IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. BRIAN LEE HAYNES, aka BRYAN LEE HAYNES, Appellant.	)	No. 66117-5-I DIVISION ONE UNPUBLISHED FILED: March 12, 2012

Cox, J. — Brian Haynes appeals his conviction for three counts of felony violation of a no-contact order. He argues that the State failed to prove beyond a reasonable doubt one of the counts. We hold that a rational trier of fact could have found Haynes guilty beyond a reasonable doubt and thus, we affirm.

Cathy Haynes obtained a no-contact order and a protection order against Brian Haynes, her estranged husband, after their marriage failed. Despite these court orders, Haynes contacted Cathy[1] several times.

In May 2010, Haynes spoke to Cathy in a YMCA parking lot. On June 14, 2010, he spoke with her at her work. Later that day, he called Cathy's mother's house and asked if Cathy was there. Although she was not, his mother-in-law told him that Cathy did not want to speak to him and hung up the phone.

[1] We adopt the naming conventions of the parties and refer to Cathy Haynes by her first name.

The State charged Haynes by amended information with six counts of Domestic Violence Felony Violation of a Court Order. Each contact with Cathy formed the basis for two counts: one for the violation of the no-contact order and one for the violation of the protection order. The June 14, 2010 contact at Cathy's workplace was the subject of counts I (A) and (B); the June 14, 2010, phone call to her mother's home was the subject of counts II (A) and (B); and the May 2010 contact was the subject of counts III (A) and (B).

A jury found Haynes guilty on all counts. Haynes moved for dismissal of counts II (A) and (B), arguing that there was no evidence of actual contact with Cathy. Thus, he claimed that the evidence was insufficient to support a conviction on those counts. The trial court denied his motion, but vacated the alternative counts related to his violations of the no-contact order. The trial court entered a felony judgment and sentence against Haynes on the remaining three counts: I (B), II (B), and III (B).

Haynes appeals.

SUFFICIENCY OF THE EVIDENCE

Haynes argues that the State presented insufficient evidence to convict him of count II (B) and, therefore, the trial court erred by denying his motion to dismiss this count. We disagree.

Where a party challenges the sufficiency of evidence, we review the evidence to determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.[2] In applying this

test in a criminal case, all reasonable inferences from the evidence must be drawn in the State's favor and interpreted most strongly against the defendant.[3]

Haynes was convicted on count II (B) of felony violation of a no-contact order, arising from his telephone call to his mother-in-law's house on June 14, 2010. The to-convict instruction set forth five elements of this crime. For the jury to convict, the State was required to prove beyond a reasonable doubt:

> (1) That on or about June 14th, 2010, there existed a protection order applicable to the defendant;
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> (2) That the defendant knew of the existence of the protection order;
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> (3) That on or about June 14th, 2010, in an act separate and distinct from the act in Count I (A) and Count I (B), ***the defendant knowingly violated a provision of the protection order;***
>
> (4) That the defendant has twice been previously convicted for violating the provisions of a court order; and
>
> (5) That the defendant's act occurred in the State of Washington.[4]

Instruction 13 stated:

> In alleging that the defendant committed the crime of felony violation of a court order in . . . Count II (B), the State relies on evidence regarding a single act of ***telephonic contact*** on June 14, 2010 constituting the alleged crime. To convict the defendant of Count II . . . (B), you must unanimously agree that this specific act was proved.[5]

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[2] State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009).

[3] State v. Joy, 121 Wn.2d 333, 339, 851 P.2d 654 (1993).

[4] Clerk's Papers at 26-27 (emphasis added).

[5] Id. at 27 (emphasis added).

Haynes does not dispute elements 1, 2, 4, or 5 of the charged crime. But he argues that the evidence was not sufficient to prove that he made "telephone contact," part of element 3. He claims that because he did not actually speak to Cathy by telephone there was no violation of the protection order.

In making this argument, Haynes concedes that the State likely proved that he attempted to violate the protection order by calling his mother-in-law's home. Essentially, he argues that the "telephonic contact" required by the jury instructions was not proved beyond a reasonable doubt without evidence of an actual telephonic exchange of verbal communication with Cathy.

A similar argument was made and rejected by the supreme court in State v. Ward.[6] There, one of the two defendants, Baker, was subject to a no-contact order protecting Ivanov.[7] Under the no-contact order, Baker was ordered to have no contact with Ivanov "in person, by telephone or letter, through an intermediary, or in any other way, except through an attorney of record."[8] Baker tried to contact Ivanov by calling his residence, but instead of reaching Ivanov, Baker reached and briefly spoke with Ivanov's spouse, who recognized Baker's voice.[9] Baker argued that the State's evidence demonstrated no more than his attempt to violate the no-contact order.[10]

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[6] 148 Wn.2d 803, 64 P.3d 640 (2003).

[7] Id. at 815.

[8] Id.

[9] Id.

> The supreme court affirmed Baker's conviction. It held that:
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> > a rational trier of fact could have found Baker guilty beyond a reasonable doubt of the misdemeanor violation. We do not, however, find it necessary to engage in speculation as to whether Cornwell told Ivanov of the phone call. The no-contact order prohibited Baker from contacting Ivanov by telephone or through an intermediary, and the evidence shows that Baker telephoned Ivanov's home and conveyed information about Ivanov to his wife. Based on this conduct alone, a jury was entitled to find that Baker violated the order.[11]

The court thus established that the State can prove that a defendant violates a no-contact order by calling the victim's home, in violation of a provision of a no-contact order, even if there is no evidence that he actually communicated with the victim by telephone or through an intermediary.

Here, the same type of contact at issue in Ward is present: telephonic contact. Although this contact was with the mother-in-law, she testified that she later told Cathy that Haynes called and wanted to talk to her. This was sufficient evidence for the jury to find beyond a reasonable doubt that Haynes had "telephonic contact" with Cathy in violation of the no-contact order.

Haynes argues that Ward is inapposite because there, the court did not instruct the jury that it had to find Ward made "telephonic contact" with the victim. This difference is not material to the outcome because the court's holding was based on facts that are indistinguishable from this case. It held that a defendant can be guilty of violating a no contact order by knowingly calling a

[10] Id. at 815-16.
[11] Id. at 816.

victim's home even where he does not speak with the victim and his message is not communicated to the victim.[12]

We affirm the judgment and sentence.

Cox, J.

WE CONCUR:

[12] Ward, 148 Wn.2d at 816.