S. Ct. No.
COA No. 34209-3-III

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOSHUAH STEPHEN CARON,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Joshuah Stephen Caron asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

The unpublished decision of the Court of Appeals which he wants reviewed was filed on June 29, 2017. A copy is attached as Appendix A.

C. ISSUE PRESENTED FOR REVIEW

1. Was the State's evidence sufficient to prove guilt beyond a reasonable doubt?

D. STATEMENT OF THE CASE

Mr. Caron was charged with one count of felony violation of a no-contact order. (CP 1). The case proceeded to jury trial.

Angela Thompson had three children, ages 13, 11, and 3. (2/16/16 RP 26). She met Mr. Caron in a bar in 2009. (*Id*. at 27). They began a relationship that lasted about 7 years. (*Id*.). A few months after starting to date, they began living together. (*Id*. at 28). Ms. Thompson said this lasted about a year. She and Mr. Caron had been engaged. (*Id*.).

On June 15, 2015, there was a no-contact order between

Mr. Caron and Ms. Thompson when she retrieved a package that arrived in the mail. (2/16/16 RP 30). It was addressed to HT, the three-year-old, and was from Mr. Caron. The return address was his sister's. (*Id*. at 31). Inside were a towel, two pajamas, some pictures, and a letter. (*Id*. at 31-32). The pajamas fit no one but HT. (*Id*. at 38). The pictures were of Ms. Thompson, Mr. Caron, and HT. (*Id*. at 34). The typewritten letter was to HT. (*Id*. at 38). Ms. Thompson was sad and upset to see the package and its contents. (2/16/16 RP 35). Mr. Caron was not HT's biological father and there was no parenting plan. (*Id*.).

JT, the 13-year-old son, knew Mr. Caron, who had dated his mother for 6-7 years. (2/16/16 RP 40-41). Mr. Caron had not sent any packages to him or his other sister, 11-year-old BT. (*Id*. at 41). JT saw the package his mother got out of the mail box. (*Id*. at 42). His mother appeared to be in shock. The package was addressed to HT, who could not read. (*Id*.). JT testified he would not have read the letter to her. He did not like Mr. Caron, who had caused him much emotional hurt. (*Id*. at 45).

Officer Tuan Nguyen met with Ms. Thompson for violation of a no-contact order just after midnight the evening of June 19, 2016, so it would have actually been June 20. (2/16/16 RP 45, 47-48). A

copy of the no-contact order was emailed to him by dispatch. (*Id*. at 49). The form of contact was a package sent through the mail. (*Id*. at 51). Officer Nguyen verified the contents of the package. (*Id*.). Ms. Thompson did not want the package as it violated the no-contact order and she did not want to give it to HT. (*Id*. at 53). At this point, the court read to the jury the parties' stipulation Mr. Caron had two prior violations of a no-contact order. (*Id*. at 55).

Ms. Thompson had a copy of the no-contact order as did the officer. (2/16/16 RP 55). The protected person in the order was Ms. Thompson and no one else. (*Id*. at 56). Mr. Caron was to have no contact with her directly, indirectly, in person or through others by, among other things, mail. (*Id*. at 57). No other family members were listed as protected persons. (*Id*.). Ms. Thompson acknowledged the package was addressed to HT. (*Id*. at 59).

Mr. Caron testified in his defense. (2/16/16 RP 62). At the time of the incident, he was working as a freight truck driver. (*Id*. at 62-63). He had met Ms. Thompson in July 2009. (*Id*. at 63). They lived together December 2009 in Liberty Lake, along with JT and BT. (*Id*. at 64). HT had not yet been born. (*Id*. at 65). Mr. Caron assumed the father role, even though he was not the biological father of any of the children. (*Id*.). He and Ms. Thompson then

separated for about a year. (*Id*. at 66). They reconciled and he moved back in at a different place in Spokane Valley. (*Id*.). They had another breakup when HT was 18 months old, so it was about two years later. (*Id*.).

In June 2015, Mr. Caron was aware a no-contact order had been entered and he was to stay away from Ms. Thompson. (2/16/16 RP 67, 71). The order did not prohibit contact with the children. (*Id*.). He mailed the package to HT. (*Id*. at 67-68). The pajamas fit only HT and the beach towel matched the motif, the movie Frozen, for the pajamas. (*Id*. at 68-69). He acknowledged typing the letter to HT and the photos were of her, Ms. Thompson, and him. (*Id*. at 69). He used his sister's address for the return because he was there when packaging the box. (*Id*. at 70).

Mr. Caron sent the letter to HT, even though she was unable to read, so she could read it later when she was able to do so. (2/16/16 RP 73, 76). The letter expressed that he loved the family and missed them all. (*Id*. at 74). To him, a package to a minor child was a package to the child. (*Id*.). HT's brother or sister could read the letter to her. (*Id*. at 76).

No exceptions were taken to the court's instructions. (2/16/16 RP 85). At closing, the defense argued the only issue was

whether Mr. Caron knowingly violated the no-contact order by indirectly contacting Ms. Thompson through the package to HT. (*Id*. at 104-05, 107).

The jury found Mr. Caron guilty and also found by special verdict the crime involved family or household members. (CP 88, 89). On appeal, the Court of Appeals affirmed. (App. A).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The decision of the Court of Appeals conflicts with decisions of the Supreme Court and other decisions of the Court of Appeals. Review is thus appropriate under RAP 13.4(b)(1) and (2).

It is well-settled that in a challenge to the sufficiency of the evidence, the test is whether, viewing it in a light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). But even in that light, the State's evidence fell short of showing beyond a reasonable doubt Mr. Caron knowingly violated a provision of the no-contact order.

The no-contact order only prohibited contact with Ms. Thompson. JT, BT, and HT were not named as protected persons. Nothing in the package was addressed to anyone but HT and the beach towel and pajamas were for no one but her. The photos of

Mr. Caron, Ms. Thompson, and HT were for her. He was the only father she knew and Ms. Thompson was her mother. The letter was addressed to HT and, even though she could not read, she could read it later when she was able to or have JT or BT read it to her. In these circumstances, the State's evidence did not prove beyond a reasonable doubt the essential element that Mr. Caron knowingly violated the no-contact order. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed.2d 368 (1970).

A claim of insufficient evidence admits the truth of the State's evidence and all reasonable inferences from it. *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010). Although credibility issues are for the finder of fact to decide, the existence of facts cannot be based on guess, speculation, or conjecture. *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972).

Here, the State failed to prove beyond a reasonable doubt Mr. Caron knowingly violated the no-contact order. The prohibition was against contacting Ms. Thompson and he did not do so directly or indirectly. He had contact with HT, who was not a protected person. *See State v. Foster*, 128 Wn. App. 932, 939, 117 P.3d 1175 (2005). There was no indirect

contact with Ms. Thompson as the package was addressed only to HT and everything in the package was for her only. It was not an indirect contact "through others."

In context, "indirectly" in the no-contact order relates to other than "direct" contact. Mail sent to the protected person is such a prohibited "indirect" contact. This did not occur here. Only by resorting to guess, speculation, and conjecture could the jury find Mr. Caron knowingly violated the no-contact order. *Hutton*, *supra*.

Yet, the Court of Appeals determined there was essential proof of guilt by "pyramiding of inferences," which it acknowledged was forbidden. (Op. at 6, citing *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999)). This pyramid was built on these inferences, some reasonable and some unreasonable:

> Although Joshuah Caron addressed the package to H.T., Caron mailed the package to Angela Thompson's address. Caron knew or reasonably should have known that a three-year-old child would not retrieve the package from the mail box and that Angela Thompson would likely retrieve the package. Caron knew or reasonably should have known that Thompson would open the package. Caron withheld his full name and his address from the package front, suggesting he did not want the retriever to immediately identify

> the sender and thereby trick Thompson into opening the package. Caron knew that H.T. could not read his letter inside the package. The message and photographs sought to endear Thompson to Caron and reestablish their courtship. Caron did not send packages to the older children. (Op. at 7).

Ms. Thompson retrieved the package, but it was just as likely the older children would have gone to get the mail. She could open the package, but it was just as likely the older children would have opened it for their little sister. The likelihood of these alternatives is even acknowledged by the court as it suggested Mr. Caron was being tricky by using his sister's address and not using his full name so the retriever would not know who sent the package. This "inference" is unreasonable and illogical as Ms. Thompson knew the return address belonged to Mr. Caron's sister and recognized Mr. Caron's handwriting. (2/16/16 RP 38).

The letter was to HT and the only references to Ms. Thompson were that (1) Mr. Caron would love the children and their mother forever and (2) he missed them all. (Ex. 6). This forbidden pyramiding of inferences does not show the State proved the essential element of knowing violation of the no-contact order beyond a reasonable doubt. *Bencivenga*, 137

Wn.2d at 711; *Hutton*, 7 Wn. App. at 728.

The Court of Appeals' decision conflicts with other appellate decisions, thus warranting review under RAP 13.4(b)(1) and (2).

F. CONCLUSION

Based on the foregoing facts and authorities, Mr. Caron respectfully urges this court to grant his petition for review.

DATED this 24th day of July, 2017.

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CERTIFICATE OF SERVICE

I certify that on July 24, 2017, I served a copy of the petition for review by USPS on Joshuah Caron # 749166, at his last-known address at PO Box 769, Connell, WA 99326; and by email, as agreed, on Brian O'Brien at scpaappeals@spokanecounty.org.

APPENDIX A

FILED
JUNE 29, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. JOSHUAH STEPHEN CARON, Appellant.	)	No. 34209-3-III UNPUBLISHED OPINION

FEARING, C.J. — A jury convicted Joshuah Caron for violating a no-contact order that protected Angela Thompson, when Caron sent a package through the mail to Thompson's toddler daughter. On appeal, Caron contends that insufficient evidence supports his conviction. We disagree and affirm.

FACTS

Joshuah Caron and Angela Thompson sporadically dated and cohabitated from 2009 to 2015. When the relationship commenced, Thompson had two children, J.T. and B.T. During the courtship, Thompson bore H.T, the biological offspring of another man. When H.T. reached one and one-half years of age, Caron and Thompson's relationship ended.

On June 10, 2015, after Joshuah Caron and Angela Thompson's courtship ceased, a trial court issued a domestic violence no-contact order prohibiting Caron from direct or indirect contact with Thompson. In pertinent part, the trial court ordered that Caron:

> B. do not contact the protected person, directly, indirectly, in person or through others, by phone, mail or electronic means, except for mailing or service of process of court documents through a third party, or contact by [Caron]'s lawyers.

Ex. 1. The order listed Angela Thompson, but not her children, as a protected person. Caron signed the protection order and understood its requirements.

On June 19, 2015, Angela Thompson received through the mail a package addressed to H.T. The return address read simply "J." Report of Proceedings (RP) (Feb. 16, 2016) at 59. Thompson knew Joshuah Caron sent the package because the address label was in his handwriting and the return address was Caron's sister's address. Thompson opened the package to find a towel, pajamas, photographs, and a letter. The pajamas fit no one but H.T. The pictures showed Thompson, Caron, and H.T. The typewritten letter read:

> Dear [H.T.],
> Hi baby girl I love you…so much! I miss your mama and Sissy and brother! I will love you forever no matter what I love all of you forever I would love your mama always & forever!!!!!!!
> I don't know if or when I'll be able to see u I just want you to remember always you're in my heart you are my heart!!! I got you a couple pairs of pajamas and a beach towel I hope the pajama fit you I hope you like them! There's also a couple of pictures in the envelope and the bottom of the box I just want you to have pictures of you and daddy! I'm so sorry the things are this way I wish it could be different, no matter what I will

> think [of] you everyday with every breath I take and I will never forget you maybe someday we can see each other again but I don't know when or if that will happen just always remember everybody makes mistakes I'm not perfect nobody is!! I wish I could out of my hands right now I miss you all so much it's hard to breathe! I'll always be in your heart no matter what happens and its not your fault that things are the way they are!
>
> Love Always & Forever
> Daddy

Ex. 6.

The package and its contents saddened Angela Thompson. Joshuah Caron never sought legal parental status of any of Thompson's children.

PROCEDURE

The State of Washington charged Joshuah Caron with one count of felony violation of a no-contact order against a family or household member. The felony count requires proof of two earlier violations of the order. At trial, Caron conceded he violated the no-contact order on two earlier occasions. The trial court read to the jury a stipulation concerning Caron's previous convictions for breaching the order.

Joshuah Caron testified, during trial, that he assumed the father role for Angela Thompson's children, including H.T. He "tried to assume the best father role [he] could because [J.T. and B.T.] had no father involved in their life at all" and he was the only dad H.T. ever knew. RP (Feb. 16, 2016) at 65-66. Caron admitted that he mailed the package, its contents, and the letter to H.T. He protested that sending the package to H.T.

violated the no-contact order, since the order did not bar contact with Thompson's children.

During trial testimony, Joshuah Caron insisted that a package to a minor child constituted a package to that child, not someone else. Caron explained that he sent the letter to an illiterate H.T., with the expectation that H.T. would read the letter when older. In the alternative, he considered that one of the older two children, J.T. or B.T., would read the letter to H.T. Caron acknowledged that he never sent similar packages to Thompson's older two children, who could read without assistance.

The trial court instructed the jury that, in order to convict Joshuah Caron, it must find the State proved five elements beyond a reasonable doubt: (1) on June 19, 2015, a no-contact order applied to Caron, (2) Caron knew of the existence of the order, (3) on June 19, Caron knowingly violated a provision of the order, (4) Caron had twice been convicted of violating the provisions of a court order, and (5) Caron's acts occurred in the State of Washington. During closing, Caron admitted that the State proved all but one of the elements required for his conviction. He told the jury that the only question to answer was whether he knowingly violated the no-contact order by indirectly contacting Angela Thompson through the package sent to H.T. Caron asked the jury to answer the question in the negative. The jury convicted Caron of violating the no-contact order. By special verdict, the jury also found that Caron committed the crime against a family or household member.

LAW AND ANALYSIS

The protection order favoring Angela Thompson banned Joshuah Caron from direct or indirect contact with Thompson. On appeal, Caron contends that the State presented insufficient evidence that he knowingly violated the no-contact order by indirectly contacting Thompson through the package he mailed to her minor daughter. The State argues that sufficient facts permitted the jury to infer that Caron knowingly violated the no-contact order. We agree with the State.

Several statutes authorize no-contact orders. The trial court originally issued the no-contact order against Joshuah Caron under chapter 10.99 RCW. RCW 10.99.050(2)(a) provides that a "[w]illful violation of a court order . . . is punishable under RCW 26.50.110." A person willfully violates a no-contact order when he acts knowingly with respect to the material elements of the offense, including the contact element. RCW 9A.08.010(4); *State v. Sisemore*, 114 Wn. App. 75, 77, 55 P.3d 1178 (2002). Therefore, Caron violated the no-contact order if he knowingly directly or indirectly contacted Angela Thompson. A criminal statute defines "knowledge" as:

> [a] person knows or acts knowingly or with knowledge when:
> (i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
> (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

RCW 9A.08.010(1)(b).

We recite familiar principles of sufficiency of evidence. Evidence is sufficient if, after viewing it in the light most favorable to the State, a rational trier of fact could find each element of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980); *State v. Witherspoon*, 180 Wn.2d 875, 883, 329 P.3d 888 (2014). A defendant challenging sufficiency of the evidence at trial admits the truth of the State's evidence and all reasonable inferences therefrom. *State v. Witherspoon*, 180 Wn.2d at 883. This court defers to the fact finder's credibility determinations and determinations of the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). A verdict may be supported by either circumstantial or direct evidence, as both may be equally reliable. *State v. Brooks*, 45 Wn. App. 824, 826, 727 P.2d 988 (1986).

A jury may draw inferences from evidence so long as those inferences rationally relate to the proven facts. *State v. Jackson*, 112 Wn.2d 867, 875, 774 P.2d 1211 (1989). A rational connection must exist between the initial fact proved and the further fact presumed. *State v. Jackson*, 112 Wn.2d at 875. An inference should not arise when other reasonable conclusions follow from the circumstances. *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999). The jury may infer from one fact the existence of another essential to guilt, if reason and experience support the inference. *Tot v. United States*, 319 U.S. 463, 467, 63 S. Ct. 1241, 87 L. Ed. 1519 (1943). Nevertheless, essential proofs of guilt cannot be supplied by a pyramiding of inferences. *State v. Bencivenga*, 137

Wn.2d at 711; *State v. Weaver*, 60 Wn.2d 87, 88, 371 P.2d 1006 (1962).

Joshuah Caron argues a jury could not reasonably infer that he knowingly indirectly contacted Angela Thompson when sending a package to Thompson's daughter, H.T., because: (1) the order only prohibited contact with Thompson, (2) the order did not list H.T. as a protected person, (3) he addressed the mailed package to H.T., and (4) the package contained only items for H.T. He reasons that the jury could only have found knowledge by resorting to guess, speculation and conjecture. We disagree.

Although Joshuah Caron addressed the package to H.T., Caron mailed the package to Angela Thompson's address. Caron knew or reasonably should have known that a three-year-old child would not retrieve the package from the mail box and that Angela Thompson would likely retrieve the package. Caron knew or reasonably should have known that Thompson would open the package. Caron withheld his full name and his address from the package front, suggesting he did not wish the retriever to immediately identify the sender and thereby trick Thompson into opening the package. Caron knew that H.T. could not read his letter inside the package. The message and photographs sought to endear Thompson to Caron and reestablish their courtship. Caron did not send a similar package to the older children. From these facts, the jury could reasonably conclude that Caron intended to directly contact Thompson, let alone indirectly contact her. The jury could reasonably conclude that Caron's sole purpose of sending the package to H.T. was to communicate with Angela Thompson.

CONCLUSION

We affirm Joshuah Caron's conviction for felony violation of a no-contact order.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Fearing, J.
Fearing, C.J.

WE CONCUR:

Korsmo, J.

Pennell, J.

July 24, 2017 - 12:42 PM

Filing Petition for Review

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