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IN THE COURT OF APPEALS OF INDIANA

TERRY C. WINSLOW,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1103-CR-257
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Crawford, Judge
Cause No. 49G21-1012-FD-94933

October 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Terry C. Winslow appeals his conviction for Intimidation,[1] as a class A misdemeanor. Winslow presents as the sole issue on appeal the sufficiency of the evidence supporting his conviction.

We affirm.

The facts favorable to the conviction are that Lillie Winslow petitioned for a protective order against Winslow, her estranged husband, on December 14, 2010. The trial court issued an ex parte order for protection that same day. The order enjoined Winslow, in part, from threatening to commit or committing acts of domestic violence or stalking against Lillie, and from harassing, contacting, or communicating with Lillie. He was also ordered to "stay away from" Lillie's residence. *Exhibits* at 7.

On December 23, 2010, Officer Thomas Figura came into contact with Winslow after responding to a dispatch for a vandalism report at Lillie's home. At that time, Officer Figura notified Winslow of the protective order that had been issued against him and specifically informed him of its terms.

On Christmas day, Lillie was inside her home celebrating with her children and grandchildren. That afternoon, officers encountered Winslow within 100 to 200 feet of Lillie's home. Officer Aaron Helton then went to Lillie's home to speak with her while his partner stayed with Winslow. Officer Helton knocked on the door and asked Lillie if she had seen Winslow that day. When Lillie responded that she had not, the officer returned to assist in Winslow's arrest. Lillie stepped out onto her porch and observed Winslow close to her house and in handcuffs.

[1] Ind. Code Ann. § 35-45-2-1 (West, Westlaw through 2011 1st Regular Sess.)

When "the wagon" showed up, Winslow's demeanor changed from initially pleasant to "very belligerent and angry". *Transcript* at 36. "He was looking back at the house where [Lillie] was and his eyes were wide as silver dollars and he was yelling." *Id*. at 37. Winslow yelled to Lillie in an angry tone, "I'll be back, bitch, and you haven't seen the last of me" and/or "You bitch, I'll be back in two days." *Id*. at 37, 22. Lillie took his words as a threat, and she told police that she feared for her life.

The State subsequently charged Winslow with class D felony intimidation and class A misdemeanor invasion of privacy. Following a bench trial, Winslow was convicted of intimidation and invasion of privacy, both as class A misdemeanors.[2] The trial court sentenced him to concurrent terms of one year on each count. Winslow now appeals, challenging only his conviction for intimidation on sufficiency grounds.[3]

Our standard of review for challenges to the sufficiency of the evidence is well settled.

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009).

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[2] The court convicted Winslow of intimidation as a class a misdemeanor rather than a class D felony, because it concluded the State failed to establish that Winslow's threat was to commit a forcible felony. *See* I.C. § 35-45-2-1(b)(1)(A).

[3] In passing, Winslow appends to his sufficiency argument an assertion that there was a material variance between the charging information and the proof at trial regarding the precise threat made by him. Winslow does not support his assertion with cogent argument establishing a material variance. Moreover, it is clear that the charging information was not intended to set forth the precise wording of the alleged threat. Rather,

I.C. § 35-45-2-1(a) provides in relevant part that "[a] person who communicates a threat to another person, with the intent…that the other person be placed in fear of retaliation for a prior lawful act…commits intimidation, a Class A misdemeanor." "Threat" includes "an expression, by words or action, of an intention to…unlawfully injure the person threatened…[or] commit a crime". I.C. § 35-45-2-1(c). Further, I.C. § 35-45-2-1(a) requires the State to prove that the victim engaged in a prior act which was not contrary to law and that the defendant intended by his threat to repay the victim for the prior lawful act. *Lainhart v. State*, 916 N.E.2d 924 (Ind. Ct. App. 2009).

In the instant case, Winslow argues that his statement did not constitute a threat, as defined by statute, because all he said was that he would return to a place, which was not on Lillie's property, in two days. Moreover, he contends that the State failed to establish that his alleged threat was made in retaliation for any particular prior lawful act.

We turn first to the alleged threat. Winslow's angry statement to his estranged wife, who had recently obtained a protective order against him, directly communicated an intention to return shortly to an area near her residence. In other words, he expressed a clear intention not to stay away from Lillie's residence as required by the protective order. Moreover, based on the record before us, one could reasonably infer that Winslow's statement communicated a threat to further violate the protective order by harming, harassing, stalking, or communicating with Lillie in the near future. In sum, the State presented sufficient evidence that Winslow threatened Lillie by expressing an intention to commit a crime (that is, violate

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the charged threat ("to get her and/or to terrorize her") was an inference drawn from the actual words he used. *Appendix* at 16.

the protective order), which included the possibility of unlawfully injuring her.

As set forth above, Winslow argues that even if his statement constituted a threat, the State failed to establish that the threat was made to place Lillie in fear of retaliation for a prior lawful act. While Winslow's words do not demonstrate the motivation for his threat, the record supports a reasonable inference that he was threatening Lillie because she had obtained the protective order against him. *See Lainhart v. State*, 916 N.E.2d 924 (considering history between the individuals involved and the circumstances preceding the threats to infer reason for threats); *Graham v. State*, 713 N.E.2d 309 (Ind. Ct. App. 1999), *trans. denied*. Specifically, the State presented evidence that Winslow learned of the protective order two days before and was in the process of being arrested for violating said order when he made the instant threat to Lillie upon seeing her out on her porch. These facts constitute sufficient evidence that Winslow intended by his threat to repay Lillie for her prior lawful act of obtaining the protective order. Thus, the State presented sufficient evidence to support the conviction.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.