

COA NO. 74508-5-I

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

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IN RE PERSONAL RESTRAINT PETITION OF WILLIAM FRANCE:

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM FRANCE,

Petitioner.

FILED  
Jul 11, 2016  
Court of Appeals  
Division I  
State of Washington

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

The Honorable Harry McCarthy, Judge

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PETITIONER'S REPLY BRIEF

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A. **ARGUMENT IN REPLY**

1. **FRANCE'S MULTIPLE CONVICTIONS FOR FELONY HARASSMENT VIOLATE DOUBLE JEOPARDY UNDER THE UNIT OF PROSECUTION TEST.**

a. **The statutory unit of prosecution for harassment is the course of threatening conduct directed toward a particular victim.**

There is a multistep approach to determine the unit of prosecution: "we first look to the statute to glean the intent of the legislature. Then we look to the statute's history, and finally to the facts of the particular case. If there is still doubt, we apply the rule of lenity in favor of a single unit." State v. Hall, 168 Wn.2d 726, 737, 230 P.3d 1048 (2010). In accord with that sequential analysis, this reply first turns to legislative intent and history in determining whether the statutory unit of prosecution for harassment is an act or a course of conduct.

State v. Morales, 174 Wn. App. 370, 298 P.3d 791 (2013) provides the foundation for France's statutory unit of prosecution argument. The facts are different from France's case. But whether the facts of a particular case show a course of conduct is different from the threshold question of whether legislative intent and statutory history show the statutory unit of prosecution for a crime is a course of conduct. State v. Leyda, 157 Wn.2d 335, 350, 138 P.3d 610 (2006).

Morales supports France's position that the statutory unit of prosecution for harassment is a course of conduct rather than each individual threat. There is no dispute on this point. Faced with this precedent, the State disagrees with Morales but its criticism does not withstand scrutiny.

The State finds fault with the Morales court's determination that "[t]he language used to define the operative criminal conduct in RCW 9A.46.020 — to 'knowingly threaten' — is not inherently a single act." Morales, 174 Wn. App. at 387. That is, the plain, operative language of the statute does not unambiguously show the unit of prosecution for harassment is every single act rather than a course of conduct. Yet the State posits the legislature, had it intended the crime to encompass a course of threatening conduct, would have used a phrase such as "repeatedly threatens" or "repeatedly harasses" rather than "knowingly threatens." State's Response (SR) at 21-23, 26. Morales rightly recognized the same kind of argument was rejected in Hall: "In Hall, the Supreme Court was not persuaded by an argument that if the legislature intended a single unit of prosecution based on a course of conduct, it could have said so plainly. What matters is not what it did not say, but what it did say." Morales, 174 Wn. App. at 386-87.

Relying on State v. Alvarez, 74 Wn. App. 250, 872 P.2d 1123 (1994), aff'd, 128 Wn.2d 1, 904 P.2d 754 (1995) and its comparison to the civil harassment statute, the State advanced the very same argument in Hall, where it claimed the unit of prosecution for witness tampering is per act, not per course of conduct. Hall, 168 Wn.2d at 733. The Supreme Court dispensed with this argument by noting "the Alvarez court was answering a very different question than the one posed here: whether the court should 'override the unambiguous elements section of a penal statute' by adding language from a statement of intent." Hall, 168 Wn.2d at 733 (quoting Alvarez, 74 Wn. App. at 258). "Here, we are simply interpreting the words set forth in the statute itself." Hall, 168 Wn.2d at 733. France engages in the same inquiry and asks no less of this Court.

Akin to its argument in France's case, the State in Hall argued if the legislature intended witness tampering to be an ongoing offense, it would have used phrases similar to those used in the stalking statute, such as "engages in a pattern or practice" or "repeatedly harasses or repeatedly follows." Hall, 168 Wn.2d at 733 (citing RCW 9A.32.055 (homicide by abuse); RCW 9.46.0269 (gambling activity); RCW 26.50.110(5) (felony violation of a no contact order)). While the Supreme Court agreed "the language could have been more precise, in the statutes cited, repetition is an element of the substantive crime. By contrast, as the State properly

notes, '[t]amper is a choate crime, complete when a single attempt of tampering is made.' . . . No repetition is necessary. But that does not reveal the unit of prosecution." Hall, 168 Wn.2d at 733-34 (internal citation omitted).

The elements section of the harassment statute, RCW 9A.46.020, unambiguously requires only one act for conviction, rather than multiple acts or threats. State v. Alvarez, 128 Wn.2d 1, 12-13, 904 P.2d 754 (1995). The elements section, however, does not answer the unit of prosecution question. Harassment, like witness tampering, is a choate crime. Like the witness tampering statute at issue in Hall, for harassment "[n]o repetition is necessary. But that does not reveal the unit of prosecution." Hall, 168 Wn.2d at 734. As in Hall, the legislature's failure to be more precise in the use of its language in the harassment statute does not mean it intended the unit of prosecution to be per act as opposed to per course of conduct.

Morales also pointed out the Court of Appeals in Alvarez relied on the fact that the venue provision (RCW 9A.46.030) treats a "harassment offense" as including a single threat to support its holding that the legislature intended a single threat could support conviction. Morales, 174 Wn. App. at 386 (citing Alvarez, 74 Wn. App. at 259). The provision, in treating a "harassment offense" as also including multiple threats ("threat

or threats"), supports the conclusion that the unit of prosecution encompasses multiple threats. Morales, 174 Wn. App. at 386.

The State claims the venue provision gives no insight into the unit of prosecution analysis for harassment. SR at 27-28. The State wants to have its cake and eat it, too. It's fine with relying on the venue provision as an indicator of legislative intent for harassment when it suits its purpose, as in Alvarez. But when confronted with that same provision in this unit of prosecution case, the State protests the venue provision offers nothing of value. Standard principles of statutory construction are used to determine the legislature's intent. Leyda, 157 Wn.2d at 345. To this end, the entire statute is considered, as well as related statutes or other provisions in the same act that disclose legislative intent. Anderson v. Dep't of Corrections, 159 Wn.2d 849, 858, 154 P.3d 220 (2007). The venue provision of the harassment statute is a piece to be considered. The State complains the venue provision dictates venue for stalking, which requires multiple acts. SR at 28. The venue provision covers harassment as well, and makes no distinction between stalking and harassment when using the language of "threat or threats." RCW 9A.46.030.

The unit of prosecution analysis looks to the statute as a whole. RCW 9A.46.010, the intent section of the harassment statute, "speaks in the plural, declaring the aim of 'making unlawful the repeated invasions of

a person's privacy by acts and threats' showing a 'pattern of harassment.'" Alvarez, 74 Wn. App. at 257 (quoting RCW 9A.46.010). That intent section covers not only stalking but also harassment. The intent section's use of the plural "acts and threats" supports a conclusion that the legislature intended the crime of harassment to encompass not only a single act (which is sufficient to convict), but also multiple threats comprising a course of threatening conduct. Morales, 174 Wn. App. at 385.

Ironically, the Court of Appeals in Alvarez noted "the practical difficulties inherent in distinguishing a pattern of threatening conduct from a single act or threat."<sup>1</sup> Alvarez, 74 Wn. App. at 260. It condemned the "hairsplitting" that would result if it interpreted the harassment statute to require proof of repeated threats demonstrating a pattern of harassment because the dividing line between one threat and multiple threats could be difficult to draw. Id. Now the State twists that case to argue there is no such thing as a pattern of threatening conduct but only a series of single acts or threats, each of which are separately punishable under a unit of prosecution standard. Alvarez itself counsels against that approach in assessing legislative intent.

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<sup>1</sup> In one of the cases on appeal in Alvarez, the defendant made several threats against the victim but the King County Prosecutor's Office charged only one count of harassment. Alvarez, 74 Wn. App. at 254-55, 260.

The State's comparison to no-contact order violations is inapt. SR at 23 n.9. The operative language in the provision defining that crime punishes "a violation" of a no-contact order. RCW 26.50.110(1). "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.'" State v. Brown, 159 Wn. App. 1, 11, 248 P.3d 518 (2010), review denied, 171 Wn.2d 1015, 249 P.3d 1029 (2011) (quoting State v. Ose, 156 Wn.2d 140, 147, 124 P.3d 635 (2005)). In contrast, the statute defining the crime of harassment contains no comparative language clearly denoting singularity, such as commission of "a threat." RCW 9A.46.020.

In its response, the State spends a good deal of effort in characterizing France's argument as "absurd" because it allows only one conviction for more than one threat. The State's effort is long on rhetoric and short on substantive analysis.

"A unit of prosecution can be either an act or a course of conduct." Hall, 168 Wn.2d at 731. But by the State's logic, the unit of prosecution should always be an act and never a course of conduct because treating a crime as a course of conduct lets criminals off the hook and emboldens them to continue committing the same offense without additional

consequence. Setting aside the doubtful premise that offenders typically study the law books before committing a crime to see what they can get away with, the State's real problem is with the very concept that a unit of prosecution could ever be a course of conduct for any crime.

The State's absurdity argument could be and has been lobbed at any crime where the unit of prosecution is a course of conduct rather than a single act. Consider assault, for example. The State attempts to show the "absurdity" of the notion that the unit of prosecution for harassment is a course of conduct by contending how silly it would be to treat assault as a course of conduct crime. SR at 15. But the unit of prosecution for assault is the course of conduct, not the act. State v. Villanueva-Gonzalez, 180 Wn.2d 975, 984, 329 P.3d 78 (2014). By the State's logic, assault should not be a course of conduct crime because that approach lessens the deterrent effect of the statutory prohibition, i.e., it emboldens criminals to commit repeated acts of assault knowing only a single assault will be punished. That argument lost.

Or consider the crime of possessing stolen property. A continuous possession of various pieces of stolen property belonging to different persons during a period of 15 days constitutes a single unit of prosecution. State v. McReynolds, 117 Wn. App. 309, 336, 340, 71 P.3d 663 (2003). By the State's logic, the unit of prosecution for possessing stolen property

should not be a course of conduct because it emboldens criminals to accumulate the property of an infinite number of individuals knowing that he or she can be convicted of only a single count. That argument lost.

Consider also the crime of witness tampering. The State's argument in France's case mirrors the State's brief in Hall.<sup>2</sup> As it does in France's case, the State in Hall lamented how absurd it would be to treat the unit of prosecution for witness tampering as a course of conduct because it would embolden an offender to commit infinite acts of tampering with impunity while only being subject to one conviction.<sup>3</sup> The State lost that argument. Hall, 168 Wn.2d at 728, 734.

The State suggests the legislature's subsequent amendment of the witness tampering statute in response to Hall vindicates its position. It does not. The unit of prosecution analysis changed because the statute changed. The statute as it now exists is not the one that the Supreme Court in Hall interpreted. The unit of prosecution holding in Hall is sound. It is the function of the judiciary to interpret the legislature's intent. Williamson, Inc. v. Calibre Homes, Inc., 147 Wn.2d 394, 401, 54 P.3d 1186

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<sup>2</sup> See Supplemental Brief of Respondent in Hall (available at [www.courts.wa.gov/content/Briefs/A08/825581%20supp%20br%20of%20respondent.pdf](http://www.courts.wa.gov/content/Briefs/A08/825581%20supp%20br%20of%20respondent.pdf)).

<sup>3</sup> Comparing the two briefs, it is apparent the King County Prosecutor's Office, in responding to France's argument, copied liberally from its losing brief in Hall.

(2002). And "[i]t is a well-settled rule of statutory construction that when the highest court in the state has interpreted a statute, that interpretation operates as if it were originally written into it." State v. Dean, 113 Wn. App. 691, 699, 54 P.3d 243 (2002).

The Supreme Court in Hall interpreted the statute as written. Subsequent disagreement by the legislature does not change the validity of that interpretation, which is why the amended statute cannot operate retroactively. See Dean, 113 Wn. App. at 698 ("Curative amendments cannot be applied retroactively if they contravene a judicial construction of the original statute."). The legislature has since amended the statute, and if another unit of prosecution analysis were done based on the amended statute, then the outcome would be different because it is apparent that legislative intent on the unit of prosecution has changed.

The State draws the wrong lesson from Hall. In 2010, the Supreme Court, interpreting the witness tampering statute, held the unit of prosecution was the "ongoing attempt to persuade a witness not to testify in a proceeding." Hall, 168 Wn.2d at 734. The legislature swiftly responded by amending the witness tampering statute to specify "[f]or purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense." RCW 9A.72.120(3) (Laws of

2011 ch. 165 § 3, eff. July 22, 2011).<sup>4</sup> The legislature does not hesitate to act when it perceives the judicial branch has misinterpreted its intent on the unit of prosecution.

For another example, in 2009 the Supreme Court in State v. Sutherby, 165 Wn.2d 870, 882, 204 P.3d 916 (2009) held the unit of prosecution under the statute criminalizing possession of child pornography was "one count per possession of child pornography, without regard to the number of images comprising such possession or the number of minors depicted in the images possessed." The legislature quickly responded to Sutherby by amending the statute in 2010, making plain that the unit of prosecution for first degree possession was per image or depiction, while the unit for second degree possession remained per possession. See State v. Polk, 187 Wn. App. 380, 390-92, 348 P.3d 1255 (2015) (detailing legislature's response to Sutherby).

The legislature knows how to act when it disagrees with a court's unit of prosecution analysis.<sup>5</sup> It did so in response to Sutherby. It did so

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<sup>4</sup> See also Laws of 2011 ch. 165 § 1 ("In response to State v. Hall, 168 Wn.2d 726 (2010), the legislature intends to clarify that each instance of an attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under the statutes governing tampering with a witness and intimidating a witness.").

<sup>5</sup> In 2006, the Supreme Court held the prosecution unit for identity theft to be any one act of obtaining, possessing, using, or transferring a single piece of another's identification or financial information, so that once the

in response to Hall. But it has *not* amended the harassment statute in response to Morales. "This court presumes that the legislature is aware of judicial interpretations of its enactments and takes its failure to amend a statute following a judicial decision interpreting that statute to indicate legislative acquiescence in that decision." City of Federal Way v. Koenig, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009). If the unit of prosecution analysis of the harassment statute in Morales is flawed, as the State contends, then we would expect the legislature to have already responded by amending the statute to clarify the unit of prosecution for harassment is per individual threat. The legislature's failure to act supports France's argument that Morales correctly interpreted legislative intent.

The State says France's interpretation renders the stalking statute a nullity. SR at 22. Not so. If a person commits multiple acts of harassment, then that person can be charged and convicted of stalking. RCW 9A.46.110(1). The stalking statute remains operative and fulfills its purpose of protecting victims against repeated acts of harassment. The

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accused engaged in any one of the statutorily proscribed acts against a particular victim, the unit of prosecution includes any subsequent proscribed conduct. Leyda, 157 Wn.2d at 342-43. The legislature disagreed and amended the identity theft statute in 2008 to clarify that the "unit of prosecution . . . is each individual unlawful use of any one person's means of identification or financial information." Laws of 2008, ch. 207 § 1. That is the longest period of time that passed before the legislature amended a statute based on its disagreement with a court's unit of prosecution holding.

State could have charged France with two counts of stalking, the more serious crime. See RCW 9.94A.515 (for sentencing purposes, stalking has a seriousness level of V, harassment has seriousness level of III). Instead, the State opted to charge five counts of harassment in an effort to maximize punishment. France's case illustrates the danger of arbitrary charging practices.

The Washington Supreme Court has noted the U.S. Supreme Court "has been especially vigilant of overzealous prosecutors seeking multiple convictions based upon spurious distinctions between the charges." State v. Adel, 136 Wn.2d 629, 635, 965 P.2d 1072 (1998) (citing Brown v. Ohio, 432 U.S. 161, 169, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977) ("The Double Jeopardy Clause is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedient of dividing a single crime into a series of temporal or spatial units."); In re Snow, 120 U.S. 274, 282, 7 S. Ct. 556, 30 L. Ed. 658 (1887) (if prosecutors were allowed arbitrarily to divide up ongoing criminal conduct into separate time periods to support separate charges, such division could be done ad infinitum, resulting in hundreds of charges).

The unit of prosecution inquiry is "necessary to assure that the prosecutor has not been arbitrary in dividing ongoing criminal conduct into units in order to facilitate separate charges." State v. Anthone, 184

Wn. App. 92, 95, 336 P.3d 1166 (2014). In charging two or more violations of the same statute, the prosecutor will always attempt to distinguish the charges by dividing the evidence supporting each charge into distinct segments. Adel, 136 Wn.2d at 633-34. That's what prosecutors, in their nearly unbridled charging discretion, do. The State's argument that France can be convicted multiple times because he made multiple threats over a period of time "rests on a slippery slope of prosecutorial discretion to multiply charges." Id. at 636.

"Prosecuting attorneys are vested with great discretion in determining how and when to file criminal charges." State v. Korum, 157 Wn.2d 614, 625, 141 P.3d 13 (2006). Prosecutorial discretion is not limited by statute. Korum, 157 Wn.2d at 626. Due process is no bar to a prosecutor overcharging a defendant to secure a guilty plea or increasing the number or severity of charges in the event a defendant proceeds to trial. Id. at 627-31. The check on prosecutorial overreach is the prohibition on double jeopardy under the unit of prosecution analysis.

In a footnote, the State claims the "continuing course of conduct" theory ensures only a single count of harassment will be filed when several acts occur close in time, suggesting this is a check on prosecutorial overreach. SR at 29 n.13 (citing State v. Handran, 113 Wn.2d 11, 17-18, 775 P.2d 453 (1989); State v. Marko, 107 Wn. App. 215, 231-32, 27 P.3d

228 (2001)). Untrue. The "continuous course of conduct" theory applies to questions of jury unanimity. Handran, 113 Wn.2d at 17-18; Marko, 107 Wn. App. at 231-32. A "continuous course of conduct" is exempt from the jury unanimity requirement. State v. Doogan, 82 Wn. App. 185, 191, 917 P.2d 155 (1996). If a prosecutor chooses to charge a single count rather than multiple counts, a continuous course of conduct adhering to that single count presents no unanimity problem. See State v. Stockmyer, 83 Wn. App. 77, 87, 920 P.2d 1201 (1996) ("a continuing course of conduct may form the basis of one charge in an information"). But there is nothing to stop the prosecutor from dividing up what would otherwise be considered a continuous course of conduct for unanimity purposes and charging multiple counts instead. That is prosecutorial discretion at work. That is what happened in France's case.

"[E]vidence that a defendant engages in a series of actions intended to secure the same objective supports the characterization of those actions as a continuing course of conduct rather than several distinct acts." State v. Fiallo-Lopez, 78 Wn. App. 717, 724, 899 P.2d 1294 (1995). The continuous course of conduct can extend for a long period of time, so long as a series of acts were done with the same objective. See State v. Dyson, 74 Wn. App. 237, 249-50, 872 P.2d 1115, review denied, 125 Wn.2d 1005, 886 P.2d 1133 (1994) (for one charged count of telephone

harassment, 50 calls made between January 8-11 and 15 calls between February 7-8 collectively comprised a continuous course of conduct); State v. Craven, 69 Wn. App. 581, 588-89, 849 P.2d 681, review denied, 122 Wn.2d 1019, 863 P.2d 1353 (1993) (assaults occurring over three week period were a continuous course of conduct).<sup>6</sup>

There is no question France, in repeatedly calling his victims and uttering threats, engaged in a series of actions intended to secure the same objective of causing them to fear for their safety. In light of the cases cited above, especially Dyson, France's course of conduct would be deemed continuous as to each victim. So if we take the State at its word that it will charge only one count for a continuous course of conduct, then the State should have charged France with one count of harassment for each of the two victims, not 3 counts per Paulsen and two counts per Daugaard. The prohibition on double jeopardy under the unit of prosecution analysis remains the check on the arbitrary exercise of

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<sup>6</sup> See also State v. Knutz, 161 Wn. App. 395, 407-09, 253 P.3d 437 (2011) (multiple acts of theft committed over two years against single person was a continuous course of conduct); State v. Barrington, 52 Wn. App. 478, 481, 761 P.2d 632 (1988), review denied, 111 Wn.2d 1033 (1989) (multiple acts of promoting prostitution over a period of almost three months was a continuous course of conduct); State v. Gooden, 51 Wn. App. 615, 620, 754 P.2d 1000, review denied, 111 Wn.2d 1012 (1988) (promoting prostitution over a 10-day period was a single ongoing offense, despite evidence of multiple acts of promotion of prostitution during the charging period).

prosecutorial discretion.<sup>7</sup> See State v. Furseth, 156 Wn. App. 516, 520-22, 233 P.3d 902, review denied, 170 Wn.2d 1007, 245 P.3d 227 (2010) (State could not charge more than single count for possession of child pornography under the unit of prosecution holding in Sutherby, thereby averting jury unanimity problem). The statutory unit of prosecution is per course of threatening conduct directed towards a person, not each individual threat.

**b. There is one unit of prosecution for each victim on the facts of France's case.**

All of which brings us to the unit of prosecution on the facts of France's case. "Once the statutory unit of prosecution is determined, an analysis is necessary to decide whether, under the facts of the case, more than one unit of prosecution is present." Leyda, 157 Wn.2d at 350.

The State describes France's argument as being a defendant can be convicted only once for innumerable threats made over an infinite period of time. That is an overblown mischaracterization. France's argument is that harassment is a course of conduct crime for double jeopardy purposes. If multiple threats directed over time toward a single target constitute a

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<sup>7</sup> Morales was decided after the trial proceedings in France's case.

single course of conduct, double jeopardy prevents conviction for each threat.<sup>8</sup>

A number of factors can interrupt the course of conduct. For example, the course of conduct may be broken if the perpetrator changes the mode of transmission, if the State briefly stops the threats but the perpetrator then resumes them, or if a substantial amount of time passes between one set of threats and another. See Hall, 168 Wn.2d at 737-38 (in addressing witness tampering was single course of conduct on facts of case, recognizing separate units may be present where perpetrator changes his strategy by employing different modes of transmission, or if he is stopped by the State briefly and found a way to resume his witness tampering campaign, or a substantial period of time elapsed between the tampering communications).

That is precisely why France does not seek to vacate *all* of the convictions in the present personal restraint petition under 74508-5-I. The threats that formed the basis for those convictions constitute a new course of conduct because they were resumed following a prosecution and conviction for the original set of threats (addressed in France's personal

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<sup>8</sup> If a victim is in fear after a single threat, then the victim is free to report the threat to police and the State is free to arrest and prosecute the offender immediately, in this way preventing the initial threat from becoming a continuous course.

restraint petition under 74507-7-I), and there is a substantial lapse of time between the two threat campaigns. The State complains there is nothing in the statutory language that shows the legislature intended the unit of prosecution to be dependent on the mode or manner of the threat. SR at 29 n.12. There doesn't need to be. The State improperly conflates the threshold determination of what constitutes the statutory unit of prosecution with whether there is one unit of prosecution on the facts of the particular case.

The State asserts the threats are different. SR at 25. The threats directed to the victims were of the same character: they would be hurt because of their involvement in the earlier prosecution. The context for those threats is the initial set of threats made in the previous case. The second set of threats at issue here is more of the same, the only difference being that now France had a reason to carry through with them and he would be in custody for a longer period of time than before. See App. G to State's Response, Daugaard's testimony at p. 68-69. The threats comprise a resumed campaign of terror. It is that campaign that constitutes the unit of prosecution for each of the three victims.

**c. The rule of lenity operates in France's favor.**

Finally, if "the legislature has failed to specifically define the unit of prosecution in the statute or if its intent in that regard is not clear, we

must resolve the ambiguity in favor of the criminal defendant, thus preventing the State from turning a single transaction or course of conduct into multiple offenses." Leyda, 157 Wn.2d at 342-43. At the very least, the harassment statute is ambiguous on the unit of prosecution. It is, at the very least, susceptible to two reasonable interpretations, one of which is France's interpretation. And to the extent there is any ambiguity on whether the facts of France's case show one course of conduct, that ambiguity must operate in favor of France as well. Hall, 168 Wn.2d at 737.

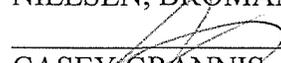
**B. CONCLUSION**

For the reasons stated above and in the opening brief, France requests that this Court grant his personal restraint petition, vacate three of the five harassment convictions, and remand for resentencing.

DATED this 11<sup>th</sup> day of July 2016

Respectfully Submitted,

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