

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JOSHUAH S. CARON, Appellant.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

1. The State's evidence was insufficient to support the conviction for felony violation of a no-contact order.

Issue Pertaining to Assignment of Error

A. Was the State's evidence insufficient to support the conviction beyond a reasonable doubt? (Assignment of Error 1).

II. STATEMENT OF THE CASE

Mr. Caron was charged by information with one count of felony violation of a no-contact order. (CP 1). The case proceeded to jury trial.

Angela Thompson had three children, ages 13, 11, and 3. (2/16/16 RP 26). She met Mr. Caron in a bar in 2009. (*Id.* at 27). They began a relationship that lasted about 7 years. (*Id.*). A few months after starting to date, they began living together. (*Id.* at 28). Ms. Thompson said this lasted about a year. She and Mr. Caron had been engaged. (*Id.*).

On June 15, 2015, there was a no-contact order between Mr. Caron and Ms. Thompson when she retrieved a package that arrived in the mail. (2/16/16 RP 30). It was addressed to Hadley, the three-year-old, and was from Mr. Caron. The return address was his sister's. (*Id.* at 31). Inside the package were a towel, two

pajamas, some pictures, and a letter. (*Id.* at 31-32). The pajamas fit no one but Hadley. (*Id.* at 38). The pictures were of Ms. Thompson, Mr. Caron, and Hadley. (*Id.* at 34). The typewritten letter was to Hadley. (*Id.* at 38).

Ms. Thompson was sad and upset to see the package and its contents. (2/16/16 RP 35). Mr. Caron was not Hadley's biological father and there was no parenting plan. (*Id.*).

Jase Thompson, the 13-year-old son, knew Mr. Caron as he had dated his mother for 6-7 years. (2/16/16 RP 40-41). Mr. Caron had not sent any packages to him or his other sister, 11-year-old Bailey. (*Id.* at 41). Jase saw the package his mother got out of the box for mail. (*Id.* at 42). He said his mother appeared in shock. The package was addressed to 3-year-old Hadley, who could not read. (*Id.*). Jase testified he would not have read the letter to her. He did not like Mr. Caron, who had caused him much emotional hurt. (*Id.* at 45).

Officer Tuan Nguyen had contact with Ms. Thompson for violation of a no-contact order just after midnight the evening of June 19, 2016, so it would have actually been June 20. (2/16/16 RP 45, 47-48). A copy of the no-contact order was emailed to him by dispatch. (*Id.* at 49). The form of contact was a package sent

through the mail. (*Id.* at 51). Officer Nguyen verified the contents of the package. (*Id.*). Ms. Thompson did not want the package as it violated the no-contact order and she did not want to give it to Hadley. (*Id.* at 53). At this point, the court read to the jury the parties' stipulation that Mr. Caron had two prior violations of a no-contact order. (*Id.* at 55).

Ms. Thompson had a copy of the no-contact order as did the officer. (2/16/16 RP 55). The protected person in the order was Ms. Thompson and no one else. (*Id.* at 56). Mr. Caron was to have no contact with her directly, indirectly, in person or through others by, among other things, mail. (*Id.* at 57). No other family members were listed as protected persons. (*Id.*). Ms. Thompson acknowledged the package was addressed to Hadley. (*Id.* at 59).

Mr. Caron testified in his defense. (2/16/16 RP 62). At the time of the incident, he was working as a freight truck driver. (*Id.* at 62-63). He had met Ms. Thompson in July 2009. (*Id.* at 63). They lived together December 2009 in Liberty Lake, along with Jase and Bailey. (*Id.* at 64). Hadley had not yet been born. (*Id.* at 65). Mr. Caron assumed the father role. (*Id.*). He and Ms. Thompson then separated for about a year. (*Id.* at 66). They reconciled and he moved back in at a different place in Spokane Valley. (*Id.*). They

had another breakup when Hadley was 18 months old, so it was about two years later. (*Id.*).

In June 2015, Mr. Caron was aware a no-contact order had been entered and he was to stay away from Ms. Thompson. (2/16/16 RP 67, 71). The order did not prohibit contact with the children. (*Id.*). He mailed the package to Hadley. (*Id.* at 67-68). The pajamas fit only Hadley and the beach towel matched the motif, the movie Frozen, for the pajamas. (*Id.* at 68-69). He acknowledged typing the letter to Hadley and the photos were of her, Ms. Thompson, and him. (*Id.* at 69). He used his sister's address for the return because he was there when he packaged the box. (*Id.* at 70). Nothing else was in the box. (*Id.*).

Mr. Caron sent the letter to Hadley, even though she was unable to read, so she could read it later when she was able to do so. (2/16/16 RP 73, 76). The letter expressed that he loved the family and missed them all. (*Id.* at 74). To him, a package to a minor child is a package to the child. (*Id.*). Hadley's brother or sister could read it to her. (*Id.* at 76).

No exceptions were taken to the court's instructions. (2/16/16 RP 85). At closing, the defense argued the only issue was whether Mr. Caron knowingly violated the no-contact order by

indirectly contacting Ms. Thompson through the package to Hadley.
(*Id.* at 104-05, 107).

The jury found Mr. Caron guilty and also found by special verdict that it involved family or household members. (CP 88, 89).

III. ARGUMENT

A. The State's evidence was insufficient to support the conviction beyond a reasonable doubt.

The pertinent part of the no-contact order was read into the record:

It says, B, do not contact the protected person directly, indirectly, in person, or through others by phone, mail, or electronic means except for mailing or service of process of court documents through a third party or contact the defendant's lawyers. (2/16/16 RP 60).

The only issue at trial was whether Mr. Caron knowingly violated the no-contact order by indirectly contacting the protected person, Ms. Thompson, through the mailed package to Hadley.

The no-contact order only prohibited contact with Ms. Thompson. Neither Jase, Bailey, nor Hadley was named as protected persons in the order. Nothing in the package was addressed to anyone but Hadley and the beach towel and pajamas were for no one but Hadley. The photos of Mr. Caron, Ms. Thompson, and Hadley were for her. He was the only father she

knew and Ms. Thompson was her mother. The letter was addressed to Hadley and, even though she could not read, she could read it later when she was able or her brother or sister could have done so. In these circumstances, the State's evidence did not prove beyond a reasonable doubt that Mr. Caron knowingly violated the no-contact order. All elements of an offense must be so proven by the State and it failed to prove this essential element.

The State must prove beyond a reasonable doubt every element of a charged crime. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed.2d 368 (1970). In a challenge to the sufficiency of the evidence, the test is whether, viewing it in a light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). A claim of insufficient evidence admits the truth of the State's evidence and all reasonable inferences from it. *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010). Although credibility issues are for the finder of fact to decide, the existence of facts cannot be based on guess, speculation, or conjecture. *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972).

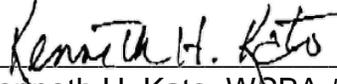
Here, the State failed to prove beyond a reasonable doubt that Mr. Caron knowingly violated the no-contact order. The prohibition was against contacting Ms. Thompson and he did not do so. He had contact with Hadley, who was not a protected person. See *State v. Foster*, 128 Wn. App. 932, 939, 117 P.3d 1175 (2005). Moreover, there was no indirect contact with Ms. Thompson as the package was addressed only to Hadley and everything in the package was for her and her only. It was not a contact “through others.” In context, “indirectly” in the no-contact order relates to other than “direct” contact and mail to the protected person is such a prohibited “indirect” contact. This did not occur here. Only by resorting to guess, speculation, and conjecture could the jury find Mr. Caron knowingly violated the no-contact order. This, it cannot do. *State v. Hutton, supra*.

The State did not prove this essential element, so the conviction must be reversed and the charge dismissed.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Caron respectfully urges this Court to reverse his conviction and dismiss the charge.

DATED this 21st day of September, 2016.



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CERTIFICATE OF SERVICE

I certify that on September 21, 2016, I served a copy of the brief of appellant by USPS on Joshua Caron, # 749166, PO Box 769, Connell, WA 99326; and by email, as agreed, on Brian O'Brien at scpaappeals@spokanecounty.org.

