SUPREME COURT NO. 93969-1

COA NO. 48053-1-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JEROME MEDINA,
Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Jeanette Dalton, Judge

PETITION FOR REVIEW

Skylar T. Brett
Attorney for Appellant/Petitioner

Law Office of Skylar Brett
P.O. Box 18084
Seattle, WA 98118
(206) 494-0098
skylarbrettlawoffice@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. IDENTITY OF PETITIONER

Petitioner Jerome Medina, the appellant below, asks the Court to review the decision of Division II of the Court of Appeals referred to in Section II below.

II. COURT OF APPEALS DECISION

Jerome Medina seeks review of the Court of Appeals unpublished opinion entered on November 8, 2016. A copy of the opinion is attached.

III. ISSUES PRESENTED FOR REVIEW

ISSUE 1: A court order is unconstitutionally vague when it fails to define proscribed conduct with sufficient definiteness and allows for arbitrary enforcement. Is the order prohibiting contact but allowing "email" unconstitutionally vague, where Mr. Medina was arrested and convicted for communicating via electronic messages?

ISSUE 2: Double jeopardy prohibits a court from entering multiple convictions for a single violation of a criminal statute. Did the court violate double jeopardy by entering seven convictions for violation of a no-contact order based on electronic messages sent on a single day, some within minutes of each other?

IV. STATEMENT OF THE CASE

Jerome Medina and Heather Mattox have a child together. RP 97. A no-contact order (NCO) prohibits Mr. Medina from contacting Mattox, except in writing by "US Post Office or email." Ex 16, p. 1.

In April 2014, a sheriff's deputy showed up at Mattox's door looking for Mr. Medina to verify his address. RP 53, 100. Mattox showed the deputy electronic communications that she had received as text messages on her cell phone. RP 107.

Mattox said that she believed the messages were from Mr. Medina because the originating phone number was similar to one belonging to Mr. Medina's friend. RP 122. The phone number was not assigned a name or saved as Mr. Medina's contact number in Mattox's phone. Ex. 1-5.

The deputy did not take any steps to verify that the messages had come from a phone associated with Mr. Medina. Despite this, the state charged Mr. Medina with nine counts of violation of a no-contact order (VNCO). CP 1-10.

At trial, the prosecution introduced "screen shots" of the messages. Ex 1-5.

The first message – a picture of Mr. Medina[1] – did not have a date on it. Ex. 1. Mattox said that she received the photo a month or two before the officer arrived. RP 111. All but one of the remaining messages

[1] Mr. Medina is holding what appears to be a gun in the photo. Ex. 1.

had been received on April 28th, some within a few minutes of each other.[2] Ex 2-6. One final message was received at 7:15am on April 29th. Ex 5.

A defense investigator had telephoned the number from which Mattox received the messages. RP 165. A woman named Luella answered the phone. RP 165. She said that she had had the phone number since January 2014. RP 165. She said that she had never loaned her phone to anyone. RP 165.

The jury could not agree on a verdict for Count IV, but found Mr. Medina guilty of the eight remaining counts. RP 216-217. The court sentenced Mr. Medina to 60 months confinement. CP 109.

Mr. Medina timely appealed. CP 53. The Court of Appeals affirmed his convictions in an unpublished decision. Opinion.

[2] The April 28th messages arrived at 7:29am, 8:58am, 9:37am, 10:51pm, 10:53pm, 10:55pm, 10:58pm and 11:01pm. Ex 2-6

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Supreme Court should accept review and hold that the court order prohibiting contact except by "email" is unconstitutionally vague. This significant question of constitutional law is of substantial public interest and should be determined by the Supreme Court. RAP 13.4 (b)(3) and (4).

The order prohibiting contact at issue in Mr. Medina's case permits contact via "email" but does not define that term. Ex. 16. The dictionary definition of "email" encompasses all electronic communication.[3] Because of innovations such as email-to-text and Facebook messaging, this definition is broad enough to embrace numerous kinds of messaging.

Still, Mr. Medina was convicted for violating the order based on allegations that he sent Mattox electronic messages. The order is unconstitutionally vague.

Due process requires that the state provide citizens with fair warning of proscribed conduct. *State v. Valencia*, 169 Wn.2d 782, 791, 239 P.3d 1059 (2010); U.S. Const. Amend. XIV; Wash. Const. art. I, § 3.

A court order is unconstitutionally vague if it (1) fails to define the proscribed conduct with "sufficient definiteness" that an ordinary person can understand what is prohibited or (2) fails to provide "ascertainable

[3] *See* Merriam-Webster Dictionary of the English Language, http://www.merriam-webster.com/dictionary/email (accessed 2/18/2016).

standards" to protect against arbitrary enforcement. *State v. Bahl*, 164 Wn.2d 739, 752-753, 193 P.3d 678 (2008).

Failure to satisfy either requirement renders an order void for vagueness. *Id.* Furthermore, unlike a statute or ordinance, the court does not begin with the presumption that a court order is constitutional. *Valencia*, 169 Wn.2d at 793. An unconstitutionally vague order cannot form the basis for a deprivation of liberty. *Id.* at 795.

In *Valencia*, for example, the court found that a sentencing condition prohibiting possession of "paraphernalia that can be used for ingestion or processing of controlled substances or that can be used to facilitate the sale or transfer of controlled substances" was unconstitutionally vague. *Id.* The court declined to read the word "paraphernalia" to mean only "drug paraphernalia," because the sentencing condition did not include such limiting language. *Id.*

The court also found that the *Valencia* condition violated the second alternative of the vagueness test:

> ...an inventive probation officer could envision any common place item as possible for use as drug paraphernalia, such as sandwich bags or paper. Another probation officer might not arrest for the same "violation," i.e. possession of a sandwich bag. A condition that leaves so much to the discretion of individual community corrections officers is unconstitutionally vague.

Valencia, 169 Wn.2d at 794-95.

The provision of the order permitting Mr. Medina to contact Mattox by "email" is unconstitutionally vague under both prongs of the test. First, the order fails to define the prohibited conduct with sufficient definiteness. *Bahl*, 164 Wn.2d at 752-53.

When a term in an order is undefined, the appellate court may consider its ordinary meaning as provided by a standard dictionary. *Bahl*, 164 Wn.2d at 754. The dictionary defines the term "email" as: "1: a means or system for transmitting messages electronically (as between computers on a network)".[4]

An ordinary person would not know whether the order in Mr. Medina's case prohibited contact via an email that could be converted to a text message by a wireless carrier,[5] a normal text message, or electronic communications sent via Facebook or other social networking platforms. Indeed, each of those communication media fall within the dictionary definition of email as "transmitting messages electronically."

Even so, the Court of Appeals baldly claims that the ordinary meaning of the term "email" is unambiguous, even if the dictionary

---

[4] http://www.merriam-webster.com/dictionary/email (last accessed 2/18/2016).

[5] Messages that are sent via email can be delivered as text messages to a recipient's wireless phone. *See* Daniel L. Hadjinian, *Reach Out and Text Someone: How Text Message Spam May Be A Call Under the TCPA*, 4 Shidler J. L. Com. & Tech. 3 (2007) (*discussing Joffe v. Acacia Mortgage Corp.*, 211 Ariz. 325, 121 P.3d 831 (Arizona Ct. App. 2005)). Indeed, some emails are automatically converted to text messages by the recipient's wireless service provider. *Id.*

definition is not. Opinion, pp. 4-6. The Court's unsupported contention is unpersuasive.

Additionally, the order also fails to provide "ascertainable standards" to protect against arbitrary enforcement. *Id.* As demonstrated by Mr. Medina's case, the order can be read as permitting arrest and conviction for a message received as a text message regardless of how it was actually *sent*. Indeed, a person could send a message by email and still be found in violation of the order if the protected party received it in some other manner. This is true despite the language allowing email communication, and despite the fact that the dictionary definition of "email" can be read to include text messages.

The order permitting Mr. Medina to contact Mattox via email but not by other means is unconstitutionally vague. *Id.* Mr. Medina's convictions for violating that order must be reversed. *Id.*

This significant question of constitutional law is of substantial public interest and should be determined by the Supreme Court. This Court should grant review. RAP 13.4 (b)(3) and (4).

B. The Supreme Court should accept review and hold that the court violated Mr. Medina's right to be free from double jeopardy by entering a separate Violation of a No Contact Order conviction for each text message, some of which were sent within minutes of one another. This significant question of constitutional law is of

substantial public interest and should be determined by the Supreme Court. RAP 13.4 (b)(3) and (4).

Eight of the nine counts against Mr. Medina were based on communications sent and received on a single day. *See* RP 187-188. Indeed, the conduct underlying Counts VI through IX all occurred within an eight-minute span. RP 188; Ex 3-5.

The single conversation that took place over the course of the day should have been counted as a single unit of prosecution. The court violated Mr. Medina's right to be free from double jeopardy by entering seven[6] different convictions based on a single violation of the statute.

The constitutional prohibition against double jeopardy precludes multiple convictions for a single offense. *State v. Morales*, 174 Wn. App. 370, 384-85, 298 P.3d 791 (2013); U.S. Const. Amends. V, XIV; Wash. Const. art. I, § 9.[7]

When addressing multiple counts of the same charge, the double jeopardy analysis turns on the unit of prosecution. *Id.* To establish the unit of prosecution, the question is "what act or course of conduct the legislature has defined as the punishable act." *Id.* (*quoting State v. Varnell*, 162 Wn.2d 165, 168, 170 P.3d 24 (2007)).

---

[6] The jury could not agree on a verdict for Count IV. RP 217.

[7] Double jeopardy violations can be raised for the first time on appeal because they constitute manifest error affecting a constitutional right. *State v. Allen*, 150 Wn. App. 300, 312, 207 P.3d 483 (2009); RAP 2.5(a)(3).

The unit of prosecution analysis looks first to the statute in question, then to the statutory history, and finally to the facts of a particular case. *Id.* If the statute is ambiguous regarding the unit of prosecution, the rule of lenity requires the ambiguity to be "resolved against turning a single transaction into multiple offenses." *Id.* at 385.

No published opinion has determined that communications occurring on a single day constitute more than one unit of prosecution for violation of a no contact order.[8] The rule of lenity requires that Mr. Medina be liable, at most, for one count of violation of a no contact order for the single electronic "conversation" which took place over the course of April 28. *Morales*, 174 Wn. App. at 385.

Indeed, a contrary approach would incentivize in-person contact in violation of a court order over less-intrusive electronic communication. A single occurrence of showing up at a protected party's home or workplace would only constitute a single violation, regardless of the number of statements made. If each individual electronic message (even if sent within minutes of each other) constituted a separate unit of prosecution, someone who avoided direct contact while having a conversation with the

[8] By contrast, violations occurring on separate days each comprise a unit of prosecution. *See State v. Brown*, 159 Wn. App. 1, 12, 248 P.3d 518 (2010); *Allen*, 150 Wn. App. at 314. In both *Brown* and *Allen* the prosecutor filed no more than one charge per day, even though there were hundreds of phone calls (and several personal contacts) in *Brown* and four separate emails in *Allen*. *Brown*, 159 Wn. App. at 6-7; *Allen*, 150 Wn. App. at 314.

protected party would be sentenced more harshly than an offender who did not.

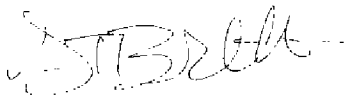
Mr. Medina's electronic conversation with Mattox over the course of a single day should constitute at most a single unit of prosecution. *Id.* The court violated the prohibition on double jeopardy by entering convictions for seven different counts based on the single act. *Morales*, 174 Wn. App. at 384-85. Six of Mr. Medina's convictions must be vacated. *Id.*

This significant question of constitutional law is of substantial public interest because it could impact a large number of criminal cases. This Court should grant review. RAP 13.4 (b)(3) and (4).

VI. CONCLUSION

The issues here are significant under the State and United States Constitutions. Furthermore, because they could impact a large number of criminal cases, they are of substantial public interest. The Supreme Court should accept review pursuant to RAP 13.4(b)(3) and (4).

Respectfully submitted December 8, 2016.



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant/Petitioner

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the Petition for Review, postage pre-paid, to:

Jerome Medina/DOC#888193
Airway Heights Corrections Center
PO Box 1899
Airway Heights, WA 99001

and I sent an electronic copy to

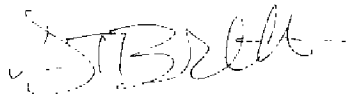
Kitsap County Prosecuting Attorney
kcpa@co.kitsap.wa.us

through the Court's online filing system, with the permission of the recipient(s).

In addition, I electronically filed the original with the Court of Appeals.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on December 8, 2016.



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant/Petitioner

APPENDIX:

Filed
Washington State
Court of Appeals
Division Two

November 8, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JEROME PATRICK MEDINA, Appellant.	No. 48053-1-II UNPUBLISHED OPINION

WORSWICK, P.J. — Jerome Medina appeals his convictions of eight counts of felony violation of a court order.[1] He argues (1) the State provided insufficient evidence to support his convictions, (2) the no-contact order prohibiting contact except by e-mail was unconstitutionally vague, (3) the trial court violated double jeopardy by entering multiple convictions for messages sent within the same day, and (4) the trial court exceeded its authority by imposing a $100 "expert witness fund" obligation. We affirm Medina's convictions, but remand to strike the expert witness fund obligation.

FACTS

Medina and Heather Mattox dated for a few years and have a child in common. A no-contact order prohibits Medina from contacting Mattox, except "written contact by U.S. Post Office or e-mail is permitted ONLY." Ex. 16.

[1] RCW 26.50.110(5).

The State charged Medina with nine counts of felony violation of a court order against a family or household member.[2] Count I is based on a picture sent to Mattox's phone showing Medina holding a shotgun with the caption, "I'm ready." Ex. 1. Counts II-IX are based on several text messages sent to Mattox's phone on April 28, 2014. The picture and text messages were sent from a phone number Mattox recognized as being associated with Medina.

A jury found Medina guilty of counts I-III and counts V-IX, but rendered no verdict on count IV. The sentencing court concluded that Counts V-IX included the same criminal conduct and therefore merged those counts for sentencing purposes. The sentencing court imposed various legal financial obligations, including a $100 contribution to the Kitsap County expert witness fund.

ANALYSIS

I. SUFFICIENT EVIDENCE

Medina argues that the State produced insufficient evidence to support his convictions because the State presented no evidence that he sent the messages to Mattox as text messages as opposed to e-mails. We disagree.

Sufficient evidence supports a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime proved beyond a reasonable doubt. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). A claim of insufficient evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). We draw all reasonable inferences from the evidence in favor of the State and interpret

[2] RCW 10.99.020.

them most strongly against the defendant. *Hosier*, 157 Wn.2d at 8. In the sufficiency context, we consider circumstantial evidence as probative as direct evidence. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). We defer to the fact finder on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

To prove felony violation of a no-contact order, the State must prove beyond a reasonable doubt that Medina knew of the existence of a no-contact order, and that he violated a provision of that order. *See* RCW 26.50.110.

For the first time on appeal, Medina argues that because the messages he sent to Mattox could have been sent via e-mail and then converted to text messages via email-to-text technology, the State failed to prove the messages violated the provisions of the no-contact order, which permitted written contact via e-mail.[3] He contends that because the State did not offer evidence as to *how* Medina *sent* the messages, no rational jury could have found beyond a reasonable doubt that Medina violated the court order. But Medina misunderstands our standard of review in the sufficiency context.

Taking all the State's evidence as true and drawing all reasonable inferences therefrom in favor of the State, the evidence was sufficient to support Medina's convictions. The State presented evidence that Mattox received text messages on her phone, which listed a phone number as the sender. Mattox testified that she recognized the phone number as one associated with Medina. From this evidence, a rational juror could have found beyond a reasonable doubt that Medina sent the messages to Mattox as text messages in violation of the no-contact order.

[3] Medina's defense theory at trial was that he had not personally sent the offending messages.

II. VAGUENESS

Medina also argues that the court order prohibiting contact with Mattox except by e-mail is unconstitutionally vague and therefore violates his due process rights. We disagree.

The due process vagueness doctrine under the Fourteenth Amendment requires that citizens have fair warning of proscribed conduct. *State v. Bahl*, 164 Wn.2d 739, 752, 193 P.3d 678 (2008) (plurality opinion). An order is unconstitutionally vague if it is insufficiently definite such that ordinary people cannot understand what conduct is proscribed, or if it does not provide ascertainable standards of guilt to protect against arbitrary enforcement. *Bahl*, 164 Wn.2d at 752-53.

"Generally, 'imposing conditions of community custody is within the discretion of the sentencing court and will be reversed if manifestly unreasonable.'" *State v. Sanchez Valencia*, 169 Wn.2d 782, 791-92, 239 P.3d 1059 (2010) (quoting *Bahl*, 164 Wn.2d at 753). An unconstitutional condition is manifestly unreasonable. *Bahl*, 164 Wn.2d at 753. Unlike statutes or ordinances, conditions of community custody are not presumed to be constitutional. *Sanchez Valencia*, 169 Wn.2d at 793.

In deciding whether a term is unconstitutionally vague, we do not consider the term in a vacuum, rather, it is considered in the context in which the term is used. *Bahl*, 164 Wn.2d at 754. "If 'persons of ordinary intelligence can understand what the [law] proscribes, notwithstanding some possible areas of disagreement, the [law] is sufficiently definite.'" *Bahl*, 164 Wn.2d at 754 (alterations in original) (quoting *City of Spokane v. Douglass*, 115 Wn.2d 171, 179, 795 P.2d 693 (1990)). "'[A] community custody condition is not unconstitutionally vague merely because a person cannot predict with complete certainty the exact point at which his

actions would be classified as prohibited conduct.'" *State v. Sanchez Valencia*, 169 Wn.2d 782, 793, 239 P.3d 1059 (2010) (internal quotations omitted) (quoting *State v Sanchez Valencia*, 148 Wn. App. 302, 321, 198 P.3d (2009)).

Contrary to Medina's contention, an ordinary person would understand what the term "e-mail" as used in the no-contact order entails. E-mail, as used in common practice, means electronic mail, or mail sent electronically from one network system to another. An ordinary person would associate the act of "e-mailing" with sending a written message from one e-mail address to another e-mail address. Whereas a "text message" is ordinarily associated with a short SMS (short message service) message sent directly between cell phones.

Medina urges us to rely on one particular dictionary definition of e-mail, namely "a means or system for transmitting messages electronically (as between computers on a network)."[4,5] Br. of Appellant 10. He argues that this definition could encompass text messages, Facebook messages, or communications on other social networking platforms. Alternative definitions offered for the term "e-mail" offer slight variations including (1) "a system for sending messages from one computer to another computer," (2) "messages that are sent electronically from one computer to another," (3) "messages sent and received electronically

[4] Merriam-Webster Dictionary of the English Language, http://www.merriam-webster.com/dictionary/e-mail (accessed Oct. 28, 2016).

[5] We may consider the plain and ordinary meaning of a term as set forth in a standard dictionary. *Bahl*, 164 Wn.2d at 754.

through an e-mail system." On the other hand, "text message" is defined as "a short message sent electronically usually from one cell phone to another."[6]

While these dictionary definitions may not provide the most clear-cut distinctions between "e-mail" and "text message" because they are both forms of electronic communication, to an ordinary person the distinction between the *forms* of electronic communication remains clear. We hold that the ordinary meaning of the word provides sufficient guidance regarding what kind of contact in this context is permitted and which is prohibited.

Medina also argues that the no-contact order fails to provide ascertainable standards to protect against arbitrary enforcement. He reiterates the possibility that a message could be sent as an e-mail but received as a text message through the use of e-mail-to-text technology. As previously discussed, an ordinary person would understand what conduct is proscribed and what conduct is permitted by the no-contact order. This is not a condition like that in *Bahl* or *State v. Sansone*, 127 Wn. App. 630, 638, 111 P.3d 1251 (2005), where courts held that community custody conditions that required further definition from community custody officers were unconstitutionally vague for their lack of ascertainable standards for enforcement. *See Bahl*, 164 Wn.2d at 758.

Here, the sentencing condition is definite and enforceable; it is not unconstitutionally vague.

[6] Merriam-Webster Dictionary of the English Language, http://www.merriam-webster.com/dictionary/text%20message (accessed Oct. 28, 2016).

III. DOUBLE JEOPARDY

Medina also argues that the trial court violated the prohibition on double jeopardy by entering convictions for seven different counts based on multiple messages sent over the course of a day. We disagree.

The Fifth Amendment to the United States Constitution provides that no "person be subject for the same offense to be twice put in jeopardy of life or limb." Similarly, article I, section 9 of the Washington Constitution provides, "No person shall . . . be twice put in jeopardy for the same offense." These double jeopardy provisions prohibit, among other things, multiple convictions for the same offense. *State v. Hall*, 168 Wn.2d 726, 729-30, 230 P.3d 1048 (2010). We review double jeopardy claims de novo. *State v. Villanueva-Gonzalez*, 180 Wn.2d 975, 979-80, 329 P.3d 78 (2014).

"If a defendant is charged with violating the same statutory provision more than once, multiple convictions can withstand a double jeopardy challenge only if each is a separate 'unit of prosecution.'" *State v. Allen*, 150 Wn. App. 300, 313, 207 P.3d 483 (2009) (quoting *State v. Turner*, 102 Wn. App. 202, 206, 6 P.3d 1226 (2000)). "The first step in the unit of prosecution inquiry is to analyze the criminal statute." *Allen*, 150 Wn. App. at 313. Once the unit of prosecution is determined, we must conduct a factual analysis to determine if more than one unit of prosecution is present. *Hall*, 168 Wn.2d at 735.

RCW 26.50.110(1) makes it unlawful for a person to violate any restraint provision contained in a no-contact order. We have held that an individual violation of a no-contact order constitutes a single unit of prosecution. *Allen*, 150 Wn. App. at 313-14 (each act of sending an e-

mail constituted a statutory violation); *see also State v. Brown*, 159 Wn. App. 1, 10-13, 248 P.3d 518 (2010).

Here, the essential question is whether Medina's multiple text messages to Mattox constituted one continuing offense or if Medina committed the crimes anew with each message. Medina argues that messages sent on the same day constitute just one violation of the no-contact order. The State responds that each message was a discreet communication with Mattox in violation of the no-contact order and therefore the multiple counts did not violate double jeopardy. Because Washington case law makes it clear that each individual contact in violation of a no-contact order constitutes one unit of prosecution, we agree with the State.

As Medina correctly points out, the multiple violations in *Allen* and *Brown* were based on violations occurring on separate days. However, the court's focus in those cases was not on the temporal separation between each violation. Rather, the court focused on the defendant's actions. *See Allen*, 150 Wn. App. at 313-14 (each act of sending an e-mail constituted a statutory violation). Indeed, in *Brown*, Division One of this court emphasized that RCW 26.50.110 criminalizes each contact, explaining, "The Supreme Court 'has consistently interpreted the legislature's use of the word 'a' in a criminal statute as authorizing punishment for each individual instance of criminal conduct, even if multiple instances of such conduct occurred *simultaneously*." *Brown*, 159 Wn. App. at 11 (emphasis added) (quoting *State v. Ose*, 156 Wn.2d 140, 147, 124 P.3d 635 (2005)).

Each time Medina messaged Mattox, he took the affirmative action of picking up the phone, typing a message to Mattox, and pressing "send." Consequently, Medina's seven convictions of violation of a no-contact order did not violate double jeopardy protections.

IV. EXPERT WITNESS FUND

Finally, Medina argues that the trial court exceeded its statutory authority by ordering him to pay $100 into the Kitsap County expert witness fund. We agree.

The trial court's authority to impose costs and fees is statutory. *See State v. Hathaway*, 161 Wn. App. 634, 652-53, 251 P.3d 253 (2011); RCW 10.01.160. Under RCW 10.01.160(2) "costs shall be limited to expenses specially incurred by the State in prosecuting the defendant." RCW 10.01.160(2) also provides that costs "cannot include expenses . . . in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law."

Here, Medina's case did not require the testimony of an expert witness. Therefore, the trial court exceeded its statutory authority by imposing costs that were not incurred by the State in Medina's prosecution.

We affirm Medina's convictions, but remand to strike the expert witness fund obligation.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, P.J.

We concur:

Lee, J.

Sutton, J.

ELLNER LAW OFFICE

December 08, 2016 - 9:52 AM

Transmittal Letter

Document Uploaded: 4-480531-Petition for Review.pdf

Case Name: State v. Jerome Medina
Court of Appeals Case Number: 48053-1

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: ____

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: Skylar T Brett - Email: skylarbrettlawoffice@gmail.com

A copy of this document has been emailed to the following addresses:

kcpa@co.kitsap.wa.us