

NO. 47632-1-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

LEROY PARKER,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR THURSTON COURT
The Honorable Christine Schaller, Judge
Cause No. 13-1-01196-8

BRIEF OF APPELLANT

THOMAS E. DOYLE, WSBA NO. 10634
Attorney for Appellant

P.O. Box 510
Hansville, WA 98340
(360) 626-0148

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A. ASSIGNMENTS OF ERROR

01. The trial court erred in not taking count I from the jury for lack of sufficient evidence.
02. The trial court erred in not taking count II from the jury for lack of sufficient evidence.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Whether there was insufficient evidence to support Parker's two convictions for felony violation of pretrial no contact order where the State submitted no evidence to the trial court that Parker's prior convictions were for violating orders issued under one of the specific RCW chapters listed in former RCW 26.50.110(5)?
[Assignments of Error Nos. 1-2].

C. STATEMENT OF THE CASE

01. Procedure

LeRoy Parker was charged by first amended information filed in Thurston County Superior Court April 13, 2013, with two counts of felony violation of pretrial no contact order, counts I-II, and two counts of assault in the fourth degree, counts III-IV, contrary to RCWs 26.50.110(5), 10.99.020, 10.99.040, and 9A.36.041, respectively. Each count named Melissa Parker as the victim and alleged domestic violence. [CP 8-9].

Trial to a jury commenced June 23, the Honorable Christine Schaller presiding. Count III was dismissed on the State's motion at the conclusion of its case. [RP 203-04]. Neither objections nor exceptions were taken to the jury instructions. [RP 241].

Parker was found guilty on counts I-II, but the jury was unable to reach a verdict on the remaining count, which was subsequently dismissed. [CP 54-58,68]. He was sentenced within his standard range, and timely notice of this appeal followed. [CP 66-77].

02. Trial¹

On August 7, 2013, Parker was in custody in the Olympia City Jail. [RP 133]. A no-contact order had been issued restraining him from having any contact whatsoever with Melissa Parker, his wife. [RP 135-38]. Several telephone calls were made from the jail on that day to Ms. Parker's phone, all on the pin number assigned to Anthony Schaff, another inmate in the jail. [RP 143-48, 169]. Two of the calls that afternoon, one at 2:36 and another at 5:26, were recorded. [RP 144, 178]. A video of the pay phone located inside the holding cell confirmed that Parker was on the phone at the time of both calls. [RP 174].

There was a male and a female voice on each call. They discussed how the female was going to bail the male out of jail. [RP 184-87, 189-

¹ The facts are limited to counts I-II, for which Parker was found guilty.

192]. The female referred to the male as “Roy” on at least three occasions. [RP 189, 193, 196].

When interviewed, Ms. Parker denied that her husband had called her, saying that several people had her number. [RP 171-72]. Parker, who denied calling his wife, told the police that Schaff, his cell mate, had called his wife in an attempt to get bail money for himself. [RP 173].

The following stipulation was read to the jury:

The parties have agreed that certain facts are true. You must accept as true the following facts: The defendant has at least two prior convictions for violating the provisions of a protection order, restraining order or no-contact order issued under Washington State law.²

[RP 151-52].

At trial, Parker admitted to making the two calls to his wife. [RP 218]. He was the voice on the calls played to the jury. [RP 219]. He didn’t think “that it was violating the no-contact order talking on the phone.” [RP 220]. “I just thought talking on the phone to get bonded out was okay.” [RP 221]. He further claimed that he didn’t know the no-contact order took effect before he was released from custody. [RP 229].

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² Court’s Instruction 9 set forth the stipulation. [CP 47].

D. ARGUMENT

THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT PARKER'S TWO CONVICTIONS FOR FELONY VIOLATION OF PRETRIAL NO CONTACT ORDER WHERE THE STATE SUBMITTED NO EVIDENCE TO THE TRIAL COURT THAT PARKER'S PRIOR CONVICTIONS WERE FOR VIOLATING ORDERS ISSUED UNDER ONE OF THE SPECIFIC RCW CHAPTERS LISTED IN FORMER RCW 26.50.110(5)?³

Due Process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. U.S. Const. Amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The test for determining the sufficiency of the evidence is whether, after viewing the evidence in 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). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638,

³ As the argument is the same for each count, the counts are addressed collectively herein for the purpose of avoiding needless duplication.

618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

Parker was charged with two counts of felony violation of pretrial no contact order under former RCW 26.50.110(5), which provides:

A violation of a court order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020.

And while the statutory authority for the issuance of the two prior court orders is not an essential element that must be decided by the jury, State v. Miller, 156 Wn.2d 23, 24, 123 P.3d 827 (2005), the State must still submit to the trial court sufficient evidence to determine whether the orders that constituted the two prior convictions were issued pursuant to one of the relevant RCW chapters listed in former RCW 26.50.110(5). State v. Case, 189 Wn. App. 422, 429, 358 P.3d 432 (2015), review granted, March 2, 2016 (TEXT NOT AVAILABLE) (citing Miller, 156 Wn.2d at 31).

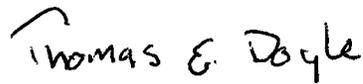
Here, as in Case, the State failed to submit evidence to the trial court that Parker's prior convictions were for violating orders issued under

one of the specific RCW chapters listed in former RCW 26.50.110(5). Without stating the statutory authority, the State relied solely on the parties' stipulation, which was identical to the stipulation entered in Case, 189 Wn. App. at 425. In view of that, there was insufficient evidence to support Parker's two convictions for felony violation of a pretrial no contact order, with the result that these convictions must be reversed and dismissed with prejudice. Id. at 430.

E. CONCLUSION

Based on the above, Parker respectfully requests this court to reverse and dismiss his convictions with prejudice.

DATED this 17th day of March 2016.



THOMAS E. DOYLE
Attorney for Appellant
WSBA NO. 10634

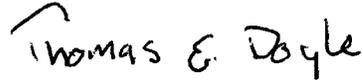
CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

Carol La Verne
paoappeals@co.thurston.wa.us

LeRoy Parker
P.O. Box 534
Roy, WA 98580

DATED this 17th day of March 2016.

Handwritten signature of Thomas E. Doyle in black ink.

THOMAS E. DOYLE
Attorney for Appellant
WSBA NO. 10634

DOYLE LAW OFFICE

March 17, 2016 - 1:36 PM

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