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IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION III
No. 35554-3-III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

NOE RUIZ ROQUE,

Defendant/Appellant

Respondent's Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. The evidence of felony harassment (domestic violence) is sufficient when a defendant sends repeated and unwanted text messages, phone calls, and voicemails to a victim who has told him to leave her alone, his messages include references to a rifle, to hunting, and that she should be afraid, the police become involved and based on the context and content of the messages believe the suspect is likely surveilling the victim, and the victim testifies she was afraid he was going to do the things he threatened including “hunt” her.
- b. The evidence of cyberstalking (domestic violence) is sufficient when a defendant sends hundreds of text messages to a victim over the course of several days even though in the course of the messages the victim asks him to leave her alone and tells him to stop and he also makes references to a rifle, to hunting, and warns her to not sleep and the charging information and to-convict instructions required those threats be made on or about July 4, 2017.

- c. The evidence for the alternative means of cyberstalking as charged and instructed to the jury is sufficient when the alternative means to commit cyberstalking by threatening to inflict injury on the victim is sufficient when the defendant made many threats to the victim both direct and indirect and she actually feared he would carry those threats out.
- d. Mr. Roque's offender score was incorrect as stated by his attorney and agreed to by the state and he must be resentenced based on the prior felony convictions being the same course and conduct pursuant to the judgement and sentence the defendant has made part of this record on appeal, but was not a part of the record at sentencing.
- e. Mr. Roque's cyberstalking counts in his offender score as a repetitive domestic violence offense because his attorney conceded that issue at trial and has waived the issue on appeal.
- f. The no contact order that was entered exceeded the statutory maximum for the offense charged and the case must be remanded to amend the no contact order

to comply with the law; sufficient evidence supports the no contact order and the victim testified she never wants to see the defendant again.

B. ISSUES PRESENTED

- a. Is a jury verdict for felony harassment and cyberstalking was supported by sufficient evidence when:
 - i. The victim testifies the defendant said he was going to “hunt” her and she believed that threat?
 - ii. The Information sufficiently alleged the offense occurred on or about July 4, 2017 and the victim testified the repeated text messages, calls, missed calls, and voice mails took place over the course of approximately three days, when the other count alleged a different day also within that time frame.
- b. Is a jury verdict for cyberstalking supported by sufficient evidence with regard to alternative means when the defendants texts included actual threats to harm the victim, even if the threats were veiled or

implied threats like, “I’m going to come by your window,” some mixture of Spanish and English/slang “watchita,” translated as “watch out for yourself,” “They don’t sleep, perhaps they’re not going to wake up,” “Don’t get near the windows, okay,” “Okay, you played with me and now you’re going to pay,” “You’re going to see what happens,” “you’re going to see what happens,” and the victim testified she was afraid the defendant would carry out his threats?

- c. Is remand the proper remedy for re-sentencing when the defendant’s incorrect offender score is raised for the first time on appeal, even though the incorrect score was suggested at sentencing by the defense attorney?
- d. Where the question of whether or not “cyberstalking” would be included as a crime of “harassment” when used in RCW 9.94A.030(42)(iv), is the issue ripe for appeal when defense attorney concedes that it is included in the offender score?
- e. If a no contact order exceeds the statutory maximum, can the case be remanded for amendment?

C. STATEMENT OF THE CASE

Patricia Campos met the defendant when he messaged her on Facebook and they became friends, eventually meeting in person (RP at 162 – 63). After meeting for the first time, they spent almost every day together beginning around April, 2017 until the events that gave rise to the charges in this case; a period of about five – six months and towards the end of that time had a romantic relationship that was sexual (RP at 166 – 67, 271). Ms. Campos told the jury it was difficult for her to be in court because he was in court and that she would prefer not to be there (RP at 168 – 69).

At some point, Ms. Campos starting withdrawing from the defendant and not spending as much time with him and he responded with anger and verbal abuse (RP at 171). Ms. Campos testified that she was afraid of him when he was angry and gave examples to the jury of his behavior that made her fearful (RP at 171 – 72). When she was attempting to break ties with him, she became fearful for her own safety and he made threats about making sure she lost her daughters

(RP at 172). She testified that she had seen him with a gun¹ and that she was afraid of him (RP at 174). She said he referred to his gun as “juguete,” in Spanish which translates to “toy.”

In the period in which she was attempting to break ties with him or end the relationship, she would tell him it was over, and then continue to see him because of “the things he would do if [she] didn’t” (RP at 184). She testified that she continually tried to get away from him, but he would have angry fits and she would acquiesce to appease his anger (RP at 185 – 86). She clarified in re-direct that when she did not go to his place, he would come to her residence and bang on her windows and cause a scene and she worried about her daughters seeing that behavior (RP at 189). She testified that whenever the defendant was angry, he would show up at her house uninvited engaging in bizarre behavior: parking, driving crazy around where she lived, knocking on her door when her daughters were sleeping, and listen to her through her windows (RP at 189). A friend of Ms. Campos’, Kimberly Lunde testified that she had been at Ms. Campos’

¹ The police did search the trailer where the defendant was arrested and the car he was driving and no guns were located (RP at 249).

apartment on at least one occasion when the defendant arrived unannounced on a day in late June, 2017 (RP at 220 – 22, 224). Ms. Lunde said while she was smoking in Ms. Campos' bedroom with the window open a male said something in Spanish and when she reported this to Ms. Campos who had left the bedroom, she believed it was the defendant and then pointed out the defendant's car to Ms. Lunde (RP at 222). When Ms. Campos saw the defendant's car that night with Ms. Lunde she became very uncomfortable with his presence (RP at 223). Ms. Lunde described Ms. Campos as being scared, locking windows, checking doors repeatedly, looking out the windows repeatedly, and constantly worried he would appear in her large backyard (RP at 225).

She told the jury on the night she called the police (which was July 3, 2017), he texted her “hundreds” of times and she had told him to leave her alone. (RP at 175, 201). She did not want to look at the text messages (marked as an exhibit) while testifying, but did remember allowing the police to take pictures of her phone of the texts from the defendant and even that while she was speaking to the

officer, he continued to text her, even after she had told him to leave her alone. (RP at 177 – 78). She reiterated that after she had told him she wanted him to leave her alone; he sent “thousands” of text messages saying all kinds of “horrible” things including threats. (RP at 178). She indicated she read every single one of the texts he sent her, specifically because she wanted to know what he was “up to” and what to prepare for (RP at 183, 188 – 89). Specifically she said he threatened her in the texts and she was afraid of the texts because she believed what he was saying. RP at 178.

She told the jury that the night she talked to the police was a long night and the police were looking for him and she was scared he was going to do what he said and that he said it was like “hunting;” that she believed he was hunting her because that’s what he said he was doing (RP at 179, 187).

She also told the jury he repeatedly called her, although she did not answer his calls, and left voicemails with the same threatening content as the text messages (RP at 180). He spoke to Ms. Campos in both English and Spanish (Id.). His text messages and phone calls did not stop until he was arrested (RP at 181). When asked by the defense

attorney in cross examination if she wanted to see the defendant anymore she replied, “Are you kidding? I don’t want to see him. I don’t even want to be here,” and that she didn’t want this behavior to happen to her anymore or anyone else (RP at 187, 188).

Officer Tim Weed testified that on July 1, 2017 he took a report from Ms. Campos where she reported the threatening text messages and he observed a lot of text messages on her phone, maybe even a hundred, mostly in Spanish and he was not a Spanish speaker (RP at 193). He identified Exhibit 7 as being photos of those messages he saw on her phone that night which was admitted (RP at 193 – 94, 197). Officer Weed indicated Ms. Campos seemed “scared” and was hesitant to make the report based on her fear (RP at 194 – 95).

Officer Ryan Potter testified that on July 3, 2017 he also responded to McDonalds where he met with Ms. Campos who had called to complain of harassment (RP at 201). He described Ms. Campos as being “clearly scared and a little nervous,” indicating that as he communicated with her, “she kept looking around – literally over her shoulder in

the parking lot” (RP at 202). He thought she was having a difficult time formulating what she was saying because she was preoccupied with whether someone was going to show up. (Id.). She looked like she had been crying and it was clear she was upset and seemed “truly scared” (RP at 203). While Officer Potter was with Ms. Campos, she was still receiving text messages, mostly in Spanish, from the defendant that the victim translated as saying he was going to go to her house and wait inside the house while she was gone (RP at 204).

Officer Potter told the jury he also met with Ms. Campos on July 4 at her home and identified Exhibit 8 as the text messages he took photos of on Ms. Campos’ phone on July 3 or July 4 as well as a photo of her phone that showed missed calls received by the phone (RP at 205, 206 – 07). Officer Potter indicated that while he was with her, based on the content of the messages, it appeared the sender was keeping Ms. Campos and the officers under surveillance (RP at 209). Officer Potter traveled with Ms. Campos to her home and watched her put security cameras in place for her safety and securely lock her door when the police left (Id.)

On July 4, Officer Potter again made contact with Ms. Campos and observed more text messages and phone calls that had come in after he left her on July 3 (RP at 210). Officer Potter attempted to make contact with the phone number that had called Ms. Campos' phone and had sent the text messages, but no one answered and Officer Potter couldn't leave a voicemail message (Id.) The text messages on the phone were concerning to Officer Potter (RP at 217). Although they attempted to locate the defendant on July 3, they were unable to find him (RP at 211). He was located and arrested the next day (RP at 247).

Officer Hall testified that he was fluent in Spanish and assisted in the case by translating the text messages from Spanish to English for Officer Weed (RP at 230). He identified Exhibit 7 as the text messages he interpreted for Officer Weed. (RP at 222). Officer Hall indicated he was present with Officer Weed and Ms. Campos on July 3 and described Ms. Campos as frightened, trembling, trying not to cry and like she wanted it all to stop and for the defendant to leave her alone (RP at 223).

Officer Hall also assisted in translation of the messages² in trial for the jury and indicated that Ms. Campos repeatedly told the sender of the messages to leave her alone (RP at 222). Officer Hall indicated that the messages were difficult to translate because some were phonetic and some were symbolic, but there did appear to be several messages that seemed like a threat (RP at 232). He translated one message as being about hunting and a rifle, he expounded in cross examination that given the context surrounding these messages they appeared to be referencing hunting a person. (RP at 234, 235, 244). Although Officer Hall did not assist Officer Potter at the scene in translation, he did review Exhibit 8 for the jury and translated those texts for the jury that included things like: “I’m going to come by your window,” “Good. The rifle is ready,” “I came by your house right now,” some mixture of Spanish and English/slang “watchita,” translated as “watch out for yourself,” “They don’t sleep, perhaps they’re not going to wake up,” “Don’t get near the windows, okay,” “Okay, you played with me and now you’re going to pay,” “You’re going to see what

² Officer Hall referenced Exhibit 7 as approximately 80 pages of pictures of the text messages from Ms. Campos’ phone

happens,” “you’re going to see what happens,” “you wanted to bring this game right now and you’ll play it until I say. You’re not going to know when he’s outside, but be careful because until the shadows I’m going to hunt.”

The defendant testified that he was communicating with Ms. Campos’ boyfriend Billy Jack Martin through her phone and he only wanted to retrieve his property and tell Mr. Martin to leave him alone (RP at 275 – 76). He admitted that Ms. Campos replied to his messages asking him to leave her alone (RP at 278).

The defendant was charged with two counts of felony harassment: count 1 on or about July 3, count 2 on or about July 4 and two counts of cyberstalking: count 3 on or about July 3 and count 4 on or about July 4. (CP at 11 – 12). There was a domestic violence allegation, alleging the defendant and victim were members of the same family or household added to each count (CP at 11 – 12).

The jury found the defendant guilty of felony harassment as charged in count one and found they were members of the same family or household. (RP at 332). They did not return a verdict on count two, but did find the

defendant guilty of two counts of cyberstalking as charged in counts three and four and also found the defendant and victim were family and household members for those counts as well. (RP at 332 – 333).

At sentencing, the defense attorney proffered that the defendant's score for SRA sentencing was a six and the prosecutor, who initially scored the defendant as a four agreed and changed the proposed judgment and sentence to conform with the defense attorney's calculation of the offender score (RP at 343). The state dismissed count two, instead of opting for a retrial on that count (RP at 343). The court discussed the gross misdemeanor concurrent convictions for the cyberstalking and the defendant's attorney alleged they were considered other "repetitive domestic violence offenses³." The defendant was then sentenced to twenty-seven months on Count One and imposed 12 months (364 days) on Counts three and four that would run concurrent (RP at 351). The state indicated they would file a separate No-Contact order and such was indicated on the Judgment and Sentence (RP at 352).

³ This is a term of art defined in RCW 9A.46.020(42).

D. ARGUMENT

a. Sufficiency of Evidence

The standard of review for sufficiency of the evidence is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979)); accord, e.g., State v. Aver, 109 Wn.2d 303, 310-11, 745 P.2d 479 (1987); State v. Guloy, 104 Wn.2d 412, 417, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020 (1986). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A reviewing court must defer to the fact finder on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. State v. Rodriguez, 187 Wn. App. 922,

930, 352 P.3d 200, review denied, 184 Wn.2d 1011
(2015).

i. Felony Harassment

ii. “A person is guilty of harassment if:

(a) Without lawful authority, the person

knowingly threatens: (i) To cause bodily
injury immediately or in the future to the

person threatened or to any other person ...;

and (b) The person by words or conduct

places the person threatened in reasonable fear

that the threat will be carried out. "Words or

conduct" includes, in addition to any other

form of communication or conduct, the

sending of an electronic communication. ...

(b) A person who harasses another is guilty of

a class C felony if any of the following apply:

... (ii) the person harasses another person

under subsection (1) (a) (i) of this section by

threatening to kill the person threatened or any

other person ...” RCW 9a.46.020.

When there is sufficient evidence showing that the victims feared that defendant's threat to kill would be carried out, that their fears were reasonable, and that their fears were caused by defendant's words or conduct, along with the defendant's statements to his therapist and to the investigating officer that qualified as "true threats," particularly in light of defendant's demeanor when he made the statements; considering the entire context, a reasonable speaker in defendant's place would foresee that his statements concerning his plan to kill some boys would be interpreted by a listener as a serious expression of intention to inflict bodily harm. State v. Trey M., 186 Wn.2d 884, 383 P.3d 474, (2016), cert. denied, 138 S. Ct. 313, 199 L. Ed. 2d 207 (2017). Evidence was sufficient to support a harassment conviction when the evidence amply supported the inferences that the alleged victim was afraid, that defendant

could foresee that the alleged victim would consider the threat to be a true threat, and that the threat was a true threat. State v. Hecht, 179 Wn. App. 497, 319 P.3d 836 (2014).

Where defendant made statements to his mental health counselor indicating that he was going to kill a judge, because the State failed to demonstrate that the judge, not the counselor, was informed of the threat and placed in reasonable fear that the threat would be carried out, and because the judge did not testify and no evidence was presented indicating that he was placed in reasonable fear, the evidence was insufficient to support defendant's conviction. State v. Kiehl, 128 Wn. App. 88, 113 P.3d 528 (2005).

Where a threat to commit bodily harm is an element of a crime, the State must prove that the alleged threat was a "true threat." State v. Kilburn, 151 Wn.2d 36, 54, 84 P.3d 1215 (2004). This is because of the danger

that the criminal statute will be used to criminalize pure speech and impinge on First Amendment rights. U.S. CONST. amend. I. True threats are not protected speech because of the “fear of harm aroused in the person threatened and the disruption that may occur as a result of that fear.” Kilburn, 151 Wn.2d at 46.

In this case, the question the court must answer is whether a reasonable person in the defendant’s position would have foreseen that the text messages would be interpreted as a serious expression of intent to kill Ms. Campos. The threats were made directly to Ms. Campos via text messages in a consistent and harassing way. The references to “hunting,” a rifle, and his warnings to her about him coming by her house, watching her, and that she needed to be careful are sufficient to constitute a true threat. In addition, Ms. Campos testified to the jury that she

understood the defendants' texts to be threats to "hunt" her and that she was afraid he was going to do exactly what he said he wanted to do; although there is an inference to be drawn that "hunting," includes killing, that inference is reasonable given Ms. Campos' obvious fear and her actions in reaching out to the law enforcement that night. Her fear was demonstrated as further reasonable when put into the context of her friend's testimony that the defendant had come to her open bedroom window without invitation on at least one occasion. To require to use exact words "kill" does not capture the nuanced experiences, particularly of domestic violence victims in the fear for their life when defendant say certain things or engage in certain activity. The question for a reviewing court is whether that fear, in context, is reasonable. The evidence here is sufficient that the defendants threats were both true and it was reasonable

for the victim to believe, as she did, that the threat was to kill her.

ii. Cyberstalking

The challenge to sufficiency of the evidence related to the cyberstalking charge is actually a challenge to the validity of the Information, alleging the date on the information is insufficient and that evidence doesn't support a finding that cyberstalking occurred on the date charged, "on or about July 4, 2017."

The standard for reviewing the sufficiency of a charging document is two pronged: (1) whether the charging document has the necessary facts or those facts can be found by fair construction; and if so, (2) whether the defendant can show that he was actually prejudiced by any vague language. State v. Kjorsvik, 117 Wn.2d 93, 106, 812 P.2d 86 (1991). Under the first prong, if the necessary facts cannot be found in the

charging document, prejudice is presumed and the conviction will be reversed. State v. Zillyette, 178 Wn.2d 153, 162, 307 P.3d 712 (2013) (citing State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000)). Under the second prong, the defendant must establish actual prejudice. Kjorsvik, 117 Wn.2d at 111.

“A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party: ... Anonymously or repeatedly whether or not conversation occurs.” RCW 9.61.260(1) (b). The statute further explains, “For purposes of this section, ‘electronic communication’ means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. ‘Electronic communication’ includes, but is

not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.

Here Ms. Campos testified that over the course of four days, the defendant repeatedly contacted her via phone – texts, calls, voicemails, and even a belief that he was keeping her under surveillance. The date alleged was “on or about” July 4, 2017 and this date is sufficient and supported by the evidence as the conduct occurred over a four day period. There were two counts of cyberstalking (both counts three and four, each with a different date range – “on or about July 3,” and “on or about July 4”). The question then that the jury is left with is whether the evidence supports two different dates of commission. That evidence and the date range charged is sufficient and the defendant can show no prejudice when it is clear the text message and phone

communication happened over the course of several days, resulting in three responses by law enforcement at the victims' request.

iii. Cyberstalking - Alternative Means

Criminal defendants in Washington have a right to a unanimous jury verdict. CONST. art. I, § 21; State v. Ortega-Martinez, 124 Wn.2d 702, 707, 881 P.2d 231 (1994). “The threshold test governing whether unanimity is required on an underlying means of committing a crime is whether sufficient evidence exists to support each of the alternative means presented to the jury.” Ortega-Martinez, 124 Wn.2d at 707. Jury unanimity is not required if substantial evidence supports each alternative means. State v. Kitchen, 110 Wn.2d 403, 410, 756 P.2d 105 (1988). The evidence is sufficient if ““after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime

beyond a reasonable doubt.” Ortega-
Martinez, 124 Wn.2d at 708 (quoting State v.
Rempel, 114 Wn.2d 77, 82, 785 P.2d 1134
(1990)). In an alternative means case, where a
single offense may be committed in more than
one way, there must be jury unanimity as to
guilt for the single crime charged. State v.
Kitchen, 110 Wn.2d 403, 410-411, 756 P.2d
105, 109 (1988). Unanimity is not required,
however, as to the *means* by which the crime
was committed so long as substantial evidence
supports each alternative means. State v.
Whitney, 108 Wn.2d 506, 739 P.2d 1150
(1987); State v. Arndt, 87 Wn.2d 374, 553
P.2d 1328 (1976). In reviewing an
alternative means case, the court must
determine whether a rational trier of fact *could*
have found each means of committing the
crime proved beyond a reasonable doubt.
Kitchen, 110 Wn.2d at 410-411.

The to-convict jury instruction given in this case with regard to the cyberstalking in count four instructed regarding an alternative means for committing cyberstalking: “That the defendant: (a) made the electronic communication repeatedly whether or not a conversation occurred; or (b) threatened to inflict injury on the person called or to whom the electronic communication was made ...” (CP at 29 – 68). Here, defendant argues there was not sufficient evidence for the second alternative means. Rather than recite the prior case law about sufficiency, counsel relies on previously cited authority within this brief about the standard of review and sufficiency of the evidence challenges.

Here, the testimony from the victim is that after a short, but traumatic relationship with the defendant, she attempted to break up with him, although those attempts did not go well for her. During the time in question,

between July 1, 2017 and July 4, 2017 the defendant called, left voicemails, and texted her (the elements requiring repeated, unwanted contact for the first alternative means requested by the state is overwhelming). In addition, the defendant texted veiled and implied threats to the victim, things like, “I’m going to come by your window,” “I came by your house right now,” some mixture of Spanish and English/slang “watchita,” translated as “watch out for yourself,” “They don’t sleep, perhaps they’re not going to wake up,” “ Don’t’ get near the windows, okay,” “Okay, you played with me and now you’re going to pay,” “You’re going to see what happens,” “you’re going to see what happens.” These text messages were in addition to the direct threat to “hunt” the victim which was the basis for the felony harassment charge. These text messages, when looked at in the light most favorable to

the state show that a juror could find the alternative means of cyberstalking beyond a reasonable doubt.

b. Correct Offender Score

The state concedes that the defendant's offender score was miscalculated by the defendant's attorney and based upon the supplemented record on appeal; the state requests this court to remand for re-sentencing with a correct offender score.

c. The argument about whether Cyberstalking is a Repetitive Domestic Violence Offense was waived by defense attorney at sentencing when he agreed that they counted in calculating the offender score

Under RCW 9.94A.525(21)(c) each prior adult conviction for a "repetitive domestic violence offense" is counted as one point toward the offender's offender score. RCW 9.94A.030(41) defines "repetitive domestic violence offense" as a DV assault that is not a felony, a DV-VNCO that is not a felony, a DV violation of a protection order that is not a felony, DV harassment that is not a felony, and

DV stalking that is not a felony. RCW 9.94A.030(41) does not qualify the definition of “repetitive domestic violence offense” with anything other than the type of offense. State v. Rodriguez, 183 Wn. App. 947, 957-958, 335 P.3d 448, 453-454 (2014).

Defense argues that because the “repetitive domestic violence” crimes are limited to those listed by name (“Harassment”) and RCW (“RCW 9A.46.020”) which does not specifically list “cyberstalking.” This is a unique argument, but is not supported by legislative history or caselaw on the statute, indicating the intent of the statute is to punish chronic and repetitive domestic violence perpetrators. Moreover, the issue was waived at sentencing when the defense attorney conceded that the crimes DO count as repetitive domestic violence offenses. See State v. Rodriguez 183 Wn. App. 947 (Div. 2, 2014); State v. Hodgins, 190 Wn. App. 437, 360 P.3d 850 (Div. 3, 2015); State v. McDonald, 183 Wn. App. 272, 333 P.3d 451 (Div. 1, 2014).

Although it is clearly established law that a defendant can challenge his offender score for the first time on appeal, this is not a case where the court miscalculated a prior conviction because it did or did not exist or had washed out, etc. This issue is an issue of statutory interpretation – defense could have argued at sentencing the cyberstalking was not a “harassment” crime that was not a felony and asked the court not to include it. Defense waived that issue and stipulated that the crime did count; in fact there was a discussion on the record about this this exact issue and defense counsel agreed and urged the court to consider the crimes as “repetitive domestic violence offenses.”

d. NCO – Statutory Maximum

The state also concedes the statutory maximum for the felony harassment crime is five years and the NCO should conform with that statutory maximum, although the state does not address the issue regarding counsel’s performance. The state requests this court

to remand to amend the NCO not to exceed the
statutory maximum of five years.

E. CONCLUSION

For the reasons stated, all convictions should be affirmed.
The case should be remanded to the Superior Court to re-
sentence the defendant with a correct offender score and to
amend the no contact order to conform to the statutory maximum
for the felony harassment charge.

Dated this 8th day of June, 2018,

Jodi M. Hammond
WSBA #32253
Attorney for Respondent

PROOF OF SERVICE

I, Jodi M. Hammond, do hereby certify under penalty of perjury that on 8th day of June, 2018, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Respondent's Brief:

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KITTITAS COUNTY PROSECUTOR'S OFFICE

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