MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Juan Gomez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 5, 2022

Court of Appeals Case No. 22A-CR-937

Appeal from the Marion Superior Court

The Honorable Amy Jones, Judge

The Honorable Richard Hagenmaier, Magistrate

Trial Court Cause No. 49D34-2108-CM-24839

Bailey, Judge.

Case Summary

[1] Juan Gomez ("Gomez") challenges the sufficiency of the evidence to support his conviction of invasion of privacy, as a Class A misdemeanor.[1] We affirm.

Facts and Procedural History

[2] M.G.P. obtained an ex parte protective order against Gomez on June 24, 2021. Deputy Johnson of the Marion County Sheriff's Office served the ex parte protective order on Gomez in person at Gomez's home on June 25, 2021. Deputy Johnson's June 25 service of the protective order upon Gomez was recorded in the trial court's Chronological Case Summary ("CCS") as follows:

> 06/25/2021 Service Returned Served: Order of Protection
>
> Served: Respondent Gomez, Juan Carlos
>
> POR – Service Perfected: Service Date 6/25/2021 9:27 AM Person Served: Juan Carlos Gomez; Served By: DEPUTY JOHNSON: ID/Badge: J8657; Street: 42 N. HOLMES AVE 46222; City: Indianapolis; County: Marion; Agency: Marion County Sheriff Department; Manner: Personal.

Ex. at 17.

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[1] Ind. Code § 35-46-1-15.1(a)(2).

[3] The explicit terms of the protective order prohibited Gomez from "harassing, annoying, telephoning, contacting, or directly or indirectly communicating with" M.G.P. *Id*. at 10. The order also directed Gomez to "stay away" from M.G.P.'s residence and place of employment. *Id*. The order was written in both English and Spanish.

[4] On August 9, 2021, Gomez called M.G.P.'s place of employment, La Hacienda Mexican Restaurant. M.G.P.'s co-worker, Jorge Bueno ("Bueno"), answered the telephone. Gomez asked to speak to M.G.P. and began yelling at Bueno, so Bueno handed the phone to M.G.P. Gomez asked M.G.P. where their children were, and she told him they were with the neighbor. Gomez began yelling at M.G.P. and accused her of lying because "the lights at the house . . . were on." Tr. at 32. Shortly after this call, Gomez arrived at La Hacienda's parking lot. While closing the restaurant, M.G.P.'s co-workers noticed that her face was white and that she was "visibly nervous." *Id*. at 41. When they asked her what was wrong, she told them that Gomez was outside, parked next to her vehicle. A surveillance video from La Hacienda's parking lot shows Gomez driving into the lot and stopping his vehicle a few feet from the front driver's side of M.G.P.'s car.

[5] M.G.P. called the police to report Gomez's violation of the protective order, but by the time Officer Ethan Carr ("Officer Carr") arrived at La Hacienda, Gomez had left. Officer Carr obtained from M.G.P. her and Gomez's identifying information and entered it into his in-car computer "dispatch system." Tr. at 36. The computer system confirmed that a protective order had

been issued, "was valid still[,] and that it was served" upon Gomez. *Id*. at 35. M.G.P.'s cellphone records revealed five subsequent calls from Gomez over the course of that evening.

[6] On August 11, 2021, the State charged Gomez with two counts of Class A misdemeanor invasion of privacy and one count of Class A misdemeanor intimidation. A bench trial was held on April 7, 2022. State's Exhibit 1—consisting of the six-page ex parte protective order, the signed and dated return of service, and the CCS—was admitted into evidence without objection. M.G.P., her co-workers, Officer Carr, and Gomez all testified. Gomez testified that a uniformed "sheriff" served him with "two papers" on June 25 at his and M.G.P.'s home. Tr. at 58. Gomez testified that he did not speak or read English, could not understand "well" what the sheriff said to him, and could not read the legal documents he was served because they were in English. *Id*. Gomez testified that he did not contact the sheriff's office to "find out what [the served documents were] about." *Id*. However, Gomez was able to understand from the sheriff's hand gestures at the time of service that Gomez had to leave the home, which he did.

[7] After the presentation of evidence and argument, the trial court found Gomez guilty of Class A misdemeanor invasion of privacy and dismissed the remaining charges. In so ruling, the court pointed to the evidence of the certified CCS which showed Gomez was served with the protective order by personal service on June 25, and the court stated that "evidence showed that [Gomez] was served." *Id*. at 63. The court imposed a one-year sentence with 180 days to be

served on "reporting probation" and the balance suspended. *Id*. at 66. The trial court also imposed a year-long no-contact order between Gomez and M.G.P. This appeal ensued.

Discussion and Decision

[8] Gomez challenges the sufficiency of the evidence to support his conviction of invasion of privacy.

> When reviewing a claim that the evidence is insufficient to support a conviction, we neither reweigh the evidence nor judge the credibility of the witnesses. *Harrison v. State*, 32 N.E.3d 240, 247 (Ind. Ct. App. 2015), *trans. denied*. We instead respect the exclusive province of the trier of fact to weigh any conflicting evidence. *Id*. We consider only the probative evidence supporting the verdict and any reasonable inferences that may be drawn from this evidence. *Id*. We will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id*.

Merriweather v. State, 128 N.E.3d 503, 514-15 (Ind. Ct. App. 2019), *trans. denied*; *see also McCarthy v. State*, 749 N.E.2d 528, 538 (Ind. 2001) ("If the testimony believed by the trier of fact is enough to support the verdict, then the reviewing court should not disturb it.").

[9] To support a conviction of invasion of privacy, as a Class A misdemeanor, the State was required to prove beyond a reasonable doubt that: (1) Gomez; (2) knowingly or intentionally; (3) violated an ex parte protective order. I.C. § 35-

46-1-15.1(a)(2). The State presented evidence—and Gomez does not dispute—that, on June 24, 2021, a criminal court issued an ex parte protective order prohibiting him from having contact with M.G.P. and that he had repeated contact with M.G.P. after that date. However, Gomez contends there is insufficient evidence that he "knowingly or intentionally" violated the protective order because the document served on him personally by the sheriff's office on June 24 was only "two pages" and was only in English.

[10] In support of this contention, Gomez cites only his own self-serving testimony.[2] However, State's Exhibit 1 shows that the ex parte protective order was six pages long and was written in both English and Spanish. And the CCS stated that service of the "order of protection" was "perfected" by personal service by Deputy Johnson of the Marion County Sheriff's Department on June 24. Ex. at 17.

[11] As Indiana courts have repeatedly noted,

> it is well settled that the trial court speaks through its CCS or docket, *Young v. State*, 765 N.E.2d 673, 678 n.6 (Ind. Ct. App. 2002), and this court is limited in its authority to look behind the CCS to examine whether an event recorded therein actually occurred, *see Trojnar v. Trojnar*, 698 N.E.2d 301, 304 (Ind. 1998) (in context of Trial Rule 72, "a proper Clerk's notation on the

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[2] Gomez repeatedly misstates the record when he asserts that "[t]he State conceded in its closing argument that 'the sheriff didn't give [Gomez] the entire document [contained] in State's Exhibit 1.'"" Appellant's Br. at 10. Rather, the Prosecutor stated in closing argument, "I will concede *we don't know that the sheriff didn't give him the entire document* that I handed in as State's Exhibit 1." Tr. at 62 (emphasis added). That statement does not support Gomez's contention that he was not served with the entire protective order, and it does not contradict the evidence in the CCS that Gomez was, in fact, served with the protective order on June 24.

> CCS will presumptively establish the fact that notice was mailed"); *Minnick v. Minnick*, 663 N.E.2d 1226, 1228 (Ind. Ct. App. 1996) ("A challenge to the mailing of notice is precluded when the docket clearly states that notice was mailed.").

City of Indianapolis v. Hicks, 932 N.E.2d 227, 233 (Ind. Ct. App. 2010), *trans. denied*; *see also Beeler v. State*, 959 N.E.2d 828, 830-31 (holding the same and citing *Epps v. State*, 244 Ind. 515, 525, 192 N.E.2d 459, 464 (1963)), *trans. denied*; Ind. Trial Rule 77(B) (stating the CCS is "an official record of the trial court"). Moreover, "there is no indication in Indiana case law that" the rule that the court speaks through its CCS is limited in its application to civil cases. *Beeler*, 959 N.E.2d at 831 n.1. Thus, the trial court did not err in relying on the CCS as proof that Gomez was served on June 24 with the full protective order that was written in English and Spanish and that Gomez therefore had notice of the order before the date he violated it. Gomez's contentions to the contrary are requests that we reweigh the evidence, which we may not do. *See Merriweather*, 128 N.E.3d at 514.

[12] In addition, the statute defining invasion of privacy "do[es] not require actual service of a protective order for a conviction," so long as the there is evidence of the defendant's "actual notice of the order" through some other means. *Joslyn v. State,* 942 N.E.2d 809, 811-12 (Ind. 2011) (citing I.C. § 35-46-1-15.1). Gomez testified that, after he had been given "the papers" by the sheriff's office but before August 9, 2021, M.G.P. had called Gomez and informed him of the hearing date on the protective order. Tr. at 59. Thus, there was evidence that Gomez also had actual notice of the protective order through some means other

than service on the date he initiated contact with M.G.P. in violation of that order.

[13] The State provided probative evidence from which the trial court could conclude beyond a reasonable doubt that Gomez knowingly or intentionally violated a protective order. The trial court did not err when it convicted Gomez of invasion of privacy.

[14] Affirmed.

Riley, J., and Vaidik, J., concur.