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IN THE
COURT OF APPEALS OF INDIANA

BART WYMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0602-CR-147
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John Hammel, Judge
Cause No. 49G21-0512-CM-198590

December 7, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Bart Wyman ("Wyman") was convicted in Marion Superior Court of Class A misdemeanor invasion of privacy. He appeals and argues that the evidence presented is insufficient to support his invasion of privacy conviction. Concluding that the evidence is sufficient, we affirm.

Facts and Procedural History

On January 19, 2005, Sherry Handlon ("Handlon") obtained an ex parte order for protection that enjoined Wyman from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with Handlon. Tr. p. 10, Ex. Vol., State's Ex. 1. Wyman was personally served a copy of the order on January 19, 2005. Tr. p. 8, Ex. Vol., State's Ex. 1. Wyman also attended a hearing concerning the protective order in February, 2005. Tr. p. 10. The protective order was not vacated at any time following the hearing. Id. The protective order does not expire until January 19, 2007. Ex. Vol., State's Ex. 1.

On or about November 10, 2005, Wyman left a phone message for Handlon, asking her to contact him and informing her that there was a message for her in her trailer. Appellant's App. p. 12, 13. As a result, Wyman was charged with Class A misdemeanor invasion of privacy on December 7, 2005. Appellant's App. p. 13.

On January 25, 2006, Wyman was convicted in a bench trial and sentenced to 365 days with 361 days suspended, credit for four (4) days; 361 days probation with substance abuse evaluation and treatment; domestic violence classes; and a no contact order with Handlon. Appellant's App. pp. 5, 6, 24. Wyman now appeals his conviction. Additional facts will be provided as necessary.

Standard of Review

Wyman argues that the evidence is insufficient to sustain his conviction of Class A misdemeanor invasion of privacy. Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor judge the credibility of the witnesses. Cox v. State, 774 N.E.2d 1025, 1028 (Ind. Ct. App. 2002). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. Id. "Where there is substantial evidence of probative value to support the judgment, it will not be disturbed." Armour v. State, 762 N.E.2d 208, 215 (Ind. Ct. App. 2002), trans. denied. "The conviction will be affirmed unless we conclude that no reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." Norris v. State, 755 N.E.2d 190, 192 (Ind. Ct. App. 2001), trans. denied.

Discussion and Decision

To convict Wyman of Class A misdemeanor invasion of privacy, the State was required to prove that Wyman knowingly or intentionally violated an order of protection to prevent domestic or family abuse. See Ind. Code § 35-46-1-15.1(2) (2004). Wyman argues that the evidence was insufficient to support his invasion of privacy conviction. Br. of Appellant at 5. Specifically, he contends that the State failed to prove that he intentionally violated the protective order. Id.

The record conclusively shows that Wyman was aware of the protective order as he was personally served on January 19, 2005, and appeared at a court hearing concerning the protective order in February, 2005. Tr. pp. 8-10. At trial, Handlon testified that she did not inform Wyman that the protective order had been vacated or

dismissed at any time. Id. at 10-11. While Wyman presented evidence that he suffers from memory loss and that he had been led to believe that the protective order had been dismissed, see tr. pp. 62, 64, he is essentially asking that we reweigh the evidence presented at trial, which we may not do. Sufficient evidence supports the trial court's finding that Wyman knowingly violated the terms of a protective order.

Wyman also contends that Handlon's testimony at trial was incredibly dubious. Br. of Appellant at 6. "For testimony to be so inherently incredible that it is disregarded based on a finding of 'incredible dubiosity,' the witness must present testimony that is inherently contradictory, wholly equivocal or the result of coercion, and there must also be a complete lack of circumstantial evidence of the defendant's guilt." Clay v. State, 755 N.E.2d 187, 189 (Ind. 2001). "Application of this rule is rare; the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." Herron v. State, 808 N.E.2d 172, 176 (Ind. Ct. App. 2004), trans. denied.

Wyman points to the fact that Handlon did not produce the message left by Wyman at trial and that the State relied solely on her testimony concerning the telephone call. Br. of Appellant at 6. Neither of these arguments establish that Handlon's testimony was inherently contradictory, wholly equivocal or the result of coercion. Therefore, the incredible dubiosity doctrine does not apply in these circumstances. It was within the trial court's purview to judge the credibility of the witnesses and to weigh the evidence presented, which it did.

Conclusion

Under these facts and circumstances, sufficient evidence supports Wyman's conviction of invasion of privacy.

Affirmed.

KIRSCH, C. J., and SHARPNACK, J., concur.