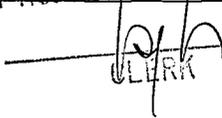


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STATE OF WASHINGTON

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NO. 81921-1

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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, PETITIONER

v.

RACHEL MARIE VINCENT, RESPONDENT

BRIEF OF PETITIONER

****Amended as to Title Page Only****

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Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

 1. Should this court find that defendant's knowing violation of a domestic violence no-contact constituted a criminal offense under former RCW 26.50.110? 1

B. STATEMENT OF THE CASE 1

 1. Procedure..... 1

 2. Facts 2

C. ARGUMENT..... 3

 1. DEFENDANT'S KNOWING VIOLATION OF A DOMESTIC VIOLENCE NO-CONTACT ORDER CONSTITUTED A CRIMINAL OFFENSE UNDER FORMER RCW 26.50.110. 3

D. CONCLUSION. 13

Table of Authorities

State Cases

<i>Berrocal v. Fernandez</i> , 155 Wn.2d 585, 590, 121 P.3d 82 (2005).....	4
<i>Cockle v. Dep't of Labor & Indus.</i> , 142 Wn.2d 801, 808, 16 P.3d 583 (2001)	4
<i>Davis v. State ex rel. Dep't of Licensing</i> , 137 Wn.2d 957, 963, 977 P.2d 554 (1999)	5
<i>In re Pers. Restraint of Smith</i> , 139 Wn.2d 199, 205, 986 P.2d 131 (1999)	10-11
<i>Jacques v. Sharp</i> , 83 Wn. App. 532, 542; 922 P.2d 145 (1996)	7
<i>Littlejohn Constr. Co. v. Department of Labor & Indus.</i> , 74 Wn. App 420, 427, 873 P.2d 583 (1994).....	6
<i>Rozner v. City of Bellevue</i> , 116 Wn.2d 342, 347-48, 804 P.2d 24 (1991)	6
<i>State v. Bunker</i> , 144 Wn. App. 407, 415, 183 P.3d 1086 (2008)	5, 6, 9, 12
<i>State v. Hogan</i> , 145 Wn. App. 210, 192 P.3d 915 (2008)	2, 5, 10, 11, 12
<i>State v. J.P.</i> , 149 Wn.2d 444, 450, 69 P.3d 318 (2003)	6
<i>State v. Knapstad</i> , 107 Wn.2d 346, 729 P.2d 48 (1986)	2
<i>State v. Madrid</i> , 145 Wn. App. 106, 192 P.3d 909, 910 (2008).....	5, 6, 10, 11, 12
<i>State v. McDougal</i> , 120 Wn.2d 334, 350, 841 P.2d 1232 (1992)	6
<i>State v. McKinley</i> , 84 Wn. App. 677, 681, 929 P.2d 1145 (1997).....	6
<i>State v. MacKenzie</i> , 114 Wn. App. 687, 699, 60 P.3d 607 (2002)	9

<i>State v. Sullivan</i> , 143 Wn.2d 162, 175, 19 P.3d 1012 (2001).....	6
<i>State v. Wofford</i> , ___ Wn. App. ___, ___ P.3d ___ (2009), 2009 Wash. App. LEXIS 371, *7.....	4, 5, 9, 10, 11, 12
<i>Tomlinson v. Clarke</i> , 118 Wn.2d 498, 510-11, 825 P.2d 706 (1992).....	9

Statutes

Former RCW 26.50.110	1, 3, 4, 5, 10, 11, 12, 13
Former RCW 26.50.110(1).....	5, 10
Laws of 2007, ch. 173	8
RCW 10.31.100(2)(a).....	4, 5, 8, 11, 12
RCW 10.31.100(2)(b).....	4, 5, 8, 11, 12
RCW 10.99.040	11
RCW 26.50.100	10
RCW 26.50.110	3, 8, 9
RCW 26.50.110(1)	2, 4, 7
Washington House Bill Report, 2000 Regular Session, SB 6400	7

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should this court find that defendant's knowing violation of a domestic violence no-contact constituted a criminal offense under former RCW 26.50.110?
 - a. Where there are multiple reasonable interpretations of former RCW 26.50.110, is the statute considered ambiguous?
 - b. Does legislative intent should support holding perpetrators of domestic violence accountable for their actions?
 - c. Would applying the last antecedent rule to former RCW 26.50.110 lead to absurd results?

B. STATEMENT OF THE CASE.

1. Procedure

On January 5, 2007, the State charged defendant, Rachel Vincent, with one count of violation of a no-contact order- post sentence. CP (Information). Defendant agreed to a stipulated facts trial. CP (Statement of Defendant on Submittal or Stipulation to Facts). Defendant stipulated to the authenticity and admissibility of the no-contact order, that she had signed the no-contact order, and that the relevant contact occurred in Pierce County. CP (Parties' Agree Stipulation to Facts). Defendant,

however, brought a *Knapstad*¹ motion to dismiss the charges against her, arguing that her conduct did not warrant criminal charges under the statute. CP (Order Denying Defendant's Motion). The Honorable Judge Rae Jasprica denied defendant's motion. *Id.* Defendant was found guilty. CP (Court Order 7-18-07). Defendant appealed to the Superior Court. CP (Notice of Appeal to Supreme Court).

On July 11, 2008, the Superior Court, under cause number 07-1-03846-1, remanded the case back to the trial court for the dismissal of defendant's conviction based on the decision of the Court of Appeals, Division II, in *State v. Hogan*, 145 Wn. App. 210, 192 P.3d 915 (2008). The court found that defendant's act, as charged under RCW 26.50.110(1), was not one for which an arrest was required and as such, found that the ruling in *Hogan* was controlling. CP (Order on RALJ Appeal Remand). The State filed a timely notice of discretionary review. CP (Notice and Amended Notice of Discretionary Review).

2. Facts

On January 4, 2007, Pierce County Sheriff's Deputy McNicol and Deputy Oleason pulled over Howard Seaworth for having expired vehicle tabs. CP (Parties' Agree Stipulation to Facts). The officers ran a records check on Seaworth, which revealed the existence of a no-contact order

¹ *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

prohibiting Rachel Marie Vincent, defendant, from having contact with Mr. Seaworth. *Id.* The description of the restrained party, defendant, matched that of the passenger in Seaworth's car. *Id.* When defendant offered proof of her valid license in order to prevent the car from getting towed, Deputy McNicol noticed that the name and date of birth matched those of the restrained person on the no contact order. *Id.* Deputy McNicol verified the existence of the no contact order prohibiting defendant from having any contact with Mr. Seaworth, and arrested defendant. *Id.* Defendant admitted that she knew about the no-contact order, and in fact had been arrested for violating it only a few days prior. *Id.*

The no-contact order was issued by the Pierce County Superior Court under cause number 06-1-03213-8. *Id.* The no-contact order was signed by defendant. *Id.*

C. ARGUMENT.

1. DEFENDANT'S KNOWING VIOLATION OF A
DOMESTIC VIOLENCE NO-CONTACT ORDER
CONSTITUTED A CRIMINAL OFFENSE
UNDER FORMER RCW 26.50.110.

Defendant's contact with the protected party of a no-contact order constituted a gross misdemeanor under RCW 26.50.110. At the time the

violation of the no-contact order took place, the following version of RCW 26.50.110(1) was in effect:

Whenever an order is granted under this chapter...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.

This statute has been subject to more than one interpretation by two divisions of the Court of Appeals.

- a. As there are multiple reasonable interpretations of former RCW 26.50.110, that statute 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). If a statute has more than one reasonable interpretation, it is ambiguous. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001), *State v. Wofford*, ___ Wn. App. ___, ___ P.3d ___ (2009), 2009 Wash. App. LEXIS 371, *7. If a statute is ambiguous, this Court will resort to principles of statutory construction, legislative history, and relevant case law to assist in interpreting it. *Cockle*, 142 Wn.2d at 808. This Court must construe an ambiguous statute to effectuate the

intent of the legislature. *Davis v. State ex rel. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999).

Former RCW 26.50.110(1) is susceptible to more than one reasonable interpretation. The clause “for which an arrest is required under RCW 10.31.100(2)(a) or (b)” can be read to modify only the immediately preceding phrase that concerns foreign protection orders or it can be read to modify all the preceding phrases. *State v. Bunker*, 144 Wn. App. 407, 415, 183 P.3d 1086 (2008), *Wofford*, at *8. The statute was not a “virtuosic specimen of legislative drafting,” leading to a dispute as to the statutes meaning. *Bunker*, 144 Wn. App. at 413. A review of the decisions in Division I and Division II of the Court of Appeals highlights this dispute.

First, in *Bunker*, Division I found the wording of former RCW 26.50.110 to be ambiguous, turned to an analysis of legislative intent, and found that the statute criminalized violations of domestic violence no-contact orders. *Bunker*, 144 Wn. App. at 409, 420. Next, in contrast, Division II, in *Hogan* and *State v. Madrid*, 145 Wn. App. 106, 192 P.3d 909, 910 (2008), found the statute to be unambiguous, refused to consider legislative intent and found that certain violations of a no-contact order were not criminal offenses. *Hogan*, 145 Wn. App. at 916. Shortly after deciding *Hogan* and *Madrid*, Division II came out with a decision in *State v. Wofford*, ___ Wn. App. ___, ___ P.3d ___ (2009), 2009 Wash. App. LEXIS 371 that was in direct conflict with its decisions in *Hogan* and

Madrid but comported with the Division I ruling in *Bunker*. Given the conflicting rulings, it is clear there is more than one interpretation of the statute. As such, this court must turn to legislative intent to interpret the statute.

- b. Legislative intent clearly supports holding perpetrators of domestic violence accountable for their actions.

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). To help clarify the original intent of a statute, the court may also turn to the statute’s subsequent history. *State v. McKinley*, 84 Wn. App. 677, 681, 929 P.2d 1145 (1997) (citing *Littlejohn Constr. Co. v. Department of Labor & Indus.*, 74 Wn. App 420, 427, 873 P.2d 583 (1994) (citing *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347-48, 804 P.2d 24 (1991))). Finally, this Court does “[n]ot 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).

The meaning of RCW 26.50.110(1) becomes clear when legislative intent is taken into account. Prior to the legislature's enactment of the 2000 amendments to RCW 26.50.110(1), the law was that violation of a no-contact provision constituted a misdemeanor. *Jacques v. Sharp*, 83 Wn. App. 532, 542; 922 P.2d 145 (1996). The 2000 amendments were enacted, in part, as a "collaborative effort that will strengthen domestic violence laws." Washington House Bill Report, 2000 Regular Session, SB 6400 at 7. "Proponents of this bill believe penalties for violating the restraint provisions of various types of orders should flow from the conduct violating the order rather than the type of order." Washington Senate Bill Report, 2000 Regular Session, SB 6400 at 1-2.

These beliefs lead the legislature to harmonize the punishments for the conduct that violated the order, as opposed to the type of order issued. This is most evident in the Summary of Amended Bill in the House Bill Report. The Summary states first, "A police officer shall arrest any person who violates the restraint or exclusion provision of a court order relating to domestic violence," which would include a prohibition of contact with a protected party under a protective order. Washington House Bill Report, 2000 Regular Session, SB 6400 at 4. The Report then explicitly states, "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." *Id.* The House aligned the punishments for violations of no-contact orders, foreign protection orders,

and restraining orders with the punishment for domestic violence protection order violations. *Id.* All of these statements are consistent with the legislature's overarching goal of strengthening domestic violence laws.

The legislature recently reiterated that it had previously criminalized the willful violation of a no-contact provision of a court order. Laws of 2007, ch. 173, § 1. The legislature sought to clear up any confusion as to the meaning of the statute. The legislature removed the phrase "for which an arrest is required under RCW 10.31.100(2)(a) or (b)." Laws of 2007, ch. 173. Specifically, in the intent statement that accompanied this wording removal, the legislature stated that it wanted to "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. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington." Laws of 2007, ch. 173, § 1. The legislature explicitly stated that a violation of a restraint provision prohibiting contact with a protected party constitutes a gross misdemeanor. Laws of 2007, ch. 173, § 2. The 2007 amendments make clear that violation of a no-contact provision of a domestic violence protection order is, and has been a crime.

Division I found the "sole purpose" of the 2007 amendment "was to eliminate any questions about whether RCW 26.50.110 was intended to impose criminal penalties for violations of domestic violence protection

orders generally.” *Bunker*, 144 Wn. App. at 416. “Where a statute or regulation is adopted to clarify an internal inconsistency to help it conform to its original intent, it may properly be retroactive as curative.” *Bunker*, 144 Wn. App. At 416 (citing *State v. MacKenzie*, 114 Wn. App. 687, 699, 60 P.3d 607 (2002)). Further, “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*, 144 Wn. App. at 417 (citing *Tomlinson v. Clarke*, 118 Wn.2d 498, 510-11, 825 P.2d 706 (1992)). As the 2007 amendments clarified the exact meaning of RCW 26.50.110 and nothing precluded a retroactive application of the law, Division I found that the amendment applied to the defendants.

In *Wofford*, Division II did not analyze whether the statute applied retroactively. The court found that the 2007 amendment did not make a substantive change to the law and only clarified the legislature’s intent. *Wofford* at *11. The court found that RCW 26.50.110 made the violation of a no-contact order a crime and that the statute applied to the defendant.

The willful violation of a no-contact order is a crime and has been a crime under RCW 26.50.110. Both Division I and now Division II (in

their most recent case- *Wofford*) have found the legislative intent clear. This court should affirm that interpretation.²

c. Applying the last antecedent rule to former RCW 26.50.100 would lead to absurd results.

In regards to former RCW 26.50.110(1), the application of the last antecedent rule would achieve absurd results that would run counter to the clearly expressed legislative intent and the statutory scheme of the Domestic Violence Prevention Act. As stated before, the legislature intended to strengthen the domestic violence laws with its 2000 amendments, yet the application of the last antecedent rule would eliminate the criminal penalty for the restrained party from having direct contact with the protected party. Division II's interpretation (in *Hogan* and *Madrid*) would mean that the phrase "for which an arrest is required" would apply to all the provisions and not just the foreign protection order provision. *Wofford* at *16. This would lead to inconsistencies with other statutory provisions and run contrary to the legislature's intent. *Id.*

The last antecedent rule is not applied inflexibly nor is it always binding. *In re Pers. Restraint of Smith*, 139 Wn.2d 199, 205, 986 P.2d

² Division II did not look at legislative intent in *Madrid* and *Hogan* as they found the statute to be unambiguous.

131 (1999). While Division II applied the rule in *Hogan* and *Madrid*, the same court in *Wofford* stated, “we are unwilling to mechanically apply the last antecedent rule if, considering other principles for determining legislative intent, the result is plainly at odds with such legislative intent.” *Wofford* at *16. *Wofford* marked a reversal of Division II’s stance on the former RCW 26.50.110. But even in *Madrid*, despite finding the statute unambiguous, Division II recognized that there was an ambiguity as to whether the phrase “for which an arrest is required under RCW 10.31.100(2)(a) or (b)” applied to only the immediately preceding provision or all of the preceding provision. *Madrid*, 145 Wn. App. at 114-115. The decision in *Wofford* seems to recognize and correct that previous inconsistency.³

Division I noted problems with applying the last antecedent rule. RCW 10.99.040 requires that all no-contact orders that are issued state that a violation of the order is a crime. Division I wondered “why, if the legislature had not intended to impose criminal penalties for violations of domestic violence no-contact orders, it has required that each and every no-contact order issued by a court proclaim that ‘violation of this order is a criminal offense’ under RCW 10.99.040?” *Bunker*, 144 Wn. App. at

³ Judge Houghton sat on both the panel for *Madrid* and the panel for *Wofford*. *Wofford* at *23.

419. Applying the last antecedent rule “throws the resulting crime classification out of joint with both the statutory scheme as a whole and the legislature’s stated intent.” *Wofford*, at *16.

Furthermore, this interpretation would mean less serious violations of a domestic violence protection order, such as coming to a protected party’s workplace even if the protected party was not there, would remain criminalized, while direct contact with a protected person outside the protected area would no longer be a crime. This is an absurd result that is contrary to the legislative intent.

Division II should have turned to legislative intent when it determined that the very phrase at issue made the statute ambiguous. As the legislative intent was to strengthen domestic violence laws, the decisions in *Madrid* and *Hogan* are inconsistent and should be rejected by this court.

This Court should decline to read the phrase, “for which an arrest is required” as anything other than an extraneous reference to RCW 10.31.100(2)(a) or (b) and instead should read the statute as a whole. To read the language as a modifying clause the way Division II did in *Hogan* and *Madrid*, undermines the legislative intent and leads to unlikely, absurd, or strained consequences. This court should find, as the courts in *Bunker* and *Wofford* did, that the ambiguity in former RCW 26.50.110

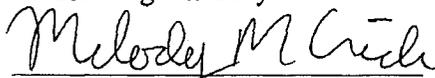
leads the court to analyze legislative intent which shows a determination to strengthen domestic violence laws and not to weaken them. This court should find that former RCW 26.50.110 criminalized the knowing violation of a domestic violence no-contact order.

D. CONCLUSION.

For the forgoing reasons, the State respectfully requests this court reverse the Superior Court's ruling by finding that former RCW 26.50.110 criminalized violations of domestic violence no-contact orders and affirm defendant's conviction.

DATED: March 17, 2009

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3/17/08 
Date Signature