

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NOS. A-2969-21  
A-3019-21  
A-3023-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

N.R.M.,<sup>1</sup>

Defendant-Appellant.

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Submitted September 26, 2023 – Decided October 17, 2023

Before Judges Sabatino and Chase.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Gloucester County,  
Docket Nos. FO-08-0149-22, FO-08-0206-22, and  
FO-08-0362-22.

Milberg Coleman Bryson Phillips Grossman, PLLC,  
attorneys for appellant (Arthur Stock, on the briefs).

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<sup>1</sup> We use initials to protect the privacy of the parties and confidentiality of these proceedings. See R. 1:38-3(d)(10).

Christine A. Hoffman, Acting Gloucester County Prosecutor, attorney for respondent (Michael C. Mellon, Special Deputy Attorney General/Acting Assistant Prosecutor, on the brief).

## PER CURIAM

Defendant N.R.M. appeals from three separate contempt convictions under N.J.S.A. 2C:29-9(b)(2), claiming that he did not knowingly and purposely violate a Final Restraining Order ("FRO") when he returned to the basement area of a house he shared with the victim, G.M. Having reviewed the record, the parties' arguments, and the applicable legal principles, we affirm but remand for a correction to the trial court's Order of Disposition in appeal A-3019-21.

We glean the following facts from the trial record.

### I.

On October 29, 2020, an FRO was issued under the Prevention of Domestic Violence Act of 1991 ("the PDVA"), N.J.S.A. 2C:25-17 to -35, to defendant's uncle, G.M. The terms of the FRO are plainly stated as defendant was: "barred from the residence(s) and place of employment of [G.M.]; prohibited from having any oral written, personal, or other form of contact or communication with [G.M.]; and prohibited from stalking, following, or threatening to harm, to stalk or to follow [G.M.]."

G.M. lives in a multi-generation family home. The home was described as a big old house with two additions. G.M. lives there with his spouse, three children, and father, who is defendant's grandfather. The residence contains a basement-level living space that includes a kitchen, living room, bathroom, and two bedrooms. This space is structurally attached to G.M.'s residence. The only separation between the living space and the rest of the home is a side entrance containing an alcove, with one door leading to the rest of the home and the other door leading to the living space. These doors are not consistently shut or locked to create a barrier between the two areas of the home. Additionally, G.M. works at the family business, which is adjacent to the property he resides at.

G.M. testified that defendant lived at the residence prior to the issuance of the FRO. Defendant later corroborated this and explained that he had moved out of the residence, where he had lived for numerous years, and was actively searching for new living arrangements.

On January 23, 2021, Officer Luke Ivey was called to G.M.'s residence for a reported violation of the FRO. Upon entering the home, Officer Ivey located defendant in a bathroom and observed him suffering from a drug overdose. During his trial court testimony, Officer Ivey could not confirm where the bathroom was located within the house. After locating defendant, Officer

Ivey confirmed that there was an active restraining order issued against defendant barring him from being present within the residence. Officer Ivey further confirmed that defendant had been properly served previously with the FRO. Defendant was arrested, and a complaint was filed violation of the FRO.

Months later, on August 8, 2021, G.M. arrived home to find defendant and several family members standing outside of the residence meeting to discuss funeral arrangements for defendant's stepfather. An argument ensued between defendant and G.M., which briefly involved some physicality before family members intervened. There was still an active restraining order held by G.M. against defendant at the time of the incident. Defendant was arrested, and a complaint was filed alleging this second violation of the FRO.

On October 1, 2021, Officer Ivey responded to another call at G.M.'s residence for a violation of the FRO by defendant. Officer Ivey located defendant in the downstairs living space of the residence suffering from an overdose and being assisted by emergency medical technicians. Defendant claims he had been permitted into the residence by G.M.'s father, even though there was still an active FRO barring defendant from the residence. Officer Ivey confirmed that there was an active restraining order against defendant, and that he had been properly served. Defendant was arrested, and a complaint was filed.

After a bench trial, the trial judge found G.M. and Officer Ivey were credible witnesses. The trial judge found that defendant demonstrated his ability to read and understand the terms of the FRO, and the State established that defendant was properly placed on notice of the FRO and its terms.

The trial judge found the residence to constitute a single-family dwelling which happened to include a side entrance that would lead to both the living space and the main home. The trial judge determined the State established beyond a reasonable doubt that N.R.M. purposely and knowingly committed contempt on three occasions by being at the house in violation of the FRO. Defendant was then sentenced to one year of probation on each offense, to run concurrent with each other.

Defendant appeals, arguing:

- I. THE STATE DID NOT PROVE THAT DEFENDANT HAD VIOLATED THE FINAL RESTRAINING ORDER OR COMMITTED DEFIANT TRESPASS BY BEING PRESENT IN OR ENTERING THE "RESIDENCE" OF [G.M.].
  - a. Elements of the offenses
  - b. The State did not prove that [defendant]'s presence in Apartment B was also presence in the [G.M.] Residence.
  - c. January 23 incident
  - d. August 8 incident
  - e. October 1 incident

II. THE COURT WRONGLY CONVICTED [DEFENDANT] OF CONTEMPT BASED ON ENGAGING IN DOMESTIC VIOLENCE ON AUGUST 8, 2021, WHEN THE STATE DID NOT CHARGE HIM WITH DOMESTIC VIOLENCE.

III. THE STATE DID NOT PROVE THAT ANY VIOLATION OF THE RESTRAINING ORDER HAD BEEN MADE "KNOWINGLY OR PURPOSELY".

## II.

When conducting an appellate review of the factual findings of the trial court, "[t]he aim of the review at the outset is [to] determine whether the findings made could reasonably have been reached on sufficient credible evidence present in the record." State v. Johnson, 42 N.J. 146, 162 (1964). When reviewing factfinding of a family court judge, appellate courts should give deference to the family court due to its "special jurisdiction and expertise in family matters." Cesare v. Cesare, 154 N.J. 394, 413 (1998). "We defer to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of the witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J. at 412). "However, [appellate courts] owe no deference to a trial court's

interpretation of the law, and review issues of law de novo." Cumberland Farms, Inc. v. N.J. Dep't of Env'tl Prot., 447 N.J. Super. 423 (App. Div. 2016).

A person is guilty of contempt "if that person purposely or knowingly violates any provision in an order entered under the provisions of [the PDVA]." N.J.S.A. 2C:29-9(b)(2). To establish criminal liability for contempt, the State must prove beyond a reasonable doubt: (1) there was an order entered; (2) defendant knew of the existence of the order; and (3) defendant purposefully or knowingly disobeyed the order. State v. Chenique-Puey, 145 N.J. 334, 341-42 (1996) (citing N.J.S.A. 2C:29-9(b)). A person acts purposely where it is "his conscious object to engage in conduct of that nature or to cause such a result." N.J.S.A. 2C:2-2(b)(1). "A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence." N.J.S.A. 2C:2(b)(2).

For the State to meet its burden in demonstrating a violation of a restraining order, "the evidence must allow at least a reasonable inference that a defendant charged with violating a restraining order knew his conduct would bring about a prohibited result." State v. S.K., 423 N.J. Super. 540, 547 (App. Div. 2012).

Defendant does not challenge the court's finding on the first two elements of contempt. However, defendant contends the trial court erred in finding that he purposely or knowingly violated the FRO. He contends that under his interpretation of the FRO he was allowed in the basement of the residence, because it is sufficiently separated from the first-floor residence to constitute its own dwelling. He also maintains that the FRO did not prohibit him from being outside the dwelling.

The State argues that defendant was provided with sufficient notice of the terms of the FRO and was aware that he was not permitted anywhere within the residence, as evidenced by his actions of moving out following the FRO's issuance. The State also argues that the living space is too closely connected to the residence for it to be conceivable for defendant to live there without violating the FRO.

The testimony of G.M. and defendant establish that defendant had a clear understanding of the terms of the FRO. Defendant understood that he was not to enter the home and on one occasion even asked permission of his grandfather. During the State's cross-examination, defendant read an addendum to the FRO, which lists these terms and explicitly states that defendant is to have no contact with G.M. When asked to confirm for the court the meaning of the addendum's



terms, defendant demonstrated his firm grasp on the terms by summarizing them for the court. Defendant's repeated presence in the home, whether by permission of his family or not, was in clear violation of the FRO. Had defendant not understood the terms of the FRO to include the downstairs living space, he would not have moved out of the residence upon the issuance of the FRO.

The trial judge was not swayed by defendant's argument that the living space was so separated as to constitute a separate dwelling, and ultimately concluded that the living space was part of the residence. Likewise, we are not persuaded that the downstairs living space constituted a separate dwelling. The living space is no different than a neighboring home or apartment unit, which courts have found to be close enough to be considered part of a victim's same household. See Zappaunbulso v. Zappaunbulso, 367 N.J. Super. 216, 226 (App. Div. 2004) (citing Storch v. Sauerhoff, 334 N.J. Super. 226, 229-35 (Ch. Div. 2000)).

Defendant additionally argues that the terms of the FRO only barred his presence inside of the residence; so, his presence outside of the residence on August 8, 2021 was not a purposeful or knowing violation of the FRO. The trial judge determined that defendant was in violation of the FRO for his presence outside of the residence and the contact he had that day with G.M.

The State argues that if the terms of an FRO only included the physical residence and not the property around the dwelling itself, then there would be a heightened risk of domestic violence offenders waiting just beyond the doors of a victim's residence and potentially causing them further mental and emotional harm. The State also argues that even if defendant was not in violation by being present on the property, there is sufficient evidence to support a finding that the communication with G.M. was enough to constitute a violation of the FRO.

We follow the Legislature's intent when considering whether the terms of an FRO would include the property encompassing the address listed in the Order. As previously discussed, the intent of the Legislature was to provide domestic violence victims with the maximum protection from abuse that the law can provide. N.J.S.A. 2C:25-18. It follows that where an FRO bars an individual from a specific address, that restriction includes the entire property.

Here, there is ample evidence in the record to support the trial court's finding that defendant purposely and knowingly violated the FRO held by G.M. on all three occasions. The record supports a finding that the residence in question was one house, as opposed to two or three separate apartments on one property. The terms of the FRO are plainly stated: defendant is barred from the

residence and place of employment of G.M. Defendant violated those terms. The convictions are affirmed.


### III.

The January 23, 2021 incident's Order of Disposition, under A-3019-21 (FO-08-206-22), incorrectly reflects a guilty finding of both contempt and defiant trespass. The defiant trespass charge was dismissed before trial. Therefore, we remand to the trial court for the limited and sole purpose of correcting the order of disposition by eliminating the guilty finding of defiant trespass.

To the extent we have not specifically addressed any remaining arguments, it is because we find them to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed in part, remanded in part. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION