MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT

Christopher Kozelichki
The Law Offices of Chris Kozelichki
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Brian Matthew Williams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 7, 2022

Court of Appeals Case No. 22A-CR-1285

Appeal from the St. Joseph Superior Court

The Honorable Keith C. Doi, Magistrate

Trial Court Cause No. 71D06-2004-CM-1042

Brown, Judge.

[1] Brian Matthew Williams appeals his conviction for invasion of privacy as a class A misdemeanor and challenges the admission of certain Facebook posts into evidence. We affirm.

Facts and Procedural History

[2] W.C. is the mother of B., and Williams is B.'s father. On September 4, 2018, the trial court issued a protective order against Williams. The order prohibited Williams from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with W.C. On December 27, 2019, W.C. reported to police that Williams violated the protective order. The State charged Williams with invasion of privacy as a class A misdemeanor. The court held a jury trial at which it admitted screenshots of Facebook posts over Williams's objection. The jury found Williams guilty as charged. The court sentenced Williams to 180 days, all suspended, and to 365 days of probation.

Discussion

[3] Williams asserts the State failed to establish the authenticity of the Facebook posts admitted as State's Exhibits 2 and 3. He argues that, absent the admission of the posts, no evidence supports his conviction. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh'g denied*. We will affirm the conviction if there exists evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id*. Ind. Code § 35-46-1-15.1 provides that a person who

knowingly or intentionally violates a protective order commits invasion of privacy as a class A misdemeanor.

[4] The admission of evidence is within the sound discretion of the trial court. *Wilson v. State*, 30 N.E.3d 1264, 1267 (Ind. Ct. App. 2015), *trans. denied*. Ind. Evidence Rule 901(a) provides: "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." "Once this reasonable probability is shown, any inconclusiveness regarding the exhibit's connection with the events at issue goes to the exhibit's weight, not its admissibility. Additionally, authentication of an exhibit can be established by either direct or circumstantial evidence." *Wilson*, 30 N.E.3d at 1268 (citing *Pavlovich v. State*, 6 N.E.3d 969 (Ind. Ct. App. 2014) (citations omitted), *trans. denied*). "Letters and words set down by electronic recording and other forms of data compilation are included within Rule 901(a)." *Id*. (citing *Hape v. State*, 903 N.E.2d 977, 989 (Ind. Ct. App. 2009), *trans. denied*). "Absolute proof of authenticity is not required." *Id*. (citation omitted).

[5] Ind. Evidence Rule 901(b) provides examples of evidence which satisfies the authentication requirement, including "(1) *Testimony of a Witness with Knowledge*. Testimony that an item is what it is claimed to be, by a witness with knowledge," and "(4) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances." *See Wilson*, 30 N.E.3d at 1268. "We have previously acknowledged that federal courts have recognized Federal

Rule of Evidence 901(b)(4) as one of the most frequently used means to authenticate electronic data, including text messages and emails."[1] *Id*. (citing *Hape*, 903 N.E.2d at 990 (citing *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 546 (D. Md. 2007))).

[6] Here, W.C. testified that she used her phone to take screenshots included in State's Exhibit 2 showing Williams's Facebook page around Christmas 2019. She indicated that, as shown in State's Exhibit 2-A, there is a picture of her and B. on Williams's profile. She further testified that Williams worked at Midland Engineering and the Facebook profile showed Williams's full name, listed Midland Engineering as his employer, and contained posts which included pictures of B., details of B.'s illness, and her name. State's Exhibit 2-C contains a screenshot of a post by Williams on his Facebook page stating "[W.C.] you are still a selfish Coward." State's Exhibit 2-D contains a post by Williams stating: "I hope He doesn't die before his mother [W.C.] stops alienating me for dissagreeing [sic] for her when she was selling drugs… Smh." State's Exhibit 2-E contains a message stating: "[W.C.] you are a coward also!" State's Exhibit 2-F contains a post stating: "Shitty people do shitty things… But good people do great things when they lose the ones they love…. Terrible, GREAT things. [] let my son die w/o me. See what happens."

[1] "The language of Federal Rule 901(b)(4) is identical to the language of Indiana's Rule 901(b)(4)." *Wilson*, 30 N.E.3d at 1268 n.2.

[7] W.C. testified that State's Exhibit 3 contains screenshots which she took of messages posted to her Facebook page. She testified that she believed Williams posted the messages on her Facebook page. The State argued these posts on W.C.'s Facebook account were authored by Williams and violated the terms of the protective order. State's Exhibit 3-A contains a screenshot of a message which was posted by "Will Smith" stating: "Merry Christmas. I miss my son. I really hope you put the past behind you before he dies. I never did anything to you to deserve this. [B.] deserves better." A photograph appears below the message which W.C. testified depicted Williams and B.

[8] State's Exhibit 3-B contains a message posted by "Brodie Wilson" stating: "I won't go away and all I want is to go back to court... How bout you just do the right thing…. For once in your selfish life. Do what's best for the child. Before this one to, dies… Smh. I know I've ALWAYS been right. Coward." State's Exhibit 3-C contains a message posted by "Will Smith" stating: "I miss him… So very much…" State's Exhibit 3-D contains a message posted by "William Smithers" stating: "Coward. Still just a drug dealer to me. Smh. I've tried so hard to forgive you…." State's Exhibit 3-E contains a message posted by "Brodie Williams" stating: "He LOVES his daddy coward. Even still… And I him." The photograph depicting Williams and B. which appeared below the message in State's Exhibit 3-A also appeared below the messages in State's Exhibits 3-B, 3-C, 3-D, and 3-E.

[9] W.C. testified that she did not know anyone named Will Smith, Brodie Wilson, or Brodie Williams, that the profile for Will Smith did not contain any profile

picture, information, friends, or posts, and that the profiles for Brodie Wilson, William Smithers, and Brodie Williams were similarly blank and contained no information. She testified Williams "likes to call me a coward a lot" and "likes to throw around talking about our son dying." Transcript Volume II at 94. She indicated one of the comments "appears to say do what's best for the child before this one, too, dies," she had a child before B., that child died, "[l]ess than a handful" of people knew of that loss, and Williams was one of the people she told about her child who died. *Id*. She also testified that Williams accused her of dealing drugs all the time.

[10] We cannot say in light of the content of the messages and testimony that the court abused its discretion in admitting the challenged exhibits into evidence. *See Wilson*, 30 N.E.3d at 1267-1269 (concluding that, taken together, the testimony identifying a Twitter account and the content posted on the account were sufficient to authenticate the posts as being authored by the defendant). Having found the court did not abuse its discretion in admitting the messages, we conclude that evidence of probative value was admitted from which a reasonable jury could find beyond a reasonable doubt that Williams committed invasion of privacy as a class A misdemeanor.

[11] For the foregoing reasons, we affirm Williams's conviction.

[12] Affirmed.

Altice, J., and Tavitas, J., concur.