IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. LUIS A. BRIONES, Appellant.	No. 40639-0-II UNPUBLISHED OPINION

Van Deren, J. — Luis A. Briones appeals his Grays Harbor County Superior Court conviction for felony violation of a no contact order. He contends that the evidence was insufficient to prove that he was the person named on the no contact order or that his two prior convictions were qualifying convictions under RCW 26.50.110.[1] We affirm.

FACTS

On September 15, 2009, the Aberdeen Municipal Court entered a domestic violence no contact order against Briones for the protection of Jaydee Joe. The order's expiration date was September 15, 2011. In early March 2010, while on patrol, Aberdeen Police Officer John Snodgrass came across Briones standing by a car talking to Joe, who was sitting in the passenger

[1] A commissioner of this court considered the matter pursuant to RAP 18.14 and referred it to a panel of judges.

seat. Snodgrass was familiar with both individuals and he knew about the no contact order. He arrested Briones.

At trial, the State produced copies of two prior municipal court judgments for convictions of violation of a protection order, one dated October 26, 2009, and one dated January 28, 2010. Neither judgment provided any description of the underlying protection order. Briones challenged the documents as not properly authenticated, but the court overruled that objection and admitted them. The jury convicted him as charged.

ANALYSIS

Briones first contends that the State did not present sufficient evidence to prove that he was the individual named in the protection order. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. McKeown*, 23 Wn. App. 582, 588, 596 P.2d 1100 (1979).

Briones asserts that there was nothing more than an "identity of names" to establish that he was the person named in the no contact order. *State v. Brezillac*, 19 Wn. App. 11, 15, 573 P.2d 1343 (1978). It is true that "identity of names" alone does not provide sufficient evidence to

uphold a conviction that depends on a link between the identity of an individual named in documents and the identity of the defendant at trial. *State v. Huber*, 129 Wn. App. 499, 502, 119 P.3d 388 (2005). The State must present some corroborating evidence, such as booking photographs or fingerprints, eyewitness identification, or distinctive personal information. *See Huber*, 129 Wn. App. at 502; *Brezillac,* 19 Wn. App. at 13.

Here, both Joe and Snodgrass testified that this defendant was subject to a no contact order protecting Joe. The reasonable inference from that testimony was that the defendant was the "Luis A. Briones" named in the no contact order submitted by the State. In addition, Snodgrass testified that he had arrested this defendant for the crime that led to the no contact order.[2] Finally, the date of birth on the information charging Briones with the current crime was the same date of birth provided for the Briones who was subject to the no contact order. These circumstances provided substantial evidence that this defendant was the person named in the no contact order.

The no contact order involved here was issued under chapter RCW 10.99 RCW. A violation of an order issued under this chapter is a class C felony if the offender has at least two prior convictions of violating the provisions of an order issued under chapter 26.50, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW. *See* RCW 26.50.110(5). Briones contends that the evidence was not sufficient to prove that his prior violations were of orders issued under any of chapters listed in RCW 25.50.110(5). He points out that protection orders may be issued under chapter 10.14 RCW, which is not listed in RCW 26.50.110(5).

[2] This testimony is somewhat ambiguous. It is not entirely clear how much of the testimony was actual memory and how much was based on the fact that the court documents contained the officer's citation numbers.

The State asserts that Briones failed to preserve this issue because he did not raise it below. It relies on *State v. Carmen*, 118 Wn. App. 655, 663-64, 77 P.3d 368 (2003), which held that whether the prior convictions qualified as predicate convictions under the statute was a threshold determination of relevance or applicability, and that the failure to object to admission on this ground waived the issue. *See also State v. Ortega*, 134 Wn. App. 617, 625-26, 142 P.3d 175 (2006); *State v. Gray*, 134 Wn. App. 547, 549-50, 557-58, 138 P.3d 1123 (2006). Our Supreme Court approved the reasoning in *Carmen* in *State v. Miller*, 156 Wn.2d 23, 30, 123 P.3d 827 (2005).

Briones relies on *State v. Roswell*, 165 Wn. 2d 186, 192, 196 P.3d 705 (2008), which held that a prior conviction that alters the crime is an essential element that must be proved to the jury. *Roswell* dealt with prior convictions of sex offenses under RCW 9.68A.090,[3] and it dealt only with an issue of bifurcation. There was no issue regarding the validity or applicability of prior judgments. *Roswell* is not on point. Under *Miller,* the existence of prior convictions is an element of Briones's current offense and the applicability of the evidence of those convictions is a question for the court, which can be waived. Briones failed to challenge the admissibility of

[3] Communication with a minor for immoral purposes is a felony, if the defendant has previously been convicted of certain listed sex offences. RCW 9.68A.090(2).

the previous judgments on the basis of applicability, and he has waived that objection.

Affirmed.

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.