IN THE COURT OF APPEALS OF THE STATE OF ALASKA

CARL HARP, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12969 Trial Court No. 4BE-15-00388 CR MEMORANDUM OPINION No. 6898 — September 9, 2020

Appeal from the Superior Court, Fourth Judicial District, Bethel, Nathaniel Peters, Judge.

Appearances: Brooke Berens, Assistant Public Advocate, and James Stinson, Public Advocate, Anchorage, for the Appellant. Timothy W. Terrell, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Judge ALLARD.

A jury found Carl Harp guilty of one count of second-degree sexual assault, two counts of third-degree assault, and two counts of first-degree unlawful contact.[1] At

[1] AS 11.41.420(a)(3), AS 11.41.220(a)(1)(A), and AS 11.56.750(a)(1)(A), respectively.

trial, Harp conceded his guilt on the two counts of first-degree unlawful contact, both through his attorney and personally through his trial testimony. On appeal, however, Harp challenges his conviction for unlawful contact,[2] arguing that the jury instructions omitted an essential element of the offense.

> A person commits first-degree unlawful contact if the person:
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> (1) has been ordered
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> > (A) by the court not to contact a victim or witness of the offense
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> > > (i) as part of a sentence imposed under AS 12.-55.015;
> >
> > > (ii) as a condition of release under AS 12.30 or probation under AS 12.55.101; or
> >
> > > (iii) while under official detention; or
> >
> > (B) as a condition of parole not to contact a victim or witness of the offense under AS 33.16.150; and
>
> (2) either directly or indirectly, knowingly contacts or attempts to contact the victim or witness in violation of the order.[3]

The trial court instructed the jury that to find Harp guilty of first-degree unlawful contact, the jury had to conclude beyond a reasonable doubt that: "(1) the defendant was court ordered not to contact [K.C.] in Case No. 4BE-14-00352 CR; (2) the defendant directly and knowingly contacted [K.C.] in violation of the order; and (3) the defendant recklessly disregarded the fact that the defendant's conduct violated or

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[2] At sentencing, the trial court merged the two unlawful contact counts into a single conviction, and imposed a sentence for that offense entirely concurrent with Harp's other convictions.

[3] AS 11.56.750(a).

would violate the order."[4] Harp's attorney told the judge that he did not see "any error" in this jury instruction.

On appeal, however, Harp argues that the jury instruction was deficient because it did not specifically require the jury to determine whether the court had ordered no contact "as a part of a sentence under AS 12.55.015" or as "a condition of probation under AS 12.55.101." We find no merit to this claim.

As an initial matter, we question whether the omission of this statutory language in the jury instruction is error. Courts are permitted to convert statutory language into plain English for juries, provided that the meaning of the statutory language is not lost.[5] There are four ways that a defendant can be court ordered not to have contact with a victim or witness in a criminal case, and all four are contained in the statute.[6] The underlying purpose of the statutory language, therefore, is to differentiate no-contact court orders that are imposed in criminal cases from no-contact court orders that arise in other contexts (such as divorce cases or domestic violence restraining orders). In other words, it does not matter, for purposes of determining a defendant's guilt under AS 11.56.750(a)(1)(A), whether the defendant violated a no-contact order that was issued "as part of a sentence" or "as a condition of probation." What matters is that the defendant was court ordered to have no contact in a *criminal* rather than *civil* case.[7]

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[4] A second instruction substituted case number 4BE-14-00841 CR.

[5] *See United States v. Tasis*, 696 F.3d 623, 627 (6th Cir. 2012) (finding no abuse of discretion when the trial court chose a plain English jury instruction over a "generic" and "wordy" pattern jury instruction proposed by the defendant).

[6] A person can also be found guilty of first-degree unlawful contact if the Alaska Parole Board has ordered no contact. *See* AS 11.56.750(a)(1)(B).

[7] *Compare* AS 11.56.750(a) *with* AS 11.56.740(a).

In our view, the trial court's instruction adequately conveyed this statutory requirement by specifying that Harp had to be court ordered not to have contact in a "CR" — *i.e.*, criminal — case. The parties also directly stipulated that Harp had been court ordered to have no contact with K.C. in two separate criminal cases. Because the instructions adequately conveyed the underlying meaning of the statutory language, we conclude that omitting the direct statutory language was not error in this case.

In any event, even if we were to assume that omission of the precise statutory language was error, we would find this error harmless beyond a reasonable doubt. On appeal, Harp acknowledges that the alleged error is not structural because this "element" was never contested.[8] Harp provides no clear argument for how he has been prejudiced by the omission of the statutory language. Nor do we perceive any prejudice, given the parties' stipulation and Harp's personal concession of guilt at trial.

The judgment of the superior court is AFFIRMED.

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[8] *See Jordan v. State*, 420 P.3d 1143, 1155-56 (Alaska 2018) (holding that the trial court's refusal to instruct the jury on a contested element of the charged offense constituted structural error requiring automatic reversal).