

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO: 2014AP900028AXXXMB
L.T. NO: 2014MM000560AXXXMB

MATTHEW JAMES HUBBARD,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Opinion filed: **OCT 23 2015**

Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.

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Defendant/Appellant, Matthew James Hubbard, was charged with one count of Violation of an Injunction for Protection Against Domestic Violence. In his appeal, Hubbard argues three (3) points: (1) that the trial court abused its discretion in limiting his voir dire questioning as to his theory of defense; (2) that the trial court erred in denying his Motion for Judgment of Acquittal because the State did not meet the burden of showing sufficient evidence inconsistent with his reasonable hypothesis of innocence; and (3) that the trial court abused its discretion in admitting

testimonial evidence at trial regarding the alleged victim's, Jaclyn Bryant, emotional demeanor during the incident, her emotional reaction to Hubbard's presence, and her fear that he would abduct their daughter. As to the first two arguments, this Court affirms the trial court's rulings. In regard to Hubbard's final argument, however, this Court agrees and reverses his conviction and remands for a new trial.

Hubbard contends that the trial court abused its discretion in allowing irrelevant, unfairly prejudicial and harmful evidence at trial, including: Ms. Bryant's emotional demeanor at the time of the incident, her emotional reaction to Hubbard, and her fear that Hubbard would abduct their child. On appeal, the State does not rebut this argument but rather concedes error. Despite the State's concession, this Court addresses the admission of the evidence of emotional demeanor using an independent, harmless error analysis. *See Knowles v. State*, 848 So. 2d 1055, 1057 (Fla. 2003) (emphasizing "the duty of a reviewing court to determine harmless error 'regardless of any lack of argument on the issue by the state.'" (quoting *Goodwin v. State*, 751 So. 2d 537 (Fla. 1999))).

Relevant evidence is that which tends to prove or disprove a material fact. § 90.401, Fla. Stat. (2012). Relevancy is the "tendency to establish a fact in controversy or to rend a proposition in issue more or less probable." *Zabner v. Howard Johnson's Inc. of Fla.*, 227 So. 2d 543 (Fla. 4th DCA 1969). If a fact is deemed to be irrelevant, it is inadmissible. *See Wright v. State*, 19 So. 3d 277 (Fla. 2009). Here, the disputed issue at trial was whether Hubbard willfully violated the temporary injunction; thus, the only evidence relevant to this element would be that which made it more or less probable that Hubbard acted with intent to violate the injunction. Ms. Bryant's emotional reaction to Hubbard's presence and her emotional demeanor lend no probative value to determining this material fact. *See Stoll v. State*, 762 So. 2d 870, 874 (Fla. 2000) ("a victim's statements cannot be used to prove the defendant's state of mind"); *see also Dorbad v. State*, 12 So. 3d 255, 259-60 (Fla. 1st DCA

2009) (finding that generally a victim's state of mind is not at issue in a homicide case). Thus, the evidence regarding Ms. Bryant's emotional demeanor was irrelevant to establish Hubbard's intent at the time he came in contact with Ms. Bryant.

Even if this evidence was relevant, it was unfairly prejudicial. "Evidence that is otherwise relevant and admissible is not excludable from trial unless its probative value is substantially outweighed by the risk of unfair prejudice." § 90.403, Fla. Stat. (2012). Testimonial evidence that Ms. Bryant was "freaking out" and "extremely nervous" and appeared "very scared," as well as her fear that Hubbard would abduct their child, lent little if any probative value to determining Hubbard's willfulness, and thus was substantially outweighed by its prejudicial effect on the jury.¹ As such, the evidence should have been deemed inadmissible and was admitted by the trial court in an abuse of discretion.

This Court further finds that the evidence admitted in error cannot be deemed harmless. An appellate court will find an error to be harmful if there is a "reasonable possibility that the error affected the verdict." *Cooper v. State*, 43 So. 3d 42, 43 (Fla. 2010). The focal point of the analysis is "on how the error affected the trier of fact." *Rubinger v. State*, 98 So. 3d 659, 663 (Fla. 4th DCA 2012) (citing *DiGuilio*, 491 So. 2d at 1139 (Fla. 1986)). The present case hinged on one material fact in issue: whether or not Defendant willfully violated the injunction. Evidence of Ms. Bryant's emotional reactions, her fear that Defendant would abduct their child and her reference to the "bad argument" that led to the injunction was irrelevant to determining Defendant's intent. Further, it is

¹ McCormick on Evidence § 276 at 231 (7th Ed. 2013) ("[T]he most likely inference that jurors may draw from the existence of fear...is that some conduct of the defendant, probably mistreatment or threats, occurred and caused the fear. The possibility of over-persuasion, the prejudicial character of the evidence, and the relative weakness and speculative nature of the inference, all argue against admissibility as a matter of relevance.").

unfairly prejudicial because it likely evoked a sympathetic reaction in the jury. There is a “reasonable possibility” that the jury was influenced by this evidence, and that the trial court’s admission of the evidence was not harmless. *Cooper*, 43 So. 3d at 43. Accordingly, we REVERSE Hubbard’s conviction and REMAND for a new trial.

KELLEY, BURTON, and SCHER, JJ. concur.