

70167-3

70167-3

NO. 70167-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ERIC LEE DAVIS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY,
THE HONORABLE MARY I. YU, JUDGE

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. The appellant was convicted of Felony Violation of a No-Contact Order at trial. Is there sufficient evidence to establish the appellant as the named respondent of the No-Contact Order (NCO), where he was found with the victim, the victim lied to police about her identity, police identified appellant at the scene via his driver's license as Eric Davis, the same name as the respondent is named in the NCO, and the appellant admitted he has known the victim for about five years?

2. Hearsay is an out-of-court statement offered in evidence to prove the truth of the matter asserted.¹ A statement is not hearsay if it is being offered for the limited purpose of providing background or context for other evidence. Did the trial court err by permitting the testimony from police officers about the existence of a NCO between Sabrina Anderson and Eric Davis as it related to their investigation?

¹ ER 801(c).

B. STATEMENT OF THE CASE²

On August 13, 2012, Seattle Police Officer Matthew Lilje was dispatched to a call involving a man forcing a woman into a vehicle. Report of Proceedings (RP) 18-19. Officer Lilje was informed via dispatch that the incident had taken place near 22nd Avenue and Spruce Street. RP 21. The vehicle was described as a silver Buick with a "VJ" bumper sticker, last seen traveling westbound on Spruce Street. RP 19. Officer Lilje was nearby and decided to intercept the suspect vehicle. RP 22. As he travelled north on 21st Street, he spotted a vehicle that matched the suspect vehicle heading southbound toward his location. RP 22-23. Both vehicles came to a stop and Officer Lilje activated his emergency lights and got out of his patrol car. RP 23.

Officer Lilje walked up to the driver's side of the car and briefly spoke to the driver. RP 24. He observed three people in the car: one woman and two men. RP 25. Officer Lilje spoke with the female passenger, while Officer William Griffin, who had arrived as backup, spoke with the male passenger. RP 26, 40. The female

² Report of Proceedings (RP) referenced in this brief refers to the transcript of the trial dated January 30, 2013.

passenger, later identified as Sabrina Anderson, was uncooperative, providing Officer Lilje a false name. RP 30.

While Officer Lilje was attempting to identify the female passenger, Officer Griffin identified the male passenger as Eric Davis via his Washington State temporary Driver's License. RP 41. Davis told Officer Griffin that he and the female passenger had been playing around and there was no problem. RP 42. Davis also told Officer Griffin that he had known her for about five years. Id. The officers learned that the defendant was the respondent in a no-contact order that listed the protected party as Sabrina Anderson, with a date of birth of January 1, 1968. RP 31-32.

When Officer Lilje confronted the female passenger with this information, she maintained that her name was not Sabrina Anderson. RP 32. Officer Lilje researched the name Sabrina Anderson with a date of birth of January 1, 1968, and discovered a photo of Sabrina Anderson that matched the passenger. RP 33. When Officer Lilje called out the name Sabrina, the female turned and looked at him. Id.

Officer Lilje confirmed that Davis matched the descriptors of the respondent, Eric Davis. RP 68-69. Davis was placed under arrest for violation of a no-contact order. RP 34. Realizing Davis

was being arrested, Anderson tried to interfere with the arrest and was arrested for obstructing a law enforcement officer and also for providing a false name. RP 47.

C. ARGUMENT

Eric Davis challenges his conviction for Felony Violation of a No-Contact Order by claiming that there was insufficient evidence to support his conviction. Davis argues that the State failed to prove that he was the person named in the NCO and Felony Judgment and Sentence. Br of App. at 1. Davis further argues that the trial court admitted impermissible hearsay at trial and that this error materially affected his right to a fair trial. Br. of App. at 11-13.

However, both arguments fail. First, the evidence presented at trial was sufficient to permit a rational trier of fact to find that Davis was in fact the same Eric Davis that was named in the NCO. Second, the testimony of the two police officers was not hearsay. Taken in context the testimony provided background information regarding the police investigation and how things progressed at the scene, and was relevant regardless of its truth.

**1. THERE WAS SUFFICIENT EVIDENCE
PRESENTED AT TRIAL TO SUPPORT ERIC
DAVIS' CONVICTION FOR FELONY
VIOLATION OF NO-CONTACT ORDER**

In a criminal matter, the State has the burden to prove every element of the crime charged. State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699 (2005) (citing State v. Teal, 152 Wn.2d 333, 337, 96 P.3d 974 (2004)). In a criminal sufficiency claim, the defendant admits the truth of the State's evidence and all reasonable inferences that may be drawn from such evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). On review, the evidence presented at trial is viewed in the light most favorable to the State. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). An appellate court must "defer to the trier of fact who resolves conflicting testimony, weighs the evidence and draws reasonable inferences from the testimony." State v. Lawson, 37 Wn. App. 539, 543, 681 P.2d 867 (1984).

The crime of Felony Violation of a No-Contact Order requires the State to establish beyond a reasonable doubt: (1) wilful contact with another, (2) the prohibition of such contact by a valid no-contact order, (3) the defendant's knowledge of the order, and (4) that the defendant has at least two prior convictions for violating

court orders under certain statutes. See, State v. Washington, 135 Wn. App. 42, 49, 143 P.2d 606 (2006) (quoting State v. Clowes, 104 Wn. App. 935, 944, 18 P.3d 596 (2001); RCW 26.50.110 (1), RCW 26.50.110 (5). The issue on appeal is whether there was sufficient evidence presented at trial to prove beyond a reasonable doubt the identity of the person prohibited from having contact with Sabrina Anderson.

The State bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person that actually committed the offense. State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974). Identity may be established by any relevant fact, either direct or circumstantial, that would convince a person of ordinary judgment of the identity of a person. Id.

Davis argues that the State failed to meet its burden because it relied solely on the NCO and Judgment and Sentence for a prior conviction and there was no independent evidence presented to establish that he was in fact the person named in those documents. However, a close examination of the record does not support this assertion.

There was ample evidence presented that would allow the jury to reasonably conclude that Davis was the same person

named in both documents. See, State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) (circumstantial evidence and direct evidence are equally reliable). "Circumstantial evidence is evidence of facts or circumstances from which the existence or non-existence of other facts may be reasonably inferred from common experience." State v. Jackson, 145 Wn. App. 814, 818, 187 P.3d 321 (2008) (quoting Washington Practice: Washington Pattern Jury Instructions: Criminal 5.01, at 124 (2d ed. 1994)). It is well established law that a trier of fact may rely exclusively upon circumstantial evidence to support its decision. State v. Kovac, 50 Wn. App. 117, 119, 747 P.2d 484 (1987).

Here the State offered a certified copy of the NCO and a certified copy of a Judgment and Sentence for two prior convictions for violation of a court order, State's exhibit #11 and #12 respectively. The name listed on both documents was Eric Lee Davis, they had the same case number, both documents stated that Eric Lee Davis was prohibited from contacting Sabrina Anderson and there was an obvious similarity in the defendant's signature on both documents.

In addition to these documents, the State presented the testimony of the three officers involved in the investigation. Their

testimony established that the officers were dispatched to a call involving a woman being forced into a car by a man. RP 19. Officer Lilje located a car occupied by three people, spoke with the male driver and then contacted the female passenger. RP 26. The name and date of birth provided by the female came back as no record. RP 27-28. Officer Lilje testified that it appeared that she misspelled the name she provided. RP 30. Through additional investigation Officer Lilje was able to identify the female as Sabrina Anderson even though she continued to deny her identity. RP 31-33.

The backseat passenger in the car provided Officer Griffin with his temporary Washington State driver's license identifying him as Eric Davis. RP 41-42. Officer Griffin testified that the photo on the license matched Davis. RP 41. Davis told the officer that the situation was a misunderstanding and that he has known the female passenger for about five years. RP 42.

Despite Anderson's refusal to provide her true name, Officer Lilje was able to positively identify her after he learned there was a NCO prohibiting Eric Davis from having contact with Sabrina Anderson. RP 31-33.

In light of the uncontroverted evidence that Davis and Anderson were together in the silver Buick, Davis has known Anderson for several years, Anderson mislead police about her true identity, and Davis had the same name as the man named in the NCO, allow for the reasonable conclusion that Davis is the person named in the NCO and Judgment and Sentence.

Davis relies on State v. Huber, 129 Wn. App. 499, 119 P.3d 388 (2005), but that case is distinguishable. In Huber, the prosecution admitted a certified copy of a charging document, a court order requiring the defendant to appear in court, the clerk's minutes and bench warrant. Huber, 129 Wn. App. at 500-501. There was not a single witness called that could link that defendant either directly or circumstantially with the individual named in the admitted documents.

Here, in addition to the admitted documents, there was strong circumstantial evidence linking Davis to the NCO and Judgment and Sentence, namely, Davis' own statement that he had known Anderson for five years and Anderson's attempts to conceal her identity to keep the officer from discovering a NCO existed between them.

Viewing all the evidence in the light most favorable to the State, and drawing all reasonable inferences from that evidence, there was sufficient evidence to support Davis' conviction for Felony Violation of a Court Order.

2. TESTIMONY RELATED TO THE EXISTENCE OF A NO-CONTACT ORDER BETWEEN ERIC DAVIS AND SABRINA ANDERSON WAS NOT INADMISSIBLE HEARSAY

The standard of review of a trial court's evidentiary is abuse of discretion. City of Spokane v. Neff, 152 Wn.2d 85, 91, 93 P.3d 158 (2004). A trial court abuses its discretion only when its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004) (quoting State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)). The burden to prove abuse of discretion rests on the appellant. State v. Williams, 137 Wn. App. 736, 743, 154 P.3d 322 (2007).

Hearsay is defined in the evidence rules as follows:

"Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801(c). An out-of-court

statement may be admitted if offered for purposes other than to prove the truth of the matter asserted. State v. James, 138 Wn. App. 628, 640, 158 P.3d 102 (2007) (quoting State v. Davis, 154 Wn.2d 291, 301, 111 P.3d 844 (2005) (not offered to prove truth of the matter asserted when officer investigating a shooting testified he interviewed an unidentified female who was with the shooting victims before they left for a walk and that heard six or seven shots and went in response to a victim's call for help).

Similar to the officer recounting the steps of his investigation in James, Officer Lilje's testimony that he learned an Eric Davis was the respondent of a NCO and he received this information via radio and his in-car computer, when placed in the proper context, shows this was part of the investigation into the identity of the female passenger (Anderson) and also his investigation of Davis.

Likewise, Officer Hill's testimony that she was aware that there was a NCO between Anderson and Davis also provided background information as to why Davis was being investigated by police despite his explanation about the events leading up to the police contact. These statements were relevant as to why Anderson and Davis were being detained regardless of the truth of the out-of-court statements implied. Therefore, these statements

were not barred by hearsay and were admissible in evidence.³

Even if this court were to find that these statements constituted inadmissible hearsay, any error was harmless. Evidentiary error is grounds for reversal only if it results in prejudice. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). “An error is prejudicial if, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.” State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001) (quoting State v. Smith, 106 Wn.2d 772, 780, 725 P.2d 951 (1986)). An error is harmless if the evidence is of minor significance in reference to the evidence as a whole. Neal, 144 Wn.2d at 611.

Any error resulting from the challenged testimony was harmless. Davis argues that the testimony was not harmless because it allowed the jury to reasonably conclude that Davis was the same Eric Davis named in State’s exhibit #11 and #12, the NCO and Felony Judgment and Sentence respectively. Br. of App. at 13. However, this argument fails because the jury could easily have reached the same conclusion in light of the uncontroverted

³ The defendant asked for no limiting instruction.

testimony that: (1) Davis was identified at the scene; (2) He was found in the same car as Anderson; (3) Davis admitted to knowing Anderson for five years; (4) Officer Lilje discovered that Anderson was a protected party of a NCO; (5) Davis matched physical descriptors on the NCO; and (6) Anderson's attempts to hide her identity in an effort to protect Davis. Therefore, any error in admitting the officers' testimony about Davis being the respondent of a no-contact order is harmless.

D. CONCLUSION

A person is guilty of felony violation of a court order if there is an order prohibiting the defendant from having contact, the defendant knows of the order, knowingly violates the order, and has at two prior convictions for violation of a court order. RCW 26.50.110 (1), RCW 26.50.110 (5).

Here, the evidence established beyond a reasonable doubt that Davis was the Eric Davis named in the NCO and Judgment and Sentence. Viewing the evidence in the light most favorable to the State, there was sufficient evidence presented at trial to support Davis' conviction for Felony Violation of a No-Contact Order.

Further, the testimony of Officers Lilje and Hill regarding Davis being the respondent of a NCO was not inadmissible

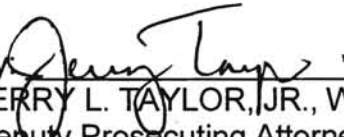
hearsay because it was not offered for the truth of the matter asserted, but was offered to provide context and background regarding the police investigation.

Thus, this court should affirm Eric Davis' conviction for Felony Violation of a No-Contact Order.

DATED this 10th day of January, 2014.

Respectfully submitted,


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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the appellant, ERIC LEE DAVIS, containing a copy of the Brief of Respondent, in STATE V. ERIC LEE DAVIS, Cause No. 70167-3-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Jerry Taylor

Done in Seattle, Washington on January 10, 2014.