MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Brent Bilski,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 30, 2023

Court of Appeals Case No. 21A-CR-2843

Appeal from the Marion Superior Court

The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No. 49D30-2012-F5-36733

Foley, Judge.

[1] Brent Bilski ("Bilski") was convicted after a jury trial of domestic battery by means of a deadly weapon as a Level 5 felony, strangulation as a Level 6

felony, criminal confinement as a Level 6 felony, two counts of domestic battery as a Class A misdemeanor, invasion of privacy as a Class A misdemeanor, and possession of cocaine as a Level 6 felony. He was ordered to serve an aggregate term of four years in Community Corrections followed by 545 days on probation. Bilski appeals and raises several issues, which we consolidate and restate as:

I. Whether the trial court erred when it read a stipulation of the parties to the jury but failed to formally admit the exhibit; and

II. Whether sufficient evidence was presented to support his convictions for invasion of privacy and domestic battery by means of a deadly weapon.

Finding no error by the trial court and that sufficient evidence supported Bilski's convictions, we affirm.

Facts and Procedural History

[2] M.K. first met Bilski in high school, and the two reconnected in September 2020, when they started dating. However, by December 2020, she had "broken it off" with Bilski, although they were still "[s]omewhat" in communication. Tr. Vol. 3 p. 135. On December 3, 2020, a no contact order was issued under a separate criminal cause number against Bilski, which prohibited Bilski from having contact with M.K. On December 4, 2020, Bilski left a voicemail for M.K., in which he said that he knew M.K. had received a no contact against

him and that he hoped she would not call him and get him arrested. *Id*. at 158–59.

[3] At approximately 3:00 a.m., on December 6, 2020, Bilski went to M.K.'s apartment. She allowed him inside because she "thought it would give him closure that everything was done and over with and that he would leave [her] alone." *Id*. at 135–36. When Bilski first arrived, he was calm, and according to his later testimony, the two discussed the no contact order. The tone of the conversation changed a few hours later when Bilski became "enraged" and "combative." *Id*. at 136. M.K. asked Bilski to leave, and he refused. M.K.'s further requests for him to leave angered him. Bilski pushed her into a wall, shoved her onto a couch, and sat on top of her with his hands around her neck, causing M.K. to have trouble breathing. M.K. was able to escape from Bilski and ran to her bedroom. She attempted to shut her bedroom door, but Bilski kicked it in.

[4] After kicking in the door, Bilski reached into M.K.'s purse, which was hanging from a hook in the bedroom. M.K. thought that Bilski had taken her wallet and house keys. Bilski left the apartment to go to his vehicle, and M.K. followed him, yelling at him to return her belongings. The two struggled at the open driver-side door of Bilski's car. Bilski got inside the car and remotely started it. At the same time, Bilski had a hold on M.K.'s arm and continued to hold onto her as he reversed the car out of the parking spot, causing M.K. to "back pedal" with the car." *Id*. at 141. After reversing out of the parking spot, Bilski began driving forward down the road. M.K. was still hanging from the driver's side of

the car and tried to run with the car "as long as [she] could." *Id*. at 142. After she had been "dragged" 60 to 100 yards, M.K. fell and hit the ground, which caused Bilski to release her arm. *Id*. The dragging caused "road rash all over [M.K.'s] back" among other injuries. *Id*. at 143. She called 911 and made a police report.

[5] Later that day, around 4:00 p.m., M.K. was in her apartment, working in her home office, when she saw through the window what she thought was Bilski's vehicle. As a "[p]recautionary measure," she went outside to retrieve some items. *Id*. at 197. She first went to her front porch, and when she unlocked her back door to do the same, "the door came flying in" at her, and Bilski entered the apartment. *Id*. at 149. He grabbed M.K. around the neck with both hands and "started strangling" her. *Id*. Bilski pinned M.K. against the wall and lifted her off her feet. She was able to grab her phone and attempted to call 911 but had to hang up because she "couldn't get words [out] because . . . he had [her] neck in his hands." *Id*. at 149–50. She was then able to hit a button on her phone to call the last person she had most recently contacted, which was her neighbor. The neighbor knew about the incident that had occurred earlier that morning. The neighbor arrived at M.K.'s apartment while Bilski still had both of his hands around M.K.'s neck.

[6] When the neighbor arrived, she told Bilski to let M.K. go, and he loosened his grip, allowing M.K. to escape his grasp. Bilski ran out the back door, and M.K. followed him with her handgun. She did this because she "didn't want him to leave . . . [and] wanted the cops to catch him there." *Id*. at 153. Bilski got into

his car, and M.K. positioned herself behind the car on the passenger side. Bilski then backed up toward M.K. "[f]airly quickly" causing the tires to "squeal." Tr. Vol. 4 pp. 16–17. The car struck M.K. and caused her to stumble out of Bilski's way. As Bilski began to drive away, M.K. fired her gun toward his rear passenger side tire. As Bilski exited the apartment's parking lot, the police arrived at the scene.

[7] The police followed Bilski and conducted a traffic stop of the car. During a search incident to arrest, a cigarette pack was found in Bilski's coat pocket containing "a balled up napkin and inside of that napkin was suspected crack cocaine." Tr. Vol. 3 p. 214. Laboratory analysis confirmed the seized substance was cocaine, weighing 0.237 grams.

[8] On December 9, 2020, the State charged Bilski with: (1) two counts of Level 5 felony domestic battery by means of a deadly weapon; (2) Level 6 felony strangulation; (3) two counts of Level 6 felony residential felony; (4) Level 6 felony criminal confinement; (5) Level 6 felony criminal recklessness; (6) two counts of Class A misdemeanor domestic battery; (7) two counts of Class A misdemeanor battery resulting in bodily injury; (8) Class A misdemeanor invasion of privacy; and (9) Class A misdemeanor theft. The State later amended the charging information to dismiss one count of residential entry and the theft charge and to add a count of Level 6 felony possession of cocaine.

[9] During the pretrial proceedings, Bilski represented himself. At a pre-trial hearing held on October 28, 2021, the State discussed a proposed stipulation

regarding the no contact order, which was the basis of Bilski's charge for invasion of privacy, and stated:

> So, just so you know, with the no contact order and the one invasion of privacy charge, I have to be able to admit it, but it's my job to also make sure that I am not talking about your previous case. And so, the stipulation that I have is, a way for me to still enter it without getting into your previous case. So, it's really a protection thing. So, if you want to read over that and then, just—we can even talk about it. Well, I actually prefer to know if you're planning to take it, just so I can put it in order in my evidence, but if we need some time.
>
> So, basically, Your Honor, it just says that a no contact order was granted under a—this cause number. He was the person named on the no contact order, M.K. was named as the protected person, and we're now entering the certified no contact order document so without getting further into his previous case.

Tr. Vol. 2 pp. 187–88. The trial court gave Bilski time to read the stipulation, and Bilski stated that he "d[idn't] see any problems" with the stipulation but denied any knowledge of the no contact order. *Id*. at 188. The State clarified that the stipulation would not be an admission that Bilski had knowledge of the no contact order but only showing that the document existed. Bilski responded, "I don't have a problem with that, Your Honor," but still had concerns about whether he could present evidence that M.K. was contacting him after the no contact order was issued. *Id*. at 188–89. Thereafter, the following exchange occurred:

The Court: Here's the deal, sir. All she's asking you is if you agree if you want to stipulate to that. If you don't want to stipulate to it, you can just say no. And then, she'll bring in the documents that she needs to bring in, because I'm sure she has them. So, you can either agree or disagree. That's—

[Bilski]: I'll agree—

The Court: —your choice. Okay.

[Bilski]: I'll agree with her.

The Court: Then, if you don't mind, go ahead and sign that, and that way, we have it ready for—it's already ready for tomorrow.

[Bilski]: Again, as long as this isn't—

[State]: You're not admitting to anything.

[Bilski]: Thank you.

The Court: You're—what she said, I mean she said just that the no contact order was signed by a Judge and was given.

[State]: Uh-huh.

[Court]: That's all she's saying.

[State]: Yes.

[Bilski]: Okay.

Id. at 190–91.

[10] At the jury trial, prior to M.K.'s testimony, the State read the stipulation, marked as State's Exhibit 17 ("the Stipulation") to the jury:

> Stipulation of facts comes [now] the [S]tate of Indiana by Deputy Prosecutor and the Defendant pro se can stipulate to the following facts. (1) That the no contact order was granted by a judge under cause number 49D232012CM036121 on December 3, 2020. (2) That Brent Bilski was named on the no contact order as a person who is not permitted to contact the protected party. (3) That M.K. was named as that protect[ed] party. (4) As a part of the stipulation the State is entering the certified no contact order document as State's Exhibit 18 without objection from the Defendant and (5) the party stipulates State's Exhibit 18 is the no contact order charged under Count IX.
>
> Executed this date of November 1, 2021. It has both of our signatures on it.

Tr. Vol. 3 p. 130. The trial court then addressed the jury as follows:

> Okay. So ladies and gentleman, you'll get this instruction in your filing instructions, but when the parties stipulate to something the direct legal definition of that is when the parties agree to certain facts you should accept the facts as true. So you'll get to read this later and you'll get the documents, but this means that what they have agreed to is a true statement. You don't have to have—there's no dispute about it. Okay. All right.

Id. Shortly before the State rested its case, Bilski requested that his standby counsel begin representing him at the trial.

[11] After the presentation of evidence and the parties' closing arguments, the parties discussed what exhibits would be given to the jury during deliberations. The State brought up the "stipulation" and "also the no-contact order." Tr. Vol. 4 p. 234. Defense counsel stated, "I don't want them to see the—," to which the trial court responded, "If you don't want it to go back then it doesn't go back." *Id*. The State affirmed that it had "no problem with that not going back," and the trial court responded, "Okay." *Id*. Neither the Stipulation (Exhibit 17), nor the no contact order (Exhibit 18) were provided to the jury. After deliberations, the jury found Bilski guilty of many of the charges including domestic battery by means of the deadly weapon and invasion of privacy. Bilski now appeals.

Discussion and Decision

I. Stipulation

[12] Bilski first argues that the trial court erred when it read the Stipulation to the jury without first admitting the Stipulation into evidence. The trial court is afforded wide discretion in ruling on the admissibility of evidence. *Shinnock v. State*, 76 N.E.3d 841, 842 (Ind. 2017). On appeal, we review evidentiary decisions for abuse of discretion and only reverse when the decision is clearly against the logic and effect of the facts and circumstances. *Id*. at 842–43. However, Bilski did not object to the reading of the Stipulation at trial and argues that the trial court committed fundamental error.

[13] The failure to object at trial waives the issue for review unless fundamental error occurred. *Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013). Fundamental error is an extremely narrow exception to the general rule that a party's failure to object at trial results in a waiver of the issue on appeal. *Durden v. State*, 99 N.E.3d 645, 652 (Ind. 2018). "An error is fundamental, and thus reviewable on appeal, if it 'made a fair trial impossible or constituted a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm.'" *Id*. (quoting *Knapp v. State*, 9 N.E.3d 1274, 1281 (Ind. 2014) (internal quotation marks omitted), *cert. denied*). The fundamental error exception, however, encompasses only errors so blatant that the trial judge should have acted independently to correct the situation. *Brewington v. State*, 7 N.E.3d 946, 974 (Ind. 2014), *cert. denied*. Conversely, "if the judge could recognize a viable reason why an effective attorney might not object, the error is not blatant enough to constitute fundamental error." *Id*.

[14] When a passive lack of objection is coupled with defendant's active agreement for the admission of the evidence, it becomes a question of invited error.[1] "[T]he 'doctrine of invited error is grounded in estoppel,' and forbids a party to

[1] The fact that Bilski was proceeding pro se at the time the stipulation was entered into by the parties and when the stipulation was admitted into evidence at trial is of no moment. A litigant is not given special consideration by virtue of his or her pro se status. *Kelley v. State*, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021). "It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so." *Basic v. Amouri,* 58 N.E.3d 980, 983–84 (Ind. Ct. App. 2016) (internal citations omitted)*, reh'g denied*. Bilski's stand by counsel also failed to object to the reading of the Stipulation after assuming the duties of trial counsel.

'take advantage of an error that [he] commits, invites, or which is the natural consequence of [his] own neglect or misconduct.'" *Id*. at 975 (quoting *Wright v. State,* 828 N.E.2d 904, 907 (Ind. 2005)).

[15] By agreeing to the Stipulation, Bilski affirmatively consented to the jury knowing about the existence of the no contact order. Therefore, any claimed error regarding the facts contained in the Stipulation was invited. At the pretrial hearing, Bilski was fully advised of what the Stipulation was, its contents, and what effect it would have. Bilski was specifically advised that the Stipulation was not an admission of Bilski's knowledge of the issuance of the no contact order. He was also informed that the Stipulation would avoid the jury hearing about the "previous case," which was a criminal case in which the no contact order had been issued. Tr. Vol. II pp. 187–88. After being fully advised, Bilski signed the Stipulation. Consistent with his prior consent, Bilski did not object when the Stipulation was read into evidence at his trial. Because of Bilski's informed and presumably strategic agreement to the Stipulation being presented to the jury, he invited any error in the jury being read the Stipulation.

[16] Nonetheless, Bilski argues that the trial court committed fundamental error by reading the Stipulation to the jury without first formally admitting Exhibits 17 and 18 into the record. Bilski maintains that because the trial court never explicitly stated that Exhibits 17 and 18 were admitted into evidence, they were not evidence, and the jury could not hear about them.

[17] In making his argument, Bilski relies on *Montgomery Ward, Inc. v. Koepke*, 585 N.E.2d 683 (Ind. Ct. App. 1992), *trans. denied*. In that case, the parties proposed an unsigned pretrial order stipulating to "the authenticity of received exhibits." *Id.* at 684–85. At trial, the trial court sustained an objection to multiple exhibits referenced in the stipulation, and on appeal, a panel of this court affirmed the trial court. *Id.* at 684, 687. The issue in *Montgomery Ward* was the scope of the stipulation.. *Id*. at 685. This court held that the stipulation was limited to the authenticity of the subject exhibits and not admissibility, permitting an objection to the exhibits under other evidentiary grounds. *Id*.

[18] Unlike *Montgomery Ward*, the meaning or scope of the Stipulation is not challenged, just the trial court's failure to formally admit Exhibits 17 and 18 into evidence. Bilski fails to cite any authority for his proposition that the trial court was required to formally admit Exhibits 17 and 18 into evidence prior to reading the Stipulation to the jury. Exhibits 17 and 18 were preserved in the record in this matter affording review by this court and, based upon the agreement of the parties, were not provided to the jury during deliberations. We do not find any error in the fact that the trial court did not say the actual words "Exhibits 17 and 18 are admitted."

II. Sufficiency of the Evidence

[19] Bilski argues that insufficient evidence was presented to support his convictions for Class A misdemeanor invasion of privacy and for Level 5 felony domestic battery by means of a deadly weapon. When there is a challenge to the

sufficiency of the evidence, "[w]e neither reweigh evidence nor judge witness credibility." *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *reh'g denied*, *cert. denied*. Instead, "we consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom." *Id*. (internal quotation marks, bracket, and ellipses omitted). "We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence." *Id.* (internal quotation marks, ellipses, and brackets omitted). Further, "[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

A. Invasion of Privacy

[20] Bilski first challenges his conviction for invasion of privacy. To convict Bilski of Class A misdemeanor invasion of privacy, the State was required to prove that he knowingly or intentionally violated a no contact order issued under Indiana Code section 35-33-8-3.2 by the trial court under cause number 49G14-2012-CM-36221, to protect M.K. *See* Ind. Code § 35-46-1-15.1(a)(11); Appellant's Conf. App. Vol. II pp. 172, 174. Bilski argues that insufficient evidence was presented to support his conviction because the evidence did not prove that he had knowledge of the no contact order, only that he knew of the protective order that was not the subject of his charge.

[21] Looking at the evidence most favorable to the verdict, we conclude the State presented sufficient evidence to prove Bilski had knowledge of the no contact order referenced in the charging information. Bilski testified that he and M.K.

discussed the "no contact order" on the day of the crimes and that M.K. asked him to leave her apartment because the no contact order was in place. Tr. Vol. 4 p. 162. The jury also heard a recording of a phone call Bilski made two days before the day of the crimes and the day after the no contact order was issued, in which he stated, "I know you got a restraining order against me. I hope you don't call and have me arrested." Ex. 21; Tr. Vol. 3 pp. 158–59. Further, the Stipulation informed the jury of the existence of the no contact order. The evidence presented was sufficient to support Bilski's conviction for invasion of privacy.

B. Battery by Means of a Deadly Weapon

[22] Bilski next argues that the evidence presented was not sufficient to support his conviction for domestic battery by means of a deadly weapon because no evidence was presented to prove that he used his car to touch M.K. To convict Bilski of Level 5 felony domestic battery by means of a deadly weapon, the State was required to prove that Bilski knowingly or intentionally touched a family or household member in a rude, insolent, or angry manner and that the touching was committed with a deadly weapon, here Bilski's car. *See* I.C. § 35-42-2-1.3(a)(1), (c)(2); Appellant's Conf. App. Vol. II pp. 172–73. An automobile can be considered a deadly weapon. *DeWhitt v. State*, 829 N.E.2d 1055, 1064 (Ind. Ct. App. 2005)*, trans. denied*. While battery requires a defendant to have intended to touch another person, he does not have to personally touch another person since battery may be committed by the defendant's unlawful touching or "'*by any other substance put in motion by [the]*

defendant.'" *Henson v. State*, 86 N.E.3d 432, 439–40 (Ind. Ct. App. 2017) (quoting *Matthews v. State*, 476 N.E.2d 847, 850 (Ind. 1985)).

[23] The evidence most favorable to the verdict showed that as M.K. struggled to grab her keys and wallet from Bilski, he grabbed her arm and held onto it. While he maintained a hold on her arm, he started the car and began driving by reversing out of the parking spot. Bilski's hold on M.K.'s arm required her to "back pedal" with the vehicle. Tr. Vol. 3 p. 141. Then, while still holding onto M.K.'s arm, he began to drive forward with M.K. "[h]anging from the driver[']s side of the car", which resulted in M.K. being "dragged" 60 to 100 yards. *Id*. at 142. Although she tried to run alongside the car "for as long as [she] could," Bilski only released her arm when she fell because she lost her footing. *Id*. As a result, M.K. sustained injuries, including "road rash all over her back." *Id*. at 143.

[24] Bilski contends that, because he did not actually strike M.K. with the car, then the evidence was not sufficient to prove his conviction. However, actually personally striking or hitting the victim with the motor vehicle is not necessary. The unlawful touching can be accomplished by the defendant or by any other substance put into motion by the defendant. *See Henson*, 86 N.E.3d at 440 (sufficient evidence found for defendant's conviction for battery by means of deadly weapon and that he touched the victims in an angry manner where the defendant intentionally drove a car at a high rate of speed directly into gas pumps causing the passengers to be ejected from the car and thrown onto the pavement, which resulted in injuries). Bilski intentionally drove his car while

holding onto M.K's arm and accelerated until she could no longer run alongside the car, which caused M.K. to fall onto the pavement and only then did Bilski release M.K. The combination of Bilski's grasp on M.K.'s arm and the propulsion of the vehicle resulted in M.K. falling and striking the pavement and is sufficient to sustain the conviction for battery by means of a deadly weapon (motor vehicle).

[25] Additionally, evidence was presented that, when Bilski returned to M.K.'s apartment later the same day, after an altercation inside of the apartment, M.K. followed Bilski outside to his car. While M.K. was standing behind the car, Bilski reversed out of his parking spot "fairly quickly" and backed the car into M.K., causing her to stumble. Tr. Vol. 3 p. 155; Tr. Vol. 4 pp. 16–17. M.K. testified that she had her back to the car when it hit her, pushing her forward and causing her to stumble. Tr. Vol. 3 p. 155. This evidence too was sufficient to prove that Bilski knowingly or intentionally touched M.K. in a rude, insolent, or angry manner and that the touching was committed with a deadly weapon.[2]

[2] Bilski asserts that the State argued that Count I, which was the count of battery by means of a deadly weapon that the jury found him guilty of, was charged based on Bilski's conduct on the morning of December 6, 2020. Appellant's Br. p. 27. However, the language in the charging information for both counts of battery by means of a deadly weapon are identical in charging that the conduct occurred "[o]n or about December 6, 2020" with no other timeframe. Appellant's Conf App. Vol. II p. 173. Additionally, contrary to Bilski's argument, the record is not clear which set of facts was charged as Count I as opposed to Count II. Therefore, sufficient evidence was presented to support Bilski's conviction for battery by means of a deadly weapon under either set of facts.

Conclusion

[26] We, therefore, conclude that Bilski failed demonstrate reversible error with respect to the Stipulation and that the State presented sufficient evidence to support Bilski's convictions for both invasion of privacy and battery by means of a deadly weapon.

[27] Affirmed.

Robb, J., and Mathias, J., concur.