IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. STEVEN C. FELIX, Appellant.	No. 40528-8-II UNPUBLISHED OPINION

Armstrong, J. — Steven C. Felix appeals his Mason County conviction of felony violation of a protection order. He contends that: (1) the evidence was insufficient to prove he knowingly violated the order; (2) the trial court improperly instructed the jury that they must unanimously agree to their answer on the special verdict; and (3) his period of community custody must be reduced in accordance with the mandates of former RCW 9.94A.701(8) (2010). In his pro se statement of additional grounds (SAG), Felix also contends that the trial court erred when it read the amended information to the jury.[1] We find no reversible error and affirm.

FACTS

Monty Felix has a protection order prohibiting his brother Steven Felix[2] from coming within 1,000 feet of Monty's residence. The order does not describe a specific address, however, when it was issued, Felix knew that Monty lived at 725 North 5th Street in Shelton, the brothers' family home. The protection order was issued in September 2006 and expires in September 2016.

[1] A commissioner of this court initially considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

[2] Monty Felix will hereafter be referred to as Monty, simply for clarity. We mean no disrespect.

On January 5, 2010, Felix passed Shelton police officer Calvin Moran on Alder Street, in Shelton. He flashed his lights at the officer, and Moran turned around and followed him. At one point, Felix stopped and Officer Moran spoke with him through the patrol car window, reminding him about the protection order. Felix responded that he knew about the order, then drove away. Officer Moran caught up with him again a short time later and arrested him. Moran testified that when he contacted Felix the second time, Felix said, "Come on, man, can't you just give me a break." Report of Proceedings (RP) at 46.

The State produced a map that showed Felix was within 1,000 feet of his brother's house during the entire incident described above. Monty testified that he had lived at the same residence for 30 years. He said that his brother had also lived there from time to time until their mother died.

Felix acknowledged that he knew about the protection order. He explained that he and Monty had "been in a fight" because their mother left the house to Monty. RP at 64, 67. Felix also acknowledged that he knew in October 2009 that his brother was still living at the house. But he asserted that he did not know on January 5, 2010, whether Monty was still living there because "there was previous talk about him renting it to other people." RP at 66, 68.

The jury convicted Felix as charged, finding by special verdict that Steven and Monty Felix were family members at the time of the crime. The court sentenced Felix to 60 months of incarceration, the high end of the standard range, and 12 months of community custody.

ANALYSIS

I. Sufficiency of the Evidence

In reviewing Felix's challenge, we consider all of the evidence in the light most favorable to the prosecution. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008); *State v. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358 (1991). We accept the State's evidence as true and draw all reasonable inferences in the State's favor. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). And we consider circumstantial evidence to be as reliable as direct evidence. *State v. Turner*, 103 Wn. App. 515, 520, 13 P.3d 234 (2000). If, under these guidelines, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, we will uphold the conviction. *Scoby*, 117 Wn.2d at 61.

Felix contends that the evidence was insufficient to prove that he knowingly violated the protection order. He does not dispute that his brother had lived in the family home for many years, and that he knew Monty was still living there in October 2009, less than three months before the crime. Nor does he dispute or explain why, when Officer Moran stopped him, he asked Moran to "give [him] a break." He simply relies on his own self-serving, uncorroborated statement that he had heard talk about his brother renting the house to other people.

That reliance is misplaced. The evidence was sufficient to permit a reasonable inference that Felix knew his brother was still living in the 5th Street house at the time of the crime. The jury was not required to accept Felix's statements, and their credibility determination is not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

II. Special Verdict Instruction

With regard to the special verdict, the trial court instructed the jury:

> You will also be given a special verdict form for the crime charged in count I. If you find the defendant not guilty of this crime, do not use the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict form and fill in the blank with the answer "yes" or "no" according to the decision you reach. Because this is a criminal case, all twelve of you must agree in order to answer the special verdict form. In order to answer the special verdict form "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer "no".

Clerk's Papers (CP) at 40. As the State concedes, this instruction was error because the jury need not be unanimous in order to answer no. *See State v. Bashaw*, 169 Wn.2d 133, 147, 234 P.3d 195 (2010). But the error was harmless.

An instructional error is harmless beyond a reasonable doubt if it did not contribute to the verdict. *State v. Brown*, 147 Wn.2d 330, 341, 58 P.3d 889 (2002); *Neder v. United States*, 527 U.S. 1, 15, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999). When the evidence that supported the jury's determination is uncontroverted, the error is harmless. *See Brown*, 147 Wn.2d at 341.

Here, the special verdict form required the jury to determine whether Steven and Monty Felix were members of the same family or household. The jury was instructed that "'family or household members' means adult persons related by blood or marriage." CP at 36. The protective order, admitted as Exhibit 3, said that the petitioner's relationship with the respondent was a blood relationship. Monty testified that Felix was his brother, related to him by blood. And Felix referred to Monty as his brother 10 times. Thus, Felix never disputed the relationship. The jury had no basis to answer "no" on the special verdict.

III. Community Custody

The trial court sentenced Felix to 60 months of incarceration, the high end of the standard range and also the maximum sentence for his crime. The court imposed 12 months of community custody, as well. Felix contends that this sentence is contrary to former RCW 9.94A.701(8) (2010),[3] which provides:

> The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021.

The judgment and sentence states, "In no event shall the combined term of confinement and community custody exceed the statutory maximum of 60 months." CP at 10. In *In re Personal Restraint of Brooks*, 166 Wn.2d 664, 670-73, 211 P.3d 1023 (2009), our Supreme Court held that such language is sufficient to ensure that the defendant does not serve a sentence in excess of the statutory maximum. RCW 9.94A.701(9) is not inconsistent with the holding in *Brooks*, or the language used in this judgment and sentence. The sentence is valid.

IV. Reading Information to the Jury

The trial court read the charge to the jury as part of the opening instructions. In his SAG, Felix challenges that action, contending, without explanation, that it prejudiced him. The court can read the charges to the jury; it cannot inform them that the crimes are crimes of domestic violence. *See State v. Hagler*, 150 Wn. App. 196, 200-02, 208 P.3d 32 (2009). The court complied with *Hagler* in this case, and we find no basis for the claim of prejudice.

[3] Effective June 10, 2010, RCW 9.94A.701(8) was recodified as RCW 9.94A.701(9). Laws of 2010 ch. 224, § 5.

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.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Worswick, A.C.J.