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State of Washington  
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**No. 34959-4-III**

IN THE COURT OF THE APPEALS  
OF THE STATE OF WASHINGTON

Division III

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STATE OF WASHINGTON, Respondent

v.

RUDY E. WILLIAMS, Appellant

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**BRIEF OF RESPONDENT**

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BAILEY J. WILCOX  
Asotin County  
Deputy Prosecuting Attorney  
WSBA #51357

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I. SUMMARY OF ISSUES

- A. WHETHER SUFFICIENT EVIDENCE EXISTED TO ALLOW A RATIONAL TRIER OF FACT TO FIND THE APPELLANT GUILTY OF WITNESS TAMPERING.
- B. WHETHER SUFFICIENT EVIDENCE EXISTED TO ALLOW A RATIONAL TRIER OF FACT TO FIND THE APPELLANT GUILTY OF ASSAULT IN THE THIRD DEGREE.
- C. WHETHER THE COURT'S FINDING OF CLEAR, COGENT AND CONVINCING EVIDENCE SUPPORTING APPLICATION OF THE FOREFEITURE BY WRONGDOING DOCTRINE WAS SUBSTANTIALLY SUPPORTED BY THE EVIDENCE.
- D. IF THE CLEAR, COGENT AND CONVINCING STANDARD WAS NOT MET, WHETHER SUFFICIENT NON-TAINTED EVIDENCE WAS PRESENTED TO ALLOW FOR A FINDING THE ERROR WAS HARMLESS.
- E. WHETHER THE APPELLANT UNEQUIVOCALLY MADE A KNOWING AND INTELLIGENT WAIVER OF HIS RIGHT TO COUNSEL.
- F. WHETHER THE CHARGING DOCUMENT ALLEGING FELONY VIOLATION OF COURT ORDER CONTAINED THE "ESSENTIAL ELEMENTS" OF THE OFFENSE.
- G. WHETHER SUFFICIENT EVIDENCE EXISTED TO ALLOW A RATIONAL TRIER OF FACT TO FIN THE APPELLANT GUILTY OF FELONY VIOLATION OF COURT ORDER.

## II. STATEMENT OF THE CASE

### a. Assault in the Third Degree

On May 3, 2016 Misty Shoemaker called law enforcement reporting that Appellant Rudy E. Williams had struck her with a belt. Report of Proceedings (hereinafter RP) 138-39. Eyewitness La'Quan Williams reported he saw the Appellant strike his mother, Misty Shoemaker with a belt. RP 158. The Appellant told Deputy Vargas that the children and Ms. Shoemaker were “horsing around” with a belt. RP 135. When asked if she had any injuries Ms. Shoemaker showed Deputy Vargas her back. RP 134. At trial Deputy Vargas testified that he observed injuries on the right side of her back. *Id.* Deputy Vargas photographed the injuries on Ms. Shoemakers back, and this photograph was later admitted into evidence at trial. RP 139. Deputy Vargas described the photograph as depicting “two distinctive belt marks on the back.” RP 148. Based upon this information Deputy Vargas concluded the Appellant had struck Ms. Shoemaker repeatedly with a belt. RP 139. Ms. Shoemaker complained that a strike to her knee was causing her pain. RP 158. The Appellant was subsequently arrested for Assault in the Fourth Degree. RP 136. At trial the Appellant acting as his own attorney stated in his closing argument “I know, ah – I hold some guilt, but ah, not to this degree.” RP 278-279.

b. Procedural History

The Appellant was originally charged with Assault in the Fourth Degree. On May 5, 2016 the prosecutor moved to dismiss the Assault in the Fourth Degree and filed an Information in Superior Court alleging Assault Third Degree and Felony Violation of Court Order. Clerk's Papers (hereinafter CP) 4-5. The court advised the Appellant that he was facing both a count of Felony Court Order Violation and Assault in the Fourth Degree. RP 6. The Information alleging Court Order Violation read:

That on or about the 3<sup>rd</sup> day of May 2016, in Asotin County, Washington, the above named Defendant with knowledge that the Nez Perce County District Court, had previously issued a no contact order pursuant to Chapter 26.50 RCW in State of Idaho v. Rudy Eugene Williams, Cause No. CR-2016-0349, did violate the order while the order was in effect by assaulting Misty Shoemaker.

CP 4-5. On May 16, 2017 the court informed the Appellant that he was now facing two felony charges, Felony Court Order Violation and Assault in the Third Degree each punishable by up to five years incarceration and a fine of up to \$10,000. RP 17. The Appellant informed the court that he had issues with his appointed counsel Richard Laws. RP20. The court informed the Appellant that Mr. Laws is a qualified attorney who was on the public defender's contract in Asotin County. RP 21. The judge did however state he would be willing to review any motions the Appellant may have on the subject. Id. Mr. Laws was present at this hearing. RP 17-27. At

his next hearing the Appellant maintained his position that he was not willing to proceed with his appointed counsel. RP 32. After the court informed the Appellant he was not entitled to choose who his appointed counsel is, the Appellant stated

“Your Honor, ah, I’m willing to -- I’m willing -- I can’t – I can’t proceed at this point in my life right now, I cannot see myself proceeding with Mr. Law, so, therefore, I’m going to have to try to represent myself for now.”

RP 34. After this attempt by the Appellant to fire his appointed attorney the court gave him the following cautionary advice regarding his waiver of right to counsel:

Well, Mr. Williams, you remember the advisement I gave you last time that if you represent yourself, ah, I can’t save you from up here. Ah, you’re going to be required to know the laws of evidence and the rules of procedure just like any lawyer would be required to do. Ah, and any objection that the State has, I can’t play with kid gloves just because you’re representing yourself pro se; do you understand?

RP 35. In response the Appellant stated “I don’t have any choice right now at all. I mean, I could do a better defense.” Id. On November 18, 2017 the court engaged in a formal colloquy with the Appellant regarding his waiver of counsel. RP 83. It should be noted that in this formal colloquy the court acknowledged the Appellant’s prior waiver of counsel:

And you realize that once you waive your right to an attorney, which you have done, it’s discretionary as to whether or not you may withdraw that waiver?...At the time you waived your right to

counsel, had any threats or promises been made to you to get you to do that?"

RP 88.

c. Witness Tampering

On June 23, 2016 Detective Jackie Nichols discovered an envelope containing several documents authored by the Appellant. RP 110. The first was a two page letter addressed to Cathy McNeil. RP 212. The bottom of the first page was signed "love Rudy." Id. On the second page the Appellant provided Ms. McNeil the following instructions regarding the other documents included in the envelope:

Number one: please print out all statements. Number two: after all are signed and notarized, please get three copies of each. Number three: deliver Misty's and Lisa's Idaho statements to my Idaho lawyer, Mr. Rick Cuddihy's office at 312 17<sup>th</sup> Street, number 208-746-0104" in parenthesis "or contact my sister, Maria, number 509-552-3977, and she can handle after statements are notarized" end of parenthesis. Number four: my lawyer tells me that Washington assault charge will be dropped to a misdemeanor breaking a no contact order only if Lewiston's charge is dropped first. Ultimately, must have Washington statement—must is quotation marks – "from Misty signed and notarized or I will be giving – be given years because the State can use the police report against me, even though Misty doesn't show. Number five: only add Misty's medication paperwork for Washington statement. Number six: inside is a letter for Lisa from Kevin.

RP 213-14. (Hereinafter the Instruction Letter). The first

"statement" was read into the record as follows:

It's headed "Courthouse" and a date and no date written. "I, Misty M. Shoemaker, am writing this court's letter to the courts because of an altercation that caused Rudy Williams to get arrested on a fourth degree domestic charge at the Cedars Motel Inn. I need to advise the courts that Rudy Williams has never at any time physically placed his hands on me" parenthesis "we have unfortunately at times been very argumentative with one another" end parenthesis. "Me and Rudy are now separated and it is my intention to hold no more ill will towards him personally. Though my actions this far weren't right, I feel that the only way for me to move forward is to try and clear up any malicious, negative actions that I may have caused others. I sincerely apologize for any troubles that I may have caused your office. Thank you for your time." Ah, then a date, print, colon, signed, colon, and witnessed, colon.

RP 217-18 (Hereinafter Shoemaker Idaho Recantation). The second statement contained the following:

"Asotin County Superior Court", date. "This statement is with regards to a false incident, which was to have occurred on 5-4-6 at 1933 13<sup>th</sup> Street, Clarkston, Washington" parenthesis "this is my children's father's home, Rudy Williams" end parenthesis. "After arriving unbeknownst to Mr. Williams, a brief argument ensued where I called the Asotin County Police Department and falsely accused Mr. Williams of striking me. After a rocky 15-years relationship where both parties have faults, I can't consciously allow my own personal vindictive issues to become involved. I also recently discovered that I suffer from a bipolar disorder, which I believe also contributed to my actions on 5-4-16." Parenthesis "attached is a copy of medication/ext." end parenthesis. "Though" quotation marks "not physically abusive, he is mentally abusive and it is my hope that Mr. Williams will receive some type of

drug and alcohol treatment to better himself. The courts have my most humble apologies. I truly didn't know how exactly to handle myself or the verbally abusive situation I was in that led to this apology. I am sorry for the court's inconvenience. Sincerely" dot, dot, dot, name, signed, witness, date.

RP 219-20 (hereinafter Shoemaker Washington Recantation).

The third Letter was read into the record as follows:

It's titled "Idaho District Court". Ah, there's a date, but no date written after it. "I'm writing this statement regarding an incident that occurred at the Cedars Inn Motel, Lewiston, Idaho, Between Rudy Williams and Misty Shoemaker. While Mr. Williams was very verbally abusive towards Ms. Shoemaker and myself, he never touched Ms. Shoemaker. Though they were loud and very nasty with one another, I was just personally upset with Mr. Williams for adding me to his personal disputes. This is my reason for filling initial statement during the Cedars in incident. Please understand that I am sorry and that I never, again, will express this sort of conduct with your office in the future. Sincerely" – and then it – there's just dot, dot, dot, and print, and a colon, signed, colon, witness, colon, date.

RP 216 (hereinafter Bond Recantation Letter). Previously in the Appellant's Idaho matter he admitted to Officer Woods that he punched Ms. Shoemaker in the face. RP 169. Officer Woods observed that Ms. Shoemaker was injured. RP 166. It was this prior assault that gave rise to the no contract order the Appellant was accused of violating. RP 142. The Idaho order prohibiting the Appellant from contacting Ms. Shoemaker was to remain in effect until January 19, 2018. Id.

d. Forfeiture by Wrongdoing

The prosecutor filed a Motion to admit Evidence Pursuant to the Forfeiture by Wrongdoing Doctrine on November 21, 2016. CP 75-81. The next day a hearing was held on the matter. RP 111. After argument, the court found the Tyler factors had been met and the statements were admissible. RP 119-20. After bench trial, the court formally articulated its Findings of Fact and Conclusions of Law After Forfeiture by Wrongdoing Hearing. CP 83. The court found that on January 17, 2016 the Appellant punched Ms. Shoemaker in the face for disrespecting him in front of other females and his children. CP 83. The court also found that Lisa Bond, who witnessed the assault, told law enforcement that she saw the Appellant punch Ms. Shoemaker in the face. Id. The court then found that on May 3, 2016 the Appellant struck Ms. Shoemaker with a belt several times in the presence of La'Quan Williams. On June 23, 2016 Detective Jackie Nichols received an envelope that had been intercepted by corrections staff at the Asotin County Jail. Id. inside the envelope were the previously described Shoemaker Washington Recantation, Shoemaker Idaho Recantation and Lisa Bond Recantation. Id. The court found that these letters materially changed the substance of each prior statement. Id. The court also found these recantations were written by the Appellant. Id. The court went on to find that on September 19, 2016 during a defense interview with Misty

Shoemaker, the Appellant's then attorney, Richard A. Laws, was scheduled, but Ms. Shoemaker did not feel comfortable proceeding because Victim/Witness Advocate Susan Martz was not present. Id. Finally the court found that on October 20, 2016 the prosecutor met with the Appellant to discuss possible resolution of his case. Id. After negotiation broke down, the Appellant informed the prosecutor that Ms. Shoemaker and La'Quan Williams would not testify against him. Ms. Shoemaker appeared for the last time before the court on October 31, 2016 on a material witness warrant. Id. The court concluded as a matter of law that the Appellant's act of authoring recantation letters from the jail constituted wrongdoing and established his intent to prevent Ms. Shoemaker from testifying, or at least testifying truthfully. Id. The court stated that the Appellant tacitly admitted to wrongdoing when he informed the prosecutor two days after issuance of the October 18, 2016 material witness warrant for Ms. Shoemaker that Ms. Shoemaker and La'Quan Williams would not testify against him at trial. Id. The court found that taking into account past domestic violence against her by the Appellant, Ms. Shoemaker was placed in "the untenable position to either appear, testify truthfully and face more abuse at the hands of the Appellant or to recant and face possible prosecution for making false statements." Id. The court's finding that the victim would likely face retribution if she were to testify truthfully was further

bolstered by the Appellant own statements to law enforcement. Id. On January 17, 2016 when he informed Officer Woods that he punched Ms. Shoemaker in the face for disrespecting him in front of others. Id. The court found that the campaign of wrongdoing by the Appellant was intended to render Ms. Shoemaker and La'Quan Williams absent at trial. Id. The court stated this was supported by the letters the Appellant drafted with the intention Ms. Shoemaker sign and present them to the court as well as his statement to the prosecutor that neither Ms. Shoemaker nor La'Quan would testify against him. Id. Finally, the court found that because neither Ms. Shoemaker nor La'Quan Williams appeared for trial the wrongdoing did in fact render Ms. Shoemaker and La'Quan Williams unavailable at trial. Id.

e. Court Findings After Bench Trial

The previously discussed evidence and testimony was admitted at trial and found by the judge to be sufficient to support a finding beyond a reasonable doubt that the Appellant was guilty as charge of Assault in the Third Degree, Felony Violation of Court Order, and Witness Tampering. CP 101-105.

## DISCUSSION

### A. SUFFICIENT EVIDENCE EXISTED FOR A FINDING OF GUILT AS TO THE CHARGES OF WITNESS TAMPERING.

The Appellant assigns error to the trial court's determination of his guilt beyond a reasonable doubt as to the charge of Witness Tampering. Ample evidence was presented at trial to support a finding by a rational trier of fact that the Appellant was guilty of three counts of Witness Tampering. It was established that the Appellant was the author of three recantation letters, that he intended for Ms. Shoemaker and Lisa Bond to sign the recantation letters, and submit them to the court as fact. These recantation letters directly contradicted the witnesses' prior testimony, physical evidence, and the Appellant's own confession.

The Appellant challenges the sufficiency of the evidence and contends the State failed to prove his guilt beyond a reasonable doubt with respect to the three counts of Witness Tampering. Sufficiency of the evidence is evaluated by determining whether any rational trier of fact could have found guilt beyond a reasonable doubt when the evidence is viewed in the light most favorable to the State. State v. Salinas, 119 Wn.2d 192 201, 829 P.2d 1068, 1992. In a criminal case where sufficiency of the evidence is challenged "...all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the

defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Salinas, 119 Wn.2d 192, 201 Witness tampering requires the following be established beyond a reasonable doubt:

A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to: Testify falsely or, without right or privilege to do so, to withhold any testimony.

RCW 9A.72.120. Because the Appellant challenges his Witness Tampering convictions on a sufficiency of the evidence grounds, he admits the truth of the State's evidence and all reasonable inferences that may be drawn therefrom. Salinas at 119 Wn.2d 192, 201.

In this case, the Witness Tampering charges are based upon four letters contained in a single envelope sent from the Asotin County Jail addressed to Cathy McNeil. RP 93-94. The first, previously labeled The Instruction Letter, informed Ms. McNeil of what the Appellant wanted her to do. The other three letters, Shoemaker Washington Recantation, Shoemaker Idaho Recantation, and Bond Idaho Recantation contained demonstrably false information intended to relieve or at least mitigate the Appellant's criminal culpability. In the Shoemaker Idaho Recantation letter the Appellant claimed he had only been mentally abusive, not physically abusive. The photograph of the injuries he

caused to the victim's back stood in stark contrast to this assertion. The Shoemaker Idaho Recantation and Bond Idaho Recantation letters contradict the Appellant's own confession to Officer Woods that he punched Ms. Shoemaker in the face. Unlike State v. Remperl where the defendant merely asked the victim to "drop the charges" in this case the Appellant did far more. State v. Remperl 114 Wn.2d 77 (1990). Here, the Appellant attempted to send the witnesses false statements and attempted to cause them to sign and present his fabrications as truth to the court. the Appellant not only attempted to put words in the witnesses mouths, but went so far as to blame Ms. Shoemaker herself writing "though my actions this (sic) far weren't right, I feel that the only way for me to move forward is to try and clear up any malicious, negative actions that I may have caused others." Shoemaker Idaho Recantation.

The Appellant attempted to induce Ms. Shoemaker and Ms. Bond to present false testimony to the court. The Appellant knew or had reason to believe they would be called as witnesses in his pending criminal matter. Viewed in a light most favorable to the State, the elements of Witness Tampering were supported by the evidence presented at trial. This Court should find that sufficient evidence existed to allow a rational trier to find the Appellant guilty beyond a reasonable doubt of Witness Tampering.

**B. THE EVIDENCE ESTABLISHED THAT THE APPELLANT CAUSED BODILY HARM TO MS. SHOEMAKER BY STRIKING HER WITH A BELT THREE TIMES.**

The Appellant assigns error to the trial court's finding that he struck Ms. Shoemaker with a belt causing bodily harm, further alleging the State failed to prove Assault in the Third Degree. As this challenge is premised upon the sufficiency of the evidence, the standard of review requires a viewing of the evidence in a light most favorable to the State when determining if "...any rational trier of fact could have found guilt beyond a reasonable doubt." Salinas, 119 Wn.2d 192 201.

The Appellant's act of striking Ms. Shoemaker three times with a belt left a visible injury and caused her to suffer pain. The evidence presented at trial was more than sufficient to allow a rational trier of fact to conclude the Appellant was guilty beyond a reasonable doubt of Assault in the Third Degree. In Washington, Assault in the Third Degree is defined as follows:

A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree: With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm.

Rev. Code Wash. (RCW) § 9A.36.031(1)(d). Under 9A.04.110(4)(a) “bodily harm” means “physical pain or injury, illness, or an impairment of physical condition.”

In the Appellant’s appeal to this Court he asserts “there was no evidence that Shoemaker experienced pain, injury, illness or impairment. Without evidence to establish one of these conditions, the state failed to prove ‘bodily injury’ as charged.” Appellant’s Brief pg 33. This assertion departs sharply from the facts presented in the record. The record clearly shows that the victim reported suffering pain from the belt strikes and that her injuries were visible, photographed, and admitted into evidence. RP 148, 158. The portion of the record the Appellant references, RP 147, does not include testimony regarding victim’s pain or lack thereof. However, RP 146 does contain the Appellant’s cross examination of Deputy Vargas which discusses pain. In the previously mentioned section, the Appellant asked “... was Mrs. Shoemaker hysterical in any way *when you arrived*...did it seem to you that Mrs. Shoemaker wasn’t in any physical pain *when you arrived?*” to which Deputy Vargas replied “yes.” RP 146 (emphasis added). The question was limited to Deputy Vargas’ initial impressions. The evidence of bodily harm was discovered after his initial contact. RP 139, 158.

The trial court was presented with photographic evidence depicting the injuries the Appellant inflicted on Ms. Shoemaker with

a belt. The trial court was also presented evidence that Ms. Shoemaker did in fact suffer pain as a result of the belt strike to her knee. Deputy Vargas testified that the Appellant himself mentioned there was “horsing around” with a belt, and that both Ms. Shoemaker and La’Quan Williams reported that the Appellant struck Ms. Shoemaker with a belt three times. In the Appellant’s own closing argument in reference to the assault charge he stated “I hold some guilt, but ah, not to this degree.” RP. 279

This Court should find that viewed in a light most favorable to the State, the facts presented at trial would allow for a rational trier of fact to find the Appellant guilty beyond a reasonable doubt of Assault in the Third Degree.

**C. THE EVIDENCE SUBSTANTIALLY SUPPORTED THE TRIAL COURT’S FINDING OF CLEAR, COGENT, AND CONVINCING EVIDENCE TO ALLOW THE STATE TO PROCEED UNDER THE FORFEITURE BY WRONGDOING DOCTRINE.**

The Appellant assigns error to the trial court’s conclusion that the State made a sufficient showing that The Appellant committed wrongdoing with the intent to cause Ms. Shoemaker and La’Quan Williams to absent themselves from trial, and that the Appellant’s wrong doing caused them to become unavailable at trial. The Appellant further assigns error to the court’s order permitting the State to proceed by way of forfeiture by wrongdoing alleging the State failed to prove forfeiture by wrong doing by

clear, cogent, and convincing evidence. A confrontation clause challenge is reviewed de novo. State v. Mason, 160 Wn.2d 910, 922, 162 P.3d 396, 402, 2007. The trial court's finding that the Appellant caused Ms. Shoemaker's unavailability was substantially supported by the evidence.

It is the trial court's task to decide whether the witness has been made unavailable by the wrongdoing of the accused based upon evidence that is clear, cogent, and convincing. Mason, 160 Wn.2d 910, at 927. Once the State shows that the defendant's conduct is the reason for the witness's absence, the State may introduce the witness's out-of-court statements. Mason, 160 Wn.2d at 924. To apply this doctrine, the State must prove the causal link between the defendant's conduct and the witness's absence by clear, cogent, and convincing evidence. Mason, 160 Wn.2d at 926-27. When the standard of proof is clear, cogent, and convincing evidence, the fact in issue must be shown to be "highly probable." State v. Fallentine, 149 Wn. App. 614, 620, 215 P.3d 945, 948, 2009. It is for the trial court, not the reviewing court, to actually weigh the evidence and determine whether it was clear, cogent, and convincing. Id. at 620. It is not the appeal court's place to disturb findings supported by evidence which the court could reasonably have found to be clear, cogent, and convincing. Id. at 612.

In this case, the trial court determined that the evidence establishing that the Appellant caused Ms. Shoemaker's unavailability was clear, cogent and convincing. It is this court's task to determine whether there existed substantial evidence to support the trial courts finding.

The court found that on January 17, 2016 the Appellant punched Ms. Shoemaker in the face for disrespecting him in front of others. CP 83. As the court in State v. Dobbs noted "there is no rule that the trial court may consider only acts occurring after the defendant is charged in deciding whether the forfeiture doctrine applies." State v. Dobbs, 167 Wn. App. 905, 913, 276 P.3d 324, 328, 2012. The court found that on May 3, 2017 the Appellant struck Ms. Shoemaker with a belt. CP 83. The court was also presented evidence that the Appellant had attempted to send multiple letters while in jail with specific instructions regarding what Ms. Shoemaker should do. Notably included in the instructions was a directive to sign statements written by the Appellant which recanted the witnesses' statements. While the letters themselves were not delivered, they demonstrated clear evidence of the Appellant's intent to both tamper with witnesses and attempt to cause them to become unavailable. The fact that the Appellant felt confident enough in Ms. Shoemaker's unavailability that he saw fit to inform

he prosecutor that she would not testify a mere two days after a material witness warrant was issued was also telling.

**D. ALTERNELY, THERE EXISTED OVERWHELMING UNTAINTED EVIDENCE SUFFICIENT TO CONVICT THE APPELLANT THEREFORE ADMISSION OF ANY TAINTED EVIDENCE WAS HARMLESS ERROR.**

However, should this Court determine upon review that substantial evidence did not exist to support application of the forfeiture by wrong doing doctrine, sufficient untainted admissible evidence was presented for a reasonable trier of fact to find the Appellant guilty of all charges beyond a reasonable doubt.

Confrontation clause error may be harmless. State v. Davis, 154 Wn.2d 291, 304, 111 P.3d 844 (2005). In Davis, Washington adopted the “overwhelming untainted evidence” test: if the untainted evidence is overwhelming, the error is deemed harmless. Davis, 154 Wn.2d at 305. If there is no “reasonable probability that the outcome of the trial would have been different had the error not occurred,” the error is harmless. State v. Powell, 126 Wn.2d 244, 267, 893 P.2d 615 (1995).

In this case, the victim called dispatch to report the Appellant had assaulted her with a belt. At minimum this evidence was admissible for the limited purpose of establishing why an investigation was conducted and provided context for the investigation. When a statement is offered to show why an officer

conducted an investigation, it is not hearsay and it is admissible. State v. Iverson, 126 Wn. Ap. 329, 337, 108 P.3d 799 (2005). Nor is it hearsay if the testimony is offered to give context for the investigation. State v. Chenoweth, 188 Wn. App. 521, 534, 354 P3d 13, review denied, 184 Wn.2d 1023 (2015). The initial report put Deputy Vargas on notice of who the alleged victim was, who the suspect was, and that a belt was used. During his investigation Deputy Vargas personally observed the injuries on Ms. Shoemaker's back that appeared to have been caused by a belt. The Appellant himself told Deputy Vargas some "horsing around" occurred with a belt. Even without the victim's statement regarding suffering pain, the "bodily harm" element of Assault in the Third Degree was established through Deputy Vargas' testimony regarding the injury on her back that her personally observed and photographed. Furthermore, in closing the Appellant himself appears to have admitted his guilt to a lesser degree of assault. No statements by either Ms. Shoemaker or La'quan Williams were necessary for a finding of Felony Violation of Protective order once assault was established. Similarly, no testimony from unavailable witnesses was considered in finding the Appellant guilty of three counts of Witness tampering.

For these reasons even should this Court conclude substantial evidence did not exist to support the trial court's

application of the forfeiture by wrongdoing doctrine, the non-tainted evidence before the court was overwhelming and that the error in admitting the tainted evidence was harmless.

**E. THE APPELLANT WAS ADEQUATLY WARNED ABOUT THE DANGERS OF PROCEEDING PRO SE AND HIS DECISION WAS MADE KNOWINGLY INTELLIGENTLY AND UNEQUIVOCALLY.**

The issues presented here is whether the trial court's warnings to the Appellant adequately informed the Appellant such that his waiver was knowing and intelligent, and whether the Appellant's request to proceed pro se was made unequivocally.

In this case the Appellant was appointed qualified counsel, Richard A. Laws, but disagreed with said counsel so profoundly he decided he would be better off representing himself. As the trial court noted, a defendant does not have an absolute, Sixth Amendment right to choose any particular advocate. State v. Stenson, 132 Wn.2d 668, 733, 940 P.2d 1239, 1272, 1997. A defendant's request to proceed *in propria persona*, or pro se, must be unequivocal and the waiver of counsel must be made knowingly and intelligently. State v. Dewese, 117 Wn.2d 369, 376-77, 1991. The court warned the Appellant of the dangers of his decision to proceed pro se on two separate occasions. The first warning occurred on May 16, 2016. There the presiding judge warned the Appellant that he would be unable to protect him should he decide to proceed pro se, that the Appellant would be required to know the

rules of evidence and procedure. The judge warned the Appellant that should he proceed pro se he would be held to the same standard as an attorney and that the judge would not “play with kid gloves” in light of the Appellant’s decision to proceed pro se. At this same hearing the court warned the Appellant that the two charges he was facing, Assault Third<sup>1</sup> and Violation of Order (class C felony), were each punishable by up to five years incarceration and a fine of up to \$10,000. RP 17. At this point the Appellant was fully aware of the severity of the charges against him and the fact that should he reject his appointed counsel and proceed on his own he would be required to know the rules of evidence and procedure. Despite this, the Appellant clearly stated his desire to fire Mr. Laws and proceed on his own. RP 35. the Appellant’s exact words were “I don’t have any choice right now at all. I mean, I could do a better defense.” *Id.* This waiver is remarkably similar to the one in State v. Deweese where the court held the defendant’s waiver was unequivocal despite his claim that he “had no choice”

DeWeese’s remarks that he had no choice but to represent himself rather than remain with appointed counsel, and his claims on the record that he was forced to represent himself at trial, do not amount to equivocation or taint the validity of his *Faretta* waiver. These disingenuous complaints in Mr. DeWeese’s case mischaracterize the fact that Mr. DeWeese did have a choice, and he chose to reject the assistance of an experienced defense

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<sup>1</sup> At this point in the record the court mistakenly referenced Assault Second, but described it as a class C felony. The proper charge was Assault Third. The remainder of the record reflects this.

attorney who had been appointed. As we have previously noted, a defendant's right to counsel of choice is limited in the interest of both fairness and efficient judicial administration.

State v. Deweese, 117 Wn.2d 369, 378-379, 816 P.2d 1, 5-6, 1991.

Despite the Appellant's prior unequivocally expressed desire to waive counsel after being made aware of the seriousness of the charge, maximum penalties, and the existence of procedural and evidentiary rules he would be required to follow, the court provided the Appellant a formal colloquy on November 18, 2016. RP 83-92. While a formal colloquy is the preferred method, it is not required for a valid waiver of counsel so long as "the defendant understood the seriousness of the charge, the possible maximum penalty involved, and the existence of technical procedural rules governing the presentation of his defense." Deweese 117 Wn.2d at 378. There is no formal checklist of the particular legal risks and disadvantages attendant to waiver which must be recited to the defendant. Id.

This Court should not view the formal colloquy as the point in time in which the Appellant waived his right to counsel. It is clear the court did not view this colloquy as a process necessary for the waiver of the Appellant counsel as the colloquy referenced his prior waiver of counsel:

And you realize that once you waive your right to an attorney, which you have done, it's discretionary as to whether or not you may withdraw that waiver?...At the time you waived your right to

counsel, had any threats or promises been made to you to get you to do that?"

RP 88.

On two separate occasions the court informed the Appellant of the charges against him, warned him of the maximum possible punishments, and pointed out the existence of technical, evidentiary, and procedural rules he would be required to follow should he proceed pro se. Despite these warnings the Appellant unequivocally waived his right to counsel and that waiver was made knowingly and intelligently.

**F. THE INFORMATION FILED MAY 16, 2017 INCLUDED THE ESSENTIAL ELEMENTS OF FELONY VIOLATION OF COURT ORDER SUFFICIENTLY PROVIDING NOTICE TO THE APPELLANT OF THE CHARGES AGAINST HIM.**

In this case, the Information filed May 16, 2017 clearly set forth the charges against the Appellant. The first count alleged "Domestic Violence Court Order Violation (Felony)" under RCW 26.50.110(4); Class C Felony. CP 4-5. The crime was alleged to have been committed as follows:

That on or about the 3<sup>rd</sup> day of May 2016, in Asotin County, Washington, the above named Defendant with knowledge that the Nez Perce County District Court, had previously issued a no contact order pursuant to Chapter 26.50 RCW in State of Idaho v. Rudy Eugene Williams, Cause No. CR-2016-0349, did violate the order while the order was in effect by assaulting Misty Shoemaker.

Id. The Appellant alleges the State failed to prove Felony Court Order Violation and further asserts the charging document was constitutionally deficient.

For a charge to be constitutionally adequate, all essential elements of the crime must be included in the charging documents. State v. Kjorsvik, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991). The purpose of the “essential elements” rule is to provide notice to the accused of the nature of the crime that he must be prepared to defend against. Kjorsvik, 117 Wn.2d at 101. The goal of the court is to ensure the accused has a meaningful opportunity to defend against the accusation. State v. Tandecki, 153 Wn.2d 842, 847, 109 P.3d 398, 2005. Accordingly, “defendants are entitled to be fully informed of the nature of the accusations against them so that they can prepare an adequate defense.” Kjorsvik, 117 Wn.2d at 101.

In this case the charging document informed the Appellant that he was accused of violating a no contact order by assaulting Mr. Shoemaker on May 3, 2016 and that the violation was a Class C felony. Through the charging document the Appellant was made aware that the maximum punishment for this offense was up to five years incarceration and a fine of up to \$10,000. Furthermore, the charging document cites to the relevant RCW which states:

Any assault that is a violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order

as defined in RCW26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

RCW 26.50.110(4). Charging documents do not need to mirror the language of the statute. State v. Leach, 113 Wn.2d 679, 686, 782 P.2d 552 (1989). Rather as previously discussed, it need only convey all the “essential elements” of the crime. Here, the “essential elements” of the crime were included in the charging document providing the Appellant with proper notice of the nature of the charges against him. It should be noted that the Appellant did not challenge the adequacy of charging documents prior to his appeal to this Court. Charging documents which are not challenged until after the verdict will be more liberally construed in favor of validity than those challenged before or during trial. Kjorsvik, 117 Wn.2d 93, 105, 812 P.2d 86, 1991.

Because the charging documents contained enough information to apprise the Appellant of the nature of the charges against him and he failed to raise a challenge prior to entry of the verdict, this Court should hold that the charging document contained the “essential elements” of the offense and was therefore constitutionally adequate.

G. SUFFICIENT EVIDENCE EXISTED FOR A FINDING OF GUILT AS TO THE CHARGE OF FELONY VIOLATION OF COURT ORDER

Regarding the Appellant's assertion that the State failed to produce sufficient evidence to support a conviction for Felony Court Order Violation, viewed in a light most favorable to the State there exists sufficient evidence to allow a rational finder of fact to find the Appellant guilty beyond a reasonable doubt. It was established that the court order was in place prohibiting the Appellant from contacting Ms. Shoemaker and that the Appellant knew of it at the time of the assault. The court found that the testimony of Deputy Vargas paired with the photographic evidence of the injuries suffered by Ms. Shoemaker were sufficient to support a finding that an assault occurred. For purposes of Violation of Court Order purposes it is inconsequential whether the assault was in the third or fourth degree. The portion of RCW 26.50.110(4) which references substantial risk of death or serious physical injury is an alternate means of violation separate from conduct amounting to assault.

For these reasons this Court should hold that viewed in a light most favorable to the State there existed sufficient evidence for a rational trier of fact to find, beyond a reasonable doubt the Appellant guilty of Felony Court Order Violation.

#### IV. CONCLUSION

The Appellant has not demonstrated any deficiency that would justify reversal. It was established that the Appellant attempted to induce persons he knew would be witnesses against him to recant their statements and that those recantations were false. It was established through both testimony and photographic evidence that the Appellant assaulted the victim with a belt and that he caused injuries to her person which caused her to suffer pain. No issue exists as to the Appellant's right to confrontation. The trial court found by clear, cogent, and convincing evidence that the Appellant engaged in wrongdoing intended to cause Ms. Shoemaker's unavailability, that she was made unavailable and that the Appellant's wrongdoing was the cause of her unavailability. Alternately, any error by the court in admitting evidence pursuant to the forfeiture by wrongdoing doctrine was harmless as the conviction was overwhelmingly supported by non-tainted evidence. The court warned the Appellant on two separate occasions about the dangers of proceeding pro se. the Appellant's waiver of counsel was made knowingly, intelligently, and was unequivocal. No deficiency existed as to the charging documents alleging felony violation of court order as they included the essential elements of the offense sufficient to provide notice to the Appellant of the charges against him. Finally, the Appellant's conviction for felony Violation of

Court Order was proper. Sufficient evidence existed such that a rational trier of fact could conclude that a no contact order was in place, that the Appellant knew of said order, and that in violation of the order he assaulted Ms. Shoemaker. For these reasons this Court should affirm the Appellant's convictions for Assault in the Third Degree, Witness Tampering, and Felony Violation of Court Order.

Dated this 20<sup>th</sup> day of November 2017

Respectfully submitted,



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**COURT OF APPEALS OF THE STATE OF  
WASHINGTON - DIVISION III**

THE STATE OF WASHINGTON,

Respondent,

v.

RUDY E. WILLIAMS,

Appellant.

Court of Appeals No: 34959-4-III

**DECLARATION OF SERVICE**

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**DECLARATION**

On November 20, 2017 I electronically mailed, through the portal, a copy of the BRIEF OF RESPONDENT in this matter to:

LISE ELLNER  
liseellnerlaw@comcast.net

I declare under penalty of perjury under the laws of the State of Washington the foregoing statement is true and correct.

Signed at Asotin, Washington on November 20, 2017.



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LISA M. WEBBER  
Office Manager

**ASOTIN COUNTY PROSECUTOR'S OFFICE**

**November 20, 2017 - 12:01 PM**

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