IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ARTHUR J. KINNAN, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13557 Trial Court No. 1SI-19-00268 CR SUMMARY DISPOSITION No. 0273 — June 15, 2022

Appeal from the District Court, First Judicial District, Sitka, M. Jude Pate, Judge.

Appearances: Jane B. Martinez, Law Office of Jane B. Martinez, LLC, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Kenneth M. Rosenstein, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

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

Arthur J. Kinnan was convicted, following a bench trial, of one count of violating a protective order for yelling and waving his arms at Kenneth Buxton, an Animal Control Officer employed by the Sitka Police Department.[1] Kinnan now appeals, arguing that the evidence at trial was insufficient to support his conviction.

[1] AS 11.56.740(a)(2).

When we review a claim of insufficient evidence, we view the evidence (and all reasonable inferences to be drawn from that evidence) in the light most favorable to upholding the verdict and ask whether a reasonable fact-finder could have concluded that the defendant was guilty beyond a reasonable doubt.[2]

To prove that Kinnan committed the crime of violating a protective order, the State had to establish: (1) that Kinnan was subject to a valid protective order, (2) that he knew of the protective order and was aware of its provisions, (3) that he knowingly committed an act that violated the provisions of the protective order, and (4) that he did so with reckless disregard for the fact that his act violated the protective order.[3]

Interpreted in the light most favorable to upholding the verdict, the evidence established the following: Buxton had once helped Kinnan find a new home for Kinnan's dog when Kinnan could no longer care for it. Kinnan changed his mind and sued to get the dog back, but the lawsuit was unsuccessful and Kinnan blamed Buxton for the loss of the dog. Kinnan became increasingly verbally aggressive with Buxton, including threatening Buxton, calling Buxton's home, and talking about Buxton's children.

After several years of this behavior, Buxton applied for a protective order against Kinnan. Buxton's application was granted at a hearing at which both Buxton and Kinnan were present, and Kinnan was personally given a copy of the final order. The order prohibited Kinnan from communicating with Buxton "directly or indirectly by any means," but it provided an exception for "emergency purposes," which included contacting Buxton "through his employment at Sitka Police Department, while Officer Buxton is on-duty, in relation to work related purposes."

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[2] *See Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012).

[3] *See* AS 11.56.740(a)(2); *State v. Strane*, 61 P.3d 1284, 1292 (Alaska 2003).

Two days later, Buxton stopped at an intersection while on duty and driving the town's marked Animal Control vehicle. Kinnan, who was standing by the intersection, turned and made eye contact with Buxton from about six feet away. Upon making eye contact, Kinnan immediately began yelling and waving his arms in the air. Buxton testified that Kinnan was "wildly swinging his arms up and down like he was a three-year-old pitching a temper tantrum." Buxton could not hear what Kinnan was saying, and quickly drove away.

On this record, a reasonable fact-finder could conclude that Kinnan committed the crime of violating a protective order. Accordingly, the evidence was sufficient to support Kinnan's conviction.

Kinnan's primary argument to the contrary relies on a single statement made by the trial court. In announcing its verdict, the trial court acknowledged Kinnan's claim that he was "simply venting about his missing [dog]" when he saw Buxton, and then stated, "that doesn't have anything to do with work related purposes, *although I'm sure Mr. Kinnan feels that way*." (Emphasis added.)

On appeal, Kinnan seizes on the trial court's comment that "Mr. Kinnan feels that way" — *i.e.*, feels that venting about his missing dog falls within an exception to the protective order — and argues that given this comment, the court was required to acquit him.

This is incorrect. As the trial court found, the protective order was issued specifically to stop Kinnan from communicating with Buxton about the dog. It is therefore clear that Kinnan's conduct did, in fact, violate the order. Furthermore, the State was not required to prove that Kinnan *knew* that his conduct violated the order. Rather, it was required to prove that Kinnan acted with reckless disregard to whether his conduct violated the order — *i.e.*, that he was aware of and consciously disregarded the

substantial and unjustifiable risk that his conduct violated the order.[4] The trial court found (and the evidence was sufficient to support) that despite subjectively "feel[ing]" that venting about the dog was a work-related purpose, Kinnan was still aware of and consciously disregarded the substantial and unjustifiable risk that this subjective belief was not true. We therefore reject Kinnan's argument that the trial court's acknowledgment of his false and recklessly held belief entitles him to reversal of his conviction.

Kinnan also argues that the evidence was insufficient to show that he knowingly communicated with Buxton. But as we have explained, upon making eye contact with Buxton, Kinnan immediately began yelling and waving his arms in the air. Buxton testified that Kinnan was "wildly swinging his arms up and down like he was a three-year-old pitching a temper tantrum." Interpreting this evidence in the light most favorable to the verdict, it was sufficient to establish that Kinnan knowingly communicated with Buxton.

Accordingly, the judgment of the district court is AFFIRMED.

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[4] *See Strane*, 61 P.3d at 1292.