

NO. 66117-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRIAN HAYNES,

Appellant.

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DIVISION ONE
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE BETH ANDRUS

BRIEF OF RESPONDENT

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ORIGINAL

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A. ISSUES PRESENTED

1. A person commits the crime of felony violation of a court order when he or she knows of the existence of a protection order or a no-contact order, knowingly violates a provision of that order, and the person has twice been previously convicted for violating the provisions of a court order. In this case, the defendant tried to contact the victim through a telephone call with the victim's mother. Was the evidence sufficient to show that the defendant violated the provision of a court order prohibiting contact with the victim?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Brian Haynes of three counts of Domestic Violence Felony Violation of a Court Order, each charged in the alternative to reflect the existing Domestic Violence No-Contact Order and Domestic Violence Protection Order. CP 10-13; 08/25/10 RP 3-7. Following a jury trial, the jury found Haynes guilty of all three counts in violation of both the No-Contact Order and Protection Order. CP 14-19. The State submitted a motion, and the honorable judge ordered, for the alternative counts IA, IIA, and IIIA to be vacated for equitable reasons. CP 54-55. Haynes was

sentenced to fifteen months in Department of Corrections Custody with a no-contact order with the victim, Cathy Arroyo Haynes, for five years. CP 59.

2. SUBSTANTIVE FACTS

Brian and Cathy Arroyo Haynes had been friends since high school; they were married in 2006. 8/26/10 RP 90-91. Both Brian and Cathy¹ worked at the Port of Seattle for the International Longshore and Warehouse Union (ILWU), Local 19. 8/26/10 RP 98; 8/31/10 RP 73. Cathy and Brian tried to balance their professional lives as longshoreman with their family life, but ultimately, their marriage became strained and Cathy obtained a no-contact order in Auburn Municipal court in February 2011. 8/26/10 RP 91. Two weeks later, Cathy went to King County Superior Court in Kent, and obtained a protection order which allowed Brian to maintain the same workplace, as long as he remained 20 feet away from Cathy. 8/26/10 RP 91-92.

By April 2010, Cathy had filed for divorce. 8/26/10 RP 93; 8/31/10 RP 72-73. Brian did not fight the divorce, but moved out of the marital home in Auburn, and in with his parents on Camano

¹ Because both Brian and Cathy share the last name Haynes, their first names will be used when both are referenced in the same section.

Island, from where he commuted to the port each day. 8/31/10 RP 76.

At trial, Cathy stated that in May 2010, Brian contacted her in violation of both orders, by speaking to her in the parking lot of the YMCA in Auburn and taking her to the mall while their children participated in a Kids Night Out program. 8/26/10 RP 95-97. Carol Arroyo, Cathy's mother, also testified to this interaction at the YMCA, 8/26/10 RP 53-54, although Brian denied seeing Cathy that night. 8/31/10 RP 74.

Cathy also stated that on June 14, 2010 from 8:00 a.m. to 5:00 p.m., she was working at the pier when she saw Brian watching her. 8/26/10 RP 100-106. Brian approached Cathy as she was unhooking the air brakes to her semi-truck and said that he wanted to speak to her. Id. Cathy told Brian that he wasn't supposed to be there because he wasn't assigned to the area. Id. After Cathy got into her truck to continue her job, Brian followed Cathy in his own semi-truck. Id. When Cathy parked her last container to take her break, Brian confronted Cathy about some clothes that he had seen in her personal car. Id. When Brian would not leave her alone, she reported the incident to the dock foreman and the union representative, who tried to resolve the issue directly

with Brian. 8/26/10 RP 106-107, 138-140. At trial, Brian agreed that he spoke with his union representative, but denied seeing Cathy that day. 8/31/10 RP 75-76.

In addition, Carol Arroyo testified that later that evening between 8:00 p.m. to 10:00 p.m., she received a phone call from Brian, who asked if her daughter, Cathy, was there. 8/26/10 RP 48-49, 109. Although Cathy was not present at the time, Ms. Arroyo told Brian that Cathy did not want to speak to him. 8/26/10 RP 49. Ms. Arroyo testified that Brian didn't want to hear it from her and that he wanted to hear from Cathy, "from her mouth and her own words." Id. Ms. Arroyo then acted as if Cathy was there and asked if she wanted to speak to Brian. Id. She then told Brian that Cathy was shaking her head no. Id. After hanging up the phone, Ms. Arroyo testified that she picked up and immediately hung up on Brian when he called two more times. 8/26/10 RP 50. Ms. Arroyo then called her daughter to tell her the details of the conversation she had with Brian. 8/26/10 RP 51-52, 110.

Both the Auburn and King County protection orders were admitted into evidence at trial without objection. 8/26/10 RP 44-45. The state offered a certified copy of the judgment and Sentence, attested to by a witness form the Auburn Municipal Court Clerk's

Office, from Brian Hayne's two prior convictions for violations of protection orders. 8/31/10 RP 50-56.

After a jury trial before the Honorable Judge Beth Andrus, Brian Haynes was found guilty of three counts of felony violation of a no-contact order. CP 14-19.

Mr. Haynes filed a post-trial motion to dismiss Count Two, pursuant to CrR 7.5(a)(3), arguing that there was insufficient proof of a material element of the crime. CP 50-52; 9/17/10 RP 9-10. Mr. Haynes then filed this appeal. CP 64.

C. ARGUMENT

1. THERE WAS SUFFICIENT EVIDENCE TO CONVICT BRIAN HAYNES OF FELONY VIOLATION OF A COURT ORDER.

The defendant claims that there was insufficient evidence to convict Brian Haynes of felony violation of a court order. A sufficiency of the evidence claim fails, when, after viewing all of the evidence in the light most favorable to the State, any rational trier of fact could have found that the essential elements of the crime were satisfied. State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)).

Furthermore, a sufficiency of the evidence claim admits the truth of the evidence and allows all reasonable inferences to be drawn in favor of the State and interpreted most strongly against the defendant. State v. Joy, 121 Wn.2d 333, 339, 851 P.2d 654 (1993). In this case, there is clear evidence of a telephonic contact between Mr. Haynes and Cathy Haynes' mother, Carol Arroyo. That contact supports the defendant's conviction in Count Two for felony violation of a court order.

The jury in this case received a "to convict" instruction stating that they must unanimously agree that "a single act of telephonic contact on June 14, 2010 constituting the alleged crime...was proved." CP 27 (Instruction No. 13). The crux of the defendant's argument is that the State only proved that Brian Haynes attempted to violate the protection order by calling the home of Carol Arroyo. However, the Supreme Court of Washington has established that a defendant may be guilty of violating a no-contact order without ever effectuating any actual communication with the protected party. State v. Ward, 148 Wn.2d 803, 816, 64 P.3d 640 (2003).

In State v. Ward, one of the two defendants, Rickey Baker, was subject to a no-contact order. The evidence showed that Baker

telephoned the victim's home and reached the victim's wife. Based on this conduct alone, there was sufficient evidence for the jury to find that Baker violated the order. Id.

The reasoning in Ward applies with equal force here. Brian Haynes called Carol Arroyo's home in order to effectuate communication with Cathy Haynes. While Cathy was not present at the time of the call, the testimony of Ms. Arroyo clearly states that Brian called her home looking for Cathy. 8/26/10 RP 48-49. This call occurred after another contact earlier that day when Cathy testified that Brian confronted her at the dock. Id. at 100-106.

In Ward, this call entitled the jury to find that the defendant violated the order, even though the victim's wife never told the victim that the defendant had called. 148 Wn.2d at 815. In this case, the victim's mother, Ms. Arroyo, decided to go one step further and informed Cathy that Brian had called. 8/26/10 RP 51-52, 110. However, even if Ms. Arroyo had declined to tell her daughter, the single act of calling Ms. Arroyo would still have been enough for a violation. The telephone call was a follow up attempt at contacting Cathy after Brian had already confronted her earlier that day at the dock. Id. at 100-106. Held in a light most favorable to the State, this

is sufficient evidence for the jury to find beyond a reasonable doubt that Brian Haynes violated the no-contact order.

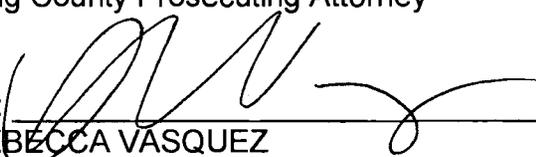
D. CONCLUSION

For the foregoing reasons, the State respectfully asks this court to affirm Brian Haynes' conviction on Count Two for felony violation of a court order.

DATED this 22nd day of June, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
REBECCA VASQUEZ
Deputy Prosecuting Attorney
Attorneys for Respondent

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jan Trasen, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. BRIAN HAYNES, Cause No. 66117-5-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name Kerri Bradford
Done in Seattle, Washington

6-22-11

Date

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