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**Court of Appeals  
Division II  
State of Washington  
March 27<sup>th</sup> 2020**

**THE COURT OF APPEALS DIVISION II  
OF THE STATE OF WASHINGTON**

**No. 54203-0**

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GARY MYERS, Appellant

v.

LALANI SHELTON, Petitioner

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**APPELLANT'S BRIEF**

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- 1) Fischer v. Fischer, Wash: Court of Appeals, 2<sup>nd</sup> Div. 2017 Quote A trial court abuses its discretion if its decision was exercised on untenable grounds or untenable reasons, or if its decision was reached by applying the wrong legal standard. [Juarez v. Juarez, 195 Wn. App. 880, 890, 382 P.3d 13 \(2016\).](#) [State v. Powell, 126 Wash.2d 244, 258, 893 P.2d 615 \(1995\);](#) [Wilson v. Horsley, 137 Wash.2d 500, 505, 974 P.2d 316 \(1999\).](#) [State v. Rafay, 167 Wash.2d 644, 655, 222 P.3d 86 \(2009\).](#)
- 2) *Equal Protection*. The principle of equal protection requires that all persons similarly situated with respect to the legitimate purposes of the law must receive like treatment. [Davis v. Department of Licensing, 137 Wash.2d 957, 972, 977 P.2d 554 \(1999\).](#)
- 3) *Due Process*. Determining the degree of procedural due process afforded in a particular case requires a balancing of the private interest to be protected, the risk of erroneous deprivation of that interest, and the government's interest in maintaining the procedures. [State v. Lee, 82 Wash.App. 298, 312-13, 917 P.2d 159 \(1996\)](#) (citing [Morris v. Blaker, 118 Wash.2d 133, 144-45, 821 P.2d 482 \(1992\)](#)), *aff'd*, 135 Wash.2d 369, 957 P.2d 741 (1998).
- 4) All facts and reasonable inferences from the facts are considered in the light most favorable to the nonmoving party. [Mountain Park Homeowners Ass'n v. Tydings, 125 Wash.2d 337, 341, 883 P.2d 1383 \(1994\).](#)
- 5) State v. Bland, 116 P. 3d 428 – Wash: Court of Appeals, 1st Div. 2005. Held a reasonable jury could conclude that Bland, an elderly man, used a reasonable means available to him at the time to convince Moore to leave his property. Although the use of deadly force is not justified to expel a mere nonviolent trespasser, under certain circumstances necessary force may include putting a trespasser in fear of physical harm. Quoting [Peasley v. Puget Sound Tug & Barge Co., 13 Wash.2d 485, 506, 125 P.2d 681 \(1942\)](#)
- 6) ("It is the generally accepted rule that a person owning, or lawfully in possession of, property may use such force as is reasonably necessary under the circumstances in order to protect that property, and for the exertion of such force he is not liable either criminally or civilly."); 16 David K. DeWolf & Keller W. Allen, *Washington Practice: Tort Law and Practice* § 13.45 (2nd ed.2000)
- 7) State v. Kayser, Wash: Court of Appeals, 1<sup>st</sup> Div. 2015 Quote 1 “The state proposed an instruction, modeled after RCW 9A.04.110(12), “It is not necessary for the defendant in such a case to show that he feared for his own personal safety. [State v. Bland, 128 Wn. App. 511, 516, 116 P.3d 428 \(2005\).](#)”
- 8) Strode v Gleason, 510 P. 2d 250 - -: Court of Appeals, 1<sup>st</sup> Div. 1973 Quoted The maliciousness that need be shown is an unjustifiable interference with

the relationship between the parent and the child. See [Swearingen v. Vik, 51 Wn.2d 843, 322 P.2d 876 \(1958\)](#); [Lankford v. Tombari, 35 Wn.2d 412, 213 P.2d 627, 19 A.L.R.2d 462 \(1950\)](#); [Allard v. La Plain, 147 Wash. 497, 266 P. 688 \(1928\)](#); [Thomas v. Lang, 135 Wash. 675, 238 P. 626 \(1925\)](#).

- 9) The only reference in the statute to a one-year minimum is in the section concerning service of summons by publication. RCW 26.50.085(3). In a case not involving service by publication, the trial court need not grant a one-year order if tenable grounds support the refusal. [Juarez, 195 Wash.App. at 891, 382 P.3d 13](#).
- 10) [Gourley v. Gourley, 124 Wash.App. 52, 57, 98 P.3d 816 \(2004\)](#) (rules of evidence need not be applied in protection order proceedings; hearsay may be considered), *review granted*, 154 Wash.2d 1012, 113 P.3d 1039 (2005); ER 1101(c)(4)
- 11) The legislature finds that some of the factors articulated in the Washington supreme court's decision in *In re Marriage of Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010), for terminating or modifying domestic violence protection orders do not demonstrate that a restrained person is unlikely to resume acts of domestic violence when the order expires, and place an improper burden on the person protected by the order. By this act, the legislature establishes procedures and guidelines for determining whether a domestic violence protection order should be terminated or modified." [2011 c 137 § 1.] Short title—2008 c 287: See note following RCW 26.50.050.
- 12) [Rausand, M. \(2013\). "Chapter 1: Introduction". Risk Assessment: Theory, Methods, and Applications. John Wiley & Sons. pp. 1–28. ISBN 9780470637647.](#)
- 13) [Manuele, F.A. \(2016\). "Chapter 1: Risk Assessments: Their Significance and the Role of the Safety Professional". In Popov, G.; Lyon, B.K.; Hollcraft, B. \(eds.\). Risk Assessment: A Practical Guide to Assessing Operational Risks. John Wiley & Sons. pp. 1–22. ISBN 9781118911044.](#)

## CONSTITUTIONAL PROVISIONS

Third Amendment--right of the people to decide who can live in their home  
Fifth Amendment--Due Process  
Seventh Amendment—Due Process  
Eighth Amendment—unreasonable and disproportional tort awards.  
Ninth Amendment—unenumerated rights—the right to complete construction  
Fourteenth Amendment—Due Process--Equal protection

## STATUTES

RAP 2.3 (d); RAP 2.3(e); RAP 2.5 (a) RAP 18.1 ATTORNEY FEES AND EXPENSES;  
RCW 9A.16.020 (3)(5); RCW 26.50.; RC

1

## I. INTRODUCTION

2 I hereby certify that this appeal is based on material matters in the record.  
3 I do not intend to be needlessly oppositional to Ms. Shelton or the court. I  
4 seek relief from the protection order. I also seek new and constructive  
5 precedent in law and in administrative practice to advance domestic  
6 violence prevention and advance a balance with constitutional protections,  
7 and I seek precedent and practice so that court orders must consider  
8 broad context on principles of risk management science. And I seek new  
9 mandate and resources for the courts to explore innovative proceedings  
10 and the application of structured information management and other  
11 interventions.

12 Appellant Gary Myers 59, pro se, has filed for appellate review, of  
13 Family Court case 19-2-30827-34 concerning a protection order and  
14 no contact modification against Myers by Dr. Lalani Shelton 56,  
15 petitioner. Myers asserts a study of the facts, law, and proceedings--  
16 on their face—warrants an expanded full-scope appellate review of  
17 each of the proceedings in the record. RAP 2.5

18 Myers, and Shelton, had an intimate relationship for four years,  
19 lived together for six months. Shelton made three minor allegations  
20 that occurred in the first three years. Late in the third year the  
21 decision was made to add Shelton to Myers title to remodel a house  
22 together. Shelton made seven other allegations most of these  
23 occurred in six weeks moving in to the unfinished house. Myers and  
24 Shelton are on title of the house. Myers is the sole name on the  
25 mortgage—a problematic circumstance.

1       **Case Summary:** On October 29<sup>th</sup> Shelton called Myers away  
2 from work for a ride. Myers made six requests for Shelton to get out  
3 of the car at their driveway so he could return to work. Shelton was  
4 oddly unresponsive to the requests and yet hyper compliant without  
5 objection to Myers pull of Shelton from the car, by the arm, to her  
6 feet, then on the ground. No threats and no physical altercation.  
7 Shelton was “humiliated, scared, and shocked”. Myers sped to work.

8       **Conflicting Standard of Assault:** The court found Myers act to  
9 be an assault under RCW 26.50 however the elements of assault  
10 were not met under RCW 9A.16.20(3)(5), and the burden of proof  
11 under RCW 26.50 did not conform to the principles under 9A.16.020.

12       **Conflicting Standard at Expiration of Protection:** Washington  
13 supreme court's decision in Marriage of Freeman, 169 Wn.2d 664,  
14 239 P.3d 557 (2010), finds factors for terminating or modifying  
15 domestic violence protection orders. However, in RCW 26.50.050  
16 (footnote) [11] the legislature finds that Marriage of Freeman placed  
17 an “improper” burden on Shelton to demonstrate that Myers is likely  
18 to resume acts of domestic violence “when the order expires”.

19       **Equal protection Unenumerated Rights:** Myers claims  
20 unenumerated constitutional right to access to complete building  
21 permits on his home co-owned with girlfriend Shelton—not

1 meretricious; and claims violation of equal protection, due to  
2 unreasonable restraint from the home.

3 **No Standard for Likelihood of Recurrence:** The court did not  
4 apply risk management science or any metric to evaluate facts. The  
5 decision was based upon facts that do not relate to whether Myers is  
6 likely to commit domestic violence. Myers submits a proposed legal  
7 standard for evaluating facts that conforms to risk management  
8 science.

9 **Prejudicial Institutional Patterns:** The lower court  
10 misrepresented testimony during ruling and introduced a new--  
11 possibly lethal--allegation. The trial court failed to consider facts and  
12 reasonable inferences from the facts in the light most favorable to  
13 the nonmoving party. *Mountain Park Homeowners Ass'n v. Tydings*,  
14 125 Wash.2d 337, 341, 883 P.2d 1383 (1994). Myers asserts  
15 prejudicial institutional patterns--The trial court denied reversal or  
16 mutual restraint--publications and resource mandated under RCW  
17 26.50. are prejudicial against the respondent.

## 18 **II. ASSIGNMENTS OF ERROR**

19 **1-Lawful Contact: Assault not met:** The court erred<sup>1</sup> in its  
20 application of the legal standard of the definition of assault—the  
21 court erred<sup>2</sup> in its decision finding that Myers act on October 29<sup>th</sup>

1 2020 to be an assault under RCW 26.50 and therefore domestic  
2 violence. when, it is more likely than not, predictable--on its face, that  
3 Myers act on October 29<sup>th</sup> was lawful under 9A.020.16(3)(5). The  
4 Court, or otherwise the RCW 26.20, has had the material-effect, and  
5 institutional pattern of violation of Myers constitutional rights—this  
6 based on a foundation of physical harm that was arguably less than  
7 an insect bite.

8 **2. Lawful Contact: Court Silent on Force:** The court was “not  
9 clear” on force used when Ms. Shelton was physically removed from  
10 the vehicle, the court erred<sup>3</sup> in holding Myers civilly accountable for  
11 his lawful actions on October 29<sup>th</sup>, 2019. The court erred<sup>4</sup> in its  
12 discretion and failed to reconcile conclusions of law RCW 26.50 with  
13 RCW 9A.020.16 and in its application of legal principle, findings of  
14 fact, and terms of the order.

15 **3-No Facts No Standard Relating to Risk of Domestic**  
16 **Violence:** The trial court erred<sup>5</sup> in finding there is no basis to revise  
17 the commissioner and entered an order January 3<sup>rd</sup>, 2020 that  
18 denied the motion for revision to reverse, remand, or mutual restraint  
19 for a new trial. The trial court and the lower court’s decision and the  
20 protection order under RCW 26.50.130 was based upon facts that do  
21 not relate to whether Myers is likely to commit domestic violence.

1 The court does not have a legal standard or metric for risk. Myers  
2 proposes a legal standard consistent with the principles of risk  
3 management science Brief page 20.[12] [13]

4 **4-Lower Court Error Trail Court Conflates Foundation:** It was  
5 an abuse-5 of discretion by the trial court to conflate its path to a  
6 ruling with the lower court's path to its ruling: The trial court abused6  
7 its discretion in failing to remand the case for a new hearing. The trail  
8 court abused7 its discretion in its over-reliance on its de novo review  
9 as a substitute for a remand for a new, fair, and error free  
10 proceeding.

11 **4b-Due process: Lower Court Error: Misrepresented**  
12 **Testimony** The lower court misrepresent testimony during its ruling,  
13 and the court held to its misunderstanding of the record after Myers  
14 objection during the ruling, and the lower court unwittingly introduce  
15 a new allegation that was more severe than any other in the petition.  
16 The lower court was negligent9 and abused10 its discretion and  
17 violate Myers due process right11 to refute the court's erroneous  
18 allegation. The same error infected the trial court proceeding on  
19 appeal--Myers was forced to argue against the courts error on  
20 appeal without standing to testify on his behalf. The trial court  
21 observed the lower court's finding did not depend on the lower courts

1 error and set it aside to the substantial prejudice against Myers.  
2 Without testimony Myers proved that he did not push Shelton down  
3 the stairs and he proved Shelton allegation false and he proved  
4 Shelton assaulted Myers on the stairs—mutual restraint was denied.

5 **2a-credibility-**And the trial court abused<sup>14</sup> its discretion when it  
6 held the credibility of the petitioner allegations (Shelton claimed she  
7 was assaulted on the stairs) after Myers made a convincing  
8 argument from facts in the record that proved the opposite: Shelton  
9 assaulted Myers on the stairs. Nine other allegations were also  
10 discredited. And Myers established that Shelton had a consistent  
11 pattern of distortion of the facts. **Myers proof: court statement**  
12 **“Pushed down the stairs” is not true CP 70, 71.**

13 **5. Due Process: Manifest Errors, Sprawling Record:** In view of  
14 Myers and Shelton pro se appearance, and in view of the  
15 unconstrained rules of evidence, the court erred<sup>15</sup> in failing to hold  
16 Shelton to her burden of proof—and failed<sup>16</sup> to respond to manifest  
17 errors that adversely impacted a fair hearing of the merits of each  
18 allegation. The court failed<sup>17</sup> in its discretion to weigh the legal  
19 principles of 9A.020.16(3)(5) for the civil case before the court.

20 **6-Equal Protection: Building Permit-Right to Finish:** Whereas  
21 Myers and Shelton, are not married, and do not have a meretricious

1 relationship, and whereas Myers and Shelton co-own a property  
2 under construction, and whereas Dr. Shelton owns a home five  
3 house down from their co-owned home with Myers, the court  
4 abused<sup>19</sup> its discretion--and RCW 26 is unconstitutional broad-- in  
5 the unconstraint power to assign property use of Myers property to  
6 Shelton. Within the context of this case (business co-ownership of  
7 home), both the court and RCW 26 are in conflict with principles of  
8 equal protection and Myers unenumerated right to access to his  
9 home to finish construction and close the loan.

10 **7-Ex parte: Insufficient Service:** Whereas the November 8<sup>th</sup> ex  
11 parte court did not explore fundamental veracity of the petition RP,  
12 and whereas the courts' order was a sovereign act of the state of  
13 Washington, the ex parte court erred<sup>23</sup> in failing to serve Myers a  
14 typed ex parte transcript to Myers at public expense in view of the  
15 expedited schedule and in view of Myers new homeless status.

16 **8 Legislative Mandate: Prejudicial Materials and Resources:**  
17 Whereas the RCW 26.50.130, established domestic violence  
18 prevention, and whereas, legislation mandates publication of  
19 materials to facilitate the completion of the petition, and whereas  
20 RCW 26.50.130 omits guidance materials for the respondent, the law  
21 is unfair, unconstitutional<sup>25</sup>.

1           **8 Legislative finding: Protection Order Expiration:**

2       Washington supreme court's decision in Marriage of Freeman, 169  
3       Wn.2d 664, 239 P.3d 557 (2010), finds factors for terminating or  
4       modifying domestic violence protection orders.

5           However, in RCW 26.50.050 (footnote)[11] the legislature finds  
6       that Marriage of Freeman placed an “improper” burden on Shelton to  
7       demonstrate that Myers is likely to resume acts of domestic violence  
8       “when the order expires”.

9           Myers seeks clarification of this conflict prior to expiration of  
10       Shelton’s protection order Dec 4<sup>th</sup> 2020.

11           **9- Motion for Modification No-contact Order:** The court  
12       abused<sup>27</sup> its discretion in its decision for a modification for no-  
13       contact with reliance on the original decision for protection— Except  
14       for an abstract observation of “too many texts”--The court abused<sup>28</sup>  
15       its discretion when it ordered no contact—at the mere election of  
16       Shelton—and failed in the applications of legal standards on Shelton  
17       to have any meaningful burden of need, cause, fact or law. The court  
18       failed<sup>29</sup> to consider situational context and routinely ordered no-  
19       contact for both direct contact and for indirect third-party contact—  
20       without any meaningful increase in protection for Shelton—

1 eliminating all contact with third party contractors to close building  
2 permits and loan obligations.

3 The lower court erred<sup>30</sup> in not hearing Myers objection in lower  
4 court to the record, RP page 5 line 12.

## 5 II. ASSIGNMENT OF ERROR—ISSUES

6 **1,2-Lawful Contact: Assault not met:** If a bus driver asked  
7 Myers for assistance in removing Myers disruptive girlfriend, Jane  
8 Doe, from his bus, would Myers be civilly liable to Jane Doe under  
9 9A.020.16(5) and RCW 26.50? What legal standard are the civil  
10 domestic violence courts required to apply in weighing question of  
11 lawful contact under 9A.020.16?

12 On its face, after six requests, the act of removing Shelton  
13 from his car to return to work is materially different than the same act  
14 removing Shelton from her personal recliner. What is the legal  
15 standard for the domestic violence court to reconcile RCW 26.50 a  
16 mere poke—violent touch is not required...with... 9A.020.16(3)(5),  
17 force not more than necessary?

18 If Myers had other legal avenues to bring standing of  
19 9A.020.16 to the civil proceeding, at what threshold do these legal  
20 avenues have the material-effect of being a burden to proof for a

1 lawful act (Myers is exempt from burden of proof under 9A.020.16)?

2 When does the court have the duty to apply standards of 9A?

3 **3-No Facts No Standard Relating to Risk of Domestic**

4 **Violence:** The lower court narrowed its ruling to the narrowest

5 conceivable tier of fact and narrowest conceivable conclusion of

6 law—that Myers physically removed Shelton from the vehicle—

7 confirmed by Myers text. The lower court decoupled itself from any

8 findings of “how” Shelton was “pulled” from the vehicle RP P42 L8.

9 The court stated its binary conclusion of law that “...the act of

10 physical removal indicates violence. It is violent. It is assault”. RP

11 P42 L19. The court was silent on bodily injury--the ruling was based

12 on physical harm and one fact--physical removal, and one

13 conclusion of law—that physical removal is domestic violence.

14 The lower court made five errors. The trial court did not weigh

15 the lower courts error enabling mind set and the error enabling

16 conditions of the lower court nor the impact of these on a fair hearing

17 of the case. More alarming, the trial court observed a “series of

18 events” and the trial court observed “...not just one incident...but

19 others that show a pattern of coercive and controlling behaviors by

20 [Myers].” There is no indication the court looked beyond the mere

21 counting of the allegations—mostly because Shelton did not provide

1 detail-except for the event on October 29<sup>th</sup>. For example, Shelton  
2 accused Myers of “threatening the contractor”—no other detail.  
3 Myers rebuttal provides context--is nearly a page—and describes an  
4 unethical practical joke on Myers and Myers did not threaten CP 50.

5           A mindful look at all sides of the record on any of Shelton’s  
6 allegations will validate Myers and find Shelton’s allegations  
7 somewhat distorted and lacking facts. Shelton’s accusations, and  
8 the trial courts ruling are highly abstract—what actually happened--  
9 where’s the beef? The trial court is negligent in failing to employ the  
10 rigor needed to find the substance to support statements about  
11 coercion and patterns. It’s not clear if these statements from the  
12 court are intended as findings—How does Myers rebut these when  
13 no detail was offered? The record will show the increase in the  
14 number of conflicts in October is associated with Shelton obsessive  
15 needs, and the stress of the move— and will show Myers to be  
16 defensive, reactive, and justifiably upset—always restrained--never  
17 violent or incapacitated.

18           If the trial court had found facts to support its statements the  
19 trial court would have cited them in support its statement about  
20 patterns of coercion against Myers. The trail court and Shelton failed  
21 to cite any facts to support its statements. Allegation like “he ripped

1 the coat rack out of the wall” or “he threatened the contractor”. Are  
2 meaningless without detail. What allegations did Shelton prove? On  
3 what facts? What acts create the pattern of coercion?

4 **4-Due process--Lower Court Error 1:** The lower court  
5 misrepresent testimony during its ruling. CP 70. See IV Argument.

6 **4 Due Process--Lower Court Error 2: Not familiar with**  
7 **Record:** The lower court recited Ms. Shelton’s description of the  
8 movement out of the car without reconciling with Myers account of  
9 the same act. The lower court said, “[Myers] never actually  
10 addresses how she was removed from the vehicle, whether she was  
11 pulled, whether she was thrown, whether she was yanked. He does  
12 not address physical removal.”

13 However, CP P45, Myers provided a page and a half, and a 24-  
14 step numbered break down of the movement out of the vehicle.

15 **4 Due Process--Lower Court Error 3:** The lower court on RP  
16 P38 L22 to P39, L3 eliminated most all elements of domestic  
17 violence. The trial court subsequently said on RP P17, L7 “There  
18 doesn’t need to be violent touching. There is no requirement in the  
19 statute for that.” In context, the trial court appears to acknowledged  
20 that the petitioner, the record, and the lower court did not establish  
21 “violent touching.” Yet the lower court relied on “removal as violent.

1 The lower court and the trial court failed to establish facts upon  
2 which relief can be granted.

3 **4. Due Process--Lower Court Error 4:** The petitioner provided a  
4 photo of a bruise. The court failed to provide any fair or useful  
5 summary of the nature of the photos or the bruise.

6 The lower court narrowed the questions before the court to  
7 physical harm and bodily injury and then remained silent on finding  
8 on the question of bodily injury even though the standard of bodily  
9 injury is not tenable on the record.

10 **4. Due Process--Lower Court Error 5:** The lower court erred in  
11 refusing to hear Myers objections to the written record. And the  
12 lower court erred in management of the large record and this  
13 resulted in the courts failure to achieve familiarity with the record and  
14 the court exhibited an over-reliance on oral testimony and an  
15 incomplete understanding of the facts within the record.

16 **4 Trial Court Error 1: Disregard of Errors:** It is an abuse of  
17 discretion by the trial court to conflate its path to a ruling with the  
18 lower court's path to its ruling. The efficacy and fairness of the lower  
19 court and its proceeding should be reviewed in context of the lower  
20 court following a proper path to its ruling and proper due process for  
21 Myers, and proper construction of the record. The trial court credited

1 the lower court for a path it did not take, facts it did not find, and legal  
2 standards the lower court did not apply. RP Page 17, line 10. And  
3 then was silent on substantial due process questions and credibility  
4 of Shelton.

5 The trial court demonstrated a lack of awareness of the record.  
6 The trial court stopped Myers argument about a video not in  
7 evidence. However, Myers declaration about the video was in the  
8 record in his declaration in reply to petitioner amendment CP 48,  
9 Page 4 includes the word “video” in bold in the title, the word “video”  
10 appears nine times in 26 lines in the declaration.

11 In view of the unstructured nature of the numerous allegations in  
12 Shelton’s petition and testimony, and in view of the large record, the  
13 court did not fulfilled its legislative mandate to modernize the courts  
14 intake forms, to help the petitioner disaggregate events in the petition  
15 to facilitate clarity of the petitioners most relevant content.

16 IX. **4 Trial Court Error 2 Incorrectly credits lower court:**

17 The trial court stated the legal standard that certain “behavior” must  
18 be established. And then incorrectly credits the lower court for  
19 meeting this standard in the lower court’s ruling.

20 The trial court abused its discretion in failing to remand the  
21 case for a new hearing—and-- in its over-reliance on its de novo

1 review as a substitute for a remand for a new error free proceeding  
2 to give standing to Mr. Myers right to due process.

3 The trail court made its decisions without regard to questions  
4 about the lower court error impacting Myers due process—on a  
5 sprawling record--and on the lower courts failure to hear Myers  
6 objections to the record.

7 **6 Trial court Error 3 Equal protection--**the court failed<sup>20</sup> to  
8 consider the veracity of Shelton's need for housing, the cost of  
9 Shelton's options for housing, and weigh these against the same for  
10 Myers--with weight given to Myers unenumerated constitutional right  
11 to complete construction and his property. The court abused<sup>21</sup> its  
12 discretion in providing non-essential remedies to Shelton that she  
13 was not entitled to-- that were unrelated to needs for her protection—  
14 with predictable adverse outcomes to Myers—outcomes  
15 substantially disproportionate to Myers acts--the judgements against  
16 Myers--and disproportionate to the risks of future harm to Shelton—  
17 when alternate housing remedies for Shelton where available to the  
18 court. The court abused<sup>22</sup> its discretion in failing to constrain the  
19 terms of its order in such a way to both protect Shelton, and to  
20 preserve Myers constitutional rights to equal protection, and Myers  
21 constitutional unenumerated-right to complete the construction of his

1 home and close out building permits. The legal standard and  
2 institutional practice authorized by RCW 26.50 and applied by the  
3 court is unconstitutional<sup>23</sup> on its face.

4 **8 Conflict in Precedent and Law: When Protection Expires:**

5 On December 4th 2020, when the protection order against Myers  
6 expires, which party holds the burden of proof on the question of  
7 extending or renewing protection? What are the factors and  
8 elements that Shelton must prove to establish that Myers is likely to  
9 resume acts of domestic violence? At the expiration of the protection  
10 order, can Shelton prevail by merely assert the original record? Will  
11 it be an abuse its discretion if the court orders an extension of  
12 protection if it considers only to the fact of Shelton's successful  
13 modification, without weighing the non-existing merits of the no  
14 contact order? Have local counsel learned the institutional patterns  
15 at expiration? Did Shelton allow contact so that she could achieve a  
16 predictable win on a motion for no contact as evidence for an  
17 extension? If the RCW 26.50.050 is designed lend vast powers for  
18 the public interest—and thereby allowed to travel to the farthest edge  
19 of constitutional protections, the court must be held to the highest  
20 standards. To what degree does Myers have the burden to show he  
21 will not resume domestic violence? If Myers seeks to return his co-

1 owned home with his business partner Shelton and if Shelton claims  
2 fear and no-change in the situation, in view of equal protection, is it  
3 an abuse of discretion if the court extends restraint of Myers from his  
4 property? Myers and Shelton are not Married, and whereas the  
5 essence of protection is not dependent on the restraining Myers from  
6 the home, and whereas, Shelton does not have any privileged  
7 interest in the home, is it constitutional or otherwise an abuse of  
8 discretion if the court sustains unequal hardship or otherwise fails to  
9 expect Shelton to independently manage her life to her satisfaction  
10 and step up to the obligations and tradeoffs of co-ownership like  
11 Myers?

12 **8 Trial Court Error 4: No Risk Assessment Standard:** a risk  
13 assessment determines possible mishaps, their likelihood and  
14 consequences, and the tolerances for such events. The results of  
15 this process may be expressed a quantitative or qualitative fashion.  
16 The court does not have a metric ,or aid, to weigh or otherwise rank  
17 the likelihood of recurrence of domestic violence[12][13].

18 **8 Risk Assessment Standard: Best practice Proposal:** A legal  
19 standard should provide a scale (e.g. 1-low, 2-M, 3-Hi) to aid in  
20 determining, on facts, the probability of an occurrence of an act and  
21 also provide a scale to gauge the likely severity of a future act. The  
22 multiplication of the two scores yields the overall risk of the  
23 resumption of domestic violence. A guide could inform the court on

1 degrees of intervention (less intervention for low scores and more  
2 intervention for high risk scores.).

3 **8-Legislative Mandate: Institutional patterns:** Prejudicial

4 Institutional Patterns and Practice: a) The November 8<sup>th</sup> ex parte  
5 court did not explore fundamental veracity of the petitioner. RP. The  
6 court failed to serve a timely, typed transcript of the ex parte hearing  
7 to Myers at public expense. b) The petitioner’s intake form is sub-  
8 optimized and fails to apply modern information management to  
9 assist in the identification, prioritization, and organization of  
10 content—and thereby causes unnecessary disorganization of the  
11 record to the disadvantage of the proceeding. d) RCW 26.50.03--  
12 instructional and informational brochures—is biased in its near-  
13 exclusive service (and resources) for the petitioner. c) The court  
14 administration failed to exploit predictable opportunities to advance  
15 domestic violence prevention at the point of personal service to the  
16 respondent. d) In contrast, Myers liberty, and access to his property,  
17 were dismissed in standing, as a matter of routine, without  
18 compensation, based on an abstract public interest in prevention of  
19 domestic violence. e) The petitioner expressed exasperation at the  
20 respondents appeals— Shelton’s distorted perception that “[his  
21 appeals] keeps coming at me”. The modification court provided a  
22 balanced acknowledgement of the courts duty to reconsider and an

1 acknowledgement of the possible contexts and the genesis of an  
2 appeal. This balanced acknowledgement by the court left a direct  
3 inference that the respondents appeals could be viewed as  
4 harassment of the petitioner—this further eroded Myers due  
5 process—resulting in Myers consideration of withdrawing the  
6 Division 2 appeal to accommodate SheltonRP page 5 line 12

7 **9- Modified for No-contact: By Mere Election of the**  
8 **Petitioner:** Myers filed all of his texts with Shelton into evidence CP  
9 59-101. A reasonable person will conclude that they would be able to  
10 conduct a civil and respectful communication with Myers. Myers did  
11 nothing wrong. If the correspondence record was completely void of  
12 correspondence, would Shelton Prevail? If the correspondence  
13 record is full, but without fault, would Shelton Prevail? The court  
14 observed “too many texts” and without rigor to learn legitimate  
15 reasons for the text. If this appeal finds this foundation weak, in view  
16 of the severe harm to Myers, Then Myers asserts this an element of  
17 the institutional pattern that suborns Myers constitutional protections  
18 to whims and incremental protections for Shelton. (See Arguments)

### 19 **III. STATEMENT OF THE CASE**

20 Shelton testified to three allegedly controlling and abusive  
21 acts during the first three years of their four year relationship: Myers

1 asked Shelton to delay a call from her mother CP 11; Myers  
2 prevailed on the selection of a radio station CP 11; and Myers  
3 grabbed her phone out of her hand when she began to respond to a  
4 text during a vulnerable moment in Myers conversation CP 7.  
5 Otherwise, Shelton made no other allegations about the first three  
6 years. The other allegations occurred during the months of  
7 construction—over half during six weeks moving in to their  
8 unfinished home in October. Shelton did not allege abusive ridicule,  
9 criticism, insults, or attacks on self-esteem. Shelton did not allege  
10 aggressive pursuit or offensive instigation, or violent aggressive  
11 intent against her or vulgar language. Myers agreed that Shelton  
12 accurately quoted him in the petition in response to more than one  
13 allegation—That Myers used of the defensive phrase, "...get out" —  
14 as his personal defensive boundary CP 21, 22, 73.

15 **October 29th Allegation: Physical removal from the car:**

16 The event on October 29<sup>th</sup> 2020 prompted Shelton's petition: Before  
17 departing to Montana, Shelton called Myers to ask for a ride home  
18 during auto repairs. Myers left work and drove Shelton to their house  
19 on a cul-d-sac. Myers swung around to drop Shelton off at the curb  
20 so he could continue to work. Myers ended their discussion with,

1 “then go be friends with Karl” and he reached over and unlocked  
2 Shelton’s door CP 17.

3 Myers testified, and Shelton did not dispute, that six requests  
4 were made by Myers asking Shelton to get out of the car CP 17.  
5 Both parties agree that Shelton “shut down” and was not responsive  
6 and not augmentative, and did not show any verbal or physical  
7 reactions, objections, or boundaries to Myers. Shelton testified she  
8 was too afraid. Shelton remained in the car CP 45. Shelton had  
9 many easy remedies and safe exits to their home. Myers perceived  
10 Shelton to be intentionally controlling and began and increased his  
11 voice and repeated. “Please get out of the F... car” two more times  
12 with no response CP 17. (Immediately after the incident Myers sent  
13 a text “Why did you just sit there... ..you baited me.”) Shelton’s  
14 PTSD-like dissociation shut down behavior was unfamiliar to Myers.  
15 CP 22, 26.

16 Myers tossed her purse and computer bag out of the driver’s  
17 side door. Myers repeated his request for Shelton to get out of his  
18 car. Shelton did not respond. Shelton and Myers agree that Myers  
19 got out of the car and paced back and forth far from Shelton’s car  
20 door. CP 26.

1           Shelton alleges that Myers was upset: “he wanted me to put  
2 money into a car and not my truck”. CP 26. Myers testified that this  
3 is a distortion--not true— a negative subtext Shelton has created.  
4 Myers was driving Shelton from the auto shop and inquired about the  
5 repairs. On a different topic Myers was impatient and said “then go  
6 be friends with Karl”. This triggered Shelton shut down. Myers  
7 became upset because Shelton was being controlling in her silence  
8 and Shelton was maliciously trespassing when she did not exit the  
9 car CP 48, 73. He testified that Shelton was possibly motivated by  
10 gaining full ownership of the house by use of a restraining order CP  
11 73. Shelton was familiar with domestic violence procedure  
12 procedures and has a ten-year restraining order against the father of  
13 her children. CP 21, 73.

14           Myers agreed with, and did not dispute, many elements of  
15 Shelton’s testimony about the movement out of the car. CP 45  
16 Shelton testified, “...then he came around and pulled me out of the  
17 car by my arm...” CP 7. The passenger car door was opened, and a  
18 sixth request was made, “please get out of the F--- car”. Myers  
19 verbal communication was limited to these words for the whole  
20 event. Shelton claimed she was fearful. Shelton was free to step out  
21 of the car at any time, CP 73. Myers testified that he would have

1 respected any verbal or non-verbal objection and would have  
2 followed her objection with a barter for Shelton to leave the car.

3           The seatbelt was released, Shelton’s right arm was held, and  
4 she was then effortlessly pulled out of the car by one arm--without  
5 struggle--without verbal objection CP 47. Testimony of both Shelton  
6 and Myers agree she was pulled onto her feet outside the car at her  
7 home CP 26 mid page, 45. Shelton re-used of the word “pulled” CP  
8 37. Movement out of the car continued a step beyond the car door  
9 toward a steep upward-sloping landscape with beauty bark and a  
10 three-inch curb—the slope reduced the fall. Myers later described  
11 Shelton to Sgt. Rodriguez as “catatonic and floppy” CP 46. No arrest  
12 was made.

13           Shelton alleged, “...then he picked me up and threw me in the  
14 dirt” CP 7. Shelton’s earlier testimony was “...pulled by my arm” --  
15 not plural. He also testified that Shelton’s description of aggressive  
16 escalation was not consistent with his many requests and his pacing  
17 back and forth prior to the movement out of the car. Myers asked  
18 Shelton to leave the car and he waited for Shelton’s response CP 73.  
19 Myers testifies that he never saw Shelton on the ground however  
20 Myers described Shelton as “floppy” and was aware Shelton was on  
21 the ground. Myers asserted the one-arm-pull continued a step

1 beyond the door, to make room to close the door, toward the  
2 landscape mound, to the side of, and then behind the one pulling.  
3 The arm was then released. The car door was closed with a pivot  
4 away from Shelton and a walk toward the rear of the car--without a  
5 view of Shelton on the ground. There was no interaction after the  
6 release of the arm or when Shelton was on the ground. Myers got in  
7 the car and sped off to work. Shelton described herself at the time  
8 as, "humiliated, scared, and shocked". CP 18, 45, 46.

9 Mr. Myers described his behavior as rude, and profane—but  
10 not violent. He expressed regret at leaving Lalani alone and driving  
11 to work—he said his actions were insensitive, wrong and out of  
12 character. He apologized to the court and to Ms. Shelton. And said  
13 Ms. Shelton did not deserve this. Myers did not seek to minimize  
14 Shelton's perception of her experience. CP 18.

15 Myers categorically rejected allegations that he has ever  
16 threatened, harmed, intimidated, demeaned, or controlled Shelton--  
17 And he claimed that he would never do so—and that he was never  
18 incapacitated by anger—and if he were aware of the definition of  
19 physical harm he would have acted differently. Myers categorically  
20 denied allegations of violence or physical harm and denied any  
21 possibility of future risk of harm to Shelton. Myers asserted that

1 contact during movement out of the car was less than contact with  
2 Shelton when playing basketball, partner dancing, or soccer. CP 18,  
3 20, 21, 22, 73.

4 Shelton testified to a photo of a bruise on her upper arm CP  
5 11,37. Myers asserted that the bruise was small and light colored--a  
6 reasonable person would prefer the bruise in the photo rather than  
7 an insect bite.

8 Myers testified that Shelton had discussed suffering severe  
9 abuse as a child-- and abuse from the father of her kids—with whom  
10 she has had a ten-year restraining order. Shelton's "shutting-down"  
11 behavior was known by her college age son, and Myers asserts it  
12 was a conditioned behavior Shelton learned prior to joining with  
13 Myers. Myers testified that he is not accountable for the genesis of  
14 Shelton's condition—nor its triggers. Myers testified Shelton's PTSD-  
15 and OCD-like behavior are not indicators of Myers culpability and he  
16 has testified to Shelton's distorted perceptions and allegations in the  
17 record.

18 Myers testified that Shelton is a hyper-sensitive person CP  
19 47—and that Shelton's obsessive behavior to control the  
20 configuration of the house and her possessive territorial behavior of  
21 the house emerged during the eight-month construction--after Myers

1 put her on title—and this increased during the move into the home.  
2 Shelton had a long-term relationship with the contractor Karl. This  
3 relationship with Karl enabled her to control construction decisions  
4 and she configured it for her kids to the ever-increasing exclusion of  
5 Myers. CP 22.

6 The lower court narrowed the court’s decision to the act on  
7 October 29<sup>th</sup> “physical removal” out of the car. RP. And narrowed to  
8 the one fact of physical removal and the one conclusion of law that  
9 this act is domestic violence. The court was silent on Shelton’s  
10 credibility—Shelton’s credibility was not needed and was not relevant  
11 to the court’s decision.

12 The trail court held the lower court’s decision, denied the motion to  
13 reverse. In comments from the bench the Court found Shelton to be  
14 credible and observed patterns of coercive behavior by Myers in the  
15 record—without supporting factual example or detail.

16 **Ten Other Allegations 1-10: (Located in IV Argument)**

17 Shelton’s petition and testimony had a number of broadly stated  
18 allegations—many without detail CP 47. This resulted in large written  
19 record (CP 1- 137). The majority of Shelton’s allegations happened  
20 in the four weeks during moving into the unfinished home. Myers

1 testified to a defensive and reactive posture, and due restraint in  
2 every allegation cited by Shelton CP 21, 22, 51.

#### 3 **IV SUMMARY OF ARGUMENT**

4 (No Summary)

#### 5 **V ARGUMENT**

6 **RAP 18.1 Attorney Fees and Cost Bill:** Myers is under  
7 financial hardship related to being forced to pay \$1450/month Dr.  
8 Shelton's share of the mortgage obligation to avoid bankruptcy. is in  
9 breach of her contractual obligation with Myers to pay the entire  
10 mortgage as sole occupant of the home. Myers may be forced to  
11 withdraw this appeal if he is at risk of paying the attorney fees of the  
12 opposing counsel.

13 **Theory of Myers Case: Defensive: Myers case** centered on  
14 his defensive, responsive, and restrained posture in the conflicts. It is  
15 an abuse of discretion by the trial court to assume the lower court  
16 was mindful of Myers theory of his case while the court made an  
17 error that characterized Myers doing an aggressive—potentially  
18 lethal act—pushing Shelton down the stairs. These are mutually  
19 exclusive--The Lower court errors taint the entire ruling—and  
20 infected the trail court proceeding.

1           **Ten Other Allegations Refuted:** Shelton’s petition included  
2 many broadly stated allegations—many without detail CP 47. Myers  
3 created a large written record (CP 1- 137) to refute Shelton’s  
4 allegations. The elapse time of all allegations is less than 30 minutes  
5 of a 4-year relationship CP49. The majority of Shelton’s allegations  
6 happened in the four weeks during moving into the unfinished home.

7 1) Pulled from the car **Shelton:** Alleged domestic violence-  
8 movement out of the car CP 7. **Myers:** lawful contact—minor  
9 contact—Shelton was in a dissociated state or otherwise elected to  
10 bait Myers—had a safe exit path and Myers waited for her response  
11 and would have bartered for her exit if he heard any response CP  
12 17, 26 mid. pg., 45, 46, 73. ( Myers Prevails—no more force than  
13 necessary is fair and valid legal standard otherwise can we do  
14 without 9A in statute? The appeal reconcile lawful contact and a test  
15 of the legal standard of the lowest metric of physical harm.)

16 2) Pushed on the stairs (**Lower Court Error = pushed down the**  
17 **stairs**) **Shelton:** Alleged she was pushed on the stairs CP 7.  
18 **Myers:** Convincingly established the opposite, on the facts in the  
19 record, that Shelton assaulted Myers on the stairs—counter-petition  
20 for domestic violence is on hold. See Myers trail court analysis about

1 lower court error CP 70, 71. (Myers prevails—Shelton assaulted  
2 Myers and blamed Myers. See proof CP 70.)  
3 3) Pushed into hallway-- (Credibility—Awakened-Pan-Video)  
4 **Shelton:** Alleged Myers said “Get the F out of my house” and  
5 Shelton described this as a threat. Shelton claims she was pushed  
6 into hall “pole” about a popcorn pan in the sink—Claims has audio  
7 evidence without useful video CP 7, 19, 27. **Myers:** Myers was  
8 rudely awakened from sleep in bed. Shelton’s audio evidence  
9 supports Myers testimony—Myers transcribed a portion in his  
10 declaration CP 48. Myers was subjected to relentless intrusion of  
11 personal space while sleeping. Shelton would not take “yes” for an  
12 answer, Myers verbal boundaries were ignored. The conflict was of  
13 equal and opposing intensity to “Get out of [the room]. It was  
14 initiated by Shelton, and then reignited by Shelton--without fear-- to  
15 make the hidden video. Myers asserted no physical harm and that  
16 the audio discredits Shelton’s allegation of the push and threats.  
17 Shelton fearlessly ignited this conflict due to hyper-concerned about  
18 a popcorn pan left in the sink—she wanted it in the dishwasher—or  
19 Shelton may have wanted to incite video evidence for a restraining  
20 order to exit the relationship and obtain ownership of the house from  
21 Myers. CP 7,12, 19, 27, 48, 49. (Myers prevails--Myers was

1 sleeping—audio validates Myers—Shelton was obsessive aggressor  
2 in Myers personal space. Loud profane verbal boundaries and “get  
3 out” spoken—These are not a threat—no violence no harm—Myers  
4 showed restraint and self-control. Credibility must be credited to  
5 Myers due to failure for her to demonstrate.)

6 4) Smash and grab theft **Shelton:** Alleged an elaborate story of  
7 Myers smash and grab car theft CP 8. **Myers:** Categorical denial—  
8 then the perpetrator was caught—Myers asserted Shelton’s  
9 credibility was eroded and his credibility confirmed CP 20. (Myers  
10 prevails)

11 5) Pulled coat rack off the wall **Shelton:** Alleged Myers ripped a coat  
12 rack out of the wall and other damage to property CP 7. **Myers:**  
13 Shelton compulsively needed to rework his installation and Shelton  
14 reinstalled it into unsecured sheetrock. Myers easily removed the  
15 unsecured rack from the wall—it’s a non-issue—not relevant.  
16 Property damage over four years amounts to a coffee cup, a strap on  
17 a computer bag and a wine glass. CP 20 (Myers prevails—Shelton  
18 obsessed and was compelled to reinstall Myers work and failed to  
19 anchor it—no claim of harm—not relevant.)

20 6) Texts sympathetic to Shelton: **Shelton:** Alleges that Myers had  
21 past verbal abuse with his son, and Shelton filed his text sympathetic

1 to Shelton CP 8. **Myers:** Shelton was untruthful under oath in her  
2 declaration citing the pretext for her contact with Myers son, and  
3 Shelton recklessly exploited difficulties eight years ago. Shelton’s  
4 actions have recklessly setback Myers relationship with his son CP  
5 21, 51. Myers son misused the term “abuse” and was not aware  
6 Shelton would use the email in court. Myers daughter, Kelly Myers  
7 31, provided a declaration stating she has never witnessed her father  
8 drunk, and she has never been aware of anything in the family rising  
9 to the level of abuse CP 41. Mr. Myers testified to a regretful phone  
10 call with his son related to the dissolution of a 26-year marriage eight  
11 years ago. CP 51 (Myers prevails-no detail of any act or event-not  
12 relevant.)

13 7) No talking with Friends **Shelton:** Myers said she could not have  
14 contact with friends, **Myers:** Shelton is severely distorting the facts.  
15 Myers merely said, “If Karl texts, let’s talk before you reply.” Shelton  
16 version of this is “He told me that I cannot have ANY contact with  
17 Karl.” CP 19 (Myers prevails—Thematic support throughout the  
18 record. It is more plausible that this is an example of Shelton’s  
19 distortion. This is evidence that Shelton is a highly sensitive person  
20 that has distorted Myers words and failed to understand his intent.

1 8) Threatened the contractor--\$6000 joke **Shelton:** He threatened  
2 the contractor and would not let me talk to my friend CP 11,12,13.  
3 **Myers:** The contractor, with Shelton's knowledge, played an  
4 unethical practical joke on Myers. The contractor faked his theft of  
5 \$6000 check from Shelton CP 50. Myers did not threaten Karl-- he  
6 loudly told Karl to get F\*\*\* off the property. Myers de-escalated  
7 immediately when Myers learned it was a joke—no theft. CP 50.  
8 (Myers prevails—the joke on Myers was extremely inflammatory—  
9 No threats—it was a loud profane demand for Karl to get off Myers  
10 property—Myers de-escalated and walk is a credit to ability to  
11 manage in highly inflamed situations)

12 **Lawful Contact: No Assault** An assault is an intentional  
13 [touching] of another person [, with unlawful force,] that is harmful or  
14 offensive [regardless of whether any physical injury is done to the  
15 person]. WPIC 35.50. The court erred in finding an act of assault  
16 when, on its face, more likely than not, Myers contact was  
17 predictably lawful. Therefore, the court erred in its application of the  
18 legal standard for assault, or otherwise RCW 26.50 has had the  
19 material-effect of violation of Myers right to due process. See, e.g.,  
20 State v. Hupe, 50 Wn.App. 277, 748 P.2d 263 (1988), State v. Krup,  
21 36 Wn.App. 454, 676 P.2d 507 (1984).

1           It is the generally accepted rule that a person owning, or  
2 lawfully in possession of property may use such force as is  
3 reasonably necessary under the circumstances in order to protect  
4 that property, and for the exertion of such force he is not liable either  
5 criminally or civilly. (David K. DeWolf & Keller W. Allen, Washington  
6 Practice: Tort Law and Practice § 13.45 (2nd ed.2000) explaining  
7 that reasonable force may be used by a property owner to prevent  
8 an unprivileged person from trespassing). 6], RCW 9A.16.020.(3)(5).

9           Myers asserted a property right in his vehicle and a property  
10 right in his job. Myers simply needed to return to work. Shelton  
11 remained in his car after five requests for her to leave the car Myers  
12 got out of the car and paced outside the car. The contact was lawful,  
13 proportional, and necessary. Myers did not have any duty to retreat.  
14 Shelton called Myers for the ride home. Myers delivered Shelton to  
15 their home. Shelton had many safe and easy remedies to exit the  
16 car during multiple requests by Myers. Shelton's action was  
17 unjustified interference—and malicious. [2,3,4,5,7]

18           Ms. Shelton has the burden of proving that the force used by  
19 the respondent was not necessary and not lawful. If you find that the  
20 Ms. Shelton has failed this test, it will be the appellate courts duty to  
21 find Myers act on October 29<sup>th</sup> lawful, and the elements of assault

1 not achieved and order reversal of assault, domestic violence and  
2 reverse the trial court and the lower court decisions and reverse, and  
3 the protection order against Myers.

4 In State v. Acosta, 101 Wn.2d 612, 683 P.2d 1069 (1984) the  
5 court held that the State has the burden of proving the absence of  
6 self-defense in prosecutions for assault. The court cited both a  
7 statutory and a constitutional basis for its holding. The constitutional  
8 arguments hold on the same grounds for civil proceeding for Shelton.

9 **2-No Risk: Couples Counselor Against Protection Order:**

10 Myers and Shelton's long-time licensed couples' counselor did not  
11 recommend a restraining order to the couple and indicated this in his  
12 text to Myers. The licensed therapist is, more likely than not, aware  
13 of Shelton's tendency to dissociate and her tendency to add negative  
14 subtext in her perceptions. He is also aware of Myers and the risk of  
15 future acts of violence and the potential severity of such acts. Both  
16 courts failed to weigh the counselor's text to Myers CP 53, 54.

17 **3-Trial Court Reaches for a Foundation:** It is an abuse of  
18 discretion by the trial court to conflate its path to a ruling with the  
19 lower court's path to its ruling. The efficacy and fairness of the lower  
20 court's discretion and its proceeding must be reviewed in context of  
21 the lower court following a proper path to its ruling, due process for

1 Myers, and proper construction of the record. The trial court credited  
2 the lower court with a path it did not take, facts it did not find, and  
3 legal standards not met. The Lower court ruling was extremely  
4 narrowed. RP Page 17, line 10. The trial courts basis for confirming  
5 the lower court therefore was out of the scope of the lower court  
6 ruling.

7 For example, the trial court highlighted the legal standard that  
8 certain “behavior” must be established. And then incorrectly credits  
9 the lower court for meeting this standard.

10 **Lower Court Narrowed Findings: No Facts:** The lower court  
11 relied solely on Myers texts to Shelton and his text phrase “physical  
12 removed you from the car”. The lower court then asserted that the  
13 act of physical removal alone—the fact in isolation--indicates  
14 violence and is therefore an assault.

15 The lower court decoupled itself from any findings of “how”  
16 Shelton was “pulled” from the vehicle 42 line 8. Leaving “physical  
17 removal” to stand on its own—without detail—to establish domestic  
18 violence. [1, 3].

19 Without clear findings of facts and conclusions of law from the  
20 lower court, there was no room for the trial court to cite facts

1 supporting the lower court ruling and likewise, not much for Myers to  
2 appeal. See Issues Brief page 10.

3           **Trial Court Broadens: No Facts No Support:** The trial court  
4 broadened the questions before the court to include a question of  
5 coercion and credibility of the parties. The trial court observed a  
6 “series of events” and the trial court observed “...not just one  
7 incident...but others that show a pattern of coercive and controlling  
8 behaviors by [Myers].” There is no indication the court looked  
9 beyond the mere counting of the allegations—mostly because  
10 Shelton did not provide detail-except for the event on October 29<sup>th</sup>.  
11 For example, Shelton accused Myers of “threatening the  
12 contractor”—no other detail. Myers rebuttal provides context--is  
13 nearly a page—and describes an unethical practical joke on Myers  
14 and that Myers was justifiably upset but did not threaten. Was  
15 “threatening the contractor” included in the pattern stated by the trial  
16 court? CPxxx

17           **Physical Harm: Photo:** the lower court cited the photos  
18 submitted by Shelton of a bruise—but did not characterize the  
19 bruise—and did not link the bruise to its ruling. Pictures of bruises on  
20 her legs are accurately characterized as imperceptible. A picture of  
21 her arm showed a very light-colored bruise on the inside of her upper

1 left arm about the size of a quarter. A reasonable person viewing the  
2 photos will more likely than not conclude that alleged physical harm  
3 to Shelton in the photos to be less physical harm than a minor  
4 sunburn or an insect bite. The lower court eliminated all other  
5 theories of Domestic violence.

6 **Mere “Poke” Standard Broad Enough for a King:** The legal  
7 standards described by the lower court--that a mere “poke” is  
8 physical harm and domestic violence—it is unconstrained under  
9 RCW 26.50.050 and is unconstitutionally broad enabling cause  
10 against any party on any given day—this standard becomes anything  
11 a king might want it to be—it is unconstitutional on its face. [1,3,7,8,  
12 Constitution Provisions].

13 **Trial Court Disregards Errors:** The trial court disregarded  
14 the substantial and documented error of the lower court, and it  
15 overreached in its pursuit to salvage the protection order—and then  
16 create a new untenable finding of coercion by Myers—a finding  
17 previously eliminated by the lower court.

18 The lower court made five errors. The trail court did not weigh  
19 the lower courts error enabling mind set and the error enabling  
20 conditions of the lower court nor the impact of these on a fair hearing  
21 of the case.

1           **Lower Court Error 1: “Myers Pushed Shelton Down the**  
2 **Stairs”**. CPxxx shows the lower court misrepresented Shelton’s  
3 allegation and described a new allegation during the ruling that was  
4 more severe than any other allegation in the record. Myers observed  
5 in disbelief at the unimaginable, profound injustice of being falsely  
6 accused, by the court, of an act that could be viewed as a first-  
7 degree felony—a possibly lethal act--during the ruling. Myers  
8 objected immediately during the ruling. The court persisted in its  
9 perspective on the record.

10           On its face, the lower court has abused its discretion by not  
11 being familiar with the record and creating a material error that was  
12 out-of-character with the other elements of the record. The court did  
13 not recognize the vast increase in severity of the court’s new  
14 allegation in contrast to all else in the record. CPxxx

15           On appeal, Myers asserted the error of the lower court, and  
16 asserted that the court erroneous mindset which enable the error,  
17 was prejudicial to Myers and tainted the lower courts entire  
18 proceeding and decision. The trial court only agreed with Myers on  
19 the lower court’s misrepresentation—and was silent on is impact on  
20 a fair hearing. The error tainted the lower court’s ruling and also  
21 infected the trail courts proceeding.

1           **Myers Proves Shelton Assaulted Myers on Stairs** CP 70:  
2 Myers appeal included a logical and convincing argument from three  
3 lines of Shelton’s testimony about the event on the stairs. Myers  
4 proved Shelton assaulted Myers on the stairs--and then blamed  
5 Myers. Myers proof was a serious logical progression of reason on  
6 the facts. At trial court Myers was forced to do the proof to defend  
7 himself against the court’s new allegation—that Myers push Shelton  
8 down the stairs--without his due process right to testify on his behalf.  
9 Although his proof is complete on its own merit--Myers did not  
10 prevail. The trial court looked past the act on the stairs and looked  
11 past Myers proof. CP XXXX. The trial court abused its discretion by  
12 failing to consider facts and reasonable inferences from the facts in  
13 the light most favorable to the nonmoving party. Mountain Park  
14 Homeowners Ass'n v. Tydings, 125 Wash.2d 337, 341, 883 P.2d  
15 1383 (1994).

16           **Myers Observes Prejudicial Institutional Patterns**--The trial  
17 court denied reversal and Myers request for mutual restraint. Myers  
18 proof stands on its own merit without the support of testimony, the  
19 court was negligent in failing to honor the success of the proof on its  
20 merits. The damage to Myers case is unsurmountable. Had Myers  
21 prevailed Shelton’s credibility would question; Myers would have

1 standing for a counter claim for Shelton's assault on him, and Myers  
2 could reduce the number allegations on return to the lower court and  
3 expect rigorous attention to the facts and argument. And the trial  
4 court abused its discretion in its failure to exonerate or apologize for  
5 Myers for the lower court's harmful error. The proof in CP 70 stands  
6 on its own merit. The trial court abused its discretion when it set the  
7 act on the stairs aside. Myers has not been granted standing to add  
8 testimony to his testify to support his defense. Myers defense and full  
9 details of the event on the stairs will improve Myers case and his  
10 testimony will support his allegation and proof that Shelton assaulted  
11 Myers. The court denied Myers motion for reversal, a new hearing,  
12 mutual restraint, and a review of Shelton's credibility. [2,3,4,5,6,7]

13 **Modify for no contact: Ordered at mere election: No-**  
14 **need-cause-fact-Law:** Shelton made a motion for no contact. Myers  
15 entered all texts into evidence. Myers was not aware of any  
16 objections to his respectful correspondence. Shelton did not show  
17 any attempts to manage the communication to her satisfaction.  
18 Myers asserted the texts show he was apologetic, respectful,  
19 considerate, constructive, flexible, patient, responsive, listened well,  
20 and he acted in good faith in his correspondence. The court held no  
21 expectation on Shelton to manage the conversation to her

1 satisfaction. This implies that the court finds Shelton a highly  
2 sensitive—Myers agrees.

3           The court intervened and deprived Myers of liberty and  
4 important contact with third party contractors when the court issued  
5 the no contact order. Shelton could have simply blocked Myers texts  
6 or otherwise instructed Myers of her wishes. Myers managed his  
7 messaging and the content and number of texts as reasonably as  
8 can be expected. A reasonable person viewing the text record will  
9 conclude that they would be able to conduct a civil and respectful  
10 communication with Myers.

11           The court abused its discretion in its ruling to grant the  
12 modification for a no contact order citing an arbitrary standard of “too  
13 many texts”.. The court overreached at the expense of Myers liberty.  
14 The court granted a modification for no contact under RCW  
15 26.50.130 based upon facts that do not relate to whether Myers is  
16 likely to commit domestic violence. Myers motioned for  
17 reconsideration was not successful. CP XXXX [1, 2, 3, 4, 9]

18           The proceeding that granted the order of no contact appeared to  
19 follow a familiar institutional pattern—over-reliance on the original  
20 order granting protection—and relaxing legal standards and burdens  
21 for Shelton to show need, cause, fact, or law—and over reliance on

1 Myers right to file motions to seek relief--on the question before this  
2 court-- in a future court--the court thereby abdicated its discretion  
3 and unfairly transferred the burden of proof to Myers.

4 The court abused its discretion in its ruling to grant the  
5 modification for a no contact order arbitrarily citing “too many texts”—  
6 and did not identify and apply any deep rigor to characterize or parse  
7 out unnecessary texts—and did not exert the rigor to read the texts  
8 to understand the genesis and veracity justifying the number of  
9 texts—and had an incomplete copy of the texts. Myers Filed a  
10 motion to reconsider on the arbitrary basis of the number of texts and  
11 Shelton’s failure to set her expectations. Myers did nothing wrong.

12 Whereas the terms of the no-contact had valid standing before  
13 the court, and whereas the court abused its discretion when it failed  
14 to consider facts relevant to the design of the terms of the order, the  
15 court erred in following institutional pattern to complete a court form,  
16 and routinely ordered both no direct-contact with Shelton and no  
17 indirect third-party contact with Shelton without context.

18 **Courts Lacked awareness with the Record:** The record is  
19 many pages. Both courts, first stated they “reviewed” the record  
20 (trial court page 3 line 17; lower court page 38 line 18. Myers argues  
21 that pages of his response may have never been read by the court--

1 both courts showed a lack of awareness of the record from  
2 statements from the bench. Myers observed the potential for court  
3 error and asked the court for a continuance for the Court to review  
4 the record. CP 45 1st paragraph, CP 62 2nd paragraph. (Expanded in  
5 Issues Section)

6 The court abused its discretion when on CPXXX the court  
7 said “and that is the only record the court is considering”. The court  
8 stopped Myers argument and excluded the 26 lines of page 4 of the  
9 respondent’s declaration in Reply to Petitioner Amendment 1,2, 3.  
10 The court did not have a full understanding of the event where  
11 Shelton woke Myers to obsess about a pan in the sink. [1,3]

12 **Highly Sensitive Person--Reasonable Fear:** The record  
13 supports the opinion that Shelton was hyper-compliant in the motion  
14 out of the car, while at the same time, shut down and unresponsive  
15 to Myers multiple requests to leave the car. Shelton did not express  
16 any boundaries, pull away, or otherwise do anything to suggest  
17 objection. If Shelton had expressed any verbal or nonverbal  
18 objection, Myers asserts he would have responded with a barter her  
19 achieve her exit from his car. The onset of Shelton’s dissociation  
20 behavior in no way implies that Myers is accountable for conditioning  
21 Shelton’s behavior or triggering Shelton. The total elapse time of all

1 the allegations is only minutes of a four-year relationship. Myers  
2 supported his case in CP 49 Para. 3-4. P [1,2,3,4,10]

3 **2-Due Process: Assess Fear of a Highly Sensitive Person**

4 what legal standard is available to Myers and the court to assess the  
5 fear of a sensitive person in contrast to fear of a reasonable person?  
6 Is Myers expected to be subjected to the erosion of his constitution  
7 protections in service to both the public interest and to the uncharted  
8 universe of unreasonable and amplified fears—with the civil  
9 proceeding blind to lawful contact under RCW 9A.020? What legal  
10 standard can the court use to conform the order with Myers 14th  
11 amendment unenumerated rights to complete construction on his  
12 home with two open building permits and construction loan?

13 **VI CONCLUSION**

14 With respect for the courts and with respect for the noble  
15 public interest in domestic violence prevention, Myers liberty has  
16 been needlessly restricted, and his constitutional protections  
17 suborned—confronting spurious allegations of a smash and grab  
18 disproven car theft--on the basis of a finding of domestic violence--on  
19 a one-fact foundation of non-violent touching during a lawful act in  
20 response to Shelton's puzzling-controlling-malicious-trespass--  
21 resulting in a light color quarter-sized bruise—and a protection order

1 without on any tenable theory or metric of domestic violence  
2 prevention—and modified for no contact--as the courts remedy to a  
3 non-existent problem with Myers respectful and constructive texts to  
4 Shelton— with a court having no expectation on Shelton to make  
5 Myers aware of her preferences to manage correspondence to her  
6 satisfaction— And all this enabled by the court’s over-reaching to  
7 accommodate Shelton’s mere election for no-contact—the court  
8 employing an institutional pattern that relieved Shelton of the burden  
9 of need, cause, fact, or law--with one court acting to aid a highly  
10 sensitive person to appease unreasonable fears and another court  
11 finding Shelton credible—without regard to the resulting in life-  
12 changing financial harm to Myers—and all this while the court is  
13 unaware of possible design by Shelton to remain in the car to bait  
14 Myers for the benefit of acquiring a familiar protection order--to  
15 ultimately acquire his interest in their home-- all this amid errors that  
16 introduced a new and lethal allegation by the court against Myers  
17 during the ruling--prompting Myers immediate objection--and without  
18 providing Myers his constitutional right to defend against the courts  
19 new allegation—and then the trial courts disregard of the insight  
20 available from the evidence beneficial to Myers—and the disregard  
21 of Myers logical proof that Shelton assaulted him on the Stairs--And

1 this amid a sprawling record that requires speed reading and heroic  
2 efforts by the court---resulting in vague findings and thin support of  
3 conclusions—and resulting in a protection order to mitigate an  
4 ambiguous risk void of metric—and findings that are absent of deep  
5 rigor needed to support statements from the bench about coercion  
6 and patterns of assault.

7           It is predictable that the Appeals court will be unable to trace a  
8 path from the decisions back to true and actual facts and the  
9 constitutional application of law and procedure—and the court will  
10 not be able to trace to any meaningful proof by Shelton---and yet all  
11 this is to be repeated on December 4<sup>th</sup> by Shelton when she cites  
12 her no-contact modification as justification for an extension—And if  
13 ordered, it will effectively transfer title of Myers interest in his home  
14 and retirement investment to Shelton.

15           This is absurd on its face. “Courts must keep in mind the  
16 need to satisfy the intent of the legislature while avoiding absurd  
17 results”. In re Det. of Swanson, 115 Wn.2d 21, 28, 793 P.2d 962, 804  
18 P.2d 1 (1990).

19           **Shelton’s fear is real and deep--to her. Shelton’s visible**  
20 **fear is tangible at times to others...Her fear is evident**  
21 **throughout her testimony. Shelton was victimized prior to**

1 **joining me and this fear came with Ms. Shelton into our**  
2 **relationship. I am not accountable for how and when Shelton’s**  
3 **fear is triggered. Nor am I accountable for the intensity of her**  
4 **fear. Ms. Shelton parted with sentimental treasures when**  
5 **moving in to the home and Shelton was lost to an illness of her**  
6 **father—this was too Much. Shelton had an increased need to**  
7 **control the configuration of all affairs—to the increasing**  
8 **exclusion of Myers. Myers willingly accommodated Shelton and**  
9 **the record shows that Myers reacted with profanity and loud**  
10 **voice but always with restraint—and never to intimidate.**  
11 **Although the fear is real to Shelton, Shelton is not immune from**  
12 **attributing it to Myers nor is she immune to creating an agenda**  
13 **using the protection order process familiar to her. Myers**  
14 **respectfully seeks a fair hearing—this has not happened. Myers**  
15 **was in a 26-year marriage without incident. Trust the couple’s**  
16 **counselor who advised against the protection order.**

17 **Relief:** Myers motions the Appellate Court to reverse the  
18 protection order and reverse the no-contact order and clear Myers  
19 record. Otherwise, Myers asks the court to remand for a new  
20 proceeding. And instruct the court on legal standards raised on  
21 appeal, and instruct the court on the scope and reach of the

1 remaining questions before the court, and on the findings of facts  
2 and conclusions of law.

3 I ask the court to clarify the issues of law and process relating  
4 to the a future motion to extend the protection order upon it  
5 expiration December 4<sup>th</sup> 2020. Including clarity on the issues in this  
6 brief.

7 The trial court denied mutual restraint. Myers seek remand  
8 and reconsideration of Myers counter proof that Shelton assaulted  
9 Myers on the stairs. CP 70, other similar acts and patterns in the  
10 record. And instruct the court to consider merits of a reversal  
11 petitioner and respondent roles.

12 I ask the court to order resources for the courts for  
13 modernization of administrative practice and to develop aids and  
14 standards and materials to remedy issues identified in this brief.

15 Shelton exported Myers belongings off the property into  
16 storage and thereby force Myers to needlessly pay \$135/mo or risk  
17 losing everything he owns--when adequate storage was available in  
18 his house. Myers 60, elects to pay \$1450/m of Shelton's share of the  
19 mortgage obligation to avoid bankruptcy. Myers rents a single  
20 bedroom as a result of the act on October 29th. Myers moves that  
21 the court expedite an order that each party will be liable for only their

1 own attorney fees regardless of the outcome of the appeal. And  
2 under RCW 26.50 modify the terms of the protection order to clarify  
3 remove restrictions from 1012 Lake terrace Dr SW. And otherwise  
4 require Shelton sign a rental agreement and provide renters  
5 insurance for adult children are living on the property without proper  
6 renters' insurance putting Myers at undue risk.

7 Under the penalty of perjury under the laws of the of Washington State, I  
8 hereby certify this document was sent to Kevin Hochhalter to Kevin  
9 OlympicAppeals.com on March 27<sup>th</sup>, 2020. Signed in Thurston county in  
10 the city of Olympia.  
11

12 Respectfully Submitted,

3-27-20

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GARY MYERS, APPELLANT PRO SE

DATE

3-27-2020

**PRO SE**

**March 27, 2020 - 3:45 PM**

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Respectfully

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