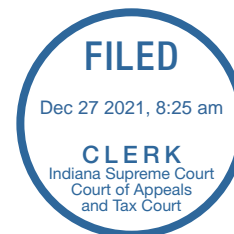


MEMORANDUM DECISION

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

Drew Alexander Osborne,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 27, 2021

Court of Appeals Case No.
21A-CR-629

Appeal from the Boone Circuit
Court

The Honorable Lori Schein, Judge

Trial Court Cause No.
06C01-2002-CM-285

Bradford, Chief Judge.

Case Summary

[1] Drew Osborne and Brittany Robbins were previously married and have two children together. In December of 2018, Robbins obtained an ex parte protective order against Osborne, with an expiration date in December of 2020, barring Osborne from contacting her or the children. In November of 2019, Osborne was granted parenting time in the form of nineteen pre-scheduled video chats with his children that Robbins would initiate by video calling him. On January 16, 2020, Robbins received a text that she believed to be from Osborne, a violation of the protective order. Osborne was subsequently charged with Class A misdemeanor invasion of privacy. A bench trial was held on March 10, 2021. The State introduced, over Osborne's objections, screenshots that Robbins had taken of the text message in question and the contact information relating to the number that sent the text message. The trial court found Osborne guilty and ultimately sentenced him to nine months executed, consisting of ninety days of incarceration, the remaining time on home detention, and three months suspended to probation. Osborne appeals, arguing that the trial court abused its discretion by admitting the screenshots, which he claims were unauthenticated, and that the evidence was insufficient to sustain his conviction. We affirm.

Facts and Procedural History

[2] Osborne and Robbins were previously married and have two children together. In December of 2018, Robbins obtained an ex parte protective order from the

trial court against Osborne with an expiration date in December of 2020. The protective order prohibited him from communicating with Robbins or the children.

[3] On November 13, 2019, the trial court in cause number 0601-1812-PO-1741 (“Cause No. PO-1741”) held a hearing on the issue of parenting time and subsequently modified the protective order to allow Osborne parenting time in the form of nineteen pre-scheduled of video chats with his children to take place between November 16, 2019, and January 15, 2020. The modified protective order stipulated that Robbins would initiate the calls. Osborne was still barred by the protective order from contacting Robbins or the children. The trial court set a review hearing on January 16, 2020.

[4] Between November 16, 2019, and January 15, 2020, Robbins contacted Osborne pursuant to the terms of the modified protective order, initiating the video calls with Osborne by calling the saved telephone number listed under his contact information on her phone. Robbins had a telephone number ending in 3481 (“the 3481 number”) saved in her telephone’s contacts under “Drew Most Recent.” Tr. Vol. II p. 11. On January 15, 2020, Osborne participated in around six video calls with his children, which Robbins initiated by calling the contact listed under “Drew Most Recent.” Tr. Vol. II p. 11.

[5] Osborne failed to appear at a January 16, 2020, review hearing in cause PO-1741 and, as a result, was not awarded more parenting time and the protective

order remained in effect. That same day, at 8:25 p.m., Robbins received a text message from the 3481 number, which read:

I don't care if I get invasion of privacy anymore. You ruined my life. I'm ending my life so I don't have to see you have another man raise my kids. [F***] you for all the hell you put me through. You are the one that has killed me.

Tr. Vol. II p. 18. Robbins contacted the police minutes after receiving the text message. Robbins took a screen shot of the text message and the contact information for the number that sent it. Robbins also allowed the officers who responded to the scene to take a picture of the text message.

[6] On February 5, 2020, Osborne was charged with Class A misdemeanor invasion of privacy. A bench trial was held on March 10, 2021. At trial, Osborne testified that the 3481 telephone number belonged to his ex-girlfriend Kelli Rich, he did not send the text message in question, and Robbins “has never called me at that phone number.” Tr. Vol. II p. 31. Specifically, Osborne testified that his phone did not have a SIM installed, preventing him from receiving text messages or calls. Osborne testified that Robbins had contacted him by email to initiate Facetime calls in the past. Osborne, however, also testified that he gave that number out to people who needed to reach him, explaining “[y]es, if you needed a way to contact me, contact this person, this person would then relay the message to me, and then I would contact you at my earliest convenience, basically.” Tr. Vol. II p. 33. Osborne did not contest that there was a protective order in place.

- [7] The trial court admitted State’s Exhibit 1, a screenshot of the text message in question, and State’s Exhibit 2, a screenshot of Osborne’s contact information in Robbins’s phone. Robbins testified at trial that she saved Osborne’s contact information under the contact “Drew Most Recent” after receiving contact from him from that number. Tr. Vol. II p. 11. Robbins knew it was Osborne’s phone number because “[t]his is the one that since it’s an iPhone he was facetimeing me for the parenting time[,]” and that the text message she received was sent from the number associated with the contact “Drew Most Recent.” Tr. Vol. II p. 16. At trial, when asked whether the language used in the text message was similar to language that Osborne had used in previous communications, Robbins answered “[a]bsolutely.” Tr. Vol. II p. 19.
- [8] The trial court took the matter under advisement and, on March 12, 2021, found Osborne guilty of Class A misdemeanor invasion of privacy. The trial court ultimately sentenced Osborne to nine months executed, consisting of ninety days of incarceration the remaining time on home detention, and three months suspended to probation.

Discussion and Decision

I. Abuse of Discretion

- [9] “Wide discretion is afforded the trial court in ruling on the admissibility and relevancy of evidence.” *Nicholson v. State*, 963 N.E.2d 1096, 1099 (Ind. 2012) (citing *Smith v. State*, 730 N.E.2d 705, 708 (Ind. 2000)). “We review evidentiary

decisions for abuse of discretion and reverse only when the decision is clearly against the logic and effects of the facts and circumstances. *Id.* “We will not reverse the trial court’s decision absent a showing of a manifest abuse of that discretion resulting in the denial of a fair trial.” *Walters v. State*, 120 N.E.3d 1145, 1154 (Ind. Ct. App. 2019) (citing *Gaby v. State*, 949 N.E.2d 870, 877 (Ind. Ct. App. 2011)). “We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling.” *Collins v. State*, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005) (citing *Overstreet v. State*, 724 N.E.2d 661, 663 (Ind. Ct. App. 2000), *trans. denied*).

[10] Osborne argues that the trial court abused its discretion when it admitted State’s Exhibits 1 and 2 which are, respectively, screenshots of the text message Robbins received from Osborne and Osborne’s contact information in Robbins’s phone. Osborne claims that these exhibits were not properly authenticated. “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Ind. R. Evid 901(a). However, “[a]bsolute proof of authenticity is not required.” *Rogers v. State*, 130 N.E.3d 626, 629 (Ind. Ct. App. 2019) (quoting *Pavlovich v. State*, 6 N.E.3d 969, 976 (Ind. Ct. App. 2014)). Indiana Rule of Evidence 901(b) provides that, as examples, the “testimony of a witness with knowledge[,]” and “distinctive characteristics and the like[,]” may satisfy the requirement of authenticating the evidence. “Additionally, authentication of an exhibit can be established by

either direct or circumstantial evidence.” *Pavlovich*, 6 N.E.3d at 976 (citing *Newman v. State*, 675 N.E.2d 1109, 1111 (Ind. Ct. App. 1996)).

[11] On the same day that Osborne failed to appear for a review hearing, resulting in him receiving no additional parenting time video calls, Robbins received a text message from the 3481 number listed under “Drew Most Recent” which read:

I don’t care if I get invasion of privacy anymore. You ruined my life. I’m ending my life so I don’t have to see you have another man raise my kids. [F***] you for all the hell you put me through. You are the one that has killed me.

Tr. Vol. II p. 18. Robbins testified at trial that she had saved Osborne’s contact information under the contact “Drew Most Recent” after being contacted by him from that number, she knew it was Osborne’s phone number because “[t]his is the one that since it’s an iPhone he was facetime me for the parenting time[,]” and the text message she received was sent from the number associated with the contact “Drew Most Recent.” Tr. Vol. II p. 16. At trial, when asked whether the language used in the text message was similar to language that Osborne had used in previous communications, Robbins answered “[a]bsolutely.” Tr. Vol. II p. 19. Despite being circumstantial, there is more than enough authenticating evidence for the trial court to conclude that the exhibits were, in fact, what Robbins claimed them to be. *Pavlovich*, 6 N.E.3d at 976 (“[A]uthentication of an exhibit can be established by either direct or circumstantial evidence.”).

[12] At trial, Osborne denied that he sent the text message and claimed to have never received any calls from Robbins at the 3841 number. Osborne also testified that the 3841 number belonged to Rich and that he gave her number out to people who needed to reach him, testifying “[y]es, if you needed a way to contact me, contact this person, this person would then relay the message to me, and then I would contact you at my earliest convenience, basically.” Tr. Vol. II p. 33. Osborne’s request that we credit his testimony denying sending the text message is simply a request that we reweigh the evidence, which we will not do. *Collins*, 822 N.E.2d at 218 (concluding that “[w]e do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court’s ruling”). The trial court did not abuse its discretion in admitting the evidence regarding the text message and Osborne’s contact information.

II. Insufficient Evidence

[13] On a challenge to the sufficiency of the evidence, “we will affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *Tharp v. State*, 942 N.E.2d 814, 816 (Ind. 2011) (quoting *Tobar v. State*, 740 N.E.2d 109, 111–12 (Ind. 2000)). “We do not assess the credibility of the witnesses or reweigh the evidence in determining whether the evidence is sufficient.” *McMiller v. State*, 90 N.E.3d 672, 675 (Ind. Ct. App. 2017) (citing *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007)). “We ‘consider only the probative evidence and reasonable inferences supporting the verdict.’”

Tharp, 942 N.E.2d at 816 (quoting *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005)).

- [14] Osborne argues that the evidence was insufficient to “convict [him] of this charge for many of the aforementioned reasons regarding the authentication of Exhibits 1 and 2.” Appellant’s Br. p. 17. In order to convict Osborne of a Class A misdemeanor invasion of privacy, the State was required to prove beyond a reasonable doubt that he “knowingly or intentionally violate[d ...] a protective order to prevent domestic or family violence or harassment[.]” Ind. Code § 35-46-1-15.1(a)(1). As stated above, the trial court did not abuse its discretion in admitting the exhibits in question, as they were properly authenticated. Robbins testified that, after Osborne had failed to receive more parenting time video calls, she received the text message in question from him. The State supported that testimony with exhibits representing the screenshots of the text message Robbins had received from Osborne and Osborne’s contact information in Robbins’s phone. The probative evidence and reasonable inferences drawn from the evidence was sufficient for the trial court to determine that Osborne was guilty. Osborne’s request that we credit his testimony denying sending the message and evidence that the 3841 phone number belonged to Rich is a request that we reweigh the evidence, which we will not do. *McMiller*, 90 N.E.3d at 675 (“We do not assess the credibility of the witnesses or reweigh the evidence in determining whether the evidence is sufficient.”).

- [15] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.