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# IN THE
# COURT OF APPEALS OF INDIANA

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| MICHAEL NUCKOLS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-1002-CR-202 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David Certo, Judge
Cause No. 49G21-0910-CM-090350

**November 29, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Michael Nuckols ("Nuckols") was convicted in Marion Superior Court of Class A misdemeanor invasion of privacy. Nuckols appeals and raises two issues, which we restate as:

> I. Whether the trial court abused its discretion by admitting certain testimony of the arresting officer; and
>
> II. Whether the State presented sufficient evidence to support the conviction.

**Facts and Procedural History**

On October 23, 2009, Indianapolis Metropolitan Police Officer Matthew McFadden ("Officer McFadden") was on patrol near a Chinese restaurant when he noticed a vehicle parked at the north end of the building. It was nearing the restaurant's closing time, and the vehicle was parked in an unlit area of the parking lot where vehicles do not normally park. Concerned about the possibility that the occupants of the vehicle were planning to rob the restaurant, Officer McFadden decided to investigate further.

After driving into the parking lot and stopping near the parked vehicle, Officer McFadden approached the driver's side and asked what the occupants were doing. Nuckols, who was sitting in the driver's seat, responded that he and the female passenger were talking. Officer McFadden then asked Nuckols and the passenger for identification, and Nuckols produced his driver's license. The passenger said she had no identification, but verbally gave the officer her name. While Nuckols and the passenger remained in the vehicle, Officer McFadden checked Nuckols's identification and learned that he was under a no contact order concerning a woman named Jaime Beasley ("Beasley"), which

was not the name given by the female passenger. But when Officer McFadden ran the name provided by the female passenger, he was unable to confirm her identity.

Officer McFadden then returned to the car and asked Nuckols if he was on probation, and Nuckols responded affirmatively. Officer McFadden then told Nuckols that he was not in any trouble, but that the officer needed to know the passenger's identity. Nuckols responded "If I tell you who she is, I'll be in violation of my probation." Tr. p. 22. Officer McFadden then concluded that the female passenger was Beasley, the subject of the no contact order, and placed Nuckols under arrest for invasion of privacy.

The State charged Nuckols with Class A misdemeanor invasion of privacy. At a bench trial held on January 20, 2010, the State called Officer McFadden as its sole witness. When Officer McFadden was shown a photograph of Jaime Beasley, he identified her as the female passenger. He then testified about Nuckols's statements to him and the events leading up to his arrest. Nuckols objected to Officer McFadden's testimony regarding the officer's observations and Nuckols's statement on the basis that they were the result of an unreasonable seizure under the state and federal constitutions. Nuckols further objected to the introduction of his statement to Officer McFadden on the basis that it was obtained in violation of Miranda. Both objections were overruled, and at

the conclusion of the evidence, Nuckols was found guilty as charged. Nuckols now appeals.[1]

## I. Admission of Evidence

Nuckols argues that the trial court abused its discretion when it admitted, over his objection, Officer McFadden's testimony regarding the events that took place after Officer McFadden initially approached Nuckols and Beasley in the parked car, as well as Nuckols's statement to Officer McFadden. The admission of evidence is within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion. Rogers v. State, 897 N.E.2d 955, 959 (Ind. Ct. App. 2008), trans. denied. A trial court abuses its discretion if its decision is clearly against the logic and the effect of the facts and circumstances before the court, or if the court has misinterpreted the law. Id. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling, but we also consider the uncontested evidence favorable to the defendant. Collins v. State, 822 N.E.2d 214, 218 (Ind. Ct. App. 2005), trans. denied.

On appeal, Nuckols argues that Officer McFadden's inquiry constituted an investigatory stop and, because Officer McFadden lacked reasonable suspicion to detain him further after ascertaining his identity and determining that he was not planning a robbery, Nuckols was subject to an unreasonable seizure within the meaning of the

[1] We heard oral argument in this case on November 4, 2010, at Indiana Wesleyan University in Marion, Indiana. We extend our thanks to the students, staff, faculty, and administration of the school for their hospitality, and we commend counsel for the quality of their written and oral advocacy.

Fourth Amendment. See Lockett v. State, 747 N.E.2d 539, 544 (Ind. 2001) (an officer may stop and briefly detain an individual for investigatory purposes if the officer has a reasonable suspicion that criminal activity may be afoot (citing Terry v. Ohio, 392 U.S. 1, 19-20 (1968)); D.K. v. State, 736 N.E.2d 758, 761 (Ind. Ct. App. 2000) (once the purpose of the initial stop has been satisfied, an officer cannot detain a vehicle or its occupants further unless something that occurred during the stop generated the necessary reasonable suspicion to justify a further detention). Nuckols therefore argues that the evidence obtained as a result of the continued detention should not have been admitted.

Nuckols also argues that the trial court abused its discretion by admitting his statement to Officer McFadden because the statement was obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966). The State contends, in part, that any error in the admission of the complained-of testimony was harmless.

Assuming *arguendo* that Nuckols's continued detention was illegal and that his statement was obtained in violation of Miranda, we are considering alleged violations of Nuckols's Fourth Amendment right to be free from an unreasonable seizure of his person and his Fifth Amendment privilege against self incrimination. A federal constitutional error is reviewed *de novo* and must be found harmless beyond a reasonable doubt. Furnish v. State, 779 N.E.2d 576, 581 (Ind. Ct. App. 2002), trans. denied; accord Chapman v. California, 386 U.S. 18, 24 (1967); Alford v. State, 699 N.E.2d 247, 251 (Ind. 1998). To conclude that such an error is harmless beyond a reasonable doubt, we must find that it did not contribute to the conviction, that is, that the error was

unimportant in light of everything else considered by the trier of fact on the issue. Furnish, 779 N.E.2d at 582.

Nuckols concedes that Officer McFadden had reasonable suspicion when he initially approached the vehicle and asked for identification. It was at this point during the encounter that Officer McFadden first observed the female passenger, and this observation formed the basis of Officer McFadden's later, in-court identification of the photograph of Beasley as the female passenger. Because Officer McFadden was able to independently identify Beasley as the female passenger without reference to Nuckols's challenged statements, we conclude that any error in the admission of Nuckols's statements in the bench trial at issue was harmless beyond a reasonable doubt.[2] Therefore, we need not consider the merits of Nuckols's constitutional arguments.

**II. Sufficiency**

Nuckols also argues that the State presented insufficient evidence to support his conviction. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Atteberry v. State, 911 N.E.2d 601, 609 (Ind. Ct. App. 2009). Instead, we consider only the evidence supporting the conviction and the reasonable inferences to be drawn therefrom. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could have

[2] Although Nuckols objected at trial to the reasonableness of the seizure on both state and federal constitutional grounds, he does not make any direct reference on appeal to Article 1, Section 11 of the Indiana Constitution, nor does he present any authority or independent analysis supporting a separate standard under the Indiana Constitution. He has therefore waived any state constitutional claim. See Lockett, 747 N.E.2d at 541.

drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt, then the judgment will not be disturbed. Baumgartner v. State, 891 N.E.2d 1131, 1137 (Ind. Ct. App. 2008).

To establish that Nuckols committed Class A misdemeanor invasion of privacy, the State was required to prove that he knowingly or intentionally violated a no contact order issued as a condition of probation. Ind. Code § 35-46-1-15.1(6) (2004). At trial, the State introduced into evidence a copy of a no contact order entered against Nuckols as a condition of his probation for Class A misdemeanor intimidation. The order bore Nuckols's signature and specified that Nuckols was to have no contact of any kind with Beasley.

Nuckols argues that absent the evidence he claims was improperly admitted, there was insufficient evidence to prove that he violated the no contact order. However, as noted above, Officer McFadden identified a photograph of Beasley as the woman he observed sitting in the vehicle with Nuckols without reference to any of the complained-of testimony. Officer McFadden's identification of Beasley through a photograph admitted into evidence was sufficient to prove that Nuckols had contact with Beasley in violation of the no contact order.

During the oral argument in this case, Nuckols's appellate counsel also argued that the State failed to present sufficient evidence that Nuckols's violation of the no contact order was knowing or intentional. However, as noted above, Officer McFadden testified that he observed Nuckols and Beasley sitting together in a parked vehicle. This

testimony, in combination with the copy of the no contact order bearing Nuckols's signature admitted into evidence by the State, was sufficient to establish that Nuckols knowingly or intentionally violated the order.

**Conclusion**

Any error in admitting Officer McFadden's testimony was harmless beyond a reasonable doubt. The State presented sufficient evidence to support Nuckols's conviction.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.