

SUFFICIENCY OF THE EVIDENCE INVASION OF PRIVACY

On February 16, 2018, the Indiana Supreme Court issued its decision in Phipps v. State, ___ N.E.3d ___ (Ind. 2018), overruling the decision in Phipps v. State, 77 N.E.3d 180 (Ind. Ct. App. 2017). Phipps accused K.G., a pastor at her church, of inappropriate conduct. Dissatisfied with the response to her accusations, she left the church and began writing K.G. and other members about her departure. Citing harassment, K.G. sought and obtained a protective order prohibiting Phipps from “harassing, annoying, telephoning, contacting or directly or indirectly communicating with” K.G. and requiring her to stay away from his residence and the church. Twice she violated the order and was convicted of invasion of privacy. In 2016, she emailed 3 elders at her church; the email gave them a deadline to comply with her demands or she would have him arrested. “I hope he makes the right decision soon.” K.G. requested the email be forwarded to him, after which he contacted police. Phipps was charged with and convicted of invasion of privacy, level 6 felony.

Phipps appealed, claiming the evidence was insufficient to support the conviction. The Court of Appeals reversed the conviction, reasoning that “Phipps’ intent in sending the email was not to contact K.G., but to ask the church elders to discipline or punish K.G. for his alleged wrongful conduct.” The Supreme Court granted transfer.

To convict a person of invasion of privacy, the state must prove that he knowingly or intentionally violated a protective order by harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the protected person. The Court found that the state had met its burden. “While there is no direct proof of Phipps’ conscious objective here, there is ample circumstantial evidence that shows she knew she would be communicating indirectly with K.G. by emailing the church elders.” She made demands on K.G. only and gave him options, and she gave him a deadline to comply. The jury’s verdict was affirmed.

SUFFICIENCY OF THE EVIDENCE CAUSING INJURY

On February 28, 2018, the Indiana Court of Appeals issued its decision in Hopson v. State, ___ N.E.3d ___ (Ind. Ct. App. 2018). After an officer attempted to handcuff him during a domestic violence investigation, Hopson broke away and ran. The officer ordered him to stop and chased after Hopson on foot. He caught up with Hopson, but Hopson resisted, punched the officer in the shoulder, and ran off again. Hopson slipped and fell in some mud, but resumed running. The officer slipped and fell in the same mud and struck his knee, and sustained an injury that prevented him from catching Hopson. Hopson was later located and arrested. He was charged with resisting law enforcement by flight causing injury and two other counts, and in a bench trial, the court found him guilty as charged.

Hopson appealed his conviction for resisting law enforcement and argued that the State did not present sufficient evidence that he caused the officer's injury. For Hopson to be convicted of the causing-



injury enhancement, the state must prove the injury was a foreseeable result of Hopson's conduct. The court reasoned that it is foreseeable that an officer will pursue a fleeing suspect. When the officer is in the position of having to pursue a fleeing suspect, it is foreseeable that an officer will suffer an injury during the pursuit. An unforeseeable, intervening cause might result in the injury, but such was not the case here. It was foreseeable that the officer would slip on the mud while pursuing Hopson, especially since Hopson himself slipped on the mud. The conviction was affirmed.