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Court of Appeals
Division II
State of Washington
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NO. 51071-5

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL DWAYNE HARRIS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Elizabeth Martin

No. 17-1-00625-6

Brief of Respondent

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

1. Did the State prove beyond a reasonable doubt that defendant was guilty of violating a domestic violence no-contact order where the order correctly and substantially identified the protected party as Laurel I. Harris, defendant's wife, in all ways besides race?
2. Did defendant have sufficient notice that he was not to contact the victim, Laurel I. Harris, when (1) defendant admitted he was aware of the order's existence, (2) defendant signed the order when it was issued, (3) Laurel testified at trial that she was the protected party, and (4) the order correctly and specifically identified Laurel in all ways besides race?

B. STATEMENT OF THE CASE.

1. Procedure

On February 13, 2017, the State charged Michael Dwayne Harris, hereinafter "defendant," with two counts of violation of a domestic violence court order. CP 3-4. The case proceeded to trial before the

Honorable Elizabeth Martin. RP 1.¹ The jury found defendant guilty of one count of violation of a domestic violence. CP 175. The court imposed an exceptional sentence of 36 months confinement, followed by 12 months of community custody. CP 467-81. This appeal followed. CP 494.

2. Facts

On February 12, 2017, at 1:14 in the morning, Officer Jacob Veenker responded to a call regarding a man suspected of assault and violation of a no-contact order. RP 200, 203. As Officer Veenker approached the location, he observed defendant, matching the description of the suspect, walking down the road. RP 203-05. Officer Veenker pulled over and detained defendant. RP 205. Defendant explained that he had just been at his wife's, Laurel's, house. RP 205-06.

Officer Veenker asked defendant if he was aware of a domestic violence no-contact order between defendant and his wife. RP 206. Defendant said he believed the order expired over a month ago. *Id.* The order listed Laurel I. Harris as the protected party. RP 207. The order is set to expire on July 12, 2018. RP 208.

After detaining defendant, Officer Veenker went to speak with Laurel. RP 209. He felt a bump on the top of Laurel's head. *Id.* At trial,

¹ The Verbatim Report of Proceedings are contained in 5 volumes. All volumes have consecutive pagination and are referred to by page number.

Laurel testified that she and defendant were married and that defendant had been living with her for the four months prior to this arrest. RP 217. On the night of the assault, Laurel had rented a movie from Netflix. RP 218. She was having trouble getting the sound to work on the T.V., so she asked defendant for help. *Id.* Defendant was “playing on his phone” and not “paying attention” to Laurel, so Laurel tried to take his phone away. *Id.* At that point, defendant got up and hit Laurel on her “right temple” and “jaw” with his fist. *Id.* Laurel called 911 and defendant left. RP 222-23.

The no-contact order listed Laurel I. Harris as the protected party. RP 231. It correctly identified Laurel by her full name, including middle initial, her gender, date of birth, and relationship to defendant. RP 232; Exh. 1. However, the order incorrectly indicated Laurel’s race as black. *Id.* Laurel identifies as Caucasian or white. *Id.* Laurel testified that while the no-contact order mislabeled her race, she is nevertheless the protected party. RP 231-32.

After the State rested, defendant moved to dismiss counts I and II, arguing that because the order listed the protected party as black, defendant did not violate the order when he contacted Laurel, a white person. RP 234-35. The State responded that “based on the totality of the evidence, a reasonable juror could find that in fact that is a scrivener’s error.” RP 235.

The trial court agreed with the State and denied defendant's motion. RP 236. The trial court held, "it is within the realm of possibility that the jury could conclude it is a scrivener error." *Id.* The court allowed the defense to make the argument, but ruled "the jury can make its own conclusion based on the testimony whether or not this is a protective order that protects Ms. Harris, Laurel Harris, from Michael Harris, the Laurel Harris who testified here in court." *Id.*

C. ARGUMENT.

1. THE STATE PROVED BEYOND A REASONABLE DOUBT THAT DEFENDANT WAS GUILTY OF VIOLATING A DOMESTIC VIOLENCE NO-CONTACT ORDER WHERE THE ORDER CORRECTLY AND SUBSTANTIALLY IDENTIFIED THE PROTECTED PARTY AS LAUREL I. HARRIS, DEFENDANT'S WIFE, IN ALL WAYS BESIDES RACE.

The sufficiency of the evidence is determined by whether any rational trier of fact could find the defendant guilty beyond a reasonable doubt after viewing the evidence in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

In considering the evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Therefore, when the State has

produced evidence of all the elements of a crime, the decision of the jury should be upheld. *Id.*

A challenge to the sufficiency of the evidence admits the truth of the State's evidence. *Id.* "All reasonable inferences must be drawn in favor of the State and interpreted most strongly against the defendant" when the sufficiency of the evidence is challenged. *Id.* (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)). Criminal intent may be inferred from conduct where "it is plainly indicated as a matter of logical probability." *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). The weight of the evidence is determined by the fact finder and not the appellate court. *Id.* at 783. Sufficiency of the evidence is reviewed *de novo*. *State v. Berg*, 181 Wn.2d 857, 867, 337 P.3d 310 (2014).

To convict defendant of violating a domestic violence court order, the jury had to find, beyond a reasonable doubt, that (1) on or about February 12, 2017, there existed a no-contact order applicable to defendant, (2) defendant knew of the existence of the order, (3) on or about said date, defendant knowingly violated a provision of the order, (4) defendant had twice been previously convicted for violating the provisions of a court order, and (5) defendant's act occurred in the State of Washington. CP 168; RCW 26.50.110(5).

Here, the State proved defendant was guilty beyond a reasonable doubt. The order was issued on July 12, 2013, and does not expire until July 12, 2018. Exh. 1; RP 208. Thus, the State proved that the order existed on February 12, 2017. Defendant knew of the existence of the order. He signed it. Exh. 1. He also affirmed to Officer Veenker that he was aware of its existence. RP 206. Defendant violated the order when he made contact with the victim on February 12, 2017. Defendant told Officer Veenker he was “just over at his wife’s house” when Officer Veenker pulled him over. RP 206. Defendant’s wife was the protected party. RP 206, 231; Exh. 1. The parties stipulated that defendant had twice been previously convicted for violating the order. CP 169. The State also proved that defendant’s acts occurred in the State of Washington. RP 204.

Here, defendant claims that no rational jury could convict defendant for violating the no-contact order because it misstates the protected party’s race. Brief of Appellant at 5. While the order does incorrectly label Laurel’s race as black, it accurately states Laurel’s full name, including middle initial, her date of birth, her gender, and her relationship to defendant. Exh. 1. The order specifies that Laurel I. Harris is an “intimate partner” (ie. former or current spouse) with defendant. *Id.* While there may be more than one Laurel I. Harris in the world, it is doubtful there exists another Laurel I. Harris with the exact same date of

birth as the victim and who also shares an “intimate partner” relationship with defendant. Laurel also testified at trial that she was the protected party listed in the order. RP 232.

Despite the error as to Laurel’s race, all of the evidence when viewed in the light most favorable to the State shows that the order protected the victim, Laurel Harris, and nobody else. Any rational trier of fact could find the mislabeling of Laurel’s race was a scrivener’s error. Thus, sufficient evidence existed for the jury to conclude that defendant knowingly violated the no-contact order.

2. DEFENDANT HAD SUFFICIENT NOTICE THAT HE WAS NOT TO CONTACT THE VICTIM, LAUREL I. HARRIS, WHEN (1) DEFENDANT ADMITTED HE WAS AWARE OF THE ORDER’S EXISTENCE, (2) DEFENDANT SIGNED THE ORDER WHEN IT WAS ISSUED, (3) LAUREL TESTIFIED AT TRIAL THAT SHE WAS THE PROTECTED PARTY, AND (4) THE ORDER CORRECTLY AND SPECIFICALLY IDENTIFIED LAUREL IN ALL WAYS BESIDES RACE.

Due process “requires statutes to provide fair notice of the conduct they proscribe.” *State v. Watson*, 160 Wn.2d 1, 6, 154 P.3d 909 (2007).

“The test is whether the words defining the prohibited acts, when read in the context of the statute, are sufficiently clear to provide a person of common intelligence and understanding with fair notice and ascertainable standards as to the conduct sought to be prohibited.” *Matter of Welfare of*

Adams, 24 Wn. App. 517, 520, 601 P.2d 995 (1979). “Fair notice exists where persons of reasonable understanding are not required to guess at the meaning of the statute.” *State v. Sherman*, 98 Wn.2d 53, 56, 653 P.2d 612 (1982) (quoting *State v. Carter*, 89 Wn.2d 236, 570 P.2d 1218 (1977)).

Defendant claims he lacked sufficient notice that he was not to have contact with his wife, Laurel Harris, due to the fact that the order mislabeled Laurel’s race as black instead of white. Defendant argues it was therefore reasonable “to assume that the order did not prohibit contact between himself and his wife.” Brief of Appellant at 6. However, when Officer Veenker asked defendant if “he was aware of the no-contact order between him and his wife,” instead of denying the existence of the order or the identity of the protected party, defendant stated that he “believed it expired over a month ago.” RP 206. Defendant’s own statement shows he was aware that the protected party was in fact the victim, Laurel Harris. Furthermore, defendant signed the no-contact order when it was entered July 12, 2013. Exh. 1. Thus, defendant had notice of its existence.

Laurel also testified at trial. RP 214. Laurel acknowledged that her race was incorrectly identified in the order. RP 232. Laurel testified that she did not fill out the order herself. *Id.* However, Laurel testified that the order was in reference to her. *Id.*

Defendant had sufficient notice that he was not to have contact with the victim, Laurel Harris. That the order contains a single scrivener's error mislabeling Laurel's race as black instead of white does not prove that defendant lacked notice that he was not to have contact with the victim. Defendant admitted he was aware of the order, defendant signed the order when it was put in place, and the order specifically identifies the protected party as defendant's wife. RP 206; Exh. 1. Thus, defendant had sufficient notice he was not to contact the victim.

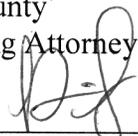
D. CONCLUSION.

The State proved beyond a reasonable doubt that defendant was guilty of violating the no-contact error. Sufficient evidence existed for the jury to find that defendant had notice he was not to contact the victim and that defendant violated the order when defendant admitted he was aware

of the order and made contact with the victim. The State respectfully requests this Court affirm defendant's conviction.

DATED: February 26, 2018

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Certificate of Service:

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.



2/26/18 Madeline Anderson
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

February 26, 2018 - 1:34 PM

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