IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
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Mark Reynolds

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No. A-1-CA-41576

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

KRISTOPHER HAAGENSON,

Defendant-Appellant.

APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO COUNTY
Nina A. Safier, Metropolitan Court Judge

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OPINION

HANISEE, Judge.

{1} Defendant Kristopher Haagenson was convicted of violating a protective order after a jury trial in metropolitan court. *See* NMSA 1978, § 40-13-6 (2013). Defendant appeals, arguing reversible error in the jury instructions, insufficient evidence supporting the jury's verdict, and violation of the Confrontation Clause and of the prohibition against hearsay. We affirm.

BACKGROUND

{2} Defendant was arrested for violating a protective order against him held by Christina Haagenson (Victim), Defendant's ex-wife, contrary to Section 40-13-6(E). At trial, Victim testified that she and Defendant had attended a telephonic hearing on December 8, 2021, pursuant to her petition to the metropolitan court for an order of protection against Defendant. The State admitted the order of protection, which had been signed by the district court judge the day after the hearing and included various recommendations accepted by the judge, including that Defendant stay 100 yards away from Victim. Victim testified that a few months after her request for a protective order was granted, Defendant called her, entered her garage when she opened it to park upon her arrival home, and said he wanted to talk to his "fucking wife." Victim backed her vehicle out of her garage and left her property, calling police to report Defendant's violation of the protective order. Victim testified that

her sister and niece were in the vehicle with her. Victim's sister also testified at trial, corroborating Victim's version of events. Victim testified that Defendant left her property as she exited her garage.

{3} Later that morning, officers responded to a separate, "suspicious subject and vehicle" call in Victim's neighborhood. Officer Luna testified that upon his arrival in the neighborhood, Defendant fled upon seeing his approaching police vehicle. Officer Luna and other officers tracked down Defendant in the backyard of a residence (not Victim's) in the neighborhood and arrested him. Bodycam footage admitted at trial showed that before the arrest, police yelled commands for Defendant to come out of the backyard. Defendant did not comply, requiring police to eventually enter the backyard in order to detain him. During the arrest, Defendant volunteered that he was never served with any "paperwork for a restraining order," that he did not do anything wrong, and that Victim was "abusing [him] with the law" because she thought he had an affair.

{4} The jury was given UJI 14-334 NMRA, which required them to find the following elements beyond a reasonable doubt in order to convict Defendant of violating an order of protection:

> 1. An order of protection was filed in cause number D-202-DV-2020-001325;
>
> 2. [t]he order of protection was valid on the 11th day of March, 2023;

3. [D]efendant knew about the order of protection;

4. [D]efendant knowingly violated the order of protection by coming within 100 yards of [Victim], and/or [Victim's] home; [and]

5. [t]his happened in New Mexico on or about the 11th day of March, 2023.

{5} To explain "knowledge" as it appears in the third and fourth elements of UJI 14-334, the metropolitan court accepted the State's proffered jury instruction, UJI 14-5032 NMRA, a proof of knowledge instruction that explained how knowledge "may be inferred from all the surrounding circumstances." The metropolitan court reasoned that this "general criminal intent instruction . . . has always gone along with an order of protection violation." The metropolitan court denied Defendant's request for a jury instruction that required the jury to find that Defendant had received notice of the protective order, agreeing with the State that while personal service or presence at issuance may be ways to prove knowledge, they were not the only ways to do so.

{6} Defendant appeals, arguing primarily that he never received the requisite notice of the protective order and therefore insufficient evidence of knowledge existed. Alternatively, Defendant argues that the jury instructions constituted reversible error because they did not include or require elements of notice. Finally, Defendant argues that the protective order was testimonial hearsay and that the check mark indicating the protective order was mailed to Defendant was therefore hearsay

within hearsay; Defendant contends that the admission of the portion of the order with the checked box without testimony from the declarant who made the check mark violated his Confrontation Clause rights. We address each argument in turn.

DISCUSSION

I. Sufficiency of Evidence

{7} "[A]ppellate courts review sufficiency of the evidence from a highly deferential standpoint." *State v. Slade*, 2014-NMCA-088, ¶ 13, 331 P.3d 930 (omission, internal quotation marks, and citation omitted). "We examine each essential element of the crimes charged and the evidence at trial to ensure that a rational jury could have found the facts required for each element of the conviction beyond a reasonable doubt." *Id.* (internal quotation marks and citation omitted); *see also State v. Holt*, 2016-NMSC-011, ¶ 20, 368 P.3d 409 ("The jury instructions become the law of the case against which the sufficiency of the evidence is to be measured." (alterations, internal quotation marks, and citation omitted)).

{8} The third and fourth elements of the jury instruction required the jury to find beyond a reasonable doubt that "[D]efendant knew about the order of protection" and that "[D]efendant knowingly violated the order of protection." *See* UJI 14-334. Victim testified at trial that a telephonic hearing regarding her petition for a protective order occurred and that Defendant was present. Victim testified that she

received the protective order in the mail and that the order indicated that a copy had been mailed to Defendant.

{9} In addition to Victim's testimony about the protective order and hearing, the State argued at trial and on appeal that Defendant's knowledge could be gathered from circumstantial evidence. The evidence before the jury included the following: Defendant's fleeing the vicinity of Victim's home upon seeing an officer's car; Defendant remaining hidden in a backyard despite police yelling commands for him to come out; Defendant's unsolicited comment to the arresting officers that he had not received the protection order (suggesting independent awareness thereof); Defendant's contention that Victim was merely trying to use the courts against him; and the check mark on the protection order indicating that it had been mailed to Defendant.

{10} In our view, sufficient evidence existed that Defendant both knew of and knowingly violated the protective order. Defendant attended the telephonic hearing and knew that Victim sought a protective order against him. With or without later receiving personal service of the protective order, Defendant's words and behavior once police arrived indicated his awareness that he was engaged in prohibited conduct by showing up to Victim's home—let alone entering it—and angrily seeking to talk with her. We therefore agree with the State that sufficient evidence supported a finding that Defendant knew *of* the order of protection, i.e., that one

existed, as well as that Defendant knowingly violated such an order of protection by entering Victim's property.

II. Jury Instruction

{11} We turn next to Defendant's assertion, as an alternative to his sufficiency contentions, of error based on the purported contradiction among the jury instruction for violation of a protective order, the language of the statute, and *State v. Ramos*, 2013-NMSC-031, 305 P.3d 921. A defendant is "fairly entitled to a jury instruction that accurately describe[s] the essential elements of the crime and what the [s]tate would have to prove for a conviction." *Id.* ¶ 31. When, as here, a defendant objects to the jury instruction tendered at trial, "we review [their] conviction for reversible error." *Id.* ¶ 32. "To determine if a defect in a jury instruction amounts to reversible error, we must determine whether a reasonable jury could have been confused or misdirected by the jury instruction." *Id.* Otherwise, "[a] jury instruction is proper, and nothing more is required, if it fairly and accurately presents the law." *State v. Laney*, 2003-NMCA-144, ¶ 38, 134 N.M. 648, 81 P.3d 591.

{12} Because Defendant relies heavily on *Ramos*, we briefly summarize the case before addressing the parties' arguments. In *Ramos*, the defendant had been personally served with a protective order but chose not to read it. 2013-NMSC-031, ¶¶ 4, 25. When the defendant arrived and remained at a bar where the victim protected by the order was already present, the defendant was arrested for coming

within the distance proscribed by the order. *Id.* ¶¶ 6-8. At his trial for violating the protective order, the jury instruction included two elements bearing upon the defendant's knowledge that he was restrained, requiring the state to prove that "[t]he [d]efendant knew about the temporary order of protection" and that "[t]he defendant violated the temporary order of protection." *Id.* ¶ 13. On appeal, our Supreme Court agreed with the defendant that the jury instruction was erroneous because it omitted "knowingly" before "violated"; however, the Court held that knowledge was imputed to the defendant as a matter of law when he was personally served. *Id.* ¶¶ 25-28. Referring, in dicta, to the notice provisions listed in Section 40-13-6(A), our Supreme Court explained, "Mandatory service of the order of protection provides the restrained party with knowledge that certain actions will be considered criminal. . . . Thus notice, and the knowledge that comes with it, would seem to be an integral part of the crime and the legislative intent behind it." *Ramos*, 2013-NMSC-031, ¶ 21.

{13} In Defendant's view, a contradiction exists between *Ramos*'s interpretation of Section 40-13-6 and the jury instruction here at issue, rendering it potentially confusing and misleading for the jury. Specifically, Section 40-13-6(A) reads, "The order shall be personally served upon the restrained party, unless the restrained party or the restrained party's attorney was present at the time the order was issued." Defendant reads *Ramos* as making the two forms of service mentioned in Subsection

A of Section 40-13-6—presence at the time the order was issued or personal service—"mandatory preconditions" to establishing a knowing violation of a protective order. Put another way, Defendant claims that a defendant must receive notice in one of these two forms of service for notice—and by extension knowledge—to be proven. The jury instruction's omission of these two notice provisions, in Defendant's view, is "akin to a missing elements instruction," meaning that the jury instruction did not accurately convey the law and that reversible error occurred. *See State v. Mascareñas*, 2000-NMSC-017, ¶ 20, 129 N.M. 230, 4 P.3d 1221.

{14} The State responds that even though Subsection A of Section 40-13-6 includes two forms of notice, notice is not thereby automatically rendered an element of the corresponding criminal offense of violating a protective order found in Subsection E; Subsection A does not state the elements of the offense of violation of a protective order and the prosecution is not required to prove compliance with Subsection A in order to establish that Defendant violated "an order of protection," as proscribed by Subsection E. *See* § 40-13-6; *see also State v. Montoya*, 1977-NMCA-134, ¶ 6, 91 N.M. 262, 572 P.2d 1270 (stating prosecution is not required to prove compliance with administrative provisions found in one part of a statute when proving the elements of a violation found in another). As to *Ramos*'s interpretation of Section 40-13-6, the State argues that while *Ramos* does emphasize the importance of

knowledge, as evidenced by its addition of "knowingly," it does not require the State to show either of the two notice provisions identified in Subsection A when proving knowledge. *See Ramos*, 2013-NMSC-031, ¶ 26. *Ramos* never expressly held nor implied that any showing beyond the fact of knowledge itself is required, but instead acknowledged that personal service is merely one way that the State can prove knowledge. *See id.* ¶ 30.[1]

{15} We agree with the State. We view knowledge—not notice—to be an element of the crime of violating a protective order. Our Supreme Court's explanation in *Ramos* that "notice, and the knowledge that comes with it, would seem to be an integral part of the crime and the legislative intent behind it" did not elevate the notice provision found in Subsection A of Section 40-13-6 to an element of the crime of violating a protective order. *Ramos*, 2013-NMSC-031, ¶ 21. Rather, *Ramos* indicates that when at least one notice provision is satisfied, knowledge is imputed

[1]The parties skirmish over the meaning of the second notice provision—a defendant's presence when an order is issued—and whether this provision was satisfied as an alternative to personal service in this case. Rather than address this issue directly, however, we flag it for our Supreme Court and Legislature. We acknowledge that Section 40-13-6 was enacted in 1987 and note that such a provision seems out of step with now-common practice: hearing officers, rather than judges, regularly oversee protective order hearings, compile recommendations, and seek a judge's approval and signature after such a hearing. *See* Rule 1-053.2 NMRA (1998) (establishing domestic relations hearing officers, their duties and authority, since 1998). Assuming without deciding that an order is "issued" upon a judge's acceptance, approval, and signing of a hearing officer's recommendations, a defendant is frequently not present when a protective order is issued. *See* § 40-13-6(A).

as a matter of law—not that the two notice provisions are the *only* ways to prove knowledge. *Id.* In light of our reading of Section 40-13-6 and *Ramos*, the jury instruction could not have confused or misdirected a reasonable jury. *See Ramos*, 2013-NMSC-031, ¶ 21. *Ramos* made clear the State's burden and what the jury must find to convict—that beyond a reasonable doubt, Defendant knew of and knowingly violated a protective order. We see no reversible error.

III. Hearsay and Confrontation Clause

{16} Defendant's final contention is that the protective order as well as the check mark on its final page indicating the order had been mailed to Defendant are inadmissible hearsay and hearsay within hearsay, respectively. Defendant also argues that the check mark indicating the order had been mailed to Defendant was testimonial and violated Defendant's right of confrontation.

A. Hearsay

{17} As for hearsay, this Court "review[s] the admission of evidence under an abuse of discretion standard and will not reverse in the absence of a clear abuse." *State v. Sarracino*, 1998-NMSC-022, ¶ 20, 125 N.M. 511, 964 P.2d 72. "An abuse of discretion occurs when a ruling is against logic and is clearly untenable or not justified by reason." *Id.* (internal quotation marks and citation omitted).

{18} Here, the metropolitan court found that both the protective order and its contents were business records and thus exceptions to the hearsay rule. *See* Rule 11-

803(6) NMRA. The court explained that previous cases in New Mexico discuss how business records are "essentially the recording of what did or didn't happen." In applying that legal finding to the protective order and its contents, the court stated that "whether or not [the check mark] is proof that it was mailed is not necessarily what this business record is showing, but simply what the procedure of a court tasked with a certain job" is and that such procedure is "noted in a business record of regularly conducted activity and took place."

{19} In the particular facts of this case, we do not view such a finding to be against logic or clearly untenable. As the State points out, the order of protection form is a standardized document for hearing officers to fill out and include recommendations for a judge's approval. *See* Rule 4-965 NMRA. Preexisting boxes allow a hearing officer to, in the regular course of their activities, select from a myriad of potential options, such as whether the petitioner and respondent were present at the hearing, whether they were mailed copies of the order once signed, whether weapons were involved, whether certain conduct occurred, and what conduct was prohibited. *Id.* Considering the standardization of this form and the frequency with which it is used—presumably every time a hearing for a protective order is held—the metropolitan court's finding that such qualified as a business record is justified by reason and we find no abuse of discretion.

B. Confrontation Clause

{20} The Confrontation Clause "applies only to testimonial hearsay." *Smith v. Arizona*, 602 U.S. 779, 784 (2024) (internal quotation marks and citation omitted). The phrase "testimonial hearsay" imposes two limits on the reach of the Confrontation Clause: (1) only hearsay—"meaning, out-of-court statements offered to prove the truth of the matter asserted"—is barred; and (2) only "testimonial statements" are prohibited. *Id.* at 784-85 (internal quotation marks and citations omitted). Admissibility under the Confrontation Clause is a question of law, which an appellate court reviews de novo. *See State v. Zamarripa*, 2009-NMSC-001, ¶ 22, 145 N.M. 402, 199 P.3d 846.

{21} Although we determined the metropolitan court did not abuse its discretion by admitting the protective order and the check mark therein under the business records exception to the prohibition against hearsay, we still must ask whether such was testimonial. *See State v. Martinez*, 1982-NMCA-137, ¶ 16, 99 N.M. 48, 653 P.2d 879 ("The fact that evidence may have qualified for admission under an exception to the hearsay rule does not necessarily mean that a defendant's constitutional right of confrontation was not violated."). We hold that it was not.

{22} "Statements are testimonial when there is no ongoing emergency and the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Zamarripa*, 2009-NMSC-001, ¶ 24 (internal

quotation marks and citation omitted). Business and public records typically do not invoke Confrontation Clause protections "not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial." *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324 (2009).

{23} Defendant argues that while "[m]ailing copies and checking boxes may well be part of [a hearing officer]'s ordinary course of business," the check mark went to whether Defendant received notice of the protective order—a fact that would become relevant if he violated the order and was subjected to prosecution. *See Ramos*, 2013-NMSC-031, ¶¶ 20-21. The State responds that the order fails the primary purpose test and that statements made to someone, such as a hearing officer, who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers. *See State v. Tsosie*, 2022-NMSC-017, ¶ 42, 516 P.3d 1116.

{24} We agree with the State. Here, the protective order was compiled solely for Victim's protection and not to establish or prove facts relevant to future litigation. Taken a step further, the order was drafted arguably with the intent to avoid future litigation. We view the hearing officer's purpose in filling out the protective order form to be distinct from "primarily intending to establish some fact with the

understanding that the statement may be used in a criminal prosecution." *See State v. Navarette*, 2013-NMSC-003, ¶ 8, 294 P.3d 435. Determining the protective order and its contents not to be testimonial, we hold that Defendant's right of confrontation was intact.

CONCLUSION

{25} We affirm Defendant's conviction.

{26} **IT IS SO ORDERED.**

J. MILES HANISEE, Judge

WE CONCUR:

MEGAN P. DUFFY, Judge

KRISTOPHER N. HOUGHTON, Judge