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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

CURTIS TAYLOR, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Shelly K. Speir

No. 16-1-05023-1

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Is the knowledge element of defendant's conviction for violating a domestic violence no-contact order supported by sufficient evidence where defendant was advised both orally and in writing that a no contact order restrained him from personally contacting Chartrice Tillman for the next five years?
2. Does ample evidence support the materiality element of defendant's conviction for making a false or misleading statement to a public servant where defendant knew Officer Figueroa was reasonably likely to rely upon his statement that he was alone in the apartment as his statement was intended to obstruct Figueroa's investigation into a domestic disturbance?

B. STATEMENT OF THE CASE.

1. FACTS

On June 29, 2016, defendant appeared via video for a pre-trial hearing in Lakewood Municipal Court. RP 69-70. He pled guilty to violating a no contact order. Exhibit 1. Defendant requested a "no-hostile no contact order." RP 83. Judge Blinn declined the request and issued a full no-contact order against defendant. RP 83. He told defendant he was to have no contact with Chartrice Tillman and to see the actual order if he needed further details. RP 83. Defendant did not sign the order. RP 11.

A judgment and sentence was simultaneously entered against defendant. RP 74. It was signed both by Judge Blinn and defendant. RP 75. Paragraph 4.3 included a no-contact provision, providing that:

The defendant shall not have contact with Chartrice Tillman including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the minimum statutory sentence).

Exhibit 6. A Domestic Violence No-Contact Order was filed with the Judgment and Sentence. Exhibit 6; RP 74-75.

Six months later, Officer Angel Figueroa responded to a domestic disturbance at the Sundance Apartments in Pierce County. RP 51-52. He knocked and announced his presence. RP 52. Nobody answered the door. RP 52. He continued knocking. RP 52. After some time, defendant yelled through the door. RP 52. He said there was nothing going on in the apartment. RP 52. Figueroa responded that he needed to make sure everyone in the apartment was safe and that he needed to see everyone physically. RP 53. Defendant told Figueroa that he was alone in the apartment. RP 53. This back and forth lasted about five minutes. RP 53. Defendant was inside the apartment with Ms. Tillman. RP 96.

Eventually, a woman later identified as Tillman answered the door. RP 53-54. Defendant hid in the kitchen. RP 54. Figueroa asked defendant to come to the door. RP 55. He refused. RP 55. After repeated prompting from Tillman, defendant came forward. RP 55. Figueroa arrested defendant. RP 55. He conducted a records check and learned that a no contact order existed restraining defendant from contacting Tillman. RP 56-57.

2. PROCEDURE

Defendant was charged by information with domestic violence court order violation (Count I) and making a false or misleading statement to a public servant (Count II). CP 3. At trial, Ms. Tillman testified that, on December 16, 2016, she saw defendant outside her apartment in the parking lot. RP 88. He was talking to her downstairs neighbor, Cindy Slye. RP 89. Tillman asked him to come upstairs. RP 89. Defendant was initially reluctant to enter her apartment and remained outside. RP 90. Eventually, he entered her apartment, where they got into an argument. RP 90. She did not hear the police arrive as she was in the bathroom at the time. RP 90. Slye also testified. She saw defendant enter Tillman's apartment. RP 94. She called 911 after hearing the two arguing and tousling. RP 95. Police arrived 20 minutes later. RP 95. Defendant told them he couldn't open the door, Tillman wasn't in there, and he was alone. RP 96.

The jury convicted him as charged. CP 67-69. He timely filed a notice of appeal. CP 70. Defendant challenges the sufficiency of the evidence regarding: (1) the knowledge element of his violation of a domestic court order conviction, and (2) the materiality element of the false statement conviction. App. Brief at 1.

C. ARGUMENT.

1. DEFENDANT KNEW A DOMESTIC VIOLENCE NO-CONTACT ORDER EXISTED AGAINST HIM WHERE HE WAS REPEATEDLY ADVISED, BOTH ORALLY AND VIA A WRITTEN DOCUMENT SIGNED BY HIM, THAT A NO-CONTACT ORDER EXISTED AGAINST HIM RESTRAINING HIM FROM PERSONALLY CONTACTING MS. TILLMAN.

Sufficiency of the evidence is reviewed *de novo*. *State v. Berg*, 181 Wn.2d 857, 867, 337 P.3d 310 (2014). A conviction will not be overturned where a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). This Court treats the State's evidence as true and draws all reasonable inferences in favor of the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Both circumstantial and direct evidence are equally reliable. *State v. White*, 150 Wn. App. 337, 342, 207 P.3d 1278 (2009) (quoting *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004)). Credibility assessments are unreviewable. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

A person commits felony violation of a no-contact order when: (1) a protection order was granted under statute, (2) the restrained party knows of the order, (3) he knowingly violates the order, and (4) he has twice been previously convicted for violating the provisions of a court order. RCW 26.50.110(1), (5). Consent by the protected party is not a defense. *State v.*

Dejarlais, 136 Wn.2d 939, 942, 969 P.2d 90 (1998). Defendant challenges the second element of his conviction. App. Brief at 6.

A person acts with knowledge when he is aware of a fact or has information which would lead a reasonable person in the same situation to believe that fact exists. RCW 9A.080.010(1)(b). The State meets the knowledge requirement by proving defendant was given notice that a no-contact order was imposed against him. *See State v. Carver*, 122 Wn. App. 300, 305, 93 P.3d 947 (2004) (knowledge for bail jumping is met where state proves defendant was given notice of his court date). In similar cases, analyzing the knowledge element under a bail jumping statute, courts found a defendant is aware of a fact when he signs a written notice explicitly advising him of that fact. *State v. Ball*, 97 Wn. App. 534, 536, 987 P.2d 632 (1999); *State v. Frederick*, 123 Wn. App. 347, 355, 97 P.3d 47 (2004).

In addition to signed, written notice, a defendant has actual knowledge of a fact when he receives verbal notice of said fact. *State v. Bryant*, 89 Wn. App. 857, 869, 950 P.2d 1004 (1998). In *Bryant*, the court found defendant had actual, subjective knowledge of his December 8th hearing because he was present in court when the judge ordered him to appear and signed a written order agreeing to appear for the hearing. *Id.*

Defendant knew that a no contact order existed against him. He signed the written notice in the judgment and sentence, which explicitly

prohibited him from contacting Ms. Tillman as per the terms of the no contact order. RP 75. However, this case goes beyond mere written notice. Similar to *Bryant*, defendant also received a verbal advisement by Judge Blinn in open court that a full no contact order existed against him and that he was to have no contact with Tillman. RP 83. This written and verbal notice constitutes sufficient evidence that defendant was aware that a no-contact order restricted him from contacting Tillman.

Defendant contends that, absent proof of service, no evidence exists as to his knowledge of the terms of the order. App. Brief at 6. Proof of service is not required to establish defendant knew the order existed. *City of Auburn v. Solis-Marcial*, 119 Wn. App. 398, 402-03, 79 P.3d 1174 (2003). This argument improperly conflates the requisite element of knowledge of the order with knowledge of the terms of the order. To meet the knowledge element, defendant must know the order itself exists. RCW 26.50.110. Knowledge of the specific terms of the no contact order is not an element of the crime. Rather, the knowledge element is met when the defendant knows of the type of conduct prohibited by the order. *See Solis-Marcial*, 119 Wn. App. at 401 (defendant knew what conduct was prohibited where he had a description of prohibited conduct, did not contest any provisions, and was present at hearing where permanent order issued).

Defendant knew that physical proximity with Ms. Tillman was prohibited under the terms of the no-contact order. Judge Blinn told him in open court that he was not to contact Tillman under the order's terms. RP 80. Defendant also signed a judgment and sentence, agreeing to comply with the no-contact order restricting him from contacting Tillman. RP 73-75. The judgment and sentence contained a description of what conduct was prohibited, including "personal, verbal, telephonic, written or contact through a third party for 5 years." Exhibit 6. He contested these provisions by requesting a no-hostile contact order, stating that he and Tillman were "kind of on good terms and we still want to be able to be social with each other." RP 83; Exhibit 1. Clearly, defendant knew that a no-contact order prohibited him from talking to or being near Tillman.

Moreover, defendant was initially reluctant to enter Tillman's apartment. RP 90. He remained outside. RP 90. Eventually, however, he entered her apartment. RP 90. Defendant's reluctance to be near Tillman is circumstantial evidence which supports a reasonable inference that he knew he was not supposed to be near Tillman, let alone inside her apartment.

Viewing the evidence in the light most favorable to the State, defendant clearly knew a no-contact order existed against him. He was advised both orally in court and in writing, signed by him, that a no-contact order was imposed against him and, under its terms, he was not to have

personal contact with Tillman. Based on these repeated advisements, a reasonable person would believe that a no contact order existed against him. Sufficient evidence supports the jury's finding defendant knew of the order.

2. DEFENDANT KNEW OFFICER FIGUEROA WAS REASONABLY LIKELY TO RELY ON HIS STATEMENT THAT HE WAS ALONE IN THE APARTMENT WHERE HE KNEW FIGUEROA WAS INVESTIGATING THE SAFETY OF THE APARTMENT'S OCCUPANTS AND HIS STATEMENT INTENDED TO OBSTRUCT THAT INVESTIGATION.

Lying to a police officer is a crime. RCW 9A.76.175. The falsity of speech alone does not bring the speech outside the First Amendment's protections. *U.S. v. Alvarez*, 567 U.S. 709, 719, 132 S.Ct. 2537 (2012). However, one does not have the right to tell falsehoods that undermine the function and integrity of government processes. *Id.* at 721. Regulations on these types of false speech have been found permissible in cases of a false statement made to a government official, perjury, and the false representation that one is speaking on behalf of the government. *Id.* at 720.

A person is guilty of a gross misdemeanor when he knowingly makes a false or misleading material statement to a public servant. RCW 9A.76.175. Police officers are public servants. RCW 9A.04.110(23); *State v. Graham*, 130 Wn.2d 711, 719, 927 P.2d 227 (1996). A statement is material if it is "reasonably likely" to be relied upon by an officer in the discharge of his official duties. RCW 9A.76.175.

Materiality does not require actual reliance; an officer's subjective knowledge of a statement's falsity does not render it immaterial. *See State v. Godsey*, 131 Wn. App. 278, 291, 127 P.3d 11 (2006). Materiality requires that the defendant knows the officer is reasonably likely to rely on the statement. *Godsey*, 131 Wn. App. at 291. An officer is reasonably likely to rely on a statement the defendant provides when the statement is directly related to the officer's official government purpose or investigation and, if believed, would obstruct his investigation. *Godsey*, 131 Wn. App. at 291; *State v. Collins*, 175 Wn. App. 1009, 2013 WL 2444554 *6 (2013)¹; *State v. Barringer*, 180 Wn. App. 1006, 2014 WL 1094889 *1 (2014).

In *Godsey*, officers sought and arrested Ray Godsey on warrants. 131 Wn. App. at 283. When asked "are you Ray Godsey?"; defendant responded, "I am not Ray, I have never been called that." *Id.* Despite the officer's subjective knowledge of the statement's falsity, the court found the defendant knew the officer was reasonably likely to rely on his false statement where it was directly related to and attempted to thwart the officer's investigation into his identity. *Id.* at 291.

¹ GR 14.1(a) allows citation to unpublished opinions of the Court of Appeals filed on or after March 1, 2013. The unpublished decision cited above has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate. Pursuant to GR 14.1(e), the unpublished opinions are attached in the Appendix.

Similarly, in *Collins*, officers questioned defendant about a reported car accident they were investigating. 175 Wn. App. at *1. When asked if he knew what happened, Collins said that someone else was driving the truck while he slept in the passenger seat. *Id.* The officer recorded this information and attempted to learn more about the driver and where he could be located. *Id.* at *6. The court found the officer was reasonably likely to rely on Collins' statement that someone else was driving where he was investigating a crash and did not know who the driver was or how the accident occurred. *Id.*

This Court reached a similar conclusion where the defendant made a false statement during a traffic stop. In *Barringer*, officers responded to the scene of a collision. 180 Wn. App. at *1. They found a Chevy Blazer in a ditch on the side of the road. *Id.* Defendant sat in the driver's seat while the true driver, Hartley, occupied the passenger seat. *Id.* When asked what happened, defendant told the officers she was driving, and later admitted to having done so to cover Hartley's crime of driving with a suspended license. *Id.* at *7. The defendant's statement was material to the investigation of traffic infractions related to the collision because it hid who had driven the vehicle into the ditch. *Id.*

Here, defendant knew Officer Figueroa was reasonably likely to rely on his statement because it interfered with his domestic disturbance

investigation. Figueroa approached Apartment E11 to investigate a reported domestic disturbance. RP 50. Similar to *Collins*, he did not know who was in the room or the extent of the reported domestic dispute. RP 52. He attempted to gather information from defendant. RP 53. Defendant knew Figueroa was attempting to determine the number and safety of individuals inside the apartment. RP 53. By repeatedly asserting that he was alone in the apartment, defendant attempted to thwart Figueroa's investigation so that he would not discover he was in the apartment with Ms. Tillman. RP 51-53. This attempt to hide the truth of the matter being investigated makes his statement material to the investigation into the domestic dispute. *Godsey*, 131 Wn. App. at 291; *Barringer*, 180 Wn. App. at *7. Figueroa's subjective suspicions that defendant was not alone does not negate the necessary inference that defendant knew his lie about being alone was a statement Figueroa was reasonably likely to rely on and hoped that Figueroa would in the course of his investigation. *Godsey*, 131 Wn. App. at 291.

Defendant asserts that an officer does not rely on a statement where he has a duty to check the apartment and ensure the occupants are safe. App. Brief at 11-12. Actual reliance is not the standard by which materiality is determined. *See Godsey*, 131 Wn. App. at 291. Under defendant's line of reasoning, virtually any statement an officer receives in the course of their duties would be immaterial; rendering even the most sinister lies in an

investigation out of the court's reach. This is especially concerning in domestic violence situations, where an officer has a duty to ensure the safety of the occupants of the home. *State v. Menz*, 75 Wn. App. 351, 355, 880 P.2d 48 (1994). Courts have established that lies told to an officer intending to interfere with the function and integrity of government processes are not protected. *Alvarez*, 567 U.S. at 720. This includes lies attempting to interfere with an officer's investigation. *Godsey*, 131 Wn. App. at 291; *Collins*, 175 Wn. App. at *6; *Barringer*, 180 Wn. App. at *1.

Based on the above facts, defendant knew Officer Figueroa was reasonably likely to rely on his statement in the midst of his investigation into a reported domestic disturbance. In fact, defendant hoped Figueroa would rely on his statement so he would not be caught violating the no-contact order. Sufficient evidence supports the materiality element of defendant's conviction for making a false or misleading statement.

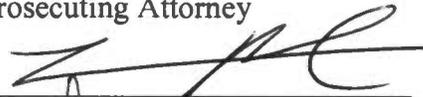
D. CONCLUSION

Ample evidence supports the knowledge element of defendant's conviction for violating a protection order and the materiality element of his conviction for making a false or misleading statement to a public servant. Defendant knew the protection order existed against him because he was advised, both orally by Judge Blinn and in writing on his judgment and sentence, that a no-contact order restrained him from contacting Ms.

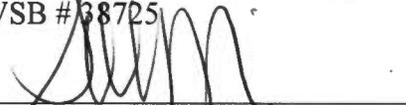
Tillman in person. He also knew Figueroa was reasonably likely to rely on his assertion that he was alone in the apartment where said statement attempted to interfere with Figueroa's domestic dispute investigation. For these reasons, defendant's convictions on both counts should be affirmed.

DATED: February 28, 2018.

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The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

2.28.18 Inessa K
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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