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**IN THE  
COURT OF APPEALS OF INDIANA**

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ROBERT BURKS, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. ) No. 49A02-0601-CR-13  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Heather Welch, Magistrate  
Cause No. 49G01-0505-FD-077819

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**NOVEMBER 1, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBERTSON, Senior Judge**

## STATEMENT OF THE CASE

Defendant-appellant Robert Burks is appealing his conviction at a bench trial of the Class D felony of attempting to obstruct justice.

We affirm.

## ISSUES

Burks states the issues as:

- I. The trial court abused its discretion when it admitted State's Exhibit 1, a handwritten letter and analysis of Mr. Burks to prove that he attempted to obstruct justice by coercing Ms. Ping into not testifying against him in a conviction proceeding.
- II. The evidence presented is insufficient to support that Mr. Burks committed attempt (sic) obstruction of justice against Ms. Ping, and the sentence should be revoked.

## FACTS

Burks and Ping were in an intimate relationship. An altercation occurred between them with Burks beating up on Ping. Later, while Burks was awaiting trial on other charges that involved Ping, he sent her a letter, which asked her not to appear at the upcoming trial. Ping died prior to the instant trial.

Additional facts will be added as needed.

## DISCUSSION AND DECISION

### 1. State Exhibits

The State introduced three exhibits which implicate Burks. States Exhibit 1 is a letter that Burks sent to Ping and asked that she not appear and testify at a trial in which

Burks was a defendant. Objection was made to the introduction of the letter, one ground being relevancy. It seems that the other grounds for objection concerned a step in the examination of Burks' writing exemplar. The objection was overruled. State's Exhibit 2 was Burks' handwriting exemplar. It was conditionally admitted only for the purpose that it was for comparison, and not for the truth of the matter asserted. State's Exhibit 3 was the opinion of the State's Forensic Document Examiner that Burks was the writer of Exhibit 1. The objection to State's Exhibit 3 was that it was hearsay.

The admissibility of evidence is within the sound discretion of the trial court. *Curley v. State*, 777 N.E.2d 58, 60 (Ind. Ct. App. 2002), *trans. denied*. We will only reverse a trial court's decision on the admissibility of evidence upon a showing of an abuse of that discretion. *Id.* An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.*

The argument in Burks' brief is dedicated to the authentication of States Exhibit 1. The transcript reveals different objections made at the time it was admitted as an exhibit. A defendant may not argue one ground for objection at trial and then raise new grounds on appeal. *Corbin v. State*, 840 N.E.2d 424, 430 (Ind. Ct. App. 2006). This issue is waived.

In any event, the path taken by States Exhibit 1 is that Ping received the letter but did not open it. Ping contacted a detective who was involved in the other case with Burks and gave the unopened envelope to her. The detective opened the letter in the presence of Ping, and they read it. The detective took the letter to the crime lab and a forensic

document examiner made tests and comparisons and concluded that Burks wrote the letter.

Ind. Evidence Rule 901(a) says that the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. In addition, and as an example, the rule provides that a comparison by an expert witness with specimens which have been authenticated is admissible. Evid. R. 901(b)(3).

The trial transcript reveals that the forensic document examiner expert from the crime lab testified after making due examination of the letter and concluding that Burks wrote the letter. Accordingly, the expert testified that the questioned material was what it was supposed to be. Authentication was properly made under the Rules of Evidence.

#### Sufficiency of the Evidence

Our standard of review when considering the sufficiency of the evidence is well settled. *Morrison v. State*, 824 N.E.2d 734, 742 (Ind. Ct. App. 2005), *trans. denied*. We will not reweigh the evidence or assess the credibility of the witnesses. *Id.* Rather, we will only consider the evidence most favorable to the judgment, together with all reasonable inferences that can be drawn therefrom. *Id.* We will uphold a conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

The charging information tracks the language of Ind. Code 35-44-3-4 and alleges that Burks wrote a letter to Deborah Ping (a witness in cause number 49G01-0504-FB-061283) in which he stated, “if you show to court I’ll get at least 50 years...I’ve learnt

(sic) my lesion (sic)...please have mercy on me...please don't send me to prison, give me a chance.”

The thrust of Burks' argument on sufficiency of the evidence is that the letter, State's Exhibit 1, did not coerce, threaten, or provide false statements to convince Ms. Ping not to testify against him. "Coercion" has been defined for the purpose of Ind. Code 35-44-3-4 as "1: to restrain, control, or dominate, nullifying individual will or desire (as by force, power, violence, or intimidation)...2: to compel to an act or choice by force, threat, or other pressure...3: to effect, bring about, establish, or enforce by force, threat, or other pressure." *Sheppard v. State*, 484 N.E. 2d 984, 987 (Ind. Ct. App. 1985), *trans. denied*. Given Burks' history of battering Ping, the trial court could consider her absence at the other trial as being coerced.

Burks points out that the evidence could be subjected to conflicting inferences. We disregard that part of Burks' argument that asks us to reweigh the evidence and assess the credibility of the witnesses. We have previously held that the question is "whether the inferences supporting the judgment were reasonable, not whether there were other more reasonable inferences that could have been made. Reaching alternative inferences such as this is a function of the trier of fact, not this Court." *Brink v. State*, 837 N.E.2d 192, 197 (Ind. Ct. App. 2005), *trans. denied*. We cannot reverse the conviction merely because this inference is a plausible one that might have been drawn from the evidence. *Id.* Triers of fact determine not only the facts presented to them and their credibility, but any reasonable inferences from the facts established either by direct or circumstantial evidence. It is not necessary that the court find the circumstantial

evidence excludes every reasonable hypothesis of innocence. It need only be demonstrated that inferences may reasonably be drawn which support the finding of guilt.

*Id.*

The judge, the trier of fact, after hearing the evidence and examining the exhibits came to the conclusion that Burks letter was an attempt to obstruct justice by coercing or threatening Ping from testifying.

### CONCLUSION

The trial court did not err in admitting State's Exhibit 1. The evidence is sufficient to support the verdict.

Judgment affirmed

VAIDIK, J., concurs.

BAKER, J., dissenting with separate opinion.

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**BAKER, Judge, dissenting.**

I respectfully dissent. To support Burks’s conviction for attempted obstruction of justice, the State was required to prove that he attempted to knowingly or intentionally induce Ping to refrain from testifying by threat, coercion, or false statement. Ind. Code §§ 35-41-5-1, 35-44-3-4. The primary evidence upon which the State relied in prosecuting its case against Burks was the letter that he wrote to Ping in which he tells her that he “really messed up this time” and hopes that she will forgive him:

I am in love with you and I know that you don’t believe that but I’m so into you Deb, Thiers [sic] no reason that you deserve to be hit on and for that I was wrong and I’m so so sorry. Alls [sic] I tried to do is love you and take care of you Deb, I never ment [sic] to hurt you. Right now I’m scared, if you show to court I’ll get at least 50 years.

Deb I'm only 43 and I've learnt [sic] my lesion [sic]. I know that you're afraid but please have mercy on me . . . . I think of you all the time, I think about if you will help me, I also wonder if you love me still. . . . [P]lease give me one last chance, please help save my life. . . . Please don't send me to prison, give me this chance please. I love you very much and I always have.

State's Ex. 1.

The State directs our attention to the following definition of coercion:

“coercion” carries with it, at a minimum, the sense of some form of pressure or influence being exerted on the will or choice of another.

The form that the pressure or influence may take for purposes of “coercion” in our obstruction of justice statute may vary widely—and certainly includes harassment, physical force, intimidation and threats—as long as it is exerted knowingly or intentionally to induce conduct by a witness or informant that is proscribed by the statute I.C. 35-44-3-4.

Sheppard v. State, 484 N.E.2d 984, 988 (Ind. Ct. App. 1985). In Sheppard, the defendant robbed a restaurant and then telephoned an acquaintance who witnessed the robbery, telling her that he was not the robber, informing her what his number would be in a lineup, and telling her not to pick his number. Sheppard made no threats during the conversation. We found insufficient evidence supporting his obstruction of justice



conviction because there was no indication that any consequences would follow if the acquaintance failed to obey his instructions. Thus, “his statement to her amounts to nothing more than a request.” Id. at 988-89.

Here, as in Sheppard, Burks’s letter to Ping contains no threats, harassment, intimidation, or indication that any consequences would result if she failed to comply with his request. To the contrary, Burks’s letter contains profuse apologies and pleas for mercy. As in Sheppard, this evidence amounts to nothing more than a request. I cannot conclude, based upon this letter, that Burks was attempting to “leverage his proclamations of love and his claimed desire for a continued relationship with Ping in order to stop Ping from testifying against him.” Appellee’s Br. p. 9. Nothing in the letter indicates dishonesty or a lack of sincerity. Similarly, I cannot conclude, as does the majority, that Burks’s history of battering Ping casts doubt upon the genuineness of the sentiments contained in the letter.

Even if the trial court properly admitted the letter into evidence, therefore, I do not believe that there is sufficient evidence supporting Burks’s conviction for attempted obstruction of justice. Thus, I would reverse the judgment of the trial court.