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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-271**

State of Minnesota,
Respondent,

vs.

Stephen Lyle Pearson,
Appellant.

**Filed February 23, 2010
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-CR-08-47318

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Marie Wolf, Interim Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, Anthony Todero, Certified Student Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant Stephen Lyle Pearson challenges his conviction of second-degree burglary, arguing that the district court's conclusion that he committed the crime of

contempt by violating the no-entry portion of a no-contact order does not satisfy the burglary statute's independent-crime requirement. Because the district court's determination of guilt is supported by its finding that appellant violated the no-contact order by calling the victim on the telephone—conduct which satisfies the independent-crime requirement, we affirm.

FACTS

In September 2008, Brooklyn Park police officers were dispatched to a reported residential burglary in progress at 4019 83rd Avenue North in Brooklyn Park. A taxi driver reported that he had dropped off a man at that residence; the man told the driver he had money in the house to pay the fare. The driver saw the man attempt to enter the residence through the front door, but when that was not possible, he entered by breaking a window and unlocking the front door from the inside. While the driver was waiting, he was approached by a neighbor who told him that only a woman lived at that address, and no male should be inside. The driver called 9-1-1 to report the incident.

The responding officers observed a broken window on the west side of the house and saw a white male rummaging through items in the basement. Dispatch advised the officers that the homeowner, K.B., had called 9-1-1 from California, stating that appellant, her former boyfriend, had called her from inside the house. She told police that appellant had been released from jail; a conditional release order was in place, stating that he should not have contact with her or her residence; she had not given him permission to enter the house; and appellant was aware of the police outside and she believed he was suicidal. Dispatch also told the officers that they had received a call

from the person inside the residence, who identified himself as appellant and stated that he was holding a .22 caliber gun to his head and would kill himself if they entered the home.

An officer on the scene telephoned K.B., who confirmed her report to dispatch and repeated that she had not given appellant permission to be at her residence. She also told the officer that appellant had called her again, stating that police were outside and that he was “all done” and “might as well kill [himself].” An officer made phone contact with appellant in the house; appellant repeated to them that he was armed and would shoot himself if they attempted to enter. The Brooklyn Park SWAT team arrived, secured the area, and removed appellant from the residence. An officer confirmed that appellant was the person he had seen earlier in the basement and placed appellant under arrest.

The state charged appellant with two counts of second-degree burglary in violation of Minn. Stat. § 609.582, subd. 2(a)(1) (2008). The defense moved to dismiss count two of the complaint, which alleged that appellant committed burglary by entering a dwelling without consent, with intent to commit or committing the crime of violation of a no-contact order. The defense argued that count two did not properly allege that appellant committed a crime because the only no-contact order against appellant was a conditional release order in an unrelated case, and that order did not fall within the definition of a domestic-abuse no-contact order. The district court granted the state’s motion to amend the complaint to allege that the underlying crime for count two was criminal contempt of court.

The parties agreed to submit the matter for a court trial on stipulated facts.¹ The district court issued its findings, conclusions, and order finding appellant guilty of count two, second-degree burglary. The district court found that appellant entered the residence without permission and contacted K.B. by telephone while inside the home. The district court further found that court records confirmed that the district court had issued a conditional release order and contract, which specified that appellant was not to have contact with appellant and her residence. The district court concluded that appellant committed the crime of criminal contempt while in the building by contacting the residence and willfully disobeying a court order. The district court sentenced appellant to 25-1/3 months on count two and dismissed count one at sentencing. This appeal follows.

DECISION

When determining whether the evidence is sufficient to support a conviction, this court's review of a court trial is the same as the review of jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). When examining a claim of insufficient evidence to support a conviction, this court reviews a district court's factual findings for clear error but conducts an independent review of legal issues, including whether a certain violation satisfies the independent-crime requirement of the burglary statute. *State v. Colvin*, 645 N.W.2d 449, 452–53 (Minn. 2002).

¹ The state argues that appellant submitted this case under the procedure in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). But the record reflects that the district court conducted a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3, rather than a stipulation to the state's case to obtain review of a pretrial ruling under Minn. R. Crim. P. 26.01, subd. 4. Thus, appellant retains his right to the full scope of appellate review, including a sufficiency-of-the-evidence challenge. Minn. R. Crim. P. 26, cmt.; see *State v. Busse*, 644 N.W.2d 79, 89 (Minn. 2002).

The district court convicted appellant of second-degree burglary of a dwelling, which requires proof beyond a reasonable doubt that a person: (1) entered a building that is a dwelling, without consent; and (2) either had the intent to commit a crime while in the dwelling, or committed a crime while in the dwelling. Minn. Stat. § 609.582, subd. 2(a)(1) (2008). To sustain a conviction of burglary, the state must prove that a person intended to commit an independent crime while in the dwelling, rather than mere trespass. *Colvin*, 645 N.W.2d at 452. In *Colvin*, the supreme court held that a defendant's entry into his former wife's residence, in violation of the no-entry portion of an order for protection (OFP), was insufficient, by itself, to establish the independent-crime requirement of the burglary statute, absent an intent to commit, or the commission of, another violation of that order. *Colvin*, 645 N.W.2d at 456. The court stated that "[the defendant] may well have violated the OFP in ways other than mere entry; we simply have no district court findings to support that conclusion." *Id.* at 454. The court thus implied that its conclusion might have been different had the district court made findings to support an OFP violation other than mere entry into the dwelling.

Appellant argues that the evidence is insufficient to sustain his conviction because, under *Colvin*, the district court's conclusion of law that appellant committed the crime of contempt while in the dwelling "by contacting [K.B.'s residence]" is insufficient to satisfy the independent-crime requirement of the burglary statute. Appellant maintains that the district court's order may logically be interpreted to mean that *any* entry into a dwelling which violates the terms of a no-contact order, and thus subjects a defendant to a contempt order, could be construed as an independent crime. Appellant maintains that

this result would be contrary to *Colvin's* holding that more than mere trespass is necessary to satisfy the independent-crime requirement for burglary.

A person may be convicted of misdemeanor criminal contempt if that person willfully disobeys a court order. Minn. Stat. § 588.20, subd. 2(4) (2008). Here, the legal basis for the district court's determination that appellant committed criminal contempt was appellant's willful violation of the no-contact provision of a conditional-release order, which prohibited appellant from contacting either K.B. or her residence. Unlike the situation in *Colvin*, the district court here not only found that appellant entered K.B.'s residence, but specifically found in addition that appellant "continued to call" K.B. while he was in her residence. By making those calls, appellant was violating not just the no-entry portion of the order, but also the portion of the order that prohibited him from contacting K.B. Thus, under *Colvin*, appellant's telephone contact with K.B. while in the residence satisfies the independent-crime requirement for his conviction of second-degree burglary.

Affirmed.