

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.



APPELLANT PRO SE

Michael C. Steele
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

George P. Sherman
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Michael Steele,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 28, 2021

Court of Appeals Case No.
21A-CR-237

Appeal from the Marion Superior
Court

The Honorable Christina R.
Klineman, Judge

Trial Court Cause No.
49D17-1911-CM-44707

May, Judge.

[1] Michael Steele appeals following his conviction of Class A misdemeanor invasion of privacy.¹ Steele argues the State presented insufficient evidence to sustain his conviction. We affirm.

Facts and Procedural History

[2] Steele² and N.T. dated for approximately six months in early 2018. After their romantic relationship ended, N.T. petitioned the Hamilton Superior Court (“Protective Order Court”) for a protective order. On July 17, 2018, the Protective Order Court issued an ex parte order for protection that prohibited Steele “from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with” N.T. (Ex. at 11.) The Protective Order Court set a hearing on the protective order in August 2018, but the Protective Order Court reset the hearing after Steele moved for a continuance. The Protective Order Court held a two-hour evidentiary hearing on October 9, 2018, and a second two-hour evidentiary hearing on December 4, 2018. These two hearings were not sufficient to hear all evidence, and the Protective Order Court held a half-day hearing on January 15, 2019. Steele was allowed to call witnesses, and Steele’s mother testified at the January 15, 2019, hearing. The parties did not complete their presentation of evidence at the January 2019 hearing, and the

¹ Ind. Code § 35-46-1-15.1.

² Steele represents himself in this matter and is a licensed attorney. Indiana Roll of Attorneys (July 7, 2021). <https://perma.cc/J2VC-6MYP>

litigation continued with both Steele and N.T. filing several discovery related motions. The Protective Order Court held additional evidentiary hearings on June 4, 2019, and October 22, 2019, but the matter remained pending.

[3] On Sunday November 3, 2019, Steele sent N.T. a text message, purportedly in response to a text message N.T. sent Steele over a year earlier,³ stating:

Hi [N.T.] I'm responding to your message of Oct 28 2018 at 12:36 am. I think what's actually gonna happen is I'm gonna show the whole world, in video, exactly the whore you are, and also have you, Zaki and Maggie locked up in jail...for good measure. So you won't get your wish. The law will prevail, even in Hamilton County

But thank you for reaching out!!

(*Id.* at 30) (errors and ellipses in original). N.T. was in Marion County when she received the text message. She contacted the Indianapolis Metropolitan Police Department and met with Detective Andre Bell. N.T. showed Detective Bell the text message from Steele, and Detective Bell reviewed the ex parte

³ N.T. acknowledged in her testimony at Steele's criminal trial that, after a night of drinking, she sent a text message to Steele on October 28, 2018, that stated:

It's my birthday. I wished you were well and this monster inside you wasn't real. I pray for the day you realize what you've done to me—and did to us.

(Ex. at 32) (errors in original).

protective order. Detective Bell then relayed the information to the Marion County Prosecutor's Office.

[4] The State charged Steele in Marion Superior Court ("Criminal Court") with Class A misdemeanor invasion of privacy on November 22, 2019.⁴ The Protective Order Court held additional hearings on December 17, 2019, and March 24, 2020. On April 6, 2020, the Protective Order Court entered judgment in favor of Steele, terminated the ex parte order for protection, and denied N.T.'s request for a protective order.

[5] The Criminal Court held a bench trial on February 1, 2021. During the trial, the State questioned Steele:

[State:] Okay, Mr. Steele, to be clear, you and [N.T.] were previously in a relationship, correct?

[Steele:] Correct.

Q. And you're not disputing that she got a protective order-an ex parte protective order against you, correct?

A. Ex parte, correct.

* * * * *

⁴ The State also charged Steele with a second count of Class A misdemeanor invasion of privacy. However, the criminal court found Steele not guilty of that count, and we do not discuss it further.

Q. And that was served on your [sic], correct?

A. Yes, it was.

* * * * *

Q. Okay, and you're not disputing that you had knowledge of the protective order?

A. Correct. I had knowledge. I did.

Q. And you're not disputing that [N.T.] was a protected person under that protective order?

A. I am not disputing that.

Q. Now, I want to talk briefly about the text message. Uhm, I'm going to show you what-well, we have a couple of them, but what's in evidence as State's Exhibit Five (5), we'll do this one. You're not disputing that you sent [N.T.] that text message in November of 2019, correct?

A. I've stipulated to it so many times now already.

Q. Is that correct, you sent that one?

A. Yes.

Q. And she had contacted you on October 28, 2018, correct?

A. That's correct.

Q. There's no text between October 2018 and November 2019, correct?

A. That's correct.

Q. And between October of 2018, and November of 2019, this protective order case is pending, correct?

A. Correct.

Q. And at the time that you sent that text message, the protective order was still in effect, is that correct?

A. That is correct, although-

Q. That's a yes or no question. Had the Judge dropped the protective order on November of 2019 when you sent that message?

A. I don't think the- I don't-

Q. Was the protective order in effect?

A. No. Because the law said it wasn't, because it was illegal.

Q. I didn't ask you whether it was legal or illegal, I understand you contend it was unconstitutional. But, in all of the hearing [sic] that were had, between July of 2018, and November of 2019, when this contact was made, had the judge ever indicated to you that the protective order was no longer in effect?

A. No.

Q. So, at that point, according to the judge, and according to the court room, the protective order was still in effect?

A. Yes.

(Tr. Vol. II at 104-107.) Steele also testified regarding his motivation for sending the November 2019 text message:

Before I texted her back, I, I ex- I tried every avenue . . . And, I mentioned this before, it's, it's important because I honestly thought that I might have a judge, in Magistrate Murphy, who wasn't quite flying straight. Now, I don't have that opinion of him now, at all, because he did, he did do his job in the end. But boy there was a long time. I mean, it's a heck of a thing to be accused of something like that . . . But I, I-apart from really wanting to get another Judge to see it, somehow, I also felt that if he was put in a position like that, where it was "send me to jail," he would have to, first, acknowledge that he hadn't given me a chance to speak. And, like I said, I was just doing everything I could.

(*Id.* at 96-97.) The Criminal Court subsequently found Steele guilty and imposed a suspended sentence of 180 days in the Marion County Jail. The Criminal Court also ordered Steele not to contact N.T. or her adult sons.

Discussion and Decision

[6] Our standard of review regarding challenges to the sufficiency of the evidence necessary to support a conviction is well-settled:

When reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor judge the credibility of witnesses.

Rather, we consider only the evidence that is favorable to the judgment along with the reasonable inferences to be drawn therefrom to determine whether there was sufficient evidence of probative value to support a conviction. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt.

Staten v. State, 884 N.E.2d 186, 187 (Ind. Ct. App. 2006) (internal citations omitted), *trans. denied*.

- [7] Steele contends that, because of alleged due process violations by the Protective Order Court, the ex parte protective order issued by that court was not valid when he sent the November 2019 text message to N.T. However, Indiana Code section 34-26-5-9(f) specifies when a protective order expires, and the statute states: “An order for protection issued ex parte or upon notice and a hearing, or a modification of an order for protection issued ex parte or upon notice and a hearing, is effective for two (2) years after the date of issuance unless another date is ordered by the court.” As the State points out, “the invasion of privacy statute does not state that a party may disregard a court’s protective order if the party believes the order is ‘invalid.’” (Appellee’s Br. at 9-10.) A court order remains in effect until it is rescinded or overturned. *Kindred Nursing Ctr. v. Est. of McGoffney*, 15 N.E.3d 641, 646 (Ind. Ct. App. 2014), *trans. denied*. Therefore, Steele was required to abide by the ex parte order for protection until the Protective Order Court terminated the order on April 6, 2020.

- [8] Steele attempts to collaterally attack the proceedings in the Protective Order Court in this criminal matter. For instance, Steele claims: “There was nothing fair nor prompt about the protective order proceedings, insofar as Steele was forced to essentially stand mute for well over a year while the alleged victim held his very freedom in her (unclean) hands.” (Appellant’s Br. at 10.) Steele also argues the protective order court “deprived [him] of due process protections,” and the court “violated the Fourteenth Amendment of the United States Constitution along with the Due Course of Law provision in the Indiana Constitution.” (*Id.* at 11.) However, this criminal proceeding is not the forum for such collateral attacks. *See Boultinghouse v. State*, 120 N.E.3d 586, 591 (Ind. Ct. App. 2019) (holding defendant charged with invasion of privacy was precluded from collaterally attacking the validity of an order for protection), *trans. denied*.
- [9] Steele was aware of the ex parte protective order when he contacted N.T. in November 2019 because he was actively contesting the order in litigation at that time. The Protective Order Court did not inform Steele the ex parte protective order was no longer in effect prior to Steele sending the text message. The order prohibited Steele from contacting N.T., yet Steele still contacted her and threatened to release embarrassing video and send her to jail. Therefore, we affirm Steele’s conviction of invasion of privacy. *See Blair v. State*, 62 N.E.3d 424, 428 (Ind. Ct. App. 2016) (holding State presented sufficient evidence to support conviction of invasion of privacy).

Conclusion

[10] The State presented sufficient evidence to sustain Steele's conviction. He knew that an order for protection was in effect when he sent a text message to N.T. The order did not become invalid simply because Steele thought the Protective Order Court was being unfair, and he cannot collaterally attack the proceedings in the Protective Order Court in this criminal matter. Therefore, we affirm Steele's conviction.

[11] Affirmed.

Bailey, J., and Robb, J., concur.