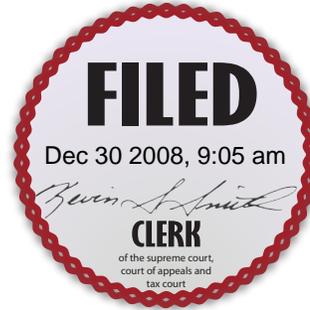


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RAGENA DENNIS,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 21A01-0802-CR-35

APPEAL FROM THE FAYETTE CIRCUIT COURT
The Honorable Daniel Lee Pflum, Judge
Cause No. 21C01-0508-FC-266

December 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Ragena Dennis was convicted after a jury trial of battery, a Class C felony,¹ and attempted murder, a Class A felony.² She argues there was insufficient evidence to support her conviction of attempted murder because she had the opportunity to commit murder but did not. We affirm.

FACTS AND PROCEDURAL HISTORY

Dennis had been married to Dustin Dennis for several years. While they were married, Dustin periodically had affairs with Kim Carlin. Dustin was living with Carlin in August of 2005. On August 6, 2005, Dennis telephoned Carlin at her home looking for Dustin, and an argument ensued. Dennis threatened Carlin and tried to induce Carlin to fight her. Carlin called the Connersville Police to report the threat.

Later that afternoon, Carlin was driving her moped to work when Dennis, who was waiting for Carlin, pulled out of a parking lot. Dennis drove alongside Carlin's moped yelling insults and threats. After a few moments, Dennis swerved her car off the road and hit Carlin's moped. Carlin flew off the moped and landed in a ditch filled with rocks. Dennis exited her vehicle and began punching Carlin and yelling that she was going to kill her. Several witnesses attempted to help Carlin and were eventually able to stop Dennis from hitting her. Carlin received minor injuries.

Dennis pled guilty to attempted murder, but the court rejected the plea when Dennis reported she had not intended to kill Carlin.

¹ Ind. Code § 35-42-2-1(a)(3).

² Ind. Code §§ 35-42-1-1 (Murder), 35-41-5-1 (Attempt).

At trial, Dennis testified she intended to fight Carlin but did not intend to kill her. A jury found Dennis guilty of battery and attempted murder. The trial judge sentenced Dennis to thirty years imprisonment, with seventeen years suspended to probation.

DISCUSSION AND DECISION

Dennis argues there was insufficient evidence to convict her of attempted murder.³ She contends she had opportunities to kill Carlin but did not, which demonstrates she did not intend to murder Carlin. We disagree.

When reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witness. *Harris v. State*, 884 N.E.2d 399, 404 (Ind. Ct. App. 2008), *trans. denied* 891 N.E.2d 53 (Ind. 2008). We consider only the evidence favorable to the judgment together with reasonable inferences therefrom. *Id.* The conviction will be affirmed if there is sufficient probative evidence from which a jury could find the defendant guilty beyond a reasonable doubt. *Id.*

To convict Dennis of attempted murder, the State was required to prove Dennis (1) had the specific intent to commit murder and (2) took a substantial step toward the commission of murder. Ind. Code §§ 35-41-5-1(a) (attempt), 35-42-1-1(1) (murder).

Intent may be inferred from the defendant's conduct and the natural and usual consequences of such conduct. *Moore v. State*, 723 N.E.2d 442, 452 (Ind. Ct. App. 2000). More specifically, a defendant's intent to murder may be inferred from use of a deadly weapon in a manner likely to cause death or bodily injury. *Perez v. State*, 872 N.E.2d 208, 213 (Ind. Ct. App. 2007), *trans. denied* 878 N.E.2d 218 (Ind. 2007).

³ Dennis does not challenge her conviction of battery.

Depending on the nature of its use, an automobile may be a deadly weapon. *Johnson v. State*, 455 N.E.2d 932, 936 (Ind. 1984), *reh'g denied*. Intent to kill may be established by the defendant's use of a deadly weapon coupled with an announcement of a threat to kill. *Corbin v. State*, 840 N.E.2d 424, 429 (Ind. Ct. App. 2006).

Dennis argues the evidence was insufficient to demonstrate intent to kill because she had several opportunities to kill Carlin but did not. She cites testimony indicating she had the opportunity to hit Carlin's moped at a faster speed and she could have hit Carlin with a rock from the ditch. However, Dennis cites no authority suggesting a jury must infer a lack of intent to kill from missed opportunities.

Dennis briefly argues the State failed to prove she took a substantial step towards the commission of the crime. A "substantial step" is any overt act beyond mere preparation and in furtherance of an intent to commit an offense. *Collier v. State*, 846 N.E.2d 340, 344 (Ind. Ct. App. 2006), *trans. denied* 860 N.E.2d 585 (Ind. 2006). Whether a defendant has taken a substantial step is a question of fact to be determined based on the circumstances of the case. *Id.*

Dennis parked along Carlin's route to work and waited for her. When Carlin passed by, Dennis drove alongside her, yelled threats out the window, then hit Carlin's moped with sufficient force to send Carlin flying from the moped. Dennis exited her car and began punching Carlin and yelling that she was going to kill her. Dennis had made similar threats earlier in the day when she phoned Carlin. This was ample evidence from which the jury could infer Dennis had the specific intent to commit murder and took a

substantial step toward murdering Carlin. *See e.g., Johnson*, 455 N.E.2d at 936; *Perez*, 872 N.E.2d at 214. As a result, we may not set aside her conviction of attempted murder.

Affirmed.

ROBB, J., and NAJAM, J., concur.