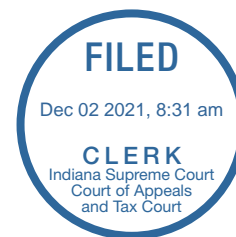


MEMORANDUM DECISION

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

Mark D. Altenhof
Elkhart, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Courtney L. Staton
Deputy Attorneys General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kenae M. Shorter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 2, 2021

Court of Appeals Case No.
21A-CR-1647

Appeal from the Elkhart Superior
Court

The Honorable Stephen Bowers,
Judge

Trial Court Cause No.
20D02-2004-CM-549

Friedlander, Senior Judge.

Statement of the Case

- [1] Kenae M. Shorter (Kenae) appeals from her convictions of one count of Class A misdemeanor criminal trespass¹ and one count of Class B misdemeanor criminal mischief,² arguing that the evidence is not sufficient to support her convictions. We affirm.

Facts and Procedural History

- [2] Kenae is the youngest of three sisters, and the victim, Kanya Shorter (Kanya), is the oldest. In November 2019, Kanya lived at her home in Elkhart County with her five children. She spent the afternoons watching television with her three youngest children. One afternoon, Kenae, who was uninvited, showed up at Kanya's house. After Kenae banged on the door, Kanya's nine-year-old son jumped up, answered the front door, and told Kanya that "Titi" was there. Tr. Vol. II, p. 13. "Titi" was a name the family used for both of Kanya's sisters. Kanya assumed that it was the middle sister at the door, not Kenae. Because her relationship was better with the middle sister, Kanya told her son to open the door.
- [3] Kanya realized that it was Kenae at the door after she stepped inside and "went ballistic." Tr. Vol. II, p. 14. Kenae used profane language with Kanya's child, and Kanya told her not to talk to her son like that. Kanya asked Kenae to

¹ Ind. Code § 35-43-2-2(b) (2019).

² Ind. Code § 35-43-1-2(a) (2018).

leave, but she refused to do so. Kenae continued to use profanities and remained just inside the front door of Kanya's house. Kanya told Kenae that she was going to call the police.

[4] Just inside the front door of Kanya's house, she kept and arranged the possessions of her deceased son. Those possessions included gifts he made for her for Mother's Day, the small bedding for his urn and ashes, his high school football jersey, photographs, and posters that others made in memory of him. She kept some of the items on a shelf in the hallway at the entrance of her house.

[5] While Kanya was talking on the phone with the police, Kenae said "F- you. F- your son." *Id.* at 17. Kenae used her hand to swipe the Mother's Day gifts off the shelf, breaking them. Other items were sent in different directions. Kenae said to Kanya, "F- you. You ain't gonna be nothin." *Id.* at 18. Kenae then left the house. Kanya went to the police station, taking with her at least one of the items that Kenae had broken which had been made by Kanya's deceased son.

[6] The State charged Kenae with one count of class A misdemeanor criminal trespass and one count of class B misdemeanor criminal mischief. Her bench trial was held on May 11, 2021, but Kenae failed to appear. At the conclusion of the trial, the court found her guilty as charged. Kenae now appeals.

Discussion and Decision

[7] Kenae argues that the evidence is insufficient to support her convictions. More specifically, Kenae argues that the State failed to establish beyond a reasonable

doubt: 1) the precise date of the offense; and 2) identification of her as the perpetrator, through the only witness who testified at trial, her sister Kanya.

[8] Our standard of reviewing claims of sufficiency of the evidence is well settled. When reviewing challenges to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *Purvis v. State*, 87 N.E.3d 1119 (Ind. Ct. App. 2017). Instead, we consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom, and we will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the verdict. *Id.* Reversal is appropriate only when a reasonable trier of fact would not be able to form inferences as to each material element of the offense. *Id.*

[9] To establish that Kenae committed Class A misdemeanor criminal trespass, the State was required to prove beyond a reasonable doubt that Kenae, who did not have an interest in Kanya's property, knowingly refused to leave Kanya's property after having been asked to do so. *See* Ind. Code § 35-43-2-2(b)(2). To prove that Kenae committed Class B misdemeanor criminal mischief, the State was required to prove beyond a reasonable doubt that Kenae, knowingly damaged or defaced Kanya's property without Kanya's consent. *See* Ind. Code § 35-43-1-2(a).

[10] During the bench trial, the State established that in November of 2019, Kanya lived in her home, in Elkhart County. One afternoon she was watching television with her younger children when Kenae knocked on the door.

Kanya's young son went to the door and told his mother that Titi was there. Titi was the name her children used when referring to both of their aunts. Kanya, believing that her younger sister was at the door, told her son to open the door. Kenae came into the house and began using profanity at Kanya's son and at Kanya. Kanya told Kenae she was not welcome and asked her to leave. Kenae refused and continued to use profane language.

[11] Kanya threatened to call the police if Kenae did not leave, but she remained. While Kanya was on the phone with the police, Kenae took her hand and swiped it across a shelf containing items including a container holding Kanya's deceased son's ashes, and Mother's Day presents he had made for her. Some of those items were broken because of Kenae's actions. As Kenae did so, she shouted profanities and derogatory comments at Kanya. Kanya did not give permission for Kenae to be in her home, did not invite her, nor did she give her permission to damage her personal items while there.

[12] First, Kenae argues that the State failed to establish the precise date of the offense during the bench trial. The State established that Kanya lived in her home in Elkhart County in November of 2019. The charging information alleges that the crimes occurred on November 5, 2019. *See Appellant's App. Vol. 2, p. 2.* We have held that "when time is not an element of a crime, or 'of the essence of the offense,' the State is only required to prove that the offense occurred any time within the statutory period of limitations; the State is not required to prove the offense occurred on the precise date alleged in an information." *See Neff v. State*, 915 N.E.2d 1026, 1032 (Ind. Ct. App. 2009)

(quoting *Poe v. State*, 775 N.E.2d 681, 686 (Ind. Ct. App. 2002), *trans. denied*).

Here, time is not an element or the essence of the offenses. Consequently, we conclude that the evidence was sufficient to support Kenae's convictions in that regard.

[13] Next, Kenae argues that Kanya's identification of her at trial was insufficient. During direct examination, Kanya was shown State's Exhibit 2, which was Kenae's booking photograph. When asked if she recognized the person in the photograph, Kanya responded that it was "Kenae Shorter" Kanya's "little sister." Tr. Vol. 2, p. 12. On appeal, Kenae argues that "at no point did the State attempt to 'link up' State's Exhibit 2, with the Appellant, Kenae Shorter." Appellant's Br. p. 7. We disagree. Kanya consistently testified that it was Kenae, her younger sister, who came into her home uninvited and damaged her personal items. She also identified the person in the booking photograph as her sister, the one who came into her home uninvited, refused to leave, and damaged her property.

[14] Kenae's additional argument that "the State's entire case was contingent upon the credibility of Kanya's identification of Kenae," is a request for us to reweigh the evidence and assess the credibility of the State's only witness. *See* Appellant's Br. p. 6. This is a task we cannot undertake and decline to do so. *See Purvis*, 87 N.E.3d at 1124.

Conclusion

[15] Having found that the evidence is sufficient to support the convictions, we affirm the convictions.

[16] Judgment affirmed.

Najam, J., and Molter, J., concur.