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Dec 20, 2016

Court of Appeals
Division III
State of Washington

34209-3-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOSHUAH S. CARON, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENT OF ERROR

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

II. ISSUES PRESENTED

Whether the State presented sufficient evidence that the defendant had indirect contact with the protected party of a no-contact order when he sent a package and letter to her three-year-old child, who was unrelated to him, and unable to read?

III. STATEMENT OF THE CASE

The defendant was charged in Spokane County Superior Court with one count of felony violation of a no-contact order against a family or household member. CP 1. His case proceeded to a jury trial.

Angela Thompson and the defendant intermittently dated and cohabitated during a seven-year time span. RP 27-28.¹ During that time, Ms. Thompson gave birth to H.T.;² however, Mr. Caron was not the

¹ All citations to the verbatim report of proceedings have been taken from the consecutively paginated transcripts of the trial and sentencing from court reporter Kerbs, beginning on February 16, 2016.

² Appellant uses H.T.'s full first name (as well as her siblings' first names) without regard to this Court's general order of June 18, 2012 requiring the use of initials or pseudonyms for any child witness or victim known to have been under the age of three at the time of any event in the case. While H.T and her sister were not called to testify at trial, and were not technically victims of Mr. Caron's crime, the use of initials should also be required in this case to protect their privacy

biological father. RP 29. When H.T. was approximately a year and a half old, Ms. Thompson and Mr. Caron's relationship ended. RP 66. A domestic violence no-contact order was subsequently issued on June 10, 2015, protecting Ms. Thompson from any direct or indirect contact with the defendant. RP 67; Ex. S1.³ Mr. Caron signed the no-contact order and was aware of its requirements. RP 71.

On June 19, 2015, Angela Thompson picked up her mail and discovered a box that was addressed to H.T. RP 30, 48. The sender of the package only listed his name on the return address as "J." RP 59. The return address was the defendant's sister's residence, rather than the defendant's

interests. J.T., the eldest child involved, *was* called as a witness at trial, and Appellant has failed to use initials or a pseudonym as well.

³ Respondent designated State's Exhibit 1 to be transmitted to the Court of Appeals for review on December 20, 2016.

In pertinent part, the no-contact order provides:

Defendant:

B. do not contact the protected person, directly, indirectly, in person or through others, by phone, mail or electronic means, except for the mailing or service of process of court documents through a third party, or contact by the defendant's lawyers.

Ex. S1.

residence. RP 69, 74. Inside the box were pajamas, a towel, photographs of Mr. Caron,⁴ Ms. Thompson and H.T., and a letter to H.T. The letter read:

Dear [H.T.],
Hi baby girl I love you...so much.! I miss your mama and Sissy and brother! I will love you forever no matter what I love all of you forever I would love your mama always & forever!!!!!!
I don't know if or when I'll be able to see u I just want you to remember always you're in my heart you are my heart!!! I got you a couple pairs of pajamas and a beach towel I hope the pajama fit you I hope you like them! There's also a couple of pictures in the envelope and the bottom of the box I just want to you have pictures of you and daddy! I'm so sorry the things are this way I wish it could be different, no matter what I will think you everyday with every breath I take and I will never forget you maybe someday we can see each other again but I don't know when or if that will happen just always remember everybody makes mistakes I'm not perfect nobody is!! I wish I could out of my hands right now I miss you all so much it's hard to breathe! I'll always be in your heart no matter what happens and its not your fault that things are the way they are!
Love Always & Forever
Daddy

Ex. S6.⁵

Ms. Thompson was sad, upset and shocked at having received this package and its contents. RP 35, 42. She reported the violation of the

⁴ Respondent designated State's Exhibit 5 to be transmitted to the Court of Appeals for review on December 20, 2016.

⁵ Respondent designated State's Exhibit 6 to be transmitted to the Court of Appeals for review on December 20, 2016.

no-contact order to law enforcement, RP 41, 50, and defendant was subsequently charged.

Mr. Caron testified that while he and Ms. Thompson were together, he “tried to assume the best father role [he] could because they⁶ had no father involved in their life at all,” and that although he was not H.T.’s biological father, he was the only dad she ever knew. RP 65-66. He testified that he had signed the no-contact order and was aware of it. RP 71. He admitted to two prior convictions for violating a no-contact order. RP 71.

Mr. Caron testified that he mailed the box, its contents and the letter to three-year-old H.T. RP 66. He also admitted that he had never sent similar packages to J.T or B.T., Ms. Thompson’s older children, who were able to read without assistance. RP 74. He admitted the package was not addressed to H.T. in care of B.T or J.T., or any other person. RP 74-75.

The jury convicted the defendant of violating the no-contact order, CP 88, and also found that the crime was committed against a family or household member, CP 89. The defendant was sentenced to a low-end standard range sentence of 13 months of confinement, with 12 months of community custody. CP 116-117. He timely appealed.

⁶ This testimony was specifically in reference to the older children, J.T. and B.T.

IV. ARGUMENT

THE EVIDENCE WAS SUFFICIENT FOR THE JURY TO FIND THAT MR. CARON’S ACT OF SENDING A PACKAGE CONTAINING A WRITTEN LETTER TO A THREE-YEAR-OLD CHILD WAS PROHIBITED CONTACT WITH THE CHILD’S MOTHER, AND THE PROTECTED PARTY OF THE NO-CONTACT ORDER.

Mr. Caron challenges the sufficiency of the evidence supporting his conviction for felony violation of a no-contact order against a family or household member. The purpose for sufficiency of the evidence review is “to guarantee the fundamental protection of due process of law.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When the sufficiency of the evidence is challenged in a criminal case, *all* reasonable inferences from the evidence must be drawn in favor of the state and interpreted most strongly against the defendant. *Id.* A claim of insufficiency admits the truth of the state’s evidence and all inferences that reasonably can be drawn therefrom. *Id.* In a sufficiency of the evidence challenge, the court is highly deferential to the decision of the jury. *State v. Davis*, 182 Wn.2d 222, 227, 340 P.3d 820 (2014).

Credibility determinations are for the trier of fact and are not subject to review on appeal. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). The appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses and the persuasiveness of the evidence. *Id.*

Our Supreme Court has stated:

It is the province of the jury to weigh the evidence, under proper instructions, and determine the facts. It is the province of the jury to believe, or disbelieve, any witness whose testimony it is called upon to consider. If there is substantial evidence (as distinguished from a scintilla) on both sides of an issue, what the trial court believes after hearing the testimony, and what this court believes after reading the record, is immaterial. The finding of the jury, upon substantial, conflicting evidence properly submitted to it, is final.

State v. Williams, 96 Wn.2d 215, 222, 634 P.2d 868 (1981); *see, also, State v. Walton*, 64 Wn. App. 410, 415–16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992) (the court defers to the jury’s determination regarding conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence).

At trial, the defendant agreed that the State had proven all but one of the elements required for his conviction.⁷

⁷ The jury was instructed that in order to convict the defendant, it must find that five elements were proven beyond a reasonable doubt:

1. That on or about June 19, 2015, there existed a no-contact order applicable to the defendant;
2. That the defendant knew of the existence of the order;
3. That on or about said date, the defendant knowingly violated a provision of this order;

Was there on June 19 of 2015 a no-contact order that was applicable to Mr. Caron. You heard about it in testimony. You'll have it in the jury room. Of course there was. Was he aware of the existence? One, his signature was on it and, two, he acknowledged it here in court. Skipping, for a moment, number three. The defendant had twice been previously convicted of violating provisions of a court order. And there was a stipulation that was read to you. And it happened in Washington... All that's agreed.

RP 104.

Thus, the only issue on appeal is whether the State presented sufficient evidence that the defendant knowingly violated a provision of the no-contact order, as that was the only disputed element at trial. CP 82.

A defendant willfully violates a no-contact order when he or she acts knowingly with respect to the material elements of the offense. RCW 9A.08, 010(4); *State v. Sisemore*, 114 Wn. App. 75, 77, 55 P.3d 1178 (2002).

Here, sufficient facts were presented to the jury to allow it to infer that Mr. Caron knowingly violated the no-contact order.

The State argued in closing that one does not send a letter to a three-year-old without reasonably expecting that some other person would read its contents. RP 97. “[The child doesn’t] even know it’s coming. They

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4. That the defendant has twice been convicted for violating the provisions of a court order; and
 5. That the defendant’s acts occurred in the State of Washington.

CP 82; *see also* RCW 26.50.110; WPIC 36.51.02.

wouldn't even know how to read it and that it's for them." RP 98. The State argued that the contents of the letter and the photographs were intended to elicit sentimentality in an adult, not in a child, and that they would mean nothing to a three-year-old. RP 100. The State argued that the contents of the letter specifically were meant to communicate with Ms. Thompson, using emotions and the power of their past relationship. RP 100.

These are not difficult inferences to make. The letter itself reads as a love letter, not only referencing the love Mr. Caron professed to have for H.T. but also for Ms. Thompson and the other children to whom Mr. Caron did not send letters. Ex. S6. By virtue of the fact that Mr. Caron did not send letters to the older, literate children, to whom he also tried to be a father figure, the jury could infer that Mr. Caron intended the letter for H.T. to be read by Ms. Thompson, and knew that it would be read by her.⁸

Even more telling regarding Mr. Caron's intent to direct the package and letter to Ms. Thompson was the fact that he did not use his address or full name on the package as a return address. From this fact, the jury could infer that Mr. Caron did not want the recipient to know who sent the package until it was already opened, and the letter read or photographs viewed.

⁸ To a sufficiency of the evidence inquiry, it is irrelevant that J.T. or B.T. could have read the contents of the letter to H.T., or that she could read it on her own later, as argued by defendant at trial and on appeal. The jury was free to find that this was not the defendant's intent in sending the letter.

Additionally, he was not the child's biological father, and although he "was the only father she ever knew" for the first 18 months of her life, it is also highly suspect that he would consciously choose to send her a package when she was three years old (18 months after the relationship with her mother ended), and less than two weeks after the no-contact order was issued.⁹ The jury's common sense would inform them that, just as the State argued in its rebuttal closing, "[w]hen you send a package to a minor to the parent's address, it's the parent who decides who gets the package. He knew that."¹⁰ RP 109.

Viewing the evidence in the light most favorable to the State, Mr. Caron knew he was prohibited from contacting Ms. Thompson, yet he chose to send a package containing a letter to her three-year-old, who was unable to read, knowing that Ms. Thompson would likely be the individual who would retrieve and open the package and read the letter. At a minimum, this contact was indirect contact in violation of the order, but the jury could also find that it amounted to direct contact with Ms. Thompson. The evidence was, therefore, sufficient for the jury to find that Mr. Caron knowingly violated the no-contact order.

⁹ The no-contact order was issued on June 10, 2015, and the package was received by Ms. Thompson on June 19, 2016. Ex. S1; RP 48.

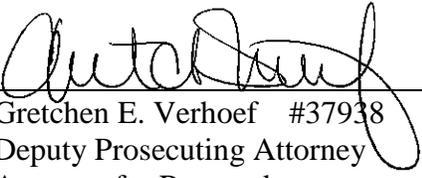
¹⁰ Officer Nguyen testified that Ms. Thompson did not want the package and did not want to give it to her baby. RP 53.

V. CONCLUSION

The State respectfully requests this court affirm the lower court and jury verdicts in this case. The evidence was sufficient to convict Mr. Caron of violating a no-contact order.

Dated this 20 day of December, 2016.

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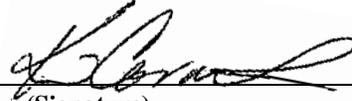
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on December 20, 2016, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Kenneth Kato
khkato@comcast.net

12/20/2016
(Date)

Spokane, WA
(Place)


(Signature)