

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.

ATTORNEY FOR APPELLANT:

TIMOTHY J. BURNS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JASON FUGATE,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A05-0701-CR-62

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Melissa Kramer, Commissioner
Cause No. 49G21-0609-CM-176195

October 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Jason Fugate appeals his conviction for Invasion of Privacy, as a Class A misdemeanor.¹ We affirm.

Issue

Fugate raises three issues on appeal. We address the consolidated issue of whether there was sufficient evidence that Fugate knowingly violated a protective order.

Facts and Procedural History

On February 23, 2006, the Marion County Superior Court entered an Ex Parte Order for Protection (“Protective Order”), ordering Fugate “to stay away from the residence, school, and/or place of employment of [Jessica Fogleman].” State’s Exhibit 1, page 3. Fugate signed the back of it, signifying his receipt.

Later that year, Fugate was arrested outside Fogleman’s residence. The State charged Fugate with Invasion of Privacy, as a Class A misdemeanor, for knowingly violating a protective order issued to prevent domestic or family violence pursuant to Indiana Code Chapter 34-26-5. Specifically, the State alleged that Fugate was “in her presence and/or at her residence.” Appellant’s Appendix at 14. After a bench trial, the judge found Fugate guilty as charged.

Fugate filed a Motion to Correct Error, arguing that certain evidence was admitted in error. The trial court entered an Order Granting in Part and Denying in Part Motion to Correct Error, in which it ordered that certain testimony should have been excluded.

¹ Ind. Code § 35-46-1-15.1(1).

Nonetheless, the trial court found that there remained sufficient evidence that Fugate knowingly violated the Protective Order.

Fugate now appeals.

Discussion and Decision

On appeal, Fugate argues that certain testimony should have been excluded as inadmissible hearsay, or alternatively, as being in violation of his Sixth Amendment right to confront witnesses. He contends that the properly admitted evidence is insufficient to sustain his conviction. Per the trial court’s Order Granting in Part and Denying in Part Motion to Correct Error, we confine our analysis to the evidence admitted without objection.

Our standard of review when considering the sufficiency of the evidence is well settled. We will not reweigh the evidence or assess the credibility of witnesses. Robinson v. State, 699 N.E.2d 1146, 1148 (Ind. 1998). Rather, we consider only the evidence that supports the verdict and draw all reasonable inferences from that evidence. Id. We will uphold a conviction if there is substantial evidence of probative value from which a judge or jury could have found the defendant guilty beyond a reasonable doubt. Id.; Upp v. State, 808 N.E.2d 706, 707 (Ind. Ct. App. 2004).

The Protective Order ordered Fugate “to stay away from the residence, school, and/or place of employment of [Fogleman].” State’s Ex. 1, page 3. Marion County Deputy Sheriff Marlon Minor (“Deputy Minor”) testified as follows:

Q: . . . Did you come into contact with the defendant, Jason Fugate?

A: Yes, ma'am.

Q: And where was that?

A: Outside of 8303 Coshour Road – Coshour Road?

Q: What were the circumstances that you came into contact with him?

A: The initial dispatch run was a burglary in progress at that address. The resident of the home, Ms. Jessica Fogleman, said that she thought that somebody was breaking into her basement.

Q: And when you got there, who was present?

A: Actually, Deputy Jonathan Hayes and Deputy Aaron Robinson got there before I did. They were standing by with Mr. Fugate.

Q: And – so, when you arrived on the scene, Mr. Fugate was present, is that correct?

A: Yes. He was standing outside the home.

Transcript at 6-7. Under cross-examination, Deputy Minor added that he observed Fugate on the sidewalk.

This evidence, admitted without objection, supported the allegation that Fugate knowingly violated the Protective Order by standing outside of Fogleman's residence. As we look only to evidence supporting the verdict, we conclude that there was sufficient evidence of probative value to conclude beyond a reasonable doubt that Fugate committed Invasion of Privacy.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.