

NO. 46703-8-II

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

STATE OF WASHINGTON,

Respondent,

v.

FRANK RUCKER

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Jeanette Dalton, Judge

BRIEF OF APPELLANT

LISE ELLNER
Attorney for Appellant

LAW OFFICES OF LISE ELLNER
Post Office Box 2711
Vashon, WA 98070
(206) 930-1090
WSB #20955

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	3
THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT RUCKER KNOWINGLY VIOLATED A NO CONTACT ORDER.....	3
a. <u>The State must prove each element of the charge beyond reasonable doubt</u>	3
b. <u>The state did not prove that Rucker knowingly violated a no contact order</u>	4
D. <u>CONCLUSION</u>	6

TABLE OF AUTHORITIES

	Page
<u>STATE CASES</u>	
<i>State v. Clowes</i> , 104 Wn. App. 935, 18 P.3d 596 (2001).....	4
<i>State v. Danforth</i> , 97 Wn.2d 255, 643 P.2d 882 (1982).....	4
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	3
<i>State v. Homan</i> , 181 Wn.2d 102, 330 P.3d 182 (2014).....	3, 4
<i>State v. Sisemore</i> , 114 Wn. App. 75, 55 P.3d 1178 (2002).....	4-6
<i>State v. Washington</i> , 135 Wn. App. 42, 143 P.3d 606 (2006).....	4
<i>State v. Nonog</i> , 169 Wn.2d 220, 237 P.3d 250 (2010).....	4
<u>FEDERAL CASES</u>	
<i>Apprendi v. New Jersey</i> , 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).....	3
<i>Blakely v. Washington</i> , 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).....	3
<i>In re Winship</i> , 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).....	3

TABLE OF AUTHORITIES

	Page
<u>FEDERAL CASES, continued</u>	
<i>United States v. Gaudin</i> , 515 U.S. 506, 115 S. Ct. 2310, 132 L.Ed. 2d 444 (1995).....	3
<u>STATUTES, RULES AND OTHERS</u>	
RCW 9A.08.010.....	5
RCW 10.99.050.....	4
RCW 26.50.110.....	5

A. ASSIGNMENT OF ERROR

The state failed to prove beyond a reasonable doubt the essential element of violation of a no contact order: knowingly violating a no contact order.

Issue Presented on Appeal

Where the defendant was unaware that the protected party was within the protected area, could the state prove a knowing violation of a no contact order?

B. STATEMENT OF THE CASE

On May 29, 2014 Rucker was stopped by officer Main in Aberdeen after she ran the plates on his van and learned that he had a possible felony warrant. RP 35-41. After officer Main confirmed that the owner of the van Rucker drove had outstanding warrants, she initiated a stop along with backup. RP 41-48. Before the backup arrived, Main had Rucker keep his hands visible outside of his window. RP 46. After back up arrived, Main arrested Rucker and asked him how many people were in the van, to which Rucker stated “two”. RP 47. Rucker explained that the two people in the van included himself and “Nate”. RP 112-113.

After Rucker was removed from the van, the police found Kelly Eidsmore in the back of the van behind a curtain. RP 66-67. Officer Main and Officer Huibgretse both acknowledged that there was a sheet separating the front of the van from the back of the van and that to see in back, it was necessary to pull back the curtain. RP 55, 73.

No one saw Eidsmore enter the van and Rucker had no idea that she was in the van. RP 112-114. Eidsmore had her own set of keys and Rucker left the van unattended several times during the morning of the day he was arrested. RP 112-114, 117. Rucker explained that the passenger door does not lock and that someone could sit or lay undetected in the back of the van while the curtain was in place. RP 114, 126. The windows on the van are tinted and it is not possible to see into the back. RP 125. Rucker explained that if someone tried to enter the van while he was in the front he would hear them but that he was not in the van all morning. RP 112-113, 116, 126.

Rucker admitted to knowing that there was a valid no contact order prohibiting contact with Ms. Eidsmore and to having 2 prior violations of a no contact order involving Ms. Eidsmore. RP 121-122. Rucker was convicted of violation of a no contact order and this timely appeal follows.

CP 58-71.

C. ARGUMENT

1. THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT RUCKER KNOWINGLY VIOLATED A NO CONTACT ORDER.

a. The State must prove each element of the charge beyond reasonable doubt.

The Fourteenth Amendment provides a criminal defendant may only be convicted if the government proves every element of the crime beyond a reasonable doubt. *Blakely v. Washington*, 542 U.S. 296, 300- 01, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 476-77, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *United States v. Gaudin*, 515 U.S. 506, 510, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Due process “indisputably entitle[s] a criminal defendant to ‘a . . . determination that he is guilty of every element of the crime beyond a reasonable doubt.’” *Apprendi*, 530 U.S. at 476-77 (quoting *Gaudin*, 515 U.S. at 510).

Evidence is sufficient if, when viewed in a light most favorable to the

State, it permits any rational trier of fact to find the elements of the crime beyond a reasonable doubt. *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014). A claim of insufficient evidence admits the truth of the evidence and all reasonable inferences that can be drawn from that evidence. *Homan*, 181 Wn.2d at 106.

- b. The state did not prove that Rucker knowingly violated a no contact order.

There are three essential elements of the offense of violating a no-contact order: (1) the willful contact with another, (2) the prohibition of such contact by a valid no-contact order, and (3) the defendant's knowledge of the no-contact order. *State v. Clowes*, 104 Wn. App. 935, 944, 18 P.3d 596 (2001); RCW 10.99.050(2)(a) (*disapproved on other grounds by State v. Nonog*, 169 Wn.2d 220, 237 P.3d 250 (2010)). As to the first element, "not only must the defendant know of the no-contact order; he must also have intended the contact." *Id.* at 944-45; *State v. Washington*, 135 Wn. App. 42, 49, 143 P.3d 606 (2006).

Evidence that a defendant who knew of a no-contact order accidentally or inadvertently came into contact with the alleged victim is

insufficient to satisfy this element. *Clowes*, 104 Wn. App. at 945. To the contrary, “willful” requires a purposeful act. *State v. Sisemore*, 114 Wn. App. 75, 78, 55 P.3d 1178 (2002) (citing *State v. Danforth*, 97 Wn.2d 255, 258, 643 P.2d 882 (1982)).

When a defendant is unaware that a protected party is within the protected area, he has not committed a knowing violation of a no contact order. *Sisemore*, 114 Wn. App. at 78; RCW 26.50.110. Rucker was charged with knowingly violating a known no contact order under RCW 26.50.110. CP 14-16. Accordingly, to convict Rucker of violating a domestic violence protection order under RCW 26.50.110(1)(a)(i), the State had to prove beyond a reasonable doubt that he knew of the order and *knowingly* violated its provision prohibiting contact with a protected party. *Siesmore*, 114 Wn.App. at 77-78.

A person acts knowingly if “he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense.” RCW 9A.08.010(1)(b)(i). Conversely, a person does not knowingly violate a contact order prohibition when the defendant is unaware that the protected party is within the protected area, such as in an accidental or inadvertent

contact. *Sisemore*, 114 Wn.App. at 78.

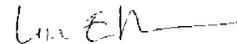
The evidence at trial established that Rucker was not aware that Eidsmore was hiding in the back of his van behind a curtain hidden from his view. There was no evidence that Rucker ever made contact or that he initiated contact or that he acted purposefully in making contact. RP 112-114. Taken in the light most favorable to the State, the evidence failed to establish that Rucker knowingly violated a no contact order. *Sisemore*, 114 Wn.App. at 78. In short, the State failed to present sufficient evidence to support Rucker's conviction.

D. CONCLUSION

Frank Rucker respectfully requests this Court reverse his conviction and remand for dismissal with prejudice for insufficient evidence.

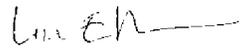
DATED this 19th day of March 2015

Respectfully submitted,



LISE ELLNER
WSBA No. 20955
Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age Kitsap County Prosecutor Appeals Department – kcpa@co.kitsap.wa.us and Frank Rucker DOC# 751716 Airway Heights PO Box 2049 Airway Heights, WA 99001-2049 a true copy of the document to which this certificate is affixed. On March 19, 2015 service was made electronically to the prosecutor and via U.S. Postal to Mr. Rucker.

Handwritten signature of Lise Ellner in black ink, consisting of the letters 'Lise Ellner' followed by a horizontal line.

Signature

ELLNER LAW OFFICE

March 19, 2015 - 6:01 PM

Transmittal Letter

Document Uploaded: 4-467038-Appellant's Brief~2.pdf

Case Name: State v. Rucker

Court of Appeals Case Number: 46703-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Lise Ellner - Email: liseellnerlaw@comcast.net

A copy of this document has been emailed to the following addresses:

kcpa@co.kitsap.wa.us