

¶ 3

BACKGROUND

¶ 4 On March 23, 2015, the defendant was arrested and charged with violating an order of protection after he entered a residence located at 3831 West Van Buren Street, Chicago, Illinois (the Van Buren property). The order of protection had been issued to his sister, Almarie Ratcliff, after a dispute arose between defendant and Ratcliff, regarding their father's estate. Their father had lived at the Van Buren property, a "three flat gray stone" building. The defendant lived in the basement apartment with their father until he moved to a different residence in March 2014. In January 2015, following their father's death, the defendant moved back into the basement apartment of the Van Buren property and, according to Ratcliff, told her that he was "going to take possession" of the property. The defendant, Ratcliff, and their other siblings then learned that their father had left the Van Buren property in a trust to Ratcliff and her daughter.

¶ 5 The defendant filed a petition seeking an order of protection against Ratcliff in early February 2015. Shortly after that, Ratcliff filed her own petition seeking an order of protection against the defendant. The trial court conducted a hearing on both petitions on March 20, 2015, with both the defendant and Ratcliff present.¹ After the hearing, the trial court denied the defendant's petition, granted Ratcliff's petition, and entered an order of protection against the defendant for a six-month period. According to Ratcliff, the judge read the order of protection out loud and the defendant was served with a copy of the order in open court.

¶ 6 Under paragraph 2 on the order of protection, Ratcliff was granted "exclusive possession of the residence and [the defendant] shall not enter or remain in the household or premises located at: 5407 S. Damen Ave., Chicago, IL; 3831 W. Van Buren, Chicago, IL." Under

¹ There is no transcript from the hearing in the record on appeal.

paragraph 3b, the order of protection stated: “[The defendant] is prohibited from entering or remaining at 3831 W. Van Buren, Chicago, IL while any protected person is present.” The order listed Ratcliff as a protected person. The order also listed the defendant’s address as the Van Buren property and listed Ratcliff’s address as 5407 S. Damen Avenue, Chicago, Illinois (the Damen property).

¶ 7 According to Ratcliff, on March 23, 2015, three days after the court entered the order of protection, she was moving from the Damen property into the third-floor apartment of the Van Buren property. Around 4 p.m., she was standing by the third-floor window and looking outside when she saw the defendant enter the front gate of Van Buren property. She testified that the defendant “looked up at the window” in her direction and then he “walked into the basement [apartment].” She then called the police. The police officers arrived and escorted the defendant out of the basement apartment. Ratcliff heard the defendant tell the police officers that he had an order of protection against Ratcliff, and saw him hand the officers a copy of his petition for an order of protection that had been denied. Ratcliff provided the officers with the March 20, 2015 order of protection and the defendant was arrested.

¶ 8 On May 21, 2015, a bench trial commenced.² Ratcliff testified to the foregoing facts on behalf of the State. The State also presented police officer Robert Gasca as a witness. Officer Gasca testified that he responded to a call at the Van Buren property on March 23, 2015. Upon his arrival, he knocked on the basement apartment and the defendant opened the door. Once Officer Gasca confirmed there was an active order of protection, he placed the defendant under arrest.

² The defendant was subsequently charged with a second violation of the order of protection on April 21, 2015. This second charge was tried simultaneously with the first charge at the bench trial. The defendant solely appeals his conviction from the first charge stemming from the March 23, 2015 incident. Accordingly, we limit our review to that conviction.

¶ 9 After the State rested, the trial continued with the defendant's testimony. He acknowledged that on March 20, 2015, the court ruled in favor of Ratcliff. However, he claimed that the court did not inform him that he was prohibited from entering the Van Buren property and he claimed that he was never given a copy of the order of protection. The defendant further testified that he understood the court's ruling to mean he could continue living at the Van Buren property because Ratcliff was not living there at the time. He did not understand the order of protection until the police explained it to him after his arrest on March 23, 2015.

¶ 10 At the conclusion of the trial, the court noted that it found Ratcliff's testimony to be credible. The court further stated that even if it had believed the defendant's claim that he did not receive a copy of the order of protection, the defendant still had notice of the order because he admitted that the court had ruled in Ratcliff's favor after the March 20, 2015 hearing. The court concluded: "[T]wo witnesses, one being an [*sic*] police officer, observed [the defendant] [at the Van Buren property] on [March 23, 2015]. That's all that needs to be proven. I think the State has proven it beyond a reasonable doubt."

¶ 11 The court then found the defendant guilty and sentenced him to 75 days' imprisonment. The defendant filed a motion for a new trial, which the court denied. This appeal followed.

¶ 12 ANALYSIS

¶ 13 We note that we have jurisdiction to review the trial court's judgment, as the defendant filed a timely notice of appeal following the denial of his motion for a new trial. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); Ill. S. Ct. R. 606 (eff. Dec. 11, 2014).

¶ 14 The defendant seeks reversal of his conviction under a two-part argument: (1) that the terms of the order of protection are ambiguous, and must be read to bar him from the Van Buren

property only when Ratcliff was present; and (2) that the State failed to prove beyond a reasonable doubt that he knowingly entered the premises while Ratcliff was present.

¶ 15 The defendant first argues that the terms of the order of protection are ambiguous and, as a result, must be strictly construed in his favor. Specifically, the defendant asserts that there is an inherent conflict in the order of protection where one paragraph prohibited him from *ever* entering the Van Buren property but another paragraph simultaneously prohibited him from entering the Van Buren property *only when* Ratcliff was present. The defendant argues that under the rule of lenity, the order of protection prohibited him from entering or remaining at the Van Buren property only when Ratcliff was present.

¶ 16 The State concedes that there is a “discord” in the order of protection, but argues that the evidence shows that the circuit court intended to draft the order so that the defendant was prohibited from *ever* entering the Van Buren property. The State stresses that the order of protection arose out of a dispute over the Van Buren property, and that the court focused on protecting the property, as authorized under the Illinois Domestic Violence Act (750 ILCS 60/214 (West 2014)). The State claims that the court included both paragraphs in the order of protection either due to a clerical error *or* as a preventative measure in the event that a probate court subsequently questioned Ratcliff’s ownership of the Van Buren property. The State posits that ambiguity does not have an effect on the court’s intent. The State thus urges us to interpret the order of protection to be read so that the defendant was prohibited from ever entering or remaining at the Van Buren property.

¶ 17 Reviewing courts interpret an order of protection by giving effect to its plain language. *People v. Davit*, 366 Ill. App. 3d 522, 527 (2006). “However, if the language contained in the order of protection reasonably can be interpreted in two different ways, it is ambiguous.

[Citation.] In a criminal context, when the reviewing court is presented with ambiguous language to enforce, the principle of lenity is applied.” *Id.* Under the doctrine of lenity, the language in the order of protection is strictly construed in favor of the accused. *Id.* When this court interprets language of an order, we do so *de novo*. *Summers v. Retirement Board of Policemen’s Annuity & Benefit Fund of City of Chicago*, 2013 IL App (1st) 121345, ¶ 14.

¶ 18 We agree with the defendant here that the language in the order of protection is ambiguous. The two paragraphs are in conflict, leading to two possible interpretations. It would be unclear to any reasonable person whether the defendant was prohibited from entering the Van Buren property *entirely* or *only when Ratcliff was present*. See *People v. Ramos*, 316 Ill. App. 3d 18, 23 (2000) (a defendant must have specific knowledge of the provisions of the order, lest the State prosecute a defendant for violating an order of protection where the defendant does not know what conduct is prohibited by the order).

¶ 19 Although the State may be correct in that the court *intended* to prohibit to the defendant from ever entering the property, we cannot know that given the ambiguity of the order. Accordingly, our focus is on how the language of the order of protection plainly reads. “Because ‘the penal law is intended to regulate the conduct of people of all grades of intelligence within the scope of responsibility,’ *** it is therefore ‘essential to its justice and humanity that it be expressed in language which they can easily comprehend; that it be held obligatory only in the sense in which all can and will understand it.’ ” *People v. Eagle Food Centers, Inc.*, 31 Ill. 2d 535, 539 (1964) (quoting Sutherland, *Statutory Construction*, 2d ed., vol. II, sec. 520)). And in this case, because the order of protection’s plain language is ambiguous, the rule of lenity compels that it be construed in favor of the defendant. *Davit*, 366 Ill. App. 3d 522, 527. Consequently, the order of protection prohibited the defendant from entering the Van Buren

property *only when* Ratcliff was present.

¶ 20 Having determined that the order of protection prohibited the defendant from entering the Van Buren property only when Ratcliff was present, we now review the second part of the defendant's argument for reversal of his conviction: which is, that the State failed to prove beyond a reasonable doubt that he *knowingly entered the premises while Ratcliff was present*. Specifically, the defendant claims that there is no evidence that he knew Ratcliff was inside the Van Buren property when he entered the basement apartment on March 23, 2015. He emphasizes that there was no reason for him to know that Ratcliff would be moving into the Van Buren property at that time, especially when the order of protection had listed her address as the Damen property, not the Van Buren property, just three days earlier.

¶ 21 The State counters that it did prove beyond a reasonable doubt that the defendant knew Ratcliff was present when he entered the Van Buren property on March 23, 2015. The State relies on Ratcliff's testimony that she saw the defendant look up in the direction of the third-floor window before entering the basement apartment. The State also claims that the defendant's false statement to the police officers that he had an order of protection against Ratcliff was evidence that he knew he was not permitted to be on the property.

¶ 22 A person violates an order of protection when he commits an act prohibited by a court in a valid order of protection. *People v. Stiles*, 334 Ill. App. 3d 953, 956 (2002). "The offense of violating an order of protection is not a strict liability offense, and the State is required to prove both *actus reus*, a guilty act, and *mens rea*, a guilty mind." *Davit*, 366 Ill. App. 3d 522, 525. A person acts knowingly when he "is consciously aware" of the nature of his conduct or the results of his conduct. 720 ILCS 5/4-5(a) (West 2014). Knowledge can be, and often is, established by circumstantial evidence. *People v. Hinton*, 402 Ill. App. 3d 181, 185 (2010). However,

“knowledge cannot be based on circumstances that give rise only to conjecture and suspicion.”

Id. When a defendant challenges the sufficiency of the evidence, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime *beyond a reasonable doubt*. *People v. Gray*, 2017 IL 120958, ¶ 35.

¶ 23 The crux of the issue before us is whether there was evidence that the defendant *knew* Ratcliff was present when he entered the Van Buren property on March 23, 2015. The only evidence the State relies on is that Ratcliff stated that she saw the defendant look up in the direction of the third-floor apartment before entering the basement apartment. This alone is insufficient to prove, beyond a reasonable doubt, that the defendant was “consciously aware” that Ratcliff was present. This is especially true since Ratcliff testified only that she saw the defendant look up in the direction of the third-floor window. There was no testimony that he communicated with her, made eye contact, or otherwise acknowledged her presence. The testimony in its plainest form shows that Ratcliff saw the defendant, not that the defendant saw Ratcliff. Looking in the direction of the window from which Ratcliff observed the defendant entering the Van Buren property does not come close to proving beyond a reasonable doubt that defendant knew Ratcliff was present.

¶ 24 We recognize that the trial court found Ratcliff’s testimony to be more credible. However, credibility is not relevant to this issue. Even if the defendant did look up in the direction of the third-floor window, there is simply no evidence to support a finding *beyond a reasonable doubt* that the defendant knew Ratcliff was present when he entered the Van Buren property on March 23, 2015. To the contrary, it is just as plausible to believe that the defendant would not have known that Ratcliff was moving into the Van Buren property considering that,

just three days before, the court had listed her address as the Damen property on the order of protection. We are also not persuaded by the State's reliance on the defendant's false statement to the police officers that he had an order of protection against Ratcliff. This has no relevance as to whether he knew Ratcliff was present at the time he entered the Van Buren property.

¶ 25 We hold that there was no evidence by which the trier of fact could have found that the State proved, beyond a reasonable doubt, that the defendant knew Ratcliff was present at the Van Buren property when he entered it on March 23, 2015. Accordingly, we reverse the defendant's conviction of violating the order of protection on that date.

¶ 26 **CONCLUSION**

¶ 27 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County.

¶ 28 Reversed.