

33793-6-III
COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

FILED
Apr 29, 2016
Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON,

Respondent,

v.

STEPHEN GERALD DOUGLAS,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF FRANKLIN COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:
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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Franklin County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the trial and conviction of the Appellant/Defendant.

III. ISSUE

Is there sufficient evidence of the Defendant's knowledge that he had been ordered to have no contact with an individual where (1) in 2003, twelve years earlier, the Defendant had been convicted of a misdemeanor violation of a court order and ordered to have no contact; (2) in 2013, only two years earlier, the Defendant had been convicted of another violation regarding the very same protected party, his wife, but this time as a felony; (3) his fingerprints (which connect him to a state ID system) and his signature are on the 2013 criminal judgment and sentence which again orders him to have no contact with her; (4) his signature is also on the stand-alone no-contact order appended to the J&S; (5) a former correctional officer testified that criminal defendants receive copies of their judgment and

sentences and no-contact orders in court proceedings; (6) the protected party had knowledge of the order and reported the violation to police while the Defendant was present in her home; (7) the Defendant was found hiding from police in a gap between a child's bed and wall in the protected party's home; (8) the Defendant had no other reason to be hiding from police; and (9) the Defendant did not express surprise at the reason for his arrest but only questioned why the police believed there had been contact when the protected party had left her home?

IV. STATEMENT OF THE CASE

The Defendant Stephen Douglas is convicted of a felony violation of a no-contact order, domestic violence. CP 30.

On April 2, 2015, the Defendant's wife Sheree McCullough was stopped for driving on a suspended license. RP 64-65, 92. She appeared panicked and fearful and implied to Deputy Hill that she had been driving out of necessity. RP 65, 92. She indicated that there was a restraining order. RP 119. The deputy confirmed that Ms. McCullough was the protected party in a no-contact order issued against the Defendant. RP 95.

Two deputies returned with Ms. McCullough to her Pasco home. RP 65-66, 70. After Ms. McCullough removed her sleeping daughter from the child's bedroom, police discovered the Defendant hiding from police, lying on the floor in a small gap between the child's bed and wall. RP 93-94, 99. The deputies arrested him for violating the no-contact order. RP 93-94. He expressed no confusion about the reason for his arrest. RP 97, l. 20. Initially, he queried whether he had technically violated the order if police had not seen them together at the time of the traffic stop. RP 106 ("... he stated how could he be violating the order if he wasn't with her? She was driving."), 110, 112. However, he eventually acknowledged that he had been in contact with his wife and knew that he was inside her residence. RP 106.

At trial, the court admitted three exhibits through the jail's records and extradition clerk. RP 5, 75. The jail clerk testified that these documents are linked to offenders through their fingerprints which are linked to a specific state ID (SID) number. RP 76.

Exhibit 1 is a 2003 Pasco Municipal Court judgment and sentence (J&S) which the jail clerk explained is linked to the Defendant by his fingerprints and SID number 16982478. RP 77-78; PE 1. The J&S was for a conviction of a violation of a no-contact

order and included a new no-contact order. PE 1.

Exhibit 2 is a 2013 (J&S) convicting the Defendant of a felony violation of a no-contact order, domestic violence, and ordering him to have no contact with Ms. McCullough. RP 79-80; PE 2. The 2013 J&S bears the Defendant's SID number, fingerprints, and signature. RP 79-80; PE 2. Exhibit 3 is the stand-alone domestic violence no-contact order, ordering the Defendant to have no contact with Ms. McCullough and bearing his signature. RP 80-81; PE 3.

Deputy Conner testified that when he had been a corrections officer, he observed criminal defendants receive copies of their judgment and sentences and copies of no-contact orders in court proceedings. RP 102.

V. ARGUMENT

THERE IS SUFFICIENT EVIDENCE TO SHOW THE DEFENDANT HAD KNOWLEDGE OF THE NO-CONTACT ORDER.

The Defendant challenges the sufficiency of the evidence for his knowledge of the existence of the no-contact order. The evidence is more than sufficient as to this element.

The standard of review: "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be

drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* A reviewing court defers to the trier of fact on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970 (2004). After viewing the evidence in the light most favorable to the State, interpreting all inferences in favor of the State and most strongly against the Defendant, the Court must determine whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Salinas*, 119 Wn.2d at 201.

The evidence is that: The Defendant has knowledge of no-contact orders and the repercussions for violations of court orders from as far back as 2003. PE 1. Before this offense, he had only recently been convicted of violating a no-contact order in which his wife was the protected party. PE 2. As a result of that conviction, he was ordered again to have no contact with his wife Ms. McCullough. PE 2 at 7 and 7b; PE 3. The order was in effect when he was present

in her home. The Defendant signed both the judgment and sentence and the appended no-contact order. Both documents ordered him to have no contact with Ms. McCullough. He was fingerprinted at the time of the entry of the orders. He was linked by his fingerprints which had previously been entered into the state system. Although her signature is not on the order, the protected party Ms. McCullough knew about its existence and reported the violation to police as the Defendant was present in her home. When police came to Ms. McCullough's residence, the Defendant hid from them. He was arrested on the violation of the no-contact order and for no other reason. He had no other reason to hide from police. Upon his arrest, the Defendant was not surprised to learn about the existence of the order, but only questioned how police established he had violated the order if the parties were not together at the time of Ms. McCullough's traffic stop.

The Defendant acknowledges *State v. France*, 129 Wn. App. 907, 911, 120 P.3d 654 (2005) (a certified copy of the no-contact order with Defendant's signature sufficiently demonstrates his knowledge of the order). Brief of Appellant (BOA) at 5. Under this case, the admission of PE 3 alone would be sufficient evidence of his

knowledge of the order.

The Defendant asks this Court to presume that the *France* opinion relied upon other evidence demonstrating the validity of the defendant's signature on the J&S. BOA at 5. This cannot be presumed, because, as the Defendant acknowledges, there is no such evidence or discussion of any such evidence in the opinion. There is no basis for the Defendant's request to read into the *France* opinion a different rationale. Nor is there any reason to alter the standard of review so as to find the no-contact order with Defendant's signature to be insufficient evidence of his knowledge of the order he signed.

If this case is distinguishable from *France*, it is in how this case has so much more evidence of this element than *France* did. Although there is no evidence discussed in the *France* opinion indicating the validity of the defendant's signature, that evidence exists in Mr. Douglas' case. Here the Defendant's signature is authenticated in the record – by testimony that his fingerprints were tied to his SID and tied to previous criminal history which also contains his matching signature.

It is also authenticated by the fact that the parties are husband

and wife. RP 64. It is significant that the Defendant is not some random Stephen Douglas who has no relationship to the protected party.

The record in this case explains precisely why the *France* standard is sufficient. A signature demonstrates the knowledge of the signatory. And a signature on a *judgment and sentence* is verified by a fingerprint/booking process as belonging to the actual person and ties him by both fingerprint and SID to his entire criminal history.

The Defendant's argument repeatedly speaks to presumptions. The standard of review does not allow presumptions. Instead, it requires inferences.

The Defendant fails to observe the many other facts from which a rational trier of fact, interpreting all inferences most strongly against him, could conclude he had knowledge of the order. Quite separately from his signature, the jury could infer his knowledge from this Defendant's long history with being subject to no-contact orders and being prosecuted for his violations of these orders with the very same protected party, the protected party's knowledge of the order, her flight from him, and his hiding from police when his only wrongdoing was the violation of the no-contact order. A person who

is frequently restrained by no-contact orders and convicted for their violation understands the seriousness of the orders. From Ms. McCullough's knowledge of the order, her upset communications with police about her husband's presence in her home, and the Defendant's presence in her home, one can infer that the parties had discussed the order. Hiding, like flight, is an instinctive or impulsive reaction evidencing consciousness of guilt and is a deliberate attempt to avoid arrest and prosecution. *State v. Bruton*, 66 Wn.2d 111, 112, 401 P.2d 340 (1965). The Defendant hid, because he knew that he was not allowed to be in his wife's house and police would arrest him for it. And one can infer from Dep. Conner's testimony that the Defendant would have received his orders in court after signing them so as to have had ample opportunity in the intervening two years to read the language carefully.

There is sufficient evidence on these facts of the Defendant's knowledge.

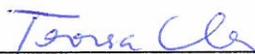
VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

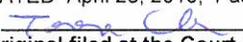
DATED: April 28, 2016.

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| <p>John C. Julian john@jcjulian.com</p> | <p>A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED April 28, 2016, Pasco, WA  Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201</p> |
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