

NO. 46703-8-II

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

STATE OF WASHINGTON,

Respondent,

v.

FRANK JUNIOR RUCKER,

Appellant.

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

Superior Court No. 14-1-00647-9

BRIEF OF RESPONDENT

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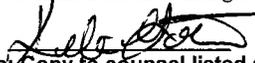
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DATED May 21, 2015, Port Orchard, WA 
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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether sufficient evidence was presented to prove that Mr. Rucker knowingly violated a court order where the protected party in a valid no-contact order prohibiting Rucker from contact was discovered to be a passenger in Rucker's vehicle following a traffic stop of the vehicle by police?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Frank Junior Rucker was charged by information filed in Kitsap County Superior Court with felony violation of a no-contact order contrary to RCW 26.50.110. CP 1-8. It was specially alleged to be a crime of domestic violence based on Mr. Rucker's victim having been a family or household member. CP 2. Prior to trial, a first amended information was filed charging Rucker with making a false or misleading statement to a police officer in addition to the previously charged felony domestic violence violation of a no-contact order. CP 14-16. Mr. Rucker's case was tried to a jury. CP 26. The jury convicted Rucker of the felony violation of a no-contact order but could not reach a unanimous verdict as to the second count of making a false or misleading statement to a police officer. CP 51. By special verdict, the jury found that Frank Rucker and Kelly Eidsmoe were members of the same family or household. CP 52.

Mr. Rucker, calculated to have an offender score of 11, was sentenced to 60 months in prison. CP 58-69, 70. This appeal followed.

B. FACTS

Sergeant Donna Main of the Port Orchard Police Department became interested in the driver of an older-style blue van when the vehicle cut in front of her as she prepared to turn into a gas station. RP 34-36. Sergeant Main's check on the van revealed that the registered owner was Frank Junior Rucker and that he had a possible felony warrant. RP 35. Sergeant Main followed the van after it left the gas station. RP 41-42. Sergeant Main activated her overhead lights after the blue van turned northbound on Pottery Avenue. RP 43-44. The blue van failed to yield to Sergeant Main's signal to stop. RP 44. The van continued down Pottery and then turned onto Alder Lane, a small gravel road. RP 44. At this point, Sergeant Main activated her sirens in addition to the lights. RP 44. The van still did not stop for the pursuing police vehicle. RP 45. Sergeant Main believed that the blue van was actually accelerating away from her down the gravel road. RP 45. The blue van eventually stopped where the road dead-ended in a rocky, gravelly area. RP 45.

The driver of the blue van immediately began to exit his vehicle but Sergeant Main ordered him to get back into the van. RP 46. Sergeant Main ordered the driver to keep his hands outside the window where she

could see them as she waited for some other police officers to arrive for back-up. RP 46. Sergeant Main asked the driver how many others were in the van. RP 47, 58. The driver replied, "Two." RP 47, 58. Sergeant Main testified that she could not see anybody else in the van. RP 47. The driver was instructed to exit the van and when he complied with her request, the driver was handcuffed and detained. RP 48.

The driver initially told Sergeant Main that his name was Michael Jr. Park. RP 48. The driver gave Sergeant Main a date of birth that was inconsistent with his stated age. RP 48-49. She asked him if he was the owner of the van and he said, "No. Frank is the owner." RP 49. While she was attempting to identify the driver other officers were dealing with the passengers in the van. RP 50, 64-73.

Initially it was believed that there was only one male passenger in the van but later a female passenger was found by an officer who was attempting to secure the van. RP 66. She identified herself to Officer Huibregtse as Kelly Eidsmoe. RP 67. Huibregtse observed Eidsmoe come out from the back of the van and exit through the front passenger door of the van. RP 69. Officer Huibregtse ran Ms. Eidsmoe's name and learned that she was the protected party in a valid protection order with Rucker. RP 68. Officer Huibregtse relayed this information to Sergeant Main. RP 68-69.

At some point, the driver of the blue van apologized to Sergeant Main for providing the wrong name to her. RP 50. He told her that his wallet was in the van. RP 50. Officer Huibregtse removed the wallet from the blue van. RP 74. The wallet contained identification indicating it belonged to Frank Junior Rucker. RP 51. Once Sergeant Main learned of the violation of the no-contact order, she read Mr. Rucker his *Miranda* warnings. RP 50. Sergeant Main asked Rucker why he didn't immediately stop when she signaled him. RP 52. Rucker initially offered the excuse that he didn't see the lights or hear the siren. RP 52-53. He later offered to Sergeant Main that the reason for his failure to stop was that he had actually been trying to find a place to park the van so that it would not be towed and someone could come and get it. RP 52-53. Sergeant Main considered Rucker's two responses to be conflicting answers. RP 53. Sergeant Main told Mr. Rucker the reason that he was under arrest. RP 55. Sergeant Main observed no reaction by Mr. Rucker and he did not express any surprise when told the reason for his arrest. RP 55.

The blue van had a thin sheet between the front seats of the van and the rear of the van that served as a partition between the two. RP 56, 73. There was a lot of stuff in the van, so much that a person could not occupy the space all the way at the back of the van. RP 56-57. The only

doors on the blue van that appeared to work were the two front doors on both the passenger's and driver's sides. RP 57, 69. The rear doors to the van as well as the sliding rear side door were inoperable. RP 57, 69.

At trial, Sergeant Main and Officer Huibregtse testified in accordance with the facts set forth above. The State introduced evidence of Rucker's two prior violations of court orders. RP 90, 105. The State also introduced into evidence the existing, active no-contact order that Rucker violated. RP 52, 68, 100-103. Mr. Rucker was the lone witness for the defense. RP 107-129. He testified that he generally slept in the back of his van. RP 112, 115. He testified that on the day in question, he only picked up one passenger, a friend named Nate. RP 112-13. Rucker testified that when he told Sergeant Main that two people were in the van, he was referring to himself and Nate. RP 115-16. Rucker testified that the false name he initially gave was actually a religious name that he used. RP 120. Rucker testified that he was not aware that anyone else besides Nate was in the van. RP 116.

III. ARGUMENT

- A. SUFFICIENT EVIDENCE EXISTS THAT RUCKER KNEW HE WAS VIOLATING A NO-CONTACT ORDER WHERE THE PROTECTED PARTY WAS A PASSENGER IN THE VAN DRIVEN BY RUCKER, RUCKER FAILED TO YIELD AND GAVE A FALSE NAME TO POLICE, AND RUCKER IMPLICITLY ACKNOWLEDGED HE WAS AWARE OF THE PROTECTED PARTY'S PRESENCE BY TELLING OFFICERS THERE WERE TWO PASSENGERS IN HIS VAN.**

Rucker argues that insufficient evidence was produced at trial to prove that Mr. Rucker knowingly violated the court order. This claim is without merit because the evidence demonstrated that the police located the protected party in Mr. Rucker's vehicle following a traffic stop.

Due process requires that the State prove every element of a crime beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 476-77, 120 S.Ct. 2348, 147 L.Ed. 2d 435 (2000); U.S. Const.amend. XIV, Wash.Const. art. I, § 3. “[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be ... to determine whether the record evidence could reasonably support a finding of guilty beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 318, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979). “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential

elements of the crime beyond a reasonable doubt.” *Jackson*, 443 U.S. at 319(emphasis in original).

“A claim of insufficient evidence admits the truth of the State’s evidence and all reasonable inferences therefrom.” *State v. Ehrhardt*, 167 Wn.App. 934, 943, 276 P.3d 332 (2012)(citing *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010)). “In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence.” *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Determinations of credibility are for the trier of fact and are not subject to review. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004)(citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)). The appellate court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

“[T]he crime of willful violation of a court order has three essential elements: ‘the willful contact with another; the prohibition of such contact by a valid no-contact order; and the defendant’s knowledge of the no-contact order.’” *State v. Washington*, 135 Wn.App. 42, 49, 143 P.3d 606 (2006)(quoting *State v. Clowes*, 104 Wn.App. 935, 944, 18 P.3d 596 (2001)). The State must prove that the defendant knew the order existed and willfully, that is knowingly and intentionally, contacted or remained in contact with the protected person. *State v. Sisemore*, 114 Wn.App. 75, 78,

55 P.3d 1178 (2002)(citing RCW 26.50.110(2); 10.99.050(2)(a); 9A.08.010(4)). Proof that a person acted “knowingly” is proof that the person acted “willfully.” *State v. Clowes*, 104 Wn.App. 935, 944, 18 P.3d 596 (2001), *disapproved on other grounds*, *State v. Nonog*, 169 Wn.2d 220, 237 P.3d 250(2010). 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).

The State is not required to prove who made the initial contact under the statute, only that contact occurred. *State v. Sisemore*, 114 Wn.App. 75, 79, 55 P.3d 1178 (2002). A defendant does not violate a no-contact order if contact was accidental or inadvertent and the defendant *immediately* broke it off. *State v. Sisemore*, 114 Wn.App. 75, 78, 55 P.3d 1178 (2002)(emphasis added). A finding that the defendant was walking with the protected party is sufficient to support the legal conclusion that the defendant’s contact was willful. *Sisemore*, 114 Wn.App. at 79.

In this case, evidence was presented that Rucker had a valid no-contact order prohibiting him from contact with Kelly Eidsmoe. RP 52, 68, 100-103. Evidence was presented that police officers discovered Eidsmoe inside a van driven by Frank Rucker. RP 58-59, 65-69, 72. Rucker acknowledged being aware of the existence of the order but disclaimed all knowledge that Eidsmoe was a passenger in his vehicle. RP 121, 115-116. Rucker’s failure to initially yield to the police when

signaled, lying to the police about his identity, and his admission that two other people were in the vehicle he was driving were all factors that could lead a reasonable juror to reject his proffered defense that he was unaware that Ms. Eidsmoe was a passenger in his van.

The fact that the protected party in a valid no-contact order was found in the same vehicle driven by the defendant should be sufficient evidence to go to the jury on the question whether the defendant willfully violated the no-contact order. *Cf. State v. Sisemore*, 114 Wn.App. 75, 79, 55 P.3d 1178 (2002)[defendant found walking alongside protected party sufficient to support legal conclusion that defendant's conduct was willful]. In Rucker's case, however, there was more than just the direct evidence that the protected party was a passenger in his vehicle. RP 58-59, 65-69, 72. In addition, there was the evidence of flight in his failure to yield and the fact he lied about his correct identity. RP 43-45, 48-53. There was evidence presented of his lack of surprise when informed by Sergeant Main the reason for his arrest. RP 53. There was evidence presented that the only van doors that opened and closed were the two front doors. RP 57, 69. Finally, there was Rucker's acknowledgment that two other individuals were in his van. RP 47, 58. Each of these points could have been used by the jurors to persuade them that Rucker was "aware of a fact, facts, or circumstances" that made Eidsmoe's presence in his vehicle a crime. RCW 9A.08.010(1)(b)(i). Viewed cumulatively, in

the light most favorable to the State, this evidence was more than sufficient for a reasonable juror to find that Rucker knew that Eidsmoe was a passenger in his vehicle and conclude he was willfully violating a no-contact order at that time.

I. CONCLUSION

For the foregoing reasons, Rucker's conviction and sentence should be affirmed.

DATED May 21, 2015.

Respectfully submitted,
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A handwritten signature in black ink, appearing to read 'S.M. Lewis', written in a cursive style.

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Transmittal Letter

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