

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Jan L. Lemler,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 29, 2024

Court of Appeals Case No.
23A-CR-2634

Appeal from the Marshall Superior Court
The Honorable Dean A. Colvin, Judge

Trial Court Cause No.
50D02-2307-CM-671

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] Jan L. Lemler appeals his conviction for Criminal Mischief, as a Class B misdemeanor.¹ He presents the issue of whether sufficient evidence supports his conviction.² We affirm Lemler’s conviction but reverse the fine and restitution orders and remand with instructions to the trial court to conduct an indigency hearing.

Facts and Procedural History

- [2] On July 3, 2023, Melissa Owens, the manager of a Beacon Credit Union branch office in Marshall County, took a call from an employee at the customer service call center. Owens was informed that Lemler had called “a number of times” and appeared to be “upset [and] erratic.” (Tr. Vol. II, pg. 101.) Owens learned that Lemler was on his way to the branch office to close out his account; accordingly, Owens began to review Lemler’s account history. She was interrupted by an employee reporting that Lemler was on a bicycle in a drive-up

¹ Ind. Code § 35-43-1-2(a).

² Lemler also observes – and the State agrees – that the trial court imposed a fine of \$150.00 and entered a restitution order for \$860.00 but failed to conduct an inquiry into Lemler’s ability to pay any such sums. Indiana Code Section 35-38-1-18(a) requires that a court conduct an indigency hearing if it imposes a fine as part of a sentence. An indigency determination involves a mandatory inquiry into a person’s assets, income, and necessary expenses; the trial court may consider additional factors. I.C. § 35-33-7-6.5. Also, “when the trial court enters an order of restitution as part of a condition of probation, the court is required to inquire into the defendant’s ability to pay.” *Pearson v. State*, 883 N.E.2d 770, 772 (Ind. 2008).

lane, where he had “started hitting the call button,” screaming, and unleashing profanities. (*Id.*) Owens approached the drive-up window and asked Lemler how she could help. He indicated that he wanted his account closed but “his profanity escalated.” (*Id.*) Owens called a police officer to escort Lemler from the credit union property so that she could “focus on getting his account closed.” (*Id.*)

[3] Later that afternoon, Owens called and left a voice mail for Lemler indicating that he needed to come back to the credit union branch to negotiate the check that had been drafted to close out his account. Lemler called to verify that he had permission to return and was advised that he had permission to come back onto the business property if he conducted himself in a calm manner. A few minutes before 4:00 p.m., Lemler parked his bicycle across the street and walked along the south side of the branch building. He approached the teller window and began “beating on the equipment” with his fist. (*Id.* at 103.) Owens transmitted the check to Lemler via a tube, and he endorsed the check, received his funds, and left the property by walking on the south side of the building. The employees soon left, intending to return after the Fourth of July holiday. No employee noticed anything amiss.

[4] When Owens returned to work on the morning of July 5, she parked her vehicle and noticed that the pavement was wet. After Owens exited her vehicle, she saw that water was coming from a spigot on the south side of the building. There was standing water in the landscaping and approximately six inches of water standing in the lower window wells. Owens called the credit union

security officer, and his additional investigation revealed that the crawl space was “saturated.” (*Id.* at 109). They obtained dehumidifiers and fans to dry out the crawl space.

[5] The credit union had installed camera equipment. Owens reviewed recordings from July 3 up to her arrival on July 5 and discovered that Lemler was the only person captured on camera near the spigot during that timeframe. Lemler was seen on camera making a motion that Owens described as a “dip” as he walked past the water spigot. (*Id.* at 115.) Lemler was subsequently charged with Criminal Mischief.

[6] On October 5, Lemler was brought to trial before a jury. He and the State stipulated to the authenticity and admissibility of the credit union recording, entered into evidence as State’s Exhibit 3. However, Lemler argued that the recording was insufficient to satisfy the State’s burden of proof. At the conclusion of the trial, Lemler was found guilty as charged. He was sentenced to 180 days, with 106 days executed and the balance suspended to probation. Lemler was fined \$150.00 and ordered to pay \$860.00 in restitution. He now appeals.

Discussion and Decision

[7] “A person who recklessly, knowingly, or intentionally damages or defaces property of another person without the other person’s consent commits criminal mischief, a Class B misdemeanor.” I.C. § 35-43-1-2(a). When reviewing the

sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the conviction. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting evidence most favorably to the trial court’s ruling. *Id.* We affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* (quoting *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id.* at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. *Id.*

[8] Lemler argues that the State failed to prove beyond a reasonable doubt that he was responsible for water damage to the credit union property. He concedes that State’s Exhibit 3 shows him arriving at the credit union on July 3, “walking past the hose and reaching towards the spigot.” Appellant’s Brief at 13.

However, noting that the water spigot was not visible, and the hose was not moving during the recording, Lemler contends that the State did no more than raise the “possibility” that he committed criminal mischief by turning on the water spigot. *Id.* at 12.

[9] Lemler directs our attention to *Willis v. State*, 27 N.E.3d 1065 (Ind. 2015). In that case, the defendant was convicted of criminal trespass solely on evidence that officers responding to a building alarm and finding a broken vending machine saw Willis running in a field one hundred yards away. *Id.* On appeal of Willis’s conviction, our Indiana Supreme Court reiterated that:

“Mere presence at the crime scene with the opportunity to commit a crime is not a sufficient basis on which to support a conviction.” *Pratt v. State*, 744 N.E.2d 434, 436 (Ind. 2001). Instead, presence at the scene in connection with other circumstances tending to show participation, such as companionship with the one engaged in the crime, and the course of conduct of the defendant before, during, and after the offense, may raise a reasonable inference of guilt. *Maul v. State*, 731 N.E.2d 438, 439 (Ind. 2000).

Id. at 1068. The Court observed that Willis had not been discovered at the premises where the vending machine was located and concluded that the act of running through a nearby field was not probative of whether Willis “interfered with the possession or use of the property of the Watkins Family Recreational Center.” *Id.* at 1067.

[10] The instant case is distinguishable from *Willis*. Lemler was recorded on July 3 at the credit union premises in proximity to the water spigot; he made a motion in its direction. His course of conduct on that day indicated that Lemler was angry and agitated. He had unleashed profanities and refused to calm down until he was escorted from the credit union premises by a police officer. Lemler used his fist to strike credit union property. The State presented sufficient evidence from which the jury could infer that Lemler, acting with the requisite intent, damaged credit union property without consent by turning on the unattended water spigot.

Conclusion

[11] Sufficient evidence supports Lemler’s conviction of Criminal Mischief. We thus affirm his conviction. However, we reverse the fine and restitution orders and remand with instructions to the trial court to conduct an indigency hearing.

[12] Affirmed in part; reversed in part; and remanded with instructions.

Crone, J., and Pyle, J., concur.

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