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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LEO B. BUNKER, et al,

Petitioners.

STATE'S SUPPLEMENTAL BRIEF

DANIEL T. SATTERBERG
King County Prosecuting Attorney

RANDI J. AUSTELL
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

ORIGINAL

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A. ISSUE

Where Divisions One and Two of the Court of Appeals have conflicting statutory constructions of former RCW 26.50.110, should this Court affirm Division One's interpretation, which furthers the legislative intent and avoids absurd results?

B. STATEMENT OF THE CASE

1. LEO BUNKER

a. Procedural Facts.

The State charged defendant Leo Bunker with Domestic Violence Felony Violation of a No-Contact Order (FVNCO).¹ BCP 23.² Bunker was convicted by jury as charged. BCP 25-26. The court sentenced Bunker to a standard range sentence.³ BCP 60-68. Bunker timely appealed. BCP 69.

b. Substantive Facts.

On August 18, 2005, Washington State Patrol Trooper Hurd stopped Bunker for speeding in his semi-truck. 11/6/06 RP 46-49. Hurd checked Bunker's identity against police records and learned that there

¹ The allegation was a felony because Bunker had two prior convictions for violations of domestic violence court orders for protection. Ex. 1, 2, 8. See RCW 26.50.110(5).

² The State adopts the appellants' designations of clerk's papers. See Petition at 4 n.4.

³ The Court of Appeals remanded this cause for resentencing to enable the trial court to exercise its discretion in determining whether an exceptional sentence below the standard range is warranted. *State v. Bunker*, 144 Wn. App. 407, 422, 183 P.3d 1086 (2008). The State did not seek review of that decision.

were two valid court orders for protection in which Bunker was the Respondent and Lillian Hiatt was the Petitioner. 11/6/06 RP 50-51; Ex. 1, 2. After Hiatt was positively identified as Bunker's passenger, the troopers arrested Bunker for violating the no-contact orders.⁴ 11/6/06 RP 57-59.

2. DONALD WILLIAMS

a. Procedural Facts

The State charged defendant Donald Williams with three counts of Domestic Violence FVNCO.⁵ WCP 9-11. Williams was convicted by jury as charged. WCP 36-38. The court imposed a standard range sentence. WCP 43-50.

On May 5, 2008, the Court of Appeals, Division I, affirmed Bunker's and Williams' convictions in a published opinion (144 Wn. App. 407, 183 P.3d 1086).⁶ Bunker and Williams filed a petition for review, alleging that the decision by Division One conflicted with two decisions by Division Two (*State v. Madrid*, 145 Wn. App. 106, 192 P.3d 909 (2008) and *State v. Hogan*, 145 Wn. App. 210, 192 P.3d 915 (2008)) and with other decisions of this Court (*State v. Lilyblad*, 163 Wn.2d 1, 177

⁴ A full statement of the facts of the case with citations to the record is contained in the State's opening brief to the Court of Appeals.

⁵ The allegations were felonies because Williams had two prior convictions for violations of domestic violence no-contact orders (WCP 33), and the allegation in Count I involved an assault (WCP 9). See RCW 26.50.110(4), (5).

⁶ The Court of Appeals consolidated Bunker's cause with Donald Williams' cause.

P.3d 686 (2008) and *In re Detention of Elmore*, 162 Wn.2d 27, 168 P.3d 1285 (2007)). On December 2, 2008, this Court granted review.

b. Substantive Facts.

On March 13, 2006, Williams was prohibited by a court order from having contact with Linda Poole, except for telephonic contact solely for the purpose of arranging visitation of a daughter whom they shared in common. 4WRP 44;⁷ Ex. 1. On that date, on three separate occasions, Williams violated the court order.

i. Count One.

While Poole waited in a grocery store check-out line, Williams called. 4WRP 47. He was very angry. 4WRP 47. Williams accused Poole of being unfaithful; he called her a "slut" and a "whore." 4WRP 48.

Williams was at Poole's home when she arrived; he was angry and intoxicated. 4WRP 49. Williams greeted Poole, "You fucking bitch." 4WRP 50. He ranted, "If you weren't so busy fucking your customers, then you'd have more time to spend at home with me." 4WRP 50.

Poole told Williams that she was leaving to pick their daughter up from daycare. 4WRP 51. Williams insisted upon going with her; he tried to take Poole's car keys from her. 4WRP 51. He grabbed her wrist, but

⁷ The State adopts Williams' designation of the verbatim report of proceedings. See Petition at 4 n.5.

Poole yanked it free. 4WRP 51. Williams pushed Poole, who then got into the truck, locked the door, and drove to their daughter's daycare. 4WRP 51.

ii. Count Two.

By the time that Poole had driven to daycare, Williams had called two or three additional times. 4WRP 52. Williams screamed at Poole, calling her a "bitch," a "cunt," a "whore," and a "fucking bitch." 5WRP 14. He said that he was going to trash the house, rip the telephone and the computer out of the wall, and kidnap the children's dog so that they could never see it again. 4WRP 54; 5WRP 14-15.

The police were called; an officer took a report and then followed Poole and her daughter home to ensure their safety — Williams was not there when they arrived. 4WRP 61, 63; 5WRP 18.

iii. Count Three.

Some time after arriving home, Poole saw through the window by the front door that Williams was standing next to the door rattling the doorknob. 4WRP 62-64. The door, however, was locked and Williams could not get inside. 4WRP 64.

Williams was calm, but more intoxicated than when Poole had encountered him earlier in the day. 4WRP 64. He persisted in his demand that Poole allow him inside, but Poole told him that he needed to leave —

he was not supposed to be at the house. 4WRP 64-65. Poole was afraid of Williams; she called the police and filed another incident report.⁸ 4WRP 65-66.

C. **ARGUMENT**

1. **DIVISION ONE CORRECTLY HELD THAT FORMER RCW 26.50.110(1) CRIMINALIZES ALL CONTACTS THAT VIOLATE PRIOR COURT ORDERS, NOT SIMPLY THOSE "FOR WHICH AN ARREST IS REQUIRED."**

The statute in effect when the State charged Bunker and Williams provided in relevant part:

Whenever an order is granted under this chapter [or] chapter ... 10.99... and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, *for which an arrest is required under RCW 10.31.100(2) (a) or (b),*⁹ is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

Former RCW 26.50.110(1) (italics added).

Division One's reading of former RCW 26.50.110 is consistent with the legislative intent that a willful violation of a no-contact provision

⁸ A full statement of the facts of the case with citations to the record is contained in the State's opening brief to the Court of Appeals.

⁹ The full text of RCW 10.31.100(2) (a) and (b) is appended at A-1.

of a court order is a criminal offense. Laws of 2007, ch. 173, § 1. The court in *Bunker* and *Williams* held:

Notwithstanding the last antecedent rule,¹⁰ the structure of the statute as a whole indicates that the legislature intended the phrase "for which an arrest is required under RCW 10.31.100(2)(a) or (b)" to modify the previous two complete clauses, respectively. That is, "RCW 10.31.100(2)(a)" refers to the clause "or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location," while "RCW 10.31.100(2) ... (b)" refers to "or of a provision of a foreign protection order specifically indicating that a violation will be a crime."

Bunker, 144 Wn. App. at 419 (citing former RCW 26.50.110 (see Appendix A-2)). The court noted that its construction was not "particularly surprising" because "the circumstances referenced are precisely those 'for which an arrest is required' in each respective subsection of RCW 10.31.100(2)." *Bunker*, at 419-20. "It also has the advantage of being the only construction whereby each of the subsections of RCW 10.31.100(2)—(a) and (b)—is not being applied to circumstances that, by its own terms, are governed solely by the *other* subsection." *Id.* at 420.

¹⁰ According to the last antecedent rule, "unless a contrary intention appears in the statute, qualifying words and phrases refer to the last antecedent.... Yet the presence of a comma before the qualifying phrase is evidence the qualifier is intended to apply to all antecedents instead of only the immediately preceding one." *City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006) (internal citations and quotation marks omitted).

Division One's interpretation of former RCW 26.50.110(1) furthers the legislature's intention of holding domestic violence abusers accountable when they willfully violate court-ordered restraint provisions. Accordingly, this Court should affirm Division One's decision in *Bunker* and *Williams*.

2. FORMER RCW 26.50.110 IS AMBIGUOUS.

The interpretation of a statute is a question of law that is reviewed de novo. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005). "When statutory language is susceptible to more than one reasonable interpretation, it is considered ambiguous." *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001). The primary goal of statutory construction is to ascertain and give effect to the legislature's intent and purpose. *State v. Williams*, 158 Wn.2d 904, 908, 148 P.3d 993 (2006). If a statute is ambiguous and that intent cannot be discerned from the plain text of the statute, this Court will resort to principles of statutory construction, legislative history, and relevant case law to assist in interpreting it. *Cockle*, at 808.

In discerning and implementing the legislative intent, a court considers the entire statute in which the provision is found, as well as related statutes or other provisions in the same act that disclose a statutory scheme as a whole. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318

(2003). "Unlikely, absurd or strained consequences resulting from a literal reading should be avoided." *State v. McDougal*, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992). Finally, this Court does "not add to or subtract from the clear language of a statute *unless that is imperatively required to make the statute rational.*" *State v. Sullivan*, 143 Wn.2d 162, 175, 19 P.3d 1012 (2001) (emphasis added).

In general, the intent of the legislature is to be deduced from what it said. *In re Kurtzman's Estate*, 65 Wn.2d 260, 263, 396 P.2d 786 (1964). However, as Division One noted, the statute at issue is "unfortunately not a virtuosic specimen of legislative drafting." *Bunker*, 144 Wn. App. at 413.

The plain text of the statute is susceptible to more than one reasonable interpretation because it is not obvious from the structure of the section what the phrase "for which an arrest is required under RCW 10.31.100(2)(a) or (b)" is intended to modify. *Id.* at 415. For example:

It may be that it only applies to the clause "a provision of a foreign protection order specifically indicating that a violation will be a crime." Perhaps, instead, it modifies that clause and the clause "a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location." Or perhaps it modifies both of those clauses as well as the phrase "a violation of the restraint provisions."

Id. The plain language of the statute does not indicate which construction is most plausible; the statute is thus ambiguous. *Id.*

The statute must, therefore, be interpreted to give effect to the legislature's intent and purpose. *Williams*, 158 Wn.2d at 908. Because Division One's interpretation is in accord with the legislature's intention to criminalize willful violations of restraint provisions of no-contact orders, its decision in *Bunker* and *Williams* should be affirmed.

3. **THE LEGISLATURE HAS CONSISTENTLY PRONOUNCED A CLEAR INTENT TO PREVENT DOMESTIC VIOLENCE THROUGH ENACTMENT OF LAWS TO INCREASE SAFETY FOR DOMESTIC VIOLENCE VICTIMS AND TO HOLD DOMESTIC VIOLENCE PERPETRATORS ACCOUNTABLE.**

In 1979, the legislature enacted the Domestic Violence Act, stating its intent to "[a]ssure the victim of domestic violence the maximum protection from the abuse which the law and those who enforce it can provide." RCW 10.99.010. The legislature stated its intent to "stress the enforcement of the laws to protect the victim [of domestic violence] and [to] communicate the attitude that violent behavior is not excused or tolerated." RCW 10.99.010. The legislature recognized the "[l]ikelihood of repeated violence directed at those who have been victims of domestic violence in the past," so it authorized the issuance of a no-contact order

where a court released a defendant from custody. RCW 10.99.040.¹¹

Even in its original incarnation, the statute required that the no-contact order notify the defendant that any willful violation of the order is a criminal offense. Former RCW 10.99.040(2).

To better effectuate its stated intent, the legislature in 1984 enacted the Domestic Violence Prevention Act ("DVPA"), chapter 26.50 RCW. LAWS OF 1984, CH. 263, § 2. As part of the DVPA, the legislature included the mandatory arrest provision in RCW 26.50.110(2). *See* Appendix A-4. RCW 10.31.100(2) was amended at the same time as the DVPA. LAWS OF 1984, CH. 263, § 19. Consequently, once a law enforcement officer had probable cause to believe that a domestic violence crime had been committed, arrest was mandatory. LAWS OF 1984, CH. 263 also defined "Domestic Violence" crimes as including violations of provisions of protection orders.¹² RCW 10.99.020.

Before the legislature's enactment of the 2000 amendments to RCW 26.50.110(1), violation of a no-contact provision constituted a misdemeanor. *Jacques v. Sharp*, 83 Wn. App. 532, 542, 922 P.2d 145

¹¹ The legislature has modified RCW 10.99.040 several times since its enactment in 1979. However, it has always required that a no-contact order notify the defendant that any willful violation is a criminal offense. The current version of RCW 10.99.040 is appended at A-3.

¹² LAWS 1995, CH. 246, § 21 included violations of no-contact orders within "Domestic violence" crimes. RCW 10.99.020.

(1996); *see also Bunker*, 144 Wn. App. at 417 n.3. Significantly, the legislature did not amend RCW 26.50.110(1) after the court's decision in *Sharp*, holding that a willful violation of the restraint provision—or the no-contact with the victim of domestic violence provision—constituted a criminal offense. *See In re Personal Restraint of Quackenbush*, 142 Wn.2d 928, 936, 16 P.3d 638 (2001) (the legislature is presumed to know how the courts have construed and applied the statute.). Thus, legislative inaction for thirteen plus years also supports Division One's interpretation.

In 2000, when the legislature did amend RCW 26.50.110(1), the intent of the legislature was clear: "This bill is a collaborative effort that will *strengthen domestic violence laws*." WASHINGTON HOUSE BILL REPORT, 2000 REGULAR SESSION, SB 6400 at 7 (emphasis supplied). The two stated purposes of the bill were to: (1) consolidate all violations of court orders under one statute, and (2) authorize the Department of Social and Health Services to seek a domestic violence protection order on behalf of vulnerable adults.¹³ The amendment was also a result, in part, of a decision from Division Two holding that a batterer could be punished only

¹³ The amendment was, in part, based on the recommendation of former Governor Locke's Domestic Violence Action Group, which was formed to review the case of Linda David and "recommend ways to improve the State's response to domestic violence." WASHINGTON SENATE BILL REPORT, 2000 REGULAR SESSION, SB 6400 at 2. The years of abuse that Ms. David endured at the hands of her husband and "caregiver," Vincent David, are detailed in a Court of Appeals' opinion. *See State v. David*, 118 Wn. App. 61, 63-66, 74 P.3d 686 (2003), *opinion withdrawn in part, modified in part by State v. David*, 130 Wn. App. 232 (2005).

with contempt of court when he violated a court order prohibition against coming within a specified distance of a victim's house or other location, and that only contempt of court was available because the prohibition was not a "restraint provision" within the meaning of RCW 26.50.110.¹⁴

WASHINGTON SENATE BILL REPORT, 2000 REGULAR SESSION, SB 6400 at 1-2.

Moreover, the legislature recently reaffirmed its intent. Substitute House Bill 1642 removed the language "for which an arrest is required under RCW 10.31.100(2)." *See* Appendix A-5. (LAWS 2007, CH. 173). The legislative intent is explicit: "The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a *criminal offense* and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act." The legislature stated that it was *always its intent* for willful violations of a no-contact provision of a court order to constitute a criminal offense: "This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any provision in the Revised Code of Washington." Laws of 2007, ch. 173, § 1.

¹⁴ *See State v. Chapman*, 96 Wn. App. 495, 500-01, 980 P.2d 295 (1999), *reversed*, 140 Wn.2d 436, 998 P.2d 282 (2000).

This Court may use the statute's current version to resolve the conflict between Division One's and Division Two's interpretations because it states the legislature's original intent more clearly and completely. *See Bunker*, 144 Wn. App. at 415-17 (citations omitted). "When an amendment clarifies existing law and where that amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial and retroactive. This is particularly so where an amendment is enacted during a controversy regarding the meaning of the law." *Bunker*, at 416-17 (quoting *Tomlinson v. Clarke*, 118 Wn.2d 498, 510-11, 825 P.2d 706 (1992)).

Bunker and Williams contend that Division One's reliance on subsequent legislative history conflicts with this Court's recent decision in *In re Detention of Elmore*, 162 Wn.2d 27, 168 P.3d 1285 (2007). Their contention is without merit.

In *Elmore*, this Court clarified that an amendment may apply retroactively if "the amendment is curative and 'clarifies or technically corrects ambiguous statutory language.'" *Elmore*, at 35-36 (citations omitted). Furthermore, a court may consider the amendment curative and remedial if the amendment "clarifies . . . an ambiguous statute without changing prior case law constructions of the statute." *Id.* at 36 (citations omitted). As Division One held, the 2007 amendment clarified an

ambiguous statute and did not change prior case law constructions of the statute. *Bunker*, at 416-17. Consequently, Division One's retroactive application of the curative statute should be affirmed.

Division One's interpretation of former RCW 26.50.110 is consistent with the statute's history and purpose. Permitting the State to criminally prosecute all willful violations of restraint provisions of court orders of protection is fully consistent with this Court's cases,¹⁵ and raises no concerns that would justify overriding the clear evidence of the history and purpose of the statute.

4. ALTERNATIVELY, IN ORDER TO EFFECTUATE THE LEGISLATIVE INTENT, THIS COURT MAY SUBTRACT THE EXTRANEOUS REFERENCE TO RCW 10.31.100.

The grammatically awkward structure of the sentence in subsection (1) of former RCW 26.50.110 has triggered the conflict between Division One and Division Two. Although generally the intent of the legislature is to be deduced from what it said, in a case such as this, where the phrase "for which an arrest is required" is read as a modifying clause—whether it modifies each previous clause or only the last antecedent clause—the

¹⁵ This Court has recognized the legislative intent of the statutory scheme as a whole. *Danny v. Laidlaw Transit Services, Inc.*, __ Wn.2d __, 193 P.3d 128, 132-35 (2008) ("The legislature's articulated public policy is 'truly public' in nature."); *State v. Dejarlais*, 136 Wn.2d 939, 944 P.2d 90 (1998) (the statutory scheme as a whole reflects the legislature's clear intent to criminalize violation of court orders for protection). *See also State v. Dejarlais*, 88 Wn. App. 297, 302-03, 944 P.2d 1110 (1997) (discussing the legislative intent and public policy underpinning RCW 26.50.110), *aff'd*, 136 Wn.2d 939 (1998).

result is contrary to the codified statement of the legislative intent, the legislative history, the statutory scheme, and the relevant case law. Consequently, this Court could subtract from the clear language of the statute because it is "imperatively required to make the statute rational." *See Sullivan*, 143 Wn.2d at 175.

As an alternative to Division One's interpretation, this Court could read the phrase "for which an arrest is required" as an extraneous reiteration of the legislature's determination that, once a police officer has probable cause to believe that a person has committed a crime of domestic violence, an arrest is required. *See RCW 26.50.110(2)*. If the legislature wanted to make mandatory arrest an element of the gross misdemeanor crime it could have adequately addressed it by simply referring to § (2) of the very same statute instead of referring back to a different statute. By removing the phrase at issue in § (1) of RCW 26.50.110 and simply letting § (2) in the same statute define the law enforcement obligation to make arrests, it seems clear that the reference to a different statute regarding mandatory arrest was superfluous. Consequently, this Court could give effect to the legislative intent, and make rational sense of the statute, by deleting the ambiguous phrase from the statute's language. *See Sullivan*, 143 Wn.2d at 175 (citing *State v. Taylor*, 97 Wn.2d 724, 728, 649 P.2d 633 (1982)). *But See State v. Lilyblad*. 163 Wn.2d 1, 177 P.3d 686 (2008)

(an appellate court "may not interpret any part of a statute as meaningless or superfluous.").

5. DIVISION TWO'S INTERPRETATION OF FORMER RCW 26.50.110 IS WRONG BECAUSE IT CONTRAVENES THE LEGISLATIVE INTENT AND LEADS TO ABSURD RESULTS.

Despite the legislature's repeated and unequivocal declarations that "domestic violence is an immense problem that impacts entire communities,"¹⁶ and judicial recognition of a "public policy interest in preventing domestic violence,"¹⁷ Division Two interpreted language in former RCW 26.50.110(1) that refers to RCW 10.31.100(2), as a modifying phrase that results in the decriminalization of willful violations of no-contact orders. *See Madrid*, 145 Wn. App. 106 and *Hogan*, 145 Wn. App. 210. To read the language as modifying each antecedent clause undermines the legislative intent and leads to unlikely, absurd or strained consequences. This Court should, therefore, reject the claim.

Division Two concluded that a willful violation of a no-contact provision of a court order is not a crime — only a willful violation of a no-contact provision that involves acts or threats of violence or entering or remaining in a prohibited location is a crime.

¹⁶ *Laidlaw Transit Services, Inc.*, 193 P.3d at 135 (citing LAWS OF 1992, CH. 111, § 1).

¹⁷ *Id.* at 136 (citing, among other cases, *State v. Dejarlais*, 88 Wn. App. 297, 304, 944 P.2d 1110 (1997)) ("The Legislature has clearly indicated that there is a public interest in domestic violence protection orders."), *aff'd*, 136 Wn.2d 939 (1998).

In reaching this conclusion, both the *Madrid* and *Hogan* opinions categorize RCW 26.50.110(1) with regard to the phrase pertaining to mandatory arrest under RCW 10.31.100(2)(a) and (b) as "unambiguous."¹⁸ *Madrid*, at 108; *Hogan*, at 218. However, Division Two does not explain why, if the statute is unambiguous, these opinions make reference to the "last antecedent rule," a rule of statutory construction that does not come into play if the statute is unambiguous. And if the statute is ambiguous, why are none of the other rules of statutory interpretation referenced? *See In re Personal Restraint of Lofton*, 142 Wn. App. 412, 415, 174 P.3d 703 (2008):

We first attempt to effectuate the plain meaning of the words used by the legislature, examining each provision in relation to others in search of a consistent construction of the whole. . . . We consult outside sources and apply the rules of statutory construction only if the statute is ambiguous, meaning susceptible to more than one reasonable interpretation.

(Internal citations omitted). Furthermore, "[t]he primary objective of statutory construction is to carry out the intent of the legislature. . . . [T]he interpretation adopted should be the one that best advances the legislative

¹⁸ The court in *Madrid* stated, "A plain reading reveals that the *only possible ambiguity* in former RCW 26.50.110(1) is whether the phrase 'for which an arrest is required under RCW 10.31.100(2)(a) or (b)' ('arrest provision') applied to each of the four prior antecedents of RCW 26.50.110(1), or only to the immediately preceding one." *Madrid*, at 114-15 (emphasis added). This statement is perplexing in light of the fact that the entire crux of the issue in these consolidated cases is whether that particular phrase is ambiguous.

purpose." *State Dep't of Transp. v. State Employees' Ins. Bd.*, 97 Wn.2d 454, 458-59, 645 P.2d 1076 (1982).

As a preliminary matter, the last antecedent rule is not inflexible or uniformly binding. *State v. McGary*, 122 Wn. App. 308, 314, 93 P.3d 941 (2004). The rule is simply an aid to courts in discerning legislative intent *where no contrary intention appears in a statute*. *Fernandez*, 155 Wn.2d at 593. Furthermore, the rule should only be applied where "the grammatically correct construction of the statute makes sense within the statutory scheme as a whole." *McGary*, at 314 (application of the last antecedent rule would conflict with "the codified statement of legislative intent and the statutes defining the other degrees of criminal mistreatment," and therefore should not control). Significantly, Division Two's application of the rule to the exclusion of "more fundamental principles of statutory construction"¹⁹ undermines the effective application of the statute in a manner that the legislature would not have intended.

The construction expressed in Division Two's decisions, would frustrate the legislature's purpose of "strengthen[ing] domestic violence laws." WASHINGTON HOUSE BILL REPORT, 2000 REGULAR SESSION, SB 6400 AT 7. The legislature would not have intended to address what it regarded

¹⁹ *Bunker*, 144 Wn. App. at 418.

as the intolerable²⁰ problem of domestic violence by enacting a law that would decriminalize willful violations of court orders issued for the protection of domestic violence victims. Nothing in the legislative history of RCW 26.50.110 supports Division Two's statutory interpretation; this Court should, therefore, reject the claim.

Moreover, Division Two's interpretation leads to unlikely, absurd or strained consequences. For example, criminal sanctions apply to a respondent who visits the petitioner's workplace even if no contact occurs; yet a respondent who uses abusive language in a telephone conversation with a protected party, as did Mr. Williams, avoids criminal sanctions. Additionally, the no-contact order would have to delineate every possible future location of the petitioner for the duration of the order. *See* RCW 10.31.100(2) (in order for the contact to be that "for which an arrest is required," the defendant must "knowingly come within, or knowingly remain within, a specified distance of a location..."). Thus, unless the issuing judge was omniscient, and able to list all of the future locations of the victim, under Division Two's reading of the statute, RCW 26.50.110 could offer no meaningful protection to petitioners. Accordingly, Division Two's reading leads to unlikely, absurd or strained consequences; it is, therefore, untenable. *See McDougal*, 120 Wn.2d at 350.

²⁰ *See* RCW 10.99.010.

By contrast, Division One's decision in *Bunker* and *Williams* is based on the recognition that the legislature always intended to make "nearly any conceivable domestic violence no-contact order violation a criminal offense." *Bunker*, 144 Wn. App. at 415-16. Because Division One's reading is consistent with the statute's aims, its interpretation should be affirmed.

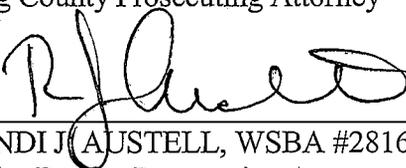
D. CONCLUSION

Division One's interpretation of former RCW 26.50.110 is consistent with the clear public policy of protecting domestic violence victims and holding their abusers accountable. The statutory language, legislative history, and cases interpreting it all support Division One's interpretation that all willful violations of the restraint provisions of no-contact orders are subject to criminal sanctions. Accordingly, this Court should affirm Division One's decision in *Bunker* and *Williams*.

DATED this 10 day of February 2009.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
RANDI J. AUSTELL, WSBA #28166
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

APPENDICES

RCW 10.31.100 provides:

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime.

Former RCW 26.50.110(1) provided:

Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2) (a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

The court in *Bunker* and *Williams* interpreted former RCW 26.50.110(1) as the below graphic indicates (the statutory provision and the clause or clauses it modifies are correlated by color):

Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2) (a) or [RCW 10.31.100(2)](b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

RCW 10.99.040 currently provides:

(4)(a) Willful violation of a court order issued under subsection (2) or (3) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows 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."

At the time of enactment, RCW 26.50.110(2) stated:

A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, if the person restrained knows of the order.

RCW 26.50.110, in its current form, provides:

(1)(a) Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location; or

(iv) A provision of a foreign protection order specifically indicating that a violation will be a crime.

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1642

Chapter 173, Laws of 2007

60th Legislature
2007 Regular Session

NO-CONTACT ORDERS--CRIMINAL VIOLATIONS

EFFECTIVE DATE: 07/22/07

Passed by the House February 28, 2007
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 10, 2007
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved April 21, 2007, 10:49 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1642 as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

April 23, 2007

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1642

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Judiciary (originally sponsored by
Representatives Pedersen, Lantz, Williams, Moeller, Wood, Kirby,
O'Brien, Chase, Ormsby and Green)

READ FIRST TIME 02/16/07.

1 AN ACT Relating to criminal violations of no-contact orders,
2 protection orders, and restraining orders; amending RCW 26.50.110;
3 creating a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. Sec. 1. The legislature finds this act necessary to
6 restore and make clear its intent that a willful violation of a
7 no-contact provision of a court order is a criminal offense and shall
8 be enforced accordingly to preserve the integrity and intent of the
9 domestic violence act. This act is not intended to broaden the scope
10 of law enforcement power or effectuate any substantive change to any
11 criminal provision in the Revised Code of Washington.

12 Sec. 2. RCW 26.50.110 and 2006 c 138 s 25 are each amended to read
13 as follows:

14 (1) (a) Whenever an order is granted under this chapter, chapter
15 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid
16 foreign protection order as defined in RCW 26.52.020, and the
17 respondent or person to be restrained knows of the order, a violation

1 of any of the following provisions of the order is a gross misdemeanor,
2 except as provided in subsections (4) and (5) of this section:

3 (i) The restraint provisions(~~(, or of)~~) prohibiting acts or threats
4 of violence against, or stalking of, a protected party, or restraint
5 provisions prohibiting contact with a protected party;

6 (ii) A provision excluding the person from a residence, workplace,
7 school, or day care(~~(, or of)~~);

8 (iii) A provision prohibiting a person from knowingly coming
9 within, or knowingly remaining within, a specified distance of a
10 location(~~(, or of)~~); or (~~of~~)

11 (iv) A provision of a foreign protection order specifically
12 indicating that a violation will be a crime(~~(, for which an arrest is~~
13 required under RCW 10.31.100(2) (a) or (b), is a gross misdemeanor
14 except as provided in subsections (4) and (5) of this section).

15 (b) Upon conviction, and in addition to any other penalties
16 provided by law, the court may require that the respondent submit to
17 electronic monitoring. The court shall specify who shall provide the
18 electronic monitoring services, and the terms under which the
19 monitoring shall be performed. The order also may include a
20 requirement that the respondent pay the costs of the monitoring. The
21 court shall consider the ability of the convicted person to pay for
22 electronic monitoring.

23 (2) A peace officer shall arrest without a warrant and take into
24 custody a person whom the peace officer has probable cause to believe
25 has violated an order issued under this chapter, chapter 7.90, 10.99,
26 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order
27 as defined in RCW 26.52.020, that restrains the person or excludes the
28 person from a residence, workplace, school, or day care, or prohibits
29 the person from knowingly coming within, or knowingly remaining within,
30 a specified distance of a location, if the person restrained knows of
31 the order. Presence of the order in the law enforcement computer-based
32 criminal intelligence information system is not the only means of
33 establishing knowledge of the order.

34 (3) A violation of an order issued under this chapter, chapter
35 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign
36 protection order as defined in RCW 26.52.020, shall also constitute
37 contempt of court, and is subject to the penalties prescribed by law.

1 (4) Any assault that is a violation of an order issued under this
2 chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of
3 a valid foreign protection order as defined in RCW 26.52.020, and that
4 does not amount to assault in the first or second degree under RCW
5 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in
6 violation of such an order that is reckless and creates a substantial
7 risk of death or serious physical injury to another person is a class
8 C felony.

9 (5) A violation of a court order issued under this chapter, chapter
10 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign
11 protection order as defined in RCW 26.52.020, is a class C felony if
12 the offender has at least two previous convictions for violating the
13 provisions of an order issued under this chapter, chapter 7.90, 10.99,
14 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order
15 as defined in RCW 26.52.020. The previous convictions may involve the
16 same victim or other victims specifically protected by the orders the
17 offender violated.

18 (6) Upon the filing of an affidavit by the petitioner or any peace
19 officer alleging that the respondent has violated an order granted
20 under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34
21 RCW, or a valid foreign protection order as defined in RCW 26.52.020,
22 the court may issue an order to the respondent, requiring the
23 respondent to appear and show cause within fourteen days why the
24 respondent should not be found in contempt of court and punished
25 accordingly. The hearing may be held in the court of any county or
26 municipality in which the petitioner or respondent temporarily or
27 permanently resides at the time of the alleged violation.

Passed by the House February 28, 2007.

Passed by the Senate April 10, 2007.

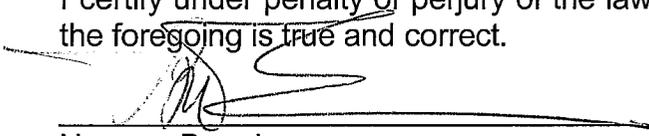
Approved by the Governor April 21, 2007.

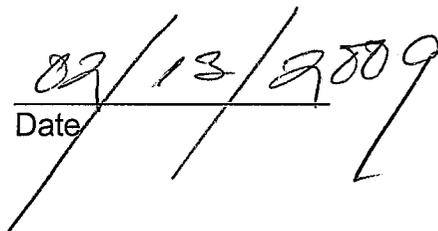
Filed in Office of Secretary of State April 23, 2007.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher Gibson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the State's Supplemental Brief, in STATE V. LEO BUNKER, et al, Cause No. 81921-1, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.


Name Bora Ly
Done in Seattle, Washington


Date