IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. GARY LYNN BARCKLEY, Appellant.	No. 38993-2-II UNPUBLISHED OPINION

Van Deren, C.J. — Gary Lynn Barckley appeals his jury conviction for felony violation of a domestic violence no-contact order. He contends that his conduct was not criminal under former RCW 26.50.110 (2006). He alternatively argues that the State's evidence was insufficient to sustain his conviction. We affirm.

FACTS

On August 12, 2004, the Thurston County Superior Court entered a domestic violence no-contact order prohibiting Barckley from contacting his former girl friend, Brenda Huhtala. Barckley signed the no-contact order, which stated that it remained in effect until August 12, 2009.

Barckley and Huhtala had been together for thirteen years and had one child in common, Hunter. On December 12, 2006, Hunter was six years old. On that day Barckley, telephoned

Huhtala's residence and left a message on her answering machine asking for Hunter's social security number for tax purposes. When Huhtala discovered Barckley's message on her answering machine, she called the police.

Based on Barckley's December 12 telephone call and message, the State charged Barckely with felony violation of a no-contact order, alleging that Barckley had two prior convictions for violating no-contact orders. At trial, Huhtala testified as above described. Barckley stipulated at trial that he had two prior convictions for violating no-contact orders. He also testified that Hunter was not listed on the no-contact order and that when he called Huhtala's residence, he was trying to ask Hunter about his social security number.

The jury convicted Barckley as charged and found by special verdict that he had two prior convictions for violating no-contact orders. Barckley appeals.

DISCUSSION

Interpretation of Former RCW 26.50.110

Barckley first contends that his conviction should be reversed and dismissed because his conduct was not criminal under former RCW 26.50.110. We disagree.

We review questions of statutory interpretation de novo. *State v. Allen*, 150 Wn. App. 300, 307, 207 P.3d 483 (2009). As we noted in *Allen*, former RCW 26.50.110(1) was not artfully drafted. 150 Wn. App. at 307; *see also State v. Wofford*, 148 Wn. App. 870, 878, 201 P.3d 389 (2009); *State v. Bunker*, 144 Wn. App. 407, 413, 183 P.3d 1086, *review granted*, 165 Wn.2d 1003 (2008). The relevant provision stated in part:

> Whenever an order is granted under this chapter, chapter 7.90, 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 the restraint provisions, or of a provision excluding the person

> from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2)[](a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

Former RCW 26.50.110(1). If a violation involves assaultive contact, it is a felony. Former RCW 26.50.110(4). And, if the offender has two previous convictions for violating a no-contact order, a third conviction is a felony. Former RCW 26.50.110(5). Violating a no-contact order is also punishable as contempt of court under former RCW 26.50.110(3).

RCW 10.31.100(2)(a), in turn, mandates that the police must arrest any person suspected of violating a Washington domestic violence or no-contact order, but only if they have probable cause to believe that the restrained person has threatened or performed acts of violence, or has entered a prohibited area. *Allen*, 150 Wn. App. at 308; *Wofford*, 148 Wn. App. at 876; *Bunker*, 144 Wn. App. at 414. RCW 10.31.100(2)(b) requires arrest under similar circumstances for foreign protection orders. *Allen*, 150 Wn. App. at 308; *Wofford*, 148 Wn. App. at 876; *Bunker*, 144 Wn. App. at 414. As did the defendant in *Allen*, Barckley argues that, for a violation of former RCW 26.50.110(1) to be a criminal offense, the violation must be one that mandates arrest; i.e., one that involves an act or threat of violence. *Allen*, 150 Wn. App. at 308. In other words, Barckley contends that the phrase "for which an arrest is required under RCW 10.31.100(2)[](a) or (b)" modifies each of the clauses that precedes that phrase in former RCW 26.50.110(1).

We recently, on two occasions, specifically addressed and rejected Barckley's argument. In *Wofford*, and later in *Allen*, we held, in accord with Division One's decision in *Bunker*, that

Barckley's interpretation of the statute is erroneous. *See Allen*, 150 Wn. App. at 310; *Wofford*, 148 Wn. App. at 879, 881. We explained that Barckley's proffered interpretation would lead to illogical results. *Allen*, 150 Wn. App. at 311-12; *Wofford*, 148 Wn. App. at 882-84. We also held that the statute is ambiguous and we explained why the last antecedent rule and the rule of lenity do not apply in this circumstance. *Allen* at 310-12; *Wofford*, 148 Wn. App. at 878, 881-84. We instead looked to the legislature's amendments to the statute in 2000 and 2007 and held that "[t]hese amendments show that the legislature always intended criminal penalties for any no-contact order violation." *Allen*, 150 Wn. App. at 309; *see also Wofford*, 148 Wn. App. at 879-81.

Barckley contends that there is a split of authority regarding the correct interpretation of former RCW 26.50.110(1) and asks us to apply our prior decisions in *State v. Madrid*, 145 Wn. App. 106, 108, 192 P.3d 909 (2008) and *State v. Hogan*, 145 Wn. App. 210, 212, 192 P.3d 915 (2008), which found the former statute unambiguous and applicable only to crimes requiring arrest, a result contrary to *Allen*, *Wofford,* and *Bunker*. But, because Barckley offers no compelling reason for us to depart from our recent decisions in *Wofford* and *Allen*, we adhere to and apply those decisions and hold that any violation of a no-contact order is a crime under former RCW 26.50.110(1).[1]

Sufficiency of the Evidence

Barckley next argues that the evidence is insufficient to sustain his conviction for violation of a no-contact order because the evidence shows only that he was trying to contact his child,

[1] As noted, our Supreme Court granted review in *Bunker*. *See* 165 Wn.2d at 1003. The Court heard oral argument on February 23, 2010, and a decision is pending. Barckley acknowledges that *Bunker* is pending and states in his brief that he will withdraw this issue if the Supreme Court affirms *Bunker*.

who was not listed on the no-contact order. We disagree.

When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007) (citing *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *Brown*, 162 Wn.2d at 428. An insufficiency claim admits the truth of the State's evidence and all reasonable inferences. *Brown*, 162 Wn.2d at 428. Credibility determinations are for the trier of fact and are not subject to review. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004) (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990), *abrogated on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)). We must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *Thomas*, 150 Wn.2d at 875.

When Barckley left a message on Huhtala's answering machine on December 12, 2006, he was subject to a no-contact order. The order provided in part that Barckley "[s]hall have NO CONTACT, directly, indirectly, in writing, by telephone, personally or through other persons with the person(s) named below." Ex. 1. The person named was Huhtala.

Barckley admitted at trial that he signed the order and knew of the order and its contents. He admitted that he called Huhtala's residence and left a message on her answering machine, but he argued at trial, and argues here, that the message was for his six year old son, Hunter. But although Hunter's name is not listed on the no-contact order, that fact does not assist Barckley.

He admitted that he telephoned Huhtala's home and left a message on her answering machine.

Barckley contends that the purpose of his call was to ask Hunter for his social security number for tax purposes. But Barckley also admitted at trial that, to his knowledge, Hunter did not know his social security number and that, although Hunter was capable of pushing a button on the answering machine to listen to it, Hunter did not know how to operate the answering machine. Thus, it was likely that Huhtala would review the messages on her answering machine, and she did so. The jury did not find convincing Barckley's contention that he was merely trying to reach his son. Moreover, as noted, there is no evidence that six year old Hunter knew his social security number and would have been able to relay that information to Barckley without Huhtala's help. *See State v. Foster*, 128 Wn. App. 932, 940, 117 P.3d 1175 (2005) (indicating that family court is the appropriate avenue for parents to contact their children where a no-contact order exists between the parents).

Barckley argues that Hunter could have learned his social security number with the help of the boy's older sister and, thus, would not have had to contact Huhtala for that information. But there is no evidence in the record regarding Hunter's sister's age or capabilities, whether she knew Hunter's social security number, or whether she could obtain such information without Huhtala's help. Considering Barckley's admission at trial that he left a message on Huhtala's answering machine and reviewing the evidence in the light most favorable to the State, we hold that the State presented sufficient evidence to sustain his conviction for violation of a no-contact

order.

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, C.J.

We concur:

Hunt, J.

Penoyar, J.