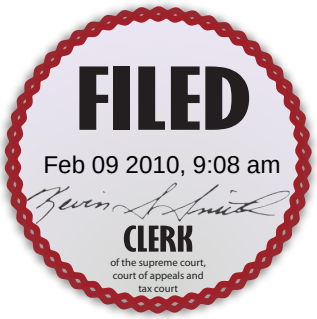

APPELLANT PRO SE:

DON CHAVIS
Anderson, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DON CHAVIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0907-CR-363
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David J. Certo, Judge
Cause No. 49G21-0811-CM-263019

February 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Don Chavis challenges the sufficiency of evidence supporting his convictions for five counts of class A misdemeanor invasion of privacy. We affirm.

On July 9, 2008, Clarra Chavis filed a report with the Indianapolis Metropolitan Police Department accusing her then-husband, Chavis, of domestic battery, threats, and telephone harassment. On July 10, 2008, the trial court issued an ex parte protective order that included the following:

> a. [Clarra] has shown by a preponderance of the evidence, that domestic or family violence, stalking, or a sex offense has occurred sufficient to justify the issuance of this Order.
>
> ….
>
> c. [Chavis] represents a credible threat to the safety of [Clarra] or a member of [Clarra's] household.
>
> d. The following relief is necessary to bring about a cessation of the violence or the threat of violence.
>
> ORDER
>
> 1. [Chavis] is hereby enjoined from threatening to commit or committing acts of domestic or family violence, stalking, or a sex offense against [Clarra] and the following designated family, or household members, if any:
> J.C. [the couple's child] …
>
> 2. [Chavis] is prohibited from harassing, annoying, *telephoning*, contacting, or directly or indirectly communicating with [Clarra].

Appellant's App. at 69 (emphasis added). On July 10, 2008, Clarra and J.C. went to live at the Julian Center.

On November 24, 2008, the State charged Chavis with seven counts of class A misdemeanor invasion of privacy. A bench trial ensued on April 30, 2009. At trial, Clarra

testified that after she obtained the protective order and moved out, she received numerous phone calls on her cell phone during which the unidentified caller remained silent on the line. Tr. at 31, 33. The State introduced Chavis's phone records indicating numerous calls to Clarra's cell number during the period in question. The trial court found Chavis guilty on counts I through VI, which included five counts of invasion of privacy via telephone call and one count of invasion of privacy via third party message, and not guilty on count VII, which involved his passing through an intersection near Clarra's workplace. Chavis appeals his convictions on counts I through V.

On appeal, Chavis contends that the evidence is insufficient to sustain his convictions. When reviewing sufficiency of evidence claims, we neither reweigh evidence nor judge witness credibility; rather, we consider only the evidence and reasonable inferences most favorable to the judgment. *Campbell v. State*, 841 N.E.2d 624, 630 (Ind. Ct. App. 2006). We note, however, that the State has failed to file an appellee's brief. As such, Chavis must establish only that the trial court committed prima facie error. *Cox v. State*, 780 N.E.2d 1150, 1162 (Ind. Ct. App. 2002). Prima facie means "at first sight, on first appearance, or on the face of it." *Id*. "This rule is not intended to benefit the appellant, but rather to relieve this Court of the burden of developing arguments on behalf of the appellee." *State v. Moriarity*, 832 N.E.2d 555, 557 (Ind. Ct. App. 2005).

Chavis was convicted pursuant to Indiana Code Section 35-46-1-15.1, which provides in pertinent part, "A person who knowingly or intentionally violates: … (2) an ex parte protective order issued under IC 34-26-5 … commits invasion of privacy, a Class A

misdemeanor." Chavis asserts that the State failed to meet its burden of establishing that he was the person who made the phone calls to Clarra. "Identification of a telephone caller may be based upon circumstantial evidence." *Zinn v. State*, 424 N.E.2d 1058, 1060 (Ind. Ct. App. 1 Dist. 1981). "[W]here a conviction is based in whole or in part upon circumstantial evidence, we do not have to find that circumstantial evidence is adequate to overcome every reasonable hypothesis of innocence." *Id*. (citation and quotation marks omitted). Instead, "[w]e need find only that a reasonable inference may be drawn from such evidence to support the trial court's finding of guilt." *Id*.

Here, the State presented as evidence the telephone records from Chavis's telephone number. The log listed dates and times ranging from July 10, 2008—the date Clarra received the protective order and moved out of the marital residence—to August 10, 2008. The log showed numerous calls from Chavis's phone number to Clarra's cell phone number, many of which were late at night or after midnight.[1]

Chavis argues that the phone log failed to specify whether the call times were listed according to Eastern Standard Time ("EST") or Greenwich Mean Time ("GMT"). In this regard, we note that although Clarra was unsure of the exact times of many of the calls, she described some as coming in the evening and at least one as "probably late at night … well after bed check which is at 8 o'clock" at the Julian Center. Tr. at 35. Chavis essentially asserts that Clarra's uncertainty regarding some of the call times supports his argument that

[1] The calls were listed in military time. The list included, among other calls, a July 10 call made at 23:45; a July 12 call at 22:03; a July 13 call at 21:45; a July 14 call at 02:35; a July 17 call at 00:31; and a July 30 call at 01:25. State's Ex. 2. Thus, these calls ranged in time from 10:00 at night to 2:30 in the morning.

the records were more likely indicative of GMT, which is five hours earlier, and that therefore it is more likely that his two children or his mother could have made the calls. We note that "time" is not an element of the offenses for which Chavis was convicted. Thus, a "time zone" argument is merely an invitation to reweigh the evidence, which we may not do.

Moreover, Chavis's reliance on *Zinn* for his argument that the State failed to identify him as the caller is misplaced. In *Zinn*, this Court reversed a harassment conviction for insufficiency of evidence where phone company records traced a series of calls to the victim's neighbor, who had numerous phone extensions (one of which was in an unlocked carport), who shared the residence with her husband and daughter, and who had no history of any negative relationship with the victim. The *Zinn* decision did not turn merely on the accessibility of the residential phone to other household members; rather, the Court held that

> the evidence in the case at bar which proved merely that the call or calls in question originated from a telephone number assigned to [defendant] without other evidence showing either that she had sole access to the use of that line *or that she had some reason or motivation for making the telephone calls* is insufficient to support her conviction beyond a reasonable doubt.

424 N.E.2d at 1061-62 (emphasis added).

Here, as in *Zinn*, Chavis shares his residence with other family members, each of whom had access to the residential telephone. However, in contrast to the defendant in *Zinn*, Chavis has a history of negative conduct aimed at Clarra. In fact, it was this history of violence, threats, and telephone harassment that led Clarra to seek and obtain a protective order in the first place. As a result, the evidence supports a reasonable inference that Chavis merely continued to act in a manner consistent with his established pattern of conduct. To

the extent he argues that a "contact" never took place whenever Clarra declined to answer the calls, we note that the protective order specifically lists "telephoning" among the prohibited acts. Thus, it is the caller's act of *making* the call and not the recipient's act of *answering* the call that is prohibited. As such, we find no prima facie error and hold that the evidence is sufficient to sustain Chavis's convictions. Accordingly, we affirm.

Affirmed.

RILEY, J., and VAIDIK, J., concur.