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NO. _____

NO. 61027-9-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED
OCT 07 2009
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

CITY OF SEATTLE

Petitioner,

v.

ROBERT MAY,

Petitioner,

FILED
APPEALS DIV. #1
COURT OF APPEALS
STATE OF WASHINGTON
SEP 24 PM 4: 31

PETITION FOR REVIEW

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I. DESIGNATION OF PETITIONER

Robert May , respondent in the Court of Appeals and petitioner in the King County Superior Court, petitions for review in this court.

II. DECISION SUBJECT TO REVIEW

May seeks review of the published Court of Appeals decision in *Seattle v. May*, COA NO. No. 61027-9-I. (filed August 24, 2009).

III. ISSUES

1. May was charged with violating a permanent protection order issued by the King County Superior Court pursuant to RCW 26.50. The order does not contain on its face the requisite finding for a permanent order, that May was likely to resume acts of domestic violence against the petitioner or her family when the order expires. The superior court file contained no such finding either. Did the municipal court error by failing to suppress the order as inapplicable to the prosecution? If the order is not applicable, then is the evidence insufficient to support the conviction?

2. The predicate protection order only warned May that a violation of the order is a crime under RCW 26.50 and RCW 10.31.100, but not SMC

12A.06.180. The evidence is insufficient to support a conviction for the crime of violating the provisions of a no-contact order pursuant to RCW 26.50.110(1) as found by Division II in *State v. Hogan* and *State v. Madrid*. The municipal code is broader and includes conduct which does not violate state law as interpreted in those cases. Was May denied due process when the City prosecuted him under the City code without fair warning?

IV. STATEMENT OF THE CASE

Robert May was charged and convicted in Seattle Municipal Court No. 471005 with two counts of violating the restraint provisions of a domestic violence protection order issued by King County Superior Court on December 30, 1996 pursuant to RCW 26.50, a violation of SMC 12A.08.180. The predicate order was issued in *Douglass v. May*, No. 94-5-03704-9 SEA. CP 111-12. Generally, the duration of such orders do not to exceed one year when the respondent is restrained from contacting his minor children. RCW 26.50.060(2). The order in this case purported to be a permanent order issued pursuant to RCW 26.50.060(2) but did not contain the specific finding required by the statute ("that the respondent is likely to resume acts of

domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires. . . .").

Rather, the order contained only the following boilerplate, conditional language.

THIS ORDER FOR PROTECTION IS PERMANENT. ✓
If the duration of this order exceeds one year, the court finds that an order of *less than one year* will be insufficient to prevent further acts of domestic violence.

CP 112.

A search of the superior court file --when finally located-- did not turn up any record that such a finding was made when the superior court issued the permanent order. CP 42.

Also, the order contained only the following warning regarding criminal prosecution.

WARNING TO RESPONDENT: Violation of the provisions of this order with actual notice of its terms is [a] criminal offense under chapter 26.50 RCW and 10.31.100 RCW and will subject the violator to arrest.

Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 is a class C felony. Any conduct in

violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

CP 112.

May challenged the applicability of the predicate protection order, asserting that the superior court did not have authority to issue a permanent order because the findings required by the statute for issuance of an order exceeding one year was not made. CP 23-44 (Transcript of Proceedings); CP 92-98, 129-184. (Defendant's Memorandum In Support Of Motion To Suppress, Defendant's Supplemental Memorandum In Support Of Motion to Suppress). The court file which would have contained any such findings was initially missing, but then was found. CP 42; CP 130. Nonetheless, the superior court file did not contain any separate order or findings required by the statute for issuance of a permanent order pursuant to RCW 26.50.060(2). CP 130.

May's challenge to the applicability of the protection order was first heard on February 7, 2006. CP 27-34. *See also* CP 23-24 (issue discussed

at November 3, 2006 hearing). At the time of that hearing, the relevant portion of the superior court file could not be located and, thus, it could not be determined whether any findings not reflected on the face of the order were made. CP 28. The court denied the motion, giving May leave to move for reconsideration if additional information was discovered. CP 32-34..

On May 18, 2006, the municipal judge revisited this issue after the relevant volume of the superior court action was located and additional documentation was presented by both parties. CP 41-44; CP 129-184 (Defendant's Supplemental Motion). May's counsel was able to confirm the superior court file did not contain any record that the court made the requisite finding for issuance of a permanent order pursuant to RCW 26.50.060(2). CP 41-42.

The municipal court held that RCW 26.50.060(2) "doesn't require any specific findings as part of the statutory scheme for granting a permanent order." CP 43. The trial judge then went on to find "after a review of the voluminous materials from the superior court file" the superior court did not appear to have abused its discretion in issuing the order. CP 42, 43. The

municipal judge ultimately denied the motion because she believed the boilerplate language in the predicate order was found to be a sufficient basis for issuance of a permanent order in *Spence v. Kaminski*, 103 Wn.App. 325 (2000). CP 44. The municipal judge found that any failure to make a specific factual finding does not require exclusion of the order. CP 44.

The municipal court then found May guilty of two counts of violation of a domestic violence protection order under SMC 12A.06.180 on stipulated facts. CP 56, 59-60. The court found that May violated the December 30, 1996 protection order on March 11, 2005 by leaving a phone message for the protected party and that on March 24, 2005 May emailed her as well. CP 59. The contacts were not pursuant to an emergency and, thus, violated the restraint provisions of the predicate order. CP 59-60.

May appealed his conviction. The King County Superior Court reversed, holding the order was facially invalid because the finding on the face of the order did not satisfy the statutory prerequisite for issuance of a permanent order. CP 98. The superior court did not reach the other issue raised by May on appeal: whether he was denied due process because the

warning on the face of the protection order did not inform him that he could be prosecuted under the Seattle Municipal Code which is broader than the state law, RCW 26.50.

V. ARGUMENT & AUTHORITY

A. Why Review Should Be Granted

This case meets the criteria for review in RAP 13.4(b)(1), (3) and (4).

The court should granted review because the Court of Appeals decision conflicts with *State v. Miller*, 156 Wn.2d 23, 24, 123 P.3d 827 (2005); presents significant constitutional questions; and involves issues of substantial public interest that should be addressed by this court.

B. The Predicate Protection Order Was Not Applicable Because The Order Was Not Issued In Compliance With The Governing Statute. The Issuing Court Failed to Make the Threshold Finding Required By RCW 26.50.060(2) For Issuance Of A Permanent Order Restraining May From Contact With His Minor Son.

The permanent protection order in dispute here cannot support May's conviction because the issuing court did not make the threshold finding required by RCW 26.50.060(2). Where the protection order restricts

respondent's access to his or her minor children, the order cannot exceed one year.¹ The issuing court is authorized to exceed that limit and enter a permanent order of protection only when the court finds

the respondent is likely to resume acts of domestic violence against the petitioner or petitioner's family or household members or minor children when the order expires . . .

RCW 26.50.060(2). The superior court record contained no evidence that this finding was made.

The only evidence of any such finding is contained in the boilerplate language on the face of the order and does not satisfy the statutory requirement. THIS ORDER FOR PROTECTION IS PERMANENT. ✓

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

CP 112 (emphasis added).

¹The original statute strictly limited such protection orders to one year. Laws of Washington 1984 ch. 263 § 7 ("Any relief granted by the order for protection . . . shall be for a fixed period not to exceed one year."). In 1992, the legislature expanded the court's authority to issue orders for a longer duration, but required the threshold finding that is at issue here. Laws of Washington 1992 ch. 143 § 2. In 1995, the legislature eliminated the one year restriction for restraining orders issued in dissolution proceedings (RCW 26.09), third party child custody cases (RCW 26.10) and parentage actions (RCW 26.26). Laws of Washington 1995 ch. 246 § 7.

The King County Superior Court correctly ruled the language on the order did not satisfy the threshold finding for issuance of a permanent order. That decision is supported and controlled by *State v. Miller*, 156 Wn.2d 23, 24, 123 P.3d 827 (2005) and the plain language of RCW 26.50.060(2).²

The King County Superior Court correctly held that the finding of the face of the protection order did not satisfy the statutory prerequisite for issuance of a permanent order. The court issuing the protection order was required to make findings necessary to the findings of fact concerning all of material issues. CR 52(a)(2)(C); Wold v. Wold, 7 Wash.App. 872, 503 P.2d 118 (1972). The duration of the protection order cannot exceed one year unless the issuing court first finds “the respondent is likely to resume acts of domestic violence against the petitioner or petitioner’s family or household members or minor children *when the order expires . . .*” RCW 26.50.060(2)

² This court reviews the municipal court in the same manner as the superior court did. State v. Ford, 110 Wn.2d 827, 829, 755 P.2d 806 (1988). This court is charged with discerning whether the municipal court committed any errors of law and whether its factual determinations are supported by the record. RALJ 9.1(a), (b). The City did not challenge any of the municipal court’s factual findings so those findings are verities on appeal. State v. Stenson, 132 Wn.2d 668, 697, 940 P.2d 1239 (1997).

(emphasis added.). The only evidence that any such finding was made when the permanent order in this case was issued appears on the face of the order.

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

CP 112 (emphasis added). This language merely states that an order of *less than one year* is insufficient to prevent further acts of domestic violence.

The presumptive duration of a protection order issued pursuant to RCW 26.50.060 is *one year*. Thus, this abbreviated “finding” does no more than state why the order is being issued in the first place, to prevent future acts of domestic violence for a period of one year. The “finding” merely states that an order of *less than* the statutory presumptive duration of one year is not sufficient. It does not establish the need for an order that exceeds the one year period. It does not state that respondent is expected to resume perpetrating domestic violence upon the expiration of the one year period. At best, the language may state that a longer order may have a deterrent effect during the one year period. But in any event, this is not the finding required by the statute, that domestic violence will resume upon the expiration of the

initial one year period.

Moreover, this “finding” is conditional; it is not an affirmative statement that the court has entered the finding. Rather, the “finding” is effective only if the duration of the order exceeds one year. At best, this language glosses over the threshold requirement and treats it like a formality. At worst, this boilerplate appears to be an anticipatory attempt to justify every order that exceeds one year. In determining whether the appropriate findings have been made, this court should be mindful of the fact that this order is permanent and prevents May from seeing his child. Thus, strict compliance with the statute is required because it implicates May’s fundamental right to parent his child. State v. Ancira, 107 Wn. App. 650, 27 P.3d 1246 (2001).

Finally, the language on the face of the order is the only evidence that any such finding was actually made. There was no other record –clerk’s minute or electronic recording– that the superior court made the statutorily required finding before issuing the permanent order. The form language on the face of the order is not sufficient to demonstrate that the order was issued in compliance with the statute.

The City properly concedes “[t]he findings themselves must of course be made . . . “, but asserts that the threshold finding is not required to be on the face of the order and such findings need not mirror the statutory language. Brief of Appellant at 3-4. The City asserts that the only language required on the face of the order is the warning of criminal penalties. Brief of Appellant at 4-5. The City’s position is unsupported by any of the cited authorities.

In this court, the City relies primarily on *State v. Wilson*, 117 Wn.App. 1, 75 P.3d 573 (2003). *Wilson* actually supports May’s position. In that case, the statutorily required warnings appeared on the face of the order; the court held that the governing statute did not require a warning on the face of the order that a third violation of the no-contact order would be a felony and the defendant was not affirmatively misled by the statutorily required warning. *Wilson*, 117 Wn.App. at 12-13. *Wilson* merely stands for the proposition that every adverse consequence of violating the protection order need not be listed on the face of the order.

In the case at bar, the governing statute requires that a particular threshold finding be made prior to the issuance of a permanent order, just as

the statute requires certain warnings to appear on the face of the order. But the only evidence that any such finding was made was when the predicate order was issued is the language on the face of the order. The superior court record contained no other evidence that the threshold finding was made. Consequently, that language must satisfy the statutory prerequisites.

The City further claims this case is controlled by *Spence v. Kaminski*, 103 Wn.App. 324, 12 P.3d 1030 (2000) upon which the municipal court premised its decision. *Spence* is inapplicable to the controversy before this court, as explained below.

The municipal court erred in denying May's motion to exclude the protection order in two respects. First, the court impermissibly shifted the burden to establish the applicability of the order --in other words, its admissibility-- to the defense. While the *Miller* court did not expressly state that the prosecution bears the burden of establishing the admissibility or applicability of the evidence against the accused, there is no authority to shift that responsibility to the defense. *Miller* did not hold that the defense is in any way responsible for establishing the applicability or inapplicability of the

predicate order. The prosecution bears the burden to prove the elements of the offense and is the proponent of the inculpatory evidence. Generally where the validity of an underlying order or administrative action is at issue in a criminal prosecution, the government bears the burden to prove the validity of the predicate action. See State v. Snapp, 119 Wn.App. 614, 625 (2004); City of Redmond v. Moore, 151 Wn.2d 664 (2004) (in DWLS prosecution the government must prove that the underlying suspension complies with due process). While *Snapp*, relies on cases disapproved in part by *Miller*, nothing in that decision relieves the prosecution of its duty to present evidence of an applicable predicate order. It is axiomatic that the proponent of the evidence bears the burden to establish its admissibility. The existence and validity of the protection order is essential to the prosecution. Miller, supra; City of Seattle v. Termain, 124 Wn.App. 798, 804 (2004). Thus, the burden to establish that the order is “applicable” when challenged falls squarely with the prosecution and is consistent with the constitutional principle that the government bears the burden of proof in all criminal prosecutions.

Second, the municipal court erred by holding the language on the face of the order was sufficient to establish the statutory prerequisite for issuance of a permanent order. At this point, the municipal court relied primarily on *Spence v. Kaminski*. That reliance was misplaced. *Spence* was a direct appeal challenging an order issued pursuant to RCW 26.50. *Spence* challenged the order on several constitutional grounds, but the primary question before the court was whether due process requires the court to find a recent act of domestic violence before issuing a protection order. *Spence*, 103 Wn.App. At 328 (the answer was no). The section apparently relied upon by the municipal court holds that the language on the pre-printed form --which is nearly identical to that used in this case-- sufficiently stated findings to support the issuance of the order. But in *Spence*, the court was engaged in a full appellate review of the record below. Based on that record, the court found a sufficient factual basis for issuance of the order and that the trial court did not abuse its discretion in doing so. *Id.* at 331-32. *Spence* does not control here because there trial court complied with the statutory mandate; the court made the requisite finding and the evidence in the record

supported that finding. *Spence* is also distinguishable because the order in that case contained additional hand written findings that supported the issuance of a permanent order. *Id.* at 329 (“the long history of allegations back to . . . 1992 have been investigated by law enforcement[,] ICPS or others. All this court can determine is that Mr. Kaminski has threatened Ms. Spence in the past and she is afraid of him.”).

In sum, the predicate permanent order in this case is facially defective. This is exactly the type of defect that *Miller* identified as rendering the protection order inapplicable for purposes of criminal prosecution. *Miller, supra* (the order is not applicable if it is not statutorily sufficient, adequate on its face or fails to comply with the governing statute; such an order will not support a conviction of violating the order). Under *Miller*, the order is inapplicable and should not have been admitted. Without the protection order, the evidence is insufficient to support May’s conviction.

C. May Was Denied Due Process Because He Was Only Given Notice That A Violation Of the Order Is A Crime Under State Law. Where the Charged Conduct Did Not Constitute A Violation Of State Law And May Was Not Given Notice That A Violation Could Be Prosecuted Under The City Code, The

Prosecution Violated Due Process.

May asks this court to address the constitutional issue that he raised in his appeal. May was denied due process because the protection order warned him only that he could be criminally prosecuted under RCW 26.50.110. He was not informed that he could be prosecuted under the Seattle Municipal Code, SMC 12A.06.180. The municipal ordinance is broader than the state law was found to be in *State v. Hogan*, 145 Wn.App. 210, 192 P.3d 915 (Div. II 2008) and *State v. Madrid*, 145 Wn.App. 106, 192 P.3d 909 (Div. II 2008). Cf. *State v. Bunker*, 144 Wn.App. 407, 183 P.3d 1086 (Div. I 2008), *petition for review pending Supreme Court No. 81921-2, December 2, 2008*. Thus, the warning was affirmatively misleading and insufficient to provide May with notice of prohibited contacts. See *State v. Wilson*, 117 Wn.App. 1, 12-15, 75 P.3d 573 (2003) and *State v. Minor*, 162 Wn.2d 796, 174 P.3d 1162 (2008). This court may affirm the trial court for any reason supported by the law and the record. *State v. Bobic*, 140 Wn.2d 250, 258, 996 P.3d 610 (2000); *State v. Michielli*, 132 Wn.2d 229, 242-43, 937 P.2d 587 (1997).

The predicate order did not warn May that a violation of the order is a crime under the Seattle Municipal Code. The legend on the order only warned him that a violation of the order is a crime under state law, specifically RCW 26.50 and RCW 10.31.100. (The former does not define a crime, but only sets out the authority for warrantless arrests.) The conduct established by the stipulated facts does not establish a violation of the state law, RCW 26.50.110(1), as explained further below. Thus, the warning on the protection order in this case was incomplete and confusing such as to mislead May. State v. Wilson, 117 Wn.App. 1, 12-15, 75 P.3d 573 (2003). *See also* State v. Minor, 162 Wn.2d 796, 174 P.3d 1162 (2008) (court's failure to check box indicating felony firearm prohibition on order affirmatively misled defendant into believing that his right to possess firearm was not restricted). Similarly, May was not given "fair notice of what conduct is prohibited" by the protection order.

In *Wilson*, the defendant was charged under RCW 26.50.110(1) with violating a protection order that was apparently issued as a condition of pre-trial release by the Seattle Municipal Court. The court held that "where

statutory notice is required but not given, a due process violation may occur.”

Wilson, 117 Wn.App. at 12. In that case, the predicate protection order warned the defendant that a violation of the order constituted a crime under both state law and the Seattle Municipal Code. While the court held that the warning was constitutionally sufficient, the court also noted that the failure to give a proper warning on the face of the protection order may violate due process. The *Wilson* court explained.

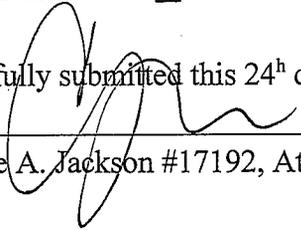
[A]lthough ignorance of the law is generally no defense, a small exception exists where a court fails to give statutorily required notice of prohibited conduct and actively misleads a defendant as to the status of the law. In *State v. Leavitt*, a court failed to give a defendant the statutorily required written notice that his firearm restrictions would last longer than one year, issued an order that seemed to imply that the ban would last only one year, and allowed the defendant to retain his concealed weapons permit. Thus, when the defendant was later convicted of violating the court order after repossessing his firearms after a year had passed, the Court of Appeals reversed finding that his due process rights were violated.

Wilson, 117 Wn.App. at 13.

This same principle was applied to the failure of the predicate offense court to notify the defendant of the statutorily required notice of the loss of

his firearms right. State v. Minor, 162 Wn.2d 796, 802-04, 174 P.3d 1162 (2008). Similarly, May was misled by the warning which referenced only the state law criminalizing a violation of the order where his conduct did not violate that law. He could not have found out about the broader the municipal code by looking up RCW 26.50.110(1) because that statute does not reference the Seattle code in particular or municipal codes in general. *Compare with* State v. Sutherland, 114 Wn.App. 133, 136, 56 P.2d 613 (2002) (order is not invalid where the warning legend referenced RCW 10.99 which in turn specifically references RCW 26.50.110, the criminal sanctions for violations of such orders). If May's conduct did not violate the state law and he had no notice that his conduct would be tested against the broader City code, then the order does not sufficiently appraise him of what is prohibited. City of Seattle v. Edwards, 87 Wn.App. 305, 308, 941 P.3d 697 (1997) "We cannot allow a conviction to stand where the State has not given fair notice of the proscribed conduct." Id.

Respectfully submitted this 24^h day of September, 2009,



Christine A. Jackson #17192, Attorney for Petitioner

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF SEATTLE,)	
)	No. 61027-9-1
Appellant/Cross-Respondent,)	
)	DIVISION ONE
v.)	
)	PUBLISHED OPINION
ROBERT J. MAY,)	
)	
Respondent/Cross-Appellant.)	FILED: August 24, 2009

GROSSE, J. — A permanent protection order is not invalid when it does not contain language showing a specific finding made by the issuing court satisfying the statutory requirement that for orders exceeding one year the court must affirmatively find that the respondent is “likely to resume acts of domestic violence” against his former spouse and child. Nothing in the statute requires such a finding appear on the order itself. Thus, the order in this case, in which the court found “that an order of less than one year will be insufficient to prevent further acts of domestic violence,” was not facially invalid and we reverse the RALJ court and reinstate Robert May’s two convictions for violating the protection order.

FACTS

In May 2006, the City of Seattle charged Robert May, under Seattle Municipal Code (SMC) 12A.06.180, with two counts of violating a permanent domestic violence protection order issued pursuant to chapter 26.50 RCW. The order was issued during May’s dissolution action in 1996 and limits May’s contact with his former wife and his

son. The order provides:

THIS ORDER FOR PROTECTION IS PERMANENT.

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

At trial in municipal court, May argued that the order was not valid because it did not contain, on its face, the statutorily required finding that “the respondent is likely to resume acts of domestic violence against the petitioner [or family members] when the order expires.”¹ The municipal court determined that the order was valid, finding there was nothing to suggest that the issuing court failed to make this statutory finding. At the time of this finding, the superior court file from May’s dissolution action could not be located. The file was eventually located and the court revisited the issue of the validity of the order. The court again determined that the order was facially valid and that there is no requirement that the protection order contain the specific finding on which the issuing court based its determination to make the order permanent. Trial proceeded on stipulated facts and the court found May guilty as charged.

May appealed his conviction to the superior court, again raising the issue of the validity of the order. He also argued that he was denied due process because he was given notice only that a violation of the order is a crime under state law and was not given notice that he could be prosecuted under the SMC for violating the order. The superior court reversed May’s convictions, holding that the order was facially invalid because it did not contain the issuing court’s finding, stated in the statutory language, on which the issuing court based its determination to make the order permanent. The

¹ RCW 26.50.060(2).

superior court did not reach May's due process argument.

Both parties sought discretionary review in this court. A commissioner granted the City's motion and passed May's motion to this panel for determination.

ANALYSIS

Under RALJ 9.1, our inquiry is whether the court of limited jurisdiction committed an error of law and whether substantial evidence supports the factual findings.² Any unchallenged findings are verities on appeal.³ Our review for errors of law is de novo.⁴

Generally, if a protection order restrains the respondent from contacting his or her minor children, the restraint must be for a fixed period not to exceed one year.⁵ However, the statute grants the issuing court the authority under specified circumstances to enter a permanent order of protection:

[I]f the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.^{6]}

May argues that the order restraining him was not valid because it did not state, on its face and in the language of the foregoing statute, that the issuing court found that he was "likely to resume acts of domestic violence" against his former spouse and child. Instead, the order stated: "If the duration of this order exceeds one year, the court finds that an order of less than one year will be insufficient to prevent further acts

² Kyle v. Williams, 139 Wn. App. 348, 353, 161 P.3d 1036 (2007).

³ Kyle, 139 Wn. App. at 353.

⁴ City of Bellevue v. Jacke, 96 Wn. App. 209, 211, 978 P.2d 1116 (1999); RALJ 9.1.

⁵ RCW 26.50.060(2).

⁶ RCW 26.50.060(2).

of domestic violence.” The RALJ court agreed with May, concluding that the protection order’s language was lacking because it was “not the finding required by RCW 26.50.060(2).”

We disagree. There is nothing in chapter 26.50 RCW requiring that the issuing court’s finding as to further acts of domestic violence appear on the face of the protection order. Certain information must, by statute, be included on an order of protection, such as notice of criminal penalties resulting from violation of the order.⁷ No such similar requirement exists as to the court’s finding on which it determines to make the protection order permanent.⁸ Here, the municipal court properly concluded that the order did not have to contain the issuing court’s finding on which it based its determination to make the protection order permanent.⁹

In his motion for discretionary review, May argues that he was denied due

⁷ RCW 26.50.35(1)(c).

⁸ See City of Seattle v. Edwards, 87 Wn. App. 305, 310, 941 P.2d 697 (1997) (RCW 26.50.060 “authorizes the issuance of permanent orders and does not require any particular wording.”), overruled on other grounds, State v. Miller, 156 Wn.2d 23, 123 P.3d 827 (2005); Spence v. Kaminski, 103 Wn. App. 325, 331, 12 P.3d 1030 (2000) (RCW 26.50.060(2) does not require any particular wording in the order; beyond requiring that the order specifies the types of relief provided, the statute requires only that the order specify the date it expires (if at all), the type and date of service of process used, and a notice of the criminal penalties resulting from violation of the order).

⁹ May’s challenge to the validity of the order is not an impermissible collateral attack. The validity of a protection order, as opposed to its existence, is not an element of the crime of violation of such order, but rather is a question of law appropriately within the province of the trial court to decide as part of the court’s gate-keeping function. State v. Miller, 156 Wn.2d 23, 31, 123 P.3d 827 (2005). “[V]alidity” includes whether the order was facially adequate and complied with the underlying statutes. Miller, 156 Wn.2d at 31. Further, protection orders are presumptively valid. State v. Snapp, 119 Wn. App. 614, 625-26, 82 P.3d 252 (2004). Absent a timely, substantive challenge to the validity of an order, the State is not required to presume invalidity. Snapp, 119 Wn. App. at 625.

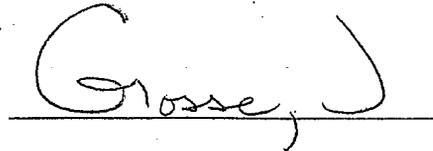
process because he was not informed that he could be prosecuted for violating the protection order under the SMC. We grant May's motion for discretionary review and hold that he was not denied due process.

The order provides in part:

WARNINGS TO THE RESPONDENT: Violation of the provisions of this order with actual notice of its terms is [a] criminal offense under chapter 26.50 RCW and RCW 10.31.100 and will subject a violator to arrest.^[10]

RCW 26.50.110, both prior to and after the 2007 amendment, imposes criminal penalties for violations of domestic violence protection orders generally.¹¹ Its scope is therefore the same as the comparable provision of SMC 12A.06.180. The warnings to May in the order provided sufficient notice of the conduct for which he could be prosecuted under both state and local law.

The protection order was not facially invalid. There is no requirement that the order contain the issuing court's finding required by RCW 26.50.060(2) as a condition for making the order permanent. May was not denied due process with regard to the warnings contained in the order. We reverse the RALJ court and reinstate Robert May's two convictions for violating the protection order.

A handwritten signature in cursive script, reading "Grosse, J.", is written above a horizontal line.

WE CONCUR:

¹⁰ (Alteration in original).

¹¹ State v. Bunker, 144 Wn. App. 407, 416, 183 P.3d 1086, review granted, 165 Wn.2d 1003 (2008).

No. 61027-9-1 / 6

Jan J.

Schindler, CT