

FILED
Mar 11, 2016
Court of Appeals
Division III
State of Washington

No. 33793-6-III

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III**

STATE OF WASHINGTON

/Respondent

v.

STEPHEN GERALD DOUGLAS,

Appellant

Initial Brief of Appellant

Appeal from Franklin County Superior Court No. 15-1-50148-7
The Honorable Cameron Mitchell

John C. Julian, WSBA #43214
5 W. Alder St., Ste. 238
Walla Walla, WA 99362
Attorney for Defendant/Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS i
TABLE OF AUTHORITIES i
INTRODUCTION 1
ASSIGNMENT OF ERROR 1
 ASSIGNMENT OF ERROR 1: Insufficient evidence supports Mr. Douglas’
 conviction for felony violation of a no-contact order. 1
ISSUE 2
 Whether sufficient evidence supports Mr. Douglas’ conviction for felony
 violation of a no contact order where the only substantive information adduced
 at trial was a certified copy of the subject no-contact order?..... 2
MATERIAL FACTS 2
ARGUMENT 4
 Insufficient evidence was produced at trial to establish the knowledge element
 of felony violation of a no contact order. Accordingly, Mr. Douglas’
 conviction should be vacated. 4
CONCLUSION..... 8

TABLE OF AUTHORITIES

Cases

State v. Meyer, 37 Wn.2d 759, 226 P.2d 204 (1951).....7
State v. Myers, 133 Wn.2d 26, 941 P.2d 1102 (1997)4
State v. Salinas, 119 Wn. 2d 192, 201 P.2d 1068 (1992)4
State v. France, 129 Wn. App. 907, 120 P.3d 654 (2005).....4, 5, 7, 8

Statutes

RCW 10.99.0504, 7

INTRODUCTION

Mr. Douglas was charged with, and convicted of, felony violation of a no-contact order. At trial, the only evidence directly supporting the knowledge element of the crime was a certified copy of the no contact order containing a signature purporting to belong to Mr. Douglas. Indirectly, testimony was offered wherein Mr. Douglas questioned the arresting deputy about the grounds of his arrest, including how he could violate the no-contact order represented to him by the deputy to exist.

On appeal, this Court must clarify whether a certified copy of a no contact order alone is sufficient to meet the knowledge element without additional evidence supporting either the authenticity of the signature or demonstrating that the restrained person had knowledge of the documents' contents where no record of the prior proceedings or a witness thereto was proffered by the State.

ASSIGNMENT OF ERROR

ASSIGNMENT OF ERROR 1: Insufficient evidence supports Mr. Douglas' conviction for felony violation of a no-contact order.

ISSUE

Whether sufficient evidence supports Mr. Douglas' conviction for felony violation of a no contact order where the only substantive information adduced at trial was a certified copy of the subject no-contact order?

MATERIAL FACTS

On or about April 2, 2015 Stephen Gerald Douglas was found by two Franklin County Sheriff's deputies inside a house where his former significant other, Sheree McCullough purportedly resided. Verbatim Report of Proceedings (VRP) at 66, 93-94, 102-03. He was found after Ms. McCullough informed the deputies of his presence in the house, as well as the no-contact order, during a traffic stop. VRP at 66, 92, 102. Through dispatch, the deputies confirmed that there existed a valid no-contact order which precluded Mr. Douglas from knowingly coming within 500 feet of Ms. McCullough's residence. VRP at 108. Mr. Douglas was arrested for violation of a valid no-contact order, and subsequently charged accordingly. VRP at 104.

At trial, the State provided witness testimony that Mr. Douglas was found in the home by the two deputies. VRP at 66, 93-9, 102-03. The State also entered into evidence a certified copy of the subject no contact order, which purported to contain Mr.

Douglas' signature. VRP at 80-81. However, no evidence was offered to demonstrate that the signature on the no-contact order belonged to Mr. Douglas, that Mr. Douglas was indeed present at the entry of the no-contact order, or that he had understood the contents of the order.

Notably, the only witness testimony brought forth at trial on the subject of Mr. Douglas' knowledge consisted of the general experience of Deputy Conner, who testified that "to the best of [his] knowledge, defendants are given copies of judgment and sentences, as well as no contact orders." VRP at 102. Additionally, the deputy testified that "[he] informed [Mr. Douglas] that there was a no contact order between him and Ms. McCullough. [Mr. Douglas] stated how could he be violating the order if he wasn't with her? She was driving." VRP at 106. No signed or written statement was made by Mr. Douglas, nor did any of Mr. Douglas' purported statements admit knowledge of a no-contact order other than the one represented to him to exist by Deputy Conner.

A jury found Mr. Douglas guilty of felony violation of a no-contact order. Mr. Douglas was subsequently convicted and sentenced within the standard range. This appeal timely followed.

ARGUMENT

Insufficient evidence was produced at trial to establish the knowledge element of felony violation of a no contact order. Accordingly, Mr. Douglas' conviction should be vacated.

It is axiomatic that, in order to determine whether suffice evidence was adduced at trial to support a conviction, this Court looks to whether, after viewing the evidence in a 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 P.2d 1068 (1992). As such, the State's evidence is taken as true, and all reasonable inferences therefore drawn in its favor. *Id.* The State may prove its case through either direct or circumstantial evidence, which are weighed equally. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997).

In order to demonstrate the elements of violation of a no-contact order, it is of paramount importance that the State must demonstrate that the accused had knowledge of the order. RCW 10.99.050. To that end, it has been previously held that the admission into evidence of a certified copy of a no-contact order containing the restrained individual's signature is sufficient to withstand a challenge to the sufficiency of the knowledge element. *State v. France*, 129 Wn. App. 907, 911, 120 P.3d 654 (2005).

In *France*, the defendant challenged the sufficiency of the evidence, alleging that he was the subject of a non-*Miranda*¹ custodial interrogation, and that his statements should not have been admitted to support the knowledge prong of a no contact order violation. *Id.* Division One of this Court agreed, however it held that the error was harmless because the State had entered into evidence a certified copy of the subject no-contact order containing the defendant's signature, which itself was sufficient evidence of knowledge. *Id.* Key to this holding was undoubtedly the fact that the *France* court was satisfied that the signature on the certified order did in fact, belong to France, though the court does not mention in its brief opinion what information it relied upon in the record to make that determination. *See Id.*

It is precisely this omission that makes this case presumably distinguishable from *France*² and merits clarification by this Court. That is because, although a certified copy of the no-contact order was submitted, there was no evidence as to the authenticity of the signature on the document, nor any other evidence supplied to demonstrate Mr. Douglas' actual presence at the hearing which

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602; 16 L. Ed. 2d 694

² It likewise raises a question worthy of clarification for trial counsel.

produced the document, nor evidence of his comprehension of the document's contents. Indeed, the entirety of the oral evidence regarding his presence at the hearing the order was derived from consisted of simple procedural testimony regarding the witness' knowledge of what ordinarily occurred at such proceedings. VRP at 102. Further the testimony regarding Mr. Douglas' statements to the arresting deputy likewise failed to demonstrate knowledge, since he asked only how he could violate a no-contact order as disclosed to him by that deputy. VRP at 106. As such, there is insufficient evidence to establish either the legitimacy of the signature or his comprehension of the document. Consequently, the presumption of Mr. Douglas' knowledge of the order must be called into question.

While it could certainly be argued that, viewing the order in a light most favorable to the State yields a presumably authentic signature, such a view nevertheless exceeds what may be considered "reasonable" for purposes of determining what a trier of fact could conclude from the document standing alone without evidentiary context. After all, the certification itself merely reflects the authenticity of the court's document – it does not vouch for the *process* by which it was created, nor the actual presence of the

subject party, or his or her comprehension of the contents of the document.

Given the lack of context in the record, and given the absence of explanation by the *France* Court as to the basis of its ruling, this Court should clarify the holding in *France* by confirming the necessity of some quantum of evidence in addition to a certified copy of a no-contact order for purposes of demonstrating the knowledge element of RCW 10.99.050.³ Such a rule, applied to this case, must yield a finding that insufficient evidence was adduced at trial to support the knowledge element of the crime, and as a result, this Court should overturn the jury's verdict and grant Mr. Douglas his freedom.

³ In some aspects, such a requirement would appropriately mirror the *corpus delicti* rule. That rule, as the Court is aware, requires that there be some evidence in addition to a defendant's confession to establish that he or she committed a crime. *State v. Meyer*, 37 Wn.2d 759, 226 P.2d 204 (1951). On the other hand, this rule would require that there be some evidence in addition to the mere existence of a signed no-contact order to demonstrate the knowledge (comprehension) requirement, the purpose of both rules being that there must be an independent *indicia* of evidence confirm the reliability of a conviction.

CONCLUSION

Neither Mr. Douglas' knowledge of the no-contact order, nor his knowledge of its contents were established beyond a reasonable doubt because insufficient evidence was offered at trial. Accordingly, this Court should clarify the holding in *France* as discussed above, and in so doing, vacate Mr. Douglas' conviction.

Respectfully submitted this 11th day of March, 2016 by:

s/ John C. Julian
WSBA #43214
John C. Julian, Attorney at Law, PLLC
5 W. Alder St., Ste. 238
Walla Walla, WA 99362
Telephone: (509) 529-2830
Fax: (509) 529-2504
E-mail: john@jcjulian.com

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that I personally caused this INITIAL BRIEF OF APPELLANT to be delivered to the following individual(s) via U.S Postal Mail first class, postage prepaid, addressed as follows:

Shawn P. Sant
Franklin County Prosecutor's Office
1016 N. 4th Ave
Pasco, WA 99301

Stephen Douglas
805898
Airway Heights Corrections Center
P.O Box 1899
Airway Heights, WA 99001

DATED this 11th Day of March, 2016 by:

s/ John C. Julian
WSBA #43214
John C. Julian, Attorney at Law, PLLC
5 W. Alder St., Ste. 238
Walla Walla, WA 99362
Telephone: (509) 529-2830
Fax: (509) 529-2504
E-mail: john@jcjulian.com