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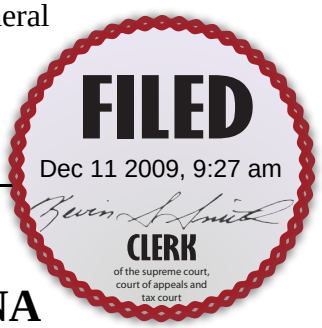

IN THE COURT OF APPEALS OF INDIANA

GREGORY A. ROWE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 73A04-0905-CR-255
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE SHELBY SUPERIOR COURT
The Honorable Jack A. Tandy, Judge
Cause No. 73D01-0808-FD-86

December 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Gregory A. Rowe challenges the sufficiency of the evidence supporting his convictions for class D felony intimidation and class A misdemeanor battery. We affirm.

The facts most favorable to the trial court's judgment indicate that on the evening of July 31, 2008, Shelbyville Police Department Officer Robert Brinkman, Jr., was on patrol when he saw Rowe and his girlfriend, Mary Dixon, arguing as they walked down the street. Officer Brinkman saw Rowe push Dixon to the ground. Dixon got up and started to walk away. Rowe grabbed Dixon's arm, and she tried to pull away from him. When Officer Brinkman exited his patrol car to investigate, Rowe let go of Dixon, and she fell to the ground. Officer Brinkman noticed that both Rowe and Dixon were intoxicated and saw red marks on Dixon's arm and a cut on her finger. Officer James Hasecuster arrived to assist Officer Brinkman and noticed blood on Dixon's hand. He also observed that Dixon was "emotional" and "crying from time to time[.]" Tr. at 20.

Rowe questioned the officers' authority and became verbally abusive and argumentative. When Rowe tried to snatch his ID out of Officer Brinkman's hand, the officer "told him to place his hands behind his back, he was under arrest." *Id*. at 10. Rowe pulled away from the officers, who forced him to the ground and struggled to handcuff him. The officers then placed Rowe in Officer Hasecuster's patrol car. As Officer Hasecuster drove Rowe to jail, Rowe told the officer that when they reached their destination and his handcuffs were removed, he was going to kick the officer "in the f***ing head." *Id*. at 24. Rowe also told Officer Hasecuster that "the next time that [Rowe] saw [him] out whether [he] was working or not [Rowe] was going to f***ing kill [him]." *Id.*

The State charged Rowe with class D felony intimidation, class A misdemeanor resisting law enforcement, class A misdemeanor battery, class B misdemeanor disorderly conduct, and class B misdemeanor public intoxication. On February 10, 2009, the trial court found Rowe guilty as charged.[1]

On appeal, Rowe challenges only the sufficiency of the evidence supporting his intimidation and battery convictions. Our standard of review in such cases is well settled:

> We do not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt.

Gomez v. State, 907 N.E.2d 607, 611 (Ind. Ct. App. 2009) (citations omitted), *trans. denied*.

To convict Rowe of class D felony intimidation, the State was required to prove beyond a reasonable doubt that he communicated a threat to a law enforcement officer, with the intent that the officer be placed in fear of retaliation for a prior lawful act. Ind. Code § 35-45-2-1. Rowe first contends that his "state of intoxication impaired his ability to form an intent." Appellant's Br. at 8. We note, however, that "[i]ntoxication is not a defense in a prosecution for an offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense unless the defendant meets the requirements of IC 35-41-3-5." Indiana Code Section 35-41-3-5 provides, "It is a defense

[1] We note that Rowe's counsel included Rowe's presentence investigation report in the appellant's appendix. Indiana Administrative Rule 9(G)(1) states that the information therein "is excluded from public access and is confidential." Indiana Trial Rule 5(G)(1) requires that such documents be separately identified and "tendered on light green paper or have a light green coversheet attached to the document, marked 'Not for Public Access' or 'Confidential.'"

that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the intoxication resulted from the introduction of a substance into his body: (1) without his consent; or (2) when he did not know that the substance might cause intoxication." Rowe does not claim that this statute applies. Consequently, this argument fails.[2] Rowe also contends that he "did not make numerous threats, as he made only two (2) quick utterances to [Officer] Hasecuster." Appellant's Br. at 8. The State correctly observes that only one threat is required to sustain Rowe's conviction. As such, this argument fails.

To convict Rowe of class A misdemeanor battery, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally touched another person in a rude, insolent, or angry manner that resulted in bodily injury to any other person. Ind. Code § 35-42-2-1(a). Rowe's argument boils down to his assertion that "[i]t is entirely possible that [Officer] Brinkman thought he saw a disturbance when in fact, there was no problem between Rowe and Dixon." Appellant's Br. at 10. This is merely an invitation to judge witness credibility and reweigh the evidence in his favor, which we must decline. Accordingly, we confirm Rowe's intimidation and battery convictions.

Affirmed.

RILEY, J., and VAIDIK, J., concur.

[2] Rowe improperly relies on *McCaffrey v. State*, 523 N.E.2d 435 (Ind. Ct. App. 1988), which was decided before the legislature abolished the voluntary intoxication defense in 1997.