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**IN THE
COURT OF APPEALS OF INDIANA**

TRENT D. THOMAS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 02A05-0703-CR-188

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0610-FD-892

November 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Trent Thomas appeals his conviction and sentence for Interference with the Reporting of a Crime, a Class A misdemeanor,¹ for which he received a sentence of 180 days executed at the Allen County Jail. On appeal, Thomas challenges his conviction by claiming it is inconsistent with his acquittal for criminal recklessness and that it is not supported by sufficient evidence. We affirm.

FACTS

On October 13, 2006, Sarah Malone, who lived with her nephew, Reginald Allen, got into an argument with her then-boyfriend, Thomas. At some point, the argument escalated, and, according to Malone, Thomas stood over her with a knife in his hand, waving it in front of her face and telling her he was going to kill her. At this point, Allen slid the phone across a table to Malone and told her to call 911. Malone picked up the phone and dialed 911, whereupon Thomas took the phone from her and threw it. At that point, Allen retrieved his shotgun, which caused Thomas to put the knife down and leave the house.

Fort Wayne Police Officer John Helmsing, who responded to the call, verified with dispatch that the 911 operator received a call but that the call was immediately ended. It is the policy of 911 operators to return such calls and attempt to establish contact. According to Officer Helmsing, the 911 operator was successful in returning the call and establishing contact with Malone, resulting in Malone's report of the incident and Officer Helmsing's response to the scene. Officer Helmsing further testified that

¹ Ind. Code § 35-45-2-5 (2006).

Thomas admitted at the scene that he had grabbed the phone from Malone as she attempted to make a 911 call.

According to Thomas, he did not wave any knife in front of Malone, he did not grab the phone away from Malone when she attempted to call 911, he did not know Malone was calling 911, and Malone hung the phone up herself after her first attempt to call 911.

On October 19, 2006, the State charged Thomas with criminal recklessness (Count I) and interfering with the reporting of a crime (Count II). Following a January 18, 2007 jury trial, the jury found Thomas guilty of Count II, interfering with the reporting of a crime, but it acquitted him of the criminal recklessness charge in Count I. Upon entering judgment of conviction on Count II, the trial court sentenced Thomas to 180 days in the Allen County Jail. On February 20, 2007, Thomas filed a motion to correct error, which the trial court denied on March 9, 2007. This appeal follows.

DISCUSSION AND DECISION

I. Mandated Consistency Doctrine

Thomas first challenges his conviction on the basis that, pursuant to the doctrine of mandated consistency, he cannot be convicted of interference with reporting a crime under Indiana Code section 35-45-2-5 if he is acquitted of the underlying crime which he allegedly prevented the alleged victim from reporting. In making this argument, Thomas argues that Indiana Code section 35-45-2-5 is similar to Indiana's Assisting a Criminal statute, Indiana Code section 35-44-3-2, which the Indiana Supreme Court has held

cannot support a conviction if the principal is acquitted of the underlying crime. *McNight v. State*, 658 N.E.2d 559, 563 (Ind. 1995).

As the Indiana Supreme Court discussed in *McNight*, the doctrine of mandated consistency has been invoked when necessary to avoid inconsistent convictions and findings under statutes having the same common law origin as the current Assisting a Criminal statute. 658 N.E.2d at 563. Indiana Code section 35-45-2-5, which merely criminalizes the interference with the reporting of a crime, does not have as its common law origin the Assisting a Criminal statute, and it does not deal in the interrelated culpabilities between a principal and an accomplice. We therefore decline to consider the doctrine of mandated consistency in the context of the case at hand.

II. Inconsistent Verdicts / Sufficiency of the Evidence

Thomas also argues that the jury's verdict convicting him of interfering with the reporting of a crime was fatally inconsistent with its verdict acquitting him of criminal recklessness. When this court reviews a claim of inconsistent jury verdicts, we take corrective action only in cases where the verdicts are extremely contradictory and irreconcilable. *Powell v. State*, 769 N.E.2d 1128, 1131 (Ind. 2002). A jury's verdict may be inconsistent or even illogical but nevertheless permissible so long as it is supported by sufficient evidence. *Id.*; see *Hodge v. State*, 688 N.E.2d 1246, 1248-49 (Ind. 1997) (noting that ordinarily when a defendant's trial results in acquittal on some charges and convictions on others, the verdicts will not survive a claim of inconsistency when the evidence is sufficient to support the convictions). Upon resolving such a claim, we neither interpret nor speculate about the thought process or motivation of the jury in

reaching its verdict. *Powell*, 769 N.E.2d at 1131. In conducting our sufficiency-of-the-evidence analysis, we consider the probative evidence and all reasonable inferences in support of the judgment without reweighing evidence or re-assessing witness credibility. *See Hodge*, 688 N.E.2d at 1247-48.

We are not persuaded that the jury returned inconsistent verdicts in the instant case. To convict Thomas of criminal recklessness, the jury was required to find that, while armed with the knife, Thomas recklessly, knowingly, or intentionally waved and thrust the knife in Malone's direction, creating a substantial risk of bodily injury to Malone. *See* Ind. Code § 35-42-2-2 (2006). To convict Thomas of interference with the reporting of a crime, the jury was required to find that Thomas, with the intent to commit, conceal, or aid in the commission of a crime, knowingly or intentionally interfered with Malone's use of the 911 emergency telephone system. *See* Ind. Code § 35-45-2-5. As a plain reading of Indiana Code section 35-45-2-5 demonstrates, a defendant need only *intend* to commit, conceal, or aid in the commission of the crime when interfering with the reporting of it. We fail to see how, as Thomas argues, his acquittal on the criminal recklessness charge negates any element of the charge of interfering with the reporting of a crime, as it is immaterial to the interference conviction that no underlying crime actually occurred, so long as the evidence supports a finding of *intent* to commit, conceal, or aid in the commission of a crime.

Here, the jury could have found that Thomas had the intent to commit or conceal criminal recklessness when he interfered with Malone's use of the 911 phone system. The jury could have also found that Thomas did not actually commit criminal

recklessness on the basis that, for example, he did not create a substantial risk of bodily injury to Malone. The jury was at liberty to assign the proper weight to and either accept or reject certain pieces of evidence. *May v. State*, 810 N.E.2d 741, 743 (Ind. Ct. App. 2004).

Even if the verdicts were somehow inconsistent or illogical, however, such inconsistency is not fatal to the conviction so long as it is supported by sufficient evidence. *See Powell*, 769 N.E.2d at 1131. A brief review of the evidence demonstrates there was sufficient evidence of interference with the reporting of a crime to support that conviction. Malone testified that during her argument with Thomas, when he was threatening to kill her and waving a knife in front of her, she picked up the phone and called 911, whereupon Thomas grabbed the phone from her and threw it. Officer Helmsing testified that he received a report from dispatch that an initial 911 call from Malone's residence was disconnected before contact with the caller was made. State's Exhibit 1, during which the 911 operator, upon answering, is greeted by a dial tone, supports this contention. While Thomas argues that he did not know Malone was calling 911, given the obvious nature of a three-number call, the jury was free to assess his credibility and reject his version of the events in question. Given the evidence and our deference to the jury's credibility assessments, we conclude there was sufficient evidence to support Thomas's conviction for interference with the reporting of a crime. Accordingly, we conclude his challenge to his conviction on the grounds of inconsistent verdicts and insufficient evidence is without merit.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.