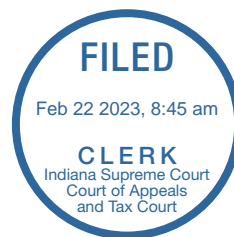


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Kevin Todd Jones, Jr.,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

February 22, 2023

Court of Appeals Case No.
22A-CR-1363

Appeal from the Hendricks
Superior Court

The Honorable Stephenie LeMay-
Luken, Judge

Trial Court Cause No.
32D05-2110-CM-1164

Memorandum Decision by Judge Weissmann
Judges May and Crone concur.

Weissmann, Judge.

- [1] Kevin Jones was convicted of invasion of privacy after violating a no contact order. Jones appeals, arguing that the State presented insufficient evidence to support his conviction. We disagree and affirm.

Facts

- [2] While Jones was on pre-trial release in a felony intimidation case, a no-contact order prohibited him from contacting Cameron Bear. Specifically, Jones could not contact Bear “in person, by telephone or letter, through an intermediary, or in any other way, directly or indirectly, except through an attorney of record” Exh. Vol. III, p. 3. This included, but was not limited to, “acts of harassment, stalking, intimidation, threats, and physical force of any kind.” *Id.* Jones was also prohibited from going “wherever [he knew Bear] to be located.” *Id.*
- [3] While the order was in effect, Bear and his fiancée were eating at a restaurant when Jones entered with his girlfriend. Jones sat at a booth by the door, made eye contact with Bear, and began pointing at him. Around 10 minutes later, an unknown male walked into the restaurant and went over to Jones’s booth. After briefly speaking with Jones, the male approached Bear and began punching him repeatedly in the face and head. When the assailant finished attacking Bear, he fled the restaurant a few seconds behind Jones and his girlfriend. The restaurant captured video footage of the assailant and of Jones fleeing the restaurant after the attack.

[4] The State charged Jones with invasion of privacy for violating the no contact order by remaining in the restaurant after he saw Bear and arranging the assailant to attack Bear. At his bench trial, Jones testified that he had no idea before entering the restaurant that Bear was there and that he left upon seeing him. Jones also denied pointing at Bear and arranging the assailant's attack. The trial court found Jones guilty of invasion of privacy, a Class A misdemeanor. Jones received a 180-day suspended sentence.

Discussion and Decision

[5] “When reviewing the sufficiency of the evidence to support a conviction, ‘appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict.’” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (quoting *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005)). Here, it was the trial court’s role as the factfinder to assess witness credibility and weigh the evidence. *Id.* We will affirm the conviction “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Id.* (internal quotation marks omitted). Conflicting evidence is construed “most favorably to the trial court’s ruling.” *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005).

[6] To convict Jones of invasion of privacy by violating a no-contact order, the State was required to prove: (1) he acted knowingly or intentionally; (2) a no-contact order existed; and (3) he contacted the victim (Bear) in violation of the

order. Ind. Code § 35-46-1-15.1. Jones concedes the existence of a valid no-contact order but contends the State did not prove he knowingly violated it.

[7] Jones argues the State merely proved he was in the same restaurant as Bear, not that Jones knowingly contacted him. “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.” Courts have defined “contact” in this context as “establishing . . . communication with someone.” *C.W.W. v. State*, 688 N.E.2d 224, 226 (Ind. Ct. App. 1997). A person “communicates” when the person “makes something known or transmits information to another.” *Hunter v. State*, 883 N.E.2d 1161, 1162-65 (Ind. 2008).

[8] Jones attempts to liken this case to *Hunter v. State*, where the Indiana Supreme Court ruled the defendant’s brief presence in the same place as individuals with which the defendant was forbidden to interact does not qualify as “contact.” 883 N.E.2d at 1162-65. But in *Hunter*, the language of the no-contact order was ambiguous, such that the defendant did not reasonably believe his actions violated it. *Id.* at 1164 (holding “the defendant’s failure to report his occasional momentary presences with [the individuals] does not constitute a probation violation because of the vagueness of the word ‘contact’ as applied to the defendant’s challenged behavior.”)

[9] By contrast, the evidence here shows that Jones knowingly contacted Bear. Testimony at Jones’s trial established that Jones made eye contact with and pointed at Bear while inside the restaurant. Tr. Vol. II, p. 24. Bear testified that

his assailant spoke with Jones immediately before the assault. Further, video footage from the restaurant shows Jones and his girlfriend entering the restaurant about 10 minutes before the attack and exiting “just seconds” before the assailant flees behind them. *Id.* at 33. This evidence is sufficient to prove Jones contacted Bear in violation of the no-contact order. *See Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001).

[10] The judgment of the trial court is affirmed.

May, J., and Crone, J., concur.