

**FILED**  
**APRIL 10, 2012**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

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|-----------------------------|---|----------------------------|
| <b>STATE OF WASHINGTON,</b> | ) | <b>No. 30494-9-III</b>     |
|                             | ) |                            |
| <b>Respondent,</b>          | ) |                            |
|                             | ) | <b>Division Three</b>      |
| <b>v.</b>                   | ) |                            |
|                             | ) |                            |
| <b>JEREMY LOGAN MILLS,</b>  | ) | <b>UNPUBLISHED OPINION</b> |
|                             | ) |                            |
| <b>Appellant.</b>           | ) |                            |
|                             | ) |                            |

Kulik, J. — Jeremy L. Mills was convicted of felony violation of a no contact order (NCO). He appeals, asserting that the State did not present sufficient evidence that he was the person named in the NCO. In a challenge to the sufficiency of the evidence, all reasonable inferences are drawn in favor of the State. Here, a deputy sheriff testified Mr. Mills was the subject of an NCO and Jennifer Morgan, the protected party, identified Mr. Mills in the courtroom as the person who she reported as having contacted her. That is sufficient evidence for a juror to identify Mr. Mills. We affirm the conviction.

**FACTS**

Thurston County Superior Court issued a protection order listing Jennifer L. Morgan as the protected party and Jeremy L. Mills as the restrained party. After Mr.

Mills allegedly called and spoke to Ms. Morgan, the State charged Mr. Mills with a felony violation of the NCO.

At trial, the court admitted the domestic violence NCO as evidence. The NCO restrained Jeremy L. Mills from contacting Jennifer L. Morgan. Ms. Morgan testified to the circumstances surrounding the telephone call and the report made to police. She identified Mr. Mills at trial.

Thurston County Deputy Sheriff Marlin Bryant testified that an NCO existed between Jeremy Mills and Jennifer Morgan and identified the NCO at trial. He also recounted the events surrounding his investigation into the contact between Ms. Morgan and Mr. Mills. He stated that he attached a copy of the NCO to his investigation report. The State and Mr. Mills stipulated that Mr. Mills had twice been convicted for violating an NCO. A jury convicted Mr. Mills of the charged offense.

Mr. Mills appeals, contending that the State failed to prove all of the elements of the crime beyond a reasonable doubt. Specifically, Mr. Mills contends that the State did not present sufficient evidence to prove that Ms. Morgan and he were the persons named in the NCO, and that the stipulation did not establish that Mr. Mills had two prior qualifying convictions.

## ANALYSIS

In a challenge to the sufficiency of the evidence, the standard of review is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt.” *State v. Gentry*, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Id.* at 597. Direct and circumstantial evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility issues are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

*Sufficiency of the Evidence.* The due process clause of the Fourteenth Amendment to the United States Constitution requires that the State prove every element of a crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The remedy for a conviction based on insufficient evidence is reversal and dismissal with prejudice. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

Violation of an NCO consists of three essential elements: (1) willful contact with another, (2) the prohibition of such contact by a valid NCO, and (3) the defendant’s

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knowledge of the NCO. *State v. Washington*, 135 Wn. App. 42, 49, 143 P.3d 606 (2006) (quoting *State v. Clowes*, 104 Wn. App. 935, 944, 18 P.3d 596 (2001)); *see* RCW 26.50.110.

Violation of an NCO under chapter 10.99 RCW becomes a felony if the offender has at least two previous convictions for violating the provisions of an order issued under chapter 26.50, 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW. RCW 26.50.110(5).

It is the State's burden to establish the "identity of the accused as the person who committed the offense." *State v. Hill*, 83 Wn.2d 558, 560, 520 P.2d 618 (1974). "Identity involves a question of fact for the jury and any relevant fact, either direct or circumstantial, which would convince or tend to convince a person of ordinary judgment, in carrying on his everyday affairs, of the identity of a person should be received and evaluated." *Id.*

"[W]hen criminal liability depends on the accused's being the person to whom a document pertains . . . the State must do more than authenticate and admit the document." *State v. Huber*, 129 Wn. App. 499, 502, 119 P.3d 388 (2005). The State must establish by independent evidence that the person named in the document is the defendant in the present action; independent evidence can include booking photographs or fingerprints,

eyewitness identification, or distinctive personal information. *State v. Santos*, 163 Wn. App. 780, 784, 260 P.3d 982 (2011) (quoting *Huber*, 129 Wn. App. at 502-03).

In *Hill*, the repeated references to the identity of the defendant were sufficient to allow the jury to conclude that Mr. Hill had committed the crime. *Hill*, 83 Wn.2d at 560.

Here, the State produced evidence to convince a rational trier of fact that Mr. Mills, the defendant, was the same Jeremy Mills named in the NCO. Mr. Mills was present during trial and continually referred to as “the defendant” and “Mr. Mills.” *See* Report of Proceedings (March 31, 2011) (RP). Neither the State nor the defense mentioned any other Jeremy Mills. Ms. Morgan identified Mr. Mills in the courtroom and said that her mother called the police after Mr. Mills contacted her. Deputy Bryant also testified that Jeremy Mills was the subject of an NCO and then continued to refer to Mr. Mills as “the defendant.” There is ample evidence for a reasonable juror to conclude that Mr. Mills was the same Jeremy Mills named in the NCO.

The State also produced evidence to convince a rational trier of fact that Ms. Morgan, the victim, was the same Jennifer Morgan named in the NCO. Ms. Morgan testified at trial that she needed to report the telephone call from Mr. Mills to avoid consequences from Child Protective Services. After Ms. Morgan’s testimony, Deputy Bryant testified that there was an NCO involving Jennifer Morgan and Jeremy Mills.

Deputy Bryant also testified that Jennifer Morgan was the protected person and that “the defendant” was restrained from contacting her. RP at 57. Deputy Bryant testified that he spoke with Jennifer Morgan while investigating a complaint lodged by her mother.

Considering the evidence, a reasonable juror could conclude that Ms. Morgan was the same Jennifer Morgan who was named in the NCO.

In closing arguments, Mr. Mills’s counsel told the jury that Mr. Mills did not dispute that he knew of the NCO and the only element at issue was whether or not Mr. Mills violated the NCO. A juror could conclude that the defense did not question the identity of the parties involved in the NCO.

The State presented sufficient evidence to convince a reasonable juror that Jeremy Mills and Jennifer Morgan, named in the NCO, were the same parties who appeared at trial.

*Prior Qualifying Convictions.* Mr. Mills also challenges the court’s finding that he had two prior qualifying convictions. In a felony violation of an NCO, the statutory authority for prior NCOs is not an essential element to be decided by the jury. *State v. Gray*, 134 Wn. App. 547, 556, 138 P.3d 1123 (2006). Rather, the trial court makes a threshold determination whether the previous NCOs are admissible “as part of its ‘gate-keeping function’ before admitting the prior convictions into evidence for the jury’s

consideration.” *Id.* (quoting *State v. Miller*, 156 Wn.2d 23, 31, 123 P.3d 827 (2005)).

A party must raise a timely objection on specific grounds in order to assign error to a ruling that admits evidence. *Id.* at 557. A party waives his or her opportunity to challenge the admissibility of a prior NCO by failing to object to its admission at trial. *Id.* “[W]hen a defendant stipulates to a prior conviction the court must accept the stipulation and shield the jury from hearing evidence that led to the prior conviction.” *State v. Roswell*, 165 Wn.2d 186, 195, 196 P.3d 705 (2008).

In *State v. Ortega*, 134 Wn. App. 617, 625, 142 P.3d 175 (2006), Mr. Ortega contended that the statutory authority for his previous NCO convictions needed to be proven to a jury beyond a reasonable doubt, even though Mr. Ortega stipulated to the prior convictions. The court rejected his argument, based on its holding in *Gray*. *Id.* at 625-26. Furthermore, the court determined that Mr. Ortega could not challenge the admissibility of his prior NCOs. *Id.* “Because [Mr.] Ortega did not object, he may not complain on appeal that the trial court should have made the determination before admitting the stipulation.” *Id.* at 626.

Just as in *Ortega*, Mr. Mills contended that the State needed to prove that his prior NCO violations were within the list of qualifying orders under RCW 26.50.110. But Mr.

Mills did not object to the admissibility of the NCO violations prior to his stipulation. He waived any challenge to their statutory authority.

Based on the trial court's unchallenged admission of the prior NCO violations and the parties' stipulation to the two prior violations, the jury could determine beyond a reasonable doubt that Mr. Mills had two previous convictions for NCO violations.

Mr. Mills also assigns error to two other issues in his statement of additional grounds for review. First, he contends that the unlawful inclusion of two slash marks on his charging document was a double jeopardy violation, and his counsel was deficient for not contesting the two slashes. This alleged error is unclear and, therefore, cannot be evaluated. He also contends that he was denied the right to confront a third party whose testimony was used at trial. He fails to identify the third party and, therefore, this contention cannot be evaluated either.

We affirm the conviction and the judgment and sentence.

A majority of the panel has determined this opinion will not be printed in the



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Washington Appellate Reports, but it will be filed for public record pursuant to  
RCW 2.06.040.

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Kulik, J.

WE CONCUR:

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Brown, J.

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Siddoway, A.C.J.