2016 IL App (2d) 140107-U
No. 2-14-0107
Order filed June 20, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WILLIAM ROSALES, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 12-CF-2242 Honorable George Bridges, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Officer's recollection of serving defendant with a modification to an order of protection was sufficient to sustain conviction where officer recalled relevant details of the event and was able to identify defendant in open court despite fact that modification order was not returned with other documents filed in clerk's office.

¶ 2 Defendant, William Rosales, was convicted of two counts of violating an order of protection. He now appeals, arguing that the State failed to prove that he was served with a modification to an existing order of protection that he was alleged to have violated (the sole issue in this appeal). For the reasons that follow, we affirm.

¶ 3 The matter proceeded to a bench trial where the State first called Deputy Thomas Lex. On June 14, 2013, Lex was assigned to the highway patrol division. His duties included serving court paperwork. The State presented Lex with an exhibit that he recognized to be "a sheriff's office service sheet." This is a document that he fills out in connection with effecting service on an individual. The State then showed Lex five additional exhibits, which he identified as being documents that would have been attached to the service sheet. Lex explained that he was able to tell that these documents would have accompanied the service sheet as they all had the same order of protection number. Lex testified that the six documents were true and accurate copies of what he served on defendant. He signed one of the documents when he effected service.

¶ 4 Lex testified that he served these documents to defendant, and he identified defendant in court. When asked whether he recalled serving defendant, he answered, "Vaguely I do." He stated he recalled serving defendant after seeing defendant in court. When he served defendant, he identified defendant by asking defendant his name and date of birth, which defendant provided, and matching them against his paperwork. Lex recalled explaining to defendant the details of the documents he was serving, including the location covered by the order of protection. He told defendant he would be arrested if he did not comply with the order.

¶ 5 On cross-examination, Lex agreed that it was sometimes difficult to remember details regarding routine events. He testified that an inventory listing the documents he served was maintained by the Lake County Clerk, which includes copies of the actual documents served. He further agreed that all of the documents he served to defendant should be in the Clerk's files. The Clerk typically file stamps each document. However, in this case, three of the documents Lex stated he served on defendant were not file stamped. Moreover, one document was file

stamped the day before he served it, and another was file stamped about six weeks before he served it. All documents he served should be in the court file.

¶ 6 On redirect-examination, Lex explained that it was not unusual for a document to be served to have been stamped earlier than it was served. He stated that this often occurs in situations where it was not possible to effect service immediately. Lex admitted that prior to the trial, he was not certain whether he would be able to identify defendant; however, once he actually saw defendant, he recognized him as the person he served. Lex added, "We receive file stamped copies [to serve] often." On recross-examination, Lex said he recognized the documents he served on defendant.

¶ 7 Tamara Franz, the victim, was next called by the State. She identified the original order of protection in this case, and she stated that after its issuance, she later motioned for a change of the protected address. She did not recall mailing any sort of notice to defendant in connection with that motion. On August 8, 2013, Franz received a telephone call, and, as a result, she went outside. It was about 10 p.m. She observed defendant in his cousin's car driving around her neighborhood. She was on the sidewalk in front of her house, and defendant passed by "multiple times." He passed by at least three or four times. Defendant smiled and waved at Franz, which she found both threatening and "pompous." Franz testified that defendant came within 100 feet of her house. Defendant was circling the block. Franz called the police.

¶ 8 On cross-examination, Franz explained that her house was in the middle of her block. There are no street lights in the area. Her porch light was on. There is a row of evergreen trees in front of her house. The trees are about three feet apart, so they do not form a "wall of trees." She was familiar with defendant's cousin's car, and she recognized it that day. She acknowledged that she gave a written statement to the police that states that defendant drove by

two times. The statement does not mention defendant smiling or waving at Franz, and she did not relate this fact to the police. She explained that she was upset at the time she prepared the statement.

¶ 9 The State next called Officer Adriana Cancino of the Waukegan Police Department. On August 8, 2013, she responded to a call at Franz's residence regarding the violation of an order of protection. After speaking with Franz, she went to defendant's residence. She observed defendant's cousin's car and noted that the hood was warm. She then spoke with defendant and his cousin.

¶ 10 Alyssa Borland then testified for the State. On August 8, 2013, she observed defendant pull out from an alley next to Franz's house. She later clarified that she was not sure if defendant was driving. After Borland testified, the State rested. Defendant then moved for a directed finding, and the trial court denied his motion. Defendant then rested. Defendant was convicted of two counts of violating an order of protection.

¶ 11 Defendant now appeals, arguing that the State failed to prove beyond a reasonable doubt that he was served with the modifications to the order of protection after the victim moved to change the protected address. When a defendant challenges the sufficiency of the evidence, we must view all evidence in the light most favorable to the State. *People v. Fountain*, 2011 IL App (1st) 083459-B, ¶ 26. It is not our role to retry a defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Instead, we must consider whether any rational trier of fact could find that the essential elements of the charged offense were proven beyond a reasonable doubt. *Id*. We will reverse only if the evidence is so improbable and unsatisfactory that a reasonable doubt as to the defendant's guilt remains. *Id*. The elements of the instant offense are (1) that defendant committed an act prohibited by an order of protection and (2) that defendant had been served

notice or otherwise had actual knowledge of the order. *People v. Stiles*, 334 Ill. App. 3d 953, 956 (2002). Defendant contests only the second element.

¶ 12 Relying on the testimony of Officer Lex, the trial court found that defendant had been served with the modification to the order of protection. Defendant contends that this ruling was erroneous. He first points out the Lex testified that he "vaguely" recalled serving defendant. He then notes that Lex testified that when court documents are served, copies of the documents are attached to a "sheriff's office service sheet." They are then returned to the clerk's office and filed as a packet. Here, the modification to the order of protection changing the protected address was not included in the packet. Defendant also points to the fact that the modification to the order of protection was not served until about six weeks after it was issued. Every other document that needed to be served was served shortly after its issuance. The service sheet has a place to enter earlier unsuccessful attempts, and none are listed. Finally, defendant questions the credibility of Lex's claim that he remembered serving a particular document while admittedly having only a vague recollection of serving defendant.

¶ 13 While defendant raises some valid points in his favor, it must be remembered that at this stage of the proceedings, we must construe the record in favor of the State. *Fountain*, 2011 IL App (1st) 083459-B, ¶ 26. Doing so, we note certain considerations weigh in the State's favor as well. As the State points out, when asked what details Lex recalled about discussions he had with defendant when he served him, Lex stated that he explained the contents of the orders, including the changed address of the protected premises. Obviously, for Lex to have recalled this detail, he had to have had access to the order containing the change. Moreover, despite stating he only "vaguely" recalled serving defendant, he was able to accurately identify defendant in court. Additionally, if Lex had served the packet of documents without the

modified order, he would have been essentially serving defendant with nothing but proof of service documents. Lex testified that it was his practice to explain the documents to a person upon whom he is effecting service. If the orders had not been part of the packet, it would seem inconceivable that Lex would not have noted that he was serving nothing but proof of service documents.

¶ 14 Construing the evidence in the light most favorable to the State, as we are required to do at this point, we find the evidence is sufficient to sustain defendant's conviction. While Lex admitted having only a "vague" recollection of serving defendant, that he was able to identify defendant in open court supports an inference that his memory, though vague, was nevertheless accurate.

¶ 15 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 16 Affirmed.