## MEMORANDUM DECISION





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# IN THE
# COURT OF APPEALS OF INDIANA

Michael Toney,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff*

July 24, 2023

Court of Appeals Case No. 22A-CR-2961

Appeal from the Marion Superior Court

The Honorable Elizabeth Christ, Judge

Trial Court Cause No. 49D24-2209-CM-24913

**Memorandum Decision by Judge Crone**
Judge Brown and Senior Judge Robb concur.

**Crone, Judge.**

## Case Summary

[1] Michael Toney appeals his conviction, following a bench trial, for class A misdemeanor invasion of privacy. He asserts that the State presented insufficient evidence to support his conviction. Finding the evidence sufficient, we affirm.

## Facts and Procedural History

[2] Toney dated S.R. "on and off" for about two years. Tr. Vol. 2 at 23. On July 25, 2022, S.R. sought and obtained an ex parte protective order against Toney. The order prohibited Toney from "harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [S.R.]" On September 12, 2022, Indianapolis Metropolitan Police Department Officer Aaron Mauk personally served Toney with a copy of the protective order. The next morning, S.R. observed Toney repeatedly driving in front of her house. He kept "makin' laps" and "circlin'" her house. *Id*. at 25. At one point Toney was stopped in front of her house. Around 7:15 a.m., Toney got out of his car, walked up the driveway, and left a letter at S.R.'s gate. After seeing Toney drive by numerous additional times, S.R. called the police. Toney was apprehended "right around the corner" from S.R.'s home and was arrested for violating the protective order. *Id*. at 40.

[3] The State charged Toney with class A misdemeanor invasion of privacy. A bench trial was held on November 17, 2022. The court found Toney guilty as

charged and sentenced him to 365 days, with 335 days suspended to probation. This appeal ensued.

## Discussion and Decision

[4] Toney challenges the sufficiency of the evidence to support his conviction. In reviewing a claim of insufficient evidence, we do not reweigh the evidence or judge the credibility of witnesses, and we consider only the evidence that supports the judgment and the reasonable inferences arising therefrom. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). It is "not necessary that the evidence 'overcome every reasonable hypothesis of innocence.'" *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007) (quoting *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). "We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt." *Bailey*, 907 N.E.2d at 1005.

[5] To convict Toney of class A misdemeanor invasion of privacy, the State was required to prove that he knowingly or intentionally violated the ex parte protective order issued by the Marion Superior Court to protect S.R. Ind. Code § 35-46-1-15.1. Toney asserts that the State failed to prove that he knowingly or intentionally violated the order because there is insufficient evidence that he "had actual knowledge of the protective order." Appellant's Br. at 11.

[6] The State presented the chronological case summary (CCS) entry which indicated that Toney was personally served with the protective order by a police officer the day before he went to S.R.'s home. It is well established that

although proper service of an ex parte protective order is not required to prove that a respondent has knowledge of the order, service of a protective order from an agent of the State is sufficient to prove actual knowledge. *Joslyn v. State*, 942 N.E.2d 809, 811-12 (Ind. 2011).

[7] Toney's sole claim is that, although the CCS shows that a person named "Michael Toney" was personally served with the protective order, the CCS constitutes insufficient evidence "that the identity of Michael Toney is the same as Michael Toney, the defendant in [this] case[,]" and thus the State failed to prove that he had knowledge of the order. Appellant's Br. at 10. We disagree. It is well settled that "[a] court speaks through its order book entries, and such records import verity." *Beeler v. State*, 959 N.E.2d 828, 830 (Ind. Ct. App. 2011) (citation omitted), *trans. denied*.[1] The CCS entry indicating that Michael Toney, the defendant in this case, was personally served with the ex parte order is therefore presumptively true. Toney's suggestion otherwise is simply a request for this Court to reweigh the evidence, which we will not do. Moreover, contrary to Toney's suggestions, the trial court as trier of fact need not credit Toney's self-serving testimony that he was unaware of the protective order. In sum, the evidence and reasonable inferences arising therefrom most favorable to the trial court's judgment establish that Toney was served with, and therefore had actual knowledge of the protective order. His conviction is affirmed.

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[1] The trial court speaks through its CCS or docket. *Young v. State*, 765 N.E.2d 673, 678 n.6 (Ind. Ct. App. 2002).

[8] Affirmed.

Brown, J., and Robb, Sr.J., concur.