

70508-3

70508-3

NO. 70508-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

STATE OF WASHINGTON,  
Respondent,  
v.  
ROBERT WOLD,  
Appellant.

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STATE OF WASHINGTON  
COURT OF APPEALS  
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
THE HONORABLE BRUCE HELLER

**BRIEF OF RESPONDENT**

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A. ISSUES PRESENTED

1. A criminal defendant is presumed competent unless he has been adjudicated otherwise; consequently, it is the defendant's burden to overcome that presumption. Wold had never been found to be incompetent. Did the trial court properly place the burden on Wold to prove incompetency?

2. An information is constitutionally sufficient if it includes all of the essential elements of the crime, affording a defendant notice of the charges against him so that he can prepare a defense. Wold had notice that he had been charged with knowingly restraining Melinda Hopper, and he prepared a diminished capacity defense for trial. Was the language in the information charging Wold with unlawful imprisonment sufficient?

3. A trial court has the legal authority to impose a no-contact order that lasts the length of the defendant's sentence. Wold was sentenced to 20 years and the trial court imposed a no-contact order for a period of 15 years. Did the trial court act within its legal authority?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged the defendant, Robert W. Wold, as follows:

Count I: felony harassment, domestic violence, against Melinda Hopper,<sup>1</sup> for an incident that took place during a period of time intervening between May 1, 2009 through March 23, 2011;

Count II: assault in the second degree, against William Hopper, for an incident that took place on July 21, 2010;

Count III: unlawful imprisonment, domestic violence, against Melinda Hopper, for an incident that took place on July 21, 2010;

Count IV: assault in the second degree, domestic violence, against Melinda Hopper, for an incident that took place on or about December 1-16, 2010;

Count V: assault in the second degree, domestic violence, against Melinda Hopper, for an incident that took place on or about March 20-22, 2011;

Count VI: assault in the fourth degree, against D.M., for an incident that took place on or about March 24-July 20, 2010;

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<sup>1</sup> Because Melinda Hopper and her father, William Hopper, share the same last name they will be referred to by their first names. No disrespect is intended.

Count VII: assault in the fourth degree, against N.H., for an incident that took place on or about March 23, 2011; and

Count VIII: assault in the second degree, against Spencer Martenson, for an incident that took place on March 24, 2010.

CP 154-58.

The State further alleged as an aggravating circumstance on counts I, III, IV and V, that there was evidence of an ongoing pattern of psychological, physical or sexual abuse of multiple victims manifested by multiple incidents over a prolonged period of time pursuant to RCW 9.9A.535(3)(h)(i). CP 154-58.

Trial began on March 12, 2012, before the Honorable Bruce Heller. 1RP 3.<sup>2</sup> Wold had two appointed attorneys representing him, Paul Vernon and Brian Flaherty. 1RP 3. Wold indicated his intent to present a diminished capacity defense at trial for all counts except for count V, assault in the second degree by strangulation. CP 32-66; 1RP 136, 156-64; 2RP 9-10. Consequently, Wold made a motion to sever count V because his defense on that particular count was going to be general denial. 1RP 156-64; 2RP 9-10. As

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<sup>2</sup> The Verbatim Report of this appeal consists of ten volumes referred to in this brief as follows: 1RP (March 12-March 14, 2012), 2RP (March 15, 2012), 3RP (March 19, 2012), 4RP (March 21, 2012), 5RP (April 10, April 26, May 30, and August 13, 2012), 6RP (September 27, 2012), 7RP (November 9, 2012), 8RP (December 6, 2012), 9RP (December 11 and December 19, 2012, March 19 and April 4, 2013), and 10RP (June 7, 2013).

the parties argued several motions, including the admission of evidence pursuant to ER 404(b), it was very evident that Wold would argue to the jury, with the exception of count V, that he did not have the capacity to form the intent to commit the crimes charged, including the crime of unlawful imprisonment. 1RP 109, 145-56; 2RP 27-34.

On March 21, 2012, after four days of pre-trial motions and commencement of jury selection, Wold made a motion to dismiss one of his attorneys, Vernon, from the case. 4RP 3-5. Wold expressed his dissatisfaction with Vernon, but not with Flaherty. 8RP 101-02. The trial court found that Wold had not shown any basis to obtain a new counsel and denied Wold's request. 4RP 13-15. The parties continued with voir dire, and later in the day, Vernon raised for the first time his concern about Wold's competency. 4RP 19. Vernon was concerned with Wold's ability to rationally assist his attorneys, mainly his ability to communicate. 4RP 19. Upon further inquiry from the court, counsel indicated that in the year he had been representing Wold, he had never seen the need to request a psychiatric evaluation because he had never had competency concerns. 4RP 20-21. Vernon stated that Wold did not appear to trust him any longer. 4RP 21.

Although the trial court did not see any evidence that Wold did not understand the proceedings against him, the court was concerned that Wold was unable to communicate with counsel mainly because Wold was convinced that they were not going to proceed with a diminished capacity defense or call the defense expert, despite both attorneys on the record stating the contrary. 4RP 32-34; 9RP 92. As a result, the trial court granted the defense request to have Wold evaluated for competency at Western State Hospital (WSH). 4RP 32-34, 40; CP 92-101.

On May 22, 2012, Dr. Sharrette of WSH concluded that Wold was not competent, stating that Wold did not have the capacity to understand the nature of the proceedings against him or the capacity to assist in his own defense. 5RP 35; 9RP 92-93. However, Dr. Sharrette failed to review Wold's complete records and based his evaluation on very limited information.<sup>3</sup> 5RP 17-23. This raised significant concerns to the trial court. 5RP 33. With the knowledge that Wold had a lengthy history, both criminally and

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<sup>3</sup> The State provided WSH several volumes of medical records used by the defense expert, Dr. Beaver, to conduct the diminished capacity evaluation. The records included: jail records, treatment records from a 2005 accident, Department of Corrections records, and psychiatric records from Wold's childhood. The State also provided the hospital with the police reports of the underlying charge and a copy of an interview with Dr. Beaver. Dr. Sharrette, who conducted the competency evaluation at Western State Hospital, reviewed only the inpatient records from Wold's admission at WSH and Dr. Beaver's diminished capacity evaluation. 5RP 18-21.

medically, the trial court believed it was necessary to obtain a comprehensive evaluation that would include a review of all of the pertinent records. 5RP 33-34. The trial court granted the State's request for an independent evaluator. 5RP 34.

On August 1, 2012, the State submitted a report from Dr. Judd finding Wold competent. 9RP 93.

The trial court held a contested competency hearing, which started on September 27, 2012. 6RP 3. Dr. Judd, a neuropsychologist, testified at the hearing. 6RP 16-19. Dr. Judd had reviewed the following materials: the police reports related to the underlying case (6RP 21-22); jail calls made by Wold after trial began (6RP 24, 30); Western State Hospital records, (6RP 24, 30); medical records from Regions Hospital in Minnesota, where Wold was treated as a result of a motorcycle accident from August of 2005 (6RP 43-47); records from Ten Rivers Correctional Center, where Wold was incarcerated in 1998 (6RP 54); Andina Police Department reports from May of 2002 and March of 2003 involving Wold's arrests (6RP 57); medical records from 1994 describing a minor injury to Wold's head (6RP 57-58); and Dr. Beaver's evaluation of Wold. 6RP 59-60. Dr. Judd did not interview Wold

because Wold declined to be interviewed by the State's expert.  
6RP 21, 81.

Dr. Judd offered several opinions. Of significance, he opined that even if Wold had in fact sustained any brain injury from the 2005 accident, it was minimal because there was no evidence to suggest that his consciousness had been impaired, nor was there any evidence of an injury in the scanning of his brain.

6RP 59. Dr. Judd also opined that there was a lack of evidence to conclude that Wold had memory problems as a result of his 2005 accident. 6RP 67-68. This opinion was based on several jail calls where Wold recounted what had happened in court and his conversations with his lawyer. 6RP 63-67. For instance, in one of those calls, Wold said his trial had been put on hold because he was being evaluated for competency, and he recounted what had transpired in court:

I talked to my lawyer and my lawyer said: 'Um I'm not going to go in there and, uh, just say – basically say that you have the issues that other doctor says that you have' that doctor that came to interview me. And I did not like that so I wrote a letter to the judge stating that and all of my other issues that I had with my lawyer, um, him not getting in touch with people that I wanted him to, uh, him not just doing the things that I asked him to do. The judge turned around and said basically tough crap, you are stuck with him, then my

lawyer turns around and says: 'Well, I don't know if I can work with him if he doesn't trust me.'

6RP 27-28. Dr. Judd also observed that Wold had entered guilty pleas to felony charges subsequent to the accident, in September of 2005 and in April of 2007, without raising competency concerns.

7RP 36. In Dr. Judd's opinion, had the motorcycle accident caused a brain injury, the issue of competency would have arisen during those previous proceedings, and not six years later for the first time. 7RP 37.

Dr. Judd further opined that Wold did not suffer from any delusions that would impede his ability to communicate with his attorneys, but rather that Wold simply disagreed with his attorneys as to their representation of him. 6RP 28. Dr. Judd opined that Wold understood about competency and the procedures in Washington, including that if he was found incompetent the charges against him could be dismissed. 6RP 39-41. During a call with his mother, Wold stated:

My lawyer is trying to find me incompetent to deal with the system... me incompetent to deal with the system like to stand trial... I'll go to Western State... I just wanted to let you know what happened because that was a big issue. I mean, this is... as I understand it – as I think he [defense counsel] was saying is that we go back to court and if the judge agrees with the findings, um, that the charges will be thrown out...

and then I would go to Western State for a civil commitment... it can't hurt. Something like [unintelligible] 20 years in jail. Good heavens, I mean.. Well, it's nicer at that place definitely, so.

6RP 38-42.

Dr. Judd did not find any evidence of a mental disease or defect that rendered Wold unable to assist counsel. 6RP 77. His overall opinion was that Wold showed an understanding of the specifics of the charges against him, could discuss the facts underlying the charges, and had the ability to assist counsel in his defense. 6RP 74-75.

Dr. Sharrette, who conducted the forensic competency evaluation at WSH, also testified at the hearing. 9RP 52. Dr. Sharrette reviewed Dr. Judd's report prior to the hearing. 9RP 52. Although Dr. Sharrette had made a finding that Wold was not competent, a review of Dr. Judd's report cast doubts on his findings and confirmed his suspicions that Wold was disingenuous during their contact. 9RP 53. Dr. Sharrette further testified that if he had reviewed all of the information available, he would possibly have found Wold competent. 9RP 61.

The defense presented testimony from Dr. Leisenring, a psychiatrist at WSH. 6RP 129-30. Although Dr. Leisenring was not

the evaluator, she conducted the admission interview of Wold and met with him twice during his stay at Western State Hospital. 6RP 13-36. Dr. Leisenring had seen the competency report prepared by Dr. Sharrette and testified that she agreed with the findings that Wold did not seem to have the capacity to understand his legal situation or the capacity to interact with his attorneys. 6RP 137.

The defense also called Dr. Beaver, a psychologist. 8RP 8. His first contact with Wold was in September of 2011, when he was interviewing Wold for a diminished capacity defense. 8RP 22-23. At that time, Dr. Beaver did not have any concerns that Wold lacked the capacity to assist counsel. 8RP 95-96. In August of 2012, Dr. Beaver met Wold again to evaluate him for competency because defense counsel had indicated he was having a difficult time communicating with Wold. 8RP 31. Dr. Beaver opined that Wold had a basic understanding of the charges against him and the consequences. 8RP 40-41. However, it was his opinion that Wold's ability to rationally assist counsel was impaired. 8RP 43. Dr. Beaver's opinion was based on Wold's neurocognitive limitations from the time he was a child, his head injury from the 2005 accident, his psychiatric difficulties, and his underlying personality issues. 8RP 43-44.

On April 4, 2013, the trial court announced its ruling regarding Wold's competency. 9RP 92. First, the trial court concluded that the WSH report was discredited and the "conclusions were entitled to little, if any, weight." 9RP 97. The court relied on the opinions of Dr. Judd and Dr. Beaver, finding both experts knowledgeable, helpful and thoughtful. 9RP 97. The court noted that Dr. Judd rendered his opinion based on an extensive record review, but he did not interview Wold, which was a concern. 9RP 97. By contrast, Dr. Beaver, interviewed Wold, but did not perform a formal competency evaluation. 9RP 98.

As to the first prong of the competency test, the court found that both experts shared the opinion that Wold had the capacity to understand the nature of the proceedings against him. 9RP 99. The trial court also considered the numerous jail calls, and concurred that Wold had the capacity to understand the proceedings against him. 9RP 102.

As to the second prong, the trial court began by acknowledging that there was a disagreement between the two experts as to whether Wold could assist his attorneys in defending him. In evaluating their opinions, the trial court considered the medical records and the jail calls, and concluded that Wold had not

met his burden of demonstrating that he did not have the capacity to assist in his own defense as a result of a mental disease or defect. 9RP 107-08.

The trial court observed that it is not uncommon for defendants to distrust their attorneys, who are doing their best to defend them, but that distrust does not render a defendant incompetent. 9RP 108. Finally, the trial court remarked that until the time of trial there was no indication whatsoever that Wold was unable to communicate with counsel. 9RP 113. Of importance, the trial court highlighted the fact that Dr. Beaver, who had spent a considerable amount of time with Wold in preparing the diminished capacity defense, had never raised any concerns about Wold's competency. 9RP 113. The trial court entered its findings of fact and conclusions of law finding Wold competent to stand trial and to enter a plea to the charges. CP 151-53.

On April 30, 2013, Wold pled guilty as charged. CP 159-89. Wold also admitted in his statement of defendant on plea of guilty that counts I, III, IV, and V involved domestic violence as defined by RCW 10.99.020, and were a part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of

time. CP 182. He specified, "Other victims were Kristin Winter, my former girlfriend, and Vanessa Wold, my wife, who were assaulted by me." CP 182.

On June 7, 2013, in support of the State's request for an exceptional sentence based on the aggravator, the State presented testimony from Melinda Hopper (10RP 15-60), Kristin Winter (10RP 70-77), and Vanessa Wold (10RP 78-89). The trial court imposed an exceptional sentence of 240 months. CP 207-20, 320-21; 10RP 124. In addressing the no-contact order, the trial court stated, "I will impose the longest no-contact order permissible." 10RP 125. Given that the trial court had imposed consecutive sentences on felony harassment, and assault in the second degree, the combined statutory maximum was 15 years, which is the length of time the trial court imposed for the no-contact order. 10RP 125. Wold now appeals.

## 2. SUBSTANTIVE FACTS

Melinda Hopper has three children, N.H., K.M., and M.M. 10RP 15. Melinda first met Wold in 1993 when she was 17. 10RP 16. Wold moved shortly thereafter to Minnesota until 2009, when they reunited. 10RP 16. Wold moved into Melinda's home

where she lived with her three children and her father, William. 10RP 15-16. Things started off well until May or June of 2009, when Wold assaulted Melinda for the first time as they were leaving a party. 10RP 18. He grabbed her by her hair, pulled her to the floor of the car and slammed her head. 10RP 18-19. Later that evening Wold punched her, dragged her on the ground, and kicked her. 10RP 19. Wold told Melinda to say she had fallen down the stairs if asked what had happened. 10RP 19. She complied. 10RP 19-20.

The next time that Wold assaulted Melinda was in September of 2009, when he strangled her, kicked her, and slammed her against the wall. 10RP 21. The assaultive behavior continued over time. 10RP 22, 46-47, 59.

On July 21, 2010, Wold got into an altercation with a man at a tavern. 10RP 30. After hitting the man, Wold went home and told Melinda he needed her car to go to Renton, and that he was going to take her son, N.H., because he had been a witness to the assault. 10RP 31. When Melinda said he could not take her car or her son, Wold grabbed her hands, twisted her arm behind her back, threw her to the ground, kicked her and hit her in the back of her head. 10RP 31. William, who lived in a recreational vehicle (RV)

located on the property, witnessed this and opened the door to find out what was going on. 10RP 32, 63. Wold became enraged and went toward the RV. 10RP 32. Wold punched William, giving him a black eye and splitting his ear. 10RP 32, 63. Wold noticed the neighbors watching, so he went to tell them it was just a family disagreement and "to stay out of it." 10RP 32. N.H. called 911. 10RP 32.

After Wold walked away toward the neighbors, William went inside the RV. 10RP 32. Wold broke in the door of the RV and tore a table up. 10RP 63. Melinda came into the RV and saw that Wold was still hitting her dad. 10RP 33, 63. Melinda begged Wold to stop assaulting her father. 10RP 33. Wold then threw Melinda to the ground, kicked her, and told her to sit next to William. 10RP 33. Melinda asked Wold to please let her get some ice for her dad because he was bleeding and his arm was hurting, but Wold refused and told her to remain seated. 10RP 33.

The police arrived and Wold asked William to tell the police he had fallen down the stairs because Wold did not want to go to prison. 10RP 33. Melinda was reluctant to give a statement because giving a statement to the police was a "death sentence." 10RP 34. Wold had warned Melinda that if she ever had anything

to do with him going to jail or to prison, he would kill her and her family. 10RP 34.

Less than two months later, sometime in September, Wold assaulted Melinda again. He threw her to the ground and kicked her after she refused to give him money to buy another car. 10RP 41.

Sometime in early December of 2010, Wold was angry and accused Melinda of cheating. 10RP 44. Melinda tried to leave but he came to the door. 10RP 44. As Melinda was trying to shut the door, he said "that was stupid" and forced her to go back in the house. 10RP 44. Wold twisted Melinda's arm and took her phone away from her. 10RP 44. Melinda ran away in the driveway until he caught up to her. 10RP 44. He threw her on the ground, kicked her and told her to get back in the house. 10RP 44. Wold pushed Melinda into a room where he held her for eight hours, and continued to slap and hit her. 10RP 44. At some point during this incident, Wold got on top of Melinda and had his hands on her throat. 10RP 44-45. Some of his knives were on the floor and Wold said, "There's a knife right there, I very easily could just take it and kill you." 10RP 45.

In March of 2011, another time when Wold was upset, he slapped Melinda and pushed her against the wall. 10RP 49. Wold then jumped on her chest, put his knee on her breast, his hand around her throat, and pushed his fingers between her ribs laughing and asking, "Can you breathe? Can you breathe?" 10RP 47. Melinda could not breathe. 10RP 47.<sup>4</sup>

On March 22, 2012, Melinda came home and Wold told her to yell at the kids because they were terrible and did not know how to behave. 10RP 50-51. Melinda went to N.H.'s room and whispered in his ear, "Are you okay?" to which he responded, "No." 10RP 51. Wold came in and asked why she was whispering. 10RP 51. Wold then pushed her into the kitchen, hit her and jabbed at her. 10RP 51. Melinda noticed that M.M.'s face was red and she asked why. 10RP 51. Wold immediately told M.M. to go to his room. 10RP 51. Wold was yelling and claiming to be sick. 10RP 51. Melinda told Wold to get in the shower and that she would take him to the hospital. 10RP 51. As soon as Wold got in the shower, Melinda walked out with the children, hid, and called 911. 10RP 51-52. After Wold got out of the shower, he started to

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<sup>4</sup> Melinda confused two incidents and later clarified that the time when Wold strangled her and put his knee on her chest was the last assault, which also took place in March of 2011. 10RP 47-49.

look for Melinda and yelled, "You all make me feel like a bitch. You make me feel like I have to kill somebody so that I'm not your bitch anymore." 10RP 52. The police arrived and arrested Wold. 10RP 52.

After Wold was arrested, Melinda learned that Wold had also assaulted her two boys. 10RP 24-25. M.M. told her that Wold had dragged him down the hallway by his hair and kicked him in the face. 10RP 27. Melinda also learned that Wold had hit N.H. with a Wiffle ball bat in the arm, pushed him over M.M.'s bed, and hit him several times. 10RP 53. Wold had also hit N.H. with a five-pound hand weight, and used a screwdriver to jab into his thigh. 10RP 56.

C. ARGUMENT

1. BECAUSE WOLD HAD NEVER BEEN ADJUDICATED INCOMPETENT, HE HAD THE BURDEN TO PROVE HE WAS NOT COMPETENT.

Wold argues that the trial court violated his due process right to a fair trial by improperly placing the burden on him to prove incompetence. Because it is well settled law that a defendant is presumed competent unless he has been adjudicated otherwise, Wold had the burden to establish incompetence, and thus, his argument should be rejected.

An incompetent person may not be tried, convicted, or sentenced for an offense so long as the incapacity continues. RCW 10.77.050. A defendant is incompetent if he or she “lacks the capacity to understand the nature of the proceedings against him or her, or to assist in his or her own defense as a result of mental disease or defect.” RCW 10.77.010(15).

Washington has a two-part test to determine legal competency for a criminal defendant: (1) whether the defendant understands the nature of the charges; and (2) whether he or she is capable of assisting in his or her defense. In re Personal Restraint Petition of Fleming, 142 Wn.2d 853, 862, 16 P.3d 610 (2001).

Contrary to Wold’s contentions, RCW 10.77 does not address who has the burden in competency proceedings, and that is because the burden depends on the circumstances of each case. State v. P.E.T., 174 Wn. App. 590, 601, 300 P.3d 456, petition for review stayed, No. 89157-5 (2013). For instance, if a defendant is found to be incompetent, the presumption is that he remains incompetent until adjudicated otherwise. State v. Coley, 171 Wn. App. 177, 187, 286 P.3d 712 (2012), rev. granted, 176 Wn.2d 1024 (2013). Thus, in such a situation, the State bears the burden

to overcome the presumption of incompetence and prove the defendant to be competent. Id. at 188.

Conversely, “it is well settled that the law will presume sanity rather than insanity, competency rather than incompetency; it will presume that every man is sane and fully competent until satisfactory proof to the contrary is presented.” Grannum v. Berard, 70 Wn.2d 304, 307, 422 P.2d 812 (1967); see State v. Bonner, 53 Wn.2d 575, 587, 335 P.2d 462 (1959) (every person is presumed sane and competent until a person is adjudicated to be of unsound mind). In that situation, the defendant bears the burden to overcome the presumption of competence. Simply stated, when a defendant is found to be incompetent, the burden of proof shifts to the State to prove that the defendant is competent. But when the defendant has never been adjudicated incompetent, as is the case with Wold, the burden is on him to prove he is not competent. Coley, 171 Wn. App. at 188; P.E.T., 174 Wn. App. at 597. Contrary to Wold’s contention, the presumption that a defendant is competent does not violate due process. Medina v. California, 505 U.S. 437, 438, 112 S. Ct. 2572, 120 L. Ed. 2d 353 (1992).

Wold erroneously claims that RCW 10.77 places the burden on the State to prove a defendant competent to stand trial after the

court has found reason to doubt his competency. App. Br. 6-7.

This is not a correct statement of the law. As already noted, RCW 10.77 “does not explicitly ascribe the burden of proof.” P.E.T., 174 Wn. App. at 600. Wold further cites to State v. Wicklund, 96 Wn.2d 798, 638 P.2d 1241 (1982), for the same proposition. However, Wicklund did not hold that the burden of proof is on the State. Rather, in its recitation of the facts, the court mentioned that, “The case was continued for a determination of Mr. Wicklund’s competency, but the court first placed the burden of establishing competency on the State.” Id. at 799-800. Wicklund does not address the burden of proof in its legal analysis. Instead, it examines the applicability of RCW 10.77 to courts of limited jurisdiction, and the requirement for a formal psychiatric evaluation. Id.

Wold also cites to two other cases in an attempt to shift the burden to the State. Neither of those cases assign the burden of proving competency to the State. In Born v. Thompson, 154 Wn.2d 749, 117 P.3d 1098 (2005), the issue was which standard of proof was applicable to civil commitments. Id. at 753-54. The court held that due process required the State to prove by clear and

convincing evidence that the defendant was charged with a violent act, a prerequisite for commitment for restoration. Id. at 769.

Similarly, State v. Hurst, 158 Wn. App. 803, 244 P.3d 954 (2010) aff'd, 173 Wn.2d 597, 269 P.3d 1023 (2012), did not address the burden of proof as to an initial finding of competency. Rather, the issue was the standard of proof that needed to be applied to findings necessary to commit a defendant for restoration of competency. Id.

In essence, contrary to established law, Wold wants this Court to hold that the State always has the burden of proving competence, whether a person has ever been found incompetent or not. This holding would require an initial presumption of incompetence on all criminal defendants. This outcome would be absurd.

At the beginning of trial Wold was presumed competent because he had never been adjudicated incompetent in the past. Thus, it was his burden to rebut that presumption, which he did not. This Court should hold that the trial court properly placed the burden on Wold to prove incompetency to stand trial.

2. THE INFORMATION CHARGING WOLD WITH UNLAWFUL IMPRISONMENT WAS SUFFICIENT.

For the first time on appeal, Wold argues that the information charging him with unlawful imprisonment was deficient. He contends that he did not enter into a knowing and voluntary plea because the information failed to define the term “restrain.” Wold’s argument should be rejected because the definition of “restrain” is not an essential element of unlawful imprisonment. Moreover, Wold cannot show that he was actually prejudiced by the wording of the information.

The accused in a criminal case enjoys a constitutional right to notice of the crime the State intends to prove. Wash. Const. art. I, § 22 (“In criminal prosecutions the accused shall have the right ... to demand the nature and cause of the accusation against him ....”). This notice is formally given in the information, which shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. State v. Nonog, 169 Wn.2d 220, 225-26, 237 P.3d 250 (2010).

An information is constitutionally sufficient if it includes all of the essential elements of the crime, both statutory and non-statutory. State v. Moavenzadeh, 135 Wn.2d 359, 362, 956

P.2d 1097 (1998). The purpose of this rule is to afford the defendant notice of the nature and cause of the allegations against him so that he may properly prepare a defense. State v. Campbell, 125 Wn.2d 797, 801, 888 P.2d 1185 (1995). An information challenged for the first time on appeal is more liberally construed in favor of validity than an information challenged before or during trial. State v. Kjorsvik, 117 Wn.2d 93, 102, 812 P.2d 86 (1991).

Courts apply a two-prong test when determining the validity of an information: (1) do the necessary elements appear in any form, or can the elements be found by fair construction, in the information, and if so, (2) can the defendant show that he was actually prejudiced by the inartful language that caused the lack of notice? Id. at 105-06. In considering the first prong, courts look at the face of the information only. Id. at 106. To this end, courts have held that failing to “define every element that the State must prove at trial does not render the information constitutionally defective.” State v. Rhode, 63 Wn. App. 630, 635, 821 P.2d 492 (1991); State v. Allen, 176 Wn.2d 611, 629-30, 294 P.3d 679 (2013) (holding that the State was not required to include the definition of “threat” in the charging document for felony harassment.) Furthermore, courts deem it appropriate to examine

“all the language in the information, reading it as a whole and in a commonsense manner.” Nonog, 169 Wn.2d at 228.

By statute, “[a] person is guilty of unlawful imprisonment if he or she knowingly restrains another person.” RCW 9A.40.040. The definition of “restrain” is contained in another section of the same chapter, entitled “Definitions,” which defines “restrain” as restricting a person’s movements (1) without consent, (2) without legal authority, and (3) in a manner that interferes substantially with the person’s liberty. RCW 9A.40.010(6).

In this case, count III of the amended information charged Wold with unlawful imprisonment and included the following language:

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse ROBERT WILLIAM WOLD of the crime of **Unlawful Imprisonment – Domestic Violence**, based on a series of acts connected together with another crime charged herein, committed as follows:

That the defendant ROBERT WILLIAM WOLD in King County, Washington, on or about July 21, 2010, did knowingly restrain Melinda Hopper, a human being;

Contrary to RCW 9A.40.040, and against the peace and dignity of the State of Washington.

CP 154-55 (bold in original). The information cited the correct statute, provided all of the elements of the crime, and gave Wold notice of the nature of the charges against him, allowing him to prepare a defense. In reading all the language in the information in a commonsense manner, and applying a liberal construction in favor of its validity, this Court should find that the information was sufficient.

This issue is not one of first impression to this Court. In State v. Johnson, 172 Wn. App. 112, 297 P.3d 710 (2012), as modified on denial of recons., rev. granted in part, 178 Wn.2d 1001 (2013),<sup>5</sup> this Court held that the definition of “restrain” must be included in an information charging a defendant with unlawful imprisonment. Id. at 136-40. Specifically, the Court found that it was not reasonable to conclude that the restraint was “without legal authority.” Id. at 139.

Subsequently, a different panel of this Court held in State v. Phuong, 174 Wn. App. 494, 299 P.3d 37 (2013), petition for rev. stayed pending Johnson, No. 88889-2 (Oct 3, 2013), that the statutory definition of “restrain” is *not* an essential element required to be in the charging document. The Court relied on Allen, supra,

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<sup>5</sup> This case was argued before the Washington Supreme Court on January 21, 2014.

where our Supreme Court rejected the notion that the definition of an element of an offense must be alleged in the charging document. Phuong, Wn. App. at 544-45.

The State believes that Johnson was wrongly decided, and respectfully requests that this Court hold, as it did in Phuong, that it is not necessary to define "restraint" in the charging document.

Moreover, Wold cannot make a showing that the alleged defect in the information prejudiced him in any way. In considering the second prong of the test, courts may look beyond the face of the information to determine if the defendant actually received notice of the charges that he had to defend against. Kjorsvik, 117 Wn.2d at 106. Wold fails to show that he was prejudiced by the lack of notice in the information. Even though Wold chose to plead guilty, he did so in the midst of trial. It is apparent from the record that Wold was ready to present a diminished capacity defense at trial to most of the charges, including the charge of unlawful imprisonment. 1RP 109, 145-56; 2RP 27-34. Wold cannot claim that he was prevented in any way from preparing a defense against the charge.

Wold's argument that his plea was not knowingly made because he did not know that "lack of legal authority to restrain"

was an essential element of the crime is unpersuasive. In State v. Warfield, 103 Wn. App. 152, 5 P.3d 1280 (2000), the court reversed the defendants' convictions for unlawful imprisonment because it was uncontroverted that the defendants believed they were acting lawfully. Id. at 159. In Warfield, three bounty hunters knowingly restrained DeBolt for the purpose of arresting him on a 1987 misdemeanor warrant out of Arizona, and were subsequently charged with unlawful imprisonment. Id. at 154. In the court's analysis, it emphasized that the adverb "knowingly" modifies all four components of the statutory definition of "restrain": (1) restricting another's movements; (2) without that person's consent; (3) without legal authority; and (4) in a manner that substantially interferes with that person's liberty. Id. at 157. Thus, the State had to prove the defendants knowingly restrained DeBolt without legal authority, and since the defendants believed they were acting lawfully because they had a warrant, the State failed to meet its burden. Id. at 159.

That is not the case here. Wold in his statement of defendant on plea of guilty, said:

On or about July 21, 2010, I knowingly restrained Melinda Hopper, my girlfriend, by demanding that she not leave the RV where we were with her father after her father and I had a fight and she was afraid to leave.

CP 169-83. Thus, Wold admitted he knowingly restricted Melinda's movements, without her consent or without legal authority, in a manner that substantially interfered with her liberty. Unlike in Warfield, this is not a circumstance where Wold believed that he had the legal authority to restrain Melinda. Therefore, his argument should be rejected and his conviction for unlawful imprisonment should be affirmed.

3. THE TRIAL COURT HAD THE LEGAL AUTHORITY TO IMPOSE A NO-CONTACT ORDER FOR THE TOTAL LENGTH OF WOLD'S SENTENCE.

Lastly, Wold argues that the trial court exceeded its authority by imposing a no-contact order for 15 years, whereas the most serious crime for which Wold was sentenced was a class B felony, limiting the court to a no-contact order for 10 years. This argument should be rejected because the trial court can impose no-contact orders to last the length of the sentence.

The Sentencing Reform Act of 1981 and RCW 9.94A.505(8), authorize the trial court to impose crime-related prohibitions as a condition of sentence. The plain language of the SRA supports the conclusion that trial courts may impose no-contact orders for a term of the maximum sentence for a crime. State v. Armendariz, 160

Wn.2d 106, 120, 156 P.3d 201 (2007). A no-contact order can last the length of the sentence. State v. France, 176 Wn. App. 463, 474, 308 P.3d 812 (2013) rev. denied, 318 P.3d 280 (2014). Sentencing conditions that do not interfere with a constitutionally protected right are reviewed for abuse of discretion. State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008).

France is instructive. France pled guilty to nine counts of felony harassment.<sup>6</sup> 176 Wn. App. at 465. The court imposed an exceptional sentence of 180 months, running three counts consecutive to each other. Id. at 467. The court also imposed a no-contact order for the maximum of 15 years. Id. at 474. On appeal, France challenged his exceptional sentence and the court's authority to impose a community custody condition of no contact when it lacked statutory authority to do so. Id. at 463-65. On review, it became apparent that there was a clerical error in the judgment and sentence with respect to the no-contact order and the community custody. Id. at 473-74. This Court noted that the trial court's intent was to impose the no-contact order for 15 years as a condition of the sentence rather than a condition of community custody. Id. This Court declined to vacate the no-contact order

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<sup>6</sup> Felony harassment is a class C felony, with a statutory maximum punishment of 5 years. RCW 9A.46.020(2)(b); RCW 9A.20.021(c).

and remanded the case for the trial court to correct the erroneous reference to community custody. Id. In its holding the Court noted, “The court acknowledged in its oral ruling that it had no authority to impose supervision, but was ordering no contact. And the no-contact order is scheduled to last only the length of the sentence.” Id.

Here, similar to France, the trial court imposed consecutive sentences on counts I, felony harassment, a class C felony; counts II and IV, assault in the second degree, a class B felony;<sup>7</sup> and count VI, assault in the fourth degree, with a statutory maximum punishment of 364 days in jail. CP 207-20. The total length of the sentence was 20 years. Hence, the trial court had the discretion to impose a no-contact order that would last the length of the sentence, which would have been 20 years. Thus, this Court should hold that the trial court did not exceed its authority in imposing a no-contact order for 15 years.

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<sup>7</sup> The statutory maximum punishment for a class B felony is 10 years. RCW 9A.20.021(b).

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Wold's judgment and sentence.

DATED this 17<sup>th</sup> day of March, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

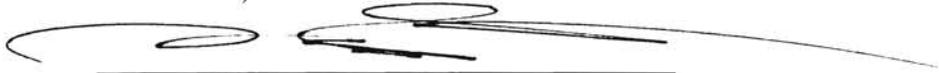
By:   
MAFÉ RAJUL, WSBA #37877  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Andrew P. Zinner, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the RESPONDENT'S BRIEF, in STATE V. ROBERT WOLD, Cause No. 70508-3 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 17 day of March, 2014



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Bora Ly  
Done in Seattle, Washington