MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark A. Thomas
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Irie Young,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 6, 2022

Court of Appeals Case No. 21A-CR-2186

Appeal from the Allen Superior Court

The Honorable Wendy Davis, Judge

The Honorable Samuel R. Keirns, Magistrate

Trial Court Cause No. 02D04-1706-F3-28

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Irie Young (Young), appeals the trial court's Order revoking his probation.

[2] We affirm.

ISSUE

[3] Young presents this court with one issue, which we restate as: Whether the State proved by a preponderance of the evidence that he violated an order of protection after having actual knowledge of that order.

FACTS AND PROCEDURAL HISTORY

[4] On October 24, 2017, Young pleaded guilty to Level 3 felony dealing in cocaine or a narcotic drug and was sentenced to eight years, with three years executed and five years suspended to probation. On December 13, 2017, Young executed a probation order agreeing to abide by standard probation conditions and acknowledging that a failure to obey those conditions could result in his return to prison. The probation order executed by Young provided that probation was to be "[n]o tolerance per plea agreement." (Exh. Vol. p. 3). On July 15, 2019, Young was released to probation.

[5] On a date which is unclear from the record, Young's estranged wife, M.Y., received an ex parte protective order against Young. Young requested a hearing on the ex parte order, and on October 28, 2020, a hearing was held at which Young was present and registered his disagreement with the issuance of

the protective order. On October 28, 2020, the magistrate entered a permanent protective order in favor of M.Y., prohibiting Young from "committing acts of domestic or family violence" against M.Y., including "harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [M.Y.]" (Exh. Vol. p. 6). The permanent protective order contained a directive to law enforcement that they were to supervise Young's removal of his personal property and animals from the marital residence. The permanent protective order further provided that it would expire on September 3, 2022.

[6] On April 28, 2021, the State filed a verified petition to revoke Young's probation, alleging, in relevant part, that he had committed the new offense of Class A misdemeanor invasion of privacy by contacting M.Y. in violation of the permanent protective order, as charged in a separate criminal case. On July 29, 2021, the State amended its petition to include an allegation that "on September 4, 2020, [Young] was personally served with an Ex Parte Protective Order in 02D08-2009-PO-2326[.]" (Appellant's App. Vol. II, p. 86). On August 6, 2021, the State filed a final amendment to the revocation petition, alleging that Young had been personally served with the permanent protective order on November 2, 2020.

[7] On September 10, 2021, the trial court held a hearing on the State's petition to revoke Young's probation. A copy of the permanent protective order was entered into evidence. M.Y. testified that Young was present in open court when the permanent protective order was granted. The State also had admitted into evidence copies of text messages sent by Young to M.Y. in April of 2021,

after the permanent protective order had been entered, in which Young stated, among other things, "You filed for divorce, and a restraining order, and then you stole money from me[,]" "Now, I have a court order to collect my things. I would hate to show up at your job with the police[,]" and "So what do I do, bring you up on fraud charges? (Because you've file [sic] for divorce and have a restraining order in place . . .)." (Exh. Vol. pp. 13, 16). At the conclusion of the hearing, the trial court found that lay people commonly refer to protective orders and no-contact orders as restraining orders, Young knew that the permanent protective order was in place, and that he had violated the protective order by contacting M.Y. The trial court revoked Young's probation and committed Young to the Department of Correction for five years.

[8] Young now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[9] Young challenges the evidence supporting the trial court's conclusion that he violated his probation. "A probation hearing is civil in nature, and the State must prove an alleged probation violation by a preponderance of the evidence." *Murdock v. State*, 10 N.E.3d 1265, 1267 (Ind. 2014). When a defendant/probationer challenges the sufficiency of the evidence supporting the revocation of his probation, we will consider only the evidence most favorable to the judgment, without regard to weight or credibility. *Id*. We will affirm if

there is substantial evidence of probative value to support the trial court's conclusion that the probationer violated any condition of his probation. *Id*.

II. *Knowledge of the Protective Order*

[10] The State alleged in its revocation petition that Young had violated the terms of his probation by committing the new offense of invasion of privacy by contacting M.Y. in violation of the protective order. By operation of law, it is automatically a condition of probation that the probationer must obey federal, state, and local law. *Williams v. State*, 695 N.E.2d 1017, 1019 (Ind. Ct. App. 1998). "A person who knowingly or intentionally violates . . . a protective order" commits Class A misdemeanor invasion of privacy. Ind. Code § 35-46-1-15.1(a)(1). Therefore, to prove the offense, the State must show that the defendant knowingly or intentionally violated some form of protective order. *Chavers v. State*, 991 N.E.2d 148, 151 (Ind. Ct. App. 2013), *trans. denied*. "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35–41–2–2(a). Actual service of the protective order on a defendant is not an element of the offense of invasion of privacy. *Joslyn v. State*, 942 N.E.2d 809, 811-12 (Ind. 2011). Rather, a defendant may be found guilty of violating a protective order where the evidence shows that he had actual knowledge of the order. *See id*. (affirming Joslyn's invasion of privacy conviction even though he had not been properly served with the protective order, where he admitted in statements to police and at trial that he was aware of the protective order and had read its terms).

[11] Young claims that there was no evidence that he had actual service or actual notice of the permanent protective order. While we agree with Young that there was no evidence presented at the revocation hearing that he was served with the permanent protective order following the October 28, 2020, hearing,[1] we disagree that there was inadequate evidence supporting a finding that he had actual notice of the permanent order. M.Y. testified at the revocation hearing that Young was present in court on October 28, 2020, when the permanent protective order was granted, which was strong, probative evidence of his knowledge of the order. *See Boultinghouse v. State*, 120 N.E.3d 586, 593 (Ind. Ct. App. 2019) (concluding that Boultinghouse had knowingly violated a protective order when he had been present at the hearing when the permanent order was granted with his agreement), *trans. denied*. In addition, in a text Young sent to M.Y. after the October 28, 2020, hearing and entry of the protective order, Young used the present tense in referring to the fact that M.Y. had a "restraining order" against him, which supports a reasonable inference that Young knew at the time he sent the text to M.Y. that the protective order was still in effect. (Exh. Vol. p. 16). In the same text and also using the present tense, Young referred to one of the terms of the protective order—*i.e.*, that he had a court order allowing him to collect his property from the home he had shared with M.Y.—which additionally supports an inference that he had

[1] In support of its Amended Verified Petition to Revoke Probation, on July 29, 2021, the State filed as "Exhibit A" a printout from the Indiana Protection Order Registry indicating that Young was personally served with the protective order on November 4, 2020. The State did not have this exhibit admitted into evidence at the probation revocation hearing and did not request that the trial court take judicial notice of it.

knowledge of the contents of the protective order and knew that it was still effective. Young does not address this evidence, let alone explain why it is inadequate to show his knowledge of the protective order and its continued viability at the time he contacted M.Y. Accordingly, we conclude that the State met its burden of proof and decline Young's invitation to reweigh the evidence or to reassess the credibility of M.Y.'s testimony, in line with our standard of review. *See Murdock*, 10 N.E.3d at 1267.

CONCLUSION

[12] Based on the foregoing, we conclude that the State proved by the preponderance of the evidence that Young violated his probation by committing the new offense of invasion of privacy after receiving actual notice of the entry of the protective order in favor of M.Y.

[13] Affirmed.

[14] May, J. and Tavitas, J. concur