

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brent Wayne Roe,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 14, 2021

Court of Appeals Case No.
20A-CR-2373

Appeal from the Tippecanoe
Superior Court

The Honorable Kristen E. McVey,
Judge

Trial Court Cause No.
79D05-1911-F6-1195

Brown, Judge.

[1] Brent Wayne Roe appeals his conviction for invasion of privacy as a class A misdemeanor and claims the evidence is insufficient to sustain his conviction. We affirm.

Facts and Procedural History

[2] On November 1, 2019, Roe was in a relationship with M.R. and lived with M.R. and M.R.'s mother. On that day, Roe and M.R. had an argument. Roe grabbed M.R. by the throat and slammed her on the kitchen floor. At some point, M.R. and Roe went to the living room, Roe straddled M.R. on a loveseat, placed both of his hands around her throat, and applied pressure, M.R. felt that her head was tingling, that it was as if her leg were asleep, and that she was running out of air, and her face turned red and purple. M.R.'s mother called 911.

[3] On November 4, 2019, the State charged Roe with: Count I, strangulation as a level 6 felony; Count II, intimidation as a level 6 felony; and Count III, domestic battery as a class A misdemeanor. Also on that date, the court issued a No Contact Order providing that Roe “is ordered to have no contact with: [M.R.] in person, by telephone or letter, through an intermediary, or in any other way, directly or indirectly, except through an attorney of record, while this case is pending.” Appellant’s Appendix Volume II at 31. The order further stated: “VIOLATION OF THIS ORDER CONSTITUTES A VIOLATION OF IC 35-33-8-3.2.” *Id.* Roe signed a “Statement of Defendant” which stated that he had read the no contact order and understood that violation of the order

was punishable by a revocation of his bond or release and may cause additional charges to be filed against him. *Id.* at 32.

[4] On January 1, 2020, Roe posted a message on Facebook which stated: “Happy New year to you every one and you too [M.R.¹].” State’s Exhibit 3. M.R. received a notification of Roe’s post on her phone and took a screenshot of the post. M.R. called 911 and made a report.

[5] On February 20, 2020, the State filed information under Count IV charging Roe with invasion of privacy as a class A misdemeanor. On October 1, 2020, the court held a jury trial. With respect to Roe’s January 1, 2020 Facebook post, M.R. testified that she “received a notification that [Roe] had tagged me in.” Transcript Volume II at 131. When asked “how did you know it was the defendant who tagged you in the new year[’]s post,” she testified “[b]ecause it showed up in my notifications on Facebook” and “[i]t was a picture of him. It was his Facebook page.” *Id.* at 133. On cross-examination, when asked “[w]hat does tagged mean,” M.R. testified: “It showed up where he had put my name on his Facebook. So it showed. It was a notification that he had sent something basically it was put on his page, but it was I was tagged in it because it was my name if that makes sense.” *Id.* at 141. When asked “so when somebodies [sic] tagged they get a notification that another Facebook member has put their name somewhere,” she replied affirmatively, and when asked “so

¹ The post contained M.R.’s full first and last name in bold print.

it's kind of an automated thing from Facebook if somebody tags you or tags someone that person gets a notice," she answered "[y]es." *Id.* When asked if he contacted her directly from his own Facebook messenger, she stated "[n]o." *Id.* at 142. When asked "[y]ou can share posts to somebody else," M.R. stated "[c]orrect," and when asked "but that wasn't the case here," she stated "I don't believe he did share it on my particular page." *Id.* On redirect examination, when asked "when you tag someone in Facebook do you physically have to put their name," M.R. testified "I believe if you tag someone you have to. I believe if you tag someone you have to go up and tag someone. So the specifics on between tagging and it showing up in my notifications I guess I'm not clear on if I was tagged or if it just showed up because my name was on his page, but either way I was notified that you know it was a message sent to me." *Id.* at 144.

[6] With respect to the Facebook post, Roe testified "I posted that on my page. On my page I didn't tag nothing or send it to nobody yeah." *Id.* at 201-202. When asked "did you do anything special that would have directed this towards [M.R.'s] account," he answered "I did not. I did not. It just did it and it went automatically there. It just did it automatically," and when asked "[o]kay cause you used her name," he said "[r]ight." *Id.* at 202. When asked "[w]as she Facebooking too," he said "[s]he had earlier but she had erased it." *Id.* When asked "so when you posted this. I mean you were expressing your feelings, but was it your intent to send that to her," he replied "[i]t wasn't not my intent to send it to her direct no," when asked "[s]o Facebook kind of automatically . . .

,” he said “[a]utomatically just tagged her and sent it to her yes,” and when asked “[y]ou did realize that was going to . . . ,” he stated “[n]o.” *Id.* When asked “you would acknowledge you made that post,” he replied “I do.” *Id.* When asked “you admitted making that post correct,” Roe replied “[y]es,” when asked “[b]ut you denied sending it to her,” he stated “[n]o I didn’t send it direct to her,” and when asked “[s]o when you made that post it wasn’t your intent that she would even get it,” he testified “I wasn’t even think she would have saw it no.” *Id.* at 203.

[7] The jury found Roe guilty of strangulation as a level 6 felony under Count I, domestic battery as a class A misdemeanor under Count III, and invasion of privacy as a class A misdemeanor under Count IV, and found him not guilty of intimidation as a level 6 felony under Count II. The court sentenced Roe to 365 days, all suspended to probation, for each of his convictions and ordered that the sentences be served concurrently. The court extended the no contact order for the length of probation. The court also issued an order that Roe pay restitution related to M.R.’s medical care costs.

Discussion

[8] The issue is whether the evidence presented was sufficient to support Roe’s conviction for invasion of privacy as a class A misdemeanor. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh’g denied*. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there

exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

[9] Roe argues that he posted a Facebook message containing M.R.'s name, he did not directly send a message to her, and he did not believe she would ever see the message. He asserts M.R. said that she was not sure whether she had been "tagged" or she received a notification because her name was on his page. Appellant's Brief at 14. He acknowledges M.R. received the notification and "the communication was completed" but asserts the State did not prove that he knew M.R. would receive the message or intended for her to receive it. *Id.* at 16. He also argues the post was on his own page and the State presented no evidence to show how Facebook posts work.

[10] Ind. Code § 35-46-1-15.1(a) provides that a person "who knowingly or intentionally violates: . . . (11) an order issued under IC 35-33-8-3.2 . . . commits invasion of privacy, a Class A misdemeanor." Ind. Code § 35-33-8-3.2 provides that a court, upon certain conditions, may require a defendant to "refrain from any direct or indirect contact with an individual."

[11] A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so. Ind. Code § 35-41-2-2(a). A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2(b). The Indiana Supreme Court has noted that intent is a mental function and it is well-established that a defendant's intent can be proved by circumstantial evidence.

Phipps v. State, 90 N.E.3d 1190, 1195 (Ind. 2018). “For example, intent can be inferred from a defendant’s conduct and the natural and usual sequence to which such conduct logically and reasonably points.” *Id.* at 1195-1196 (citation and quotations omitted).

[12] The record reveals that Roe was ordered to have no contact with M.R. in any way, directly or indirectly. Roe subsequently posted a message to Facebook which stated: “Happy New year to you every one and you too [M.R.]” State’s Exhibit 3. He does not dispute that M.R. received a notification of his Facebook post or that he specifically wrote M.R.’s name in his post. Roe testified regarding his intent before the jury, and the jury was able to assess his credibility and weigh his testimony. The jury as the trier of fact was able to reasonably infer from the facts and circumstances as presented that Roe intended indirect contact with M.R. in violation of the court’s order. Based upon the record, we conclude the State presented evidence of a probative nature from which a reasonable trier of fact could find that Roe committed invasion of privacy as a class A misdemeanor.

[13] For the foregoing reasons, we affirm Roe’s conviction.

[14] Affirmed.

Bradford, C.J., and Tavitas, J., concur.