IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MELVIN ROBIN AUGG, Appellant.	No. 39846-0-II UNPUBLISHED OPINION

Armstrong, P.J. — A jury found Melvin Augg guilty of felony violation of a domestic violence protection order that prohibited him from entering his mother's residence.[1] He argues that the State failed to prove that he knowingly violated that order because it presented insufficient evidence that the house he had entered was his mother's residence. Melvin[2] also argues in his statement of additional grounds that the trial court erred in imposing 18 to 36 months of community custody. We affirm his conviction but remand for correction of his term of

[1] The jury also found Augg guilty of two counts of felony harassment, which he does not appeal.

[2] Because this case involves people sharing a family name, for clarity we refer to them by their first names. We intend no disrespect.

community custody.[3]

FACTS

On November 17, 2008, the Tacoma Municipal Court issued a domestic violence protection order ("no-contact order") that protected Margaret Augg. That order prohibited Melvin from "[e]ntering or knowingly coming within or knowingly remaining within 500" feet of Margaret's "residence." Ex. 5. The order did not specify a residence address. Margaret is Melvin's mother.

On December 18, 2008, Tacoma Police Officers Eric Robinson and Kory Smith[4] responded to a 911 call reporting a violation of a no-contact order at 3837 East I Street in Tacoma. The 911 call did not come from that house. Officers Robinson and Smith had been in contact with Margaret several times before, and they believed her to be a resident of the 3837 East I Street address, having had contact with her within the previous six to twelve months. Officer Robinson identified Margaret from a Washington State identification card issued in 2005, which listed her address as 3837 East I Street in Tacoma.

Margaret, however, was not at the house when Officers Robinson and Smith arrived. Darlene Augg, who is Margaret's daughter and Melvin's sister, answered the door. She allowed them into the house, where they found Melvin hiding under a bed. They arrested Melvin for violation of the no-contact order.

The State charged Melvin with felony violation of a domestic violence protection order

[3] A commissioner of this court initially considered Melvin's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

[4] The record indicates two different spellings of the officers' names. For the purposes of this opinion, we will use Eric Robinson and Kory Smith.

and two counts of felony harassment. Officers Robinson and Smith testified as described above. Margaret did not testify. Melvin called David Carson. Carson testified that both Margaret and Darlene had lived across the street from him at 3837 East I Street since he moved into the neighborhood 15 or 16 years prior, but that he had seen Margaret taken from the house in an ambulance three months earlier and had not seen her return to the house.

The jury convicted Melvin as charged. The trial court denied his motion to arrest the judgment for lack of evidence of Margaret's residence and he appeals.

ANALYSIS

Melvin argues that the State failed to prove that 3837 East I Street was Margaret's "residence" when he entered it. Evidence is sufficient to support a conviction unless no rational trier of fact could find all of the essential elements of the crime beyond a reasonable doubt when viewing the evidence in a light most favorable to the prosecution. *State v. Turner*, 103 Wn. App. 515, 520, 13 P.3d 234 (2000). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences therefrom. *Turner*, 103 Wn. App. at 520.

The residence prohibition in Melvin's no-contact order did not specify an address. Instead, it prohibited Melvin from "[e]ntering or knowingly coming within or knowingly remaining within 500" feet of Margaret's "residence." Ex. 5. In *State v. Vant*, 145 Wn. App. 592, 599, 186 P.3d 1149 (2008), this court relied on a *Webster's Third New International Dictionar*y definition of the word "residence" to conclude that the evidence was sufficient to determine that the victim resided at the house in question, although she only lived there off and on. Under that definition, a residence is "the place where one actually lives or has his home distinguished from his technical domicile; . . . a temporary or permanent dwelling place, abode, or

habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit." *Vant*, 145 Wn. App. at 599. In *Vant*, the court reasoned that the victim may not have lived at the house full time, but that it was at least a temporary dwelling to which she intended to return. 145 Wn. App. at 599-600.

Here, the State presented evidence that Margaret had been seen living at 3837 East I Street three months before Melvin entered the house. Darlene, who had lived with Margaret, was present in the house and was living there when she let Melvin enter the house. Margaret's state identification still listed her address as 3837 East I Street, although it had been issued in 2005. Despite Carson not seeing Margaret at the house since he saw her leave in an ambulance three months before Melvin's arrest, a rational trier of fact could find beyond a reasonable doubt that 3837 East I Street was a "permanent dwelling place" to which she "intend[ed] to return" and, thus, was Margaret's "residence" under *Vant.* 145 Wn. App. at 599. Therefore, the State presented sufficient evidence that Melvin had entered Margaret's residence and, in so doing, violated the no-contact order. We affirm his conviction.

At sentencing on September 18, 2009, the trial court imposed 18 to 36 months of community custody for Melvin's conviction of violating the no-contact order. He contends that it should have imposed 9 to 18 months of community custody. He is correct that the trial court erred in imposing 18 to 36 months of community custody but incorrect as to the amount that the court should have imposed. For sentences imposed after August 1, 2009, even for crimes committed before that date, former RCW 9.94A.701(3)(a) (2009) provides that the trial court shall impose one year of community custody for "any crime against persons under RCW 9.94A.411(2)." *See* Laws of 2008, ch. 231, § 55(2). Felony violation of a no-contact order is a

crime against persons under RCW 9.94A.411(2). Therefore, we remand Melvin's sentence for correction of his term of community custody to 12 months.

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.

ARMSTRONG, P.J.

We concur:

HUNT, J.

QUINN-BRINTNALL, J.