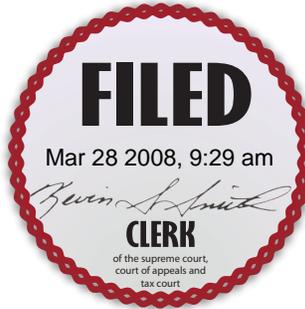


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RAYMOND WIEFLING,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A02-0709-CR-775

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jose Salinas, Judge
Cause No. 49G17-0704-FD-60022

March 28, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Raymond Wiefling (“Wiefling”) was convicted in a bench trial of Residential Entry, a Class D felony,¹ and Invasion of Privacy, a Class A misdemeanor,² and now requests that we vacate the Invasion of Privacy conviction. We affirm.

Issue

Wiefling presents the sole issue of whether his multiple convictions violate Indiana double jeopardy principles.

Facts and Procedural History

Wiefling and Wendy Crevier (“Crevier”) lived together “nine years off and on.” (Tr. 10.) On March 8, 2007, Crevier obtained a protective order against Wiefling. Thereafter, Wiefling called Crevier at times, they would talk briefly and Crevier would advise Wiefling “there’s a restraining order, we can’t.” (Tr. 15.) At about 9:00 p.m. on March 30, 2007, Crevier walked into her kitchen and saw Wiefling sitting on her sofa. Crevier reminded Wiefling about the restraining order and he left. Crevier summoned the police.

On April 13, 2007, Wiefling was charged with Residential Entry, Invasion of Privacy, and Intimidation.³ At the conclusion of a bench trial conducted on July 11, 2007, Wiefling was acquitted of Intimidation and convicted of Residential Entry and Invasion of Privacy. On August 3, 2007, Wiefling was ordered to serve concurrent sentences of 545 days, with 365 days suspended, for Residential Entry and 365 days, all suspended, for Invasion of

¹ Ind. Code § 35-43-2-1.5.

² Ind. Code § 35-46-1-15.1.

Privacy. He now appeals.

Discussion and Decision

Wiefling contends that he was twice placed in jeopardy for the same offense, in contravention of Article I, Section 14 of the Indiana Constitution and Indiana common law. Article I, Section Fourteen of the Indiana Constitution provides that “no person shall be put in jeopardy twice for the same offense.” In Richardson v. State, 717 N.E.2d 32 (Ind. 1999), our supreme court held that the Indiana Double Jeopardy Clause is violated if there is “a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense.” Id. at 53.

To convict Wiefling of Residential Entry, as charged, the State was required to show that he knowingly or intentionally broke and entered Crevier’s dwelling. Indiana Code § 35-43-2-1.5. To convict Wiefling of Invasion of Privacy, as charged, the State was required to show that he knowingly or intentionally violated a protective order by going to Crevier’s residence or contacting her by telephone.⁴ Ind. Code § 35-46-1-15.1. Each of these crimes includes evidence or facts not essential to the other. The Indiana Double Jeopardy Clause is not violated when the evidentiary facts establishing the elements of one offense also establish one or several, but less than all, of the essential elements of a second offense. Spivey v. State, 761 N.E.2d 831, 833 (Ind. 2002).

³ Ind. Code § 35-45-2-1.

⁴ The charging information alleged that Wiefling committed Invasion of Privacy by “engaging in the following conduct – went to her [Crevier’s] residence and/or contacted her by telephone.” (App. 16.)

However, in Guyton v. State, 771 N.E.2d 1141, 1143 (Ind. 2002), our Supreme Court recognized that five traditional categories of double jeopardy are prohibited by rules of statutory construction and common law, including conviction and punishment for a crime which consists of the very same act as another crime for which the defendant has been convicted and punished and conviction and punishment for a crime which consists of the very same act as an element of another crime for which the defendant has been convicted. In reliance upon Guyton, Wiefeling argues that the evidence established that he committed a single act – that of entering Crevier’s mobile home without permission – and so he could not be punished twice.

Crevier testified that she walked into her kitchen and saw Wiefeling, who had apparently gained entry through an unlocked door. However, this is not the only conduct in violation of the protective order that Crevier described. She testified as follows:

There were times where he called me. I have, he has a cell phone that’s on my account and um, he would call me and we would talk briefly and say well, you know there’s a restraining order, we can’t.

(Tr. 15.) As such, the State established, by separate and distinct facts, the commission of two separate offenses.

Affirmed.

NAJAM, J., and CRONE, J., concur.