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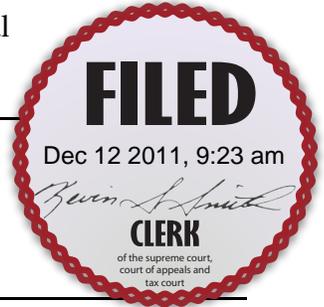
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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES GROFF,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 90A02-1106-CR-610

APPEAL FROM THE WELLS SUPERIOR COURT
The Honorable Everett E. Goshorn, Judge
Cause No. 90D01-1009-CM-239

December 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

James Groff appeals from his conviction of one count of class A misdemeanor Invasion of Privacy.¹ Groff presents two issues for our review, which we restate as follows:

1. Is the evidence sufficient to support Groff's conviction?
2. Was Groff denied due process when he appeared in jail clothes at trial?

We affirm.

Groff had been married to Sherry Irvins for approximately twenty-one years prior to their divorce in February 2010. Irvins filed a petition for dissolution of marriage in October 2009 and had obtained an *ex parte* protective order against Groff because Irvins was frightened that he would harm her. The trial court issued the protective order on October 16, 2009, and it expired in January 2010.

Groff was incarcerated in the Wells County Jail at the time the protective order was in effect. Each cell block at the jail has a telephone. Inmates are allowed to use these telephones when out of their cells. Each telephone call is recorded and saved.

On January 5, 2010, Groff called his daughter, Mimi Groff Land, and asked that she speak with Irvins on his behalf. Groff had made at least three calls to Land asking her to speak with Irvins on his behalf during the time the protective order was in effect prior to the January 5, 2010 telephone call. The only telephone call at issue in this appeal is the one that occurred on January 5, 2010. The following exchange took place between Groff and his daughter during that telephone call:

GROFF: I wrote . . . did you read my letter I wrote you?

¹ Ind. Code Ann. § 35-46-1-15.1 (West, Westlaw current through 2011 1st Reg. Sess.).

GROFF-LAND: Yeah, I read your letter and I took one of letters from Mom and read it too.

GROFF: Okay. Mimi—just talk to her for me, will you?

GROFF-LAND: Yeah.

GROFF: Okay.

GROFF-LAND: I'll try to but sometimes she don't [sic] listen to me.

* * *

GROFF: Tell your mom I at least deserve a letter from her explaining this stuff here. I don't understand any of it—okay?

GROFF-LAND: Okay—I'll tell her.

GROFF: Yeah, and I'm not going to stop writing until she does. I don't care if they put me in jail forever and ever.

Transcript at 79-80. Land relayed Groff's messages to Irvins "like two times." *Id.* at 42.

Land also "sometimes" told Irvins that Groff loved her per Groff's request. *Id.*

The State charged Groff with four counts of invasion of privacy, each as a class A misdemeanor. Groff, who was incarcerated at the time of his jury trial, appeared in court wearing his jail clothes. On June 7, 2011, the day of his trial, Groff's counsel objected to him appearing in front of the jury dressed in his jail clothes. The following conversation between Groff's counsel and the trial court ensued:

COUNSEL: I talked to some of [Groff's] family about bringing clothes to trial and they didn't. I guess I'd just like to object at this point that his prison clothes could be prejudicial. I don't think there is any duty on behalf of the defense attorney to go shopping with him. I really couldn't do that.

COURT: There is no duty on the court's behalf to dress . . .

COUNSEL: If there is a conviction for appeal, I guess I would ask that the court would make note of that objection.

COURT: It is overruled.

Id. at 16. Groff did not make a motion for continuance, and the jury trial began as scheduled.

At the conclusion of the trial, the jury found Groff not guilty of three counts and guilty of one count of invasion of privacy. The trial court sentenced Groff to one year executed in the Wells County Jail. Groff now appeals.

1.

Groff challenges the sufficiency of the evidence used to convict him. When considering a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor reassess witness credibility. *Rickert v. State*, 876 N.E.2d 1139 (Ind. Ct. App. 2007). Considering only the probative evidence and reasonable inferences supporting the jury's verdict, we must affirm if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.*

In order to establish that Groff committed invasion of privacy, the State was required to prove that Groff knowingly or intentionally violated an *ex parte* protective order. I.C. § 35-46-1-15.1(2). The evidence shows that Irvins obtained an *ex parte* protective order against Groff on October 16, 2009. The protective order, which was admitted into evidence as State's Exhibit 1, provided that Groff was not to telephone, contact, or directly or indirectly communicate with Irvins. Groff referred to the protective order in telephone conversations with his daughter and expressed his understanding that he was not to call Irvins

or leave telephone messages for her. Despite his knowledge of the existence of the protective order, Groff wrote letters to Irvins and requested that Land speak to Irvins on his behalf. Land relayed Groff's messages to Irvins at least two times and "sometimes" told Irvins, at Groff's request, that Groff loved her. *Transcript* at 42.

Groff relies upon this Court's opinion in *Huber v. State*, 805 N.E.2d 887 (Ind. Ct. App. 2004) to support his position. In *Huber*, however, the defendant attempted to have a third party communicate with his wife, who had secured protective orders against the defendant. Unlike the factual setting of this case, that third party refused. We reversed the defendant's conviction of invasion of privacy, finding that the attempt to indirectly communicate with his wife was incomplete. The facts of this case are completely distinguishable. As stated above, Land testified that she spoke with Irvins on Groff's behalf. There is sufficient evidence in the record from which the jury could have concluded that Groff indirectly communicated with Irvins in violation of the protective order. We conclude that there is sufficient evidence in the record to support Groff's conviction.

2.

Groff also challenges the trial court's ruling on his objection to being dressed in jail clothing during his jury trial. The Supreme Court of the United States has held that compelling an accused to stand trial in identifiable jail or prison clothing is a due process violation. *Estelle v. Williams*, 425 U.S. 501 (1976). The Court did not, however, establish a per se rule requiring a reversal of every conviction in which the defendant appeared at trial dressed in jail attire. *Bledsoe v. State*, 410 N.E.2d 1310 (Ind. 1980). Our Supreme Court held that the central issue is whether the defendant is compelled to appear before the jury in

jail attire. *Id.* The right to be tried in civilian clothing may be waived. *Id.* A defendant must object to his appearance in court in jail clothing. *Id.* Whether Groff was compelled to stand trial in jail clothing turns on what actions the defendant and his counsel took to alleviate the problem. *See id.*

The record in this case reflects that Groff's counsel objected to Groff wearing jail clothing at trial immediately prior to his jury trial. Groff was aware of the date of his jury trial setting for two months during which time he could have sought clothing to wear for his trial. Although counsel stated to the trial court that an attempt had been made to have family members bring civilian clothing for Groff and that the clothing had not been brought, Groff did not seek a continuance to allow additional time during which Groff could obtain civilian clothing. Groff's counsel did not request a jury instruction on the issue, nor was other relief requested or an offer of proof made.

Furthermore, our Supreme Court has held that the appearance of the defendant in jail clothing is not inherently prejudicial to the defendant where the jury already knows, based on other facts, that the defendant has been deprived of his liberty. *French v. State*, 778 N.E.2d 816 (Ind. 2002). The recordings of Groff's telephone conversations with Land, which were recorded at the Wells County Jail, were played for the jury at trial and each began with the operator identifying Groff as an inmate at Wells County Jail. Thus, the jury was fully aware that Groff recently had been incarcerated. That knowledge notwithstanding, and that Groff appeared in jail clothes at trial, the jury acquitted him of three counts of invasion of privacy and convicted him of one count. We conclude that Groff did not establish that he was compelled to appear at trial dressed in jail clothing, or that he was prejudiced.

Judgment affirmed.

RILEY, J., and MATHIAS, J., concur.