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No _____

(Court of Appeals Div. III No. 23569-6-III)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner

v.

ANDRE PAUL BECKLIN

Respondent

PETITION FOR REVIEW

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INTRODUCTION

Identity of the Petitioner

The Petitioner, State of Washington, hereinafter State, was the plaintiff in the trial court, the respondent in the Court of Appeal and is the petitioner in this Motion for Discretionary Review.

Court of Appeals Decision

Petitioner seeks Discretionary Review of the Court of Appeals' decision filed in the Office of the Clerk of Court in Division III, herein after Div.III, on June 27, 2006 in the matter of State of Washington v. Andre Paul Becklin (2006) 133 Wash. App.610, ___ P.3d ___, a copy of which is attached hereto as Appendix A. Petitioner contends that review should be accepted under the Rules of Appellant Procedure, hereinafter RAP, Rule 13.4(b)(4), as this petition involves issues of substantial public interest that should be determined by the Supreme Court of the State of Washington. If the Court of Appeals decision is affirmed, a legislative fix will be necessary to close the large hole in the protection that the legislature sought to provide by enacting RCW 9A.46.110.

Issues Presented for Review

1. Whether the failure to give an accomplice instruction, presumably WPIC 10.51, denied Andre Paul Becklin, hereinafter Becklin, a fair trial.
2. Whether the failure to give WPIC 10.51 was harmless error under the circumstance of this case.

3. Whether RCW 9A.46.110 can be committed by third parties acting under the direction of a principal.
4. Whether the trial court's response to the jury question of whether stalking could be committed by third parties was erroneous as a matter of law.

STATEMENT OF THE CASE

The Plaintiff's Case-in-Chief

The Plaintiff accepts the Court of Appeals' summary of statement of the case as stated in the Opinion supplemented by each of following additional facts. The State made clear, before the trial even began, that its theory of the case was based on a continuing course of conduct by Becklin. This continuing course of conduct was designed by Becklin to break up Becklin's former girlfriend's, Allison McGee, hereinafter McGee, marriage to Aaron Ash, hereinafter Ash, control her freedom of movement, monitor her activities by keeping her under surveillance, all in an effort to force McGee to go back to Becklin. See Report of Proceeding, Trial page 6, hereinafter RPT 6:3-11. The State sought to hold Becklin responsible for his own conduct and the conduct of others that he put in motion. RPT-38:6-20.

Jeff Lembcke testified that he kept an eye out for McGee, Ash and Ace Becklin, hereinafter Ace, to help Becklin out. He provided a statement for Becklin to use, but could not remember who asked him to provide the statement or who gave him the form on which the statement was written.

RPT 57:7-59:9. On Cross-examination, he admitted that he did know that the statement was to be given to Becklin. Mr. Lembke admitted that Becklin and he talked about the "issue" when Becklin came to town. He was unsure whether this was before or after the statement was made. RPT 61:9- 62:12. Mr. Lembke when further question stated that he and Andy [Becklin] discussed nothing. RPT 64:4-20.

The witness, Vincent Cenerrazzo, testified that he provided a statement to Becklin about seeing Ace, Ash and Allison [Mcgee] in Colville at the clinic. Andy [Becklin] had told him that Ace, Aaron and McGee were not to be together. Becklin never asked him to obtain a statement or to keep an eye out for Ace, Aaron and McGee. He knew that Becklin wanted to get his son [Ace] back. RPT 66:10-68:2 .

The witness, Raymond Maycumber, testified that while he was a police officer with the City of Republic he received a complaint from McGee regarding Becklin trying to break into her house and abduct her son [Ace]. He responded and saw the described vehicle leave the scene. A Deputy Sheriff stopped the vehicle at Maycumber's request and Becklin was found in the passenger seat of Mr. Glen Jarmen's, hereinafter Jarmen, vehicle. Becklin told Maycumber that he was at the house and had just left and that there was a current restraining order barring Ash from being with Ace. Officer Maycumber determined that the order did exist but there was no service of the order on Ash. Becklin admitted that went to McGee's house get his son because of the order he obtained. RPT 74: 5-76:6.

Officer Maycumber recalled responding to McGee's home several times after this incident because of reports of violations of [protection] orders. RPT 77:7-13. On 12-6-03 McGee reported that Becklin was at her home, intoxicated and refusing to leave. Officer Maycumber responded to that call. Becklin knew he was not wanted at McGee's home. RPT 85:7-25.

Mrs. Doris Ann Ash testified that she was the supervising visitation person who supervised visits between Becklin and Becklin. RPT 90:16-20. Mrs. Ash stated that Becklin accused Aaron [Ash] of stealing McGee from him and that he berated McGee in front of the child. RPT 91:17-92:6.

Ash testified that he was present when Becklin and Jarmen were at the McGee residence. RPT101:24-102:1. That Becklin tried to break into the house. Ash thwarted that effort and McGee called the police. Becklin's friend, Jarmen started to leave and Becklin then went with Jarmen. Becklin and Jarmen were stopped by the officers. RPT102: 2-103:3. Ash related an incident in December at the same house where Becklin had his friend deliver Ace to McGee, while Becklin remained in the vehicle. Becklin later exited the vehicle when Ash went out to get Ace's things from Becklin's friend. Becklin caused a scuffle to occur. RPT 103:7-105:13. Ash testified that he afterwards moved to the house next door, he saw Becklin's friend repeatedly circling McGee's home. Jarmen followed them wherever they went. Ash saw Becklin's car in the vicinity of McGee's home at least 7 times. RPT105: 14-107:16. He saw Becklin's

truck being driven by 'Phat Joe'. He met 'Phat Joe' at Becklin's home in Rose Valley which is about 7 miles away. RPT 107:22-108:20. To get to and from Rose Valley one would not use Adams Street. Adams Street is an off street that nobody uses unless they live there. RPT 108:13-109:10. There are eight houses on that street. RPT109: 25-110:3. Jarmen had followed Ash on one afternoon up to town and the hospital and was seen by Ash ducking down in his car. Ash confronted Jarmen, who told Ash that he could do anything that he wanted. RPT 110:12-111:9. Becklin knows Jarmen. They are long time friends. Becklin bought his car from Jarmen. RPT 112:10-20.

McGee, testified that Becklin began to keep her under surveillance in May of 1999 when she left him and got an apartment in the Town of Republic. RPT-147:13-149:1 Becklin would repeated come to her apartment and work causing disruption. RPT 153: 4-25 Becklin was told by McGee that she was involved with Ash when both she and Ash went to the Becklin residence to pick up Ace. The Becklin residence is 13 miles from Republic. Becklin told both McGee and Ash that he wanted McGee to leave Ash and come back with him. RPT 155:1-156:1 and RPT 153: 1-3.RPT 158:3-15. McGee moved to 1045 South Adams in October of 2003 with Ace and Ash. RPT 158:7-22. She and Ace lived with Ash from January of 2001. RPT158:21-25.

Mcgee described how and why she got the December 29, 2003 protection order. RPT 162:8-163:19 and Appendix #2. The order

prohibited Becklin from having any contact, from being 100 feet from the 1045 S. Adams residence and prevented third party contact and prevented him from stalking, molesting and annoying the protected person.

RPT166:2-167:8.¹ The keeping of McGee under surveillance by Becklin's friends was certain to cause annoyance and constituted a repeated course of action which was intended to vex, bother, and/or irritate.

McGee testified that she had contact with Glen Jarmen who wanted to pick-up Ace and take Ace to Becklin's home. She had this contact on 12-30-03. She had two telephone contacts with Jarmen. She told Jarmen of the protection order and he did not thereafter directly contact her by telephone. RPT 167:9-168:10. McGee recounted the other contact she had with Jarmen. Jarmen drove by her house repeatedly during the next three months. She testified that the most intimidating contact with Jarmen was on 3-26-04, after a court appearance regarding Becklin, when Jarmen and Becklin followed her to where she lived. Jarmen followed her when she left her house and went to the Ferry County Memorial Hospital. Jarmen followed her and Ash. Jarmen's car was seen at the hospital when McGee left but Jarmen was observed ducking and was hiding in the car. She reported this incident to the Sheriff's office. RPT 169:2-170:18.

McGee testified regarding the incident with Becklin and Jarmen

¹

The word molest is defined in Webster's New World Dictionary, College Edition, © 1966, World Publishing, as "to annoy, interfere with, or meddle with so as to trouble or harm, or with intent to trouble or harm." Annoy is defined in the same source as "to irritate; vex; bother, as by a repeated action, noise etc."

on 12-13-03 when Becklin tried to break into her home and called Jarmen for assistance when Becklin received resistance to his break in efforts to break into McGee's home. RPT 172:16-173:4

McGee testified that she became alarmed when she began to observe an increase of traffic in her neighborhood. She observed many of Becklin's friends driving on South Adams. She stated that she never saw Becklin's friends drive on her street before then. These people drove Becklin's trucks and Becklin's automobiles when they were driving on her street. She recognized these people as people who had visited Becklin's home when she lived with Becklin. She confronted one person who had driven by at least ten times and he told her he was "just driving by", but admitted he had heard of the problems she was having. She reported this activity to the police around March 25, 2004. RPT 174:5-175:20.

That on March 13 she saw Sean Kells and Guy McCullen driving Becklin's car on her street. Her street goes nowhere. There are eight homes on her street. RPT 175:21-176:21. Between January 3 and March 26, 2004 she saw Becklin drive by her home. It was a daily occurrence. She complained to the police repeatedly. RPT 177:5-22.

On cross-examination, McGee testified that when she left her home to go to the hospital, she ended up following Becklin's vehicle. She followed Becklin's car until he turned off and she continued to the hospital. RPT 256:12-257:21. After the hospital incident with Jarmen she went to her neighbors home, Kayo Tollett, and Jarmen showed up there

and circled the block until dark. McGee saw Becklin's car driving north then south on Leo Gaffney Boulevard.

Cross-examination revealed that on March 13, she saw Sean Kells and Guy McMullan, driving Becklin's gray Honda, travel south on Leo Gaffney and then turn onto Adams Street and make the block three times. RPT 260:11-14.

ARGUMENT

1. Whether the Failure to Give an Accomplice Instruction, Presumably WPIC 10.51, Denied Becklin a Fair Trial.

The State never charged Becklin as an accomplice a crime committed by someone else. The State charged Becklin as the principal for various reasons. Only Becklin was subject to the protection orders that McGee sought to have put in place to protect her person, her tranquility, the sanctity of her home, and her personal privacy. Only Becklin had the specific criminal intent to annoy and harass McGee. Only Becklin had the design to violate the victim's peace and tranquility.

The Protection Order of 12-29-03 restrained Becklin from molesting, harassing, or stalking McGee., RTP165:17-167:8 Becklin was retained from coming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for service of process. Becklin was restrained from coming within 100' of McGee's house. Becklin cultivated the use of third-parties to do what Becklin was forbidden by court order from doing, to wit, contacting, harassing and keeping under surveillance or monitoring

the activities of the protected person.[Ibid.]

The State sought to hold Becklin responsible for his own conduct. Becklin orchestrated through encouraging and directing other people to do what he himself was prohibited from doing. The State did not charge or seek to hold those third parties responsible for Becklin's action. The State could not have done so as the State would have to show each individual the specific intent to commit a crime. The State sought to hold Becklin responsible for his own actions as the principle and not as the agent of some other persons who had committed a crime, which is the usual situation in which the issue of accomplice liability arises. See WPIC 10.51.

It was Becklin, who recruited and assisted the other people who kept an eye on McGee. He was present, at times with the people doing his bidding, when they did it. Becklin allowed them the use of his vehicles to maintain his surveillance of McGee. Only Becklin had an interest in the results of the surveillance or following of McGee. The evidence produced at trial amply demonstrated his long-standing intent and purpose. There was sufficient circumstantial evidence indicating that Becklin orchestrated, actively supported and encouraged his friends to do the very acts that if he did would have directly violated the protection orders. By this course of conduct, he put in place activities which violated the intent of the protection order by doing indirectly what he personally was forbidden to do. The indirectly violation of an order of protection should not be allowed

to constitute a defense because if it, the obtaining of a protection order would grant very little protection at all. In fact, if the defense was allowed, the issuance of such a protection order create a false sense of security and would constitute an ineffective remedy. This cannot be what the legislature intended.

The opinion issued by the Court of Appeals held that as a matter of law, an instruction on accomplice liability was required under the theory and the evidence submitted. The approved instruction on accomplice liability, approved by the Washington Supreme Court, is WPIC 10.51.

WPIC 10.50 state the following:

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

It should be clear that this instruction only concerns RCW

9A.08.020(2) (c) and (3). Accomplice liability attaches only when the accomplice acts with knowledge of the specific crime that is eventually charged, rather than with knowledge of a different crime or generalized knowledge of criminal activity. *State v. Carter*, 154 Wn.2d 71, 109 P.3d 823 (2005); *State v. Cronin*, 142 Wn.2d 568, 578-79, 14 P.3d 752 (2000); *State v. Roberts*, 142 Wn.2d 471, 512, 14 P.3d 713 (2000). While an accomplice must have known about the specific crime the principal was going to commit, the defendant "need not have specific knowledge of every element of the crime committed by the principal, provided he has general knowledge of that specific crime. *State v. Roberts*, 142 Wn.2d at 512, 14 P.3d 713; see *State v. Sweet*, 138 Wn.2d 466, 980 P.2d 1223 (1999); *State v. Johnston* 100 Wn.App. 126, 996 P.2d 629 (2000).

However, under RCW 9A.08.020, the section of the penal code which deals with criminal liability for conduct of another, other forms of liability are existent which are not included under the notion of accomplice liability.² RCW 9A.08.020 (1) and (2) (a) and (b), and (4) state different means by which a person is determined to be held for the acts of another

²

RCW 9A.08.020 (1) and (2) (a) and (b) state

(1) A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent or irresponsible person to engage in such conduct; or

(b) He is made accountable for the conduct of such other person by this title or by the law defining the crime; or

other than by being an accomplice. RCW 9A.08.020 (3)³ defines what is an accomplice. RCW 9A.08.020 (5) states what is not an accomplice even though it would otherwise appear as one.

RCW 9A.08.020 (6) states that a person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted. With the mere reading of RCW 9A.08.020 it should be clear that accomplice liability is not the only means by which an actor can be held liable for crimes committed through the acts of other persons.

In the instant case, Becklin was a person who used other persons to accomplish what he had been forbidden by court order to do. He used friends to keep his victim, McGee, under surveillance under the guise that they would be helping him get information to fight a custody battle to gain custody of his son. He used his unwitting and the ignorant friends and acquaintances to accomplish his task. These individuals could not be

³

(3) A person is an accomplice of another person in the commission of a crime if:(a) With knowledge that it will promote or facilitate the commission of the crime, he (I) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it; or
(b) His conduct is expressly declared by law to establish his complicity.

prosecuted as accomplices because they did not share Becklin's criminal intent and their acts, in isolation, did not, *ipso facto*, constitute criminal conduct.

What purpose would be served by the giving the approved jury instruction on accomplice liability, WPIC 10.51? Its only effect would have been to blur, not clarify, the lines between what constitutes criminal liability of the principal actor and what constitutes the criminal liability of an accomplice. The giving of WPIC 10.51 would only confuse the jury, and would allow the principal to escape criminal liability for the acts of others as reflected in RCW 9A.08.020. None of the people, except Mr. Jarmen, used by Becklin, knew about the protection order.

No accomplice, under the definition of RCW 9A.08.020 (3), was involved here. The principal cannot be its own accomplice. The liability of Becklin was premised on RCW 9A.08.020 (1) or (2) (a) or (2) (b). The uncharged participants aided and abetted Becklin's purpose and not the other way around. There was no evidence showing that the person giving aid shared in Becklin's criminal intent or had their own criminal intent, which was their motivation for their participation in the venture. See *State v. Boast*, 87 Wn.2d 447,455, 553 P.2d 1322 (1976) holding that an accomplice is one who could be indicted for the same crime for which the principal is charged.

If these individuals could not suffer prosecution for the same

crimes charged against Becklin, they are not accomplices of Becklin and Becklin is not their accomplice. The giving of an instruction on accomplice liability would be erroneous, see *State v. Taplin*, 9 Wn.App. 545,547, 513 P.2d 549 (1973) and would require reversal. See *State v. Nikolich*, 137 Wash.62, 66-67, 241P. 664 (1925). Thus, for the Plaintiff to have given the accomplice liability instruction WPIC 10.51, under the facts of this case, would have resulted in a claim that the giving of such an instruction, in and of itself, was reversible error.

Further, with respect to RCW 9A.46.110 (6)(a)⁴ Becklin did appear at the protected person's home or other location to maintain visual or physical proximity . He was spotted on 3-26-04 following McGee from their court appearance in his car with his friend Jarmen who was in a separate car. Becklin was seen in his car driving on Leo Gaffney Boulevard in close proximity to McGee's home. When McGee left her home to go to hospital, Jarmen tailed her. Becklin's vehicle, driven by Becklin, appeared in front of her car showing that he was still in the

⁴ (6) As used in this section:

(a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

immediate vicinity. When she returned from the hospital and parked at her neighbor's home she saw Becklin drive again on Leo Gaffney Boulevard. Thus, on that day, March 26,2004, Becklin was seen three times in the immediate vicinity of McGee in conjunction with Jarmen, who was tailing McGee. The evidence was replete with other instances of Becklin direct participation.

McGee testified that Becklin himself was seen driving on her street almost daily between the dates of 1-3-2004 and 3-26-04. McGee testified that on 3-25-04 she complained to the police that she had been seeing Becklin's friends driving on her street, which serviced eight home and did not go anywhere else. She saw on friend of Becklin travel on her street on 3-25-04 ten times and confronted him about it. On March 13 she saw Sean Kells twice in two different vehicle owed by Becklin with two other people. Mcgee testified as to a long standing course of conduct by Becklin himself.

A stronger case of following or maintaining visual or close proximity to a specific person over a period of time is hard to imagine. A better case showing a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys, harasses or is detrimental to such person is likewise hard to imagine. While it is true that RCW 9A.46.110 (a) or (b) does not say that the crime can be committed through the use of innocent third persons, it is equally true that the statute does not say that the crime of stalking cannot be committed though the use of third

persons, innocent or otherwise. In addition, the statute does not negate the applicability of RCW 9A.08.020. The legislature knew that criminal liability could be imposed on the principal actor without using accomplice liability as the sole vehicle to impose criminal responsibility. Both statutes must be read together and harmonized so that each is effective. *State v. Tejada*, 93 Wash.App. 907, 911, 971 P.2d 79 (1999)

Further, *State v Parmelee*, 108 Wn.App,702 , 32 P.3rd 1029 (2001) is directly on point. The course of conduct is the important consideration just as it is here. The issue of who is doing the harassment, the letter writers in *Parmelee*, the drivers in the instant case, or the person causing it to happen, *Parmelee* and in the instant case Becklin. The same analysis in *Parmelee* applies here.

What is the message that Becklin is trying to send to McGee. Well several messages come to mind. The obvious ones that come to mind are that ‘I know where you are at all times’, ‘you cannot hide from me’, ‘I know everything you are doing’, ‘I can find you at any time’, ‘I am in control of your life’, ‘You will never know when I might appear’. In light of the course of conduct shown through the evidence presented at trial, one could easily find that this is the type of conduct that one could find to be alarming. The jury so decided that it was. Becklin did not refute the State’s evidence. His trial might not have been perfect, but on the whole it was a fair one.

2. The Failure to Submit a Custom Instruction under RCW 9A.08.020 (1) or (2) (a) and/ or the Failure to Give WPIC 10.51 was at Most Harmless Error under the Circumstances of this Case.

In light of the fact that the evidence showed that Becklin was at all times acting as the principle and that at all times was an active participant in the following and the keeping of McGee under surveillance Becklin's course of conduct was established by the State. The failure to give an instruction to the jury which stated, in one manner or another, that Becklin could be held criminally responsible for the consequences of the conduct he set in motion by directing others to follow and keep McGee under surveillance is at most harmless error. Not only is this proposition a matter of logic, it is for the most part self evident. There was substantial evidence showing that Becklin had a long standing purpose, plan and scheme, to cause the break-up in McGee's relationship with her present husband and force her to come back to him. This was the gravamen of the charge of stalking. The failure to give a custom instruction under RCW 9A.08.020 (1) or an instruction than one is responsible for the natural consequences of his acts did not cause prejudice to Becklin. Further, because such an instruction is not in the WPIC, even if the State had requested such an instruction, it is unlikely that would been given over the defendant's objection. In this jurisdiction, unless a requested instruction is an approved instruction or specifically supported by case law, the trial court will not giving such an instruction over a defense objection.

In *State v. Brown*, 147 Wash.2d 330, 340-341, 58 P.3d 889 (2002)

the court discuss the test for determining harmless error regarding jury instructions. Therein (Ibid) the court stated the following:

In *State v. Stein*, the jury was instructed under the alternative theories of conspiracy and accomplice liability. 144 Wash.2d 236, 241, 27 P.3d 184 (2001). In its determination that the trial court's conspiracy instructions were erroneous, the *Stein* court also undertook a harmless error analysis: "Instructional error is presumed to be prejudicial *unless it affirmatively appears to be harmless.*" *Id.* at 246, 27 P.3d 184 (emphasis added).

The United States Supreme Court has held that an erroneous jury instruction that omits an element of the offense is subject to harmless error analysis:

Unlike such defects as the complete deprivation of counsel or trial before a biased judge, an instruction that omits an element of the offense does not *necessarily* render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.

Neder v. United States, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). We find no compelling reason why this Court should not follow the United States Supreme Court's holding in *Neder*.

..... In order to conduct its analysis, the *Neder* court set forth the following test for determining whether a constitutional error is harmless: "[W]hether it appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" *Neder*, 527 U.S. at 15, 119 S.Ct. 1827 (quoting *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)). When applied to an element omitted from, or misstated in, a jury instruction, the error is harmless if that element is supported by uncontroverted evidence. *Neder*, 527 U.S. at 18, 119 S.Ct. 1827.

Therefore, we must thoroughly examine the record before us as to each defendant. In order to hold the error harmless, we must "conclude beyond a reasonable doubt that the jury verdict would have been the same absent the error." *Id.* at 19, 119 S.Ct. 1827.

Here the evidence of Becklin's direct involvement, his long

standing course of continuing conduct and the circumstantial evidence of his continued involvement in having his friends keep a continuing surveillance of Ms McGee and her activities show that the absence of the instruction was not prejudicial to Becklin. Becklin was not an accomplice. He was the only person who could have been charged with a crime under the circumstances. The evidence overwhelmingly established Becklin's involvement as a principle in the continued harassment and following of McGee. Becklin's actions constituted stalking and the jury so found. The error, if any there was, should have be considered harmless under the *Neder* standard.

Even without the *Neder* standard, under *State v. Carter*, 154 Wn.2d 71 (2005), the harmless error analysis should also be conducted under the facts of the case. Here, under the facts of the case analysis, Becklin could not have been prejudiced by the failure to give an accomplice liability, which instruction did not fit the State's of the defendant's theory of the case. The defense never argued that Becklin was a mere accomplice and thus the instruction would not have aided either party of the jury.

3. Whether a Violation of the RCW 9A.46.110 can be Committed by a Principal Though the Direction of Third Parties is Established by RCW 9A.08.020 (1) or (2) (a).

When the legislature enacts a law and does not except the application of another provision of the criminal statutes, the Legislature is presumed to have enacted that statute in consideration of that other

provisions of the criminal law. Implied repeals of statutes is disfavored and there is no basis on which to premise an implied repeal when the statutes can be harmonized. See *Tollycraft Yachts Corp. v. McCoy*, 122 Wash.2d 426, 439, 858n P 2d503. Thus RCW 9A.08.020 (1) and (2) (a), which establishes that an actor can commit crimes through his manipulation of the actions of innocent third parties who are not accomplices is to be incorporated into the kind of conduct that is regulated and prohibited by the Stalking statute, RCW 9A.46.110. Here the legislature having done nothing to exempt RCW 9A.08.020 (1) or (2) (a) from the scope of the stalking statute, when they were free to do, so should not allow a court to change the plain wording of a statute to include something that the Legislature chose not to include. There is no authority which supports an interpretation that RCW 9A.46.110 can only be committed if the principal actor commits each and every act necessary to constitute the elements of the crime.

As was stated in *State v. Tejada* 93 Wash.App. 907, 911, 971 P.2d 79 (1999), RCW 9A.08.020 is to be interpreted in harmony with RCW 9A.46.110. *Tejada* recognized the following:

Statutes are given a sensible construction. *Parada*, 75 Wash.App. at 230, 877 P.2d 231. When two statutes apparently conflict, they are read to harmonize and to reconcile their meanings whenever possible. *In re Personal Restraint of King*, 110 Wash.2d 793, 799, 756 P.2d 1303 (1988); *State v. Danner*, 79 Wash.App. 144, 149, 900 P.2d 1126 (1995). We strive to interpret a statute in a way that best advances the legislative intent and that avoids a strained and unrealistic interpretation. *Danner*, 79 Wash.App. at 149, 900 P.2d 1126.

Holding that the crime of stalking cannot be committed by a principal through the manipulation of third parties negates the protection the stalking statute was designed to inure to victims and violates the above stated principles of statutory construction. The Legislative finding stated in RCW 9A.46.010 states, in part, “that the prevention of serious personal harassment is an important governmental objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person’s privacy by acts and threat which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.” Nowhere in this chapter of the RCW is there language stating that this purpose is limited to the acts done by a single principal actor.

4. The Trial Court’s Response to the Jury Question of Whether Stalking Could Be Committed by Third Parties was a Correct Statement of Law

This argument is based on the ground that statutory construction would have required that both RCW 9A.46.110 and RCW 9A.08.020 be construed harmoniously. A harmonious construction would have indicated an affirmative response to the jury question which is what the trial court gave as its response. The trial court’s response was direct and cannot be construed as a comment on the evidence. To hold that the trial court committed error would violate the stated purpose and policy behind each of the two statutes. No attempt was by the Court of Appeal to harmonize both statutes purposes

CONCLUSION

That based on the above, The Plaintiff respectfully requests that this Petition for Review be granted and that this court consider, de novo, whether RCW 9A.46.110 and RCW 9A.08.020 can be harmonized and determine if one can commit the crime of stalking through the manipulation of third parties. Further, Petitioner requests this court to determine, *de novo*, whether an accomplice liability instruction would have been necessary under the facts of this case and if necessary, whether a harmless error analysis should have been conducted both under the *Neder* standard, and under facts of the case standard recognized in *State v. Carter*, 154 Wn.2d 71 (2005) and to determine, de novo, the correctness of the trial court's response to the jury's question during their deliberations.

Respectfully submitted,



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APPENDIX A

FILED

JUN 27 2006

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 23569-6-III
)	
Respondent,)	
)	Division Three
v.)	
)	
ANDRE PAUL BECKLIN,)	
)	PUBLISHED OPINION
Appellant.)	

SCHULTHEIS, J. — The crime of stalking as defined by the legislature in RCW 9A.46.110(1) cannot be accomplished through a third party. The State argued an accomplice liability theory in closing argument but did not offer an accomplice instruction before deliberations. In response to an inquiry during jury deliberations, the trial court instructed the panel that stalking could be accomplished through a third party. Because the instruction was both too late and an incorrect statement of the law, we reverse the defendant's stalking conviction.

FACTS

Mary McGee Ash and Andre Paul Becklin had a child together in October 1997. After their relationship deteriorated, Ms. Ash married Aaron Ash. On December 29, 2003,

Appendix A

Ms. Ash obtained an order for protection from the Ferry County Superior Court prohibiting Mr. Becklin from having any contact with her, directly or through others, or coming within 100 feet of her home.

On March 13, 2004, Ms. Ash reported to the sheriff that two people who she recognized drove Mr. Becklin's car slowly past her home a few times that day. On March 26, she filed another statement with the sheriff to report that after a court appearance on the parentage action involving her child with Mr. Becklin, he and another man who attended the hearing followed her home in separate cars and then circled the block. The men continued to follow her on an errand. She saw them driving around her neighborhood until dark.

On April 6, Mr. Becklin was charged with stalking. The information was amended the same day to include citation to the stalking statute, RCW 9A.46.110. On October 20, the State moved to amend the information, noting the hearing for November 2, the first day of trial. The State did not serve a copy of the proposed second amended information. The court granted the State's motion on the first day of trial over the defendant's objection. During trial, before the State rested, it again moved to amend the information. The court granted the motion over the defendant's objection.

During deliberations, the jury made two written inquiries to the court. In its first inquiry, the jury asked, "Is [a] third party included in stalking? Pursuant to our instructions of charges brought against the defendant can you stalk a party [through] a third

person?” Clerk’s Papers (CP) at 123. The court responded, “Yes” over the objection of defense counsel. CP at 123. The second question was, “Is there a stalking distance between the stalker and the victim?” CP at 124. The court responded, “No, refer to Instruction No. 6 for the elements of the crime that need to be proven.” CP at 124. The defense objected. The jury found Mr. Becklin guilty of felony stalking. *See* RCW 9A.46.110(5)(b). Mr. Becklin appeals.

DISCUSSION

a. Amendment of the Information

We review the trial court’s grant of a motion to amend an information for abuse of discretion. *State v. Brett*, 126 Wn.2d 136, 155, 892 P.2d 29 (1995). A trial court may allow the amendment of the information at any time before the verdict as long as the “substantial rights of the defendant are not prejudiced.” CrR 2.1(d). Mr. Becklin has the burden of demonstrating prejudice under CrR 2.1(d). *State v. Hakimi*, 124 Wn. App. 15, 26-27, 98 P.3d 809 (2004) (citing *State v. Gosser*, 33 Wn. App. 428, 435, 656 P.2d 514 (1982)), *review denied*, 154 Wn.2d 1004 (2005). Mr. Becklin argues he was prejudiced by the amendments to the information because the date of the charged conduct was altered, and he was not informed of the change in time to adequately prepare for trial.

The information was initially amended to include the statute. It read “*on or about March 26, 2004, . . .* [Mr. Becklin] repeatedly harassed or repeatedly followed another person.” CP at 3 (emphasis added). On the first day of trial, the second amended

information read, “*on or about the 13th day of March, 2004 and several times on or about the 26th day of March, 2004, . . . [Mr. Becklin] did . . . repeatedly harass or repeatedly follow another person.*” CP at 59 (emphasis added). Finally, the third amended information, ordered before the State rested, read, “*on or about the 13th day of March, 2004, up to and including on or about the 26th day of March, 2004, . . . [Mr. Becklin] did . . . repeatedly harass or repeatedly follow another person.*” CP at 121 (emphasis added).

This court has held that where only the date has changed, no alibi has been claimed, and the “principal element in the new charge is inherent in the previous charge and no other prejudice is demonstrated,” it is not an abuse of discretion to allow the amendment. *State v. Allyn*, 40 Wn. App. 27, 35, 696 P.2d 45 (1985) (quoting *Gosser*, 33 Wn. App. at 435). Here, the date of the offense was changed, no alibi defense was claimed, and the amendments had no effect on the elements.

Further, although Mr. Becklin complains on appeal that the matter was not continued, he did not request a continuance from the trial court. The failure to request a continuance shows he was not prejudiced by the amendment. *State v. Murbach*, 68 Wn. App. 509, 511, 843 P.2d 551 (1993); *State v. Brown*, 55 Wn. App. 738, 743, 780 P.2d 880 (1989).

Moreover, Mr. Becklin had pretrial notice of the allegations that the conduct took place on both of the dates at issue based on pretrial discovery, which defense counsel acknowledged he received.

Finally, Mr. Becklin argues that the third amended information was improper as it was done sua sponte by the court. He relies on *State v. Kenney*, 23 Wn. App. 220, 595 P.2d 52 (1979). The record clearly demonstrates that it was the prosecutor's decision to amend the charge. Therefore, unlike the defendant in *Kenney*, the court did not sua sponte direct the amendment.

b. Jury Instructions

When a jury is in deliberations, the trial court has discretion to determine whether to give further instructions upon request. *State v. Brown*, 132 Wn.2d 529, 612, 940 P.2d 546 (1997); see CrR 6.15(f)(1). We review claimed errors of law in jury instructions under a de novo standard of review. *State v. Barnes*, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005).

Here, the jury first asked the court if a "third party [is] included in stalking?" and "can you stalk a party [through] a third person?" CP at 123. The court responded affirmatively.

Under the stalking statute, "A person commits the crime of stalking if . . . [h]e or she intentionally and repeatedly harasses or repeatedly follows another person."¹ RCW 9A.46.110(1)(a). The statute provides definitions for "follows" and "harasses." RCW

¹ The victim must also reasonably fear personal injury or injury to another or to their property. RCW 9A.46.110(1)(b). The perpetrator must either intend to frighten, intimidate, or harass the victim or know or reasonably should know that the victim feels afraid, intimidated, or harassed. RCW 9A.46.110(1)(c)(i), (ii).

9A.46.110(6)(a), (b). Neither provides for third party performance. The definition for follows provides: -

“Follows” means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person’s home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

RCW 9A.46.110(a).

The definition for harasses refers to “unlawful harassment as defined in RCW 10.14.020.” RCW 9A.46.110(b).

“Unlawful harassment” means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

RCW 10.14.020(1).

That definition does not provide for harassment by means of a third party. The statute goes on to define course of conduct.

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of “course of conduct.”

RCW 10.14.020(2).

The State asserts that the instruction is a correct statement of the law. *See State v. Watkins*, 31 Wn. App. 485, 487, 643 P.2d 465 (1982) (affirming conviction when supplemental instruction was a correct statement of the law), *aff'd*, 99 Wn.2d 166, 660 P.2d 1117 (1983). The State relies on *State v. Parmelee*, 108 Wn. App. 702, 32 P.3d 1029 (2001). In *Parmelee*, Division One of this court held that two of the defendant's three protective order violation convictions merged with the felony stalking conviction. *Parmelee*, 108 Wn. App. at 711. There, the defendant told unwitting prison inmates that his former wife wished to receive sexually explicit mail from prisoners. *Id.* at 706-07. This is the course of conduct that resulted in the conviction, not the letter-writing by the third parties or the fact of the letters themselves, which are merely evidence of the defendant's course of conduct. *Parmelee* does not support the State's position.

A person can be held responsible for the conduct of another if "[a]cting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent or irresponsible person to engage in such conduct." RCW 9A.08.020(2)(a). One can also be held responsible for the conduct of another if the statute defining the crime specifically provides for it. RCW 9A.08.020(2)(b); *e.g.*, *State v. J.M.*, 101 Wn. App. 716, 730, 6 P.3d 607 (2000) (holding that harassment under RCW 9A.46.020 requires proof of a direct or indirect threat, which could be accomplished through a third person; therefore, the State

was not required to prove that the defendant knew that his threat to kill the high school principal that he communicated to his school friends would be further communicated to the principal, or that he knowingly engaged in words or conduct through the communication of others that placed the principal in reasonable fear the threat would be carried out), *aff'd*, 144 Wn.2d 472, 28 P.3d 720 (2001). Finally, a person can be responsible for the acts of another if “[h]e is an accomplice of such other person in the commission of the crime.”² RCW 9A.46.020(2)(c).

Here, the protective order involving Mr. Becklin covered third party contact.³ However, the statute does not include a violation of a protective order as a definition of harassment. A protective order violation merely elevates the crime to felony. RCW 9A.46.110(5)(b); *Parmelee*, 108 Wn. App. at 709-10. Mr. Becklin properly argued to the jury in his closing argument that he was not charged with violating the protective order.

² RCW 9A.08.020(3) provides:

“A person is an accomplice of another person in the commission of a crime if:

“(a) With knowledge that it will promote or facilitate the commission of the crime, he

“(i) solicits, commands, encourages, or requests such other person to commit it; or

“(ii) aids or agrees to aid such other person in planning or committing it; or

“(b) His conduct is expressly declared by law to establish his complicity.”

³ The order states, “Respondent is RESTRAINED from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly.” Ex. 15.

Mr. Becklin contends that the State was required to charge him as an accomplice. He is mistaken. An information that charges an accused as a principal provides adequate notice of potential accomplice liability. *State v. Davenport*, 100 Wn.2d 757, 764-65, 675 P.2d 1213 (1984). However, the court was required to give an accomplice instruction that provides the elements of accomplice liability. *State v. Stein*, 94 Wn. App. 616, 628, 972 P.2d 505 (1999), *aff'd*, 144 Wn.2d 236, 27 P.3d 184 (2001); *see Davenport*, 100 Wn.2d at 764-65. Here, it did not.

The State argued in closing, “Assistance. Aiding and abetting. That’s what it is, that’s what this case is about, is enlisting others to do your own dirty work, and that’s what Mr. Becklin did.” 3 Report of Proceedings (RP) at 331. Then, when the trial judge first asked the State for its comments with respect to the jury’s inquiry, if one can stalk a party through a third person, the prosecutor stated:

My view, of course, is that you can. It’s aiding and abetting. It’s a principal liability situation, and perhaps they should have had an instruction on that, that wasn’t prepared by my office.

3 RP at 340.

Similar to this case, in *Davenport*, a second degree burglary case, the prosecutor argued in closing that it was immaterial whether the defendant or the driver of the car actually went into the house, because ““they are accomplices.”” *Davenport*, 100 Wn.2d at 759. But the State had not charged the defendant as an accomplice and had not requested an accomplice liability instruction. *Id.* at 758. During deliberations, the jury sent a note to

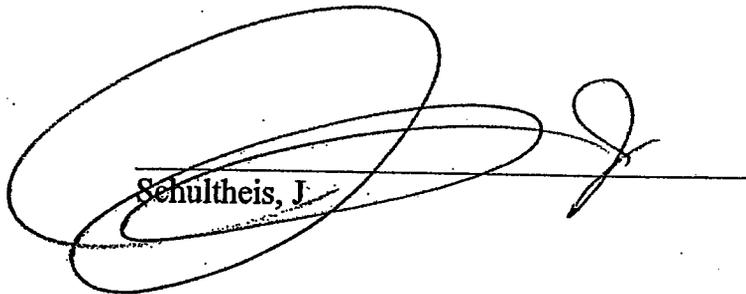
the trial judge requesting a definition of “‘accomplice’ in terms of participation in the crime of burglary, *i.e.*, does the defendant have to physically enter and remove the identified items or can he be simply an outside participant?” *Id.* at 759 (internal quotation marks omitted). The trial judge instructed the jury to “‘rely on the law given in the Court’s instructions.’” *Id.* The jury returned a guilty verdict. Our Supreme Court held that the prosecutor’s closing statement was improper because it introduced a legal theory of criminal liability that was neither charged nor contained in the jury instructions. *Id.* at 760. Further, the trial court failed to clarify that the jury could not consider accomplice liability. *Id.* at 764. Here, the judge erroneously instructed the jury that it could rely on a legal theory the prosecutor improperly introduced in closing remarks.

Counsel may argue all issues and theories covered by the instructions, whether raised by him or opposing counsel, but may not argue theories not covered by the instructions. *State v. Ransom*, 56 Wn. App. 712, 714, 785 P.2d 469 (1990). While the trial court has discretion to further instruct the jury after deliberations have begun, the supplemental instructions may not go beyond matters that either had been, or could have been, properly argued to the jury. *Id.* The State argued a partial accomplice theory without ensuring that the jury was properly instructed. Then the trial court attempted to instruct the jury regarding the belated accomplice theory. But it was too late for an accomplice instruction and the instruction the trial court gave was an incorrect statement of the law without an accomplice liability instruction.

In light of our ruling, we do not reach the jury's second inquiry.

CONCLUSION

The court abused its discretion by instructing the jury when it did and it erred as a matter of law in the incomplete manner it instructed the jury on accomplice liability. We therefore reverse.



Schultheis, J.

I CONCUR:



Thompson, J. Pro Tem.

No. 23569-6-III

SWEENEY, C.J. (dissenting)—I respectfully dissent from part “b. Jury Instructions” of the majority opinion for the following reasons:

(1) The trial judge here had broad discretion to give additional jury instructions even after deliberations had begun. *State v. Ng*, 110 Wn.2d 32, 42-43, 750 P.2d 632 (1988); *State v. Ransom*, 56 Wn. App. 712, 714, 785 P.2d 469 (1990). And a trial court may instruct the jury on accomplice liability even if the State failed to charge that theory in the information. *State v. Davenport*, 100 Wn.2d 757, 764-65, 675 P.2d 1213 (1984). This is because a defendant who is charged as a principal is on notice of accomplice liability. *State v. Teal*, 117 Wn. App. 831, 838, 73 P.3d 402 (2003), *aff'd*, 152 Wn.2d 333, 96 P.3d 974 (2004).

(2) There was ample evidence of accomplice liability.

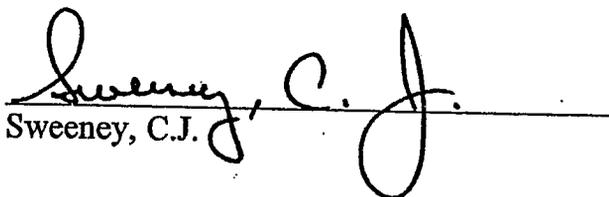
(3) And more significantly both the State and Andre Becklin argued accomplice liability to the jury. 3 Report of Proceedings at 294-96, 299, 314-15, 320, 322-23, 331.

(4) The court’s response to the jury’s inquiry was both limited and a correct statement of the law of accomplice liability, RCW 9A.08.020. Mr. Becklin’s argument here on appeal is primarily that the court’s further instruction amounted to a comment on

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the evidence. It did not. It was a simple and correct "yes" response to a legal question posed by the jury. -*State v. Woods*, 143 Wn.2d 561, 591, 23 P.3d 1046 (2001).

I would affirm Mr. Becklin's conviction.


Sweeney, C.J.

APPENDIX B

State of Washington)
) ss
County of Ferry)

I, JEAN BOOHER, County Clerk and Ex-Officio Clerk of the Superior Court of the State of Washington, for Ferry County, holding session at Republic, do hereby certify that the foregoing is a true and correct copy of the original as the same appears of file and of record in my office. IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said Court this

FILED CLERK'S OFFICE
FERRY COUNTY
DEC 29 2003
2:10 pm
JEAN BOOHER

27th day of July 2006

JEAN BOOHER
County Clerk, Ferry County, State of Washington

By Chris Burnside Deputy

Superior COURT OF WASHINGTON FOR <u>Ferry County</u>		NO. <u>03 2 00094 2</u>
<u>Mary Alison McGee</u> Petitioner	<u>8-31-70</u> DOB	ORDER FOR PROTECTION (ORPRT) (All Cases) (Clerk's Action Required) Court Address _____ Telephone Number: () _____
vs. <u>Andre Paul Becklin</u> Respondent	<u>2/27/50</u> DOB	

The court has jurisdiction over the parties, the minors, and the subject matter. If minors are involved, this state has exclusive continuing jurisdiction is the home state; no other state has exclusive continuing jurisdiction; other: _____

Notice of this hearing was served on the respondent by personal service service by mail pursuant to court order service by publication pursuant to court order other _____

This order is issued in accordance with the Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265.

Identification of Minors: No minors involved.

Name (First, Middle Initial, Last)	Age	Race	Sex
<u>Ace McGee Becklin</u>	<u>6</u>	<u>white</u>	<u>M</u>
<u>See Temporary Order</u>			

Based upon the petition, testimony, and case record, the court finds that the respondent committed domestic violence as defined in RCW 26.50.010 and represents a credible threat to the physical safety of petitioner, and **IT IS THEREFORE ORDERED THAT:**

<input checked="" type="checkbox"/>	Respondent is RESTRAINED from causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking <input checked="" type="checkbox"/> petitioner <input checked="" type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
-------------------------------------	---

JK Appendix B

X	<p>2 Respondent is RESTRAINED from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by Respondent's lawyer(s) with <input checked="" type="checkbox"/> petitioner <input checked="" type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p> <p>If both parties are in the same location, respondent shall leave.</p>
X	<p>3 Respondent is EXCLUDED from petitioner's <input checked="" type="checkbox"/> residence <input type="checkbox"/> workplace <input type="checkbox"/> school; <input type="checkbox"/> the day care or school of <input type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:</p> <p><input type="checkbox"/> Other</p> <p><input checked="" type="checkbox"/> Petitioner's address is confidential. <input type="checkbox"/> Petitioner waives confidentiality of the address which is:</p>
	<p>4. Petitioner shall have exclusive right to the residence that petitioner and respondent share. The respondent shall immediately VACATE the residence. The respondent may take respondent's personal clothing and tools of trade from the residence while a law enforcement officer is present.</p> <p><input type="checkbox"/> This address is confidential. <input type="checkbox"/> Petitioner waives confidentiality of this address which is:</p>
X	<p>5. Respondent is PROHIBITED from knowingly coming within, or knowingly remaining within <u>1 mile 100'</u> (distance) of: petitioner's <input checked="" type="checkbox"/> residence <input type="checkbox"/> workplace <input type="checkbox"/> school; <input type="checkbox"/> the day care or school of <input type="checkbox"/> the minors named in the table on page one <input type="checkbox"/> these minors only:</p> <p><input type="checkbox"/> other: <i>le</i></p>
	<p>6. Petitioner shall have possession of essential personal belongings, including the following:</p>
	<p>7. Petitioner is granted use of the following vehicle: Year, Make & Model _____ License No. _____</p>
	<p>8. Other:</p>
X	<p>9. Respondent shall participate in treatment and counseling as follows:</p> <p><input checked="" type="checkbox"/> domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at: _____</p> <p><input checked="" type="checkbox"/> parenting classes at: _____</p> <p><input checked="" type="checkbox"/> drug/alcohol treatment at: <i>le</i> _____</p> <p><input type="checkbox"/> other:</p>
	<p>10. Petitioner is granted judgment against Respondent for \$ _____ fees and costs.</p>

	11. Parties shall return to court on _____, at _____ .m. for review.
Complete only if the protection ordered involves children	
X	12. Petitioner is GRANTED the temporary care, custody, and control of <input checked="" type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
X	13. Respondent is RESTRAINED from interfering with petitioner's physical or legal custody of <input checked="" type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
X	14. Respondent is RESTRAINED from removing from the state <input checked="" type="checkbox"/> the minors named in the table above <input type="checkbox"/> these minors only:
X	15. The respondent will be allowed visitations as follows: <u>NO visitation.</u>
Petitioner may request modification of visitation if respondent fails to comply with treatment or counseling as ordered by the court.	
If the person with whom the child resides a majority of the time plans to relocate the child, that person must comply with the notice requirements of the Child Relocation Act. Persons entitled to time with the child under a court order may object to the proposed relocation. See RCW 26.09, RCW 26.10 or RCW 26.26 for more information.	

WARNINGS TO THE RESPONDENT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, the defendant may be subject to criminal prosecution in federal court under 18 U.S.C. §§ 2261, 2261A, or 2262.

Violation of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if the respondent has at least 2 previous convictions for violating a protection order issued under Titles 10, 26 or 74 RCW.

Effective immediately, and continuing as long as this protection order is in effect, the respondent may not possess a firearm or ammunition. 18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military

personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1). If the respondent is convicted of an offense of domestic violence, the respondent will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040.

YOU CAN BE ARRESTED EVEN IF THE PERSON OR PERSONS WHO OBTAINED THE ORDER INVITE OR ALLOW YOU TO VIOLATE THE ORDER'S PROHIBITIONS. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to Ferry County Sheriff's Office
 Police Department WHERE PETITIONER LIVES which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

The clerk of the court shall also forward a copy of this order on or before the next judicial day to Ferry County Sheriff's Office Police Department WHERE RESPONDENT LIVES which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.

- Petitioner shall serve this order by mail publication.
- Petitioner has made private arrangements for service of this order.
- Respondent appeared and was informed of the order by the court; further service is not required.

- The law enforcement agency where petitioner respondent lives shall:
 - assist petitioner in obtaining:
 - Possession of petitioner's residence personal belongings located at: the shared residence respondent's residence other: _____
 - Custody of the above-named minors, including taking physical custody for delivery to petitioner.
 - Use of above designated vehicle.
 - Other: _____
 - Other: _____

THIS ORDER FOR PROTECTION EXPIRES ON 12/29/2004 [Date].

If the duration of this order exceeds one year, the court finds that an order of less than one year will be insufficient to prevent further acts of domestic violence.

DATED Dec. 29, 2003 at 2:10 a.m./p.m.

[Signature]
JUDGE/COURT COMMISSIONER

Presented by:

May Albin McJ... 12/15/03
Petitioner Date

I acknowledge receipt of a copy of this Order for Protection:

Respondent Date