MEMORANDUM DECISION

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.

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IN THE COURT OF APPEALS OF INDIANA

Marquita L. Forrest,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 7, 2021

Court of Appeals Case No. 20A-CR-1670

Appeal from the Floyd Superior Court

The Honorable J. Terrence Cody, Judge

Trial Court Cause No. 22D02-1805-CM-920

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Marquita Forrest (Forrest), appeals her conviction for harassment, a Class B misdemeanor, Ind. Code § 35-45-2-2(a)(1).

[2] We affirm.

ISSUES

[3] Forrest presents this court with two issues on appeal, which we restate as follows:

(1) Whether the trial court abused its discretion in admitting certain photographic evidence; and

(2) Whether the State presented sufficient evidence beyond a reasonable doubt to sustain Forrest's conviction for harassment.

FACTS AND PROCEDURAL HISTORY

[4] Approximately seven years ago, Attorney Margaret Timmel (Attorney Timmel) was appointed to serve as the guardian to Forrest's adult son, D.F., following D.F.'s removal from Forrest's home by Adult Protective Services. D.F. has cerebral palsy and intellectual disabilities and lived in a group home during Attorney Timmel's guardianship. Although Forrest was unhappy about Attorney Timmel being her son's guardian, she refused to meet with Adult Protective Services to demonstrate she could appropriately care for him.

[5] Six months into the guardianship, Attorney Timmel was asked to settle a lawsuit that had been filed by Forrest on behalf of D.F. after he had fallen at

school. The school's attorney offered a settlement of $11,000 and Attorney Timmel, after conducting an evidentiary investigation, obtained approval from the guardianship court to accept the settlement offer. Some of the proceeds of the settlement were used to purchase furniture, clothing, and other items for D.F. After payment for these items and Attorney Timmel's legal fees, approximately $5,500 remained of the settlement funds.

[6] Subsequent to the settlement, Forrest began calling Attorney Timmel's office. Forrest would "call and hang up, call and hang up, call and hang up." (Transcript Vol. II, p. 8). On occasion, these phone calls would become "really threatening." (Tr. Vol. II, p. 8). At times, Forrest would call Attorney Timmel's office more than fifty times in a single day. Periodically, Attorney Timmel would request that Forrest not contact her again "unless you have something that we can work out." (Tr. Vol. II, p. 18). In May of 2018, Forrest made several lengthy calls to Attorney Timmel's office, some of which were recorded, and which included threatening statements. Later, Forrest stood outside Attorney Timmel's office several times, holding signs that included statements such as, "Timmel steals black people's kids." (Tr. Vol. II, p. 12).

[7] On May 3, 2018, the State filed an Information, charging Forrest with harassment, as a Class B misdemeanor. On August 11, 2020, the trial court conducted a bench trial. At the bench trial, the State offered into evidence photographs of Forrest standing outside Attorney Timmel's office, holding the signs. Forrest objected to the admission, claiming that, in addition to the irrelevant nature of the photographs, she engaged in a peaceful protest in a

public place to communicate her feelings. The trial court overruled the objection, noting, "I think I can figure out what weight, if any, to assign to the photos." (Tr. Vol. II, p. 13). At the conclusion of the bench trial, the trial court found Forrest guilty as charged, noting in particular the statements that Forrest made during a specific phone call on May 2, 2018, "Time is up bitch. Count your mother-fucking days." (Tr. Vol. II, p. 35). That same day, the trial court sentenced Forrest to 180 days in jail, with 12 days to serve and 168 days suspended to probation.

[8] Forrest now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Admission of Photographic Evidence*

[9] Forrest first contends that the trial court abused its discretion by admitting photographs of herself, holding signs and standing outside of Attorney Timmel's office. Claiming that the trial court's abuse of discretion was two-fold, Forrest maintains that her conduct was protected by the First Amendment of the United States Constitution as she was expressing her beliefs while on public property and that the evidence was irrelevant because the charging Information only alluded to the harassing nature of the phone calls but was silent about the protest or signs.

[10] We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Barnhart v. State*, 15 N.E3d 138, 143 (Ind. Ct. App. 2014). An abuse of discretion occurs when 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.* In other words, we will find an error in the exclusion of evidence harmless if its probable impact on the finder of fact, in light of all of the evidence in the case, is sufficiently minor so as not to affect the defendant's substantial rights. *Id*.

[11] We agree with Forrest that the charging Information only charged her with "call[ing] 58 times" and did not make any mention about the protest in front of Attorney Timmel's office. Therefore, we find that the photographic evidence was not relevant, as required by Indiana Evidentiary Rule 401, because the photographs did not have "any tendency" to make the existence of the harassing phone calls "more or less probable." However, the admission of the photographs was harmless as in bench trials, a reviewing court presumes that the trial court disregarded inadmissible evidence and rendered its decision solely on the basis of relevant and probative evidence. *Berry v. State*, 725 N.E.2d 939, 943 (Ind. Ct. App. 2000) ("Any harm from an evidentiary error is lessened, if not completely annulled, when the trial is by the court sitting without a jury"). Here, the trial court did just that. In ruling on the admissibility of the photos, the trial court informed the parties, "I think I can figure out what weight, if any, to assign to the photos." (Tr. Vol II, p. 13). Furthermore, in announcing its guilty judgment, the trial court did not mention the photos but focused solely on Forrest's phone calls to Attorney Timmel.

Therefore, we conclude that it was harmless error to admit the photographic evidence.[1]

II. *Sufficiency of the Evidence*

[12] Next, Forrest contends that the State failed to present sufficient evidence beyond a reasonable doubt to sustain her conviction for harassment. For sufficiency challenges, we neither reweigh evidence nor judge witness credibility. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018). We consider only the evidence most favorable to the judgment together with all reasonable inferences that may be drawn from the evidence. *Id*. We will affirm the judgment if it is supported by substantial evidence, even if the evidence is conflicting. *Id*.

[13] To convict Forrest of harassment, the State was required to establish beyond a reasonable doubt that she, "with intent to harass, annoy, or alarm another person but with no intent of legitimate communication . . . ma[de] a telephone call[.]" I.C. § 35-43-2-2(a)(1). Focusing her sole challenge on the legitimate communication prong, Forrest likens her situation to *Leuteritz v. State*, 534 N.E.2d 265 (Ind. Ct. App. 1989). In *Leuteritz*, the defendant had worked for the victim's husband, whom he alleged owed him forty dollars. *Id*. at 266. When

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[1] Although Forrest also asserts a First Amendment argument, as a matter of jurisprudence, "we do not decide cases upon constitutional grounds when they can be decided upon other grounds." *Hulse v. Ind. State Fair Bd*., 94 N.E.3d 726, 730 (Ind. Ct. App. 2018).

Leuteritz phoned the victim's residence, he asked "to speak to Diaper Rash Face Charlie." *Id*. The victim testified that she told Leuteritz to stop calling and the conversation ended. *Id*. After he was found guilty by the trial court, Leuteritz argued on appeal that there was insufficient evidence to prove that he had no intent to enter into a legitimate communication. *Id*. at 267. We agreed, and noted that although Leuteritz' request to speak to "Diaper Rash Face Charlie," was "discourteous, [it] was itself a legitimate communication for the defendant communicated his desire to speak to the [victim's] husband[.] *Id*. We held that "[W]e can do no more than speculate that, if Leuteritz had been permitted to speak to [the victim's husband], there would have been no legitimate communication." *Id*. Accordingly, we reversed the trial court's judgment. *Id*.

[14] We find Forrest's analogy to *Leuteritz* without merit. Forrest's actions went well beyond a single, discourteous phone call that could not be completed; rather, Forrest made repeated phone calls which included numerous personal threats to Attorney Timmel. Not only did Forrest communicated to Attorney Timmel personally to "count your mother-fucking days," but she also threatened Attorney Timmel, "I'm gonna whip your mother fucking ass." (State Exh. 1 & 2). Occasionally, Attorney Timmel would ask Forrest not to call her again, "unless you have something that we can work out." (Tr. Vol. II, p. 18). While Attorney Timmel kept the lines of communication open, there is no evidence Forrest availed herself of this opportunity to conduct legitimate communications, even though she claimed in her appellate brief that she was

merely calling in an effort to get her son back. Instead, Forrest repeatedly called Attorney Timmel's office over fifty times in a single day and would "hang up, call and hang up, call and hang up." (Tr. Vol. II, p. 8). Accordingly, based on the record before us, we conclude that the State established beyond a reasonable doubt that Forrest had no intent to legitimately communicate with Attorney Timmel.

CONCLUSION

[15] Based on the foregoing, we hold that it was harmless error to admit the photographic evidence and the State presented sufficient evidence beyond a reasonable doubt to sustain Forrest's conviction for harassment.

[16] Affirmed.

[17] Mathias, J. and Crone, J. concur