NO. 42895-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

AARON THOMAS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 11-1-00585-1

BRIEF OF RESPONDENT

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This brief was served, as stated below, via U.S. Mail, the recognized system of interoffice communications, *or, if an email address appears to the right, electronically.* I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED October 15, 2012, Port Orchard, WA
Original e-filed at the Court of Appeals; Copy to counsel listed at left.

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A. PROCEDURAL HISTORY

The Defendant, Aaron Thomas, was charged by an amended information filed in Kitsap County Superior Court with five counts of felony violation of a court order and one count of assault in the second degree.[1] CP 1-8. A jury found the Defendant guilty of each of the charged offenses, and the trial court then imposed a standard range sentence. CP 9-19. This appeal followed.

B. FACTS

The Defendant was charged with five counts of violating a no contact order that prohibited him contacting his mother, Dawn Woods, or coming within 500 feet of her residence. The Defendant was also charged with one count of assault in the second degree stemming from an assault where the victim was his girlfriend, Juliana Taylor.

With respect to the violation of a court order charges, the evidence showed that on April 21, 2011, the Kitsap County District Court entered a domestic violence no contact order that prohibited the Defendant from contacting Dawn Woods and prohibited him from coming within 500 feet of her residence. CP 82-83. The no contact order was admitted at trial as Exhibit 22. RP 181; CP 81-83. The order itself specifically stated that it was

[1] All of the charged crimes carried a special allegation of domestic violence. CP 1-8.

issued as a "Domestic Violence No-Contact Order under chapter 10.99 RCW" and that any violation of the order would be a criminal offense pursuant to RCW 26.50.110. CP 82-83. The Defendant also stipulated at trial that he was in fact the respondent in the no contact order. CP 79-80; RP 202. The stipulation, which was read to the jury, also acknowledged that the Defendant had two prior convictions for violation of a court order. CP 79-80, RP 202.

With respect to the specific violation of the no contact order, Juliana Taylor testified that in May through July of 2011 the Defendant was living with Dawn Woods, his mother (in violation of the order) at Ms. Woods' residence in Kingston Washington. RP 88-95. Ms. Taylor also explained that the Defendant spent nearly every night at his mother's residence. RP 93. Ms. Taylor also lived with the Defendant at Ms. Woods' residence during this time frame and she further explained that she was aware that the Defendant was not supposed to be living with his mother. RP 94-95. The Defendant also told Ms. Taylor not to tell anyone that he was living there. RP 94-95.

Ms. Taylor owned a netbook computer during the time that she was living with the Defendant at Ms. Woods' residence, and Ms. Taylor would use the computer to take pictures from time to time. A number of the pictures showed Ms. Taylor and the Defendant inside Ms. Woods' residence,

and several of these pictures were admitted at trial. See RP 98-108. Ms. Taylor further testified that some of these pictures were specifically taken on May 21, June 3, and June 30. RP 103-108.[2] These pictures, combined with Ms. Taylor's testimony, were the basis for the violation of a no contact order charges in Count I, II, and III.

Ms. Taylor also testified that on July 9 and 10th she was present with the Defendant and Ms. Woods (and Ms. Woods' boyfriend, Ray) when they drove together to a local hospital. RP 110-12. Specifically, Ms. Woods sat in the front seat while the Defendant and Ms. Taylor rode in the back seat and the Defendant had further contact with Ms. Woods at the hospital and on the trip home when he again rode in a car with Ms. Woods. RP 111-12. These events were the basis for the violation of a no contact order charged in Count IV.

Ms. Taylor also testified that on the way home from the hospital she again rode in car with the Defendant, Ms. Woods, and Ray. RP 112. On the way home, the group stopped at a Walgreens in Silverdale to get a prescription filled. RP 112-13. While they were in the Walgreen's parking lot, the Defendant and Ms. Taylor argued and the Defendant then began

[2] Steven Taylor testified that he had bought the computer for his daughter and that he had set it up for her, including setting the correct date and time. RP 59. Mr. Taylor also used the computer from time to time and never encountered any problems with the computer's clock and calendaring functions. RP 59-60.

punching Ms. Taylor in the nose and face. RP 113-114.[3] The Defendant also placed his hands on Ms. Taylor's neck to the extent that she was unable to breathe, RP 116. Ms. Taylor testified that she was afraid she was going to die. RP 116. This assault was the basis for the charge of assault in the second degree as charged in Count VI.

Ms. Taylor was eventually able to get out of the car, but she did not seek help as she was scared because she did not know what the Defendant might do to her if she called the police. RP 116. Ms. Taylor eventually went back to Ms. Woods' house with the Defendant, and when she looked in the mirror, she realized that she had bruises and a black eye. RP 117-20. Later that morning, Ms. Taylor had to go to work at her job at a Safeway store. RP 118. In order to hide her injuries, the Defendant helped Ms. Taylor cover up her bruises with makeup. RP 118-19. The Defendant told Ms. Taylor that he was sorry and that he would not do it again. RP 120.

Ms. Taylor's father, Steven Taylor came and picked her up to take her to work. RP 118-20. Mr. Taylor noticed that his daughter's makeup looked odd and described that she looked "like a raccoon." RP 61. He did not immediately notice her injuries, however, as she had worn makeup in "kind

[3] Ms. Taylor explained that Ms. Woods and Ray were in the car when the assault took place but that they did nothing to intervene. RP 115. To the contrary, Ray apparently was egging the Defendant on by saying that Ms. Taylor was a bad girl and that she wasn't smart. RP 115.

of [a] funny way in the past." RP 61. Later that day, however, Ms. Taylor told her father that she wanted to move out of the residence of Ms. Woods and the Defendant, so after her shift at Safeway, Mr. Taylor picked his daughter up and helped his daughter retrieve her belongings from the home. RP 62, 121. When Mr. Taylor and his daughter went to the home, the Defendant was again at the home with Ms. Woods. RP 62-63, 121. This final contact between the Defendant and Ms. Woods was the basis for the violation of a no contact order charged in Count V.

Ms. Taylor also told her father about the black eyes, and when her makeup had been removed , Mr. Taylor was able to see her injuries. RP 64. Mr. Taylor then called the police to report the assault. RP 65. Mr. Taylor also took a number of pictures of his daughter's black eyes, and those pictures were admitted at trial. RP 65-69.

Deputy Jeff Menge of the Kitsap County Sheriff's Office spoke to Mr. Taylor and Ms. Taylor about the assault and the injuries. RP 175. During the course of his investigation, Deputy Menge became aware of the no contact order prohibiting the Defendant from contacting Ms. Woods. RP 180. Deputy Menge also reviewed the photographs from Ms. Taylor's computer that had been taken at Ms. Wood's house, including photos showing the Defendant present in the house. RP 182. Deputy Menge then applied for and obtained a search warrant for Ms. Woods' home, in order to view the home

and confirm that the pictures had been taken inside the home. RP 182. After he executed the warrant, Deputy Menge was able to confirm that the pictures on Ms. Taylor's computer had in fact been taken inside Ms. Wood's home. RP 185-86. Deputy Menge also took a number of pictures while executing the warrant, and those pictures were admitted at trial. RP 186-93.

The trial court also allowed the State to introduce evidence pursuant to ER 404(b) regarding a prior assault and a prior threatening comment. Specifically, Ms. Taylor testified at trial that earlier in their relationship (around May or June) the Defendant had become angry with her and had punched her in the ribs and face. RP 95-96. Ms. Taylor nevertheless continued to live with the Defendant and did not report the assault to the police. RP 97-98. Ms. Taylor explained that she thought the Defendant would "change over time," and she decided to give him "another chance." RP 98. Ms. Taylor also described that the Defendant had told her not to tell anyone that he was living with his mother (in violation of the no contact order), and he further told her that if she ever told anyone then "I wouldn't sleep, if I was you." RP 94. Ms. Taylor explained that she was frightened by this remark, was "very afraid" of the Defendant and wanted to move out, but she did not do so. RP 98.

At the conclusion of the trial the jury found the Defendant guilty of all of the charged offenses, and the trial court then imposed a standard range

sentence. CP 9-19. This appeal followed.

III. ARGUMENT

A. THE INFORMATION WAS CONSTITUTIONALLY SUFFICIENT BECAUSE IT CONTAINED ALL OF THE ESSENTIAL ELEMENTS OF THE CHARGED OFFENSE.

The Defendant first argues that the information in the present case was constitutionally insufficient (and that he thus received inadequate notice of the charge) because the information did not specify the exact statutory basis for the no contact order that was alleged to have been violated. App.'s Br. at 7-9. This claim is without merit because the information contained all of the essential elements of the charged offense.

Under the Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution, a charging document must include all essential elements of a crime to inform a defendant of the charges against him and to allow preparation for the defense. *State v. Phillips*, 98 Wn.App. 936, 939, 991 P.2d 1195 (2000) (*citing State v. Kjorsvik*, 117 Wash.2d 93, 101–02, 812 P.2d 86 (1991)). A charging document is constitutionally sufficient if the information states each statutory element of the crime, even if it is vague as to some other matter significant to the defense. *State v. Holt*, 104 Wn.2d 315, 320, 704 P.2d 1189 (1985).

When a defendant challenges the sufficiency of a charging document, the standard of review depends on the timing of the challenge. *State v. Ralph*, 85 Wn.App. 82, 84, 930 P.2d 1235 (1997). If a defendant challenges the sufficiency of the information "at or before trial," the court is to construe the information strictly. *Phillips*, 98 Wn.App. at 940 (quoting *State v. Vangerpen*, 125 Wn.2d 782, 788, 888 P.2d 1177 (1995)). Under this strict construction standard, if a defendant challenges the sufficiency of the information before the State rests and the information omits an essential element of the crime, the court must dismiss the case "without prejudice to the State's ability to re-file the charges." *Phillips*, 98 Wn.App. at 940 (*quoting Ralph*, 85 Wn.App. at 86, 930 P.2d 1235).

If, however, a defendant moves to dismiss an allegedly insufficient charging document after a point when the State can no longer amend the information, such as when the State has rested its case, the court is to construe the information liberally in favor of validity. *Phillips*, 98 Wn. App. at 942–43, 991 P.2d 1195. As this Court has recently noted, these differing standards illustrate the balance between giving defendants sufficient notice to prepare a defense and "discouraging defendants' 'sandbagging,' the potential practice of remaining silent in the face of a constitutionally defective charging document (in lieu of a timely challenge or request for a bill of

particulars, which could result in the State's amending the information to cure the defect such that the trial could proceed)." *State v. Kiliona-Garramone*, 166 Wn.App. 16, 23 n.7, 267 P.3d 426 (2011), *citing Kjorsvik*, 117 Wn.2d at 103; *Phillips*, 98 Wn.App. at 940 (*citing* 2 Wayne R. LaFave & Jerold H. Israel, Criminal Procedure § 19.2, at 442 n. 36 (1984)).

In the present case, the Defendant did not challenge the sufficiency of the charging document below. Rather, the Defendant has raised this issue for the first time on appeal. Because the Defendant did not object to the information's sufficiency below, this Court is to apply the liberal standard set forth in *Kjorsvik* and construe the information in favor of its validity. *Kiliona-Garramone*, 166 Wn.App. at 24; *Phillips*, 98 Wn.App. at 942–43. Under this liberal standard of review, the court must decide whether (1) the necessary facts appear in any form, or by fair construction are found, in the charging document; and if so, (2) whether the defendant can show that he or she was nonetheless actually prejudiced by the inartful or vague language that he alleges caused a lack of notice. *Phillips*, 98 Wn.App. at 940 (*citing Kjorsvik*, 117 Wn.2d at 105–06). Although the Defendant claims on appeal that "prejudice is presumed," this claim is contrary to Washington law which clearly provides that prejudice is not presumed and that a Defendant must make an actual showing of prejudice when the Defendant had failed to object to the information below. *See* App.'s Br. at 7; *Kjorsvik*, 117 Wn.2d at 106-

07; *Kiliona-Garramone*, 166 Wn.App. at 24; *Phillips*, 98 Wn.App. at 940.

RCW 26.50.110 provides that it is a crime to knowingly violate an order issued under chapter 7.90, 9. 94A, 10.99, 26.09, 26.10, 26.26, 26.50, 74.34, or a valid foreign protection order as defined in RCW 26.52.020. The charging language in the present case specifically cited RCW 26.50.110 and mirrored the language, but the information, for the sake of clarity, listed the various types of orders by name rather by reference to the their RCW chapter numbers. Thus the charging document alleged that the order at issue was a "foreign protection order, protection order, restraining order, no contact order, or vulnerable adult order issued pursuant to state law." CP 5-6. The charging document also specifically alleged that the Defendant violated an order issued by the Kitsap District Court in cause number 16652723.

This information was sufficient to apprise the Defendant of the charge. As the probable cause materials attached to the original information showed, the order issued by the Kitsap District Court in cause number 16652723 was in fact a no contact order issued pursuant to RCW 10.99. *See*, State's Supp CP (attached as Appendix A).

While the language of the charging document mentioned such no contact orders, it also listed other types of orders such as foreign protection orders and the like. The inclusion of these other types of orders, therefore,

arguably could have created some minor ambiguity. A charging document, however, is constitutionally sufficient even if it is vague as to some other matter significant to the defense. *Holt*, 104 Wn.2d at 320.

Furthermore, Washington courts distinguish between charging documents that are constitutionally deficient because of the State's failure to allege each essential element of the crime charged and charging documents that are factually vague as to some other significant matter. *State v. Winings*, 126 Wn. App. 75, 84, 107 P.3d 141 (2005). The State may correct a vague charging document with a bill of particulars. *State v. Leach*, 113 Wn.2d 679, 686–87, 782 P.2d 552 (1989). The Defendant failed to request a bill of particulars at trial, thus, he waived any vagueness challenge. *Leach*, 113 Wn.2d at 687.

A bill of particulars, of course, was unnecessary in the present case since the actual 10.99 no contact order was included in the probable cause materials attached to the original information. See State's Supp CP. Thus any conceivable vagueness in the actual charging language was clearly remedied by the fact that the actual no contact order was attached to the original information.

Furthermore, as will be discussed in more detail below, the specific statutory authority for the current court order (and the court orders underlying

the previous convictions) is not an essential element of the crime of felony violation of court order. *See*, *State v Miller*, 156 Wn.2d 23, 123 P.3d 827 (2005) and State *v. Gray*, 134 Wn.App. 547, 138 P.3d 1123 (2006), discussed in detail below.

In the present case the information specifically alleged that the Defendant violated RCW 26.50.110 by knowingly violating a foreign protection order, protection order, restraining order, no contact order, or vulnerable adult order issued by the Kitsap County District Court in cause number 16652723.[4] This charging language was sufficient to inform the Defendant of the charge and included all of the essential elements. The charging language in no way left the Defendant to guess at the crime he was alleged to have committed.

Finally, even if this Court were to assume for the sake of the argument that there was some deficiency with the information, the Defendant's claim must still fail because the Defendant cannot show prejudice. As outlined above, the actual no contact order at issue was attached to the original information and the order clearly states on its face that it was a no contact order issued pursuant to RCW 10.99. *See*, State's Supp CP; CP 82-83. Given this fact, the Defendant cannot show any surprise or prejudice and his

[4] The exact order at issue, of course, was a 10.99 "no contact order." CP 82-83.

claim, therefore, must fail since a Defendant who fails to challenge an information before trial must demonstrate prejudice in order to prevail on a challenge to an information raised for the first time on appeal.

For all of these reasons the Defendant's claim that the information was constitutionally insufficient is without merit.

B. THE DEFENDANT'S CLAIMS OF INSUFFICIENT EVIDENCE MUST FAIL BECAUSE, VIEWING THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE WAS SUFFICIENT TO PERMIT A RATIONAL TRIER OF FACT TO FIND THE ESSENTIAL ELEMENTS OF THE CHARGED CRIMES BEYOND A REASONABLE DOUBT.

The Defendant next claims that the evidence was insufficient to support his conviction. This claim is without merit because, viewing the evidence in a light most favorable to the State, the evidence was sufficient to permit a rational jury to find that the State had proved the essential elements of the crimes of violation of a court order.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all inferences that

reasonably can be drawn therefrom. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In the present case, the Defendant first argues that the State failed to prove that he violated the terms of an order that qualified for prosecution under RCW 26.50. App.'s Br. at 11. This claim is both factually and legally without merit.

With respect to the Defendant's factual assertions, the Defendant claims in his brief that,

> "instead of producing evidence on this point, the prosecution relied on a stipulation providing that Mr. Thomas 'is the respondent in the No Contact Order, order no. 16652723, issued in the Kitsap County District Court,' Stipulation, Supp C.P..
>
> The Prosecution did not establish the authority under which order was granted. Nor did the prosecution show that the order was not an anti-harassment order entered under RCW 9A.46.060 or RCW 10.14."

App.'s Br. at 11-12.

The Defendant's above assertion, however, is factually inaccurate and misstates the record. In truth, the State did not rely solely on the stipulation to establish the existence of the no contact order that the Defendant violated. Rather, the actual no contact order form Kitsap County District Court case

16652723 was entered as an exhibit at trial. CP 82-83; RP 181. The order itself clearly shows that it was issued pursuant to RCW 10.99. The Defendant's factual assertions, therefore, are clearly without merit and are rebutted by the actual record below.

Secondly, the Defendant' legal assertions are unfounded. With respect to both the current no contact order and the prior convictions, the Defendant argues that the evidence was insufficient because the evidence did not demonstrate the statutory authority that specifically authorized the current court order or orders underlying the prior convictions. The Defendant's argument, however, is inconsistent with current Washington law.

RCW 26.50.110(5) provides that a violation of a court order issued under chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 25.50, 25.52.020, or 74.34, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50, 26.52.020, or 74.34 RCW.

Prior to December of 2005 there was some dispute regarding whether a jury or the court was charged with deciding whether a court order or conviction was authorized by one of the specific statutes listed in RCW 26.50.110. In *State v Arthur*, 126 Wn.App. 243, 249-50, 108 P.3d 169 (2005), for instance, this Court had held that the jury, and not the court, was

required to make the determination that the convictions were for violating orders issued under the relevant statute. Other courts, however, had reached the opposite conclusion. For instance, in *State v. Carmen*, 118 Wn.App. 655, 663-64, 77 P.3d 368 (2003), the Court had held that any issues regarding the statutory basis for an underlying conviction was a question of admissibility to be decided by the court, and that the jury was not called upon to decide whether a particular prior conviction was a conviction for violating an order issued under one of the statutes listed in RCW 26.50.110.

In December of 2005, however, the Washington Supreme Court ended the debate, siding with the analysis in *Carmen* and overruling *Arthur*. In *State v. Miller*, 156 Wn.2d 23, 123 P.3d 827 (2005), the defendant argued that the validity of the current no contact order was an issue for the jury. The Supreme Court disagreed and concluded that the validity of the underlying court order is neither an explicit nor implicit element of the offense of violation of the court order. The *Miller* court also specifically overruled those Court of Appeals decision that had held to the contrary. *Miller*, 156 Wn.2d at 31. Rather than presenting a question of fact for the jury, the *Miller* court concluded that the question of validity is one to be determined by the trial court as a matter of law. The court referred to this as determining whether the underlying order is "applicable" to the pending criminal charge. *Id.* The *Miller* court then explained that,

> An order is not applicable to the charged crime if it is not issued by a competent court, is not statutorily sufficient, is vague or inadequate on its face, or otherwise will not support a conviction of violating the order. The court, as part of its gate-keeping function, should determine as a threshold matter whether the order alleged to be violated is applicable and will support the crime charged. Orders that are not applicable to the crime should not be admitted. If no order is admissible, the charge should be dismissed.

Miller, 156 Wn.2d at 31 (footnote omitted).

Cases since *Miller* have explained that the analysis in *Miller* clearly applies to questions regarding both the current court order at issue as well as the prior convictions for violating a court order. For instance, in *State v Gray*, 134 Wn.App. 547, 138 P.3d 1123 (2006), the defendant moved to dismiss (at the close of the State's evidence and again after trial) based on a claim that the State had failed to prove to the jury that his prior conviction was based on a violation of a court order issued under one of the requisite statutes. *Gray*, 134 Wn.App. at 551. The trial court denied his motion, and on appeal Gray again argued that the statutory authority for the previously violated court order was an essential element which must be found by the jury beyond a reasonable doubt. *Id.* at 552. Gray also argued that *Miller* did not apply. *Id* at 555). The Court of Appeals, however, rejected Gray's argument, stating,

> Gray argues *Miller* stands only for the proposition that the validity of the *current* NCO is not an essential element of the crime of felony violation of an NCO. But *Miller* explicitly approved *Carmen's* holding that whether the prior convictions qualified as predicate convictions under the statute was a threshold determination of relevance, or applicability, properly left to the court. And because RCW 26.50.110(5) provides that the statutory authority for the previously-violated NCOs determines whether the prior convictions qualify as predicate convictions under RCW 26.50.110(5), it is, as we ruled in *Carmen*, a question of law for the court.
>
> *Miller's* "applicability" reasoning applies equally to issues of law about previously -violated NCOs. Whether the current NCO and the previously-violated NCOs are admissible to support a felony charge under RCW 26.50.110(5) depends on whether they were issued under the listed statutes. Acting in its "gate-keeping" capacity, a court must make this determination before the jury is allowed to hear the evidence. Under *Miller*, this applicability determination is "uniquely within the province of the court."
>
> In sum, prior convictions for violating NCOs are only relevant to prove felony violation of an NCO under RCW 26.50.110(5) if the previously-violated NCOs were issued under the listed statutes. *Carmen* and *Miller* establish that the statutory authority for those NCOs is not an essential element of the crime to be decided by the jury, but rather a threshold determination the court makes as part of its "gate-keeping function" before admitting the prior convictions into evidence for the jury's consideration. *Miller* resolved the *Carmen–Arthur* dispute in *Carmen's* favor, and we agree with the reasoning in both cases. We therefore decline to apply *Arthur* here.

Gray, 134 Wn.App. at 555-56.

In the present case, the Defendant attempts to revive the *Arthur* decision and argue that the validity of both the current court order and the previously entered convictions are essential elements of the crime of felony

violation of court order. As the Supreme Court's decision in *Miller* and the Court of Appeals decisions in *Carmen* and *Gray* clearly demonstrate, however, the statutory authority for both the current court order and the court orders behind the prior convictions are not essential elements of the crime to be decided by the jury. To the contrary, issues regarding the statutory authority for the orders only plays a part in the threshold determination that the trial court makes as part of its "gate-keeping function." The Defendant's claim to the contrary, therefore, is without merit and should be rejected.

The Defendant also argues that the "to-convict" instruction used in the present case was flawed because it did not include the "essential elements" of the specific statutory authority for both the current court order and the court orders behind the prior convictions. App.'s Br. at 14-15. For the reasons outlined above, this argument must be rejected because under Washington law the specific statutory authority underlying a court order is not an "essential element" of the crime.

In the present case the trial court properly instructed the jury using WPIC 36.51.02 that required the State to prove that there was a no contact order applicable to the defendant, that the defendant knowingly violated a provision of this order, and that the defendant had twice been previously convicted for violating the provisions of a court order. CP 58-62; WPIC 36.51.02.

With respect to the sufficiency of the evidence, viewing the evidence in a light most favorable to the State, the evidence showed that the Defendant repeatedly violated the no contact order issued in Kitsap County District Court cause number 16652723, and that order was admitted at trial. CP 82-83; RP 181. In addition, the Defendant stipulated that he had two prior convictions for violation of a court order. CP 80; RP 202.[5] Given these facts, the evidence was clearly sufficient to support the Defendant's convictions.

[5] Although not specifically raised in the present appeal, any claim that the trial court was required to further investigate the exact nature of the Defendant's prior convictions was waived when the Defendant entered the stipulation below and failed to raise any objection on this basis. *Key Design v. Moser*, 138 Wn.2d 875, 893, 993 P.2d 900 (1999). A stipulation is an express waiver in which the party concedes the truth of an alleged fact for the purposes of trial. *State v. Wolf*, 134 Wn.App. 196, 199, 139 P.3d 414 (2006). review denied, 160 Wn.2d 1015(2007). The effect is that one party need not prove the fact and the other may not disprove it. *Wolf*, 134 Wn. App. at 199; *State v. Ortega*, 134 Wn.App. 617, 626, 142 P.3d 175 (2006) ("[D]efendant's failure to timely object on this ground waives the issue. Because Ortega did not object, he may not complain on appeal that the trial court should have made the determination before admitting the stipulation." (citation omitted)), *review denied*, 160 Wn.2d 1016 (2007). Moreover, because the Defendant stipulated, the convictions were not made part of the record, with the result that the record was not developed sufficiently to allow this court to consider this claim for the first time now, even if characterized as a constitutional issue. See RAP 2.5(a)(3); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) ("If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest.")

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING EVIDENCE OF THE DEFENDANT'S PRIOR ACTS OF DOMESTIC VIOLENCE PURSUANT TO ER 404(B) BECAUSE: (1) THE JURY WAS ENTITLED TO EVALUATE THE VICTIM'S CREDIBILITY WITH FULL KNOWLEDGE OF THE DYNAMICS OF HER RELATIONSHIP WITH THE DEFENDANT; AND (2) THE PROBATIVE VALUE OF THE EVIDENCE OUTWEIGHED THE DANGER OF UNFAIR PREJUDICE.

The Defendant argues that the trial court abused its discretion by admitting evidence pursuant to ER 404(b). App.'s Br. at 16. This claim is without merit because the trial court did not abuse its discretion in admitting the ER 404(b) evidence. To the contrary, this evidence was properly admitted because the jury was entitled to evaluate the victim's credibility with full knowledge of the dynamics of her relationship with the Defendant.

Under ER 404(b), evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. ER 404 (b). This list of other purposes for which such evidence of other crimes, wrongs, or acts may be introduced is not exclusive. *State v. Grant*, 83 Wn. App. 98, 105, 920 P.2d 609 (1996).

To admit evidence of a defendant's other wrongs, the trial court must (1) find by a preponderance of the evidence that the wrongs occurred; (2) identify the purpose for which the evidence is sought to be introduced; (3) determine whether the evidence is relevant to prove an element of the crime with which the defendant is charged; and (4) weigh the probative value of the evidence against its prejudicial effect. *State v. Fualaau*, 155 Wn. App. 347, 356–57, 228 P.3d 771, *review denied*, 169 Wn.2d 1023, 238 P.3d 503 (2010). Furthermore, in determining the admissibility of ER 404(b) evidence, the court should be mindful that the State must prove all of the elements of the crime in its case in chief, regardless of the nature of the defense. *State v. Eastabrook*, 58 Wn. App. 805, 813, 795 P.2d 151, *review denied*, 115 Wn.2d 1031 (1990); *State v. Anderson*, 15 Wn. App. 82, 84, 546 P.2d 1243 (1976).

An appellate court reviews a trial court's decision to admit evidence under ER 404(b) for abuse of discretion. *State v. Magers*, 164 Wn.2d 174, 181, 189 P.3d 126 (2008). A trial court abuses its discretion if it exercises it on untenable grounds or for untenable reasons. *Fualaau*, 155 Wn. App. at 356.

Washington Court's have previously held that although evidence of a defendant's prior crimes, wrongs, or acts is presumptively inadmissible to prove character or to show action in conformity therewith, "Such evidence is, however, admissible for other purposes, such as proof of motive, absence of

mistake or accident, or to assist the jury in assessing the credibility of a witness who is the victim of domestic violence at the hands of the defendant." *See, e.g., State v Baker*, 162 Wn. App. 468, 470, 259 P.3d 270 (2011).

In *Baker*, the defendant was charged with two counts of second degree assault and the trial court allowed the State to introduce evidence of two earlier, uncharged, assaults under ER 404(b). *Baker*, 162 Wn. App. at 472. Specifically, the trial court held that the evidence showed the nature of the relationship between the defendant and the victim and was admissible to show motive, the absence of mistake or accident, and to assist the jury in assessing the victim's credibility as a witness. *Baker*, 162 Wn. App. at 472. On appeal Baker argued that the trial court erred in admitting the evidence. *Id* at 472.

The Court of Appeals in *Baker* held that the evidence of a hostile relationship between the defendant and the victim was admissible to show the defendant's motive. *Baker*, 162 Wn. App. at 474, *citing, State v. Powell*, 126 Wn.2d 244, 259, 893 P.2d 615 (1995).[6] In addition, the Court held that the

[6] The use of ER 404(b) evidence to show motive in domestic violence cases is well established in Washington. For instance, in *State v. Powell*, 126 Wn.2d 244, 259, 893 P.2d 615 (1995) the defendant was charged with second degree murder. The victim was his wife. The trial court admitted evidence of numerous prior assaults and hostilities between the defendant and his wife to show motive and the res gestae of the crime. *Powell*, 126 Wn.2d at 260-263. The Court found the prior act evidence admissible under motive to demonstrate the impulse or desire that moved the defendant to commit the crime. *Powell*, 126 Wn.2d at 260.

trial court properly admitted evidence of the defendant's prior assaults on the victim as relevant to the jury's assessment of the victim's credibility. *Baker*, 162 Wn. App. at 475. The *Baker* Court explained that this ruling was consistent with the Washington Supreme Court's opinion in *State v Magers*, 164 Wn.2d 174, 186, 189 P.3d 126 (2008), where the Court concluded "that prior acts of domestic violence, involving the defendant and the crime victim, are admissible in order to assist the jury in judging the credibility of a recanting victim." *Baker*, 162 Wn. App. at 475, *quoting Magers*, 164 Wn.2d at 186.

The *Baker* court also rejected the defendant's claim that *Magers* was distinguishable because the victim in *Magers* had recanted, whereas the victim in *Baker* had not recanted. *Baker*, 162 Wn. App. at 475. Specifically,

---

In addition, the Supreme Court in Powell pointed out the historical precedent for admitting evidence of prior hostilities between the same parties to establish motive:

> A number of cases dealing with the admissibility of evidence of prior assaults and quarrels have found that "[e]vidence of previous quarrels and ill-feeling is admissible to show motive". Evidence of prior threats is also admissible to show motive or malice.

Powell, 126 Wn. 2d at 260, *citing State v. Hoyer*, 105 Wn. 160, 163, 177 P. 683 (1919); *State v. Gates*, 28 Wn. 689, 697-98, 69 P. 385 (1902); 1 Charles E. Torcia, Wharton's Criminal Evidence § 110, at 389-90 (14th ed. 1985).

Similarly, in *State v. Americk*, 42 Wn.2d 504, 507, 256 P.2d 278 (1953), the defendant was charged with placing explosives next to car with intent to blow up his ex-wife. The Court allowed the ex-wife to testify that the defendant beat her during their marriage to establish motive:

> Prior acts of violence by the defendant against the same person, besides evidencing intent, may also evidence emotion or motive, i.e. a hostility showing him likely to do further violence.

Americk, 42 Wn. 2d 504, at 507.

the Court held that,

> We disagree with Baker that the fact that *Grant* and *Magers* involved recanting victims renders those cases inapposite here. On the contrary, the court's reasoning in *Grant*, which the court in *Magers* adopted, shows that evidence of Baker's prior assaults on [the victim] was properly admitted to help the jury's assessment of [the victim's] credibility. Although [the victim] did not recant, she testified at trial that she did not contact the police after Baker strangled her the first two times, nor did she call the police after he strangled her on the last occasion.

Baker, 162 Wn. App. at 475. The *Baker* court went on to explain that victims of domestic violence often attempt to placate their abusers in an effort to avoid repeated violence, and often minimize the degree of violence when discussing it with others. *Baker*, 162 Wn. App. at 475, *citing Grant*, 83 Wn. App. 98, 107–08, 920 P.2d 609 (1996). Thus, a couple's history of domestic violence explained why a victim might permit a defendant to see her despite a no-contact order, and why the victim would minimize the degree of violence when talking to others. *Baker*, 162 Wn. App. at 475.

The *Baker* court then concluded that because the victim's credibility was a central issue at trial, the jury "was entitled to evaluate [the victim's] credibility with full knowledge of the dynamics of her relationship with Baker." *Baker*, 162 Wn. App. at 475.

In the present case, the victim did not immediately report the assault charged in Count VI. Given this fact, the jury was entitled to evaluate the victim's credibility with full knowledge of the dynamics of her relationship with the Defendant. In addition, the prior assault was evidence of motive and intent. Given these facts and the well-settled law in this area, the Defendant has fallen fall short of showing an abuse of discretion. The Defendant's claim, therefore, must fail.

D. THE DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL MUST FAIL BECAUSE THE DEFENDANT CANNOT SHOW THAT THERE WERE NO LEGITIMATE STRATEGIC OR TACTICAL REASONS FOR HIS COUNSEL'S FAILING TO REQUEST A LIMITING INSTRUCTION.

The Defendant next claims that his trial counsel provided ineffective assistance of counsel by failing to request a limiting instruction regarding the State's ER 404(b) evidence. App.'s Br. at 24. This claim is without merit because defense counsel could have had a legitimate strategic or tactical reason for not requesting a limiting instruction. Specifically, trial counsel could have concluded that a limiting instruction would have highlighted the State's purpose in admitting the evidence.

A valid tactical decision cannot form the basis for an ineffective assistance of counsel claim. *State v. Israel*, 113 Wn.App. 243, 270, 54 P.3d

1218 (2002), *review denied*, 149 Wn.2d 1013 (2003). Because of the presumption in favor of effective representation, a defendant must show there was no legitimate strategic or tactical reason for the challenged conduct. *McFarland*, 127 Wn.2d at 366.

Under Washington law a reviewing court presumes defense counsel's decision not to request a limiting instruction was a tactical decision made to avoid highlighting the evidence, and Washington courts have long held that a failure to request a limiting instruction can be a tactical decision not to emphasize damaging evidence. See, e.g., *State v. Barragan*, 102 Wn.App. 754, 762, 9 P.3d 942 (2000)(noting that "we can presume counsel decided not to request a limiting instruction because to do so would reemphasize this damaging evidence" and holding that failure to request a 404(b) limiting instruction did not represent ineffective assistance); *State v. Price*, 126 Wn.App. 617, 649, 109 P.3d 27 (2005) (holding that counsel's failure to request a limiting instruction can be characterized as trial strategy or tactics as "[w]e can presume that counsel did not request a limiting instruction" for ER 404(b) evidence to avoid re-emphasizing damaging evidence); *State v. Donald*, 68 Wn.App. 543, 551, 844 P.2d 447 (1993).

In the present case, defense counsel could have legitimately decided not to request a limiting instruction in order not to draw attention to the evidence. This is especially true since the limiting instruction would have

directed the jury to the specific purpose that the evidence was admissible pursuant to ER 404(b).

For all of these reasons Defendant's claim of ineffective assistance must fail since counsel's decision not to request a limiting instruction could have been a valid tactical decision, and a valid tactical decision cannot form the basis for an ineffective assistance of counsel claim.

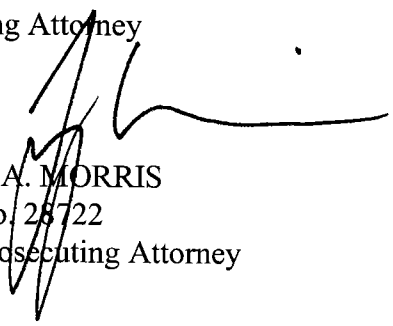
IV. CONCLUSION

For the foregoing reasons, the Defendant's conviction and sentence should be affirmed.

DATED October 15, 2012.

Respectfully submitted,

RUSSELL D. HAUGE
Prosecuting Attorney



JEREMY A. MORRIS
WSBA No. 28722
Deputy Prosecuting Attorney

DOCUMENT1

Appendix A

July 29, 2011 Information and attached probable cause information.

Note: These materials have been designated as Clerk's Papers in the State's Supplemental Designation of Clerk's Papers filed October 15, 2012.

ORIGINAL

FILED
KITSAP COUNTY CLERK
2011 JUL 29 PM 12:13
DAVID W. PETERSON

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

AARON JASON THOMAS,
Age: 22; DOB: 11/16/1988,

Defendant.

No. 11 1 00585 1

INFORMATION

(Total Counts Filed – 2)

COMES NOW the Plaintiff, STATE OF WASHINGTON, by and through its attorney, KELLIE L. PENDRAS, WSBA NO. 34155, Deputy Prosecuting Attorney, and hereby alleges that contrary to the form, force and effect of the ordinances and/or statutes in such cases made and provided, and against the peace and dignity of the STATE OF WASHINGTON, the above-named Defendant did commit the following offense(s)–

Count I
Violation of a Court Order [Felony]

On or about July 10, 2011, in the County of Kitsap, State of Washington, the above-named Defendant, with knowledge that the Kitsap County District Court had previously issued a foreign protection order, protection order, restraining order, no contact order, or vulnerable adult order pursuant to state law in Cause No. 16652723, did violate said order by knowingly violating the restraint provisions therein, and/or by knowingly violating a provision excluding him or her from a residence, a workplace, a school or a daycare, and/or by knowingly coming within, or knowingly remaining within, a specified distance of a location, and/or by knowingly violating a

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Special Assault Unit
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provision of a foreign protection order for which a violation is specifically indicated to be a crime; and furthermore, the Defendant did have at least two prior convictions for violating the provisions of a court order issued under Chapter 10.99, 26.09, 26.10, 26.26, 26.50, 26.52, and/or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020; contrary to Revised Code of Washington 26.50.110.

(MAXIMUM PENALTY-Five (5) year in imprisonment and/or $10,000 fine, pursuant to RCW 26.50.110(5) and RCW 9A.20.021(1)(c), plus restitution, assessments and court costs.)

JIS Code: 26.50.110.5 Protection Order Vio/Over 2 Conv

Special Allegation–Domestic Violence

AND FURTHERMORE, the Defendant did commit the above crime against a family or household member; contrary to Revised Code of Washington 10.99.020. "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

Count II
Assault in the Fourth Degree

On or about July 10, 2011, in the County of Kitsap, State of Washington, the above-named Defendant did intentionally assault JULIANNA F. TAYLOR; contrary to Revised Code of Washington 9A.36.041(1).

(MAXIMUM PENALTY-Three hundred sixty-four (364) days in jail or $5,000 fine, or both, pursuant to RCW 9A.36.041(2) and RCW 9A.20.021(2), plus restitution, assessments and court costs.)

JIS Code: 9A.36.041 Assault 4th Degree

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Special Allegation–Domestic Violence

AND FURTHERMORE, the Defendant did commit the above crime against a family or household member; contrary to Revised Code of Washington 10.99.020. "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that I have probable cause to believe that the above-named Defendant committed the above offense(s), and that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: July 27, 2011
PLACE: Port Orchard, WA

STATE OF WASHINGTON

KELLIE L. PENDRAS, WSBA NO. 34155
Deputy Prosecuting Attorney

All suspects associated with this incident are–

Aaron Jason Thomas

Russell D. Hauge, Prosecuting Attorney
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(360) 337-7148; Fax (360) 337-7229
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DEFENDANT IDENTIFICATION INFORMATION

AARON JASON THOMAS

Alias Name(s), Date(s) of Birth, and SS Number
[PERSON ALIAS DOB SSN]

[Address source–(1) Kitsap County Jail records if Defendant in custody, or law enforcement report noted below if Defendant not in custody, or (2) Washington Department of Licensing abstract of driving record if no other address information available]

Race: White	Sex: Male	DOB: 11/16/1988	Age: 22
D/L: THOMAAJ123QW	D/L State: Washington	SID: WA22848892	Height: 603
Weight: 200	JUVIS: Unknown	Eyes: Brown	Hair: Brown
DOC: Unknown	*FBI: 409381JC7*		

LAW ENFORCEMENT INFORMATION

Incident Location: 27699 Gamble Bay Road Ne, Kingston, WA [Incident Address Zip]

Law Enforcement Report No.: 2011SO007219

Law Enforcement Filing Officer: Jeffrey D. Menge, KCSO142

Law Enforcement Agency: Kitsap County Sheriff's Office - WA0180000

Court: Kitsap County Superior Court, WA018015J

Motor Vehicle Involved? No

Domestic Violence Charge(s)? Yes

Law Enforcement Bail Amount? unknonw

CLERK ACTION REQUIRED

In Custody

Appearance Date If Applicable: n/a

PROSECUTOR DISTRIBUTION INFORMATION

Superior Court	District & Municipal Court
Original Charging Document– Original +2 copies to Clerk 1 copy to file **Amended Charging Document(s)–** Original +2 copies to Clerk 1 copy to file	**Original Charging Document–** Original +1 copy to Clerk 1 copy to file **Amended Charging Document(s)–** Original +1 copy clipped inside file on top of left side 1 copy to file

Prosecutor's File Number–11-166527-27

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. AARON JASON THOMAS, Age: 22; DOB: 11/16/1988, Defendant.	No. SUPPLEMENTAL CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

I, KELLIE L. PENDRAS, WSBA NO. 34155, am a Deputy Prosecuting Attorney for the Kitsap County Prosecuting Attorney's Office. I am familiar with the police report(s) and investigation conducted in this matter which contain the following information in addition to that information provided in previously filed probable cause certifications upon which the motion for the determination of probable cause is made–

I have reviewed the Defendant's criminal history. He has two prior convictions for violating a protection order.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: July 27, 2011
PLACE: Port Orchard, WA

STATE OF WASHINGTON

KELLIE L. PENDRAS, WSBA NO. 34155
Deputy Prosecuting Attorney

Prosecutor's File Number–11-166527-27

Russell D. Hauge, Prosecuting Attorney
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INCIDENT / INVESTIGATION REPORT
ARREST / CITATION MADE

INCIDENT DATA

Agency Name	*Kitsap County Sheriffs Office*
ORI	*WA0180000*
OCA:	*K11-007219*
Date / Time Reported	*MO Jul 11, 2011 18:22*

	Crime Incident	CJIA	Local Statute	Att	Com
#1	*ASSAULT 4 - DV*	*01135*	*9A.36.041*	☐	☑
#2	*VIOLATION OF PROTECTION ORDER*	UCR: *0044*	*26.50.110.1*	☐	☑
#3		UCR:		☐	☐

Occ From	*07/11/2011 18:22*
Occ To	*07/11/2011 18:22*
Dispatched	*07/11/2011 18:24*
Arrived	*18:24*
Cleared	*18:51*

Location of Incident: *27699 Gamble Bay Rd Ne, Kingston, WA* | Premise Type: *Vehicle* | Offense Tract: *KN*

MO

How Attacked or Committed:

Weapon / Tools: *Hands, Fist, Feet, Etc* | Forcible Entry: ☐ Yes ☐ No ☑ N/A

VICTIM

Victims: *2* | Type: *Individual* | Injury: *Bruising (Minor)* | Residency Status:

Victim/Business Name (Last, First, Middle)	Victim of Crime #	Relationship to Offenders	Age / DOB	Race	Sex
VI1 *Taylor, Julianna Faye*	*1*		*19 7/17/1991*	*U*	*F*

Home Address: [redacted] | Home Phone: [redacted] | Cell Phone:

Employer Name/Address: | Business Phone:

VYR	Make	Model	Style	Color	Lic/Lis	VIN

OFFNDR

Offender(s) Suspected of Using: ☐ Drugs ☑ N/A ☐ Alcohol ☐ Computer

Offender 1	Offender 2	Offender 3
OF1 Age: *22* Race: *W* Sex: *M*	Age: Race: Sex:	Age: Race: Sex:
Offender 4	**Offender 5**	**Offender 6**
Age: Race: Sex:	Age: Race: Sex:	Age: Race: Sex:

Primary Offender Resident Status: ☑ Resident ☐ Non-Resident ☐ Unknown

SUSPECT

Name (Last, First, Middle): OF1 Also Known As: *Thomas, Aaron Jason* | Home Address: *Unknown Whereabouts* | Home Phone: | Cell Phone: *(360) 860-2058*

Occupation: *None* | Business Address: *None* | Business Phone:

DOB. / Age	Race	Sex	Hgt	Wgt	Build	Hair Color	Eye Color
11/16/1988 22	*W*	*M*	*6'03*	*185*	Hair Style	Hair Length	Glasses
						Brown	*Brown*

Scars, Marks, Tatoos, or other distinguishing features (i.e. limp, foreign accent, voice characteristics)

; Scars/Right Fore Head-; Head/Left Arm-Crown/ Cross W/Wing; Arm/Right Right-At; Right/Right Fore Right Fore-

Hat	Shirt/Blouse	Coat/Suit	Socks
Jacket	Tie/Scarf	Pants/Dress/Skirt	Shoes

Was Suspect Armed?	Type of Weapon	Direction of Travel	Mode of Travel

VYR	Make	Model	Style/Doors	Color	Lic/Lis	VIN

Suspect Hate / Bias Motivated: ☐ Yes ☑ No | Type:

WITNESS

Name (Last, First, Middle)	D.O.B.	Age	Race	Sex
Taylor, Steven A	*11/19/1966*	*44*	*W*	*M*

Home Address: [redacted] | Home Phone: [redacted] | Cell Phone:

Employer: | Business Phone:

Officer:	SUPERVISOR:	INFO: ONLY:	F/ UP: DET.	F/ UP: LINE	PROSECUTOR:		
(142) MENGE, JEFF							

Incident / Investigation Report

Kitsap County Sheriffs Office

OCA: *K11-007219*

OTHERS INVOLVED

CODES: DE-Deceased, DR-Driver, MN-Mentioned, MP-Missing Person, OT-Other, OW-Owner, PA-Passenger, PT-Parent/Guardian, RA-Runaway, RO-Registered Owner, RP-Reporting Party, VI-Victim

Code	Name (Last, First, Middle)	Type: *Individual*	Victim of Crime #	Age / DOB	Race	Sex
VI2	*Woods, Dawn Marie*	*SSN:* - -	2	45 *11/8/1965*	W	F

Home Address	Home Phone	Cell Phone
[redacted]		[redacted]

Employer Name/Address	Business Phone
Va Hospital / SEATTLE	

Code	Name (Last, First, Middle)	Victim of Crime #	Age / DOB	Race	Sex

Home Address	Home Phone	Cell Phone

Employer Name/Address	Business Phone

NARRATIVE

On 7-11-11 I spoke to JULIANNA FAYE TAYLOR and her father, STEVEN TAYLOR on the phone regarding an assault that occurred on 7-10-11.

STEVEN started to tell me that his daughter was assaulted by her boyfriend, AARON THOMAS. THOMAS hit her in the face and gave her a black eye. STEVEN saw her with the black eye and she told about the assault. During his explanation, I could hear a female in the background. I asked if it was JULIANNA and he said yes. He then told me JULIANNA is slightly developmentally delayed but she could tell me about it.

I then spoke to JULIANNA. She appeared to understand all of my questions and responded appropriately. I did not detect anything that would lead me to any notion she was below normal in her cognative ability.

JULIANNA told me she came back from the hospital with her boyfriend, AARON THOMAS on Sunday morning between 2am and 3am. They were in the back seat of a car driven by AARON`s mother, DAWN WOODS, and WOODS` boyfriend. They stopped at the Walgreens next to the Central Sheriff`s Office to pick up some medicine. THOMAS became very angry with JULIANNA and started yelling at her. She said it was very sudden and out of the blue. He started yelling at her that she was a Daddy`s girl and he was upset she told him everything. He hit her in the eye with his fist. He then hit her several times in the head. She tried to get out of the back seat but he held on to her arm as he hit her in the head. Once he stopped, she told DAWN WOODS that she needed to teach her son not to hit girls. WOODS said she wasn`t the one who hit her and had nothing to do with it. They then drove back to the house in Gamblewood subdivision but JULIANNA did nto know the address. Later, JULIANNA tried to call her father but THOMAS took the phone from her. JULIANNA finally got the phone back when she went to work later in the morning. THOMAS asked her if she was going to stop by later and she said she was not.

I asked where THOMAS was now and JULIANNA said he is probably trying to run from law enforcement. He has been living with his mother for quite a while. She said he has a warrant and there is also a No Contact Order between THOMAS and his mother, DAWN WOODS. JULIANNA said his mother always lies to the police about where THOMAS is. The police have come over to the house in Gamblewood several times and THOMAS has been hiding inthe house while his mother tells the police he is not there. JULIANNA never spoke up at the time because she did not want him to get in trouble but she does not want to cover for him anymore. She said THOMAS` phone number is 360-550-7016.

STEVEN TAYLOR got back on the phone when I was done and I asked them where they were so I could see the black eye. He said they were now in Bremerton. I was in Kingston with other calls pending. I asked STEVEN to take pictures of the eye today and I would get them the next time I worked which is Friday.

A check of WACIC/NCIC showed a No Contact Order protecting DAWN WOODS from AARON THOMAS, Kitsap County District Court Order 16652723.

ILEADS showed an address for DAWN WOODS at 27699 Gamble Bay Rd in the Gamblewood subdivision. The phone number listed for her was 360-550-7016. I called the number and DAWN WOODS identified herself and said she was AARON THOMAS' mother. I asked her what happened early Sunday morning and she said nothing happened and she was not involved in anything. I asked her if she was at the Walgreens in Silverdale and she said no. She then said she was only aware that her son came home from the hospital that morning but she has not seen him or been around him. I asked her if she is telling me that JULIANNA is making all of this up and she said JULIANNA makes up things sometimes. I asked her again if this was all made and she said yes and also said she called JULIANNA's father to tell him she had nothing to do with it. I then asked if her boyfriend, HOCK CHING, was home and she said no. I asked if he ahd a cell phone and she said no. I asked where he was so I could go talk to him and she said he went to the store. She said he would be back later. She seemed very hesitant to tell me anything.

I was unable to call back to speak to CHING.

When I started typing this report I found out THOMAS was arrested tonight by Port Orchard PD. I called the jail and asked if I could speak with THOMAS. They asked him if he wanted to speak with law enforcement and he said he did not. I told the jail to add the charges of Assault 4th Degree, DV and Violation of Court Order. Bail was set at $50,000.

Forward to Prosecutor.

I CERTIFY OR DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

#142 7-12-11

(Signature, Date)
(142) MENGE, JEFF
KITSAP, WA

FILED

APR 21 2011

KITSAP COUNTY DISTRICT COURT

KITSAP COUNTY DISTRICT COURT, STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff
vs.
Aaron Jason Thomas
Defendant (First, Middle, Last Name)

No. 1652723
☐ **Pre-Trial** ☒ **Post Conviction**
☐ **Replacement Order (paragraph 10)**

Domestic Violence No-Contact Order

No-Contact Order

1. **Protected Person's Identifiers:**

Dawn Marie Woods
Name (First, Middle, Last)
11/8/1965 F W
DOB Gender Race

If a minor, use initials instead of name, and complete a Law Enforcement Information Sheet (LEIS).

Defendant's Identifiers:

Date of Birth	
11/16/1988	
Gender	Race
F	W

2. **Defendant:**
   A. do not cause, attempt, or threaten to cause bodily injury to, assault, sexually assault, harass, stalk, or keep under surveillance the protected person.
   B. do not contact the protected person, directly, indirectly, in person or through others, by phone, mail, or electronic means, except for mailing or service of process of court documents through a third party, or contact by the defendant's lawyers.
   C. do not knowingly enter, remain, or come within_____ (500 feet if no distance entered) of the protected person's residence, school, workplace, other:_____.
   D. other: _____.
3. **Firearms and Weapons, Defendant:**
   ☐ do not obtain or possess a firearm, other dangerous weapon or concealed pistol license. (Pre-Trial, RCW 9.41.800. See findings in paragraph 7, below.)
   ☒ do not obtain, own, possess or control a firearm. (Post Conviction or Pre-Trial, RCW 9.41.040.)
   ☐ shall **immediately surrender** all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to: [☐ Bainbridge Island Police Department] [☐ Bremerton Police Department] [☐ Kitsap County Sheriff's Office] [☐ Port Orchard Police Department] [☐ Poulsbo Police Department] [☐ Other: _____]. (Pre-Trial Order, RCW 9.41.800.)
4. **This no-contact order expires on:** _____. Two years from today if no date

Warning: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. **You can be arrested even if the person protected by this order invites or allows you to violate the order's prohibitions.** You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application. (Additional warnings on page 2 of this order.)

NCO

Findings of Fact

5. Based upon the record both written and oral, the court finds that the defendant has been charged with, arrested for, or convicted of a domestic violence offense, and the court issues this Domestic Violence No-Contact Order under chapter 10.99 RCW to prevent possible recurrence of violence.

6. The court further finds that the defendant's relationship to a person protected by this order is an ☐ Intimate partner (former/current spouse; parent of common child; or former/current cohabitants as intimate partners) or ☒ Other family or household member as defined by Ch. 10.99 RCW.

7. ☐ (Pretrial Order) For crimes not defined as a serious offense, the court makes the following mandatory findings pursuant to RCW 9.41.800: ☐ The defendant used, displayed, or threatened to use a firearm or other dangerous weapon in a felony. ☐ The defendant is ineligible to possess a firearm due to a prior conviction pursuant to RCW 9.41.040; or ☐ Possession of a firearm or other dangerous weapon by the defendant presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

Additional Warnings to Defendant: This order does not modify or terminate any order entered in any other case. The defendant is still required to comply with other orders.

Willful violation of this order is punishable under RCW 26.50.110. State and federal firearm restrictions apply. 18 U.S.C. § 922(g)(8)(9); RCW 9.41.040.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

Additional Orders

8. ☐ (Special Assistance from Law Enforcement Agencies) The law enforcement agency where the protected person lives shall standby for a limited period of time while the defendant removes essential personal property at the protected person's residence. Personal property shall be limited to defendant's personal effects, personal clothing and tools of the trade.

9. **IT IS FURTHER ORDERED THAT** the clerk of the court shall forward a copy of this order on or before the next judicial day to:
[☐ Bainbridge Island Police Department] [☐ Bremerton Police Department] [☒ Kitsap County Sheriff's Office] [☐ Port Orchard Police Department] [☐ Poulsbo Police Department] [☐ Other: _____]
where the above-named protected person lives, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

10. ☒ This order replaces all prior no-contact orders protecting the same person issued under this cause number.

Dated and Filed: 4/21/2011 ☒ in open court with the defendant present.

I acknowledge receipt of a copy of this order:

Judge/ Pro Tem

Defendant

I am a certified or registered interpreter or found by the court to be qualified to interpret in the _____ language, which the defendant understands. I translated this order for the defendant from English into that language.

Signed at (city)_____, (state)_____, on (date)_____.

Interpreter: _____ print name: _____

KITSAP COUNTY PROSECUTOR

October 15, 2012 - 1:30 PM

Transmittal Letter

Document Uploaded: 428954-Respondent's Brief.pdf

Case Name: State v. Aaron Thomas
Court of Appeals Case Number: 42895-4

Is this a Personal Restraint Petition? ○ Yes ◉ No

The document being Filed is:

- ○ Designation of Clerk's Papers ☐ Supplemental Designation of Clerk's Papers
- ○ Statement of Arrangements
- ○ Motion: ____
- ○ Answer/Reply to Motion: ____
- ◉ Brief: Respondent's
- ○ Statement of Additional Authorities
- ○ Cost Bill
- ○ Objection to Cost Bill
- ○ Affidavit
- ○ Letter
- ○ Copy of Verbatim Report of Proceedings - No. of Volumes: ____
  Hearing Date(s): _____
- ○ Personal Restraint Petition (PRP)
- ○ Response to Personal Restraint Petition
- ○ Reply to Response to Personal Restraint Petition
- ○ Petition for Review (PRV)
- ○ Other: _____

Comments:

No Comments were entered.

Sender Name: Jeremy A Morris - Email: jmorris@co.kitsap.wa.us

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