

SUFFICIENCY OF THE EVIDENCE OBSTRUCTION OF JUSTICE

On January 31, 2020, the Indiana Court of Appeals issued its decision in Scott v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). Officers were dispatched to Scott's house, where he lived with his girlfriend, MC. They found the house in disarray and observed MC's face to be swollen and covered in blood. MC explained that after she threw a flower pot off the balcony, Scott struck her numerous times until she fell down, then grabbed her by the hair and drug her into the house. He continued to strike her and threatened to kill her. The next day, a detective took her statement. MC told the detective that Scott texted her, apologized, and promised to give her money to fix what he had done. Scott was charged with two level 5 battery offenses and kidnapping, as well several counts of level 6 battery and intimidation. Scott was arrested in February. In March, he began contacting MC from jail. During these calls, Scott repeatedly asked Cook to change her story so that the case could be dismissed, to tell the judge, prosecutor and his attorney that she had exaggerated what had happened. MC did, in fact, ask the prosecutor to dismiss, and the prosecutor declined. When Scott heard this, he told MC she did not have to attend court if she did not want to and to not attend a deposition, which he was going to request his attorney to schedule. Over the course of his calls to MC, Scott acknowledged MC was working long hours to take care of two children and that he would not be home to take care of them until the case was dismissed. He stated, "I know you want me home right there, baby."

In April, the court entered a no-contact order. Despite the order, Scott continued to call MC and talk to her about not attending depositions and not attending court. Ultimately MC stopped cooperating. In October, MC failed to appear for the trial. The trial court found that the state had shown by a preponderance of the evidence that MC was not present because of Scott's wrongdoing, and therefore, MC's statements to law enforcement would be introduced into evidence. The state then filed a motion to amend the charges to include obstruction of justice, a level 5 felony, and 30 counts of invasion of privacy. The trial granted the state's motion, and granted the defendant a motion to continue. The jury trial took place in January, and again MC was not present. The officers were permitted to testify as to MC's statements identifying Scott as her assailant. The jury found Scott guilty of one of the level 5 battery charges, of obstruction of justice, and all the counts of invasion of privacy.

On appeal, Scott challenged the admission of MC's statements and his conviction for obstruction of justice. The court of appeals upheld the admission of MC's statements to police as substantive evidence because Scott engaged in conduct that was designed to procure MC's absence. The ongoing harassment of MC "through a litany of phone calls was a campaign designed to prevent [MC] from testifying."

The court of appeals also found the evidence sufficient to support Scott's conviction for obstruction of justice. A person obstructs justice when he "knowing or intentionally induces, by threat, coercion, false statement, or offer of goods, services, or anything of value, a witness . . . in an official

proceeding . . . to . . . withhold . . . any testimony, information, document, or thing.” It’s a level 5 felony if during the pendency of a domestic violence case, he knowingly or intentionally “offers, gives, or promises any benefit to . . . any witness to abstain from attending or giving testimony at any hearing, trial, [or] deposition . . .” Scott argued that the number of calls was not coercive, and he did not make any false statements. In order to be coercive, the pressure he exerted on MC must have been for the purpose of inducing her to withhold testimony, and he must have expressed some consequence resulting from her failure to comply. The court found the Scott gave a clear indication of a consequence if MC failed to comply; he would not get out of jail, and she would have to continue working long hours and caring for the children without his help. It is not necessary that the consequence be a specifically negative event. “Under these circumstances, a reasonable fact finder could conclude that the pressure from the repeated phone calls and the statement made by Scott in this context was coercive.” Scott’s conviction was affirmed.

SUFFICIENCY OF THE EVIDENCE RESISTING LAW ENFORCEMENT

On January 30, 2020, the Indiana Court of Appeals issued its decision in Tyson v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). An officer driving on a city street observed Tyson look at her vehicle, turn around, stumble, and turn back around to walk in the original direction. The officer turned her vehicle around and initiated contact with Tyson. When she did so, she could smell the odor of alcohol and marijuana. Tyson “was uncooperative, refusing to stop, continuously having his hands in his pockets, backing away, telling me that he had done nothing wrong, that he did not have to stop.” Tyson kept his hands in his pockets, and the officer could see there were other items in his pockets. The officer repeatedly told him to take his hands out of his pockets where she could see them. She ultimately tased Tyson, but even after that, Tyson refused to put his hands behind his back. Tasing him a second time achieved the result of placing Tyson under arrest. Tyson was charged with resisting law enforcement, public intoxication and possession of paraphernalia. He was found guilty of resisting law enforcement after a bench trial.

To convict a person of resisting, the state must prove that he “forcibly” resisted, obstructed or interfered with an officer. “Forcibly” means something more than mere action. Proof requires that the person used “strong, powerful, violent means.” However, a modest level of resistance, like stiffening one’s arms, may support the offense. A threatening gesture or movement or an act that presents an imminent danger of bodily injury will suffice. The court of appeals found that “Tyson’s refusal to take his hands out of his pockets, which clearly contained items, amounted to a threatening gesture presenting an imminent danger of bodily injury” to the officer. His conviction was affirmed.

SUFFICIENCY OF THE EVIDENCE INTIMIDATION

On January 30, 2020, the Indiana Court of Appeals issued its decision in B.B. v. State, ___ N.E.3d ___ (Ind. Ct. App. 2020). B.B. was homeschooled, but he was close friends with R.A., a high school 10th grader. In 2018, B.B. told R.A. in person, by phone and through Snapchat of his desire to shoot students at R.A.’s high school. After repeated statements by B.B., R.A. began to take the statements seriously. R.A. knew B.B. had access to an assault rifle. B.B. showed R.A. what R.A. described as a manifesto, which described a plan to shoot students. R.A. suspected the shooting would occur on April 20, the anniversary of Columbine. According to R.A., B.B planned to get on the school bus, enter the high

school, hide in the bathroom, and begin shooting when classes began. R.A. told B.B.'s plan to other students, but did not tell school administrators or police. Administrators ultimately became aware of the threats and contacted law enforcement. On April 20, they re-routed buses to prevent them from passing B.B.'s residence and implemented extra security measures. Many students, having heard of the threats, stayed home. Investigators interviewed B.B. with his mother present and obtained consent to search B.B.'s cell phone. They located the manifesto R.A. described and other incriminating notes.

The state filed a petition alleging B.B. was delinquent for committing intimidation, Level 6 felony if committed by an adult. The court at a fact finding hearing found B.B. to be delinquent for committing intimidation, a Level 6 felony if committed by an adult. On appeal, B.B argued that the court did not have evidence sufficient to support intimidation because the state failed to prove that B.B. knew or had reason to know that his statements regarding the planned shootings would be communicated to any potential or intended victims. Since he intended to communicate his message only to R.A., and did not threaten to shoot R.A., B.B did not threaten victims. The portion of the intimidation statute B.B. was charged with (I.C. 35-45-2-1(a)(3)) defines in relevant part, "A person who communicates a threat with the intent of . . . interfering with the occupancy of a dwelling, building, or other structure . . . commits intimidation." It does not require a threat be communicated to a specific victim. A "reasonable factfinder could conclude that B.B. knew or should have known that R.A. would report a plan of mass murder to other students in the high school." B.B.'s delinquency adjudication was affirmed.