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Court of Appeals  
Division III  
State of Washington  
9/23/2019 9:38 AM

NO. 36704-5-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

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STATE OF WASHINGTON,

Respondent,

v.

JONATHAN TOTH,  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SPOKANE COUNTY

The Honorable Maryann C. Moreno, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Mr. Toth's motion to dismiss because the state failed to prove beyond a reasonable doubt that Mr. Toth knowingly violated a provision of the no-contact order.
2. The trial court abused its discretion when it imposed a \$200 criminal filing fee as part of Mr. Toth's sentence while also finding him indigent at sentencing.

Issues Presented on Appeal

1. Did the trial court err by denying Mr. Toth's motion to dismiss when the state failed to prove beyond a reasonable doubt that he knowingly violated a provision of the no-contact order?
2. Did the trial court abuse its discretion when it imposed a \$200 criminal filing fee as part of Mr. Toth's sentence while also finding him indigent at sentencing?

B. STATEMENT OF THE CASE

Substantive Facts

Jonathan Toth was in a dating relationship with Joenisha

Nolan between September of 2017 and May of 2018. RP 102-03. In May of 2018, Mr. Toth and Ms. Nolan were involved in an altercation and the police arrested Mr. Toth. RP 240-41. The state charged Mr. Toth with assault and the court entered a no-contact order prohibiting him from contacting Ms. Nolan. RP 104, 242. Mr. Toth remained incarcerated in the Spokane County Jail because he could not post bail. RP 241-42.

Mr. Toth's cellmate in the jail was Christopher Tidwell. RP 242. Mr. Toth wanted to contact Ms. Nolan without violating the no-contact order, which prohibited him from contacting her except "contact by the defendant's lawyers." RP 243. Mr. Toth researched how to grant Mr. Tidwell a power of attorney because Mr. Toth believed that Mr. Tidwell would then be authorized to contact Ms. Nolan about household expenses and Mr. Toth's truck. RP 243-47. The jail provided Mr. Toth with a power of attorney form, he filled it out, and gave it to Mr. Tidwell. RP 249-50. Mr. Toth wrote two letters addressed to Ms. Nolan and provided those to Mr. Tidwell with instructions to pass them onto Ms. Nolan. RP 257-61; Ex. 2-3.

Mr. Tidwell mailed the letters to his wife, who then mailed them on to Ms. Nolan. RP 155-56. Ms. Nolan found both letters in

her mailbox on May 27, 2018. RP 106. Ms. Nolan identified Mr. Toth as the author of the letters based on his handwriting. RP 108. Ms. Nolan called the police to report the letters as violations of the no-contact order. RP 77-78.

### Procedural Facts

The state charged Mr. Toth with one count of felony violation of a no-contact order and one count of bribing a witness based on some of the contents of the letters. CP 6-7. Mr. Toth moved to dismiss both charges at the end of the state's case-in-chief and after testifying in his own defense. RP 220-23, 279. The trial court denied both motions. RP 233, 279-80.

The jury found Mr. Toth guilty of felony violation of a no-contact order but acquitted him of bribing a witness. RP 338. The trial court sentenced Mr. Toth to a standard range sentence. RP 353; CP 290. The trial court included a \$200 criminal filing fee as part of Mr. Toth's sentence while also finding him indigent for the purposes of appeal. CP 293, 331-32. Mr. Toth filed a timely notice of appeal. CP 310.

C. ARGUMENT

1. THE TRIAL COURT ERRED WHEN IT DENIED MR. TOTH'S MOTION TO DISMISS BECAUSE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT MR. TOTH KNOWINGLY VIOLATED THE NO-CONTACT ORDER

In a criminal case, the state bears the burden of presenting sufficient evidence to prove every element of the charged crime beyond a reasonable doubt. *State v. Phuong*, 174 Wn. App. 494, 502, 299 P.3d 37 (2013) (citing *Jackson v. Virginia*, 433 U.S. 307, 317-18, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). In evaluating the sufficiency of the evidence in a criminal case, the appellate court must determine “whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt.” *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014) (citing *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009)). When reviewing a motion to dismiss made after the defense case, the appellate court will evaluate all of the evidence admitted at trial. *State v. Jackson*, 82 Wn. App. 594, 608, 918 P.2d 945 (1996).

To convict a defendant of felony violation of a no-contact order, the state must prove beyond a reasonable doubt that (1)

there was a no-contact order applicable to the defendant in effect, (2) the defendant knew the order existed, (3) the defendant knowingly violated a provision of the order, and (4) that the defendant had twice been previously convicted for violating court orders. RCW 26.50.110(5).

Mr. Toth admitted that the no-contact order applied to him and that he was aware of its existence. RP 242-43. Mr. Toth also stipulated to the fact that he has two prior convictions for violating court orders. CP 84-86. Thus, the only disputed element at Mr. Toth's trial was whether he knowingly violated a provision of the order.

A person acts knowingly when "he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense," or "he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense." RCW 9A.08.010(1)(b)(i-ii). The record demonstrates that Mr. Toth was not aware of sufficient facts to know he was violating the no-contact order by having Mr. Tidwell send the letters to Ms. Nolan.

The no-contact order prohibits Mr. Toth from contacting Ms.

Nolan except contact “by [his] lawyers.” CP 22. The record shows that Mr. Toth believed he empowered Mr. Tidwell to act as Mr. Toth’s attorney by signing and attempting to file a “temporary limited power of attorney” authorizing Mr. Tidwell and his wife to act on Mr. Toth’s behalf. CP 17-18, 25-26; RP 242-46, 256-58. In so doing, Mr. Toth believed that Mr. Tidwell could deliver the letters without violating the no-contact order which permitted contact “by the defendant’s lawyers.” CP 22.

Mr. Toth did not have a civil attorney at the time of his arrest, therefore he granted Mr. Tidwell a power of attorney in an attempt to comply with the no-contact order by corresponding through what Mr. Toth understood to be his “lawyer.” RP 242-45. The record establishes that Mr. Toth was not aware of the fact that a power of attorney does not authorize the agent to act as a “lawyer” as that term is used in no-contact orders.

After reviewing the evidence in the light most favorable to the state, there is insufficient evidence to prove beyond a reasonable doubt that Mr. Toth knowingly violated the no-contact order by instructing Mr. Tidwell to send the letters to Ms. Nolan. The trial court erred when it denied Mr. Toth’s motion to dismiss

because the state did not prove beyond a reasonable doubt that Mr. Toth knowingly violated the no contact order , therefore this court should reverse his conviction and order dismissal of the charge. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998) (retrial following reversal for insufficient evidence is prohibited and the remedy is dismissal).

2. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPOSED A \$200 CRIMINAL FILING FEE AS PART OF MR. TOTH'S SENTENCE WHILE ALSO FINDING HIM INDIGENT

RCW 36.18.020(2)(h) imposes a \$200 criminal filing fee on defendants convicted of a criminal offense. RCW 36.18.020(2)(h). The Washington State Legislature amended this statute effective June 7, 2018 to include language specifying that this fee may not be imposed on an indigent defendant. *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018).

Here, the trial court imposed the \$200 criminal filing fee as part of Mr. Toth's sentence despite finding him indigent at sentencing and authorizing public funds for his appeal. CP 293, 331-32. This was an abuse of discretion and contrary to law. Under the recent amendment to RCW 36.18.020, the trial court was not

permitted to impose the criminal filing fee because it found Mr. Toth to be indigent. *Ramirez*, 191 Wn.2d at 747.

For this reason, the filing fee must be vacated.

D. CONCLUSION

Mr. Toth respectfully requests that this court vacate his conviction and remand for dismissal of the charge with prejudice. In the alternative, Mr. Toth requests this court vacate his sentence and remand the case to the trial court with instructions to strike the \$200 criminal filing fee from his judgment and sentence.

DATED this 23<sup>rd</sup> day of September 2019.

Respectfully submitted,



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Attorney for Appellant



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Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Spokane County Prosecutor's Office SCPAAppeals@spokanecounty.org and Jonathan Toth/DOC#385489, Coyote Ridge Corrections Center, PO Box 769 Connell, WA 99326 a true copy of the document to which this certificate is affixed on September 23, 2019. Service was made by electronically to the prosecutor and Jonathan Toth by depositing in the mails of the United States of America, properly stamped and addressed.

A handwritten signature in blue ink, appearing to read "Lise Ellner", is written on a light-colored rectangular background.

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Signature

**LAW OFFICES OF LISE ELLNER**

**September 23, 2019 - 9:38 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
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**Appellate Court Case Title:** State of Washington v. Jonathan James Toth  
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