MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew D. Arthur,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 7, 2022

Court of Appeals Case No. 21A-CR-2718

Appeal from the Marion Superior Court

The Honorable Charnette D. Garner, Judge

Trial Court Cause No. 49D35-2105-CM-14759

Tavitas, Judge.

Case Summary

[1] Matthew Arthur appeals his conviction for invasion of privacy, a Level 6 felony. Arthur contends that the evidence is insufficient to sustain his conviction. Finding that the State presented sufficient evidence to sustain Arthur's conviction, we affirm.

Issue

[2] Arthur raises one issue, which we restate as whether the evidence is sufficient to sustain his conviction for invasion of privacy, a Level 6 felony.

Facts

[3] Arthur and T.L. were in a relationship for approximately ten years and had two children together. T.L. does not have any other children. In 2000, criminal charges were filed against Arthur, and on January 20, 2021, the trial court issued a protective order, which ordered Arthur to have no direct or indirect contact with T.L. The order provides: "[T]the Court having approved a plea agreement specifying a No Contact Order as a condition of probation or executed sentence) and the Court now finds that a No Contact Order is necessary to preserve the peace and dignity of the community." Amended Ex. Vol. I p. 6. The order remains in effect until 2028. The case's chronological case summary indicates that Arthur was present at the January 20, 2021 hearing, but a written order states that Arthur "does not appear in person" and the order is not signed by Arthur. *Id.*

[4] On May 7, 2021, T.L. received text messages from an unknown number. The first message contained her name and a question mark. T.L. responded with, "Who is this." Amended Exhibits Vol. I p. 3. The person responded:

> This is your baby daddy and I kno I shouldn't be trying to talk to you . . . but I was just wondering if you'd plz let me talk to the kids for a few or at least send pics to me so I can see how much they have grown up works can not describe how much I miss them if not I'm sorry for bothering you it won't happen again I just really miss my babies

Id. (errors in original). When T.L. did not respond, several hours later, the person texted her:

> I take it you don't care about me seeing or talking to our kids ever again huh . . . I was right about everything I use to say about you and it wouldn't surprise me either if you called and reported me trying to talk to the kids
>
> Like breaking my heart . . . wasn't enough for you you gotta keep our kids away from me too the one thing you use to say you would never do to me you have no idea what kind of hell I've been going through these days and all I want is to see or talk to our kids

Id. at 4 (errors in original). T.L. recognized Arthur as the author of the text messages based upon the content of the text messages and his distinctive spelling and punctuation.

[5] T.L. reported the incident to law enforcement, and on May 12, 2021, the State charged Arthur with invasion of privacy, a Class A misdemeanor. The State

alleged that Arthur did "knowingly violate a protective order to prevent domestic or family violence or harassment issued under I.C. 34-26-5 by the Marion County Superior Court under cause number 49D322005F4016374, to protect [T.L.]." Appellant's App. Vol. II p. 26. The State later moved to amend its charging information to charge Arthur with invasion of privacy, a Level 6 felony, due to a prior unrelated invasion of privacy conviction. The trial court granted the State's motion to amend.

[6] A jury trial was held in October 2021, and the jury found Arthur guilty of invasion of privacy as a Class A misdemeanor. Arthur then pleaded guilty to the enhancement, invasion of privacy as a Level 6 felony. The trial court sentenced Arthur to 730 days with 358 days suspended to probation. Arthur now appeals.

Analysis

[7] Arthur argues that the evidence is insufficient to sustain his conviction for invasion of privacy, a Level 6 felony. Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the

defendant was guilty beyond a reasonable doubt." *Id.* We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[8] Arthur was convicted of invasion of privacy pursuant to Indiana Code Section 35-36-1-15.1(a), which provides:

> A person who knowingly or intentionally violates:
>
> (1) a protective order to prevent domestic or family violence or harassment issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
>
> * * * * *
>
> commits invasion of privacy, a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction for an offense under this subsection.

[9] First, Arthur argues that the State failed to prove that he sent the text messages to T.L. Arthur contends that his conviction is based upon "speculation" that he sent the text messages. Appellant's Br. p. 10. The State, however, presented evidence that, although T.L. did not recognize the phone number, she did

recognize Arthur's distinctive spelling and grammar in the texts. Further, the author of the texts knew T.L.'s phone number and identified himself as T.L.'s "baby daddy." Amended Exhibits Vol. I p. 3. Arthur is the father of both of T.L.'s children; T.L. does not have children with anyone else. This evidence is sufficient to prove that Arthur sent the text messages to T.L. Arthur's argument is merely a request to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. *Powell*, 151 N.E.3d at 262.

[10] Arthur next contends that the State failed to prove Arthur was "properly served with the protective order." Appellant's Br. p. 11. Our Supreme Court has held that proper service of a protective order pursuant to the trial rules is not required to prove a knowing or intentional violation; rather, evidence that the defendant is aware of the protective order is sufficient to prove a knowing or intentional violation. *Joslyn v. State*, 942 N.E.2d 809, 813-14 (Ind. 2011) ("Joslyn admitted in statements to police and again during trial that he was aware of the protective order and had read its terms. That sufficed to prove that he 'knowingly' violated the order.").

[11] Here, the State presented evidence that a protective order was entered in January 2021 as part of Arthur's plea agreement, and some of the evidence indicated that Arthur was present at the time of the hearing in which the protective order was issued. Further, the content of the text messages indicate that the author of the text messages was aware of the protective order and aware that he was not supposed to have contact with T.L. This evidence is sufficient to demonstrate that Arthur was aware of the protective order. Again,

Arthur's argument is merely a request to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. *Powell*, 151 N.E.3d at 262.

Conclusion

[12] The evidence is sufficient to sustain Arthur's conviction for invasion of privacy, a Level 6 felony. Accordingly, we affirm.

[13] Affirmed.

Riley, J., and May, J., concur.