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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JUSTIN RICHARD LESLIE, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Judge Frank Cuthbertson

No. 18-1-02086-9

Brief of Respondent

MARY E. ROBNETT
Prosecuting Attorney

By
Kristie Barham
Deputy Prosecuting Attorney
WSB # 32764

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

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

1. Was there sufficient evidence to support defendant's conviction for Domestic Violence Court Order Violation where defendant admitted to knowing that a no-contact order was entered and he willfully contacted the protected party?
2. Should this Court remand for the interest accrual provision to be stricken?

B. STATEMENT OF THE CASE.

1. PROCEDURE

On May 29, 2018, the Pierce County Prosecuting Attorney charged Justin Richard Leslie (the "defendant") by information with Domestic Violence Court Order Violation. CP 3. Pre-trial matters commenced with a CrR 3.6 Motion to Suppress Evidence before the Honorable Helen G. Whitener on July 30, 2018. 07-30-18 RP 1-4.¹ Trial began on August 6, 2018, before the Honorable Frank E. Cuthbertson. 1RP 1. During trial, defendant stipulated to both knowledge of the order and to having the prior convictions necessary to make this charge a felony. CP 117-20. After trial, the jury found defendant guilty of Domestic Violence Court Order Violation. 3RP 289. They also found that defendant and Lauren Peterson,

¹ Where a record of proceedings is assigned a volume number, it will be cited as [Volume]RP. Where there is no volume number, it will be cited as [Date of Proceeding] RP.

the protected party to the no-contact order, were members of the same family or household. 3RP 289. Defendant timely appeals. CP 178.

2. FACTS

On May 28, 2018, Lakewood Police Officer Jordan Feldman was patrolling through the night. 2RP 234-35. At approximately 3:00 a.m., Officer Feldman noticed defendant driving a car with a broken taillight, which is a traffic infraction. 2RP 202, 235. After searching police records, Officer Feldman discovered that the woman who owned the vehicle – Lauren Peterson – was the protected party on a no-contact order. 2RP 236. Officer Feldman then stopped the vehicle and, after confirming the identities of defendant and Peterson, arrested defendant.² 2RP 237.

C. ARGUMENT.

1. THERE WAS SUFFICIENT EVIDENCE FOR A REASONABLE JURY TO CONVICT DEFENDANT OF DOMESTIC VIOLENCE COURT ORDER VIOLATION WHERE DEFENDANT ADMITTED TO KNOWING THAT A NO-CONTACT ORDER WAS ENTERED AND HE WILLINGLY CONTACTED THE PROTECTED PARTY.

Defendant and Peterson have been in a relationship, in some capacity, for ten years. 2RP 192-93. They have three children together. 2RP 193. On April 3, 2018, a post-conviction Domestic Violence No-

² Additional facts regarding the stop have been omitted as irrelevant to this appeal.

Contact Order was entered under Pierce County District Court Cause No. 7ZC002996. CP (Exhibit 4A). This order protects Peterson and restrains defendant. *Id.* In relevant part, it orders defendant not to directly or indirectly contact Peterson or “knowingly enter, remain, or come within 500 feet... of the protected person’s residence, school, [or] workplace.” *Id.* The order was entered in open court and bears defendant’s signature. *Id.* Defendant does not contest the existence or the validity of the order. Appellant’s Brief 2-3. In fact, he readily admits that he was aware the order was entered. App.Br. 5; 2RP 250; CP 119-20.

Instead, defendant asserts on appeal only that the State did not present sufficient evidence that defendant knowingly violated the No-Contact Order. App.Br.4. Due process requires that the State prove each essential element of the offense beyond a reasonable doubt. *State v. Smith*, 155 Wn.2d 496, 502, 120 P.3d 559 (2005); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970). A challenge to the sufficiency of the evidence regarding any element is an issue of law reviewed de novo. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). To succeed on a challenge to the sufficiency of the evidence, the defendant “needs to outline evidence in its brief, point to deficiencies it contends exist, and cite to relevant authority[;] a bare conclusory allegation that evidence is insufficient will not suffice.” *Mavroudis v. Pittsburgh-Corning Corp.*, 86

Wn. App. 22, 39, 935 P.2d 684 (1997). “[A]ppellate courts are not in the business of searching the record in an effort to determine the nature of any alleged deficiencies to which the challenger may be referring, and then to search the law for authority to support those same alleged deficiencies.” *Mavroudis v. Pittsburgh-Corning Corp.*, 86 Wn. App. 22, 39-40, 935 P.2d 684 (1997).

The standard of review “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.” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979)). The question is not whether the evidence could convince all rational triers of fact or even most rational triers of fact. It is whether the evidence could convince any one rational trier of fact. See *State v. Johnson*, 188 Wn.2d 742, 764, 399 P.3d 507 (2017); *State v. DeVries*, 149 Wn.2d 842, 853, 72 P.3d 748 (2003). “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citations omitted).

“Circumstantial evidence and direct evidence carry equal weight” in this analysis. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004) (citations omitted). The reviewing court does not need to

automatically affirm the hearing decision but “[t]he parties are not required to prove or ‘disprove’ any factual issues at the appellate level.” *City of Sunnyside v. Gonzalez*, 188 Wn.2d 600, 612, 398 P.3d 1078 (2017) (citations omitted). This Court merely needs to be convinced that a rational trier of fact could have found that the defendant knew an order existed and violated the terms of that order. *Green*, 94 Wn.2d at 240 (Dolliver, J., concurring in result); RCW 26.50.110(1); *see also, Jackson*, 443 U.S. at 334. Any determinations about witness credibility “‘are for the trier of fact’ and are not subject to review.” *State v. Cardenas-Flores*, 189 Wn.2d 243, 266, 401 P.3d 19 (2017) (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)).

- a. Unchallenged jury instructions, now the law of the case, require only that the State prove that defendant knew of the order and that he intentionally violated its terms.

To convict defendant of violating a court order, the State had to prove that defendant was aware of an order and knowingly violated it. CP 158. “When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.” CP 157. Defendant does not challenge any of these of these jury instructions. *See generally*, App.Br.

“Unchallenged jury instructions become the law of the case.” *State v. Perez-Cervantes*, 141 Wn.2d 468, 476 n.1, 6 P.3d 1160 (2000) (citing *State v.*

Ng, 110 Wn.2d 32, 39, 750 P.2d 632 (1988)). Therefore, this Court should view the knowing element in accordance with the unchallenged instructions from the trial court. Peterson testified that defendant was in the car with her that day. 2RP 193-94. There is no evidence in the record that defendant was in the car unintentionally or by any means other than his own volition. Defendant admits to both being aware of the order and to contacting Peterson by being in the car. App.Br. 3, 5; 2RP 250; CP 119-20. Because defendant knew the order was entered and intentionally violated its terms by contacting Peterson, the knowing element of the charge was sufficiently supported by uncontested evidence and the conviction should be upheld.

- b. Defendant's conviction is supported by sufficient evidence because, even if Peterson told defendant that the protection was dropped, that would not be a defense to this charge.

While defendant claims he was unaware the order was still in effect, the record does not conclusively establish whether Peterson told defendant she *planned* to drop the order or that she already had dropped the order. Peterson initially testified that she told defendant the order was already dropped. 2RP 194-95. However, she later admitted her memory was unclear as to her precise wording and that she likely also told defendant that she merely *intended* to drop the order. 2RP 196-99. Officer Feldman testified similarly but could state with certainty that neither party was “100

percent confident” the order was dropped. 2RP 237-38. Though the evidence in the case does not definitively prove what Peterson told defendant that day, this Court need only view the evidence in this light most favorable to State while leaving credibility determinations to the jury below. *Salinas*, 119 Wn.2d at 201; *Cardenas-Flores*, 189 Wn.2d at 266. For this issue, that means viewing the evidence as supporting Peterson’s lesser representation to defendant that she *intended* to drop the order. Such a view precludes any claim by defendant that he believed his contact with Peterson was legal because the order was not yet dropped.

Moreover, an unchallenged jury instruction clearly states that the invitation or consent of a protected party to the violation of the order is not a defense. CP 159. The order itself – which defendant signed in open court – says in bold font under a section entitled “Warning,” **“You can be arrested even if the person protected by this order invites or allows you to violate the order’s prohibitions.”** CP (Exhibit 4A) (emphasis original). It goes on to state: “You have the sole responsibility to avoid or refrain from violating the order’s provisions. Only the court can change the order upon written request.” *Id.* This language is not just a clear warning to defendant, it is a legend required by statute on all domestic violence no-contact orders. RCW 10.99.040(4)(b).

Accordingly, whether Peterson told defendant the order was dropped is of no consequence. There are two essential elements of Domestic Violence Court Order Violation that concern defendant's knowledge. First, defendant must have known of the existence of the order, which defendant stipulated to. CP 119-20, 158. Second, defendant must have knowingly violated a provision of the order. CP 158. This is the element at issue here and it applies to the defendant's violation of the order's provisions, not his claimed assumptions of its validity. Defendant was warned against such assumptions by the text of the order. CP (Exhibit 4A).

Proof that defendant knew he was prohibited from contacting Peterson, yet willingly and intentionally did so, is sufficient to convict him of Domestic Violence Court Order Violation. See *State v. Sisemore*, 114 Wn. App. 75, 79, 55 P.3d 1178 (2002) ("Viewing the evidence most favorably to the State, Sisemore knew he was prohibited from contacting Cuny, yet chose to walk down the street with her. This is sufficient to convict Sisemore of violating the statute."). The knowing element, at times read as requiring willfulness and/or intent, protects defendant from being punished for accidental contact or contact initiated against his will. See *State v. Sisemore*, 114 Wn. App. 75, 78-79, 55 P.3d 1178 (2002); *State v. Clowes*, 104 Wn. App. 935, 943-44, 18 P.3d 596 (2001), *disapproved of by State v. Nonog*, 169 Wn.2d 220, 237 P.3d 250 (2010), *on other grounds*.

Defendant cannot claim this protection simply because someone other than the court made a representation about the validity of an order.

Moreover, a reasonable jury certainly could have found that the defendant knew there was a valid protection order in place. The protection order itself was introduced as evidence and available to the jury. CP (Exhibit 4A). That order bears defendant's signature, indicating he received the order, with all accompanying warnings, in open court. *Id.* One of those warnings is a clear statement that defendant bears the sole responsibility for adhering to the order and that the order can only be modified by the court. *Id.* To argue that a reasonable jury could not find that defendant knew a valid no-contact order was in place would be to argue that it is unreasonable for a jury to assume defendant abided by the court's admonishments.

When viewing the evidence in the light most favorable to the State, the defendant was aware that Peterson's invitation could not exempt him from the order's prohibitions, he was aware that he was solely responsible for abiding by the terms of the order, and he was aware that only the court could modify or drop the order. *See* CP (Exhibit 4A). Peterson's invitation to defendant is not a valid defense to this charge. RCW 10.99.040(4)(b); CP 159. And finally, both the law of this case and the relevant precedent treat the knowing element as requiring a willful and intentional violation of an order the defendant knows was previously entered. CP 157-58; *State v.*

Sisemore, 114 Wn. App. 75, 78-79, 55 P.3d 1178 (2002). For these reasons, this Court should affirm defendant's conviction for Domestic Violence Court Order Violation.

2. THE COURT SHOULD REMAND THIS CASE,
SO THE INTEREST ACCRUAL PROVISION
CAN BE STRICKEN.

In this case, the trial court found the defendant indigent. CP 193; 4RP 316. Thus, the court waived non-mandatory legal financial obligations, imposing only the mandatory \$500.00 crime victim penalty assessment. CP 193; 4RP 316. This assessment is a nonrestitution obligation. CP 193. The court also ordered that all obligations "bear interest from the date of the judgment until payment in full[.]" CP 194. The defendant's direct appeal is still pending.

House Bill 1783, effective March 27, 2018, amended RCW 10.82.090 to provide that, "[a]s of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations." As the court held in *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018), House Bill 1783 is applicable to cases that are on appeal and therefore not yet final. The State agrees that House Bill 1783 eliminates any interest accrual on nonrestitution legal financial obligations. Because the defendant was found indigent by the sentencing court, the interest accrual provision should be stricken.

D. CONCLUSION.

This Court should affirm defendant's conviction for Domestic Violence Court Order Violation because it was supported by sufficient evidence. This Court should remand for the trial court to strike the interest accrual provision.

DATED: May 1, 2019.

MARY E. ROBNETT
Pierce County Prosecuting Attorney.



KRISTIE BARHAM
Deputy Prosecuting Attorney
WSB # 32764



Evan Boeshans
Rule 9

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Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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