# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>BOW STAR HALL,<br><br>Appellant. | No. 38001-3-II<br><br><br><br><br><br>UNPUBLISHED OPINION |

Hunt, J. — Bow Star Hall appeals his bench trial convictions for violating a restraining order and committing residential burglary. He argues that (1) insufficient evidence supports the trial court's conclusion that he "knowingly" violated a restraining order, (2) insufficient evidence supports the trial court's conclusion that he committed residential burglary based on the predicate offense of violating a restraining order, and (3) his trial counsel rendered ineffective assistance by failing to make a *corpus delicti* objection to certain trial testimony. We affirm.

FACTS

I. Temporary Restraining Order

A. May 4 Order

On May 4, 2007, Sandra Hanson obtained a temporary restraining order (May 4 order) against her ex-boyfriend, Bow Star Hall. At that time, their young son, RH,[1] lived with Hanson. The May 4 order restrained and enjoined Hall from (1) disturbing the peace of Hanson and RH; (2) coming within 250 feet of Hanson's home, work place, or school or within 250 feet of RH's

[1] We use initials to refer to minors.

school or day care; and (3) molesting, assaulting, harassing, or stalking Hanson. Although Hall attended the superior court proceedings during which the restraining order was issued, he refused to sign the May 4 order.

The May 4 order read: "***Violation of a Restraining Order in paragraph 3.1 with actual notice of its terms is a criminal offense under Chapter 26.50 RCW and will subject the violator to arrest. RCW 26.09.060.***" Supp. Clerk's Papers (CP) at 7. Although the May 4 order expressly provided that it would expire after one year, it also contained a notation, which the State describes as a "scrivener's error," listing the expiration date as "05/04/2007" instead of "05/04/2008." This section of the restraining order read:

> This restraining order will expire in 12 months and shall be removed from any computer based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants, unless a new order is issued, or unless the court sets forth another expiration date here: *05/04/2007 (month/date/year).*

Supp. CP at 7 (emphasis added). It is this latter italicized date that Hall contends on appeal caused the restraining order to expire on the date it issued.

B. May 25 Order

On May 25, after discovering the apparent scrivener's error,[2] the trial court entered a "revised temporary order" (May 25 order) to "correct" the May 4 restraining order's expiration date. The May 25 order provided: "This order amends and supersedes the Temporary Order entered herein on May 4, 2007, as the previous order contains a clerical error as to the expiration date of the restraining order." Supp. CP at 5. Aside from correcting the expiration date to May

[2] The record contains no information about how the trial court discovered this error.

4, 2008, the May 25 order contained the same language as the May 4 order.

Hall did not attend the May 25 hearing. And the record before us on appeal does not show that he received a copy of the amended order.[3]

C. Entry Into Hanson's Home

On April 18, Hall went to Hanson's home at approximately 4:30 am. Several people were with Hanson in her home at that time, including RH; Hanson's sister, Sharon;[4] Hanson's roommate, Aimee Devous; and Devous's two sons. Hall entered the home and walked into the room where Devous was sleeping. Devous awoke and saw Hall standing over her bed with a lit candle in his hand. Hall grabbed Devous's son, BD, who was sleeping in her bed, and tried to take him out of the room. But Devous stopped Hall, told BD to stay in the bedroom, and left the room to find Hanson.

Hall followed Devous to Hanson's bedroom, where Hanson and RH were sleeping. When Hanson awoke and saw Hall, she called her mother, Melinda, and asked her to call the police because "[Hall] was there, he wasn't supposed to be." While waiting for the police to arrive, Hanson observed that Hall was acting uncharacteristically strange: He spoke quickly, looked back and forth frequently, and repeatedly paced around the house. Devous also noticed that Hall was "not right," describing his behavior as "scary," "irrational," "hallucinating," "bizarre," "schizophrenic," and "delusional."

En route to Hanson's residence, Deputy Jeff Godbey learned from law enforcement

[3] The record indicates that the trial court mailed a notice of entry of the May 25 order to Hall, but it apparently went to the wrong address.

[4] For clarity, we address Hanson's relatives by their first names; we intend no disrespect.

records that Hall had not been served with the May 25 order. When Godbey approached Hall in Hanson's home, he asked Hall whether he (Hall) was supposed to be there. Hall replied that he knew about the restraining order, but he stated that the trial court had recently "squashed" it.[5] Based on this conversation, Godbey determined that Hall knew there was a valid order preventing him (Hall) from entering Hanson's home. Godbey then arrested Hall and called for "back up" because Hall refused to cooperate or to leave the property. Several minutes later, state troopers arrived and removed Hall from Hanson's property by force.

## II. Procedure

The State charged Hall with residential burglary, violating a restraining order, resisting arrest, and obstructing a law enforcement officer. Hall waived a jury and proceeded to a bench trial.

The trial court heard testimony from Godbey, Hanson, Sharon, and Melinda, who recounted the events that occurred at Hanson's home. Hanson testified that despite Hall's irregular behavior, she believed he knew where he was when he entered her home. Godbey testified that when he arrested Hall, Hall was aware of the restraining order prohibiting him from contacting Hanson. Melinda testified that one month before Hall's arrest, he had told her that he could not see RH until after May 8, 2008, when his restraining order "would be over."

Hall's defense counsel raised no *corpus delicti* objection to Melinda's testimony. Hall called no witnesses. During closing argument, he argued that the State had failed to prove that he violated the restraining order because (1) he had never received notice or service of the May 25

[5] The record shows that the trial court never quashed Hall's temporary restraining order.

order, which superseded the May 4 order; and (2) lacking notice or service of the May 25 order, violation of which served as the predicate offense for residential burglary, his presence at Hanson's home did not constitute residential burglary.

The trial court found that Hall had violated the restraining order because he (1) attended the May 4 hearing, (2) declined to sign the order,[6] (3) knew that the order would expire 12 months after the court's May 4 signing date, (4) understood he could not go onto Hanson's property, (5) believed that the May 4 order was correct, and (6) had no knowledge of the supposed clerical error or the court's subsequent "correction" of the error. Consequently, the trial court found Hall guilty of violating a restraining order, committing residential burglary, and resisting arrest.[7]

The trial court sentenced Hall to 60 days in jail and ordered him to undergo both mental health and drug abuse evaluations. The trial court also entered a new one-year temporary restraining order against Hall.

Hall appeals.

## ANALYSIS

### I. Notice of Restraining Order

Hall argues that the May 4 restraining order was essentially void because by its own terms,

[6] The trial court noted that Hall might have had a stronger argument if he had signed the May 4 order, noticed the clerical error, and entered Hanson's house in 2007 based on his belief that the May 4 order expired on the signing date. The trial court also stated that it was "not willing to engage in [a] hypertechnical reading of [the order] under these circumstances." Report of Proceeding (RP) (June 9, 2008) at 90.

[7] The trial court found Hall not guilty of obstructing a law enforcement officer.

it expired on the very day that the court issued it. Hall is incorrect.

> The portion of the restraining order at issue read:
>
> *This restraining order will expire in 12 months* and shall be removed from any computer based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants, unless a new order is issued, or unless the court sets forth another expiration date here: 05/04/2007 (month/date/year).

Supp. CP at 7 (emphasis added). This order was signed and dated "May 4, 2007." Thus, by the order's own terms, it expired 12 months from May 4, 2007, namely May 4, 2008.

Hall contends that the language of the May 4 order that caused the superior court to "correct" it on May 25 did not operate to extinguish the restraining order on the day it was signed. As set forth above, the May 4, 2007 order unambiguously states that the order "will expire in 12 months." It goes on to state several possibilities that might change or nullify this order, including if "the court sets forth another expiration date here: 05/04/2007 (month/date/year)." Supp. CP at 7.

This latter clause does not, however, nullify the former clause setting the expiration date 12 months hence; nor does this latter clause state that "05/04/2007" is the expiration date. On the contrary, "05/04/2007" appears merely to be an example of the place and manner in which a new expiration date would be entered, if and when such an event occurred. And it cannot reasonably be said that the court was entering a new expiration date on the very day that it was first entering the restraining order, May 4, 2007. As the record shows and we explain later in this analysis, it is uncontroverted that Hall was present when the court entered the May 4, 2007 restraining order and that he received a copy of it. Therefore, he clearly had notice of the restraining order that he

later violated when he entered Hanson's home.

## II. Sufficiency of Evidence

Hall next argues that the evidence is insufficient to support his convictions because the State failed to prove he received notice of the May 25 order. Because the record contains sufficient evidence to show that Hall knew about the May 4 order, his argument fails.

Hall similarly argues that the evidence presented at trial was insufficient to prove that he possessed the requisite intent to commit residential burglary because he (1) did not know about the May 25 order and (2) was "not in his right mind" at the time of the offense. This argument also fails.

### A. Standard of Review

A defendant may challenge the sufficiency of the evidence for the first time on appeal. RAP 2.5(a)(3); *City of Seattle v. Slack*, 113 Wn.2d 850, 859, 784 P.2d 494 (1989) ("Due process requires the State to prove its case beyond a reasonable doubt; thus, sufficiency of the evidence is a question of constitutional magnitude and can be raised initially on appeal.") (citing *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983)). When reviewing a challenge to the sufficiency of evidence, we view the evidence in the light most favorable to the State and determine whether a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Slack*, 113 Wn.2d at 859. In challenging the sufficiency of the evidence, the defendant admits the truth of the State's evidence and all inferences reasonably drawn from it. *State v. Hernandez*, 85 Wn. App. 672, 675, 935 P.2d 623 (1997). Under this standard, reviewing courts need not be convinced of the defendant's guilt beyond a reasonable doubt; we must determine only whether substantial evidence supports the trial court's verdict.[8] Such is the case

here.

B. Restraining Order Violation

A person violates a restraining order by knowingly violating one or more of its provisions. RCW 26.50.110(1) provides: "Whenever an order is granted under this chapter . . . and the respondent or person to be restrained knows of the order, a violation [of the order] . . . is a gross misdemeanor."

Hall argues that because he never received service of the May 25 order, the State failed to prove that he knew about "the order in effect" at the time he entered Hanson's home. Hall asserts that the legislature did not intend to impute knowledge of an amended order that corrects clerical errors because RCW 26.50.110(1) requires the restrained person to know of the order that is in effect at the time of the violation. The State counters that Hall's knowledge of the May 25 order is immaterial because he knew about the May 4 order and had no reason to think it was invalid. As the State discusses, the trial court found that Hall knew about the May 4 order when he entered Hanson's home.

Hall's insufficiency claim admits the truth of the State's evidence and all inferences that may be drawn from it. *Hernandez*, 85 Wn. App. at 675. He does not dispute that he attended the May 4 hearing and that he understood the terms of the restraining order that the trial court entered that day. His contention that he received no notice of the May 25 order supports the trial court's finding that Hall had no reason to know that the May 4 order had been superseded and, thus, had no reason to doubt the validity of the May 4 order or its terms, which included a one-

[8] *State v. Potts*, 93 Wn. App. 82, 86, 969 P.2d 494 (1998).

year effective period. The record also indicates that Hall told Melinda before his arrest that he had a restraining order against him that would expire in one year.

Based on the foregoing facts and drawing reasonable inferences in the State's favor, we hold that sufficient evidence supports Hall's conviction for violating a restraining order.

C. Residential Burglary

RCW 9A.52.025(1) provides, "A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle." Although the State must independently prove both elements, "the Legislature has adopted a permissive inference to establish the requisite intent whenever the evidence shows a person enters or remains unlawfully in a building." *State v. Stinton*, 121 Wn. App. 569, 573, 89 P.3d 717 (2004) (quoting *State v. Grimes*, 92 Wn. App, 973, 966 P.2d 394 (1998)). Violating a restraining order "can serve as a predicate crime for residential burglary." *Stinton*, 121 Wn. App. at 576; *see also State v. Bergeron*, 105 Wn.2d 1, 4, 711 P.2d 1000 (1985) ("The intent required by our burglary statutes is simply the intent to commit any crime against a person or property inside the burglarized premises.").

Contrary to Hall's argument, the record shows that Hall (1) knew he was in Hanson's house on April 18, 2008, and (2) understood that a restraining order prohibited him from entering it. Because violating a restraining order serves as a predicate offense for residential burglary, proof that Hall knowingly violated the restraining order established the crime's "intent" prong. Viewing this evidence in the light most favorable to the State, we hold that any rational trier of fact could have found Hall guilty of residential burglary beyond a reasonable doubt.

## III. Ineffective Assistance of Counsel

Finally, Hall claims that he received ineffective assistance when his trial counsel failed to make a *corpus delicti* objection to Melinda's trial testimony. This argument also fails.

### A. Standard of Review

To demonstrate ineffective assistance of counsel, an appellant must satisfy the two-pronged test set forth under *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 674 (1984); *see State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). First, the appellant must show that counsel's performance fell below an objective standard of reasonableness. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). Second, there must be a reasonable probability that the result of the proceedings would have differed without counsel's unprofessional errors. *McFarland*, 127 Wn.2d at 335. Reasonable probability should be sufficient to undermine confidence in the outcome of the case. *Strickland*, 466 U.S. at 694.

We presume that the defendant received effective representation at trial. *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995), *cert. denied*, 516 U.S. 1121 (1996). We must be "highly deferential" in evaluating a challenged attorney's performance. *Strickland*, 466 U.S. at 689. To establish ineffective assistance of counsel, the record must show no legitimate strategic or tactical rationale for the trial attorney's decisions. *McFarland*, 127 Wn.2d at 336. Hall fails to establish ineffective assistance of counsel here.

### B. *Corpus Delicti*

Hall contends that his trial counsel should have objected to Melinda's testimony that Hall

told her he could not see RH until after May 8, 2008, when his restraining order "would be over," because the State presented no corroborating evidence to support her testimony and, therefore, her testimony violated the *corpus delicti* rule. We disagree.

The *corpus delicti* rule renders a defendant's incriminating statement inadmissible unless the State presents independent evidence to corroborate it, showing that the crime described actually occurred. *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006) This corroborative evidence must support a logical and reasonable inference of the facts that the State seeks to prove, but it need not be enough to support a conviction. *State v. Aten*, 130 Wn.2d 640, 656, 927 P.2d 210 (1996). Here, however, there was no justification to invoke the *corpus delicti* rule.

There was ample other evidence that Hall committed the burglary of Hanson's home and violated the restraining order. The State presented the following evidence corroborating Melinda's testimony about Hall's incriminating statements: (1) Hall attended the May 4 hearing at which the court entered the one-year restraining order, (2) Hall understood that the order would be effective for one year, and (3) Hall told Godbey that he knew about this restraining order when he entered Hanson's home. This corroborative evidence supports a logical and reasonable inference, independent of Melinda's testimony, that Hall knew about the restraining order at the time he entered Hanson's home in violation of the order.

Accordingly, Hall's trial counsel did not fall below an objective standard of reasonableness when he made no *corpus delicti* objection to Melinda's testimony about Hall's incriminating statements. Because Hall fails to meet the first prong of the test, we do not reach the second

prong, prejudice. Therefore, we hold that Hall has failed to show that he received ineffective assistance of counsel.

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.

Hunt, J.

We concur:

Bridgewater, P.J.

Sweeney, J.