IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DONNIE A. BALLARD, Appellant.	No. 40265-3-II UNPUBLISHED OPINION

Van Deren, J. — Donnie Ballard appeals his conviction for felony violation of a no-contact order. He argues that (1) the unlawful interception of a letter sent to his son rendered the letter and its contents inadmissible at trial under RCW 9.73.050 and (2) sufficient evidence does not support his conviction. We affirm.

FACTS

While in prison in May 2009, Ballard sent a letter to Laurie Garity's residence that was addressed to his son, DB.[1] Michelle Garity is DB's mother and Laurie Garity's daughter.[2] Although DB lived with Laurie, Michelle resided elsewhere. Because some of Ballard's previous letters to DB had blamed Michelle for his current incarceration, Laurie opened the letter "to screen [it] and make sure there wasn't anything in there . . . that could be hurtful to [DB]."

[1] We refer to DB, a juvenile, by his initials in order to protect his privacy.

[2] We refer to Laurie and Michelle Garity by their first names for clarity. We intend no disrespect.

Report of Proceedings (RP) at 54. The letter also contained a Mother's Day card and a note written to Michelle. Ballard's letter to DB specifically requested that DB "[g]ive the card t[ohis] mother," and Ballard promised to write to DB soon. Clerk's Papers (CP) at 34.

Laurie gave the letter's contents to Michelle who, in turn, gave them to law enforcement authorities because a no-contact order prevented Ballard from contacting Michelle. The no-contact order, signed by Ballard, provided that Michelle was the protected party and prohibited him from "[c]oming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for mailing of service of process of court documents by a third party or contact by defendant's lawyers with the protected person(s)." CP at 8-9.

The State charged Ballard with felony violation of a no-contact order with a special domestic violence allegation; in the alternative, the State charged Ballard with attempted violation of a no-contact order.[3] At trial, Ballard stipulated that he had two prior convictions for violation of a court order. The jury convicted Ballard of felony violation of a no-contact order with a finding of domestic violence. He appeals.

[3] Before trial, Ballard filed an unsuccessful motion under *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986), arguing that Laurie had unlawfully intercepted and opened Ballard's letter to DB under RCW 9.73.020, thus rendering the documents inadmissible under RCW 9.73.050. Ballard also appeals the trial court's denial of his *Knapstad* motion. But, "after proceeding to trial, a defendant cannot appeal the denial of a *Knapstad* motion, which is a pretrial challenge to the sufficiency of the evidence"; instead, he must challenge the sufficiency of the evidence presented at trial supporting his conviction. *State v. Cannon*, 120 Wn. App. 86, 90, 84 P.3d 283 (2004). We do not consider this claim.

ANALYSIS

Ballard argues that the trial court erred in admitting the contents of his letter to DB because Laurie's interception and opening of the letter was unlawful under RCW 9.73.020, rendering its contents inadmissible under RCW 9.73.050. The State responds that RCW 9.73.050 does not apply to written communications, such as letters. We agree with the State.

I. Admissibility of the Letter's Contents under Chapter 9.73 RCW

We review questions of statutory interpretation de novo. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). When interpreting a statute, we seek to ascertain the legislature's intent. *Jacobs*, 154 Wn.2d at 600. Where a statute's meaning is plain on its face, we must give effect to that meaning as expressing the legislature's intent. *Jacobs*, 154 Wn.2d at 600. We determine the statute's plain meaning from the ordinary meaning of its language, as well as from the statute's general context, related provisions, and the statutory scheme as a whole. *Jacobs*, 154 Wn.2d at 600.

RCW 9.73.020 provides, "Every person who shall wilfully open or read, or cause to be opened or read, any sealed message, *letter* or telegram intended for another person, or publish the whole or any portion of such a message, letter or telegram, knowing it to have been opened or read without authority, shall be guilty of a misdemeanor." (Emphasis added.)

On the other hand, RCW 9.73.030 provides in pertinent part:

> (1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:
>
> (a) *Private communication transmitted by telephone, telegraph, radio, or other device* between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

> (b) *Private conversation*, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(Emphasis added.) RCW 9.73.050 provides in pertinent part, "Any information obtained *in violation of RCW 9.73.030* or pursuant to any order issued under the provisions of RCW 9.73.040 shall be inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state." (Emphasis added.)

Thus, RCW 9.73.020 prohibits the unauthorized opening of letters, such as Laurie opening Ballard's letter to DB; RCW 9.73.030 generally prohibits the unauthorized interception or recording of private communications transmitted by electronic devices and private conversations; and RCW 9.73.050, under its plain language, requires suppression of "information obtained in violation of RCW 9.73.030," not RCW 9.73.020.[4] Relevant here, RCW 9.73.020 contains no language requiring suppression of evidence obtained by opening a letter addressed to another person.

Further, "[u]nder expressio unius est exclusio alterius, a canon of statutory construction, to express one thing in a statute implies the exclusion of the other." *State v. Delgado*, 148 Wn.2d 723, 729, 63 P.3d 792 (2003). The legislature's inclusion in RCW 9.73.050 of suppression of evidence obtained in violation of RCW 9.73.030, but not evidence obtained in violation of RCW 9.73.020, implies legislative intent to not require exclusion of evidence obtained in violation of RCW 9.73.020. Thus, even if we were to assume that Laurie's interception and opening of

[4] Similarly, two cases to which Ballard cites in support of his argument—*State v. Christensen*, 153 Wn.2d 186, 102 P.3d 789 (2004) and *State v. Porter*, 98 Wn. App. 631, 990 P.2d 460 (1999)—do not apply because they involved intercepts of communications under RCW 9.73.030.

Ballard's letter violated RCW 9.73.020, RCW 9.73.050 did not require suppression of its contents. Accordingly, the trial court did not err in its interpretation of RCW 9.73.050 and its admission of the documents was not erroneous.

II. Sufficiency of the Evidence

Ballard also argues that sufficient evidence does not support his conviction because he intended for DB, not Laurie, to deliver the Mother's Day card and note to Michelle in violation of the no-contact order.

A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). On appeal, we draw all reasonable inferences from the evidence in favor of the State and interpret them most strongly against the defendant. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). In the sufficiency context, we consider circumstantial evidence as probative as direct evidence. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). We may infer specific criminal intent of the accused from conduct that plainly indicates such intent as a matter of logical probability. *Goodman*, 150 Wn.2d at 781. We defer to the fact finder 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, *abrogated in part on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Sufficient evidence supports a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime proved beyond a reasonable doubt. *Hosier*, 157 Wn.2d at 8.

RCW 26.50.110(1)(a) provides:

> Whenever an order is granted under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:
>
> (i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party.

RCW 26.50.110(5) provides that, if the offender has two previous convictions for violating a court order, then a third conviction is a felony.

The trial court's unchallenged jury instructions stated that a person commits felony violation of a no-contact order when "he . . . has at least two prior convictions for violating the provisions of a court order and with knowledge that the [trial c]ourt had previously issued a no contact order . . . knowingly violat[es] the restraint provisions." CP at 130. RCW 9A.08.010(1)(b) provides that a "person knows or acts knowingly or with knowledge" 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(2) also provides, "When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally."

Here, Ballard stipulated that he had two prior convictions for violation of a no-contact order. The uncontested evidence shows that a no-contact order that Ballard knew applied to him with regard to Michelle prohibited him from "having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly" with her. CP at 8-9. Despite this, Ballard sent a letter to DB, included a card and note for Michelle, and instructed DB to give

them to her.

Ballard argues only that evidence of his intent was insufficient because he intended for DB to deliver the card and note to Michelle, thus Laurie's unintended intercept and delivery of the documents was an intervening event truncating his culpability. But a "knowing violation under the statute rests on the defendant's [actions]," not the actions of other parties. *State v. Allen*, 150 Wn. App. 300, 313, 207 P.3d 483 (2009). The evidence shows that Ballard intended to contact Michelle and took steps to do so. The letter and its contents that were to be delivered to Michelle intended the prohibited contact and, with his admission to two prior violations of the no-contact order, completed the crime of felony violation of the no-contact order on their delivery to her. Because sufficient evidence supports his conviction, his claim of insufficiency fails.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Penoyar, C.J.

Johanson, J.