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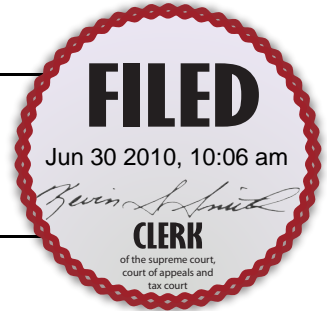
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**IN THE
COURT OF APPEALS OF INDIANA**



RICHARD JOSLYN,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A04-0908-CR-460

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0812-FC-272486

June 30, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Richard Joslyn appeals his convictions of Class C felony stalking¹ and four counts of Class A misdemeanor invasion of privacy,² all of which were based on violations of a protective order. Joslyn argues the State failed to prove he was properly served with the protective order; however, he admitted he had actual knowledge of the order. Therefore, we affirm.

FACTS AND PROCEDURAL HISTORY

On November 10, 2008, Stephanie Livingston obtained a protective order against Joslyn. Livingston had lived with Joslyn, but then moved in with her mother, Jacquelyn Young. Erin Lind, a process server, left a copy of the order at Joslyn's residence on November 13, 2008. There is no indication that a copy was sent by first class mail.

On November 14, 2008, Livingston went to a liquor store with Joni Bratcher, Savannah Dunham, and Michael Dunham. While Livingston was inside the store, the others noticed Joslyn was watching them from a parking lot across the street. Later that evening, they went to a bar, and Livingston realized that Joslyn was there. While Livingston was on the dance floor, Joslyn stood at the edge and watched her throughout an entire song.

On November 17, Livingston was visiting a friend, Richard Neutzman. While she was there, Neutzman received a call, which he put on speakerphone. Livingston heard Joslyn ask Neutzman whether he knew where Livingston was. As she was getting ready to leave, Livingston saw Joslyn peering through a window. On November 18, Young showed

¹ Ind. Code § 35-45-10-5.

² Ind. Code § 35-46-1-15.1.

Livingston a note she had found on her property. Livingston recognized the handwriting as Joslyn's.

On November 19, Young and Livingston had several people over for dinner, including Livingston's friend Victor. Livingston heard a crash and looked out the window. She saw Joslyn running away. They discovered that four windows of Victor's vehicle had been smashed.

On November 23, Young came home and found Joslyn crouching under her deck. On November 25, Livingston's dog started barking, so she went outside to see what was happening. Joslyn's step-father was outside with a flashlight, and he said he was looking for Joslyn. Livingston went back inside and locked the doors. She heard a noise outside the bathroom window, and when she looked out, she saw Joslyn crawling out from beneath the trailer. On November 26, Livingston saw Joslyn near her home and called 911. While she was on the phone, Joslyn approached and peered in the living room window.

Based on the forgoing events, Joslyn was charged with Class C felony stalking and four counts of Class A misdemeanor invasion of privacy. At trial, the State admitted a recording and transcript of a statement Joslyn made to the police, which included the following exchange:

- Q: OK, and you're aware you have a restraining order against you?
A: Yeah. Yeah, I know I got a restraining order. I ain't, I haven't been callin' her or talkin' to her or seein' her. Uh, as a matter of fact, she's been callin' my house
* * * * *
- Q: Do you know, do you know when your protective order was effective?
A: It was more like the 20th or somethin'
* * * * *

Q: Uh, how about the 10th and it was served to you on the 13th?
A: OK.

(Exhibit Volume at 41-43.) Later in the interview, Joslyn stated, “November 10th was when the restraining order or whatever was and then I got it three days later, so the 13th, so I’ve only had it for a couple weeks now” (*Id.* at 82.) Joslyn testified at trial and admitted he found the protective order at his residence, but was equivocal as to when he found it. Joslyn was found guilty of stalking and all four counts of invasion of privacy.

DISCUSSION AND DECISION

Joslyn raises one issue, which we restate as whether there was insufficient evidence to support his convictions because the State did not prove he was served with the protective order. In reviewing a claim of insufficient evidence, we consider only the evidence favorable to the judgment and the reasonable inferences to be drawn therefrom. *Dixon v. State*, 869 N.E.2d 516, 519 (Ind. Ct. App. 2007). We do not reweigh the evidence or judge the credibility of witnesses. *Id.* at 519-20. We will affirm if a reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

A person who knowingly or intentionally violates a protective order commits invasion of privacy as a Class A misdemeanor. Ind. Code § 35-46-1-15.1. Stalking is a Class C felony if a “protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order.” Ind. Code § 35-45-10-5(b)(2). Service of a protective order is required by Ind. Code

§ 34-26-5-9(d). Nevertheless, a defendant may be found guilty of invasion of privacy if he received actual notice of the protective order from an agent of the State. *Dixon*, 869 N.E.2d at 520; *Hendricks v. State*, 649 N.E.2d 1050, 1052 (Ind. Ct. App. 1995).

In *Hendricks*, the Mercado family obtained a protective order against Hendricks. Six days after the order was issued, Hendricks called the Mercado home. Bernadette Mercado informed him of the protective order and told him he was not to have contact with the family. Later that day, Hendricks called the Mercado home again. An officer was present at the time and spoke to Hendricks. The officer told Hendricks of the protective order and its parameters. The next day, Hendricks came within 1000 feet of Altimease Mercado, in violation of the order. Hendricks was convicted of invasion of privacy. He appealed, arguing he did not have notice of the protective order, but we affirmed. *Hendricks*, 649 N.E.2d at 1052.

In *Dixon*, Demetrice Bruno obtained a protective order against Dixon. Later, an officer was dispatched to Bruno's home, where Bruno and Dixon were arguing. The officer performed a warrant check and discovered Bruno had a protective order against Dixon, but Dixon had not been served with it. Bruno produced a copy of the order, and the officer advised Dixon that he had been served and was not to come back to Bruno's residence. Later that day, Dixon returned, and he was arrested. After being convicted of invasion of privacy, Dixon argued he did not have sufficient notice of the protective order, but we affirmed his conviction:

[I]t is clear from Officer Gomez's testimony that he informed Dixon of the protective order and advised Dixon that he was not to return to Bruno's

residence. Regardless of whether Bruno actually gave Dixon a copy of the protective order, Officer Gomez explicitly gave Dixon oral notice of the order and, in particular, the provision that ordered Dixon to stay away from Bruno's residence. Dixon's return to the home just hours later indicates that he knowingly or intentionally violated the protective order.

Dixon, 869 N.E.2d at 520.

As for the protective order Livingston obtained against Joslyn, a process server with the Marion County Sheriff's Department testified she left a copy of the order at Joslyn's home, but there was no indication she also sent a copy of the order to his house by first class mail. Thus, Joslyn was not properly served according to our Trial Rules.³ *See* Ind. Trial Rule 4.1(B) (requiring copy be sent by mail when order left at dwelling house). But Joslyn admitted, both to police upon arrest and at trial, that he received the copy of the protective order the process server left at his residence and he was aware of its contents. (*See* Exhibit Volume at 82) (Joslyn states, "November 10th was when the restraining order or whatever was and then I got it three days later, so the 13th, so I've only had it for a couple weeks now . . ."). Because Joslyn admitted he received the notice left on his door by the State's agent, his case is controlled by *Hendricks* and *Dixon*, where the defendants received actual knowledge of the order from an agent of the State.

The purpose of the Indiana Civil Protection Order Act is to "provide a mechanism for a protective order that promotes the protection and safety of all victims of domestic violence and prevents future domestic violence." *A.S. v. T.H.*, 920 N.E.2d 803, 808 (Ind. Ct. App. 2010) (citing Ind. Code § 35-26-5-1). Because technical errors in the service of process

³ The State does not argue otherwise.

might go unnoticed until after a petitioner has been put at risk, the purpose of the Civil Protection Order Act is best served by holding violators accountable when they admit having actual knowledge of the order.

We also note that, although a civil statute requires service of the protective order upon the person whose behavior is being restrained, Ind. Code § 34-26-5-9(d), neither of the criminal statutes at issue was written such that proper service is required for a conviction: invasion of privacy requires knowing or intentional violation of an order, Ind. Code § 35-46-1-15.1, and stalking requires “the person has been given actual notice of the order.” Ind. Code § 35-45-10-5(b)(2).

Joslyn admitted he had actual notice of the order of protection and he violated it. Joslyn’s admission that he received the notice left at his home by an agent of the State is sufficient notice to permit his conviction of invasion of privacy and stalking, despite a technical flaw that may make that service insufficient under our Trial Rules. Therefore, the judgment of the trial court is affirmed.

Affirmed.

BAILEY, J., and BARNES, J., concur.