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IN THE
COURT OF APPEALS OF INDIANA

JIMMY ROBINSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-1101-CR-57
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable David Bonfiglio, Judge
Cause No. 20D06-0912-CM-709

August 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jimmy Robinson appeals his two Class A misdemeanor invasion of privacy convictions. We affirm.

Issues

The issues before us are:

I. whether there was sufficient evidence to convict Robinson of two counts of Class A misdemeanor invasion of privacy; and

II. whether Robinson received ineffective assistance of trial counsel.

Facts

In 2008, Robinson and Anita Calhoun ended their relationship after twenty-nine years. Calhoun sought a protective order against Robinson, which the trial court issued on April 3, 2009. The protective order prohibited Robinson from "harassing, annoying, telephoning, contacting, or directly or indirectly communicating" with Calhoun. Appellant's App. p. 12. It also ordered him to "stay away from the residence, school, and/or place of employment" of Calhoun. Id.

Between April 6 and 9 and on April 15 of 2009, there were phone calls and messages referring to the break-up left for Calhoun from a phone number belonging to Robinson. Deputy David Lanzen of the Elkhart County Sheriff's Department heard the messages and Calhoun confirmed the voice belonged to Robinson. The calls were made to Calhoun's home. On or about April 9, 2009, Robinson called Calhoun's work

pretending to be her brother. Calhoun's supervisor, Sandy Tobler, handed Calhoun the phone and witnessed her reaction when she heard Robinson's voice.

On one morning between July 27 and 29, 2009, as Calhoun was leaving her apartment with her friend Phillip Glaze to go to work, Robinson was blocking Calhoun's vehicle with his truck. Calhoun managed to pull out when Robinson was distracted. Robinson followed Calhoun all the way to work. When Calhoun pointed out Robinson's truck, Tobler saw it on the street in front of their office. Detective Kelly Todd of the Elkhart County Sheriff's Department interviewed Calhoun, Glaze, and Robinson. Glaze's and Robinson's statements corroborated Calhoun's as to what Robinson was driving on the morning of the incident.

The State charged Robinson with two counts of Class A misdemeanor invasion of privacy. Count I related to the April 2009 conduct, and Count II related to the July 2009 conduct. A bench trial was held in October 2010, and the trial court found Robinson guilty of both charges. Robinson now appeals.

Analysis

I. Sufficiency of the Evidence

Robinson asserts there was insufficient evidence to convict him of two counts of Class A misdemeanor invasion of privacy. In reviewing a sufficiency of the evidence claim, we do not reweigh the evidence nor do we assess the credibility of the witnesses. Treadway v. State, 924 N.E.2d 621, 639 (Ind. 2010). We look to the evidence and reasonable inferences drawn therefrom that support the verdict. Id. We will uphold the conviction if there is probative evidence from which a fact finder could have found the

defendant guilty beyond a reasonable doubt. Id. To convict Robinson of Class A misdemeanor invasion of privacy, the State needed to prove that he knowingly or intentionally violated a protective order issued under Indiana Code Chapter 34-26-5. See Ind. Code § 35-46-1-15.1(1).

Referring to Count I, Robinson alleges that the evidence does not preclude the possibility that the contacts were made before the protective order was put in place, and thus is insufficient to establish that he violated his protective order. He specifically argues that no trier of fact could find that the messages heard on Calhoun's answering machine were made on or about April 9, 2009, as alleged in the charging information, or after April 3, 2009, the issue date of the protective order. At trial, Calhoun did first testify to April 15, 2009, as being the first contact after the protective order was in place, but she later testified to other dates as she remembered them. These included the dates between April 6 and April 9. It was for the trial court to resolve any discrepancies in her testimony.

Robinson argues that Count II is flawed because Calhoun initially testified the last contact she had with Robinson was in December 2008, which is before April 3, 2009, the date the protective order was put in place. He also argues that when Calhoun was asked about the incident at her apartment, she testified that it occurred on July 29, but did not give a year.

From Calhoun's testimony that Robinson was in her apartment in December 2008, it is reasonable to infer that she was stating that was the last time she had actual willing contact with Robinson and not when he contacted her in violation of the protective order.

As for her testimony that the incident at her apartment occurred on or about July 29, she did not need to specify the year; the prosecutor had specifically asked her whether the incident occurred on July 29, 2009. There is sufficient evidence that Robinson contacted Calhoun on or about April 9, 2009, and July 29, 2009.

II. Ineffective Assistance of Counsel

Robinson contends his trial counsel provided him with ineffective assistance of counsel, and therefore, his conviction must be vacated and a new trial ordered. When assessing a claim of ineffective assistance of counsel, we apply the two components set out in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). First, the defendant must demonstrate deficient performance by counsel. Perry v. State, 904 N.E.2d 302, 308 (Ind. Ct. App. 2009), trans. denied. This requires a showing that representation by counsel fell below reasonable objective standards and the errors were so serious that they resulted in a denial of the right to counsel guaranteed by the Sixth and Fourteenth Amendments. Id. Second, there must be a showing that prejudice resulted from the deficient performance. Id. To establish this, there must be a showing that there is a reasonable probability that but for the unprofessional errors by counsel, there would have been a different result to the proceeding. Id. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. We may dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice if it is easier to do so. Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

Robinson argues that his trial counsel repeatedly did not object to hearsay evidence and failed to give a closing argument, resulting in prejudice against him. He

specifically argues that Tobler only knew about Robinson, what he drove, and the fact that Robinson had a protective order from Calhoun's statement, so Tobler's testimony that she saw Robinson's car at Calhoun's place of employment was inadmissible. Likewise, Robinson argues that Glaze only knew a protective order was in place from Calhoun. Robinson also argues that an objection by his trial counsel should have been made when Deputy Lanzen testified that it was Robinson's voice he heard in the phone messages because it was confirmed by Calhoun's recognition of the voice. Finally, Robinson argues that Detective Todd's testimony regarding the date of the July incident related inadmissible hearsay.

"Admission of hearsay is not grounds for reversal where it is merely cumulative of other evidence admitted." Robinson v. State, 693 N.E.2d 548, 553 (Ind. 1998). Tobler's and Glaze's testimonies are cumulative of Calhoun's testimony that Robinson came to Calhoun's work. The fact that they learned about the protective order from Calhoun is irrelevant to the outcome of the case; Tobler and Glaze did not need to know about the protective order's existence. Deputy Lanzen's and Detective Todd's testimony is also cumulative of Calhoun's. Also, Deputy Lanzen did not only confirm with Calhoun that the voice on the messages belonged to Robinson, but he additionally confirmed the phone number belonged to Robinson.

Finally, this is a bench trial, and we find that there is no error in not making a closing argument. We presume the trial court correctly applied the law. Moran v. State, 622 N.E.2d 157, 159 (Ind. 1993). Robinson has failed to prove the prejudice required to establish that trial counsel was ineffective.

Conclusion

There is sufficient evidence to convict Robinson for two counts of Class A misdemeanor invasion of privacy, and his claim of ineffective assistance of counsel is unavailing. We affirm.

Affirmed.

ROBB, C.J., and BRADFORD, J., concur.