MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael L. Cardwell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 23, 2023

Court of Appeals Case No. 22A-CR-1855

Appeal from the Allen Superior Court

The Honorable Steven O. Godfrey, Judge

Trial Court Case No. 02D06-2110-F4-109

Memorandum Decision by Senior Judge Shepard
Judges Brown and Foley concur.

Shepard, Senior Judge.

[1] Michael L. Cardwell was convicted on one count of Level 4 burglary,[1] one count of Class A misdemeanor invasion of privacy,[2] and one count of Class A misdemeanor resisting law enforcement.[3] On appeal he is challenging the trial court's exclusion of evidence proffered as to his conviction for invasion of privacy. Concluding that the court did not abuse its discretion by excluding the evidence, we affirm.

Facts and Procedural History

[2] Angela Norvell-Shicks was in an "on and off" relationship with Cardwell for approximately seven years before she sought and was granted an ex parte protection order against him on August 5, 2021. Tr. Vol. 2, p. 131. That order explicitly prohibited Cardwell from having any contact with Angela and ordered him to stay away from her residence. Cardwell filed a verified request for a hearing and certified in his request that he had received notice of the protection order on August 9, 2021.

[3] On October 11, 2021, Cardwell came to the hotel room where Angela had been staying and began arguing with her. Angela told him to leave and locked him

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[1] Ind. Code §35-43-2-1(1) (2014).

[2] Ind. Code §35-46-1-15.1(a) (2019).

[3] Ind. Code §35-44.1-3-1(a) (2021).

out of her room. She then retreated to her neighbor's room because she felt unsafe.

[4] Around thirty minutes later, while still in her neighbor's room, she heard a crash. When she returned to her room, she found that Cardwell had "smash[ed] the window," taken her car keys, and stolen her vehicle from the parking lot. Angela's neighbor called 911. Hotel surveillance equipment showed Cardwell near Angela's room at the time of the burglary.

[5] The following day, Cardwell agreed to return Angela's vehicle if she would meet with him. He told her that "he was sorry, he didn't mean to, he got scared and he had to leave." *Id.* at 140. Angela notified the police, and an officer arrived at the arranged meeting place in a marked police vehicle. Cardwell immediately fled on foot when he saw the car and had to be tased to be apprehended. He admitted to the officers that he stole Angela's car, and her keys were found in his pocket. Her car was recovered at the location he provided.

[6] The State charged Cardwell with one count of Level 4 burglary, one count of Class A misdemeanor invasion of privacy, and one count of Class A misdemeanor resisting law enforcement. At the conclusion of his jury trial, he was found guilty as charged and was later sentenced to an aggregate sentence of nine years executed and three years suspended. On appeal, Cardwell challenges only his conviction for invasion of privacy.

Discussion and Decision

[7] Cardwell says the court abused its discretion by excluding evidence that on October 5th, Angela mailed a request to the court to have the protective order dismissed and that the court dismissed the protective order on October 12th, one day after the commission of the crimes at issue here. Outside the presence of the jury during an offer of proof, Angela said that she had mailed the request but that her request was "not exactly [made] willingly." *Id.* at 152. She testified that "we were still under the understanding that it was still valid." *Id.* at 153. She also stated, "So when I said leave don't come back, that means leave don't come back, leave me alone." *Id.*

[8] Cardwell argued that the evidence was relevant to his intent, i.e., whether he believed the protection order was in place at the time, while the State countered that Angela would testify that Cardwell forced her to make the dismissal request. The court excluded the evidence because it lacked relevance, as the protective order "was a court order that was in place on October 11th." *Id.* at 155-56.

[9] "We review a trial court's decision to admit or exclude evidence for an abuse of discretion." *Barnhart v. State*, 15 N.E.3d 138, 143 (Ind. Ct. App. 2014). "An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances presented." *Id.* "'Errors in the admission or exclusion of evidence are to be disregarded as harmless error unless they affect the substantial rights of a party.'" *Id.* (quoting *Fleener v. State*,

656 N.E.2d 1140, 1141 (Ind. 1995)). "In other words, we will find an error in the exclusion of evidence harmless if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect the defendant's substantial rights." *Id.* (citing *Williams v. State*, 714 N.E.2d 644, 652 (Ind. 1999)).

[10] Furthermore, evidence is relevant if it has any tendency to make any "fact that is of consequence to the determination" of the action more or less probable. Ind. Evidence Rule 401. And irrelevant evidence is not admissible. Ind. Evidence Rule 402. Here, the court properly concluded that Angela's request to lift the protective order was irrelevant given that the protection order was still in effect when Cardwell broke into Angela's room on October 11th.

[11] Nevertheless, Cardwell suggests that his case is similar to *Tharp v. State*, 942 N.E.2d 814 (Ind. 2011), because the evidence he sought to admit "is demonstrative of Mr. Cardwell's knowledge or intent regarding the continuing restraint of the Protective Order, namely, that Mr. Cardwell believed that" the order "was no longer restraining him," and the "mere fact that the Order persisted is not determinative of Mr. Cardwell's knowledge or intent." Appellant's Br. p. 22. *Tharp*, however, is inapposite here because *Tharp* held that the victim's statement to the defendant that an order of protection existed, but was no longer valid, was insufficient evidence of *notice* to establish the defendant's knowing violation of the protection order. 942 N.E.2d at 817-18 (emphasis added). Here, there is no dispute that Cardwell had notice of the protection order. He specifically certified he received notice of the protection

order on August 9, 2021 when he filed a verified request for a hearing on the matter. *See Joslyn v. State*, 942 N.E.2d 809, 812 (Ind. 2011) (defendant's "admission of receipt is sufficient to sustain his convictions[]" of stalking and invasion of privacy).

[12] This case is also dissimilar to *Tharp* in that there was no evidence that Angela told Cardwell that the order was no longer valid. In *Tharp*, the victim told the defendant about the protective order, but also told him that it was inactive. *Id.* at 817. Angela testified during the offer of proof that she and Cardwell understood that the order was still valid and that when she told Cardwell not to return to the hotel room, "that means leave don't come back, leave me alone." Tr. Vol. 2, p. 153. The order was not dismissed until October 12th, after the crimes, and notice was mailed to the parties on October 14th. Thus, neither of the parties could have known of the protection order's dismissal on the date of Cardwell's crimes.

[13] We further note the substantial prejudice to Cardwell that would have occurred had the court admitted the evidence. Evidence Rule 403 allows a court to exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. The jury would have heard Angela's additional testimony that she made the dismissal request unwillingly, putting before the jury evidence that Cardwell had committed other, prior uncharged violations of the order.

[14] To prove that Cardwell committed invasion of privacy as a Class A misdemeanor, the State had to establish beyond a reasonable doubt that Cardwell knowingly or intentionally violated a protective order to prevent domestic or family violence or harassment. *See* Ind. Code §35-46-1-15.1(a)(1). Angela testified that she was in an "on and off" relationship with Cardwell. Tr. Vol. 2, p. 131. The protection order was effective until August 5, 2023, and "only the court [could] change the order." Exhibit Vol. 1, p. 6 (State's Exhibit 3). Cardwell acknowledged receipt of the order and admitted breaking into Angela's room on October 11th, taking her keys, and stealing her vehicle while the protection order was in effect. The proffered evidence was properly excluded as irrelevant, and its exclusion would have constituted harmless error at best because it did not negate an element of the crime. *See Williams*, 714 N.E.2d 644 (error in exclusion of evidence harmless if its probable impact on jury, in light of all evidence, is sufficiently minor so as not to affect defendant's substantial rights).

[15] Though there is no evidence in the record to suggest that Angela somehow invited or acquiesced in the violation, we note that if such evidence had existed, it would not provide Cardwell relief here. *See* Ind. Code §34-26-5-11 (2002) ("If a respondent is excluded from the residence of a petitioner or ordered to stay away from a petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection."); *Patterson v. State*, 979 N.E.2d 1066, 1069 (Ind. Ct. App. 2012) ("In summary, our General Assembly has determined that where a protected person invites the subject of a protective order to violate the

terms of the order, such is irrelevant to the subject's guilt."). The court did not abuse its discretion by excluding the evidence.

Conclusion

[16] In light of the foregoing, we affirm the trial court's judgment.

[17] Affirmed.

Brown, J., and Foley, J., concur.