**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

| | |
|---|---|
| **STATE OF WASHINGTON**<br><br>**Plaintiff/Respondent**<br><br>**v.**<br><br>**ERIC C. ARNESON,**<br><br>**Defendant/Petitioner,** | **SUPREME COURT NO.**<br>**96260-0**<br><br>**COURT OF APPEALS NO.**<br>**#75317-7-1**<br><br>**SUPERIOR COURT CASE NO.**<br>_____<br><br>**DISCRETIONARY REVIEW OF INTERLOCUTORY DECISION TO THE COURT OF APPEALS DIVISION ONE (RAP RULE 13.5)** |

**A. IDENTIFICATION OF MOVING PARTY (PETITIONER)**

**The moving party is the defendant (Petitioner), ERIC C. ARNESON.**

**B. RELIEF SOUGHT**

**The defendant seeks:**

**1. An order to overturn the Court of Appeals' decision to deny review.**

**2. This court grants review in the Supreme Court.**

**C. DECISION BELOW**

**The Court of Appeals decision was: An order denying motion of dismissal made September 10, 2018 by a panel of three judges.**

D. ISSUE PRESENTED FOR REVIEW

1. Did law enforcement have a valid search warrant to enter Mr. Eric Arneson's home?

2. Did the Court of Appeals commit obvious error? (RAP RULE 16.4 (C)?

3. Did the Court of Appeals' proceeding to a right of fair decision under RAP RULE 16.4 (C)?

4. Did the Court of Appeals' proceeding to the admission of misconduct under 16.4(C) substantially limit the freedom of the defendant to act? RAP 13.5?

5. Has the Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for review by the Supreme Court? RAP 13.5?

E. FACTS - STATEMENT AND AGREEMENTS

The motion to suppress evidence hearing of Mr. Arneson, arrest and illegal entry decision was an abuse of discretion, unfairly prejudicial, and misconstrued violating 4th, 5th, 6th and 14th Constitutional Amendments when the CrR 3.6 hearing was denied in favor of the state. See: Yick Wo vs. Hopkins, 118 US 356 30 LEd 220, 96 SCT 1064. Term, "The evil eye and the underhand." RP 4-9

For the record, defense attorney Mr. Adams states, "Mr. Marchesano, it became clear to me that -- what we deemed to be an illegal entry by Renton Police on October 27 may not be relevant to the ultimate issue as to the two counts in this case, which are allegedly -- have occurred on October 26. See: DeWeese vs. Town of Palm Beach, 812 F.2d 1365. RP $5^{2-6}$

Mr. Arneson was not charged with any criminal violations for October 27, 2015. See: CrR 7.8 Court Clerical Mistakes.

Prosecution Mr. Marchesano stated for the record, "Your Honor, so to take a step back, the two -- Mr. Arneson was not contacted on the 26th on the night of the alleged allegations by --" See: CrR 7.8. RP $6^{13-15}$

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Mr. Marchesano, "the only person connecting him to the house is the alleged victim in the case." RP 6[19-20]

On October 27, 2015 Renton Police officers Scott and Desmet came to Mr. Arneson's private leased residence for a civil standby by Ms. Garcia's request. RP 5, 74-75, 84-86, 114-116, 134, 137, 141, 381-383, 398-399, 543-546

Defense attorney Mr. Adams was unreasonably deficient as an effective attorney when he relied without corroborated material and testimonial evidence of Mr. Arneson's contractoral authority and possession of lease to residence 651 Shelton Ave. NE. The defense did not enter Mr. Arneson's lease into exhibits or call into testimonial evidence of landlord Mr. Bunch. Mr. Adams made no corroborated attack of Ms. Garcia's privileged testimony. RP 8, 9, 18, 100, 124, 125, 126, 397-398, 450-451, 167-169

Ms. Garcia agreed she was excluded October 12, 2015 of any authority of Mr. Arneson's private residence upon his instance in presence of two Renton police officers at a civil stand by call by Mr. Arneson. RP 134-137, 151-152, 421-422, 461, 462, 167-169, 170

Record was made Renton case 15-11840 5Z1082543 RPD for October 12, 2015, one Renton officer present Desiree Scott that Ms. Garcia was no longer invited or otherwise privileged to so enter or remain at 651 Shelton Ave NE, Mr. Arneson's private residence. (FFCL) 3 Finding of fact and conclusion of Law CrR 3.6 motion to suppress. RP 134-137, 461-462, 167-169 See: Searches and Seizures: 164 WA.APP

820 Officer Scott, after Mr. Arneson's request for Ms. Garcia to leave, arrested Mr. Arneson for 3rd degree malicous mischief. Renton case 15-11840 5Z1082543 RPD on October 12, 2015.

Ms. Garcia continued to stay at Mr. Arneson's private residence without invitation or privilege. See: Parkhust vs. Trapp, 77 f3d 707. RP 115, 136-137, 152, 423, 167-169

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Officer Scott had prior knowledge to Mr. Arneson's and Ms. Garcia's relationship and address 651 Shelton Ave NE on October 27, 2015. RP 335-338, 381, 397 Renton case 15-11840 5Z1082543,

Prosecutions perjures to law of court RP 335 22-24. Prosecution has complete understanding of October 12, 2015 made during investigations of 15-1-0623-4 KNT.

Prosecution is concealing Officer Scott's complete involvements with Mr. Arneson, Ms. Garcia, Renton case 15-11840 5Z1082543 RPD, 15-1-06523-4 KNT, October 12, 2015 and illegal entry date October 27, 2015. Mr. Marchesano request that Officer Scott testify "something equally vague" to court. Brady violations occurred. See: US vs. Gill, 297, F3d93.CD pg 39. RP 335-338

In front of jury although Officer Scott had no contact with Mr. Arneson on October 26, 2015, the date he was charged for violations of court order, prosecution ask Officer Scott to identify Mr. Arneson without indicating any dates she is identifying him for creating confusion and unfair prejudice. See: US vs. Miles, 207 F.3d 988. RP 389-390

The effects of suppressed evidence should be assessed collectively and vigorously. See: Su vs. Filion, 335 F.3d CD pg 64.

The prosecution wants to win at all cost. Mr. Marchesano and defense attorney are shielding Officer Scott. Did falsification of procedural records occur? Prosecution has a duty to refrain from improper methods. RP 134-137, 165-168, 213-214 FFCL 3, 8, 11 See: US vs. Gomez-Orduno, 235, F3d 453.

Defense attorney did not enter exculpatory evidence for October 12, 2015 into pretrial motion to suppress, concealing Officer Scott's involvements to both dates October 12, 2015 and October 27, 2015. Mr. Arneson called for civil standby to ask Ms. Garcia to leave. FFCL 3, 8, 11 RP 167-169, 21-23

Both prosecution and defense attorney are communicating, they are corroborating information, they have a complete understanding of the no contact order

(NCO) being born out of a civil standby call by Mr. Arneson to remove Ms. Garcia from his private residence October 12, 2015 in front of Renton Officer Scott. RP 5, 21-23 See: Su vs. Filion, 335 F.3d 119.

Both violating the professional rules of conduct set forth by the American Bar Association while attempting to protect Renton police from collateral damage during exhibits and testimonies denying Mr. Arneson a fair trial, liberties and freedoms. See: Bivens vs. Six Unknown, 403 US388.

My defense attorney was instructed by his clients decisions to admit all October 12, 2015 into exhibits including lease. Mr. Adams did not. RP 18, 19, 167-169. See: Bivense vs. Six Unknown Agents, 403 US.388, 29 LEd2d, 91, when a government agent acting an unconstitutional manner he becomes liable for money damages. CD pg 63

The no contact oder (NCO) does not authorize any law-enforcement-accompanied civil standby for protected person. The NCO does not grant protected person Ms. Garcia any sanctions or possessions to Mr. Arneson's private residence, 651 Shelton Ave NE.

NCO #2

The NCO "speaks for itself." The presumption should be that the judge being aware of the facts October 12, 2015 intended not to give law enforcement authority to engage in such actions. The necessary boxes are left unchecked and blank.

NCO #2 Renton case 15-11840 5Z1082543 RPD

Ms. Garcia's request to law enforcement was more than a civil stand by and not authorized by any others or NCO. RP 114-119, 137, 138, 148-153, 382, 397, 398, 546, 547, 550, 560

Ms. Garcia's request to Renton officers Scott and Desmet was to conduct an investigation and search on a knowingly private secure residence of Mr. Arneson's on October 27, 2015 in disobedience of a court order. RP 116, 119, 138-141, NCO #2 RP 546, 74-75

(FFCL) Findings of Fact and Conclusion of Law on CrR 3.6 Motion to Suppress Unlawful Search & Seizures, 77 F.3d 707

No others ever testify Mr. Arneson's residence was not secure for privacy before Renton police broke threshold. RP 76-79, 86-92, 115-119, 138-150, 382-387, 547-551, 169-170

Any attempts are non-existent in the finding of fact and conclusion of law CrR 3.6 motion to suppress (FFCL) to contact Mr. Arneson and request for consent or extend any cautions or warnings on October 27, 2015. FFCL RP 169-171

A search implies some exploratory investigation and prying into places.

People v Elmore (1963)

Renton law enforcement violated RCW 10.79.040 for entering and searching a private dwelling without authority. RP 169-171, 179-185

There was not "any contact" with Mr. Arneson before unlawfully violating the privacy of secured threshold on October 27, 2015 by Renton police. FFCL See: US vs. Parcel of Land, Etc., 507 U.S. 11, 122 LEd2d 469, 113 SCT. and Funaway vs. New York City, 445 US. 573 63 LEd2d 639, unlawful searches and seizures.

Mr. Arneson was not charged with any violations of a NCO on October 27, 2015. He was not charged with assault on October 26, 2015. FFCL RP 6, RP 53, 227-228

Ms. Garcia's request to Renton police officers Scott and Desmet was for her not to violate an element of burglary. RP 138, 169, 385-387, 551-552, 98, 150-152, 171

Jury instruction WPIC 65.02 enter or remains unlawfully - definition. One of the elements of burglary is entering or remain unlawfully. See: Jury Instruction, US vs. Sarkisian, 197 F.3rd 966. FFCL 3 RP 145-151, 169, 98 CD pg 73

Residential burglary. A person enters or remains unlawfully in or upon premises when he/she is not licensed, invited, or otherwise privileged to so enter or remain. Trial court instruction cannot impermissible shift the burden of proof. RP 169 FFCL 3

**During testimony of Officer Desmet RP 561 prosecution asks, do you know if other officers had contact with Ms. Garcia prior to that (October 26, 2015) night? See: US vs Hinton, 218 F.3d 910, due process requires that a defendant be tried only if he is on trial for the crime not past crimes. CD. pg 54**

**Desmet does not answer. He states "correct," concealing of Officer Scott's prior knowledge continues. Brady violations. See: Brady vs. Maryland, 373 US. 83 10 LEd2d 215. RP 561, 546, 16-21, CD pg. 38**

**Officer Scott's prior knowledge includes October 12, 2015 Renton case 15-11840 5Z1082543 RPD and discussions with Officer Desmet is are acts two competent, objective and reasonable police officers should make, together in an objective reasonable fashion. They should have read and understood the NCO before taking any action. If they did not understand they should have clarified with a supervisor. RP 544, 545, 547, 561, 145-150, 543-551, 381-383**

**Renton police officers Scott and Desmet knowingly perjured the contents of language in NCO issued October 20, 2015. RP 73, 93-97, 398-399 See: Aponte Matos vs. Toledo Davila, 135 F.3d 182. CD pg 40**

**Officer Desmet is uncreditible as a law enforcement officer testifying in trial. Defense attorney Mr. Adams commits unfair prejudice deliberately attempting to repair harmful error allowed by court's abuse of discretion by deliberately guiding Officer Desmet to an assumption no competent law enforcement officer should have committed. See: Misconduct: Bevins vs. Six Unknown, 403 US 388. CD pg 63. RP 75, 93-97, 398-399**

**At civil standby officers Scott and Desmet do not read NCO, do not consult with each other about prior events or give anyone complete informed cautions and warnings to breaking privacy threshold. RP 75, 78, 84-86, 88-90, 95-97, 383, 385, 115-119, 139-140, 144, 147**

**In finding of fact and conclusion of law it is non-existent that an exigent emergency exist, that Renton officers believed lives were in danger, investigating a crime or given authority to assist placing Ms. Garcia in possession of any items.**

**FFCL RP 93, 546, 562, 382**

**NCO #2**

**RCW 26.50.080 contains no language expressly prohibiting an officer from entering a residence in absence of a court order. However, this "omission" did not authorize entry into Mr. Arneson's residence.**

**Such langauge is unnecessary because both state and federal constitutions already prohibit such law enforcement warrentless entry of privacy in a home absent specific exigent circumstances. See: US vs. Mulderig, 120 F.3d 354. CD pg 60 [Circumstantial.]**

**No such specific exigent circumstance exist in the finding of fact and conclusion of law on CrR 3.6 motion to suppress.**

**FFCL RP 77, 78, 83[23], 93, 381, 562**

**No such "burden of proof" required by Renton law enforcement to show Ms. Garcia's residence was 651 Shelton Ave NE, 15 days after she agreed it was not is non-existent in the (FFCL) on October 27, 2015. RP 125, 97, 135-137, 461, 544-547, 611, 82, 83, 96-97**

**397, It should have been a "James Hearing"**

**See: US vs. Casel, 995, F.2d 1229 CD pg 60**

**The announcements of complete and informed cautions and warnings to either Ms. Garcia or Mr. Arneson are non-existent in FFCL on October 27, 2015 before any attempts to open doors, remove air-conditioner, or climb thru window and violate privacies. RP 75, 76, 116, 119, 138-141, 143, 144-150, 546**

**Further, only the court can change the NCO upon written application. RP 173**

**See: US vs. Johnson, 968 F.2d 768. CD pg 63.**

**The police did not seek a warrant having opportunity. The threshold was secured for privacy. RP 173. See: Franks vs. Delaware, 438 US 154, 57. CD pg 5**

**Ms. Garcia should have been denied civil standby for requesting an element of residential burglary type action. Once police enter a threshold secured for privacy it becomes open season and coercion increases. RP 173**

**Georgetown Law Journal Criminal 2.0 (2015)**

**We have what I described elsewhere as an epidemic of Brady violations abroad in the land. See: Hustell vs. Sayer, 5 F.d3d 996. CD pg 40**

**Officer Desmet during examination testifies Mr. Arneson "was calm and apologetic." The notifications of Miranda Rights are non-existent finding of fact and conclusion of law on CrR 3.6 motion to suppress or anywhere in record. RP 565**

**Renton law enforcement knowing used Ms. Garcia's request for civil standby for "fruits of the poisonous tree." RP 119**

**Ms. Garcia and Renton law enforcement both used civil standby for "gifts of the horses mouth." RP 119**

**Laying side by side the collective testimonies of officers Scott and Desmet and Ms. Garcia for October 27, 2015 are inconsistent, conflicting, vague, incomplete and uncreditible. RP Desmet 74-80, 83-91, Garcia 114-119, 137-148, Garcia 381-387, 395-398, Desmet 544-551, 562**

**Both state and federal precedents clearly establishes that Renton police violated Mr. Arneson's Fourth and Fifth Amendment rights. They violated the privacy of threshold without warrants, court orders or other justification.**

**The court abused its discretion and misconstructed motion to suppress CrR 3.6 violating the Sixth and Fourteenth Constitutional Amendments.**

**Applying the whole of the Fourth Amendment to the states through due process clause of the Fourteenth Amendment hold that "all" evidence obtained by search and**

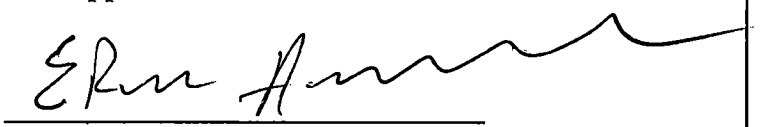
seizures in violation of the Constitution is, by the same authorities, inadmissible in a state court.

All evidence of October 27, 2015 shall be inadmissible to 15-1-06523-4 (KNT).

G. CONCLUSION:

Petitioner prays upon this court, based on factors in this Discretionary Review to grant relief herein under RAP RULE 13.5.

Under penalty of perjury, that I did mail a copy of this motion to: The County Prosecutor's Office and to the Court of Appeals Division One.



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| THE STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>ERIC CHRISTIAN ARNESON,<br><br>Appellant. | ) | No. 75317-7-I<br><br>DIVISION ONE<br><br>UNPUBLISHED OPINION<br><br>FILED: April 23, 2018 |



MANN, A.C.J. — Eric Arneson appeals his conviction for two counts of felony violation of a court order—domestic violence, under RCW 26.50.110. Arneson argues that he was denied his right to a unanimous jury verdict because the jury was not instructed that it must unanimously agree on which of the underlying alternative acts it relied upon for each conviction. Because RCW 26.50.110 is an alternative means crime and sufficient evidence of each alternative means was submitted to the jury, we affirm.

FACTS

In September 2015, Colette Garcia moved into a house leased by Arneson after being introduced to him by a mutual friend. Garcia had her own room in the house and Arneson did not ask her to sign a lease or pay rent. Garcia and Arneson soon became romantically involved.

In October 2015, Garcia and Arneson got into an argument and Arneson told Garcia to move out. Arneson began destroying some of Garcia's property, so she called the police, who arrested Arneson for malicious mischief. On October 20, 2015, Garcia obtained a court order prohibiting Arneson from having contact with her. The court order provided Garcia with sole access to the house.

Garcia testified that a week later, Arneson entered the house, grabbed her by the hair, dragged her onto the ground, and kicked her in the ribs. He then left. Garcia called the police, but Garcia was not cooperative when they responded. After the police left, Garcia remained in the house and fell asleep. Arneson again entered the house and attacked Garcia by dragging her off the couch on to the floor, striking her head against the floor, kicking her, and choking her. Garcia walked to a neighbor's house and called the police again. The police responded, but did not find Arneson at the house. Garcia was treated by medical personnel at the scene and then transported to the hospital for further treatment. She had bruises on her face, arms and ribs, cuts to her face and red marks around her neck. Photographs taken the next day showing her injuries were admitted at trial.

After being discharged from the hospital the next day, Garcia called police and requested a civil standby at the house in order to remove her belongings. Garcia told police they could enter the house to make sure Arneson was not present. Police found Arneson asleep and arrested him.

Arneson was charged by amended information with two counts of felony violation of a court order—domestic violence under RCW 26.50.110. Although generally a gross misdemeanor, a violation of RCW 26.50.110 is a class C felony if (1) the defendant's

conduct was an assault or was reckless and created a substantial risk of death or serious physical injury to another person, pursuant to RCW 26.50.110(4) or (2) the offender has at least two previous convictions for violating a court order, pursuant to RCW 26.50.110(5).

During trial, Arneson stipulated that he had two prior convictions, elevating the violations to felonies, so the jury would not hear details of the prior convictions. Jury instruction 14, the to-convict instruction for Count 1, provided:

> To convict the defendant of violation of a court order as charged in Count 1, separate and distinct from those alleged in Count 2, each of the following five elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about October 26, 2015, there existed a no-contact order applicable to the defendant;
>
> (2) That the defendant knew of the existence of this order;
>
> (3) That on or about said date, the defendant knowingly violated a provision of this order;
>
> (4) That
>
> (a) the defendant's conduct was an assault or
>
> (b) the defendant's conduct was reckless and created a substantial risk of death or serious physical injury to another person or
>
> (c) at the time of the violation, the defendant had twice been previously convicted for violating the provisions of a court order; and
>
> (5) That the defendant's act occurred in the State of Washington.
>
> If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty as to Count 1.
>
> If you find from the evidence that elements (1), (2), (3), and (5), and any of the alternative elements (4)(a), or (4)(b) or (4)(c), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of

> guilty as to Count 1. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (4)(a), or (4)(b) or (4)(c), has been proved beyond a reasonable doubt as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.
>
> On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of the five elements, then it will be your duty to return a verdict of not guilty as to Count 1.

Jury instruction 15, the to-convict instruction for Count 2, included the same language substituting Count 2 for Count 1.

A jury found Arneson guilty as charged. The jury also returned special verdicts finding that each felony violation of a court order involved domestic violence. Arneson appeals.

## ANALYSIS

### *Unanimous Jury Verdict*

Arneson's primary argument on appeal is that he was denied his right to a unanimous jury verdict because the jury was not instructed that it must unanimously agree on which of the underlying acts it relied upon to support each conviction. We disagree.

Article 1, section 21 of the Washington State Constitution guarantees criminal defendants the right to a unanimous jury verdict. State v. Ortega-Martinez, 124 Wn.2d 702, 707, 881 P.2d 231 (1994). In certain situations, the right to a unanimous jury verdict includes the right to have express jury unanimity on the means by which the defendant is found to have committed the crime. Ortega-Martinez, 124 Wn.2d at 707. "In alternative means cases, an expression of jury unanimity is not required when each alternative means presented to the jury is supported by sufficient evidence." State v. Sandholm, 184 Wn.2d 726, 732, 364 P.3d 87 (2015).

The jury instructions presumed RCW 26.50.110 is an alternative means crime, not requiring unanimity. Arneson argues, for the first time on appeal, that his right to a unanimous jury verdict was violated when the court instructed the jury that it did not have to be unanimous as to whether the conviction rested on two prior violations or an assault. Arneson does not argue that the different means are not supported by sufficient evidence, instead, Arneson argues that RCW 26.50.110(4) and RCW 26.50.110(5) do not create alternative means, but instead define alternative acts each constituting a charge of violation of a court order.

Although Arneson did not object to the instruction below, "[a]n appellate court will consider error raised for the first time on appeal when the giving or failure to give an instruction invades a fundamental constitutional right of the accused, such as the right to a jury trial." State v. Green, 94 Wn.2d 216, 231, 616 P.2d 628 (1980); RAP 2.5(a)(3) (a party may raise a "manifest error affecting a constitutional right" for the first time on appeal); see also State v. Armstrong, 188 Wn.2d 333, 339, 394 P.3d 373 (2017). Therefore, we will consider this issue.

We review constitutional issues de novo. Armstrong, 188 Wn.2d at 339. The legislature has not defined what constitutes an alternative means crime or designated which crimes are alternative means crimes. This is left to judicial determination. State v. Peterson, 168 Wn.2d 763, 769, 230 P.3d 588 (2010). Each case must be determined on its own merits. State v. Owens, 180 Wn.2d 90, 96, 323 P.3d 1030 (2014).

RCW 26.50.110, titled "Violation of order – Penalties," states, in pertinent part,

> (1)(a) Whenever an order is granted under this chapter, . . . and the respondent or person to be restrained knows of the order, a violation of

> any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:
> . . .
>
> (4) Any assault that is a violation of an order issued under this chapter, . . . and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.
>
> (5) A violation of a court order issued under this chapter, . . . is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, . . . The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

RCW 26.50.110(1), (4), (5).

In State v. Kosanske, 23 Wn.2d 211, 213, 160 P.2d 541 (1945), our Supreme Court differentiated between alternative means and separate acts crimes, stating,

> [T]here are two classes of criminal statutes to be considered. One class defines a specific crime, or makes a certain act or acts a felony or misdemeanor, or either, or both, and provides different ways in or means by which the crime may be committed, all in one statute, and the other class may set forth several distinct acts and make the commission of each a separate crime, all in one statute.

In determining whether RCW 26.50.110(4) and (5) creates alternative means, or separate acts, what must be ascertained is the legislature's intent—whether the legislature intended RCW 26.50.110 to define a single offense of violating a court order that is committable in more than one way, or to define several separate and distinct offenses that each could be chargeable as violating a court order. State v. Arndt, 87 Wn.2d 374, 378, 553 P.2d 1328 (1976); Owens, 180 Wn.2d at 96-97.

In Peterson, our Supreme Court gave the example of theft as an alternative means crime, which "may be committed by (1) wrongfully obtaining or exerting control

over another's property or (2) obtaining control over another's property through color or aid of deception." 168 Wn.2d at 769. The court explained "[t]he alternative means available to accomplish theft describe distinct acts that amount to the same crime . . . In each alternative, the offender takes something that does not belong to him, but his conduct varies significantly." Peterson, 168 Wn.2d at 770.

Here, RCW 26.50.110 makes it illegal to violate a court order, then RCW 26.50.110(4) and RCW 26.50.110(5) define distinct acts that could elevate that violation to a class C felony. In all circumstances, the offender is violating a court order, however, his conduct in doing so varies.

To hold, as Arneson suggests, that RCW 26.50.110(4) and RCW 26.50.110(5) define separate acts that each constitute a chargeable offense would permit charging the offender with multiple felonies for a single act of violating a court order. In this case, Arneson could be charged once for committing an assault in the process of violating a court order, and then be charged separately for having at least two previous convictions for violating other court orders. Doubt should be resolved against turning a single transaction into a multiple offense. Arndt, 87 Wn.2d at 385. We hold RCW 26.50.110(4) and (5) describe a single offense, violating a court order, with alternate means for elevating that offense to a class C felony.

Because RCW 26.50.110 is an alternative means crime, an expression of jury unanimity is not required when each alternative means presented to the jury is supported by sufficient evidence. Sandholm, 184 Wn.2d at 732. "Sufficient evidence is evidence adequate to justify a rational trier of fact to find guilt beyond a reasonable doubt." Ortega-Martinez, 124 Wn.2d at 708. The evidence is sufficient if "after viewing

the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt." Ortega-Martinez, 124 Wn.2d at 708 (citing State v. Rempel, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990)). Arneson does not argue that the alternative means were not supported by sufficient evidence. Viewing the evidence in the light most favorable to the State, there was sufficient evidence to support each alternative. We find no error.

*Statement of Additional Grounds*

Arneson also filed a pro se statement of additional grounds for review pursuant to RAP 10.10. The statement of additional grounds suffers generally from a misunderstanding of applicable law.[1] However, it does raise a number of legal issues, such as ineffective assistance of counsel, trial court error, and evidentiary errors. None have merit.

Our review of statements of additional grounds are subject to several practical limitations. For example, we consider only issues that adequately inform us of the nature and occurrence of the alleged errors and are not repetitive of briefing. RAP 10.10(a); State v. Alvarado, 164 Wn.2d 556, 569, 192 P.3d 345 (2008). We also do not consider issues that involve facts or evidence not in the record. Those issues are properly raised through a personal restraint petition, not a statement of additional grounds. Alvarado, 164 Wn.2d at 569.

[1] Many of Arneson's claims do not identify cognizable legal issues. For example, Arneson repeatedly accuses the witnesses, counsel, and the trial court of committing perjury, without evidence supporting these assertions. Arneson also accuses the trial court of bias. However, a trial court allowing evidence supporting a conviction of a defendant during a criminal trial does not demonstrate bias.

A. Ineffective Assistance of Counsel

Arneson argues his trial counsel was ineffective for various reasons, such as in failing to admit certain evidence at the time of the CR 3.6 hearing, in deciding to stipulate to Arneson's past convictions for violating court orders, and in not objecting to a non-expert detective being permitted to testify to photographs taken of the victim.[2] "To prevail on a claim of ineffective assistance of counsel, a defendant must establish both ineffective representation and resulting prejudice." State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002). There is a strong presumption of effective assistance. In re Detention of Moore, 167 Wn.2d 113, 122, 216 P.3d 1015 (2009). "Deficient performance is not shown by matters that go to trial strategy or tactics." State v. Studd, 137 Wn.2d 533, 551, 973 P.2d 1049 (1999).

Arneson fails to show that these actions were not part of a legitimate trial strategy. First, the evidence Arneson argues should have been admitted, proof of his lease at the property, was not pertinent to the issue of the CR 3.6 hearing, as nobody disputed that Arneson had a lease to reside at the property. Next, defense counsel's decision to stipulate to the previous convictions kept potentially prejudicial evidence from being presented to the jury. "[F]or strategic reasons, defendants charged with felony violation of a domestic violence no-contact order regularly stipulate to prior convictions that are elements of the charged crime in order to constrain the prejudicial effect on a jury." See State v. Case, 187 Wn.2d 85, 91, 384 P.3d 1140 (2016), as

[2] Arneson also contends that defense counsel was colluding with the prosecution when defense counsel objected to the prosecution's line of questioning, and when defense counsel cross-examined a prosecution witness. This claim is entirely without merit. In objecting, defense counsel was not trying to "save the witness" from committing perjury, but was instead seeking to limit the prejudicial evidence and impeach a witness. These are both standard practice for defense counsel and are not malicious as suggested by Arneson.

amended (Jan. 19, 2017). Finally, the detective's testimony was not scientific or technical and did not require expert certification. ER 701, 702. Arneson also has not shown that any of these errors has likely affected the outcome of his trial.

B. Trial Court Error

Arneson raises several claims of trial court error, some of which we do not address for the reasons listed above.[3] First, Arneson argues the trial court erred in not granting his motion to suppress the evidence that Arneson was arrested in the house after the police entered for the purpose of a civil standby without his permission. When reviewing a denial of a motion to suppress evidence, the appellate court reviews whether substantial evidence supports the challenged findings of fact and, if so, whether the findings support the conclusions of law. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006), as amended (Jan. 26, 2007). "Unchallenged findings of fact are verities on appeal and an appellate court reviews only those facts to which the appellant has assigned error." Brockob, 159 Wn.2d at 343.

The trial court held a CR 3.6 hearing on the issue and issued findings of fact and conclusions of law. Arneson does not assign error to any of the trial court's findings of fact. Arneson simply argues that he was the resident on the lease, and he had a right to privacy in his home. Therefore, the police did not have the authority to enter the property, leading to his eventual arrest. The trial court found that Garcia was a co-resident of the house and that Arneson had an existing no-contact order barring him from the property. These findings supported the trial court's conclusions that Garcia

[3] Arneson argues the trial court erred in admitting cumulative photographic evidence of the victim's injuries. At trial, Arneson objected to several photographs as being cumulative. The trial court went through the photographs and determined they were not unduly prejudicial. Because the photographs in question are not in the record before us, we do not address this issue.

had the authority to allow the police to enter the home for the purpose of a civil standby. See State v. Morse, 156 Wn.2d 1, 11, 123 P.3d 832 (2005) ("When a guest is more than a casual visitor and has 'run of the house,' her lesser interest in the property is sufficient to render consent to search effective only as to the areas of the home 'where a visitor would normally be received'"). The evidence supported this conclusion.

Arneson also argues the trial court erred in holding the predicate no-contact order was valid. The trial 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." State v. Miller, 156 Wn.2d 23, 31, 123 P.3d 827 (2005). "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. Miller, 156 Wn.2d at 31. At trial, Arneson argued that the failure of the trial court to check the "domestic violence" box on the no-contact order was error rendering the order ambiguous. The trial court found the errors were minor scrivener's errors, because the judgment accompanying the order stated the finding of domestic violence, therefore, failure to check the box did not render the order ambiguous as to whether the court found domestic violence. We agree with the trial court, and find no error.

C. Prosecutorial Misconduct

Arneson raised several claims that the prosecutor committed misconduct. Arneson argues the prosecutor committed misconduct by vouching for the witnesses' credibility, and by making comments during closing statements that were "intended to inflame the passions of the jury." The defendant bears the burden of proving that the

prosecutor's alleged misconduct was both improper and prejudicial. State v. Emery, 174 Wn.2d 741, 756, 278 P.3d 653 (2012). The "failure to object to an improper remark constitutes a waiver of error unless the remark is so flagrant and ill-intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury." State v. Russell, 125 Wn.2d 24, 86, 882 P.2d 747 (1994).

Arneson only pointed to statements in which the prosecutor was accurately relaying the evidence presented at trial, or was asking leading questions. Moreover, none of these statements were objected to at trial. Arneson did not point to any statements that would rise to the level of misconduct, let alone causing "enduring and resulting prejudice." Arneson did not meet his burden.

D. Witness Credibility

Finally, throughout his statement, Arneson argues that several witnesses were not credible at trial. Credibility is an issue for the trier of fact, and we do not review credibility determinations on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The jury had the opportunity to observe the witnesses and determine whether they were credible. We do not reweigh witness credibility.

We affirm.

Mann, ACJ

WE CONCUR:

Leach, J.

Dwyer, J.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

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| THE STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>ERIC CHRISTIAN ARNESON,<br><br>Appellant. | ) | No. 75317-7-I<br><br>DIVISION ONE<br><br>ORDER GRANTING MOTION TO EXTEND TIME TO FILE PRO SE MOTION TO RECONSIDER AND ORDER DENYING MOTION FOR RECONSIDERATION |

Appellant Eric Arneson has filed a motion to extend time to file his pro se motion for reconsideration and a motion for reconsideration of the court's opinion filed on April 23, 2018. The panel has determined that the motion to extend time to file a pro se motion to reconsider is granted to July 1, 2018. The panel has also determined that the motion for reconsideration should be denied.

Therefore, it is

ORDERED that the motion to extend time to file pro se motion to reconsider is granted and the motion for reconsideration is denied.

FOR THE PANEL:

Mann, A.C.J.