2017 IL App (4th) 150019-U

NO. 4-15-0019

FILED
March 10, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
LATELE Y. PINKSTON,	)	No. 14CF745
Defendant-Appellant.	)	
	)	Honorable
	)	Scott Daniel Drazewski,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for violating an order of protection is reversed where the evidence presented was insufficient to show defendant had actual knowledge of the contents of the order of protection.

¶ 2 Following an October 2014 bench trial, defendant, Latele Y. Pinkston, was convicted of two counts of violating an order of protection, a Class 4 felony. In December 2014, the trial court sentenced her to 30 months' probation with 180 days in jail.

¶ 3 Defendant appeals, arguing (1) the evidence used to show she was served or otherwise knew of the order of protection was either insufficient or inadmissible hearsay. In the alternative, defendant contends (2) her conviction on count II should be vacated where (a) the terms of the order of protection were ambiguous, and (b) the State failed to prove she knew a subject of the order was present; and (3) one of her convictions should be vacated where both

charged counts were based on the commission of a single act in violation of the one-act, one-crime doctrine. Defendant also maintains one of her two $200 domestic violence fines should be vacated, and her fines should be offset by her *per diem* credit. We reverse.

¶ 4 I. BACKGROUND

¶ 5 On July 2, 2014, defendant was indicted on two counts of felony violating an order of protection (720 ILCS 5/12-3.4(a)(1) (West 2014)) as to Juan Ramirez (count I) and their minor daughter, A.R. (count II). The indictment alleged defendant, "knowingly having been served with notice of the contents of an order of protection," intentionally violated its terms by being within 500 feet of the protected address at a time when Ramirez and A.R. were present. The indictment provided defendant had a previous conviction for violating an order of protection.

¶ 6 During defendant's October 2014 bench trial, Ramirez testified he obtained an emergency order of protection for himself and A.R. on June 13, 2014 (McLean County case No. 14-F-36). The order provided defendant was to stay 500 feet from certain addresses. Ramirez testified one of the protected addresses, 708 Golf Crest Street, apartment No. 3, was his stepmother's home. According to the order, that address was protected when Ramirez or A.R. was present. The following colloquy took place between the State and Ramirez regarding whether he knew defendant had been served with the order:

> "Q. Okay. Was [defendant] in court whenever this Emergency Order of Protection was issued?
>
> A. *** [F]rom what I was told, she was in court for something else when she got served.
>
> Q. But she was not in court with you when this was issued

*** ?

A. No.

Q. But you received word later that she was given this Order of Protection?

A. Yes. They couldn't find her address that she keeps lying about, so they served her here.

Q. She was eventually served; correct?

A. Yes."

Ramirez went on to testify he obtained a plenary order of protection a few weeks later.

¶ 7 Turning to the date in question, Ramirez testified he was sitting on the porch at his stepmother's apartment on June 25, 2014, when, at approximately 6 p.m., he observed defendant driving a car past the apartment. Ramirez testified defendant was with her boyfriend. According to Ramirez, "[t]hey hesitated like they was gonna stop, or what they was do[ing] I didn't know exactly, but they kept drivin[g] and they just left." A.R. was playing in the front yard at the time. Ramirez also testified, "[s]he returned [a few minutes later] and she drove up the driveway and parked in the back of the building." Ramirez testified defendant made "little hand gestures," like pointing, in his direction and was moving her mouth but he could not hear her because the window was up. Ramirez "got a little shaken" and "grabbed [his] daughter and went inside" and called the police. Ramirez told the police defendant went to one of the two apartments in the back of the building. Ramirez explained one of defendant's friends had recently moved into one of those apartments. However, he did not see defendant enter either apartment. When asked if that was the reason why he wanted the Golf Crest Street address listed in the order as a protected

location, defendant replied, "No," and explained it was because he wanted to feel safe when he visited his stepmother.

¶ 8 On cross-examination, Ramirez testified defendant did not slow down or stop while she was turning into the driveway. She gestured as she was pulling onto the driveway. On redirect, Ramirez clarified, "She was looking at me, pointing. I don't know if she was pointing or just—her arm was directed towards me, [there wasn't anybody] out there to assume she was pointing at, so I know it was me." Defendant never spoke to Ramirez, nor did she make any direct contact with him during this encounter.

¶ 9 Normal, Illinois, police officer Matthew Badalamenti testified he responded to a report of a violation of an order of protection at 708 Golf Crest Street, on June 25, 2014. Upon his arrival, Ramirez told Badalamenti he believed defendant might be inside apartment 5. Badalamenti checked that apartment and found an employee of the landlord lived there and defendant was not present. Badalamenti then knocked on the door to apartment 6. After several minutes, Chakira Davis, defendant's friend, came to the door and indicated defendant was not inside. Davis denied Badalamenti's request to search the apartment. Maurice Delaney, defendant's boyfriend, who was also inside the apartment, told Badalamenti defendant was not there. Delaney initially told Badalamenti he had driven defendant to the area but dropped her off in the 700 block of West Orlando Avenue and then came to the apartment to visit Davis. However, Delaney then told Badalamenti he drove defendant to 708 Golf Crest Street and she walked to the 700 block from there. After Badalamenti confronted Delaney with the fact he knew Delaney's driver's license had been suspended, Delaney denied telling Badalamenti he drove at all. Instead, Delaney maintained the mother of his child drove him to Davis's apartment.

¶ 10 Badalamenti then viewed the apartment complex's surveillance video. While

Badalamenti was reviewing the video, another officer, Joseph Gossmeyer, who was watching Davis's apartment, informed him defendant had just exited. Badalamenti then confronted defendant. Badalamenti testified her clothing matched what the driver of the vehicle he observed in the surveillance video was wearing. Defendant told Badalamenti she was dropped off at a nearby gas station and walked to the 708 Golf Crest Street address. After Badalamenti told her he had viewed the video, defendant admitted she drove to the apartment. However, she denied knowing either Ramirez was present or the apartment building was a protected address. Badalamenti then arrested defendant.

¶ 11 During his testimony, the following colloquy took place between the State and Badalamenti:

> "Q. And were you able to confirm whether *** an Order of Protection was in place?
>
> A. Yeah. MetCom, our dispatch center, was able to obtain the names and information of the people who were involved in the call, [Ramirez and defendant]. Checking them in our computer system, we were able to locate the Order of Protection. They let us know via the radio there was an active Order of Protection in effect and that 708 North Golf Crest, Apartment 3, was one of the protected addresses.
>
> * * *
>
> Q. Now, were you able to verify whether the Order of Protection was served upon [defendant]?
>
> A. The way MetCom does it, when we have them check a

name, they'll let us know if there was an instance where the Order of Protection was valid and had been signed but not been served yet. They would let us know over the radio. They would say [defendant] shows an active Order of Protection but it has yet to be served. If they don't tell us that, then it's assumed that the Order of Protection has been served.

Q. Did they tell you anything with regard to the Order of Protection?

A. Just that it was valid and that it had been served. They didn't specifically say that, but it was implied."

¶ 12 The State also called Maurice Delaney, to testify. Delaney testified he visited his friend, Chakira Davis, on June 25, 2014, at her apartment on Golf Crest Street. Delaney testified he was "drinking a lot that day" and did not recall with whom he went there. Delaney recalled talking to the police that day but did not remember what they discussed. According to Delaney, defendant could have come over that day because she and Davis were friends, too, but he was not sure defendant was there on the day in question. While Delaney testified to knowing who Ramirez was, Delaney was unaware there was an order of protection in place between Ramirez and defendant.

¶ 13 The State then called Chakira Davis to the stand. Davis testified defendant came to her house on June 25 to do her laundry. She was scared when the police came to her door because they had never done so before. Defendant was in the bathroom when the police knocked on the door. Davis admitted she might have initially told the police defendant was not there. However, Davis testified, at some point, defendant came out and talked with police. When asked

why she was worried about what the police would want with defendant, Davis testified she just knew defendant had been "getting into it" with Ramirez. When asked why she thought the police would be involved, Davis testified, "Because I think maybe, like, a couple weeks before that or something, she told me, like, he's been trying to get, like, a restraining order on her and stuff." However, Davis did not know whether there was an order of protection in place at the time defendant came to visit her.

¶ 14 At the close of the State's case, defendant moved for a directed verdict on the basis the State failed to present any evidence to show defendant had been served with the order of protection or provided with notice of its contents. In denying the motion, the trial court found the following:

> "The testimony that was presented by Ms. Davis and Mr. Ramirez would be insufficient in order to have there be some evidence that there was, in fact, service of the Order of Protection upon the Defendant. Officer Badalamenti, however, did testify, and it wasn't objected to, that he had confirmation via MetCom not only that the Order of Protection had been issued, but that it had been served as well. So there is some evidence, again, which, when considered in the light most favorable to the [State], would support each and every element of the charge."

¶ 15 Defendant did not present any evidence.

¶ 16 Thereafter, the trial court found defendant guilty on both counts of violating the order of protection. In commenting on the evidence, the court stated the following:

"Now, let's get to some legal parts here, then, which [involves] one issue we have already addressed, but let me put [it] in a different light this time. The factual issues, as I indicated, are not that difficult, meaning I think that the Defendant clearly was present on that date, time[,] and location. It's just whether she was 500 feet away. And the Court is indicating that she was within 500 feet on two occasions. However, the legal argument[] that remains is one that was addressed at the Motion for Directed Verdict which is whether or not the Defendant had knowledge of the contents of the petition; more specifically, was she served with notice of the contents of an Order of Protection. I still believe that there's an insufficient amount of evidence, that being from the perspective of Ms. Davis or Mr. Ramirez, to establish that the Defendant had knowledge that there was an order of protection against her; and even though it would have been better for the State to have presented some testimony, whether it was in the form of asking the Court to take judicial notice of 2014-F-36, or in the alternative, have the officer that served [defendant] come in and verify, in essence, that he had done so, nonetheless, the only evidence, the only evidence that the Court has before it is that, according to MetCom and the computer, that Officer Badalamenti was aware that that Order was in effect. Based upon previous experience he also testified *** if both things had not occurred, if either the Order hadn't been entered and/or it had

not been served, that they would not have that information in LEADS. It was based upon the LEADS entry and the MetCom verification that he was able to act, in essence, upon the phone call *** that Normal Police received and *** were then dispatched upon; and so that is the evidence, in essence, based upon previous experience as well, that he knew that the Order of Protection was valid and in effect and [defendant] had been served with [it]. So that being the only evidence, it also is sufficient evidence, from the Court's perspective, to satisfy the criteria that the State has established, in essence, that the Defendant has knowledge of what was within the Order of Protection because if she was served, it is no defense to say that if I don't read it, that I'm not required to be bound by it. So she would have been served with the paper and be aware of [the] same."

¶ 17 On November 17, 2014, defendant filed a posttrial motion for a judgment of acquittal, arguing the evidence was insufficient to establish she had been served with notice of the contents of the order of protection.

¶ 18 During the December 29, 2014, hearing on the posttrial motion, defendant argued, although Badalamenti's testimony regarding what MetCom told him was admitted into evidence without an objection, it should have been excluded as inadmissible hearsay. In response, the State argued the following:

"Your Honor, the Court is fully aware of the facts that came out *** at trial, and *** the Court did make a proper ruling based on

> the facts at the trial. I would also point out that there was no evidence to the contrary that [defendant] did not have, that she did not have notice of the contents of the order, and again, just—I ask the Court to find that you did make a proper ruling."

The court then denied defendant's motion, stating the following:

> "[T]here was evidence, which was unrefuted and uncontradicted, that she had been served with an order of protection from Officer Badalament[i]. And that evidence then, which was submitted, was sufficient from the Court's perspective then and now to have the State prove that particular element of the charge of violation of an order of protection. She had actual knowledge of the fact that she was subject to staying away in essence from Mr. Ramirez and/or the address that he was located at the time that she came within, within the protected geographic limitation as provided for in the order of protection, so there was evidence sufficient to meet the State's burden of proof of beyond a reasonable doubt."

¶ 19 Thereafter, the trial court sentenced defendant to 30 months' probation with 180 days in jail. The court stayed all but 10 days of the jail sentence pending the successful completion of her probation.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant argues (1) the evidence used to show she was served or otherwise knew of the order of protection was either insufficient or inadmissible hearsay. In the

alternative, defendant contends (2) her conviction for count II should be vacated where either (a) the terms of the order of protection were ambiguous, or (b) the State failed to prove she knew a subject of the order was present; and (3) one of her convictions should be vacated where both of them were based on her commission of a single act in violation of the one-act, one-crime doctrine. Defendant also maintains one of her two $200 domestic violence fines should be vacated, and her fines should be offset by her *per diem* credit.

¶ 23 Defendant primarily argues on appeal the evidence used to show she was served or otherwise knew of the order of protection was insufficient or inadmissible. Specifically, defendant contends (1) no reliable evidence was presented to show she was served with the order, and (2) Badalamenti's testimony regarding what MetCom told him was inadmissible hearsay.

¶ 24 We note the State did not argue below, and does not now argue on appeal, Badalamenti's MetCom testimony was not hearsay or a hearsay exception applied. Instead, the State tellingly begins its appellate brief by arguing retrial of defendant after her conviction is reversed would not be barred by double jeopardy. The State goes on to focus on its contention defendant forfeited review of the hearsay issue because she did not object to Badalamenti's testimony at trial. See *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988) (a defendant forfeits review of an issue if she fails to object at trial and raise the issue in a posttrial motion). While defendant acknowledges she did not object to this testimony at the time it was given, she notes she did argue it was hearsay during the hearing on her posttrial motion. Regardless, she urges our review of the issue under a plain-error analysis. The State argues plain error does not apply because the evidence in this case was overwhelming. Because we find, even with the inadmissible hearsay evidence, the State failed to prove defendant had notice of the

order of protection, we need not address defendant's plain-error argument.

¶ 25 When the sufficiency of the evidence is challenged on appeal, we must determine " 'whether, after viewing the evidence in the light most favorable to the [State], any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis omitted.) *People v. Graham*, 392 Ill. App. 3d 1001, 1008-09, 910 N.E.2d 1263, 1271 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We "will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt." *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001).

¶ 26 "A person commits the offense of violating an order of protection when he commits an act prohibited by a valid order of protection and has been served notice of the contents of the order 'or otherwise has acquired actual knowledge of the contents of the order.' " *People v. Hinton*, 402 Ill. App. 3d 181, 183, 931 N.E.2d 769, 771 (2010) (quoting 720 ILCS 5/12-30(a)(2) (West 2006)). "[A]ctual knowledge can be shown by service, notice, or '[b]y other means demonstrating actual knowledge of the contents of the order.' " *Hinton*, 402 Ill. App. 3d at 183, 931 N.E.2d at 771 (quoting 750 ILCS 60/223(d)(4) (West 2006)). Because knowledge is not ordinarily susceptible to direct proof, it is generally established through circumstantial evidence. *Hinton*, 402 Ill. App. 3d at 185, 931 N.E.2d at 772. " 'Circumstantial evidence is proof of facts or circumstances that give rise to reasonable inferences of other facts that tend to establish guilt or innocence of the defendant.' " *Hinton*, 402 Ill. App. 3d at 185, 931 N.E.2d at 772 (quoting *People v. Saxon*, 374 Ill. App. 3d 409, 417, 871 N.E.2d 244, 251 (2007)). When knowledge is an essential element of the crime, it cannot be based on conjecture and speculation. See *People v. Gillespie*, 276 Ill. App. 3d 495, 499, 659 N.E.2d 12, 15 (1995). "The State must

[still] present sufficient evidence from which an inference of knowledge can be made, and any inference must be based on established facts and not pyramided on intervening inferences." *People v. Weiss*, 263 Ill. App. 3d 725, 731, 635 N.E.2d 635, 639 (1994).

¶ 27 In this case, the trial court found the only credible evidence to show defendant knew about the contents of the order of protection was Badalamenti's testimony MetCom did *not* tell him the order had *not* been served on defendant. This evidence was insufficient to show defendant *had* been served. The State could have called the individual who purportedly served defendant with the order. The State could have asked the trial court to take judicial notice of the service return in McLean County case No. 14-F-36, if the service return was in that file. As it stands, however, the MetCom testimony at issue was insufficient to prove defendant had notice of the order of protection. As such, we must reverse defendant's conviction. Moreover, because the State's evidence is insufficient to sustain defendant's conviction, we find she would be subject to double jeopardy if retried. Retrial of defendant is therefore barred. See *People v. Jenkins*, 2012 IL App (2d) 091168, ¶ 29, 964 N.E.2d 1231 (finding the State's insufficient evidence barred retrial on double jeopardy grounds). Finally, as we are reversing defendant's conviction, we need not address her remaining contentions of error on appeal.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we reverse defendant's conviction.

¶ 30 Reversed.