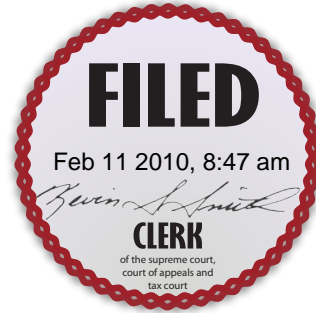


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JOHN PINNOW
Special Assistant to the State
Public Defender
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHY BRADLEY
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JAY BECKER,)

Appellant-Defendant,)

vs.)

No. 57A03-0908-CR-368

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Michael J. Kramer, Judge
Cause No. 57D02-0901-CM-64

February 11, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jay A. Becker appeals his conviction following a bench trial for intimidation,¹ as a class A misdemeanor.

We affirm.

ISSUE

Whether sufficient evidence exists to support Becker's conviction.

FACTS

On January 18, 2009, Becker argued with his wife, Melissa, at their residence. Their argument escalated into a physical fight, during which Melissa sustained a facial injury. Becker "took off," and Melissa called the Kendallville Police Department. (Tr. 17). Officers McCann, Gillespie, and Stuckey soon arrived at the residence. They found the screen door broken with shattered glass all over the porch. Melissa answered the door, bleeding profusely from a laceration to her nose and holding a towel to absorb the blood. When Officer McCann asked whether Becker had caused Melissa's injury, Melissa responded, "[W]hat do you think[?]" (Tr. 37). She refused, however, to report any battery, saying only that everything would be fine if the police would help her to leave the residence. The officers transported Melissa to the hospital for treatment.

As the officers were leaving the hospital, dispatch advised that Becker wanted to meet with them. The officers met Becker at a designated location in Kendallville. Becker "was upset" and "kind of mumbling under his breath saying . . . stuff about the

¹ Ind. Code § 35-45-2-1.

cops or dumb cops.” (Tr. 41). Officer McCann later testified that inside the meeting location, Becker was “calling [the officers] names telling us uh, we need to learn how to do our jobs, using profanities.” (Tr. 42). McCann instructed Becker to be quiet, to no avail. McCann then “raised [his] voice” and “told [Becker] to shut up and listen.” (Tr. 42). Becker ignored McCann, “got in [his] face, and told [him] to shut up and listen.” (Tr. 42, 43). Using a police maneuver, McCann took Becker to the ground. Officers Gillespie and Stuckey handcuffed Becker and arrested him for domestic battery. Becker continued “using profanities [and] name calling,” saying that “he was going to get [McCann] fired for what [McCann] did” and that McCann “was never going to walk again.” (Tr. 44, 45). McCann later testified that he perceived Becker’s statements “[a]s a threat that [Becker] was going to get even with me for arresting him.” (Tr. 45).

On January 20, 2009, the State charged Becker with domestic battery and intimidation as class A misdemeanors. He was tried before the bench on July 16, 2009. Melissa testified that Becker had committed a domestic battery upon her, but that she had not reported it because she “didn’t want to make things worse.” (Tr. 18). Her testimony revealed further that she was suffering from depression and suicidal ideations at the time of the incident, and her testimony was equivocal in certain respects. The trial court found Becker not guilty of domestic battery and guilty of intimidation. He now appeals.

Additional facts will be provided as necessary.

DECISION

Becker argues that there is insufficient evidence to support his conviction because his arrest was made without probable cause and, therefore, his arrest was not a “prior lawful act” pursuant to Indiana Code section 35-45-2-1. We disagree.

Our standard of review for sufficiency of the evidence is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *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 that the defendant was guilty beyond a reasonable doubt. *Id.* If substantial evidence of probative value exists to support the conviction, it will not be set aside. *Id.*

In order to convict Becker of intimidation as a class A misdemeanor, the State was required to prove beyond a reasonable doubt that he communicated a threat to Officer McCann with the intent that McCann be placed in fear of retaliation for a prior lawful act, namely, the arrest. *See* Ind. Code § 35-45-2-1.

Probable cause adequate to support a warrantless arrest exists when, at the time of the arrest, the officer has knowledge of facts and circumstances that could warrant a person of reasonable caution to believe that the suspect committed a criminal act. The amount of evidence necessary to meet the probable cause requirement for a warrantless arrest is determined on a case-by-case basis.

Wessling v. State, 798 N.E.2d 929, 934 (Ind. Ct. App. 2003) (internal citations omitted).

Here, our review of the record supports the finding that Officer McCann had probable cause to arrest Becker. Officers McCann, Gillespie, and Stuckey were dispatched to the Becker residence after Melissa called the police to report a domestic dispute. By the time officers arrived at the residence, Becker was gone. The officers observed that the screen door was broken and that shattered glass was on the porch. Melissa answered the door holding a towel to a laceration on her nose, which was bleeding profusely. When asked whether Becker had caused her injury, Melissa responded, “[W]hat do you think[?]” (Tr. 37). She then asked for assistance in leaving the residence, insisting that everything would be fine if she could only do so.

The foregoing facts and circumstances could have warranted a person of reasonable caution to believe that a criminal act had been committed. *See Wessling*, 798 N.E.2d at 934. Given the physical damage to the screen door, Becker’s sudden departure, Melissa’s injury, and her remarks to the officers, Officer McCann was reasonable in his belief that Becker had committed a domestic battery on Melissa. McCann, therefore, satisfied the probable cause requirement for a warrantless arrest. Because Becker’s arrest was valid, we conclude that his subsequent threats to Officer McCann were made with the intent that McCann be placed in fear of retaliation for the prior lawful arrest. Thus, sufficient evidence exists to support Becker’s conviction for intimidation.

Affirmed.

KIRSCH, J., and MAY, J., concur.