

BRIEF

DEC 07 2009

NO. 63257-4-I

IN THE COURT OF APPEAL OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRYAN CORBETT,

Appellant.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 DEC -7 PM 4:07

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

The Honorable Deborah Fleck, Judge

REPLY BRIEF OF APPELLANT

DAVID B. KOCH
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u>	1
NEITHER THE COURT NOR THE PUBLIC IS A VICTIM OF VIOLATION OF A DOMESTIC VIOLENCE NO CONTACT ORDER.....	1
B. <u>CONCLUSION</u>	3

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Dejarlais

136 Wn.2d 939, 969 P.2d 90 (1998)..... 1, 2, 3

State v. Victoria

150 Wn. App. 63, 206 P.3d 694 (2009)..... 2

RULES, STATUTES AND OTHER AUTHORITIES

RCW 9.94A.030 2, 3

Sentencing Reform Act 1, 2

A. ARGUMENT IN REPLY

NEITHER THE COURT NOR THE PUBLIC IS A VICTIM
OF VIOLATION OF A DOMESTIC VIOLENCE NO
CONTACT ORDER

A majority of the State's arguments are adequately addressed in Corbett's opening brief. One argument, however, warrants additional discussion here. Citing only State v. Dejarlais, 136 Wn.2d 939, 969 P.2d 90 (1998), the State maintains that not only was Zanida Green a victim of Corbett's violations of the no contact order, so too were the trial court that entered the order and the general public. Therefore, argues the State, because no other crimes involved these additional victims, they cannot be considered the same criminal conduct as the two protection order violations. See Brief of Respondent, at 10-11.

But Dejarlais did not address same criminal conduct, much less the definition of a victim under the Sentencing Reform Act (SRA). The only issue in that case was whether the trial court erred when it "declined to give defense counsel's proposed instruction, which would have told the jury a person is not guilty of violating a protection order if the person protected by that order expressly invited or solicited the defendant's presence." Dejarlais, 136 Wn.2d at 940.

The Dejarlais court held that consent is not a defense to violation of a domestic violence protection order. Id. at 942. In reaching this holding, the court found that such a defense would be inconsistent with legislative intent, noting that the Legislature believed there was a public interest in preventing domestic violence – an interest that would be undermined if the protected individual could merely consent to violation of a valid order. Dejarlais, 136 Wn.2d at 944. It is this discussion the State cites in Corbett’s case. See Brief of Respondent, at 11.

The SRA, however, contains an express definition of “victim” applicable to same criminal conduct analysis. State v. Victoria, 150 Wn. App. 63, 67, 206 P.3d 694 (2009). A victim is “any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.” RCW 9.94A.030 (49).

Under this definition, the judge issuing the protective order is not a victim. He has not sustained any harm listed in the statute. Nor has the public sustained such harm. And even if it could be said that Corbett’s violation of the domestic violence protection order harmed the general public in some fashion, the same could be said

for the assaults and harassment that occurred during the same episodes. These were also domestic violence offenses and involve the same public interest, discussed in Dejarlais, in preventing and punishing domestic violence crimes. See CP 59-61, 91-101 (all five of Corbett's convictions designated "domestic violence").

In sum, a trial judge issuing a no contact order is not a victim under RCW 9.94A.030(49). Nor is the general public. But if the general public is considered a victim of that offense, it is also a victim of other domestic violence offenses, including those committed by Corbett.

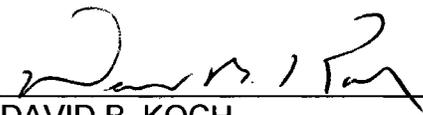
B. CONCLUSION

For the reasons discussed in the opening brief and above, Corbett's offender score is 6.

DATED this 7th day of December, 2009.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



DAVID B. KOCH
WSBA No. 23789
Attorneys for Appellant

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

STATE OF WASHINGTON,)

Respondent,)

v.)

BRYAN CORBETT,)

Appellant.)

COA NO. 63257-4-I

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 7TH DAY OF DECEMBER, 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] BRYAN CORBETT
DOC NO. 801312
WASHINGTON STATE PENITENTIARY
1313 N. 13TH AVENUE
WALLA WALLA, WA 99362

SIGNED IN SEATTLE WASHINGTON, THIS 7TH DAY OF DECEMBER, 2009.

x *Patrick Mayovsky*

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 DEC -7 PM 4:08