (Tr. p. 25.) But Chaney became tense and irritable when he was placed in the squad car. Then Deputy Ziliak told Chaney he needed to sit down, and Chaney shouted, "Bitch, I'll kill you, mother-f-----." (Tr. p. 34.) The timing and the object of the threat demonstrate that it was made in response to Chaney's arrest, a prior lawful act. We conclude that the State presented sufficient evidence to sustain Chaney's conviction for intimidation. See Dennis, 736 N.E.2d at 303-04 (finding sufficient evidence to support the intimidation conviction where defendant threatened officer after having been arrested). Based upon the foregoing, we affirm the intimidation conviction.

Affirmed.

SHARPNACK, J., and MAY, J., concur.