NO. 308341-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

RUSSELL ALLEN HARRINGTON, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 09-1-01242-7

BRIEF OF RESPONDENT

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II. STATEMENT OF FACTS

Russell Harrington, the defendant, had a tumultuous relationship with his wife Mrs. Michelle Harrington over the course of their 20-year relationship. Mrs. Harrington had presented the possibility of divorce to the defendant numerous times and in response, was met with a handful of suicide threats by the defendant. (RP[1] 63). In November of 2009, Mrs. Harrington told the defendant she had made up her mind once and for all about wanting a divorce after she noticed his behavior was becoming more violent, controlling, and erratic. (RP 52). Her decision to divorce the defendant was also based on his long-term abuse of prescription medications, which included crushing and snorting pills with their young son in the house. (RP 55-56).

Around December 13, 2009, the defendant made another suicide

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[1] "RP" refers to the Verbatim Report of Proceedings of the Jury Trial, Volumes 1-4.

threat in response to Mrs. Harrington asking for a divorce. The defendant drew up a will, a burial plan, and wrote letters to loved ones and family. (RP 462-66). On December 14, 2009, he took a large bottle of prescription pills with him in his truck, placed the syringe in his arm, and called Mrs. Harrington, his mother, and his sister. (RP 63; 466-68). However, the defendant was unsuccessful in injecting the drugs into his system. (RP 168).

In response to this suicide threat, Mrs. Harrington facilitated the removal of all firearms from the defendant's possession and had them taken to the defendant's family members. (RP 65; 465). However, the defendant's family allowed him to regain control of two firearms, one of which Mrs. Harrington took away again on December 18, 2009. (RP 66). Despite the several attempts by Mrs. Harrington to prevent the defendant from having possession of firearms, he subsequently purchased another pistol with bullets and a holster on December 21, 2009. (RP 81; 475).

On December 28, 2009, the defendant notified his wife that she needed to take Wednesday, December 30, 2009, off from her work to file divorce papers, and so a realtor could walk through their home. (RP 69). The defendant and Mrs. Harrington still lived in the same home at the time. (RP 56). Mrs. Harrington agreed to take December 30, 2009, off of work, and the next evening the defendant and Mrs. Harrington began

preparing the divorce papers for filing. (RP 71). The defendant also requested that Mrs. Harrington put their son Michael in daycare during his Christmas break from school. (RP 58). Mrs. Harrington found the request unusual since their son had not been in daycare since he was approximately one-year old. (RP 58-59). The defendant had always watched their son after school due to not being employed and at home all day. (RP 58). Despite her finding the request unusual and a strain on their already limited finances, Mrs. Harrington complied with the defendant's request and sent Michael to daycare. (RP 58-59).

On December 30, 2009, Mrs. Harrington returned to her home shortly after 8:00 a.m. after dropping her son Michael off at day care. (RP 71; 482). When she returned, Mrs. Harrington was met at her car by the defendant. (RP 71). The defendant said he needed to use her cell phone because the home phone went dead during a phone call with his grandmother. (RP 71). The defendant then told her he needed to find the phone number of the hospital his grandmother was at in order to call her back, so Mrs. Harrington followed him into the bedroom to help him find it. (RP 72).

When she entered the bedroom, the defendant closed the door to the bedroom and began yelling at Mrs. Harrington, telling her to get down on the ground. (RP 72). He also told her it would be ten hours before

anybody would realize she was missing and come looking for her and that the realtor was not really coming. (RP 72, 141). The defendant then pulled back the covers of the bed and revealed a syringe, a pill bottle, an alcohol shot glass, duct tape, and a firearm in a holster on his waist. (RP 73). Mrs. Harrington picked up her cell phone and frantically pressed the screen before the defendant took the phone from her and tossed it across the room. (RP 73). Mrs. Harrington tried to break a window and escape, but the defendant pushed her back against a wall and forced her to sit on the ground. (RP 74).

Then, the defendant poured a shot of Scotch and forced Mrs. Harrington to drink it against her will while pointing the gun at her. He told her to take another shot, which she refused. (RP 76). She testified that the defendant then grabbed her by the throat, pushed her against the wall, and pressed the gun against her head. (RP 76, 118-19). Mrs. Harrington testified that the defendant was "very emphatic" about killing both her and himself and that he made his intent to do so very clear. (RP 124-25). She said that by that point, she had resolved that she was dead and felt completely certain he was going to kill her. (RP 76-77).

During the struggle with the cell phone, Mrs. Harrington had unknowingly made an outgoing call to a co-worker named Penny Bailey-Sherman. (RP 8; 73). Ms. Bailey-Sherman answered the call and could

hear the defendant screaming at Mrs. Harrington threatening to commit suicide and also saying he was going to finish it off. (RP 8-10). Ms. Bailey-Sherman felt like the defendant's threat to finish it off indicated he intended to take Mrs. Harrington's life as well. (RP 16). She testified the defendant made two different statements saying specifically that he was going to kill Mrs. Harrington. (RP 20). She could also hear the defendant telling Mrs. Harrington to drink a liquid. (RP 8). Ms. Bailey-Sherman took the phone into her supervisor's office and placed it on speakerphone in front of her supervisor and another co-worker. (RP 9). After hearing the altercation continue over speakerphone, Ms. Bailey-Sherman's supervisor dialed 911 from her office phone. (RP 10, 25, 34).

Shortly after the 911 call, the police arrived at the Harrington residence. (RP 77-78, 155). The defendant panicked when he saw the police had arrived and asked Mrs. Harrington what she had done and who she had called. He then placed his own gun in his mouth, took it out and injected himself with the drugs in the syringe on the bed. (RP 77-78). The defendant then collapsed and Mrs. Harrington ran outside to the responding police and was taken to a safe location (RP 77-79, 156-57). The defendant then crawled out of the house where he was confronted by police officers. They asked him to show them his hands, but he failed to comply and crawled back into his residence. (RP 161). At around 8:50

a.m., the defendant reemerged from his residence, and was taken into police custody. (RP 162-63). He was taken to Kadlec Hospital where he was placed in a medically-induced coma and then later transported by air to Sacred Heart Medical Center. (RP 174-75).

The defendant's account of the events of December 30, 2009, differs drastically from that of Mrs. Harrington. The defendant testified that he gathered supplies to commit suicide and then went to meet with his wife to discuss the divorce papers and selling the home. (RP 482-84). He said he was in the bedroom when Mrs. Harrington pulled a .357 handgun and pointed it at him. (RP 484). At this point, the defendant said he showed Mrs. Harrington the .40-caliber handgun he was wearing in a holster. (RP 485). The defendant tried to calm his wife with a bottle of scotch and claims he made it clear to her that he only wanted to commit suicide, not hurt her. (RP 485-86). The defendant testified that when the police arrived, he was worried about having time to kill himself, so he placed his gun in his mouth. (RP 487). He then said he thought he heard a voice tell him "no," so he placed the syringe in his skin and injected the drugs instead. (RP 487). The defendant also testified he orally ingested 168 oxycodone as well. (RP 487).

The defendant survived the suicide attempt and awoke in Sacred Heart Medical Center. (RP 488). On December 31, 2009, he was charged

with First Degree Kidnapping with domestic violence, firearm, and deliberate cruelty allegations. (CP 1). A jury trial was held from April 16 to April 20, 2012. At trial, expert psychologists disagreed over whether the defendant's medical conditions affected his ability to form intent to commit the crime charged. (RP 218; 419). Both experts agreed, however, that the defendant had a tendency to exaggerate or over-report his medical symptoms, and his statements in his psychological evaluations were not very reliable. (RP 215-16; 421-24). A forensic expert also testified at trial and found multiple persons' DNA on the firearm Mr. Harrington had on the day of the incident. (RP 147). Tests were inconclusive as to whether the additional DNA was Mrs. Harrington's. (RP 148).

The jury was instructed on First Degree Kidnapping, Second Degree Kidnapping, and Unlawful Imprisonment with special verdict forms for the firearm, domestic violence, and deliberate cruelty allegations. (CP 130-150). During jury deliberation, the jury submitted a question to the trial judge asking for a definition of the term "inflict extreme mental distress" with regard to the instruction on First Degree Kidnapping. (CP 151). The trial judge advised the jury to rely on their collective memory of the evidence and the court's instructions. (CP 151). The jury later found the defendant guilty of First Degree Kidnapping and returned special verdicts for domestic violence and a firearm

enhancement. (CP 152-54). The defendant now appeals his conviction. (CP 185).

III. ARGUMENT

1. The RCW 9A.40.020 Definition Of First Degree Kidnapping By The Alternative Means Of "Intent To Inflict Extreme Mental Distress" Is Sufficiently Definite And Objective.

The defendant now asserts that the definition of First Degree Kidnapping, RCW 9A.40.020, by the alternative means of "intent to inflict extreme mental distress" is unconstitutionally vague. (App. Brief at 8). The statute, in pertinent part, reads:

> (1) A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent:
>
> . . . .
>
> (c) To inflict bodily injury on him or her; or
> (d) To *inflict extreme mental distress* on him, her, or a third person;

RCW 9A.40.120(1)(c) and (d).

A statute is void for vagueness under the due process clause of the Fourteenth Amendment and cannot support a conviction if either: (1) the statute does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed; or (2) the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement. *State v. Watson,* 160 Wn.2d 1, 6, 154 P.3d 909

(2007). A vagueness challenge that does not implicate the First Amendment is evaluated on the particular facts of the case. *State v. Stevenson*, 128 Wn. App. 179, 189, 114 P.3d 699 (2005). The person asserting the vagueness challenge bears the heavy burden of proving the statute unconstitutional beyond a reasonable doubt. *Id.* at 187. The statute is presumed constitutional and this presumption is only overcome in exceptional cases. *Id.* at 188.

The defendant asserts that RCW 9A.40.020's definition of First Degree Kidnapping by the alternative means of "intent to inflict extreme mental distress" is both ambiguous and likely to be arbitrarily enforced due to its subjective nature. (App. Brief at 10). This argument should be rejected. RCW 9A.40.020 provides both a sufficient definition of the proscribed conduct and an objective basis for ascertaining standards of guilt. Thus, RCW 9A.40.020 is not void for vagueness. The facts of the defendant's case do not implicate the First Amendment, so his challenge should be viewed in light of these particular facts. As the party asserting the vagueness challenge, the defendant also bears the burden of proving the statute unconstitutional beyond a reasonable doubt.

The defendant argues that the term "inflict extreme mental distress" is ambiguous because it is undefined in the statute, and the jury requested a definition of the term from the trial judge. (App. Brief at 10).

A statute is not void for vagueness merely because some terms are not defined. *City of Spokane v. Douglass*, 115 Wn.2d 171, 180, 795 P.2d 693 (1990). Furthermore, impossible standards of specificity are not required. *City of Seattle v. Eze*, 111 Wn.2d 22, 26, 759 P.2d 366 (1988). The language of the statute does not require mathematical certainty and the statute is not unconstitutionally vague merely because a person cannot predict with exact certainty when his conduct would become prohibited. *Id.* at 27. The statute becomes void for vagueness when it forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. *Connally v. General Const. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L. Ed. 322 (1926).

Vagueness in a constitutional sense is not mere uncertainty. *State v. Smith*, 111 Wn.2d 1, 10, 759 P.2d 372 (1988). When assessing whether a statute is void for vagueness, the context of the entire statute is evaluated, and the language of the statute is afforded a sensible, meaningful, and practical interpretation. *Douglass*, 115 Wn.2d at 180.

The Washington State Supreme Court has consistently rejected vagueness challenges to undefined abstract statutory terms similar to the term challenged by the defendant in RCW 9A.40.020. *See State v. Halstien*, 122 Wn.2d 109, 121, 857 P.2d 270 (1993); *Haley v. Medical*

Disciplinary Bd., 117 Wn.2d 720, 744, 818 P.2d 1062 (1991); *State v. Worrell*, 111 Wn.2d 537, 545, 761 P.2d 56 (1988); *Eze,* 111 Wn.2d at 30; *Smith*, 111 Wn.2d at 11. Particularly, these challenges have been rejected where the abstract term has acquired a meaning through ordinary use, the term lends itself to a common sense interpretation, or the term has sufficient meaning within the context of the statute as a whole. *See Haley*, 117 Wn.2d at 743; *Worrell*, 111 Wn.2d at 543-44. For example, In *Worrell,* the defendant asserted that the undefined phrases "without lawful authority" and "interferes substantially with his liberty", included in the RCW 9A.40.010 definition of "restrain", rendered the statute void for vagueness. *Worrell*, 111 Wn.2d at 540. The Court rejected the challenge, holding that the phrases were adequately defined in case law and lent themselves to a common sense interpretation. *Id.* at 543-44. The Court reasoned that people of ordinary intelligence could look at the definition of "restrain" in RCW 9A.40.010 and determine what kind of activity was being proscribed and, if necessary, could consult case law for further guidance. *Id.*

Similarly, in *Eze* the Court rejected a vagueness challenge to a municipal ordinance prohibiting "loud and raucous behavior" on METRO Transit System busses. *Eze*, 111 Wn.2d at 30. The Court held the term "loud and raucous" was not inherently vague and did not render the statute

void. *Id.* at 28. The Court reasoned that while "loud" and" raucous" are abstract words, they have acquired a general meaning through every day use that portrays a sufficiently definite concept of what conduct is prohibited. *Id.* (quoting *Kovacs v. Cooper*, 336 U.S. 77, 79, 69 S.Ct. 448 (1949)). The Court further noted that although the ordinance does not provide a requisite level of disturbance for the conduct to become prohibited, the statute read in the context of bus activity makes it clear to the ordinary person what type of behavior is proscribed. *Id.* at 29.

Additionally, in *Haley* the Court rejected a vagueness challenge to RCW 18.130.180(1), which included the term "moral turpitude" in its definition of unprofessional conduct. *Haley*, 117 Wn.2d at 744. The Court held the statute was not unconstitutionally vague even though the term "moral turpitude" standing alone may have been difficult to interpret. *Id.* at 742. The Court reasoned that statutory terms are read in the context of the statute as a whole and the additional text of RCW 18.130.180, mainly a statement of the purposes for professional discipline, gave enough specific context to give "moral turpitude" meaning. *Id.* at 743. The Court noted that when read in the specific context of professional discipline, the term had sufficient meaning to put people of common understanding on notice of what conduct was proscribed. *Id.*

The defendant relies on the Court's holding in *State v. Williams* where the Court held a criminal harassment statute was unconstitutionally vague with regards to the term "mental health". *State v. Williams*, 144 Wn.2d 197, 203, 26 P.3d 890 (2001). That statute, in pertinent part, read:

> "A person is guilty of harassment if:
> (a) without lawful authority, the person knowingly threatens:
> (i) to cause bodily injury in the future to the person threatened or to any other person; or
> . . . .
> (iv) maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety..."

Former RCW 9A.46.020(1)(a)(i),(1)(a)(iv)(b) (1992).

The Court held that the statute was void for vagueness because there was nothing in the statute to define the nature or meaning of "mental health". *Williams*, 144 Wn.2d at 204. The Court reasoned the statute was cause for concern because there was no way to distinguish between whether it prohibited a person from causing another mere irritation or emotional discomfort as opposed to requiring the person to cause the victim to suffer a diagnosable mental condition. *Id.*

The Court's concerns in *Williams* are not applicable in the defendant's case. The defendant challenges RCW 9A.40.020 based on the phrase "intent to inflict extreme mental distress." Like the terms in both *Worrell* and *Eze*, the meaning of the term "extreme mental distress" can be

interpreted through common sense and is not outside the scope of understanding of an ordinary person. *Worrell*, 111 Wn.2d at 544; *Eze*, 111 Wn.2d at 28 The meaning of the term " inflict extreme mental distress" is ascertainable from the ordinary uses of the words included in the term, just as the meaning of the phrase "loud and raucous" was determined to have an ordinary meaning in *Eze*. 111 Wn.2d at 28. The term "extreme mental distress" is no more esoteric than the terms "loud and raucous," "without lawful authority," or "interferes substantially with his liberty."

While these terms contain a degree of ambiguity, neither they or the term in RCW 9A.40.020 are required to be defined. Nor do they need to be able to be interpreted with precise certainty. *Douglass*, 115 Wn.2d at 180. All that is required is that people of common intelligence do not have to necessarily guess at the meaning and differ in the application of the term "extreme mental distress." *Connally*, 269 U.S. at 391. Jurors are certainly capable of using their collective experiences and common sense to generate a reasonably definite concept of what constitutes "extreme mental distress." In fact, that is essentially what the jury here was directed to do by the trial court judge in response to their request for a definition of the term. (CP at 151).

The term "mental health" in *Williams*, on the other hand, is far more general than "extreme mental distress." The term "mental health"

can relate to both an abstract concept and diagnosed conditions as the Court noted in *Williams*. *Williams*, 144 Wn.2d at 204. Furthermore, RCW 9A.40.020 provides far more context to help give meaning to the term "extreme mental distress" than the *Williams* statute provides for "mental health." Like the statute in *Haley*, which gave meaning to the abstract term "moral turpitude" when read in the context of professional discipline, RCW 9A.40.020 sheds more light on the meaning of inflicting "extreme mental distress" when read in the context of conduct relating to an abduction. *Haley*, 117 Wn.2d at 743. Although "extreme mental distress" may be ambiguous standing alone, the way "moral turpitude" was considered to be in *Haley*, it is difficult to imagine that a person could not have a reasonably definite concept of the type of behavior that would "inflict extreme mental distress" in the context of an intentional abduction under RCW 9A.40.020(1). *Id.* at 742. Reading the *Williams* statute in the context of harassment, on the other hand, still provides no further guidance on how to interpret "mental health". The holding in *Williams* should not apply here.

The defendant also argues RCW 9A.40.020 is void for vagueness because it is susceptible to a highly subjective interpretation. (App. Brief at 10-11). This argument should also fail. RCW 9A.40.020 provides sufficiently objective standards for its application. A statute cannot allow

police officers, the judge, and the jury to subjectively decide what conduct the statute does or does not allow in any given case. *Douglass*, 115 Wn.2d at 181. There must be at least "minimal guidelines" to guide law enforcement. *Worrell*, 111 Wn.2d at 544.

The use of particular words in a statutory term or phrase can sufficiently limit the subjectivity of that statute to withstand a vagueness challenge. See *State v. Dyson*, 74 Wn. App. 237, 247, 872 P.2d 1115 (1994); See *Eze,* 111 Wn.2d at 29-30. For example in *Dyson*, the Court of Appeals of Washington rejected a vagueness challenge to the telephone harassment statute, RCW 9.61.230(2). The statute prohibited, among other things, anonymous or repeated telephone calls at an "extremely inconvenient hour." *Id.* at 241. The defendant contented the phrase "extremely inconvenient hour" was vague because it depended on the victim's subjective reaction. *Id.* at 247. The Court held the phrase did not render the statute void for vagueness because the use of the term "extremely" limited the subjectivity associated with "inconvenient" by assuring the defendant's conduct would not be measured against those who are easily or overly inconvenienced. *Id.*

The court in *Dyson* relied on the holding in *Eze*. *See id.* The Court in *Eze*, in addition to holding the terms "loud and raucous" did not render the disorderly conduct ordinance vague, also held the phrase

"unreasonably disturbs others" was not vague because the term "unreasonably" limited the subjectivity associated with "disturbs." *Eze*, 111 Wn.2d at 29. The Court indicated that the use of "unreasonably" offered the phrase more indicia of objectivity because it removed the possibility of the defendant's conduct being measured against those who are overly shy or belligerent. *Id.* (citing *People v. Raby*, 40 Ill.2d. 392, 395 (1968)).

Just as the terms "extremely" and "unreasonably" in *Dyson* and *Eze* limited the subjectivity associated with the challenged phrase, the term "extreme" in RCW. 9A.40.020 limits the subjectivity associated with "mental distress." Including the term "extreme" in front of the term "mental distress" in RCW 9A.40.020(1)(d) assures that the mental distress suffered by the victim is not measured against those who are easily or overly distressed, the same way the use of "extremely" objectified "inconvenient" in *Dyson.* 74 Wn. App. at 247. The use of "extreme" here gives the statute additional indicia of objectivity, like the term "unreasonably" did for the ordinance in *Eze*. 111 Wn.2d at 29. Accordingly, RCW 9A.40.020 is not left open to a highly subjective interpretation and provides objective standards for ascertaining guilt.

Since the offense of First Degree Kidnapping by the alternative means of "intent to inflict extreme mental distress" is both defined with

sufficient definiteness to allow ordinary people to understand the prohibited conduct and able to be interpreted objectively as to prevent arbitrary enforcement, RCW 9A.40.020 is not void for vagueness.

2. The Evidence Was Sufficient To Sustain A Conviction For First Degree Kidnapping.

Under due process, the State must prove all elements of a crime beyond a reasonable doubt to get a conviction. *State v. Aver*, 109 Wn.2d 303, 310, 745 P.2d 479 (1987). When the sufficiency of the evidence is challenged, the test becomes whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of kidnapping beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). All reasonable inferences are drawn strongly in favor of the State and most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-907, 567 P.2d 1136 (1977) *overruled on other grounds by State v. Lyons*, 174 Wn.2d 354, 366, 275 P.3d 314 (2012). In a jury trial, the Court defers to the jury on issues of conflicting testimony, credibility of witnesses, and persuasiveness of evidence. *State v. Thomas*, 150 Wn.2d 821, 874-875, 83 P.3d 970 (2004).

The crime of First Degree Kidnapping under RCW 9A.40.020 requires, (1) an intentional abduction with (2) the intent to inflict bodily injury or intent to inflict extreme mental distress. RCW 9A.40.020(1)(c)

and (d). "Abduct" means to restrain a person by either (a) secreting or holding him in a place where he is not likely to be found, or (b) using or threatening to use deadly force. RCW 9A.40.010(2). "Restrain" means to restrict a person's movements without consent and without lawful authority so as to interfere substantially with his liberty. Restraint is "without consent" when it is accomplished by physical force, intimidation, or deception. RCW 9A.40.010(1).

The defendant contends there was not sufficient evidence of intent to inflict bodily injury and also asserts there was insufficient evidence of intent to cause extreme mental distress because that portion of the statute is unconstitutionally vague. The defendant also notes that Mrs. Harrington followed him voluntarily into the home. (App. Brief at 13-14).

The victim's voluntary entry into the defendant's home does not preclude a successful kidnapping if the victim is involuntarily restrained inside. *State v. Saunders*, 120 Wn. App. 800, 815, 86 P.3d 232 (2004). Therefore, defendant's argument that Mrs. Harrington entered the home with him voluntarily is irrelevant, since her movements were subsequently restricted without her consent or lawful authority while she was inside. (RP 73-78). Furthermore, the defendant lured her into the home under a ruse that the phone was not working and he needed to enter the home to get a phone number to the hospital.

The defendant most assuredly intended to cause bodily harm to Mrs. Harrington. Mrs. Harrington, as well as another witness who could hear the incident over the phone, testified that the defendant made several comments that he intended to kill Mrs. Harrington. (RP 20; 124-25). The defendant placed a gun to her head and forced her onto the ground in the corner of the room. (RP 74). The defendant told her he had control of her because nobody would even come looking for her until some ten hours later. RP 72). The defendant only tried to kill himself once he realized the police had arrived and would interfere with his abduction. (RP 77-78). Although the defendant's testimony differs from this testimony, the jury, as the trier of fact, is responsible for determining which testimony is more credible when making their decision. *See Thomas*, 150 Wn.2d at 874-875. The defendant was labeled as unreliable by both the State's and the defense's expert mental health witnesses. (RP 215-16; 421-24). The jury convicted the defendant of the crime under these facts and their determination of the true happenings of December 30, 2009, should not be disturbed.

Furthermore, since RCW 9A.40.020's definition of First Degree Kidnapping by the alternative means of intent to inflict extreme mental distress is not void for vagueness as argued above in Section (1), the jury could have also convicted him of the crime on these grounds based on the

particular facts of the case.

The defendant clearly intended to inflict mental distress on Mrs. Harrington. He orchestrated a sophisticated plan over an extended period of time in order to get Mrs. Harrington alone in the house with him for nearly an entire day. By requesting Mrs. Harrington send their son to daycare and take December 30, 2009, off from work under the ruse of finalizing the divorce papers and having a realtor walk through, the defendant deceived Mrs. Harrington into falling into his intricate scheme. (RP 58, 69). Once he had her alone in the house, the defendant carried out the rest of his plan to terrorize Mrs. Harrington. He had a gun, tape, the alcohol, and the drugs gathered under the covers to the bed, ready to be used once he had Mrs. Harrington alone. (RP 73). The defendant pushed Mrs. Harrington against the wall, made her sit on the floor so she could not escape quickly, and pressed a gun to her head. (RP 76, 118-19). He told Mrs. Harrington nobody would be coming to help her and that he demanded answers. (RP 72). Mrs. Harrington was forced to drink alcohol from the bottle they had been saving since their wedding day and she feared the defendant was just trying to get her intoxicated before harming her. (RP 76). Mrs. Harrington testified she was sure he was going to kill her. (RP 76-77). Based on these facts, any rational trier of fact could have reached the conclusion the defendant intended to inflict extreme mental

distress on Mrs. Harrington. She had a gun placed in her face, was told nobody was coming to help her, and had her life threatened by the defendant as a result of his well thought out plan.

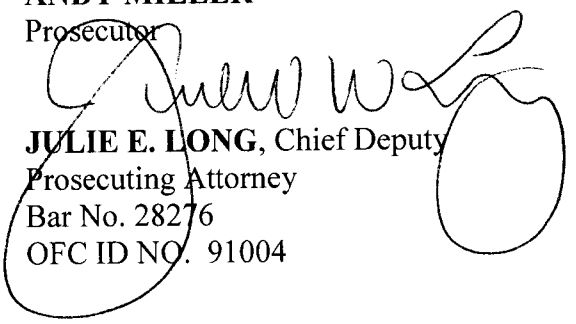
Once again, the Court gives deference to the jury's determination of the facts, and given the particular facts here, any rational trier of fact could have convicted the defendant of First Degree Kidnapping by either means outlined in RCW 9A.40.020. Since RCW 9A.40.020 is not void for vagueness, there is no presumption Mr. Harrington has been prejudiced. *See City of Bellevue v. Lorang*, 140 Wn.2d 19, 33, 992 P.2d 406 (1999).

IV. CONCLUSION

The definition of First Degree Kidnapping by the alternative means of "intent to inflict extreme mental distress" is not void for vagueness. It is capable of being understood through common sense and can be interpreted objectively. Furthermore, the testimony and evidence, although conflicting, provided sufficient evidence for any rational trier of fact to find the defendant guilty. Based on the above facts and authorities, the State of Washington respectfully requests that this Court deny the defendant's appeal and affirm his conviction for First Degree Kidnapping pursuant to RCW 9A.40.020, as well as the aggravating factors.

RESPECTFULLY SUBMITTED this 11th day of June 2013.

ANDY MILLER
Prosecutor



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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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