

59536-9

59536-9

81921-1
NO. 59536-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
DONALD WILLIAMS,
Appellant.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE JEFFREY M. RAMSDELL

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

The defendant urges this Court to interpret RCW 26.50.110 to criminalize only willful violations of a no-contact provision of a court order *for which an arrest is required*. However, when a statute is unambiguous and the legislative intent is clear, this Court need not result to statutory interpretation. Furthermore, the "last antecedent rule" and the rule of lenity do not apply when the legislative intent is clear. Our Supreme Court has held RCW 26.50.110, which criminalizes knowing violations of court orders, is unambiguous. Moreover, the legislature has clearly stated its intent--a willful violation of a no-contact provision of a court order is a criminal offense. Should this Court decline to interpret an unambiguous statute?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

By amended information, the State charged the defendant, Donald Williams, with three counts of Domestic Violence Felony Violation of a Court Order (FVNCO).¹ CP 9-11. The jury convicted

¹ At the time of the charged incidents, Williams had two prior convictions for violating a domestic violence no contact order. CP 33.

Williams as charged. CP 36-38. The court imposed a standard range sentence. CP 43-50. Williams timely appeals. CP 51.

2. SUBSTANTIVE FACTS.

At the time of the incident, Williams and Linda Poole had been involved in a romantic relationship for approximately nine years. 4RP 44.² They have a daughter, Carlee, in common. 4RP 44. Carlee is a "special needs" child. 5RP 29. She has Down syndrome, but is "high functioning." 5RP 8. Poole has a 12-year-old son, Connor, from a previous relationship. 4RP 44.

On March 13, 2006, Williams was prohibited by a court order from having contact with Poole, except for telephonic contact solely for the purpose of arranging visitation of Carlee. Ex. 1. The order had been issued on August 17, 2005 and it expired on June 4, 2006. Ex. 1; 4RP 26. Williams signed the order, acknowledging that he understood any violation of it could result in criminal charges. Ex. 1; 4RP 26; 5RP 29-31.

On March 13, on three separate occasions, Williams violated the court order.

² The State adopts the appellant's designation of the verbatim report of proceedings. See Br. of App. at 2, n.2.

a. Count I.

Mid-afternoon, Poole stopped at the grocery store before returning home from work. 4RP 47. While she waited in the check-out line, Williams called her from their home. 4RP 47. He was very angry. 4RP 47. Williams accused Poole of being unfaithful; he called her a "slut" and a "whore." 4RP 48. He said that the reason Poole was never home when she was supposed to be was because she was "sleeping with her customers" and that he was fed up with her behavior. 4RP 48.

Poole loaded the groceries into the truck and drove home to get Carlee a snack and some juice before she picked her up from daycare. 4RP 49. Williams was at home when Poole arrived; he was angry and intoxicated. 4RP 49. Williams greeted Poole, "You fucking bitch." 4RP 50. He ranted, "If you weren't so busy fucking your customers, then you'd have more time to spend at home with me." 4RP 50.

Poole told Williams that she was leaving to pick Carlee up from daycare. 4RP 51. Williams insisted upon going with her; however, because he was so intoxicated, Poole did not want him to accompany her. 4RP 51. Williams tried to take Poole's car keys from her. 4RP 51. He grabbed a hold of her wrist, but Poole

yanked it free. 4RP 51. Williams pushed Poole, who then fled out the door, got into the truck, locked the door, and drove to Carlee's daycare. 4RP 51.

b. Count II.

By the time that Poole had driven to Carlee's daycare, Williams had called two or three additional times. 4RP 52. Poole sat in her truck in the driveway at Cathy Ramisch's, her daycare provider's, house and listened to Williams' diatribe. 4RP 53.

Ramisch could see Poole's face and discerned that something was the matter. 5RP 10. The car door was open and Poole's arms were flailing and her face showed fear. 5RP 11. As Ramisch approached Poole, she could hear a male voice on the other end of the telephone screaming at Poole, he then hung up. 5RP 11.

Poole got out of the truck and stood alongside Ramisch, Williams then called back. 5RP 11-13. Poole was very, very agitated--"frantic looking." 5RP 12. Ramisch saw by the caller identification on Poole's cell phone that it was Williams calling back. 5RP 13. Ramisch was also standing close enough to recognize Williams' voice. 5RP 13.

Williams screamed at Poole, calling her a "bitch," a "cunt," a "whore," and a "fucking bitch." 5RP 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. 4RP 54; 5RP 14-15. Poole, who looked very frightened, tried to calm Williams down--she tried to get him to think rationally about the consequences of what he was threatening to do. 5RP 15.

Williams hung up, but then moments later he called back. 5RP 15-16. He continued to berate Poole, who repeatedly tried to calm down Williams. 5RP 17. She told him that she was trying to get home. 5RP 17.

Ramisch was fearful for Poole and Carlee, and convinced Poole that she needed to call 911 and make a report. 4RP 57-58; 5RP 17. Ramisch called 911 and an officer took a report and then followed Poole and Carlee home to ensure their safety--Williams was not there when they arrived. 4RP 61, 63; 5RP 18.

c. Count III.

After arriving home, Poole tried to resume Carlee's normal routine because, being a "special needs" child, Carlee finds comfort

in routine. 4RP 62. Poole and Carlee went upstairs to eat dinner. 4RP 63. Poole then went downstairs because Carlee needed something. 4RP 63. When Poole descended the stairs, she saw through the window by the front door that Williams was standing next to the door rattling the doorknob. 4RP 63-64. The door, however, was locked and Williams could not get inside. 4RP 64.

Williams was calm, but more intoxicated than when she had encountered him earlier in the day. 4RP 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. 4RP 64-65. Poole was afraid of Williams; she called the police and filed another incident report. 4RP 65-66.

Williams testified at trial. See generally 5RP 28-33. He acknowledged that he knew of the court order that prohibited him from having contact with Poole, except for arranging visitation with Carlee. 5RP 29, 31. However, he denied that he had had any contact--telephonic or in person--with Poole on March 13, 2006. 5RP 30, 32.

C. ARGUMENT

THE PHRASE "FOR WHICH AN ARREST IS REQUIRED" MODIFIES ONLY "VIOLATIONS OF FOREIGN PROTECTION ORDERS"; THUS, ITS INCLUSION WAS UNNECESSARY IN EITHER THE CHARGING DOCUMENT OR THE JURY INSTRUCTIONS BECAUSE IT IS NOT AN ESSENTIAL ELEMENT OF THE CRIME OF FVNCO.

Williams contends that both the charging document and the jury instructions were defective because they omitted an essential element of the crime of FVNCO. Williams' argument is premised on the claim that a willful violation of a no-contact provision of a court order via telephone contact 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. From this follows his claim that the phrase, "for which an arrest is required," must be included in the charging document and the jury instructions.

As support for Williams' interpretation of RCW 26.50.110, he relies upon both the "last antecedent rule" and the rule of lenity. Williams' reliance is misplaced. Because the statute is unambiguous and the intent of the legislature is clear--a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly--neither the last

antecedent rule, nor the rule of lenity applies. Consequently, Williams' interpretation of RCW 26.50.110 fails.

1. Interpretation Of RCW 26.50.110.

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). This Court's purpose when interpreting a statute is to "discern and implement the intent of the legislature." City of Olympia v. Drebeck, 156 Wn.2d 289, 295, 126 P.3d 802 (2006). Where the meaning of statutory language is plain on its face, this Court must give effect to that plain meaning as an expression of legislative intent. Id. In discerning the plain meaning of a provision, this Court considers the entire statute in which the provision is found, along with other provisions in the same act that disclose legislative intent. Id. Only if the statute is ambiguous, does the Court resort to aids of construction, such as legislative history. Id.

When trying to discern legislative intent, another aid available to courts is "the last antecedent rule"; a rule that is "not inflexible and uniformly binding." Fernandez, 155 Wn.2d at 593. According to the rule, "unless a contrary intention appears in the

statute, qualifying words and phrases refer to the last antecedent." Id. (quoting In re Sehome Park Care Center, Inc., 127 Wn.2d 774, 781, 903 P.2d 443 (1995)). However, the rule further provides that "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." Sehome Park Care Center, 127 Wn.2d at 781.

Finally, in construing a statute, "a reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results." State v. Delgado, 148 Wn.2d 723, 733, 63 P.3d 792 (2003).

2. The Plain Language Of The Statute Is Unambiguous And The Legislative Intent Is Clear: A Willful Violation Of A No-contact Provision Of A Court Order Is A Criminal Offense.

Williams was charged with the crime of domestic violence FVNCO, pursuant to RCW 26.50.110(1). The statute provides in pertinent part:

Whenever an order is granted under ... 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), is a gross misdemeanor except as provided in subsections (4) and (5) of this section.³

At issue here, is the phrase "for which an arrest is required under RCW 10.31.100(2)(a)" and which specific relative clause it modifies. Williams asserts that it modifies *each* preceding relative clause; the State maintains that it modifies only the relative clause that immediately precedes it.

RCW 10.31.100(2) reads:

(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 ... chapter ... 10.99 ... 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,

³ In this instance, the allegations were felonies because Williams had two prior convictions for violations of domestic violence no-contact orders (CP 33), and the allegation in Count I involved an assault (CP 9). See RCW 26.50.110(4), (5).

imposing any other restrictions or conditions upon the person.⁴

As a preliminary matter, the Washington Supreme Court has held that RCW 26.50.110 is "clear and unambiguous and there is no need for judicial interpretation." See State v. Chapman, 140 Wn.2d 436, 451, 998 P.2d 282 (2000). Yet despite the plain language and clear legislative intent behind RCW 26.50.110, Williams asks this Court to read the statute in a manner that compels absurd results.

Under Williams' reading of the statute, a violation of a no-contact provision of a court order is only a crime if the violation is "the kind for which an arrest is required under RCW 10.31.100(2)(a) or (b)"; i.e. it involves acts or threats of violence or entering or remaining in a prohibited location (but not repeatedly telephoning the petitioner and calling her a "bitch,"⁵ a "cunt,"⁶ and a "whore,"⁷ despite a court order prohibiting such contact). See Br. of App. at

⁴ A foreign protection order is not at issue in this case; therefore, RCW 10.31.100(b) is inapplicable.

⁵ 5RP 14.

⁶ 5RP 14.

⁷ 5RP 14.

5-6. Otherwise, according to Williams, the violation merely subjects the offender to sanctions for contempt.

Williams' interpretation, however, ignores the tenet of statutory interpretation that compels the court to consider other provisions in the same statute when discerning legislative intent. See Drebeck, 156 Wn.2d at 295. Another provision of RCW 26.50.110, section (3), provides: "A violation of an order issued under ... chapter ... 10.99 ... shall also constitute contempt of court, and is subject to the penalties prescribed by law." Thus, this provision would be rendered superfluous and, therefore, meaningless under Williams' reading of RCW 26.50.110(1). See Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) ("Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.").

Moreover, the legislature has made its intent quite clear-- willful violations of no-contact provisions of court orders constitute a criminal offense. Substitute House Bill 1642 removed the language "for which an arrest is required under RCW 10.31.100(2)," the

language relied upon by Williams. See Appendix A (LAWS OF 2007, CH. 173).⁸ 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.

Appendix A. 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 (Appendix A).

This Court may use the statute's current version to resolve the issue that Williams has raised because it states the legislature's original intent more clearly and completely. See In re Detention of Elmore v. State, 134 Wn. App. 402, 413, 139 P.3d 1140 (2006). As in Elmore, where the legislative notes indicated the legislative intent

⁸Substitute House Bill 1642 was passed by the House of Representatives on February 28, 2007 (Yeas: 97; Nays: 0). The Senate passed the bill on April 10, 2007 (Yeas: 49; Nays: 0). The law became effective on July 22, 2007. See Appendix A.

to clarify the "so changed" standard, pursuant to RCW 71.09.090,⁹ the recent statutory amendment to RCW 26.50.110 is *clarifying*--it did not make any substantive changes to the law. LAWS of 2007, ch. 173, § 1. Consequently, under the plain language of the statute and the clear legislative intent, Williams' argument fails.

Williams cites to the history of the 2000 amendments to RCW 26.50.110 as support for his position that the legislature did not intend to criminalize contacts other than knowingly coming within or knowingly remaining a specified distance from a prohibited place or person. See Br. of App. at 8-9. However, Williams misapprehends the 2000 amendments. See Appendix B (Washington House Bill Report, 2000 regular session, SB 6400). 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. Appendix B. Although there was testimony both in support of and against the amendment, the intent of the legislature was clear: "This bill is a

⁹ The "so changed" standard is the standard under which a person deemed a sexually violent predator and who has been civilly committed may petition the Superior Court for conditional release to a less restrictive alternative or unconditional discharge.

collaborative effort that will strengthen domestic violence laws." Appendix B at 7. Nothing in the legislative history of RCW 26.50.110 supports Williams' statutory interpretation; this Court should, therefore, reject Williams' claim.

Moreover, because as argued above, the statute is unambiguous, the rule of lenity does not apply. See In re Post Sentencing Review of Charles, 135 Wn.2d 239, 250 n.4, 955 P.2d 798 (1998) (rule of lenity applies only if statutory construction and legislative history fail to remove ambiguity). Further, the rule of lenity does not apply because Williams' interpretation of the statute is absurd. See State v. McGee, 122 Wn.2d 783, 789, 864 P.2d 912 (1993) ("The rule of lenity does not require us to reject an 'available and sensible' interpretation in favor of a 'fanciful or perverse' one....").

3. The Charging Document And Jury Instructions.

By amended information, Williams was charged as follows:

Count I

That the defendant DONALD CARL WILLIAMS, in King County, Washington, on or about March 13, 2006, did know of and willfully violate the terms of a court order issued on August 17, 2005, by the King County District Court West Division pursuant to RCW chapter 10.99, for the protection of Linda Poole, by

intentionally assaulting the said Linda Poole, and at the time of the above violation did have at least two prior convictions for violating the provisions of an order issued under RCW chapter 10.99, 26.50, 26.09, 26.10, 26.26 or 74.34, or under a valid foreign protection order as defined in RCW 26.52.020.

Count II¹⁰

That the defendant DONALD CARL WILLIAMS, in King County, Washington, on or about March 13, 2006, did know of and willfully violate the terms of a court order issued on August 17, 2005, by the King County District Court West Division pursuant to RCW chapter 10.99, for the protection of Linda Poole, and at the time of the above violation did have at least two prior convictions for violating the provisions of an order issued under RCW chapter 10.99, 26.50, 26.09, 26.10, 26.26 or 74.34, or under a valid foreign protection order as defined in RCW 26.52.020.

CP 9-11.

The Court gave the "to-convict" instruction on Count I as

follows:

To convict the defendant of the crime of Domestic Violence Felony Violation of a Court Order . . . each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about March 13, 2006, during a time approximately between 4:00 P.M. and 5:00 P.M.;

¹⁰ Count III was identical to Count II with respect to the charging language. CP 10-11.

(2) The defendant knew of the existence of a domestic violence no-contact order;

(3) That the defendant acted by one or more of the following means or methods when he either:

(a) willfully violated the terms of that order, and at the time of the above violation did have at least two prior convictions for violating a domestic violence no-contact order; or

(b) willfully violated the terms of that order by assaulting Linda Poole; and

(4) That the acts occurred in the State of Washington.

And the court gave the "to-convict" instruction for Counts II

and III as follows:

To convict the defendant of the crime of Domestic Violence Felony Violation of a Court Order . . . each of the following elements of the crime must be proved beyond a reasonable doubt:;

(1) That on or about March 13, 2006, during a time approximately between 5:00 P.M. and 6:00 P.M., the defendant willfully had contact with Linda Poole;¹¹

(2) That such contact was prohibited by a domestic violence no-contact order;

(3) That the defendant knew of the existence of that order;

¹¹ The distinction between Counts II and III was the time period in which the violation was alleged to have occurred--in Count II, the time period was between 5:00 - 6:00 P.M. and in Count III, the time period was between 7:30 - 8:30 P.M. CP 29-30.

(4) That at the time of the above violation the defendant did have at least two prior convictions for violating a domestic violence no-contact order; and

(5) That the acts occurred in the State of Washington.

CP 27-30.

Thus, as charged in Count I, the State was required to prove that Williams willfully had contact with Poole, despite knowing that he was forbidden by a court order to have contact, and that he either had two previous convictions for violations of a domestic violence no-contact order or that he assaulted Poole. CP 9, 22, 27-28; RCW 26.50.110 (1), (4), (5); WPIC 36.50; WPIC 36.51. And, as charged in Counts II and III, the State needed to prove that Williams willfully had contact with Poole, despite knowing that he was forbidden by a court order to have contact, and that he had two previous convictions for violations of a domestic violence no-contact order. CP 10-11, 22, 29-30; RCW 26.50.110 (1), (5); WPIC 36.50; WPIC 36.51. The defense did not take exception to any of these instructions, or propose any "to-convict" or definitional instruction that included the language that Williams claims on appeal is an essential element. 5RP 35-39.

4. The Information Included All The Necessary Elements.

When the sufficiency of an information is first challenged on appeal, the court applies the two-prong test adopted by the Supreme Court in Kjorsvik: (1) do the necessary elements appear in any form, or by fair construction can they be found, in the information, and if so (2) can the defendant show he or she was actually prejudiced by the inartful language. State v. Kjorsvik, 117 Wn.2d 93, 105-06, 812 P.2d 86 (1991). In this case, all of the essential, i.e. necessary elements can be found in the information.

Williams' claim, that the information omitted an essential element, rests on the application of the "last antecedent rule"--a rule that can assist courts in discerning legislative intent *where no contrary intention appears in a statute*. Fernandez, 155 Wn.2d at 593. But, as argued extensively above, the legislative intent behind RCW 26.50.110 is clear. Accordingly, the applicability of the last antecedent rule is limited to the general proposition that "qualifying words and phrases refer to the **last** antecedent." Id. (Emphasis supplied). Thus, the qualifying phrase, "for which an arrest is required under RCW 10.31.100(2) (a)," refers to the last antecedent: "a violation of a provision of a foreign protection order

specifically indicating that a violation will be a crime." RCW 26.50.110. It does not refer to all antecedents or the result would contravene the legislative intent and lead to absurd results.

To apply the last antecedent rule as Williams invites this Court to do, could result in the following absurdity: A petitioner who has a foreign no-contact order--e.g., a no-contact order issued by a court in Puerto Rico--would have **greater** protection than a petitioner whose order was issued by a Washington court. Equally absurd, is that under Williams' interpretation of the statute, 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 prescient, and able to list all of the future locations of the victim, under Williams' reading of the statute, RCW 26.50.110 could offer no meaningful protection to petitioners. Accordingly, Williams' reading leads to absurd results; it is, therefore, untenable. See Delgado, 148 Wn.2d at 733.

5. The Jury Instructions Were Proper.

In conjunction with his argument that the charging document omitted an essential element, Williams asserts that the jury instructions were deficient because they relieved the State of its burden of having to prove each element of the crime charged. This claim has no merit because, as discussed above, the phrase "for which an arrest is required" is not an essential element of the crime of FVNCO; it is a modifier of the clause that immediately precedes it ("a violation of a provision of a foreign protection order specifically indicating that a violation will be a crime.").

Jury instructions are reviewed de novo. State v. Pirtle, 127 Wn.2d 628, 656, 904 P.2d 245 (1995), cert. denied, 518 U.S. 1026 (1996). The constitution requires that courts instruct the jury on each element of the offense charged. State v. Ng, 110 Wn.2d 32, 44, 750 P.2d 632 (1988) (citing State v. Emmanuel, 42 Wn.2d 799, 259 P.2d 845 (1953)).

As set out above, the jury instructions required the State to prove beyond a reasonable doubt each of the essential elements of the crime charged. CP 27-30; RCW 26.50.110 (1), (4), (5); WPIC 36.50; WPIC 36.51. The jury determined that the State met its burden. CP 36-38. Thus, Williams was afforded due process of

law. See In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

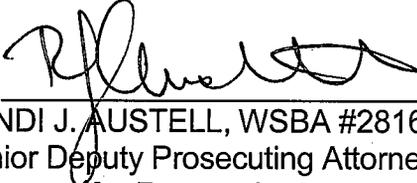
D. CONCLUSION

For the reasons stated above, the State respectfully asks this Court to affirm Williams' three convictions for FVNCO.

DATED this 3 day of August, 2007.

Respectfully submitted,

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APPENDIX A

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.

APPENDIX B

Westlaw

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Washington House Bill Report, 2000 Regular Session, Senate Bill 6400

March 3, 2000

Washington House of Representatives

Fifty-sixth Legislature, Second Regular Session, 2000

As Passed House - Amended:

March 3, 2000

Title: An act relating to domestic violence.

Brief Description: Changing provisions relating to domestic violence.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wojahn, Costa, Kohl-Welles, Winsley, Rasmussen and McAuliffe; by request of Governor Locke).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/18/00, 2/23/00 [DPA];

Appropriations: 2/26/00, 2/28/00 [DPA(APP w/o CJC)s].

Floor Activity:

Passed House - Amended: 3/3/00, 98-0.

Brief Summary of Engrossed Second Substitute Bill

(As Amended by House Committee)

* Authorizes courts to issue court orders that restrain parties from knowingly coming within or remaining within a specified distance of a specified location.

* Consolidates all violations of court orders in one uniform section of the statute.

* Authorizes the Department of Social and Health Services (DSHS) to seek a domestic violence protection order on behalf of and with the consent of any vulnerable adult.

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HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Yvonne Walker (786-7841).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Criminal Justice & Corrections. Signed by 31 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Alexander; Benson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Sump; Tokuda and Wensman.

Staff: Heather Flodstrom (786-7391).

Background:

There are several types of orders a court may grant that restrict a person's ability to have contact with another: (1) protection orders; (2) no-contact orders; (3) restraining orders; and (4) foreign protection orders.

{+ Protection Orders +} Protection orders can be issued by a court in civil proceedings. There are two types of protection orders authorized by statute: domestic violence protection orders and anti-harassment protection orders.

{+ +}Domestic Violence Protection Orders- A victim of domestic violence can obtain a domestic violence protection order against a respondent. The order can provide several types of relief including electronic monitoring, batterer's treatment, and a requirement that the respondent refrain from contacting the petitioner. A petitioner can obtain a temporary ex parte domestic violence protection order under certain circumstances. Violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

A court can grant a domestic violence protection order in a proceeding convened specifically for that purpose. A court can also grant a domestic violence protection order as part of a divorce proceeding, a non-parental action for child custody, or a paternity action. A domestic violence protection order issued in a proceeding, convened specifically for that purpose, that restrains the respondent from having contact with his or her minor children may not last more than one year. If the court finds that the respondent would resume acts of domestic violence after the order expires, the order may last more than a year.

{+ No-Contact Orders +}

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No-contact orders can be issued by a court in a criminal proceeding. No-contact orders are generally issued by the court when a defendant is released from custody prior to trial or as part of the defendant's sentence. There are two types of prosecutions for which no-contact orders are statutorily authorized: prosecutions for criminal harassment and prosecutions for crimes involving domestic violence.

Domestic Violence No-Contact Orders- A law enforcement officer must enforce a no-contact order issued as part of a prosecution for a crime involving domestic violence. Violation of such a no-contact order is a gross misdemeanor, unless the defendant has two previous convictions for violating a domestic violence protection order or other similar federal or out-of-state order, in which case the violation is a class C felony.

{+ Restraining Orders +}

As part of a civil proceeding, a court may also issue a restraining order that enjoins the person subject to the order from contacting another party. Such restraining orders can be permanent or temporary. A court can grant a permanent or temporary restraining order as part of a divorce proceeding, a non-parental action for child custody, an action involving the abuse of a child or an adult dependent person, or a paternity action. A court can grant a temporary restraining order (and not a permanent restraining order) in connection with proceedings where there has been allegations of abuse of a child or a dependent adult person.

A violation of a restraining order issued as part of a divorce proceeding or an action involving the abuse of a child or an adult person is a misdemeanor. A violation of a restraining order issued as part of a non-parental action for child custody or a paternity action is a gross misdemeanor.

{+ Foreign Protection Orders +}

A foreign protection order is an injunction or similar order relating to domestic violence, harassment, sexual abuse, or stalking issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, a United States military tribunal, or a tribal court. A violation of a foreign protection order is generally a gross misdemeanor, but becomes a class C felony in the following three circumstances: (1) the violation is an assault that does not amount to assault in the first- or second-degree; (2) the violation involved conduct that is reckless and creates a substantial risk of death or serious physical injury to another person; or (3) the offender has at least two prior convictions for violating the provisions of a no-contact order, a domestic violence protection order, or a comparable federal or out-of-state order.

{+ Courts +}

A computerized Judicial Information System (JIS) is available in each district, municipal, and superior court which is used to help prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders. The system includes the names of the parties and the case number for every domestic violence protection order issued, criminal

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no-contact order issued, and every restraining order that is issued as part of a divorce proceeding or a non-parental actions for child custody. The system does not contain foreign protection orders, orders issued on behalf of vulnerable adults, or restraining orders issued as part of paternity actions, an action involving the abuse of a child or an adult dependent person.

Summary of Amended Bill:

Courts are authorized to issue court orders prohibiting specific parties from knowingly coming within or knowingly remaining within a specified distance of a particular location. A police officer shall arrest any person who violates the restraint or exclusion provision of a court order relating to domestic violence.

In addition, effective July 1, 2000, violations of no-contact orders, foreign protection orders, and restraining orders will be subject to the violation penalties applied to domestic violence protection orders issued as part of civil proceedings. A violation of a domestic violence protection order is a gross misdemeanor unless the respondent has two prior convictions for violating an order, in which case the violation is a class C felony. Felony violations of domestic violence protection orders will continue to be ranked as a seriousness level V on the sentencing grid.

{+ Protection Orders +}

When determining whether to grant a domestic violence protection order, the courts are authorized to prohibit the parties from knowingly coming within or knowingly remaining within a specified distance of a specific location.

{+ No-Contact Orders +}

The penalties for violating a no-contact order issued during pre-trial or as part of a sentence are removed from the criminal domestic violence statute. The penalties are moved to a new section of law in order to consolidate all violations of domestic violence orders in a more uniform structure. As a result, violations of no-contact orders are subject to the same penalties applied to domestic violence protection orders.

{+ Restraining Orders +}

When determining whether to grant a temporary or a permanent restraining order, as part of a divorce proceeding, a non-parental action for child custody, or a paternity action, the courts are authorized to prohibit the parties from knowingly coming within or remaining within a specified distance of a specific location.

The penalties for violating the restraint and exclusion provisions of a restraining order issued as part of a divorce proceeding, a non-parental action for child custody, or a paternity action, are moved to a new section of law in order to consolidate all violations of domestic violence orders in a more uniform structure. Violations of restraining orders are subject to the same penalties applied to domestic violence protection orders. As a result of this move, a violation of a restraining order issued as part of a divorce proceeding is

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increased from a misdemeanor to a gross misdemeanor unless the respondent has two prior convictions for violating an order, in which case the violation is a class C felony.

{+ Foreign Protection Orders +}

The penalties for violating the restraint and exclusion provisions of a foreign protection order, are removed from the Foreign Protection Order Full Faith and Credit Act. The penalties are hence moved to a new section of law, in order to consolidate all violations of domestic violence orders in a more uniform structure. Violations of foreign protection orders are subject to the same penalties applied to domestic violence protection orders.

{+ Courts +}

All court orders issued for protection of a party must be entered in the JIS. When a guardian or the DSHS has petitioned for relief on behalf of a vulnerable adult, then the name of the vulnerable adult must be included in the database as a party, rather than the guardian or the department.

The Office of the Administrator for the Courts, must revise all informational brochures relating to court orders designed to assist petitioners, to specify the use of and process for obtaining, modifying, and terminating an order.

In addition, certificates of discharge received upon an offender's release from confinement, must not terminate his or her duty to comply with a court order. Courts must also immediately notify the proper law enforcement agency anytime a court order is modified or terminated. Upon receipt of an order that has been changed or terminated, the law enforcement agency must modify or remove the order from any computer-based system that is used to list outstanding warrants.

Vulnerable Adults- The DSHS, may seek a domestic violence protection order from the courts on behalf of and with the consent of any vulnerable adult. The courts are authorized to issue an order of protection issued on behalf of a vulnerable adult that prohibits the respondent from knowingly coming within or knowingly remaining within a specified distance from a particular location. An order of protection issued on behalf of a vulnerable adult must include notice of the criminal penalties imposed for violating the restraint provisions of the court order.

A vulnerable adult is defined as any person 60 years or older who has the functional, mental, or physical inability to care for himself/herself. Vulnerable adults include anyone who is developmentally disabled, who is living in a boarding home, nursing home, adult family home, residential facility, or other licensed facility or a person receiving services from a home health, hospice, or a licensed home care agency.

Definition- The definition of domestic violence includes violations of court orders relating to domestic violence in all types of proceedings.

Mandatory Fines- A mandatory fine of \$500 for gross misdemeanors and \$250 for

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misdemeanors, must be imposed on any offender convicted of a domestic violence crime in district or municipal court. The court must remit the assessments imposed and collected to the city or county treasurer accordingly. The city or county treasurer must remit 50 percent of the funds to the state treasurer for deposit in the public safety and education account. The remaining 50 percent of the funds received must be retained by the city or county for the purposes of reimbursing the city or county for the costs associated with implementing this act. Effective immediately, the mandatory fines apply to violations of all court orders regardless of the date the court issued the order.

Department of Social & Health Services- The DSHS is authorized to contract with public or private non-profit groups or organizations with experience and expertise in the field of domestic violence. These groups must develop and provide advocacy, community education, and specialized services to under-served victims of domestic violence.

In addition, the department must periodically evaluate domestic violence perpetrator programs, previously approved for court referral, to determine whether they are in compliance with existing standards.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Criminal Justice & Corrections) This bill is a companion to a House bill the committee heard a week or so ago with three significant differences. First, the Senate simplified the financing provisions in the bill to provide a greater share of the revenue, from the penalty assessments, to local government and put the remaining revenue in the state's public education and safety account to fund domestic violence prevention programs. Second, language was added to protect people accused of violating court orders by defining that a violation is a violation if and only if someone knowingly comes within or knowingly remains a specified distance from a prohibited place or person. Third, the Senate created a loophole in the bill that enables batterers to get away with intimidating or harassing the victims by explaining that their contact was reasonable. This section is a get out of jail free card for batterers.

The House, however included other good provisions in its version of the bill that the Senate did not, such as provisions for protecting children, removing expired or modified court orders from databases, and updating the brochures that the courts provide to victims.

This bill provides significant protections for victims of domestic violence and allows judges to craft protection orders carefully and properly so law enforcement can better enforce the orders.

(Appropriations) This bill is a collaborative effort that will strengthen domestic violence laws. The funding generated in this bill will be used for

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domestic violence programs and services to domestic violence victims at the state level. It also creates a new funding source for cities and counties without requiring any extra services, because the floating bubble provisions have been removed.

Testimony Against: (Criminal Justice & Corrections) While the Senate bill adds an affirmative defense, if the victim initiated contact, the bill still allows immediate mandatory arrest for any violation. An affirmative defense only comes into play after a criminal prosecution has begun. This is still too much criminalization and too much power to be vested in one person over another.

More troubling is the fact that the language referring to violations of all family law orders, criminalizes every restraint in every order (note: this has been corrected in the House striker to the Senate bill).

Criminalizing court orders is not the answer. Laws already exist that give police officers the tools they need to take action they deem necessary at any scene (e.g., stalking, harassment, assault, property destruction, and protection orders). It is hoped that the Legislature would not further overburden our criminal justice systems which already cannot adequately handle the valid criminal cases brought in front of them.

The state needs to enforce more communication and dispute resolution meetings instead of authorizing the issuance of more protection orders. Court orders prohibit people from talking to each other and working out their differences.

(Appropriations) This bill is unfair to the perpetrators of domestic violence. Restraining orders should apply to both parties so that neither party can antagonize the other. Children should be able to see their parents regardless of a restraining order that prohibits the parents from seeing each other. The Legislature should make sure to institute checks and balances in the domestic violence system and not allow as many court orders on people, because they take time and money to fight in court.

Testified: (Criminal Justice & Corrections) (In support) Dick VanWagenen, Governor's Policy Office; and Mary Pontarolo, Washington Coalition Against Domestic Violence.

(Opposed) Lisa Scott, Family Law Attorney TABS; Charlene Keys, citizen; Bill Harrington, American Father's Alliance; Clyde Wilbanks, citizen, and Greg Schmidt, citizen.

(Appropriations) (In support) Dick VanWagenen, Governor's Policy Office; and Sharon Case, Washington State Coalition Against Domestic Violence.

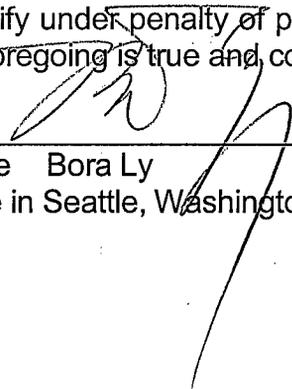
(Opposed) Steve McBride, citizen.

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END OF DOCUMENT

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 Jennifer Sweigert and Christopher Gibson, the attorneys for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of Brief of Respondent, in STATE V. DONALD WILLIAMS, Cause No. 59536-9-I, in the Court of Appeals, Division I, 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

08/03/2007

Date

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