

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

In re Personal Restraint Petition of
WILLIAM NEAL FRANCE,
Petitioner.

STATE'S RESPONSE TO PERSONAL RESTRAINT PETITION

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Division I
State of Washington

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A. AUTHORITY FOR RESTRAINT OF PETITIONER

The petitioner, William Neal France, is restrained pursuant to a jury's verdict of guilty on five counts of Felony Harassment, and the sentencing court's finding that an exceptional sentence was warranted under the "free crimes" aggravating factor of RCW 9.94A.535(2). Appendix A.

B. ISSUE PRESENTED

Is the "unit of prosecution" for felony harassment each independent threat made by a perpetrator, or can a perpetrator make threats to the same victim on innumerable occasions, and over an infinite period of time, knowing he can face but a single charge?

C. SUMMARY OF ARGUMENT

Over the course of a two month period, the defendant, a former client of The Defender Association (TDA), threatened attorney Anita Paulsen and attorney Lisa Daugaard multiple times using vial threats and language. Each call was recorded.

The defendant went to trial and was convicted of multiple counts of felony harassment. Now, for the first time, the defendant asserts that his convictions violate double jeopardy principles. Specifically, he asserts that he can be convicted of only two counts

– one count for each victim. This, the defendant posits, is what the legislature intended as the “unit of prosecution” for harassment. Thus, according to the defendant, a perpetrator can threaten a victim on multiple occasions and over any length of time and be subjected to but a single count of harassment, regardless of the number of times the victim is threatened or the harm caused.

This Court should reject the defendant’s strained interpretation of the harassment statute. The defendant’s interpretation of the statute is not dictated by the language of the statute, it does not effectuate the legislative purpose of the statute, it would lead to absurd results and it would essentially turn the harassment statute into the stalking statute. Instead, the “unit of prosecution” that is most true to the statutory language and effectuates the legislative intent is that each independent threat is a chargeable act.

D. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The defendant was charged as follows:

<u>Count</u>	<u>Charge</u>	<u>Victim</u>	<u>Violation Date</u>
1	Felony Harassment	Anita Paulsen	11/11/11
2	Felony Harassment	Anita Paulsen	11/17/11
3	Felony Harassment	Anita Paulsen	12/5/11
4	Felony Harassment	Lisa Daugaard	11/10/11

5	Felony Harassment	Lisa Daugaard & Anita Paulsen	12/14/11
6	Intimidating a Witness	Lisa Daugaard	12/27/11

Appendix B.

The case was tried in early March of 2012. The jury found the defendant guilty as charged. Appendix C. The defendant was sentenced on October 2, 2014.¹

The court imposed a sentence of 60 months on each count. Appendix A. The counts against each victim would be served concurrently to each other (1, 2 & 3 together, and 4 & 5 together). Id. Based on the “free crimes” aggravator, each group of sentences would be served consecutive to each other, for a total sentence of 120 months. Id.

The defendant filed a notice of appeal of his judgment and sentence. Appendix E. He subsequently moved to withdraw his appeal; a motion that was granted, with a mandate issuing on June 5, 2015. Appendix F.

¹ The defendant was initially sentenced on March 23, 2012. However, on direct appeal, the charge of intimidating a witness (count 6), was reversed and resentencing ordered. See Appendix D. The facts of the original sentencing and the direct appeal are not relevant to the issue raised in the defendant’s petition.

2. SUBSTANTIVE FACTS

Attorney Anita Paulsen is a public defender with The Defender Association.² Appendix G at 23. In August of 2009, Paulsen was appointed to represent the defendant on a case with her agency. Id. at 27-28. In the many meetings between the two, the defendant's temper became a problem. Id. at 28. Although Ms. Paulsen was used to a certain amount of "venting" by various clients, one such "outburst" was "beyond the pale." Id. at 29. Paulsen was forced to leave, telling the defendant that when he was ready to talk about his case and to curtail the outbursts, she would return to help him. Id. The defendant had several other outbursts after that but Paulsen was able to deal with them, and for the most part, the defendant was able to contain himself. Id.

Paulsen was able to obtain an appropriate outcome of the defendant's case. Id. at 30. He was set up to receive government benefits and enter into a Drug Offender Sentencing Alternative (DOSA). Id. Paulsen was also able to get the court in another matter to give the defendant concurrent time so that the defendant could get into the DOSA program. Id. Paulsen felt that she was

² The trial was literally a two witness case. A copy of the portion of the verbatim report of proceedings containing the testimony of attorney Anita Paulsen and attorney Lisa Daugaard is attached as Appendix G. The defendant did not testify.

able to obtain an “excellent” resolution, a resolution that was better than what the defendant initially asked for. Id. at 30-31.

About ten months later, Paulsen received a voice mail message from the defendant saying, “I’m coming to lick your pussy.” Id. at 31. The social worker working with TDA and Paulsen also began receiving disturbing messages from the defendant. Id. at 31-32. These calls continued into the middle of 2010. Id. at 32.

Attorney Lisa Daugaard ultimately sent the defendant a “cease and desist” letter. Id. at 33. At the same time, Daugaard and Paulsen attempted, without success, to determine what was motivating the defendant’s extreme anger. Id. In fact, the attempt to get the defendant to stop with his threatening behavior “was like putting gasoline on a fire.” Id. at 34. There were repeated threats of sexual assault, cutting, shooting, “all in the most vile language I think I’ve ever heard,” said Paulsen. Id.

Ultimately, the defendant was charged with a number of counts of felony harassment. Id. at 35. On November 10, 2011, Paulsen and Daugaard appeared at the defendant’s sentencing hearing and spoke to the court. Id. at 35-36. Paulsen testified that it was important for the sentencing judge to know how dangerous the situation was, that this was not the norm, and that she could not

understand what was causing the defendant so much anger. Id. at 36. More than anything else, Paulsen “just wanted it to be over.” Id. at 37. But it was not over.

The defendant called within hours of his sentencing and left the following message for Paulsen:

Hello honey. Glad to hear your voice. What you did in the courtroom was outstanding. That was a marvelous fucking act I ever heard in my whole life. I called a few of my friends and told them about you. They'll be paying you a visit. Have a nice fucking life you worthless fucking bitch.

From Trial Exhibit 1,³ Appendix G at 40-42.

Upon hearing the message, Paulsen realized that the defendant had not been “dissuaded,” and that as soon as he got out he would “implement his threat,” or he would “find quote some of his friends to do that for him” even while he was in custody. Id. at 42-44.

Almost a week later, on November 17, 2011, the defendant called Paulsen again and left the following message:

Hello Anita. That was spectacular you being in the courtroom. That was great. I like that. You was really concerned about my welfare. Just want to let you know there's a couple of my buddies are coming

³ All of the calls except for one (which will be noted), were recorded on a CD and admitted into evidence as Trial Exhibit number 1. See Appendix H. While the CD has not been designated to this Court, the quotations below are all taken from exhibit 1.

to see ya. They're gonna take you out for lunch. You know. Show you, show you appreciation. Just to let you know. It's gonna be okay. I told them to take care of you. You know treat you really good.

From Trial Exhibit 1.

A few weeks later, on December 5, 2011, the defendant called Paulsen and left the following message:

Anita Paulsen, I don't have a phone number for you to call me back. The only way I can call you, the only way I can get a hold of you is if I call you. But I do want to say one thing. You were spectacular in that courtroom on the 10th of this last month. Goddamn you were good. But there's one thing I want to do though, I want to put a bullet up your fucking ass. [long pause] ... but before I do that, I'm gonna lick your pussy. Stick my dick in your pussy, then I'm gonna stick a broom up your ass. How you gonna feel about that little girl?

From State's Exhibit 1; Appendix G at 45.

Paulsen testified that she did not believe the defendant would ever stop and that it was just "a question of time before Mr. France comes after me." Id. at 45-46. Paulsen interpreted the defendant's threats to mean he would "take me out," or kill me. Id. at 44.

Lisa Daugaard, Paulsen's supervisor, testified similarly to Paulsen. She confirmed that she was notified of the threats and that she sent a letter to the defendant in an attempt to get him to

stop. Id. at 59. Daugaard also called the defendant and left a message, but this apparently only angered the defendant because he called back quite upset. Id. Daugaard then also became a target of the defendant's threats. Id. at 60. The threats involved threats of violence and strange sex acts against Daugaard and her family. Id. Ultimately, the agency was forced to call the police which led to charges being filed against the defendant. Id. As with Paulsen, Daugaard spoke at the defendant's sentencing hearing. Id. at 60-61.

On November 10, 2011, hours after his sentencing, the defendant called Daugaard and left the following message:

Hey bitch. You fucked up by coming into the courtroom today. You think for one fucking minute nothing's not going to happen to you? You worthless mother-fucking slut. Give a message to Rita, Anita Paulsen, same thing. Eight years. You better find a new job, bitch. You better find a new fucking job.

Appendix I;⁴ Appendix G at 64-67.

On December 14, 2011, the defendant called Daugaard and left the following message:

Lisa, it's your favorite fucking person in the whole world. I like how you expressed yourself in the courtroom on the 10th of last month. Yeah, I liked that. It's been a fucking month little lady. It's been a

⁴ This call was not recorded. A transcript of the call was admitted as Trial Exhibit number 2. See Appendix H.

month. But see the thing is, I want you to understand something real fuckin' quick – I'm still gonna get you. What you said in the courtroom wasn't called for. You come to the courtroom, coming to court, wasn't called for. You understand. Now I'm gonna do, I'm gonna do 96 fucking months because of you – all because of you. But when I get out, I'm gonna get you in the fuckin' elevator. I'm gonna fuck you in your ass bitch. I'm gonna pull your fucking pants down right in the elevator and I'm gonna let you have it. I'll pin it up in ya, you little bitch slut.

From Trial Exhibit 1; Appendix G at 70-71.

Daugaard testified that “no one has ever made me feel afraid in the way that these calls made me afraid.” Id. at 71. They were specific and planned. Id.

On December 27, 2011, the defendant called Daugaard and left the following message:

Don't come to court girl. Don't come to court.

From Trial Exhibit 1; Appendix G at 72. This later message pertained to the fact that the defendant had been charged with these new counts and he had been returned to the King County Jail to face the charges. Id. at 73.

For trial, the defendant stipulated that he had been “previously convicted of the crimes of felony harassment against Anita Paulsen and Lisa Daugaard.” Id. at 83.

E. ARGUMENT

**THE LEGISLATURE DID NOT INTEND FOR A
DEFENDANT TO BE ABLE TO THREATEN A VICTIM
WITH IMPUNITY AND FACE BUT A SINGLE CHARGE**

The defendant contends that for all the many acts of harassment he committed against each of his defenseless victims, he can only be charged and convicted of a single count of harassment per victim. More specifically, the defendant contends that in enacting the harassment statute, the legislature intended that no matter how many times a defendant threatens a victim, and no matter how many days, months or even years the threats continue, the “unit of prosecution” under the harassment statute is one count per victim. This claim must be rejected.

What constitutes a “unit of prosecution” under a statute is a pure question of legislative intent and the legislature could never have intended such an absurd result, allowing a victim to be victimized over and over and over again with no additional consequences to his or her abuser. The “unit of prosecution” under the statute is each separate act of threatening a victim. Nothing else properly protects victims, holds defendants accountable for their actions, is true to the statutory language, is consistent with

cases interpreting other statutes, and fosters the legislature's goal of preventing harassing and stalking behavior.

When a defendant is convicted of violating one statute multiple times, the proper double jeopardy inquiry is what "unit of prosecution" has the legislature intended as the punishable act under the specific criminal statute. State v. Adel, 136 Wn.2d 629, 633-34, 965 P.2d 1072 (1998); Bell v. United States, 349 U.S. 81, 83, 75 S. Ct. 620, 99 L. Ed. 905 (1955). Here, the question is, what act or course of conduct has the legislature defined as the punishable act under the harassment statute, RCW 9A.46.020.

The principal focus in determining whether the legislature intended multiple acts to constitute but one crime is whether the legislature intended the punishable offense to be a continuing offense. Ex parte Snow, 120 U.S. 274, 7 S. Ct. 556, 30 L. Ed. 658 (1887). This is in contrast to statutes aimed at offenses that can be committed *uno actu*, or in a single act. Snow, 120 U.S. at 286.

In Snow, the defendant was convicted of three counts of bigamy, each count identical in all respects except that each count covered a different time span that was part of a continuous period of time. Snow, 120 U.S. at 276. The Court noted that bigamy is "inherently a continuous offense, having duration, and not an

offense consisting of an isolated act.” Snow, at 281. Because bigamy is a continuing offense, the Court held that the defendant committed but one offense.

In contrast is the situation that existed in Ebeling v. Morgan, 237 U.S. 625, 35 S. Ct. 710, 59 L. Ed. 1151 (1915). Ebeling cut open seven mail bags that were held in a single railway postal car. For this, Ebeling was convicted of seven counts of feloniously injuring a mail bag. Rejecting Ebeling’s claim that he committed but a single offense, the Court noted that the offense of injuring a mail bag was *not* one continuous offense, rather, each offense was complete irrespective of any attack upon any other mail bag. Morgan, 237 U.S. at 629. It was not, the Court noted, “continuous offenses where the crime is necessarily, and because of its nature, a single one, though committed over a period of time.” Id., at 629-30.

In pertinent part, the harassment statute reads as follows:

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person ***knowingly threatens***:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out...

(2) (a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if any of the following apply: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person; (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. . .

RCW 9A.46.020.

In State v. Alvarez,⁵ the Supreme Court was tasked with looking at what act or acts could be charged under the harassment statute. Alvarez was convicted of one count of harassment against a neighbor for telling her to “shut up bitch or I’ll take you out.” Alvarez was convicted of a second count of harassment for threatening to put Drano in his teacher’s drink. On appeal, Alvarez argued that the harassment statute required more than one act of harassment against a single victim before a person could be charged under the statute. The Supreme Court disagreed.

The Court stated that the harassment statute “is designed to prevent the type of conduct exhibited by Appellant Alvarez.”

Alvarez, 128 Wn.2d at 12. “Any person,” the Court said “may be convicted of harassment if all the elements of the offense are satisfied. Those elements stated in RCW 9A.46.020 do not include ‘repeated invasion of privacy’ nor a ‘pattern of harassment.’

Appellant Alvarez’ behavior satisfied all elements of the offense of harassment.” Id. This fits squarely within the analysis of the Supreme Court in Snow and Morgan, supra, and shows that harassment is an offense that “can be committed *uno actu*, or in a single act.” While a perpetrator can certainly continue to commit

⁵ 128 Wn.2d 1, 904 P.2d 754 (1995).

acts of harassment, just as any perpetrator can continue committing additional acts of criminal behavior under any criminal statute, harassment is not “necessarily, and because of its nature” a continuing offense.

Now the defendant argues Alvarez answered a different question than he posits. He asserts that while Alvarez held that a single act of harassment may be charged as harassment, the Court did not hold that multiple acts could be charged separately. However, the defendant’s argument fails to articulate how a crime that the Supreme Court has held can be committed and charged *uno actu*, from a single act, is by its nature a “continuing offense” where only a single count can be charged regardless of the number of acts committed. It would be like saying that a perpetrator who assaults a victim on Monday can be charged with assault, but if the perpetrator then assaults the victim again on Tuesday, that assault is subsumed in the act committed the day before and only one count of assault can be charged. This is an absurd result the legislature could not have intended.

In examining the harassment statute, it is also useful to examine a similar statute and how the courts and the legislature treated the unit of prosecution question.

Prior to 2008, no court had addressed what the proper unit of prosecution was under the witness tampering statute. Former RCW 9A.72.120(1) provided that:

A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:

(a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or

(b) Absent himself or herself from such proceedings; or

(c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.

In State v. Hall,⁶ this Court was tasked with answering the unit of prosecution question. Hall had been convicted of three counts of witness tampering. Before this Court, Hall made similar arguments to the arguments made here. He maintained that the unit of prosecution for witness tampering was “a course of conduct directed towards a witness or a person in relation to a specific proceeding.” Hall, 147 Wn. App. at 489. Hall argued “that it does

⁶ 147 Wn. App. 485, 196 P.3d 151 (2008).

not matter how many attempts a defendant makes to tamper with a single witness as long as the intent to obstruct justice in the specific proceeding remains the same.” Id.

This Court rejected Hall’s interpretation of the statute finding it unreasonable and inconsistent with the legislative intent.

Hall’s reading of the statute is incorrect. The statute prohibits any attempt to induce a witness or potential witness to do any of the actions enumerated. The focus is upon the attempt to induce, not on the specific identity of the person or proceeding. There is no ambiguity here.

Moreover, Hall’s interpretation is not reasonable. Under his reasoning, a defendant would have no incentive to stop after the first attempt, as he would expose himself to criminal liability for only one count of witness tampering no matter how many efforts he made to induce the witness to disappear or testify falsely. This interpretation does not serve the legislative purpose.

Hall, 147 Wn. App. at 489 (footnote omitted).

This Court also rejected Hall’s argument that the statutory language was ambiguous, and therefore it should be construed in his favor under the rule of lenity. Instead, this Court found that the language of the statute was clear; that “the unit of prosecution for tampering with a witness is any one instance of attempting to induce a witness or a person to do any of the actions set forth in RCW 9A.72.120.” Id.

When an appellate court issues a judicial construction of a legislative act, it is presumed that the legislature is familiar with the court's opinion. The failure of the legislature to amend the statute after it has been judicially construed indicates intent to concur in that construction. State v. Berlin, 133 Wn.2d 541, 558, 947 P.2d 700 (1997); State v. Fenter, 89 Wn.2d 57, 70, 569 P.2d 67 (1977). After this Court's judicial construction of the witness tampering statute, the legislature did not amend the statute, a clear indication that the legislature agreed with this Court's conclusion. This would become even clearer in the years that followed.

The Supreme Court accepted review of Hall's case and reversed this Court's decision. Specifically, the Court held that the unit of prosecution for witness tampering was "the ongoing attempt to persuade a witness not to testify in a proceeding," rather than any single attempt to do so. State v. Hall, 168 Wn.2d 726, 734, 230 P.3d 1048 (2010). After the Supreme Court issued its opinion, the legislative response was swift and straightforward.

In direct response to the Hall decision, the legislature amended the witness tampering statute. In doing so, the legislature stated the following: "In response to State v. Hall, 168 Wn.2d 726 (2010), the legislature *intends to clarify* that each instance of an

attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under the statutes governing tampering with a witness and intimidating a witness.” 2011 Wash. Legis. Serv. Ch. 165 (H.B. 1182) (emphasis added). The legislature added the following provision to the statute: “For purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense.” Laws of 2011, ch. 165, § 3. What this history clearly shows is that the legislature always intended to make each attempt to intimidate a witness a punishable act.

Statutes must be read together with other provisions in order to determine the legislative intent underlying the entire statutory scheme. State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282 (2000). The purpose of interpreting statutory provisions together with related provisions is to achieve a harmonious and unified statutory scheme that maintains the integrity of the respective statutes. Id.

Bearing in mind that there is no clear divergence in the language of the pre-Hall harassment statute and the witness tampering statute, and that the statutes serve the similar goal of stopping threatening behavior, it would be absurd to interpret the

two statutes in a markedly different way. More to the point, it would be nonsensical to believe that the legislature intended each act of a perpetrator threatening a potential witness to be separately punished, but when a perpetrator makes identical threats (or worse) to a victim who is not a potential witness, the latter perpetrator can only be charged with a single offense while the former can be charged with multiple offenses. This would create an inequity of punishment for similar criminal behavior that cannot be explained with rational thought and cannot be what the Legislature intended.⁷

Another statute that is particularly relevant in discerning the unit of prosecution of the harassment statute is the stalking statute – a crime in the same RCW chapter as harassment. In pertinent part, the statute reads as follows:

(1) A person commits the crime of stalking if. . . :

(a) He or she intentionally and **repeatedly harasses** or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

⁷ Additionally, chargeable acts of witness tampering cease upon occurrence of the proceeding that is the subject to the tampering. Harassment has no end point. A perpetrator could continue his unlawful acts of harassment indefinitely.

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

RCW 9A.46.110(1) (emphasis added). “Repeatedly” means on two or more separate occasions. RCW 9A.46.110(6)(e).

Two aspects of this stalking statute are particularly relevant.

First, had the legislature intended harassment to be a continuing offense, it certainly knew what language to use to convey such an intent. In the stalking statute, the legislature clearly articulated the intent that a course of conduct be the punishable unit of prosecution by using the phrase “repeatedly harasses.” Where the legislature uses certain language in one instance, and different language in another, this evidences a different legislative intent. See City of Kent v. Beigh, 145 Wn.2d 33, 46, 32 P.3d 258 (2001).⁸

⁸ There are a variety of other terms and phrases the legislature also could have used but chose not to do so. See, e.g., RCW 9A.32.055 Homicide by Abuse (using the phrase “engages in a pattern or practice of assault against a child”); RCW 9.46.0269 Professional Gambling (using the phrase “engages in” gambling activity); RCW 26.50.110(5) Violation of a No Contact Order (using the phrase “at least two previous convictions”).

Second, the defendant's claim that harassment is a continuing offense essentially makes the statute a nullity. Stalking already includes persons who "repeatedly harass" another person. But the "harassment statute is part of a multifaceted remedial scheme the Legislature established to protect citizens from harmful harassing behavior." State v. Smith, 111 Wn.2d 1, 759 P.2d 372 (1988). "Washington law" "provides a full spectrum of legal remedies, both civil and criminal, legal and equitable designed to provide meaningful relief in the myriad situations where harassment occurs." Id. (internal citations and quotations omitted). The harassment statute is one part of this legislative scheme and the statute governs situations the stalking statute does not. It makes criminal individual acts of harassment. Alvarez, 128 Wn.2d at 11-12.

In addition, statutes that relate to the same subject matter are to be read in connection with each other. State v. Houck, 32 Wn.2d 681, 684, 203 P.2d 693 (1949). The civil harassment statute defines "unlawful harassment" as "a knowing and willful **course of conduct** directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person..." RCW 10.14.020(2) (emphasis added). "Course of conduct" is

defined as “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” RCW 10.14.020(1). “[W]hen the Legislature uses certain language in one instance, and different language in another, there is a difference in legislative intent.” State v. E.J.H., 65 Wn. App. 771, 775, 830 P.2d 375 (1992). Thus, the omission of any reference to “course of conduct” in the criminal harassment statute shows that the legislature intended to focus on singular acts of harassment in the criminal context and a course of conduct in the civil context.⁹ See State v. Alvarez, 74 Wn. App. 250, 259-60, 872 P.2d 1123 (1994), aff’d, 128 Wn.2d 1 (1995).

⁹ In a similar mode, this Court has rejected the notion that violation of a no-contact order is a continuing offense. See State v. Brown, 159 Wn. App. 1, 248 P.3d 518 (2010), rev. denied, 171 Wn.2d 1015 (2011). Brown was convicted of five counts of violating a no-contact order on consecutive days. He argued that his acts amounted to a single “unit of prosecution.” This Court held that it was clear the legislature intended to make each violation of a court order a chargeable offense. Id.

Many times violations of a no-contact order are consensual in nature and result in no physical or mental harm. See State v. Dejarlais, 136 Wn.2d 939, 945, 969 P.2d 90, 92-93 (1998) (victim continued having a consensual relationship with the defendant despite having obtained a no-contact order). Here again the absurdity of the defendant’s interpretation of the harassment statute is evident. Under the defendant’s interpretation of the harassment statute, where a perpetrator is actually threatening his victim with harm and the victim is placed in reasonable fear the threat will be carried out (a requirement under the statute), according to the defendant the legislature intended only a single punishment regardless of the number of threats made. On the other hand, this Court has already held that the legislature intended to allow a perpetrator to be charged with multiple counts, one for each act that violates a no-contact order, even where no harm or threat of harm has occurred.

The defendant relies heavily on a case from Division Three, State v. Morales,¹⁰ a case that opined upon the unit of prosecution question. However, the analysis in Morales is heavily flawed, and in any event, its holding is limited to situations not applicable to the defendant's case.

Jesus Morales and Yanett Farias have three children together but lived apart. On one particular day, Morales became angry because he believed Farias had stolen \$4,000 from him. He first went to her house but she refused to open the door. Morales then went to the home of Farias's sister and the sister's husband, Trinidad Diaz. "Trembling" in anger Morales told Diaz that he was going to kill Farias the next morning when she dropped the kids off at daycare. Farias was warned of the threat and she called the police.

The next morning, Farias took the kids to daycare as usual but with a plan to avoid Morales if she saw him. However, Morales was waiting for her and blocked her vehicle with his truck. He then yelled at her, "[T]his is as far as you've gone, you fucking bitch, because I'm going to kill you here." Morales, 174 Wn. App. at 374-75. Morales was convicted of two counts of harassment with

¹⁰ 174 Wn. App. 370, 298 P.3d 791 (2013).

Farias as the victim on each count and the threats having occurred on consecutive days.

The Court of Appeals was asked to determine if Morales's acts constituted a single unit of prosecution or two units of prosecution. Ultimately, the Court came to the following conclusion as to what constitutes the unit of prosecution under the harassment statute. The Court held that where "(1) a perpetrator threatens to cause bodily harm to a single identified person at a particular time and place and (2) places a single victim of the harassment in reasonable fear that the threat will be carried out, the conduct constitutes a single offense." Morales, 174 Wn. App. at 387. Even assuming this is the unit of prosecution under the statute, it does not help the defendant here. The defendant did not threaten just a single type of harm, a single particular time or a single particular location. Rather, the defendant threatened variously to sexually assault each victim, commit sodomy on them, to physically assault them, to shoot them, and to have his friends do the same various acts. He threatened to get them when he got out, or in the elevator, or to have friends get them first. The defendant was also clearly aware that he could increase their feelings of fear by calling a month later and saying,

It's been a fucking month little lady. It's been a month. But see the thing is, I want you to understand something real fuckin' quick – I'm still gonna get you.

From Trial Exhibit 1.

In addition to the facts of this case not fitting within the scope of the unit of prosecution found in Morales, the analysis in the Morales case is flawed.

In reaching their conclusion, the Morales court stated that the operative phrase contained in the statute, “knowingly threatens,” is “not inherently a single act.” Id. at 387. What the court failed to recognize is that the word “threatens” is a verb, not a noun. Merriam-Webster's Collegiate Dictionary, 1302 (11th ed. 2003). The noun, “threat,” to which the verb applies is found at RCW 9A.04.110(28) and it is singular. Id. The plural of “threat” is “threats.” Id. “Threatens” is not some sort of plural verb of the noun “threats.” Grammatically, a person “knowingly threatens” a threat. To indicate that multiple threats need occur, another phrase, such as “repeatedly threatens” or “repeatedly harasses,” or some other phrase would have to be used.

The Morales court also relied on the language of RCW 9A.46.030; what the court termed the “venue provision of the harassment statute.” The court noted that the provision referred to multiple threats. The court’s citation to the statute is as follows:

Any harassment offense committed as set forth in RCW 9A.46.020 ... may be deemed to have been committed where the conduct occurred or at the place from which the **threat or threats** were made or at the place where the threats were received.

Morales, 174 Wn. App. at 386 (emphasis added).

There are two problems with the court drawing any unit of prosecution conclusion from this provision.

First, left out of the RCW citation in the court’s opinion is the fact that the venue provision does not just dictate venue for harassment, it also dictates venue for stalking; an offense that **requires** multiple acts.¹¹ Thus, to draw a conclusion about the unit of prosecution from the venue provision is misguided.

¹¹ With the omitted language, the statute reads that “[a]ny harassment offense committed as set forth in RCW 9A.46.020 **or 9A.46.110**... may be deemed to have been committed...” RCW 9A.46.030 (emphasis added). RCW 9A.46.110 defines the crime of stalking.

Second, the venue provision does define the elements of any crime. Acts of harassment, as well as stalking, can occur in many different locations and can occur via conduits from different locations, i.e., by phone, computer, mail, etc., where the victim and defendant may be in different venues. The statute does nothing more than identify which venue may be appropriate.

The preamble of the harassment/stalking statute states that:

The legislature finds that the prevention of serious, personal harassment is an important government objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.

RCW 9A.46.010. The best way to achieve the intended purpose of the chapter is to punish and stop harassment when it begins. In contrast, the broader the unit of prosecution, the less deterrent affect the statute has. Allowing a perpetrator to continue harassing a victim after his initial threat, with no additional sanction under the statute, leaves the target of the harassment at greater risk of

emotional distress and harm.¹² In fact, with the knowledge that he is not subject to further criminal charges, a defendant may well be emboldened to continue with his harassing behaviors.¹³

Finally, the defendant's hopeful reliance upon the rule of lenity is misplaced. Courts interpret statutes to effectuate the legislative intent and to avoid unlikely, strange or absurd results. State v. Contreras, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994). A statute is not ambiguous, and thus the rule of lenity is not employed, when the alternative reading is strained. State v. C.G., 114 Wn. App. 101, 55 P.3d 1204 (2002), overruled on other grounds, 150 Wn.2d 604, 80 P.3d 594 (2003); State v. Tili, 139 Wn.2d 107, 115, 985 P.2d 365 (1999). Here, as stated above, the defendant's interpretation is not only strained, it would lead to

¹² The defendant asserts that this dire result can be ameliorated because if a defendant were to change his mode or manner of threatening behavior, additional charges of harassment could be filed. This is incorrect. There is nothing in the statutory language that shows that the legislature intended the unit of prosecution under the statute be dependent upon the mode or manner of the defendant's threats.

¹³ The defendant's argument would apply equally to other statutes using the same language. A look at these statutes further highlights the absurdity of the defense argument. For example, the threats to bomb statute uses the term "threaten," and thus, a perpetrator could call in a bomb threat to a school day after day after day and face but a single count. See RCW 9A.61.160. A perpetrator commits the offense of criminal gang intimidation if the perpetrator "threatens" another person because they refuse to join a gang. See RCW 9A.46.120. Under the defendant's argument, the gang member can threaten his victim day after day after day with no further repercussions beyond a single count.

absurd results, undercut the legislature's intent, and create a giant loophole in the statute.

Harassment is a *choate* crime complete when a single act of harassment occurs. The elements section of the statute is unambiguous in describing what is necessary for conviction: a single act. A unit of prosecution encompassing each act of harassment is supported by the plain reading of the statute and best effectuates the legislative intent of protecting victim and holding defendants accountable for their discrete criminal acts.¹⁴

¹⁴ This is not to say that other factors do not dictate filing decisions. Filing decisions are regulated by law and standards of prosecution. See RCW 9.94A.411; State v. Lewis, 115 Wn.2d 294, 307, 797 P.2d 1141 (1990) (The filing decision was "within the prosecutor's filing standards, standards promulgated to secure the integrity of the SRA's sentencing framework. The charging decision adequately reflects the defendant's actions and ensures that his punishment is commensurate with the punishment imposed on others committing similar offenses and ensures that the punishment for a criminal offense is proportionate to the seriousness of the offense").

Additionally, when there are several acts that occur close in time, the factual doctrine of "continuing course of conduct" may be applied and a single count filed by the State. For example, where two distinct assaults occur in one place, over a short period of time, and involve the same victim, this may be considered one continuing act supporting a single charge. See State v. Handran, 113 Wn.2d 11, 17-18, 775 P.2d 453 (1989); also State v. Marko, 107 Wn. App. 215, 231-32, 27 P.3d 228 (2001) (multiple threats over a 90-minute period of time held to be a continuing course of conduct and one criminal act).

F. **CONCLUSION**

For the reasons cited above, this Court should dismiss the defendant's petition.

DATED this 19 day of May, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
DENNIS J. McCURDY, WSBA #21975
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Appendix

A: Judgement and Sentence, Findings of Facts

B: Amended Information

C: Verdict Forms

D: Appellate Opinion and Mandate

E: Notice of Appeal

F: Motion to Withdraw Appeal, Order and Mandate

G: Testimony of Attorney Anita Paulsen & Attorney Lisa Daugaard

H: Exhibit List

I: Trial Exhibit 2 – Threat to Lisa Daugaard

APPENDIX A

FILED
KING COUNTY, WASHINGTON

OCT 02 2014

SUPERIOR COURT CLERK
BY JULIE WARFIELD
DEPUTY

COPY TO COUNTY JAIL
OCT 03 2014

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
	)	Plaintiff,
)	
vs.	)	No. 11-1-08388-4 SEA,
)	
	)	JUDGMENT AND SENTENCE
WILLIAM NEAL FRANCE,	)	FELONY (FJS)
)	
	)	ON RESENTENCING
)	
	)	Defendant.

I. HEARING

I.1 The defendant, the defendant's lawyer, Brian J Todd, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were:

Law Office of Brian J Todd
6523 California Ave SW #170
Seattle, WA 98136
206-778-0750

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:
2.1 **CURRENT OFFENSE(S):** The defendant was found guilty on 03/05/2012
by Jury Verdict of:

- Count No.: I Crime: Felony Harassment
RCW: 9A.46.020(1), (2)(b) Crime Code: 00498
Date of Crime: 11/11/2011
- Count No.: II Crime: Felony Harassment
RCW: 9A.46.020(1), (2)(b) Crime Code: 00498
Date of Crime: 11/17/2011
- Count No.: III Crime: Felony Harassment
RCW: 9A.46.020(1), (2)(b) Crime Code: 00498
Date of Crime: 11/11/2011
- Count No.: IV Crime: Felony Harassment
RCW: 9A.46.020(1), (2)(b) Crime Code: 00498
Date of Crime: 11/13/2011
- Count No.: V Crime: Felony Harassment
RCW: 9A.46.020(1), (2)(b) Crime Code: 00498
Date of Crime: 12/05/2011

Additional current offenses are attached in Appendix A

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a firearm in count(s) _____ RCW 9.94A.533(3).
- (b) While armed with a deadly weapon other than a firearm in count(s) _____ RCW 9.94A.533(4).
- (c) With a sexual motivation in count(s) _____ RCW 9.94A.835.
- (d) A V.U.C.S.A offense committed in a protected zone in count(s) _____ RCW 69.50.435.
- (e) Vehicular homicide Violent traffic offense DUI Reckless Disregard.
- (f) Vehicular homicide by DUI with _____ prior conviction(s) for offense(s) defined in RCW 46.61.5055, RCW 9.94A.533(7).
- (g) Non-parental kidnapping or unlawful imprisonment with a minor victim. RCW 9A.44.128, .130.
- (h) Domestic violence as defined in RCW 10.99.020 was pled and proved for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).
- (j) Aggravating circumstances as to count(s) _____: _____

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in Appendix B.
- One point added for offense(s) committed while under community placement for count(s) ___ 1 thru 5 _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Counts I thru V	19	III	51 to 60 months		51 to 60 months	5yrs and/or \$10,000

Additional current offense sentencing data is attached in Appendix C.

2.5 EXCEPTIONAL SENTENCE

Findings of Fact and Conclusions of Law as to sentence above the standard range:
Finding of Fact: The jury found or the defendant stipulated to aggravating circumstances as to Count(s) _____

Conclusion of Law: These aggravating circumstances constitute substantial and compelling reasons that justify a sentence above the standard range for Count(s) _____. The court would impose the same sentence on the basis of any one of the aggravating circumstances.

- An exceptional sentence above the standard range is imposed pursuant to RCW 9.94A.535(2) (including free crimes or the stipulation of the defendant). Findings of Fact and Conclusions of Law are attached in Appendix D.
- An exceptional sentence below the standard range is imposed. Findings of Fact and Conclusions of Law are attached in Appendix D.

The State did did not recommend a similar sentence (RCW 9.94A.480(4)).

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

The Court DISMISSES Count(s) VI

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

[] This offense is a felony firearm offense (defined in RCW 9.41.010). Having considered relevant factors, including criminal history, propensity for violence endangering persons, and any prior NGI findings, the Court requires that the defendant register as a firearm offender, in compliance with 2013 Laws, Chapter 183, section 4. The details of the registration requirements are included in the attached Appendix L.

4.1 RESTITUTION, VICTIM ASSESSMENT, AND DNA FEE:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(5), sets forth those circumstances in attached Appendix E.
Restitution to be determined at future restitution hearing on (Date) at m.
Date to be set.
Defendant waives right to be present at future restitution hearing(s).
Restitution is not ordered.

Defendant shall pay Victim Penalty Assessment in the amount of \$500 (RCW 7.68.035 - mandatory).
Defendant shall pay DNA collection fee in the amount of \$100 (RCW 43.43.7541 - mandatory).

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ Court costs (RCW 9.94A.030, RCW 10.01.160); Court costs are waived;
(b) \$ Recoupment for attorney's fees to King County Public Defense Programs (RCW 9.94A.030); Recoupment is waived;
(c) \$ Fine; \$1,000, Fine for VUCSA \$2,000, Fine for subsequent VUCSA (RCW 69.50.430); VUCSA fine waived;
(d) \$ King County Interlocal Drug Fund (RCW 9.94A.030); Drug Fund payment is waived;
(e) \$ \$100 State Crime Laboratory Fee (RCW 43.43.690); Laboratory fee waived;
(f) \$ Incarceration costs (RCW 9.94A.760(2)); Incarceration costs waived;
(g) \$ Other costs for:

4.3 PAYMENT SCHEDULE: The TOTAL FINANCIAL OBLIGATION set in this order is \$ Restitution may be added in the future. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested. Court Clerk's trust fees are waived. Interest is waived except with respect to restitution.

4.4 CONFINEMENT OVER ONE YEAR: Defendant is sentenced to a term of total confinement in the custody of the Department of Corrections as follows, commencing: immediately; (Date): _____ by _____ m.

60 months/days on count I; 60 months/days on count II; 60 months/days on count III;
60 months/days on count IV; 60 months/days on count V; _____ months/days on count _____;

The above terms for counts I, II, III ~~concurrent~~ IV + V are consecutive concurrent. however cts I, II + III shall run consecutive to counts IV + V

The above terms shall run consecutive concurrent to cause No.(s) all other cause numbers

The above terms shall run consecutive concurrent to any previously imposed sentence not referred to in this order.

In addition to the above term(s) the court imposes the following mandatory terms of confinement for any special WEAPON finding(s) in section 2.1: _____

which term(s) shall run consecutive with each other and with all base term(s) above and terms in any other cause. (Use this section only for crimes committed after 6-10-98.)

The enhancement term(s) for any special WEAPON findings in section 2.1 is/are included within the term(s) imposed above. (Use this section when appropriate, but for crimes before 6-11-98 only, per In Re Charles.)

[] On the conviction for aggravated murder in the first degree, the defendant was under 18 at the time of that offense. Having considered the factors listed in RCW 10.95.030, a minimum term of _____ years of total confinement and a maximum term of life imprisonment is imposed. (If under 16 at the time of the offense, minimum term must be 25 years; if 16 or 17, minimum term must be 25 years to life without parole.)

The TOTAL of all terms imposed in this cause is 120 months.

Credit is given for time served in King County Jail or EHD solely for confinement under this cause number pursuant to RCW 9.94A.505(6): _____ day(s) or days determined by the King County Jail.

4.5 NO CONTACT: For the maximum term of 5 years, defendant shall have no contact with ANITA PAULSEN, LISA DAUGAARD AND THE DEFENDER ASSOCIATION

4.6 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.

HIV TESTING: The defendant shall submit to HIV testing as ordered in APPENDIX G. RCW 70.24.340.

4.7 (a) COMMUNITY CUSTODY for qualifying crimes committed before 7-1-2000, is ordered for one year (for a drug offense, assault 2, assault of a child 2, or any crime against a person where there is a finding that defendant or an accomplice was armed with a deadly weapon); 18 months (for any vehicular homicide or for a vehicular assault by being under the influence or by operation of a vehicle in a reckless manner); two years (for a serious violent offense).

(b) COMMUNITY CUSTODY for any SEX OFFENSE committed after 6-5-96 but before 7-1-2000, is ordered for a period of 36 months.

(c) **COMMUNITY CUSTODY** - for qualifying crimes committed after 6-30-2000 is ordered for the following established range or term:

- Sex Offense, RCW 9.94A.030 - 36 months—when not sentenced under RCW 9.94A.507
 - Serious Violent Offense, RCW 9.94A.030 - 36 months
 - If crime committed prior to 8-1-09, a range of 24 to 36 months.
 - Violent Offense, RCW 9.94A.030 - 18 months
 - Crime Against Person, RCW 9.94A.411 or Felony Violation of RCW 69.50/52 - 12 months
 - If crime committed prior to 8-1-09, a range of 9 to 12 months.
- _____ months (applicable mandatory term reduced so that the total amount of incarceration and community custody does not exceed the maximum term of sentence).

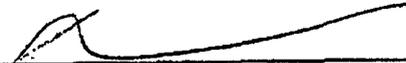
Sanctions and punishments for non-compliance will be imposed by the Department of Corrections or the court.

- APPENDIX H** for Community Custody conditions is attached and incorporated herein.
- APPENDIX J** for sex offender registration is attached and incorporated herein.

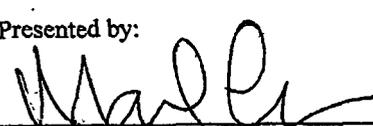
4.8 **ARMED CRIME COMPLIANCE, RCW 9.94A.475, 480.** The State's plea/sentencing agreement is attached as follows:

The defendant shall report to an assigned Community Corrections Officer upon release from confinement for monitoring of the remaining terms of this sentence.

Date: 10-2-14



JUDGE
Print Name: BILL A. BOWMAN

Presented by:


Deputy Prosecuting Attorney, WSBA#
Print Name: _____

Approved as to form:


Attorney for Defendant, WSBA #
Law Office of Brian J Todd
Print Name: 6523 California Ave SW #179
Seattle, WA 98136
208-778-0750

FINGER PRINTS



RIGHT HAND
FINGERPRINTS OF:
WILLIAM NEAL FRANCE

DEFENDANT'S SIGNATURE:
DEFENDANT'S ADDRESS:

William France
K.C.J. - DOC

Dated: 10-2-2014

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK

[Signature]
JUDGE **BILLA. BOWMAN**

By: *[Signature]*
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____
CLERK OF THIS COURT, CERTIFY THAT THE
ABOVE IS A TRUE COPY OF THE JUDGMENT AND
SENTENCE IN THIS ACTION ON RECORD IN MY
OFFICE.
DATED: _____

S.I.D. NO. WA10356245

DOB: 03/11/1954

SEX: Male

RACE: White/Caucasian

CLERK
By: _____
DEPUTY CLERK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 11-1-08388-4 SEA

vs.

JUDGMENT AND SENTENCE,
(FELONY) - APPENDIX B,
CRIMINAL HISTORY

WILLIAM NEAL FRANCE,

Defendant.

2.2 The defendant has the following criminal history used in calculating the offender score (RCW 9.94A.525):

Crime	Sentencing Date	Adult or Juv.	Cause Number	Location
Robbery 2	3/28/1978	AF	70233	King Superior Court WA
Attempt To Elude Pursuing Police	4/24/1989	AF	89-1-01068-9	King Superior Court WA
Felony Harassment	2/21/2003	AF	02-1-06390-6	King Superior Court WA
Felony Telephone Harassment DV	6/17/2005	AF	05-1-04985-1	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Harassment knowingly threaten	11/10/2011	AF	11-1-01715-6	King Superior Court WA
Protection order viol-prev co	10/16/2009	AF	09-1-05185-9	King Superior court WA
Malicious mischief 2	09/23/2005	AF	05-1-08744-3	King Superior court WA
Taking vehicle w/o permission	01/28/2000	AF	99-1-00937-6	Lewis Superior Court WA
Possess stolen property 2 nd degree	01/28/2000	AF	99-1-00937-6	Lewis Superior Court WA

[] The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.525(5)):

Date: 10/21/19


BILL BOWMAN
 JUDGE, KING COUNTY SUPERIOR COURT

FILED

KING COUNTY, WASHINGTON

OCT 02 2014

SUPERIOR COURT CLERK

BY JULIE WARFIELD
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

WILLIAM FRANCE,

Defendant.

No. 11-1-08388-4 SEA

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
EXCEPTIONAL SENTENCE

Pursuant to RCW 9.94A.535, and having reviewed all the evidence, records, and other information in this matter and having considered the arguments of counsel, the court hereby imposes an exceptional sentence of 60 months on Counts I-III, concurrent to each other, and 60 months on Counts IV-V, concurrent to each other, but consecutively to the 60 months imposed on Counts I-III. The total confinement on all counts is 120 months. This sentence is based on the following facts and law:

A. FINDINGS OF FACT

The defendant's offender score on Count I-V is 19. The defendant has also been convicted of multiple current felony offenses. As a result, unless an exceptional sentence is imposed, several of the current offenses will go unpunished.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FOR EXCEPTIONAL SENTENCE - 1
Rev. 4/2012

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1
2 The original sentencing court found the aggravating circumstances beyond a reasonable
3 doubt, pursuant to RCW 9.94A.537. That court found that under RCW 9.9.4A.535(2) (c), the
4 defendant had committed multiple current offenses, and that his high offender score would result
5 in some of the current offenses going unpunished. A standard range would also seriously
6 depreciate the seriousness of the conduct and would allow certain offenses to go essentially
7 unpunished. The Court was thus persuaded that an exceptional sentence was necessary and
8 appropriate.

9 After remand for resentencing on Counts I-V¹, this Court also finds that the basis for the
10 exceptional sentence still stands. The defendant's convictions for felony harassment in Counts I-
11 III for victim Anita Paulsen, and the felony harassment in Counts IV-V for victim Lisa
12 Daugaard, were all separate and distinct findings by the jury. The threats were egregious and
13 disturbing. Because of the defendant's high offender score, without an exceptional sentence
14 several of these counts would be left unpunished. The imposition of the same exceptional
15 sentence, as imposed at the initial sentencing hearing before the trial judge, is fair and just.

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17 **B. CONCLUSIONS OF LAW –**
SUBSTANTIAL AND COMPELLING REASONS FOR IMPOSING
EXCEPTIONAL SENTENCE

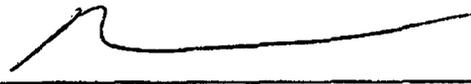
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19 Considering the purposes of the Sentencing Reform Act, the aggravating circumstances
20 specified in these Findings of Fact are substantial and compelling reasons justifying an
21 exceptional sentence.
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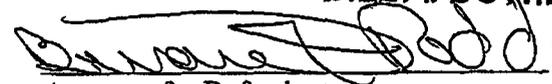
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24 ¹ Count VI, Intimidating a Witness, was conceded as error by the State on appeal and dismissed at the resentencing hearing.

1 Each one of these aggravating circumstances is a substantial and compelling reason,
2 standing alone, that is sufficient justification for the length of the exceptional sentence imposed.
3 In the event that an appellate court affirms at least one of the substantial and compelling reasons,
4 the length of the sentence should remain the same.

5
6 Date: 10-2-14

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8 
9 Mark R. Larson, WSBA #15328
10 Chief Deputy, Criminal Division


11
12 Judge, King County Superior Court
13 **BILLA. BOWMAN**

14 
15 Attorney for Defendant

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APPENDIX B

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COUNT II

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM NEAL FRANCE of the crime of **Felony Harassment**, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or about November 17, 2011, having been previously convicted on November 10, 2011, of the crime of Felony Harassment against Anita Paulsen, a person specifically named in a no contact or no harassment order, without lawful authority, knowingly did threaten to maliciously do an act intended to substantially harm Anita Paulsen with respect to her physical health or safety; and the words or conduct did place Anita Paulsen in reasonable fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendant WILLIAM NEAL FRANCE of committing the offense against a public official or officer of the court in retaliation of the public official's performance of her duties to the criminal justice system under the authority of RCW 9.94A.535(2)(c)(3)(t).

COUNT III

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM NEAL FRANCE of the crime of **Felony Harassment**, a crime of the same or similar character and based on the same conduct as another crime charged herein, which crimes were part of a common scheme or plan and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or about December 5, 2011, having been previously convicted on November 10, 2011, of the crime of Felony Harassment against Anita Paulsen, a person specifically named in a no contact or no harassment order, without lawful authority, knowingly did threaten to maliciously do an act intended to substantially harm Anita Paulsen with respect to her physical health or safety; and the words or conduct did place Anita Paulsen in reasonable fear that the threat would be carried out;

Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of Washington.

1 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
2 the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
3 FRANCE of committing the offense against a public official or officer of the court in retaliation
4 of the public official's performance of her duties to the criminal justice system under the
5 authority of RCW 9.94A.535(2)(c)(3)(t).

4 COUNT IV

5 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
6 NEAL FRANCE of the crime of **Felony Harassment**, a crime of the same or similar character
7 and based on the same conduct as another crime charged herein, which crimes were part of a
8 common scheme or plan and which crimes were so closely connected in respect to time, place
9 and occasion that it would be difficult to separate proof of one charge from proof of the other,
10 committed as follows:

11 That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
12 about November 10, 2011, having been previously convicted on November 10, 2011, of the
13 crime of Felony Harassment against Lisa Daugaard, a person specifically named in a no contact
14 or no harassment order, without lawful authority, knowingly did threaten to maliciously do an act
15 intended to substantially harm Lisa Daugaard with respect to her physical health or safety; and
16 the words or conduct did place Lisa Daugaard in reasonable fear that the threat would be carried
17 out;

18 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
19 Washington.

20 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
21 the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
22 FRANCE of committing the offense against a public official or officer of the court in retaliation
23 of the public official's performance of her duties to the criminal justice system under the
24 authority of RCW 9.94A.535(2)(c)(3)(t).

17 COUNT V

18 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
19 NEAL FRANCE of the crime of **Felony Harassment**, a crime of the same or similar character
20 and based on the same conduct as another crime charged herein, which crimes were part of a
21 common scheme or plan and which crimes were so closely connected in respect to time, place
22 and occasion that it would be difficult to separate proof of one charge from proof of the other,
23 committed as follows:

24 That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
about December 14, 2011, having been previously convicted on November 10, 2011, of the
crime of Felony Harassment against Lisa Daugaard and Anita Paulsen, persons specifically
named in a no contact or no harassment order, without lawful authority, knowingly did threaten
to maliciously do an act intended to substantially harm Lisa Daugaard and Anita Paulsen with

1 respect to their physical health or safety; and the words or conduct did place Lisa Daugaard and
2 Anita Paulsen in reasonable fear that the threat would be carried out;

3 Contrary to RCW 9A.46.020(1), (2), and against the peace and dignity of the State of
4 Washington.

5 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by
6 the authority of the State of Washington further do accuse the defendant WILLIAM NEAL
7 FRANCE of committing the offense against a public official or officer of the court in retaliation
8 of the public official's performance of her duties to the criminal justice system under the
9 authority of RCW 9.94A.535(2)(c)(3)(t).

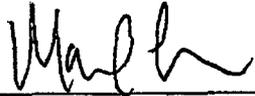
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COUNT VI

8 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse WILLIAM
9 NEAL FRANCE of the crime of **Intimidating a Witness**, a crime of the same or similar
10 character and based on the same conduct as another crime charged herein, which crimes were
11 part of a common scheme or plan and which crimes were so closely connected in respect to time,
12 place and occasion that it would be difficult to separate proof of one charge from proof of the
13 other, committed as follows:

14 That the defendant WILLIAM NEAL FRANCE in King County, Washington, on or
15 about December 27, 2011, by use of a threat against Lisa Daugaard, a current or prospective
16 witness, did knowingly attempt to induce that person to absent herself from an official
17 proceeding;

18 Contrary to RCW 9A.72.110(1)(a), (b), (c), (3), and against the peace and dignity of the
19 State of Washington.

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24
DANIEL T. SATTERBERG
Prosecuting Attorney

By: 
Mark R. Larson, WSBA #15328
Senior Deputy Prosecuting Attorney

APPENDIX C

FILED
KING COUNTY, WASHINGTON

MAR 05 2012

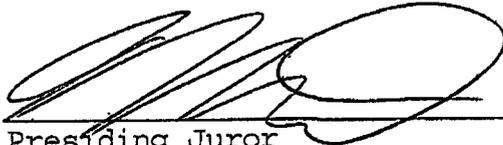
SUPERIOR COURT CLERK
TONJA HUTCHINSON
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
) No. 11-1-08388-4 SEA
Plaintiff,)
)
vs.) VERDICT FORM A
)
WILLIAM NEAL FRANCE)
)
Defendant.)

We, the jury, find the defendant WILLIAM NEAL FRANCE
guilty (write in "not guilty" or "guilty") of the
crime of Felony Harassment as charged in Count I.

3/5/2012
Date



Presiding Juror

ORIGINAL

FILED
KING COUNTY, WASHINGTON

MAR 05 2012

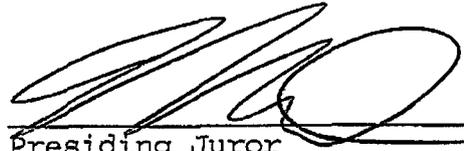
SUPERIOR COURT CLERK
TONJA HUTCHINSON
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)
) No. 11-1-08388-4 SEA
Plaintiff,)
)
vs.) VERDICT FORM B
)
WILLIAM NEAL FRANCE)
)
Defendant.)

We, the jury, find the defendant WILLIAM NEAL FRANCE
guilty (write in "not guilty" or "guilty") of the
crime of Felony Harassment as charged in Count II.

3/5/2012
Date


Presiding Juror

ORIGINAL

FILED
KING COUNTY, WASHINGTON

MAR 05 2012

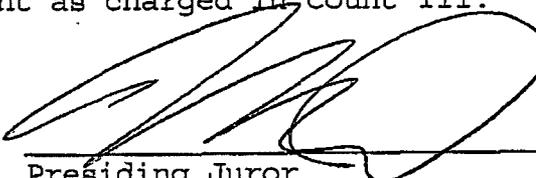
SUPERIOR COURT CLERK
TONJA HUTCHINSON
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
	)	No. 11-1-08388-4 SEA
Plaintiff,)	
)	
vs.	)	VERDICT FORM C
)	
WILLIAM NEAL FRANCE)	
)	
Defendant.)	

We, the jury, find the defendant WILLIAM NEAL FRANCE
guilty (write in "not guilty" or "guilty") of the
crime of Felony Harassment as charged in Count III.

3/5/2012
Date



Presiding Juror

ORIGINAL

MAR 05 2012

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

SUPL COURT CLERK
~~TONJA HUTCHINSON~~
Tonja Hutchinson DEPUTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM NEAL FRANCE)
)
 Defendant.)

No. 11-1-08388-4 SEA

VERDICT FORM D

We, the jury, find the defendant WILLIAM NEAL FRANCE
guilty (write in "not guilty" or "guilty") of the
crime of Felony Harassment as charged in Count IV.

3/5/2012
Date



Presiding Juror

ORIGINAL

FILED
KING COUNTY, WASHINGTON

MAR 05 2012

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

SUPERIOR
~~TONJA~~
Tonja Hutchinson
SEA

STATE OF WASHINGTON,)
)
Plaintiff,)
)
vs.)
)
WILLIAM NEAL FRANCE)
)
Defendant.)

No. 11-1-08388-4

VERDICT FORM E

We, the jury, find the defendant WILLIAM NEAL FRANCE
guilty (write in "not guilty" or "guilty") of the
crime of Felony Harassment as charged in Count V.

3/5/2012
Date



Presiding Juror

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MAR 05 2012

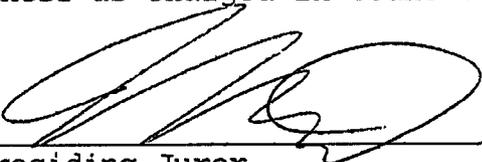
IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

SUPERIOR COURT CLERK
TONJA HUTCHINSON
DEPUTY

STATE OF WASHINGTON,)
)
Plaintiff,) No. 11-1-08388-4 SEA
)
vs.) VERDICT FORM F
)
WILLIAM NEAL FRANCE)
)
Defendant.)

We, the jury, find the defendant WILLIAM NEAL FRANCE
guilty (write in "not guilty" or "guilty") of the
crime of Intimidating a Witness as charged in Count VI.

3/5/2012
Date



Presiding Juror

ORIGINAL

APPENDIX D

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

~~COMMITMENT ISSUED~~ **AUG - 4 2014**

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM NEAL FRANCE,

Petitioner.

M A N D A T E

NO. 89235-1

C/A No. 68652-6-I

King County Superior Court
No. 11-1-08388-4 SEA

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington
in and for King County.

The opinion of the Supreme Court of the State of Washington was filed on July 3, 2014,
and became final on July 23, 2014. This case is mandated to the superior court from which the
appeal was taken for further proceedings in accordance with the attached true copy of the
opinion.

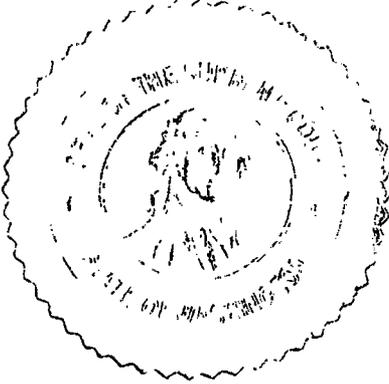
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Washington State Supreme Court

JUL 25 2014 *bph*

Ronald R. Carpenter
Clerk

Page 2
89235-1

No costs bills having been timely filed, pursuant to RAP 14.4, costs are deemed waived.

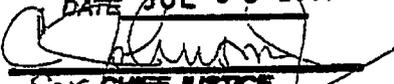


IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 25th day of July, 2014.

A handwritten signature in cursive script, reading "Susan L. Carlson", written over a horizontal line.

Susan L. Carlson
Deputy Clerk of the Supreme Court
State of Washington

cc: Hon. Harry J. McCarthy, Judge
Hon. Barbara Miner, Clerk
King County Superior Court
Casey Grannis
Andrea Ruth Vitalich
Reporter of Decisions

FILE
 IN CLERKS OFFICE
 SUPREME COURT, STATE OF WASHINGTON
 DATE JUL 03 2014

 for CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
	)	No. 89235-1
Respondent,)	
)	
v.	)	En Banc
)	
WILLIAM NEAL FRANCE,)	
)	
Petitioner.	)	Filed <u>JUL 03 2014</u>

MADSEN, C.J.—William Neal France was convicted of five counts of felony harassment and one count of witness intimidation for making multiple harassing calls to his former attorneys. Consistent with the pattern jury instructions on witness intimidation, the jury was instructed that “[a]s used in these instructions, threat *also* means to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time.” Clerk’s Papers (CP) at 40 (Instruction 9) (emphasis added); see 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 2.24, at 71-72 (3d ed. 2008) (WPIC). There was no evidence presented that France, who was in jail when he made the calls, intended immediately to use force against any person present at the time of the charged

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conduct. France contends under the law of the case doctrine, his felony harassment convictions must be dismissed. The State argues that the instructions, taken as a whole, accurately informed the jury of the elements of felony harassment and that it presented sufficient evidence to sustain France's convictions. We agree, and affirm.

FACTS

In 2010, attorney Anita Paulsen represented William Neal France in a prior case that resulted in France receiving a drug offender sentencing alternative. After sentencing in that case, France began leaving obscene and threatening voicemails for Paulsen and Nina Beach, a social worker involved in the case. Paulsen's supervisor, Lisa Duugaard, sent France a letter telling him to stop making harassing calls. France did not heed the request and began calling Duugaard as well. In November 2011, France pleaded guilty to nine counts of felony harassment and received an exceptional sentence of 180 months. *State v. France*, 176 Wn. App. 463, 308 P.3d 812 (2013), *review denied*, 179 Wn.2d 1015 (2014); CP at 1, 5. The November 2011 judgment and sentence incorporated a no contact order directing France to have no contact with Paulsen, Beach, and Duugaard. *France*, 176 Wn. App. at 466, 473-74.

Within hours of being sentenced, France left more threatening voice mails for Duaggard and Paulsen. Based on these and other calls, in December 2011 France was charged with five more counts of felony harassment under RCW 9A.46.020. After the jury had been selected but before opening statements, the State amended the information to add a witness intimidation charge under RCW 9A.72.110.

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At trial, the State offered the testimony of Paulsen and Duaggard and played recordings of some of the voice mails for the jury. Among other things, the jury was instructed that

[a] person commits the crime of harassment when he, without lawful authority, knowingly threatens maliciously to do any act which is intended to substantially harm another person with respect to his or her physical health or safety and when he or she by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

CP at 37 (Instruction 6). Consistent with instruction 6, the to-convict instructions on felony harassment instructed the jury that to convict France of felony harassment it must find beyond a reasonable doubt that France (among other things):

(1) . . . knowingly threatened:

(a) maliciously to do any act which was intended to substantially harm [the victims] with respect to [their] physical health or safety; and

(2) That the words or conduct of the defendant placed [the victims] in reasonable fear that the threat would be carried out.

Id. at 38 (Instruction 7). The other four felony harassment to-convict instructions used the same language. The witness intimidation to-convict instruction said in relevant part that the State must prove “[t]hat on or about December 27, 2011, the defendant by use of a threat against a current or prospective witness attempted to induce that person to absent herself from an official proceeding.” *Id.* at 48

(Instruction 17). The jury was also instructed that

[a]s used in these instructions, threat *also* means to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time.

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To be a threat, a statement or act must occur in a context or under such circumstances where a reasonable person would foresee that the statement or act would be interpreted as a serious expression of intention to carry out the threat.

Id. at 40 (Instruction 9) (emphasis added). The jury convicted on all six charges.

France received another exceptional sentence, this time for 120 months.

France appealed, making several arguments, including that there was insufficient evidence of “threat” as defined by the jury instructions to sustain his convictions because there was no evidence he intended to immediately use force against someone present. Br. of Appellant at 1, 9-10. The State contended that instruction 9’s definition of “threat” was “superfluous with regard to the felony harassment charges, because ‘threat’ is already defined within the essential elements of that crime.” Br. of Resp’t at 13. However, the State suggested that “such is not the case with regard to witness intimidation” and it “concede[d] that France is correct that count VI [witness intimidation] must be reversed and dismissed.” *Id.* at 12-13. The Court of Appeals accepted the State’s concession and otherwise affirmed the convictions, finding that instruction 9 did not add an element of felony harassment that the State was required to prove. *State v. France*, noted at 175 Wn. App. 1024, 2013 WL 3130408, at *4-5, *7 (Wash Ct. App. June 17, 2013).¹

¹ The Court of Appeals described the arguments and noted that no definition of “threat” was embedded in the witness intimidation instructions but did not independently analyze whether the law of the case doctrine demanded the conviction be dismissed. *State v. France*, 2013 WL 3130408, at *5. We have not been asked to review this issue or the propriety of the State’s concession.

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France petitioned for review of one issue: “Whether the convictions must be reversed due to insufficient evidence under the ‘law of the case’ doctrine?” Pet. for Review at 1. We granted France’s petition and now affirm.

ANALYSIS

This case is framed by two fundamental principles of law: the first constitutional, the second arising from the nature and exigencies of appellate review. The first principle is that constitutional due process requires that the State prove every element of the crime beyond a reasonable doubt. *State v. Warren*, 165 Wn.2d 17, 26, 195 P.3d 940 (2008) (citing *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). The second principle is that “jury instructions not objected to become the law of the case.” *State v. Hickman*, 135 Wn.2d 97, 102, 954 P.2d 900 (1998) (citing *State v. Hames*, 74 Wn.2d 721, 725, 446 P.2d 344 (1968)). If the jury is instructed (without objection) that to convict the defendant, it must be persuaded beyond a reasonable doubt of some element that is not contained in the definition of the crime, the State must present sufficient evidence to persuade a reasonable jury of that element regardless of the fact that the additional element is not otherwise an element of the crime. *Id.* (citing *State v. Lee*, 128 Wn.2d 151, 159, 904 P.2d 1143 (1995)).²

² We recognize that “[t]he term ‘law of the case’ means different things in different circumstances,” several of which are not implicated by this case. *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 113, 829 P.2d 746 (1992) (citing 15 LEWIS H. ORLAND & KARL B. TEGLAND, WASHINGTON PRACTICE: JUDGMENTS § 380, at 55 (4th ed. 1986)). In this

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France argues that his convictions must be reversed under the law of the case doctrine because the first paragraph of instruction 9 defined “threat” in a way that the evidence did not support. The State argues that other instructions, including the felony harassment to-convict instructions, contained definitions of “threat” that were amply supported by the evidence. We agree with the State.

All of the elements of the charged crime must appear in the to-convict instruction “because it serves as a yardstick by which the jury measures the evidence to determine guilt or innocence.” *State v. Johnson*, 180 Wn.2d 295, 306, 325 P.3d 135 (2014) (internal quoting marks omitted) (quoting *State v. Sibert*, 168 Wn.2d 306, 311, 230 P.3d 142 (2010)). Where an erroneous to-convict instruction creates a new element of the crime, the instruction will become the law of the case and the State will be required to prove that element. *Hickman*, 135 Wn.2d at 101 (requiring State to prove venue under law of the case doctrine—even though venue was not a statutory element of insurance fraud—because the State did not object to an erroneous to-convict instruction informing the jury it must find beyond a reasonable doubt “[t]hat the act occurred in Snohomish County, Washington” (emphasis omitted)). No party in this case argues that the elements listed in the to-convict instructions were erroneous or were not supported by the evidence presented. Instead, France contends that the law of the case doctrine applies to all instructions and thus we must reverse

case, we are concerned only with “the ‘rule that the instructions given to the jury by the trial court, if not objected to, shall be treated as the properly applicable law.’” *Id.* (quoting *ORLAND & TEGLAND, supra*, at 56).

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his conviction unless the State presented sufficient evidence that he “communicate[d], directly or indirectly, the intent immediately to use force against any person who is present at the time.” CP at 40 (Instruction 9). In other words, he argues that intent to immediately use force against a person who is present at the time of the threat is a fact that must be proved by virtue of the law of the case doctrine.

France is correct that the law of the case doctrine applies to all unchallenged instructions, not just the to-convict instruction. *Tonkovich v. Dep’t of Labor & Indus.*, 31 Wn.2d 220, 225, 195 P.2d 638 (1948) (noting that “the sufficiency of the evidence to sustain the verdict is to be determined by the application of the instructions and rules of law laid down in the charge”); accord *City of Spokane v. White*, 102 Wn. App. 955, 964-65, 10 P.3d 1095 (2000); *State v. Price*, 33 Wn. App. 472, 474-75, 655 P.2d 1191 (1982); *Englehart v. Gen. Elec. Co.*, 11 Wn. App. 922, 923, 527 P.2d 685 (1974). But “[e]ach instruction must be evaluated in the context of the instructions as a whole.” *State v. Benn*, 120 Wn.2d 631, 654-55, 845 P.2d 289 (1993) (citing *State v. Coe*, 101 Wn.2d 772, 788, 684 P.2d 668 (1984)). We have recently reemphasized this principle in *Johnson*, 180 Wn.2d at 305.³

³ While not before us, we note that “[i]t is error to give an instruction which is not supported by the evidence” presented in the case. *Benn*, 120 Wn.2d at 654 (citing *State v. Hughes*, 106 Wn.2d 176, 191-92, 721 P.2d 902 (1986)). However, a defendant is not necessarily entitled to reversal merely because a definitional instruction, taken in isolation, pertains to facts not in evidence. Even if an instruction was given in error, the error may be harmless. *State v. Berube*, 150 Wn.2d 498, 505, 79 P.3d 1144 (2003) (citing *Neder v. United States*, 527 U.S. 1, 9, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)).

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We note that all the instructions at issue here appear to be drawn from the WPIC.⁴ Specifically, the definition of “threat” in instruction 9 was drawn partially from 11A WPIC 115.52, the definition of “threat” for the purposes of intimidating a witness, and partially from the “true threat” portion of 11 WPIC 2.24, the general definition of “threat.” *Compare* CP at 40, with 11A WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL WPIC 115.52, at 438 (3d ed. 2008) (Intimidating a Witness—Threat—Definition) and 11 WPIC 2.24 (Threat—Definition).⁵ The note on use for 11A WPIC 115.52 instructs the parties to use “also” when “this instruction is used with one or more of the definitions contained in WPIC 2.24.” 11A WPIC 115.52, at 438.

France is correct that under some circumstances, the State may be required to prove facts not specifically contained in the to-convict instruction, not as elements but because those facts serve some other function that requires the State to prove them, such as a “true threat” or “sexual gratification.” *See, e.g., State v. Allen*, 176 Wn.2d 611, 626, 294 P.3d 679 (2013) (“true threat”) (quoting *State v. Kilburn*, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004)); *State v. Stevens*, 158 Wn.2d 304, 309-10, 143 P.3d 817

⁴ The felony harassment to-convict instructions given were substantially similar to 11 WPIC 36.07.03. *Compare* CP at 38, 43-46, with 11 WPIC 36.07.03, at 584 (Harassment—Felony—Previous Conviction—Elements). Instruction 6, which explained the crime of harassment, was drawn from 11 WPIC 36.07.01. *Compare* CP at 37, with 11 WPIC 36.07.01, at 579 (Harassment—Felony—Definition).

⁵ “Threat,” for purposes of intimidating a witness under RCW 9A.72.110, means either “(i) [t]o communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time or (ii) [t]hreat as defined in RCW 9A.04.110(27).” RCW 9A.04.110(27) is the general definition of “threat” for the criminal code and substantially resembles 11 WPIC 2.24. It has recently been recodified at RCW 9A.04.110(28).

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(2006) (“sexual gratification”). France suggests that this case is analogous to *Stevens*, where this court required the State to “show sexual gratification as part of its burden to prove sexual contact,” even though sexual gratification was not an element of the crime. 158 Wn.2d at 309.; RCW 9A.44.083(1) (child molestation), .010(2) (defining sexual contact within the criminal code). We disagree. *Stevens* turned on the statutory elements of child molestation, which includes sexual contact, and the statutory definition of “sexual contact,” which defines sexual contact in terms of sexual gratification. 158 Wn.2d at 307; RCW 9A.44.083(1), .010(2)). This case, on the other hand, turns on whether an instruction containing one of many statutory definitions of the term “threat,” at least one of which is contained in the to-convict instruction and that has a common meaning as well, created an additional fact the State was required to prove.⁶

Similar to sexual gratification, even though “true threat” is not an element of felony harassment, the State still must prove it. However, this is because “true threat” defines and limits the scope of criminal statutes, such as felony harassment, that potentially encroach upon protected speech. *Allen*, 176 Wn.2d at 626 (quoting *Kilburn*, 151 Wn.2d at 43). The First Amendment broadly protects speech, but not “true threats”; statements “made in a ‘context or under such circumstances wherein a

⁶ The State insists that “the first paragraph of the additional definitional instruction was superfluous as to the felony harassment counts because its use of the word ‘also.’” Suppl. Br. of Resp’t at 11-12. We disagree. No jury instruction in this case was superfluous; each went to the charged crimes. The State points to no case where the law of the case doctrine was disregarded on the theory that an instruction in a criminal case was superfluous.

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reasonable person would foresee that the statement would be interpreted . . . as a serious expression of intention to inflict bodily harm upon or to take the life' of another person." *Kilburn*, 151 Wn.2d at 43 (alteration in original) (internal quotation marks omitted) (quoting *State v. Williams*, 144 Wn.2d 197, 208-09, 26 P.3d 890 (2001)). We require the State to prove a "true threat" to prevent encroachment on protected speech. France suggests no similar reason to require the State to prove each definition of "threat" included in these instructions.

Simply put, while the State may sometimes be required to prove facts outside the to-convict instruction, France does not persuade us that this is such a case.

In addition, we have already rejected the notion that multiple definitions of statutory terms necessarily create either new elements or alternate means of committing a crime. See *State v. Smith*, 159 Wn.2d 778, 785, 154 P.3d 873 (2007); *State v. Linehan*, 147 Wn.2d 638, 646, 56 P.3d 542 (2002) (different definitions of "assault" do not create alternative means). The Court of Appeals has already rejected the contention that an instruction that listed "10 definitions of 'threat' under RCW 9A.04.110(25)" created "10 alternative means" of committing the crime. *State v. Marko*, 107 Wn. App. 215, 218-19, 27 P.3d 228 (2001) (citing *State v. Laico*, 97 Wn. App. 759, 764, 987 P.2d 638 (1999)). The court found that "[i]n describing the various kinds of threats, the legislature was not creating additional elements to, but merely defining an element of, a potential crime." *Id.* at 219-20; accord *Smith*, 159 Wn.2d at 785 (citing *Linehan*, 147 Wn.2d at 646).

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We agree. The State was not required to prove “the intent immediately to use force against any person who is present at the time” to prove felony harassment. See RCW 9A.46.020. That is only one of many definitions of “threat” our statutes provide. The instructions given in this case were consistent with the felony harassment statute. Instruction 9 said that “[a]s used in these instructions, threat *also* means to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time.” CP at 40 (emphasis added). Rather than creating an element to be proved by the State, instruction 9 merely provided an alternative definition. When read in tandem with the other instructions, including the to-convict instructions, it correctly informed the jury of the law. Compare CP at 38 (Instruction 7) (to-convict instruction), with RCW 9A.46.020(1)(a)(iv) (felony harassment)⁷ and RCW 9A.04.110(28)(j) (relevant “threat” definition).⁸

We find the State presented sufficient evidence of the elements of harassment.

CONCLUSION

France is not entitled to have his felony harassment convictions vacated under the law of the case doctrine when the to-convict instruction correctly recited the

⁷ (1) A person is guilty of harassment if:
(a) Without lawful authority, the person knowingly threatens:

.....
(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety.

RCW 9A.46.020.

⁸ “‘Threat’ means to communicate . . . the intent: . . . To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships.” RCW 9A.04.110(28)(j).

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elements of the crime but the jury was instructed on more than one definition of "threat," one of which the State did not prove. We affirm.

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Madsen, C.J.

WE CONCUR:

[Signature]

[Signature]

Fairhurst, G.

Stephens, J.

Wiggins, J.

George McCall, J.

Koromo, J.P.T.

Ellington, J.P.T.

APPENDIX E

1 FILED

2 2014 NOV -3 AM 9:47

3 KING COUNTY
SUPERIOR COURT CLERK
4 SEATTLE, WA

5 NOV - 3 2014

6 COPY TO COURT OF APPEALS _____

7 IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 STATE OF WASHINGTON,)

9 Plaintiff,)

10 vs.)

11 WILLIAM FRANCE,)

12 Defendant.)

No. 11-1-08388-4 SEA

NOTICE OF APPEAL TO
COURT OF APPEALS

13 The Defendant seeks review by the Court of Appeals for the State of Washington,
14 Division I, of the Judgment and Sentence entered on Oct 2, 2014.

15 DATED this 27th day of October, 2014.

16
17 *Bryan Rodd* for
18 29436

19 WILLIAM FRANCE, Pro Se
20 Defendant/Appellant
21
22
23

APPENDIX F

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,)	
)	
Respondent,	)	No. 72652-8-1
)	
v.	)	COURT ADMINISTRATOR/CLERK
	)	RULING DISMISSING APPEAL
WILLIAM FRANCE,)	
)	
Appellant.)	

On May 21, 2015, this court received a "motion to permit voluntary withdrawal of appeal" which states in part:

"Pursuant to RAP 18.2, Mr. France requests that this Court grant permission to voluntarily withdraw the appeal."

The Court Administrator/Clerk has considered the motion and has reviewed the records and files in this court, and it appears that the motion should be granted. Now, therefore, it is hereby

ORDERED that the above appeal is dismissed.
Done this 5th day of June, 2015.



Court Administrator/Clerk

APPENDIX G

1 attention to the opening statement of Mr. Larson on
2 behalf of the State.

3 MR. LARSON: Thank you.

4 ~~(Opening statements given)~~

5 ///

6 THE COURT: All right. Mr. Larson, you may call
7 your first witness.

8 MR. LARSON: Thank you very much.

9 (Discussion between bailiff and jurors not reported)

10 (Discussions between the Court and bailiff not
11 reported)

12 (Witness sworn by the Court)

13 THE COURT: Please be seated.

14 TESTIMONY OF

15 ~~ANITA PAULSEN~~

16 ~~DIRECT EXAMINATION~~

17 BY MR. LARSON:

18 Q. Good morning.

19 A. Good morning.

20 Q. Miss Paulsen, if you would, would you please spell your
21 first name and your last name for our court reporter.

22 A. Anita, A-n-i-t-a, Paulsen, P-a-u-l-s-e-n.

23 Q. And a business address, please.

24 A. 810 Third Avenue, Seattle, 98103.

25 Q. And can you tell us how you're employed?

1 A. I work at The Defender Association.

2 Q. All right. Why don't you give us a little thumbnail
3 sketch; what is The Defender Association?

4 A. The Defender Association is a public defense agency. We
5 handle cases in civil commitments, misdemeanors,
6 felonies, sex offender civil commitments.

7 Q. And how long have you worked there?

8 A. Twenty-three years.

9 Q. All right. And have you worked there as a lawyer the
10 entire time?

11 A. Yes.

12 Q. Have you -- have you worked anywhere else as a lawyer?
13 Has your career been entirely T.D.A.; right? Is that a
14 common description of The Defender Association, T.D.A.?

15 A. Yes, it is. Fresh out of law school, I worked for a
16 federal judge at the appeals level.

17 After that, I worked as a legislative counsel in
18 a State Legislature. I worked for a time as a corporate
19 counsel.

20 Then I went to work for Civil Legal Services
21 where I was a supervising attorney litigation
22 coordinator, did a lot of legislative work centering
23 mainly on labor issues and prevention of family violence,
24 and then I came to The Defender Association.

25 Q. So after doing so many different things, you made a

1 decision to sort of make a change in emphasis or focus to
2 enter into criminal defense; is that right?

3 A. Well, I didn't think that I would stay so long, but it's
4 -- it's very interesting work.

5 Q. Okay. But that was a shift for you twenty-three years
6 ago, it wasn't something you hadn't done previously when
7 you went to T.D.A., correct?

8 A. That's correct.

9 Q. What attracted you, and I should say, what's kept you
10 there for twenty-three years?

11 A. Well, it's -- well, you get paid to defend the
12 Constitution, you get to help people. You do your best
13 to defend them, you make sure that the State follows all
14 of the rules if they're going to convict someone.

15 Q. Okay.

16 A. It's important work.

17 Q. And tell us about the process which you were sort of
18 assigned clients or cases to defend.

19 How does that take place? And we'll work our
20 way to your representation of Mr. France.

21 A. Certainly. The Office of Public Defense assigns cases to
22 us. We take all of the cases that come through the door.
23 We have, as I said before, several divisions.

24 We check for conflicts of interest to make sure
25 that we're -- have not represented a witnesses or

1 co-defendants in a case but, other than that, we just
2 take people that are assigned to us.

3 Q. All right. And within T.D.A., there are probably
4 different assignments. As I understand it, you can be
5 doing, for instance, misdemeanors or Municipal Court, or
6 different aspects of even felony practice. What areas
7 have you touched while you've been there?

8 A. Well, I worked in family advocacy, which you might know
9 as termination of parental rights cases and dependencies.

10 I did a couple of years in misdemeanors, which
11 is family violence, traffic offenses, drunk driving,
12 shoplifting, basically gathering trial experience.

13 I worked in the appellate division for three
14 years which harkened back to my earlier experience
15 working for a federal judge, and then the bulk of my time
16 at The Defender has been in the felony division.

17 I also did five years in the sex offender civil
18 commitment division, which I think that members of the
19 jury would recognize as sexually violent predator
20 commitments.

21 I currently do what are called persistent
22 offender cases, 593 cases, which are three strikes
23 offenses, and other complex felony litigation.

24 Q. You handle serious cases.

25 A. Yes, I only --

1 Q. Okay.

2 A. -- have.

3 Q. In the course of your career, you've handled very serious
4 cases.

5 A. Yes.

6 Q. Is there any type of case you feel like you have not
7 handled in that period of time?

8 A. I think everything that's come through the door.

9 Q. Okay. Tell us a little bit, if you can, and this may be
10 a broad question, but talk about sort of the nature and
11 type of relationship, at least you intend to establish,
12 with clients when you were defending their -- defending
13 them in a criminal case.

14 A. I am their advocate. My job is to listen to them, to
15 review the state's case with them, to help analyze the
16 pros and cons of their case, to discuss with them the
17 risks they face, possible settlement of the case, to
18 investigate the case.

19 We have staff investigators. We also have staff
20 social workers that help us with cases.

21 We also have paralegal assistants, helps us
22 gather records, be it health records, all manner of
23 records that might be pertinent to a case.

24 Q. Let me ask you this, and I think it's pertinent, perhaps
25 just in this trial, but are there boundaries that you

1 need or attempt to set in what you do and don't do, what
2 sort of relationship you do and don't form with clients
3 over your twenty-three years of experience?

4 A. Oh, of course. Sometimes people don't fully understand
5 what a professional boundary is, and especially when I
6 was younger, periodically I would have somebody ask me
7 out when the case was over, or want to call and talk
8 about personal things, or that would ask that I place a
9 call to them to some family member, just -- it's
10 in ~~order to get some boundaries~~ that the job is a
11 ~~professional relationship~~, just as someone would have a
12 professional relationship ~~with their doctor~~, for example.

13 Q. Okay. So is there a balance in terms of showing empathy
14 and compassion, but also keeping it professional; can you
15 talk about that?

16 A. Well, of course. It's -- it's a professional
17 relationship, and ~~to~~ to help someone understand
18 their case, to get through their case, to analyze their
19 case, and basically to ~~get them through the criminal~~
20 ~~justice system with the least possible amount of damage.~~

21 Q. Okay. If you would tell us about how you first came into
22 contact with the defendant, Mr. France.

23 A. ~~I was appointed to represent Mr. France in~~, I think,
24 ~~August of 2009~~ and, you know, I get the file, I get the
25 police reports.

1 Q. And I'm going to ask you, we don't need to refer to what
2 sort of charge it was, what you were defending, but it's
3 important that you tell us about just sort of what steps
4 you took to sort of introduce yourself to and ultimately
5 represent Mr. France.

6 A. Well, basically, our obligation, we see people who are
7 appointed to us within twenty-four hours.

8 Assistant from my office went to see him to make
9 sure that he was -- well, that there weren't any medical
10 issues, that there weren't -- there wasn't any evidence
11 that would evaporate or could be lost.

12 I saw him ~~within a couple of days with the~~
13 ~~police reports in hand~~, and wanted to hear from him.

14 I think that we ~~met probably for about an hour~~
15 ~~and a half~~, and discussed his case and what his hopes
16 were for his case and looking at the police reports.

17 Q. Okay. And if you would continue, through the course of
18 the representation, did you ~~continue to meet with~~ and
19 ~~talk to Mr. France~~ about issues you were looking into or
20 encountering?

21 A. ~~Yes. One of the biggest issues is Mr. France has a~~
22 ~~temper.~~

23 He doesn't -- ~~We sometimes as lawyers carry~~
24 ~~people messages they do not want to hear~~, and there was a
25 ~~point in one of our early interviews where he essentially~~

1 started ~~swearing~~ and was -- and, basically, my response
2 to that, and I understand that people are stressed out,
3 and it's a very difficult situation, and I ~~was willing to~~
4 ~~put up with a certain amount of venting. It's just kind of~~
5 ~~comes with the territory.~~

6 But his ~~particular outburst~~ was essentially
7 ~~beyond the pale~~, and I just said, Mr. France, you know,
8 I've ~~not paid enough money to listen to these things come~~
9 ~~out of your mouth~~, and when you are ready to talk about
10 your case again, I'll be up to see you again, and I left.

11 Q. Okay. Tell us about the meetings then after that, what
12 do you recall of them?

13 A. He had several other outbursts, which essentially I dealt
14 with by saying if he couldn't ~~keep his temper under~~
15 control, I was -- I was going to leave and, for the most
16 part, he did contain himself after that.

17 A social worker was assigned to help with his
18 case, and she was instructed that the first -- if he
19 became profane, and had a ~~big outburst~~, that she was --
20 she was to leave and not listen to it.

21 Q. Okay. Did you have -- Did that continue to crop up
22 through your meetings with him, or did it sort of go down
23 or lessen?

24 A. It lessend.

25 Q. Okay. And I take it ~~your strategy~~ for dealing with that

1 was to sort of [REDACTED] yourself and try to keep it
2 professional and not engaged.

3 A. Not engage, yes.

4 Q. All right. What -- Do you recall about when that [REDACTED]
5 concluded?

6 A. Well, it took a while to conclude the case because we had
7 to get certain records which would be beneficial to him.

8 And so I think he was -- he was sentenced and it
9 was a resolution that -- that he felt was appropriate to
10 his case and that he wanted to do.

11 The [REDACTED] and basically
12 for when he was released, he was [REDACTED] government
13 benefits that would provide support for him.

14 He was also given the opportunity from the Court
15 to do what's called Drug Offender Sentencing Alternative,
16 that he would do half of his sentence in a treatment
17 program.

18 He also had another misdemeanor matter in
19 another court and, to get him into that program, the
20 judge gave him concurrent time on that matter.

21 Q. So, just broadly, and I -- and this is not probably in
22 your character, but did you feel like you did a pretty
23 good job?

24 A. [REDACTED] did an excellent job.

25 Q. In terms of the outcome and the various options, you've

1 talked about gathering the documents, those are the
2 things that you did that you felt really produced an
3 outcome you're proud of, professionally proud of.

4 A. ~~got it back about the time that Mr. France asked for~~

5 Q. Okay. When is the -- or what do you recall of the ~~time~~
6 ~~time you heard anything from Mr. France?~~

7 A. ~~Late October of 2010.~~

8 Q. So this is now maybe eight -- ~~about ten months later --~~

9 A. Yes.

10 Q. -- thereabouts? Okay. So we're late 2010, and what was
11 the form or nature of the contact?

12 A. Well, actually, I ~~didn't initially recognize it as a call~~
13 ~~from Mr. France,~~ and it wasn't -- though it was recorded,
14 ~~we have a different phone system now, and it wasn't~~
15 ~~retained.~~

16 But one of my co-workers had gotten a lovely
17 thank you call, and ~~I'd gotten this call going something~~
18 ~~like, when eight months and I'm coming for you,~~ and if
19 you want me to be specific as to what it ~~said was quote~~
20 ~~I'm coming, could you please closed quote.~~

21 Q. At that time, this is the first call you received, and
22 you subsequently came to believe that that was from Mr.
23 France.

24 A. Yes, ~~the co-worker and I started comparing notes.~~
25 ~~She had been getting telephone calls that were likewise~~

1 ~~inappropriate~~, and it took some time to nail down -- Mind
2 you, when you work in a public defense office, it's a
3 little bit like a legal emergency room, and there's just
4 kind of a lot of random nuttiness.

5 And initially you just kind of, you know,
6 somebody up at the jail just kind of recreationally
7 making gross phone calls and so, you know, a ~~little bit~~
8 ~~of that kind of comes with the territory, but this turned~~
9 ~~into like a drumbeat of escalating behaviors.~~

10 Q. With more calls?

11 A. More calls, yes.

12 Q. And let me ask you, if I can, about them. So you began
13 receiving calls, you said, in late 2010.

14 A. Yes.

15 Q. And is it fair to say that was ~~continued into somewhere~~
16 in the ~~middle of 2011~~?

17 A. Yes.

18 Q. First part of 2011? During that period of time, ~~how many~~
19 ~~phone calls~~ do you think you received that were from Mr.
20 France? Can you estimate the ones that came to you
21 personally?

22 A. Oh, at ~~least~~ a dozen, ~~probably more~~.

23 Q. All right. And I'm not going to play those calls, I
24 don't want to go through them, but let me ask you about,
25 ~~just generally, in many of those calls~~, did Mr. France

1 identify himself?

2 A. He ~~identified himself~~ clearly after he -- we figured out
3 who he was and sent him a cease and desist letter. Then
4 he was -- he was clear about introducing himself.

5 Q. And so let me back up. You're right, I got ahead of
6 myself.

7 So these calls are coming in, at some point, you
8 really took ~~this~~ to your management, to the supervising
9 attorneys in your office.

10 A. Yes.

11 Q. And are you aware that they -- ~~Ms. Daugaard~~ sort of took
12 the lead?

13 A. Yes.

14 Q. Ms. Daugaard ultimately communicated or attempted to
15 communicate with Mr. France to say I think the phrase is
16 cease and desist.

17 A. Well, first we ~~had a meeting to try to figure out the~~
18 ~~best way to handle the circumstance.~~

19 And what we really wanted to do was to take care
20 of it at the lowest level possible, and to figure out if
21 Mr. France was upset about something, to ~~try to deal with~~
22 ~~Mr. France, to find out what was motivating such anger,~~
23 and so ~~it was decided that Ms. Daugaard would try to~~
24 ~~contact him via~~ via telephone.

25 Q. Okay. And ~~did that succeed,~~ do you know?

1 A. [REDACTED]

2 Q. All right. A letter was sent.

3 A. [REDACTED] ultimately.

4 Q. Okay. And what I understand is that, after that letter
5 is when the calls had a different character to them.

6 A. Well, [REDACTED] on a fire, a snitch,
7 which was the nicest thing that all of us were called --

8 Q. Okay.

9 A. -- promising --

10 Q. Let me ask you about that. So before and after the
11 letter, you have repeated calls. After the letter, Mr.
12 France is identifying himself as Mr. France, correct?

13 A. Yes.

14 Q. Do you have any doubt, as you sit here today, who those
15 calls were made by, what those messages were left on your
16 phone?

17 A. No, no doubt at all.

18 Q. Okay, they were made by Mr. France.

19 A. Yes.

20 Q. Were there threats of physical harm?

21 A. Threats of sexual assault, threats of cutting us,
22 shooting us, yes, and sexual assault in the most vile
23 language I think I've ever heard.

24 Q. You ended up reporting this to the police, is that
25 correct?

1 A. Yes.

2 Q. Do you recall about when that was?

3 A. Was [REDACTED] I'm not quite sure.

4 Q. Of [REDACTED]

5 A. Yes.

6 Q. All right. At that point, then you're aware that a
7 criminal prosecution was begun, commenced.

8 A. Yes.

9 Q. And I'm going to skip ahead to just earlier, the last
10 part of this past year. That [REDACTED] France
11 with a variety of [REDACTED] felony harassment, correct?

12 A. Correct.

13 Q. Based on the calls that you've just described.

14 A. Yes.

15 Q. And on the 18th of November, did you appear in court as a
16 -- as it relates to that case?

17 A. Yes.

18 Q. And can you tell the jury what -- what that -- what that
19 event was?

20 A. It was a [REDACTED] hearing for Mr. France.

21 Q. Okay, relating to the calls made from late 2010 into
22 2011?

23 A. Yes.

24 Q. Did you have an opportunity to address the Court?

25 A. Yes, I did.

1 Q. And can you tell the jury a little bit about that, you
2 know, whether that's customary, or why or how that came
3 about, since they may not be familiar with the
4 proceedings?

5 A. Well, at a sentencing hearing, the defendant has a right
6 to address the Court, and the people who are named as
7 victims in a case have the opportunity to address the
8 Court, and I ~~did not address the court.~~

9 Q. And can you tell us, why did you think it was important
10 for you to address the Court on the 10th of November?

11 A. I think it was important for the Court to know, I was
12 ~~unusual, this is, how dangerous I felt the situation was~~
13 ~~in that this was something I could not understand, something that I~~
14 ~~could understand,~~ something that escalated in frequency
15 over time, described time, place, manner of assault,
16 history of violence towards others that had been acted
17 upon, a history of gratuitous violence.

18 Q. You wanted to share with the Court your sense of fear --

19 A. Right.

20 Q. -- and concern.

21 A. Yes, and --

22 Q. All right.

23 A. -- that -- that ~~the sentence that he had received before,~~
24 ~~he did not take advantage of his program.~~

25 Q. All right. If you can recall back as that concluded that

1 day, what were your hopes? What were your thoughts as
2 you left the courtroom on the 10th of November?

3 A. Well, it's really ~~very difficult~~ because I had never, ever
4 even contemplated reporting a client, much less following
5 through with a prosecution.

6 I had hoped that Mr. ~~Boance~~ would have
7 been successful in his program, and gotten out and been
8 able to live in the community.

9 And I hoped -- I was sad for him. It's not a
10 result that you like to see but, you know, ~~it's~~
11 ~~it to be over and done.~~

12 Q. And was that the primary emotion, you hoped that this was
13 just going to be over?

14 A. Yes.

15 Q. Wasn't over?

16 A. ~~No.~~

17 Q. How soon after the sentencing on the 10th of November is
18 it before you became aware that you'd received an
19 additional call?

20 A. Well, he ~~called within hours of the sentencing~~, but I
21 don't think that I ~~picked up the message until Sunday~~, I
22 think, yeah.

23 Q. So now I want, if I can, to go and ask you to just -- in
24 fact, your Honor, I don't know if the Court's intending
25 to take a break this morning. I can keep going but --

1 THE COURT: Okay, let's take a short break at this
2 time, about fifteen minutes, mid-morning break, ladies
3 and gentlemen, till about five minutes to eleven.

4 Remember not to discuss the case among
5 yourselves or with anyone else. We're back in court in
6 about fifteen minutes. Okay, we're in recess for a short
7 while.

8 MR. LARSON: Thank you.

9 (Morning recess taken)

10 (The following proceedings were had outside the
11 presence of the jury)

12 THE COURT: Okay, let's see, Ms. Paulsen.

13 THE BAILIFF: Ready for the jury?

14 MR. LARSON: Yes.

15 THE COURT: Yes, we are.

16 MR. LARSON: And by the way, Miss Daugaard, I'm
17 going to finish with Miss Paulsen and --

18 THE COURT: All right.

19 MR. LARSON: -- take it from there.

20 THE COURT: Okay, we'll take lunch after Ms.
21 Paulsen's done.

22 (Discussions between Court and clerk not reported)

23 (The following proceedings were had in the presence
24 of the jury)

25 THE COURT: Please be seated.

1 All right, Mr. Larson.

2 BY MR. LARSON:

3 Q. Miss Paulsen, I want to talk about three of the calls
4 that you received after the 10th of November but, before
5 I do that, I want to ask you a little bit about your
6 phone system at T.D.A. and your -- how you navigate in to
7 leave a message.

8 If I want to leave a message for you this
9 morning, how do I do that?

10 A. Well, you just call the regular number and, if you want
11 to leave a message, a ~~message is recorded.~~

12 Q. But how do I find you if I -- You're not going to pick up
13 the phone if I call T.D.A., so tell us how it is that I
14 would leave a message if I wanted to leave one for a
15 particular person.

16 A. One of two ways. You could punch in the extension, or
17 you could -- a person could call the front desk and be
18 routed to my phone number by the person answering the
19 phone at the front desk.

20 Q. Okay, so there's a way to route things into your
21 particular phone --

22 A. Yes.

23 Q. -- within T.D.A.?

24 A. Yes.

25 Q. And that's publicly accessible, right, any member of the

1 public could go through a directory and find you and
2 leave you a message.

3 A. Yes.

4 Q. And at your desk, which I assume you're probably not at
5 probably as much as you'd like, you have a voice mail or
6 some sort of way to accept calls when you're not present?

7 A. Yes, we have voice mail. In addition to that, all of my
8 calls are recorded, and they are e-mailed to me, so I
9 pick them up on my Smart Phone, I pick them up at my
10 computer.

11 Q. Okay.

12 A. Whatever computer I'm on.

13 Q. And we're going to end really quickly after that but,
14 essentially, you have an audio file --

15 A. Yes.

16 Q. -- of the ~~calls~~ calls that are received on your phone.

17 A. Yes, and ~~they are time stamped~~

18 Q. Okay, so you can know, even if you're not present, when a
19 call was left and have a record of that, in most
20 instances.

21 A. Yes.

22 Q. Okay. Were there at least -- Were there ~~three calls that~~
23 ~~you received after the 10th~~ from somebody you believed to
24 be Mr. France?

25 A. Yes.

1 Q. And did you save those in some fashion so that they could
2 be turned over to law enforcement?

3 A. Yes.

4 Q. And you sort of covered, again, but tell us what you did
5 with those particular calls, if you can.

6 A. I ~~to send them to my supervisors. I forwarded them to~~
7 ~~Detective Cooper and to you.~~

8 Q. All right. Do you remember, were you also -- Would you
9 recognize those calls if you heard them again?

10 A. Yes, I would.

11 Q. All right. And did you forward them in that fashion, or
12 save them soon after you received them?

13 A. They're saved until they're deleted.

14 Q. Okay.

15 A. Yes.

16 MR. LARSON: State's exhibit 1, can I have that
17 marked, please.

18 THE CLERK: State's exhibit 1 is marked for
19 identification.

20 MR. LARSON: And I'm going to offer that, counsel.
21 I'll authenticate it with the witness, but I'd like to be
22 able to play the calls.

23 MR. TODD: (Nodding head).

24 MR. LARSON: ~~Offering State's exhibit 1.~~

25 THE COURT: All right. Any objection?

1 MR. TODD: No, your Honor.

2 THE COURT: Exhibit 1 is admitted.

3 (Exhibit 1 admitted into evidence)

4 BY MR. LARSON:

5 Q. Miss Paulsen, I want to draw your attention then to the
6 first call, and see whether you recognize this particular
7 audio recording.

8 ~~(Audio recording played)~~

9 Q. Sorry, Miss Paulsen, whose voice is that?

10 A. That would be ~~Mr. France's~~ voice.

11 Q. How sure are you of that?

12 A. I'm completely certain.

13 Q. You recognize the voice?

14 A. I recognize the voice, I recognize the language, I
15 recognize the context.

16 Q. So when he says, for instance, what you did in the
17 courtroom was outstanding, do you believe that was a
18 reference to the hearing on the 10th?

19 A. Yes.

20 Q. Miss Paulsen, what -- how do you interpret that call?
21 You find it to be something that was frightening or
22 intimidating or scary to you at all?

23 A. Yes, ~~if he calls me he will not be dissuaded, he cannot be~~
24 ~~stopped, as soon as he has access to a phone, he will~~
25 ~~call and, as soon as he is out, he will try to implement~~

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[REDACTED] threat [REDACTED] and quote some of his friends to
do that for him.

Q. Now, obviously, there's variations; was this similar to other calls you've received from Mr. France in content?

A. Actually, most of the other calls were more sexually explicit with threats of anal rape and sodomy.

Q. All right. So this was different, it was really centered on perhaps your court appearance?

A. It was.

Q. And a more veiled threat of friends doing something.

A. Yes.

Q. Were you afraid as a result of receiving that phone call in count one on the 11th of November?

A. Absolutely.

Q. Miss Paulsen, did you receive another phone call on or about the 12th of November?

A. Yes.

Q. So now we're talking about approximately a week later --

A. Yes.

Q. -- from the date of when you appeared in court?

A. Yes.

Q. All right. Would you recognize that call if you heard it again?

A. Yes.

Q. All right, let me know if you recognize this call.

1 (Audiotape played)

2 Q. Do you recognize the caller in that call, or do you
3 recognize that -- Is that the call you received on the
4 17th?

5 A. Yes, it is.

6 Q. Do you recognize the caller?

7 A. Yes, I do, it's Mr. France.

8 Q. All right. How did you interpret that call, and how did
9 you feel about it when you received it?

10 A. I think what struck me is, despite all attempts, when
11 he's in custody, to limit his access to a telephone, he
12 still manages to call, and I believe that he would
13 attempt to recruit other individuals to hurt me.

14 Q. Now, I don't know whether you would -- this is a fair
15 characterization or not, but do you detect some note of
16 sarcasm in the voice or tone in terms of people showing
17 their appreciation or taking you out to lunch, those
18 sorts of things? The words seem to suggest one thing;
19 how did you interpret that?

20 A. Mr. France has historically been fairly cagey with a lot
21 of his case. I interpret it as taking me out to lunch,
22 meaning to take me out, period.

23 Q. Did you perceive it as a threat?

24 A. I did perceive it as a threat.

25 Q. Is there any doubt in your mind that it was intended as a

1 threat?

2 A. No doubt at all.

3 Q. Okay. Miss Paulsen, let me ask you if you -- sorry, I
4 want you to see if you can identify a ~~call you received~~
5 on or about the ~~5th of December~~

6 Did you get another call on that date which you
7 believe was from Mr. France?

8 A. Yes, I did.

9 Q. And let me know if you can identify this call then as the
10 one you received on the 5th.

11 (Audiotape played)

12 Q. Is that the call you received on the 5th?

13 A. Yes, it is.

14 Q. Do you know who that's from?

15 A. It's from Mr. France.

16 Q. Any doubt in your mind?

17 A. No doubt.

18 Q. What effect or ~~impact~~ do you recall did that call have on
19 you, Miss Paulsen?

20 A. ~~Ag~~ ~~he will not be stopped; he does everything he can~~
21 ~~to circumvent the security at the jail. He still manages~~
22 ~~to make calls. It essentially is a question of time.~~

23 (Audiotape played)

24 A. Oh, that's his post script.

25 Q. I'm sorry, that's the very end of the call.

1 A. That's the very end of the call.

2 Q. And I -- so, I'm sorry, and what we heard that we were
3 sort of talking over it but, after some gap of time,
4 there's an additional comment that you -- that you refer
5 to as a post script?

6 A. Yes, ~~the promise of sexual assault.~~

7 Q. And that's a threat you'd heard before?

8 A. Yes.

9 Q. And it's being repeated here?

10 A. Yes.

11 Q. Miss Paulsen, this last call was on the 5th of December,
12 so it's now almost -- it is almost exactly three months
13 ago, right, three months ago?

14 Reflecting back on those calls, considering how
15 you thought about them over that time, ~~do you have any~~
16 ~~changed opinion about your sense of safety,~~ or the threats
17 that are a part of those calls you received, those three
18 calls you've identified?

19 A. ~~No, I think it's a question of time before Mr. Franze~~
20 ~~comes after me.~~

21 Q. Miss Paulsen, you're in a line of work, as you mentioned,
22 that have some rough edges to it, I suspect.

23 A. Yes.

24 Q. In twenty-three years, have you ever found yourself in
25 this situation before?

1 A. No.

2 Q. This is unique.

3 A. It's unique. ~~Five had clients~~ who, from time to time,
4 have said inappropriate things. They're ~~angry~~ at being
5 caught in a system that they perceive they don't have any
6 control over, but ~~it's in another league~~.

7 Q. Okay. Miss Paulsen, thank you very much. I have no
8 further questions.

9 THE COURT: All right, cross-examination.

10 ~~CROSS-EXAMINATION~~

11 BY MR. TODD:

12 Q. Good morning, Miss Paulsen.

13 A. Good morning, Mr. Todd.

14 Q. I just kind of wanted to ask a little bit about some of
15 your dealings with Mr. France.

16 At the sentencing in November of 2010, he got a
17 substantial amount of time, did he not?

18 A. He did.

19 Q. And is it fair to say that he would be in custody for a
20 good part of that sentence?

21 A. Well, there are variation factors at work, appeal, good
22 time. The Legislature for some offenses has been
23 reducing the amount of time that people spend in custody,
24 so there -- It was a substantial amount of time, yes, it
25 was.

1 Q. I guess, given the way the situation is right about now,
2 would it be your understanding that he would have been in
3 custody upwards of ten years?

4 A. Yes, potentially.

5 Q. And as you stated, there's certain unknowns in this field
6 with regard to legislative changes and changes in D.O.C.
7 policies; is that correct?

8 A. That's correct.

9 Q. Now, Miss Paulsen, during the time that you were -- were
10 working with Mr. France -- and I guess I should ask, is
11 this the only case that you've represented Mr. France on,
12 or the one in 2009, was that the only case that you'd
13 represented Mr. France on?

14 A. It's the only case that I represented him on, yes.

15 Q. Okay. And you had done some -- some research and some
16 preparation in presenting the need for the Drug Offender
17 Sentencing Alternative; is that correct?

18 A. That's correct.

19 Q. And had you -- and your social worker -- Is it fair to
20 say your social worker had done some investigating into
21 Mr. France's background, that kind of thing?

22 A. Well, she met with Mr. France and wrote a report.

23 Q. Okay.

24 A. But she didn't do any independent investigation with
25 respect to Mr. France. The record gathering and the like

1 came from the paralegal that worked on the case.

2 Q. And, Miss Paulsen, through gathering this information,
3 did you ever have an opportunity to identify any
4 associates of Mr. France, or did he have any friends that
5 you knew of?

6 A. I don't think that I would know that from my
7 representation of Mr. France. He certainly didn't talk
8 to me about any of his friends. He didn't have
9 co-defendants in any of his cases that I was aware of.

10 Q. And he'd never talked about friends or any other
11 associates that were out on the streets that he would
12 hang around with or anything while he was -- when he was
13 out of custody?

14 A. Those wouldn't be the kinds of things that I would talk
15 to him about, but I don't recall any conversations like
16 that, Mr. Todd.

17 Q. Okay. Thank you, Miss Paulsen. Those are all the
18 questions I have for you.

19 THE COURT: Is there any redirect?

20 MR. LARSON: Yeah, just one area.

21 REDIRECT EXAMINATION

22 BY MR. LARSON:

23 Q. Miss Paulsen, this idea of friends paying a visit or
24 carrying out -- that was -- was that something that was
25 new? Had you heard that before the 10th of November of

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2011?

A. No, I had not heard that before.

Q. Okay. In your mind, was that responsive in some ways to this idea that he was going to be incapacitated for some period, or did you speculate about that?

A. Yes, I assumed that that was the reason for it.

Q. All right. Do you have any information at all lead you to believe one way or another that Mr. France could or should or would follow through on having someone else carry out any of these threats?

A. I don't know who Mr. France might be able to persuade to do something like that, but he -- I have to assume that he would if he could, and he's promised to.

MR. LARSON: Thank you. No other questions.

THE COURT: Any recross, Mr. Todd?

MR. TODD: I don't have any further questions.

THE COURT: You're excused.

THE WITNESS: Thank you.

MR. LARSON: State calls Miss Daugaard. Take the stand.

THE COURT: Raise your right hand.

(Witness sworn by the Court)

THE COURT: Please have a seat.

THE WITNESS: Thank you.

TESTIMONY OF

~~LISA DAUGAARD~~
~~DIRECT EXAMINATION~~

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BY MR. LARSON:

Q. Can you please state your full name, and spell your last name for the court reporter, please.

A. It's Lisa Daugaard, spelled D-a-u-g-a-a-r-d.

Q. Miss Daugaard, how about a business address.

A. 810 Third Avenue, eighth floor, Seattle, Washington, 98104.

Q. And what is that address?

A. ~~T. Defender Association.~~

Q. Okay, and public defender agency in town, correct?

A. Yes.

Q. Known colloquially as ~~T.D.A.~~?

A. Correct.

Q. How long have you been at T.D.A.?

A. For fifteen years.

Q. All right. Can you tell us a little bit about your -- something about your current responsibilities there?

A. Sure. I have a divided job; part-time, ~~I supervise~~ project called the ~~Racial Disparity Project~~, which works on public policy issues, but part-time, ~~as a deputy~~ director of the organization, so I have kind of office-wide administrative obligations of all sorts.

I help hire people, occasionally fire people,

1 take complaints from clients, investigate those,
2 supervise all of our personnel, work on other
3 administrative issues.

4 Q. And you're a lawyer, too.

5 A. Yes.

6 Q. All right. Can you tell us about your tenure at T.D.A.,
7 what sort of things you've done there, what
8 responsibilities you've had during that time?

9 A. Sure. So ~~started in 1996 as a staff attorney~~ in our
10 misdemeanor division, so I had a full caseload for four
11 years and, in misdemeanors, that meant about 380
12 individual clients a year; moved to the felony division
13 in around 1999, and worked in felonies for a couple years
14 before I went back to supervise misdemeanor practice in
15 2002.

16 Q. Okay. So give us a ballpark, how many people do you
17 think ~~represented~~ as part of your job at T.D.A. in
18 the last fifteen years; hundreds?

19 A. Personally, individually, probably fifteen hundred
20 people, and then, obviously, I've supervised the
21 representation of thousands or tens of thousands of
22 people.

23 Q. Okay. And if I can, could you talk to us just a little
24 bit just broadly about, as a public defender, you
25 referred to the caseload pressures, those sorts of

1 things.

2 What sort of -- you know, tell us about the
3 relationship with clients; what, if any, boundaries are
4 sort of observed, and how you execute your duties with
5 your clients.

6 A. Sure. First of all, I became a public defender because
7 -- actually, I never thought I would be a public defender
8 because a relative of mine was represented by a public
9 defender, by a number of public defenders in Oregon when
10 I was younger, and they did a terrible job, and I just
11 didn't ever think I would want to do that.

12 When I -- I grew up here. When I moved back to
13 Seattle in 1996, I sort of came to know the quality of
14 public defense in general in King County, and
15 particularly with this particular office was unusually
16 good, and I decided it was a place I wanted to work.

17 But the reason I wanted to work there was
18 because it is known for a very vigorous approach or very
19 strong commitment to the interests of clients.

20 So I personally work at the organization because
21 we take the client's goals and viewpoint very seriously.

22 And our philosophy and my personal philosophy is
23 that public defender clients should get the same quality
24 of representation as somebody who's able to go out and
25 spend \$5,000, \$10,000 to hire a private attorney.

1 Just because you can't afford to do that doesn't
2 mean you should get lesser representation and, if
3 anything, we strive to insure that what we provide is at
4 the very highest level that somebody could get if they
5 could hire a private attorney.

6 The people that we hire and the people that I
7 work with, and I'm proud to work with, are some of the
8 best criminal defense lawyers in King County.

9 They could work elsewhere, and they choose to
10 work on behalf of people who can't afford to pay them, so
11 we're all pretty mission-driven, or at least that is the
12 view that I try to enforce as a supervisor and as a
13 manager.

14 If I ever -- I mean, part of my job is
15 investigating complaints from clients, and if I get the
16 impression -- I mean, pretty much any client who calls to
17 complain, I start off from the assumption that what
18 they're telling me is 100 percent accurate and true, not
19 the opposite.

20 So I'm not discounting the complaint because,
21 you know, they're objecting to something that one of my
22 staff or colleagues did.

23 Then I investigate it with an open mind, and if
24 I determine that there's something that our attorney or
25 staff could have done differently or better, or need to

1 do differently or better, I make sure that that happens.

2 So, I guess, in answer to your question, my
3 approach and our approach, to the extent that I can
4 guarantee this, is to take clients' viewpoints very
5 seriously, to take complaints seriously, to assume, even
6 though I have very high regard for my colleagues and
7 their motivation, is a very pressing caseload, and it's
8 impossible to never make a mistake.

9 So we sort of -- that's why I take that
10 approach, that I'm assuming the client is right if they
11 complain, because they could very well be right.

12 And we need to catch things, and we need to not
13 be defensive about our work, and we need to fix things if
14 they -- if they were done -- if they were not done
15 properly, and client input is a very important part of
16 that.

17 You asked also about boundaries. So, as a
18 lawyer and as a supervisor, every so often, I mean, I
19 have to say that it's been delightful to -- I mean, many
20 of our clients are very appreciative of our work,
21 including people for whom we're not able to do anything
22 very spectacular or wonderful.

23 So I'm really appreciative of that, and
24 sometimes people will call and just say, you know, that
25 they appreciated the relationship that they had with

1 their lawyer, even if we didn't win, and I -- and that's
2 pretty frequent.

3 So disgruntled clients, or clients who are very
4 unhappy about what happened, or the nature of the quality
5 of the representation, thank God, are pretty unusual, but
6 not that unusual.

7 And often, things don't go that well for our
8 clients. We do lose every so often and so, you know,
9 people call and express that they are sad.

10 Ironically, not necessarily people who -- who
11 lose, I mean, sometimes people who -- for whom things
12 really went quite well in their cases call and express
13 that they're upset.

14 Sometimes those people are mentally ill.
15 Sometimes they're not. Sometimes they say things that
16 are, in my opinion, you know, they're rude, they're
17 unappreciative. That's part -- that's okay. That's part
18 of the -- that's part of the job.

19 It's not something that we take seriously --
20 take personally. We take it seriously, like any
21 complaint, but it's not something I would be, you know,
22 whatever, wounded by or upset by, and my -- as a
23 supervisor, certainly.

24 And when I was a lawyer, as a lawyer, my first
25 response would be to just try to respond as a human

1 being, you know, like I hear that you're upset, is there
2 something I missed here, maybe some more information
3 would be helpful or unusually.

4 But sometimes, you know, maybe I messed up, and
5 maybe we need to have some other lawyer, another agency,
6 another lawyer take a look at this and see if I committed
7 ineffective assistance of counsel, and that's an issue
8 that needs to be pursued on appeal or something like
9 that.

10 That's all perfectly standard, and I would not
11 view that as -- it's not upsetting.

12 Almost always, that kind of response to a call
13 like that or a complaint like that is -- I think maybe
14 clients don't expect that, they don't expect to be heard
15 or taken seriously, so that usually resolves the bad
16 feeling.

17 We work out a plan, or at least there's
18 conversation about the sentiment that the person was
19 calling to express.

20 So that is typically what happens, even with a
21 bad interaction.

22 Q. I'm going to suggest that it sounds like you need to have
23 thick skin at times, but also an open mind about what
24 people are complaining about, what they want to
25 communicate about their representation with you as a

1 supervisor?

2 A. Yes, that is fair, yes.

3 Q. And I want to -- I have a feeling that you -- strike
4 that. You ended up being aware that there was some phone
5 calls being received by some of your attorneys' staff,
6 purportedly from Mr. France?

7 A. Yes.

8 Q. Somewhere in the late 2010, correct?

9 A. Correct.

10 Q. And I -- that was drawn to your attention in your role as
11 a supervisor?

12 A. Yes.

13 Q. Did your agency staff that in the sense to sit down and
14 figure what do we do, how do we respond?

15 A. Yes. I think that I first became aware of this when
16 Anita Paulsen forwarded me one of Mr. France's calls, one
17 or more of Mr. France's calls.

18 We -- I talked with Anita, and then we did sit
19 down. Nina Beach and myself, along with Nina's
20 supervisor, and possibly Anita's supervisor to decide
21 what we would do in response.

22 Q. Okay, and you came up with a game plan, as I understand
23 it, to reach out to try to talk to Mr. France and end up
24 sending a letter?

25 A. Yeah. I sent the letter first. I think that may have

1 happened before ~~the sit down conversation.~~

2 Q. All right.

3 A. Because I ~~sent a letter asking Mr. France not to contact~~
4 ~~Ms. Beach and Ms. Paulsen.~~

5 He ~~continued to do that,~~ and so that obviously
6 wasn't enough, so ~~then I think we sat down in person and~~
7 ~~strategized, and then I decided to try to call Mr.~~

8 ~~France.~~

9 Q. Okay. ~~Did you ever make contact with him?~~

10 A. ~~I did not actually~~ make -- Well, I ~~called him and he~~
11 ~~called me back. He called me back quite upset that I had~~
12 ~~tried to call him.~~

13 Q. All right. So the letter was sent, though, was in the
14 nature of, as I understand it, you were willing to sort
15 of intermediate any dispute, but to also stop any
16 communications with your employees?

17 A. Yes, I ~~called it a cease and desist request and/or~~
18 directive, or something like that, ~~told Mr. France he was~~
19 ~~not to contact Ms. Paulsen or Ms. Beach again, but~~
20 ~~offered that I would talk with him about any -- if he was~~
21 dissatisfied or had ~~concerns about his representation,~~
22 that I would talk with him, that would be my job and, if
23 there was follow-up that needed to happen, I would make
24 sure that that happened.

25 Q. In the weeks and even months after that, those

1 communications, did you ~~then become the subject of~~ some
2 ~~calls or messages~~ being left on your account at T.D.A.
3 ~~from Mrs. France?~~

4 A. ~~Yes.~~

5 Q. And were they ~~threatening~~ in nature?

6 A. ~~Yes.~~

7 Q. Did they involve threats of harm to you or others?

8 A. Yes, ~~to me, to family members.~~

9 Q. And ~~including sexual violence?~~

10 A. Yes.

11 Q. ~~Strange sexual violence?~~

12 A. Yes.

13 Q. Did you ~~end up reporting~~ that, along with your
14 colleagues, to the authorities, ~~to the Seattle Police?~~

15 A. Yes.

16 Q. Miss Daugaard, in the -- I'm going to ask you where you
17 were, what you recall about the ~~10th of November of 2011.~~

18 Do you recall being in court on that date?

19 A. Yes.

20 Q. All right. And what were you there for?

21 A. ~~Mr. France's sentencing hearing.~~

22 Q. Okay. And those were his sentencing ~~relating to those~~
23 ~~threatening calls that you've just described.~~

24 A. Correct.

25 Q. ~~Did you speak, --~~

1 A. I did.

2 Q. -- in the sentencing hearing?

3 A. Yes.

4 Q. All right. And Miss Paulsen spoke as well?

5 A. Yes.

6 Q. And did you have -- What were your thoughts, or even
7 hopes, coming out of that hearing on the 10th of
8 November?

9 A. My thoughts are that it was very sad to have reached that
10 point with a client of our office.

11 ~~I've never participated in any proceeding like~~
12 ~~that with respect to anybody that we've represented, or~~
13 ~~come even close.~~

14 ~~I've never participated in reporting any of our~~
15 ~~clients to law enforcement out of all those thousands and~~
16 ~~thousands and thousands of interactions and many whatever~~
17 ~~dozens or hundreds of complaints and unhappy people and~~
18 ~~sometimes irrational-sounding people.~~

19 None of those interactions have ever made me
20 think it was appropriate to take that kind of step so,
21 obviously, not happy about it.

22 ~~I did all those things, contacted you, contacted~~
23 ~~the police, pursued our, you know, role in that case~~
24 ~~because there did not seem to be any other choice.~~

25 ~~There did not seem to be any other way to~~

1 resolve Mr. -- the threats that Mr. France was making. ~~I~~
2 ~~took the threats very seriously.~~ They were very --

3 MR. TODD: Your Honor, I'm going to object at this
4 point, and ask another question be asked.

5 THE COURT: Objection's overruled.

6 BY MR. LARSON:

7 Q. You took the threats seriously, and ~~why~~ is that?

8 A. Because it was very evident ~~that Mr. France wanted us to~~
9 ~~take them very seriously.~~

10 They were very -- ~~they kept coming.~~ They were
11 very ~~explicit.~~ They were very ~~specific.~~ They were very
12 mean. What was being threatened was awful.

13 Q. Disturbing?

14 A. Yes, and he also was making an effort to -- seemed to be
15 making an effort to make clear, you know, he was
16 explaining exactly how he was going to do these things,
17 and exactly where he was going do these things, and
18 exactly how he was going to get away with doing these
19 things, and exactly why I should expect that he would --
20 and he would say I will really do these things.

21 This is not, you know, don't think I won't do
22 these things, he would say you will get -- that he would
23 be getting out sometime and, when he got out, and he
24 would wait and --

25 MR. TODD: Your Honor, I'm going to --

1 THE WITNESS: -- do these things.

2 MR. TODD: I'm going to object; objection.

3 THE COURT: The basis?

4 MR. TODD: I believe it's gone past answering of
5 questions, becoming narrative and not responsive.

6 THE COURT: All right.

7 MR. TODD: And violation of the Motion in Limine.

8 THE COURT: Sustain the objection. It is a bit
9 narrative.

10 BY MR. LARSON:

11 Q. Did you have any hope or expectation that the calls, the
12 threats, would end after the 10th of November?

13 A. Yes, I --

14 Q. Have a hope?

15 A. Well, let me just be clear. So, in terms of my hopes at
16 that sentencing hearing, my main hope pertained to Mr.
17 France being incapacitated for a prolonged period of
18 time.

19 I don't know about -- I mean, I always sort of
20 hoped that he would stop calling, but his -- he had
21 called from Department of Corrections, he had called from
22 the King County Jail.

23 And I didn't -- I mean, whether or not that
24 could be stopped, I don't know, and his -- I mean, his
25 willingness to stop, I don't know.

1 He had always kept calling before, so I guess I
2 wouldn't tell you that I believed he would stop calling
3 after the sentencing hearing, I just didn't know if he
4 would be able to make it through the phone block systems.

5 Q. Okay. Did you receive another phone call from [redacted] the same
6 after that sentencing hearing on the 10th?

7 A. Yes. I got several additional calls.

8 Q. All right. And, again, these were calls that would have
9 been left on your voice mail account at T.D.A.?

10 A. Yes.

11 Q. And you could navigate into the directory, the attorney
12 directory, and find the person you wanted to leave a
13 message for, correct?

14 A. Correct.

15 Q. As, I understand it, you got a call on the same day, on
16 the 10th; is that right?

17 A. Yes, that afternoon of the sentencing hearing.

18 Q. Was it left on your voice message, or how did you receive
19 that call?

20 A. I think it was left on my voice mail as I -- I don't
21 remember for sure whether it was routed through the front
22 desk or kind of a dial direct, but I think it was dial
23 direct.

24 Q. Did you end up making essentially a verbatim or an
25 attempt at a verbatim transcription of that call?

1 A. ~~Yes.~~

2 Q. ~~Why~~ did you do that? Why did you do that, as opposed to
3 just simply saving the audio file?

4 A. Most of the time, our phone system captures our voice
5 mail and sends it to me. You can -- individual
6 subscribers can sign up for this, and I have this that
7 gets sent as an e-mail, gets sent as a voice file by
8 e-mail, so I would have it in my e-mail.

9 For whatever reason, ~~this one didn't show up~~ *in voice mail*
10 that way, at least I couldn't find it initially, and I
11 wanted to let you know and the Seattle Police Department
12 know the content of the call, so I did a little
13 transcript myself.

14 Q. Okay. If I read that transcript -- And ~~you provided that~~
15 ~~to the authorities~~, correct?

16 A. ~~Yes.~~

17 Q. If I read that to you, would you recall whether that was,
18 in fact, a transcript of the call you received that
19 afternoon?

20 A. Yes.

21 Q. "Hey, bitch" --

22 MR. TODD: Your Honor, your Honor, I'm going to --
23 I'm going to object. Can we have a sidebar?

24 THE COURT: Okay.

25 (Discussions at the bench not reported)

1 (Discussions between bailiff and clerk not reported)

2 (Discussions between prosecutor and clerk not

3 reported)

4 THE CLERK: State's exhibit 2 is marked for
5 identification.

6 BY MR. LARSON:

7 Q. Miss Daugaard, I'm showing you ~~State's exhibit 2~~, and
8 there's a paragraph marked there with a ballpoint pen.

9 Could you take a look at that, and just tell us
10 whether or not you recognize, not that piece of paper,
11 but those words?

12 A. (Witness reviewing document) Yes.

13 Q. And do those appear to be the words ~~that you transcribed~~
14 ~~back when you received the first call on the 10th?~~

15 A. Yes.

16 Q. And is that, to the best of your memory, a fair copy of
17 what you transcribed?

18 A. Yes.

19 MR. LARSON: I'd like to ask the witness to read or
20 I can read the phone call.

21 THE COURT: Are you offering the exhibit?

22 MR. LARSON: I'm not offering the exhibit, it's just
23 a past recollection recorded.

24 THE COURT: Yeah, all right, Mr. Todd, any
25 objection?

1 MR. TODD: No, I have no problem with Mr. Larson
2 reading at this point. Thank you.

3 THE COURT: All right.

4 BY MR. LARSON:

5 Q. So Miss Dugaard, did you -- Does this sound like the
6 transcription that you made on that date: "~~hey, bitch,~~
7 ~~you fucked up by coming into the courtroom today.~~

8 "~~You think for one fucking minute nothing's~~
9 ~~going to happen to you? You worthless motherfucking~~
10 ~~shit.~~

11 "~~Give a message to Rita, Anita, Paul, Sen, same~~
12 ~~thing, eight years, you'd better find a new job, bitch,~~
13 ~~you better find a new fucking job.~~

14 A. Yes.

15 Q. Is that the message that was left on your phone?

16 A. Yes.

17 Q. Did you recognize the voice?

18 A. Yes.

19 Q. Whose voice was it?

20 A. It was the voice -- the same voice that had called and
21 identified himself as William France on numerous prior
22 occasions.

23 Q. All right. Any doubt in your mind, either by context or
24 the tone of voice or any of it, that it was Mr. France?

25 A. No.

1 Q. Receiving that, Miss Daugaard, can you tell us whether or
2 not you had any concerns or any fear as a result of that
3 message?

4 A. Yes.

5 Q. Could you describe those?

6 A. So, essentially, these were the same fears that I've had
7 before the -- while getting the first series of calls,
8 except that now there was no possible -- there was no
9 other road, you know, there was no possibility of Mr.
10 France viewing me or us as people who had not been ~~part~~
11 ~~of him, you know, being sentenced to prison.~~ **we were**

12 The ~~first time~~, I mean, he ~~was angry at us~~, but
13 ~~for no clear reason. This time, there was a reason.~~

14 Whether -- I mean, I felt completely warranted
15 that we had forwarded these calls to the prosecutor and
16 had participated in the prosecution of Mr. France, but
17 the difference now is that -- I mean, if before there was
18 no reason to be mad at us, now there is a reason to be
19 mad at us, if you think of it that way.

20 So, for me, Mr. France was still a person who
21 had -- who had made very specific threats, who had made
22 it very clear that he knew how to carry them out, that he
23 had a plan for carrying them out, now he was -- had a
24 specific motivation to be angry at me.

25 And, you know, the only difference is that he

1 was going to be in custody for -- he personally
2 individually would be in custody for a longer period of
3 time than before.

4 Before, he was scheduled to get released, I
5 think, in January 2000, maybe this year, actually, maybe
6 about now, and so this is now further out. That would be
7 the only difference.

8 Q. Okay, I want to ask about the next call. Did you receive
9 a call on or about the 14th of December? Does that sound
10 right, about?

11 A. I think there may have been another call sooner than
12 that. I'm not ...

13 Q. Did you receive one on or about the 14th?

14 A. I honestly don't remember the dates.

15 Q. Well, let me ask if you -- You would have saved it, each
16 of the files with a date stamp, correct?

17 A. Yes.

18 Q. So if we listen to the one that's date-stamped the 14th,
19 I'll just ask if you recognize this phone call?

20 A. Yes.

21 MR. TODD: Your Honor, I'm going to object, without
22 foundation. I would ask somehow that the witness
23 identify this same call as coming on December 14th. So
24 far, Mr. Larson's the only one that's told us that, and
25 that's not evidence.

1 THE COURT: Well, I'll overrule the objection. I
2 think that there's probably been sufficient foundation.
3 Mr. Larson, perhaps you could lay a little bit more as to
4 her -- Miss Daugaard's recollection of that date and
5 call.

6 BY MR. LARSON:

7 Q. Okay. And, Miss Daugaard, that's -- I mean, you've
8 received a lot of calls over some period of time from Mr.
9 France, correct?

10 A. Yes.

11 Q. Including after the 10th.

12 A. Yes.

13 Q. So there are different dates and times. Is the best way
14 for you to remember that is to sort of really look at the
15 audio files, and to sort of see what dates are associated
16 with those?

17 A. Yes.

18 Q. All right. If there's an audio file that says and
19 a message ~~addressed to you~~, would that help you be
20 confident that that's on or about the date that you
21 received that call?

22 A. Yes.

23 Q. All right. So I'm going to ask to play the call from the
24 14th, and I'm going to ask if you recognize that
25 particular phone message.

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(Audiotape played)

Q. Miss Daugaard, whose voice is that, to your knowledge?

A. I believe that's Mr. France's voice.

Q. Do you recall how you felt on the 14th when you received that call?

A. Yes.

Q. Can you tell the jury, share that with the jury?

A. So similarly to the way I felt during the earlier series of calls, extreme apprehension that Mr. France might do the things that he said and, you know, in an earlier call --

MR. TODD: Your Honor, I'm going to object.

THE COURT: Objection sustained.

BY MR. LARSON:

Q. Any other thoughts about how you felt that day?

A. When I -- when I say extreme apprehension, I mean, I don't know for sure that Mr. France would do any of these things.

I know that it's -- I have never -- ~~no one has ever made me feel afraid in the way that these calls made me afraid because they are so specific~~, and because they are so reasonable, honestly, ~~in the plan that is being expressed~~

~~He had indicated that he was very familiar with the building that we work in,~~ very -- When he talked

1 about the elevator, he had earlier explained --

2 MR. TODD: Your Honor, I'm going to object. It's
3 getting nonresponsive.

4 THE COURT: Yeah, the objection's sustained.

5 BY MR. LARSON:

6 Q. Miss Daugaard, is it fair to say that that's the problem,
7 is it -- these aren't the sort of things you can sort of
8 cast them aside and say, well, no one's ever going to do
9 that; you have no assurance about that?

10 A. Yes, correct. I mean, he might not do these things. If
11 he did, it is very unlikely that we could protect
12 ourselves, and very likely that he could do them, I
13 guess, is the point.

14 Q. I want to ask you about ~~the 27th of December~~ as well.
15 You saved a phone message; do you recall saving a phone
16 message on or about that date?

17 A. Yes.

18 Q. All right. And I'll ask you whether -- whether you
19 recognize it in the first instance.

20 ~~(Audiotape played)~~

21 Q. Is that a message you found on your voice machine as
22 well?

23 A. Yes.

24 Q. Did you recognize that as being Mr. France's voice?

25 A. Yes.

1 Q. And what did you understand that to be a reference to?

2 A. He had, at ~~this point~~, I think, ~~been re-arrested~~,
3 re-arrested ~~such as~~ it is when you're already in custody
4 ~~and brought back to the King County Jail~~. I think, and
5 knew of these new -- knew that there would be new
6 charges, so I took that to be a reference to the upcoming
7 proceeding, this -- this case.

8 Q. And, for instance, including your appearance here today.

9 A. Yes. Yeah, don't -- don't cooperate with the new case,
10 basically.

11 Q. Miss Daugaard, thank you. I don't have any other
12 questions.

13 THE COURT: Cross-examination.

14 ~~CROSS~~ EXAMINATION

15 BY MR. TODD:

16 Q. Morning, Ms. Daugaard.

17 A. Good morning.

18 Q. Ms. Daugaard, you had never directly represented Mr.
19 France, had you?

20 A. No.

21 Q. So you never had the opportunity to come into contact
22 with him other than through the letter or through the
23 receiving the calls from him?

24 A. Right.

25 Q. You'd testified on direct that part of your hope at this

1 sentencing was that he was going to be incapacitated for
2 a long time; is that right?

3 A. Yes.

4 Q. And part of that incapacitation was that he was going to
5 be in custody for a long period of time as well; is that
6 correct?

7 A. Yes.

8 Q. And he got a substantial amount of time at that
9 sentencing, right?

10 A. He received a fifteen-year sentence, on which I believe
11 he would serve ten years, yes.

12 Q. And, actually, those are all the questions that I have.
13 Thank you.

14 THE COURT: Is there any redirect?

15 MR. LARSON: Nothing further.

16 THE COURT: All right, you may step down.

17 THE WITNESS: Thank you.

18 MR. LARSON: Your Honor, I'm not -- there's one
19 thing counsel and I have to discuss before I rest.

20 THE COURT: Okay.

21 MR. LARSON: We can do that right after --

22 THE COURT: All right, let's take our lunch break
23 right now, ladies and gentlemen, until 1:30.

24 Please remember, again, not to discuss the case
25 among yourselves or with anyone else, or to access any

1 electronic medium to try to obtain information about this
2 case, so we'll see you at lunch. Have a nice lunch, back
3 here at 1:30.

4 (The following proceedings were had outside the
5 presence of the jury)

6 THE COURT: Okay, anything we need to discuss at
7 this time?

8 MR. LARSON: Quickly, your Honor, if you wouldn't
9 mind.

10 THE COURT: Yeah.

11 MR. LARSON: Help us move more swiftly in the
12 afternoon.

13 THE COURT: All right.

14 MR. LARSON: Counsel has proposed a stipulation
15 concerning the prior conviction.

16 THE COURT: Um-hum.

17 MR. LARSON: And I'm going to agree to it. It
18 states: The parties agree and stipulate that the
19 following fact has been agreed upon, shall be deemed
20 proven beyond a reasonable doubt for the purposes of this
21 trial.

22 One: The defendant, William France, was
23 previously convicted of the crimes of felony harassment
24 against Anita Paulsen and Lisa Daugaard.

25 Two: This fact shall be used by the jury to

1 consider whether the State has proved an element of the
2 charged offense beyond a reasonable doubt. It shall be
3 considered by the jury for no a purpose.

4 That's agreeable. I do want to -- I've made, I
5 think, one error in my jury instructions, and I think, if
6 the Court looks at those on the to-convicts, there's
7 really an alternative means that I've charged.

8 **P** And I -- whether I meant to or not, ~~there are~~
9 ~~two ways in which this becomes a felony, a prior felony~~
10 ~~harassment conviction~~ with these people or, secondarily,
11 through a ~~no contact order~~, and I've alleged both.

12 For ~~clarity's~~ sake, I would like the
13 instructions, and I'll ~~conform the information as~~
14 ~~necessary to simply indicate that they have been~~
15 ~~previously convicted of a felony harassment~~ against Anita
16 Paulsen and Lisa Daugaard, which is what the stipulation
17 provides so --

18 THE COURT: Okay.

19 MR. LARSON: -- we'll be striking -- I would propose
20 that we ~~strike from the jury instructions~~ the portion
21 that says they were also named in a ~~no contact order~~.

22 THE COURT: Okay. All right, Mr. Todd, any comment
23 with respect to that modification to the -- to that
24 instruction by the State?

25 MR. TODD: No, that's fine. Let me look at --

1 THE COURT: What instruction number is that?

2 MR. LARSON: I don't have the numbers, okay? On the
3 citations, your Honor, it's in all the to-convicts for
4 the felony harassment.

5 So under item four or element number four, I
6 believe everything after the comma can be deleted.

7 In each of the five to-convicts, it is
8 sufficient that the defendant was previously convicted of
9 the crime of felony harassment against Anita Paulsen.

10 THE COURT: Okay. Mr. Larson, could you do this
11 over the lunch hour?

12 MR. LARSON: Yes.

13 THE COURT: Maybe just have that e-mailed to Miss
14 Hansen; we can incorporate those modified instructions.

15 MR. LARSON: You'll have that in a half hour.

16 THE COURT: Okay, there's one we're going to delete,
17 let's see, somehow it got in here mistake, a witness has
18 special training, et cetera.

19 MR. LARSON: Just pro forma. And then, with the
20 stipulation, I'll be resting when we return at 1:30.

21 THE COURT: Okay. Mr. Todd, at this point in time,
22 do you -- Give us a preview of what -- anything that's
23 going to be presented or -- All right, okay, seems like
24 we should be able to get this case to the jury, right,
25 this afternoon then and so -- okay.

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MR. LARSON: Thank you, your Honor.

THE COURT: See you back here at 1:30.

(Discussions between Court and clerk not reported)

(Luncheon recess taken)

AFTERNOON SESSION 1:45 P.M.

--o0o--

(The following proceedings were had outside the presence of the jury)

THE COURT: Okay, we do have the Court's instructions to the jury ready, if counsel has any comments, exceptions, objections to the instructions, Mr. Todd.

MR. TODD: Your Honor, ~~the State does not have any objections or exceptions, and would have proposed the same packet, and does endorse this packet of jury instructions, as they have been presented to the Court.~~

THE COURT: All right, thank you. Mr. Larson, any comment?

MR. LARSON: No, no objection, no exceptions. The only other remaining things, your Honor, a little bit of housekeeping.

I would ask the Court to allow me to substitute what is currently marked State's exhibit 2, which is just to help refresh the witness' memory, and inserting -- taking my notes and using a clean copy of that for the

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record, my request.

THE COURT: Okay, Mr. Todd, have you seen that?

MR. TODD: I have seen that, and we'd have no objection to substituting.

THE COURT: All right, that request is granted.

MR. LARSON: The other matter is the stipulation, which I believe we've entered into now, and we would ask -- I would ask the Court read that to the jury as an agreement of the parties.

THE COURT: I will do that as soon as they come out. Anything further before the jury comes out?

MR. LARSON: No, State will rest, of course, upon reading the stipulation.

THE COURT: Yeah, and --

MR. TODD: And, your Honor, with that representation, I do have two things. I guess my first would be a Motion to Dismiss count six, the witness intimidation.

The evidence that was submitted to substantiate count six was the phone call or the message which Mr. Larson played for Ms. Daugaard which said, if I recall correctly, it said don't come to court, don't come to court, and that was it.

As the instructions state, and as the statute reads, a person commits the crime of intimidating a

1 witness when by use of a threat against a current or
2 prospective witness attempts to induce that person to
3 absent herself from an official proceeding.

4 And, your Honor, I would submit that don't come
5 to court, don't come to court does not meet a definition
6 of a threat or any other proof to be able to do that.

7 So, your Honor, for that reason, I don't believe
8 that any reasonable jury can reach a verdict of guilty on
9 count six, witness intimidation, so I'd ask that count
10 six be dismissed.

11 THE COURT: All right, Mr. Larson, did you wish to
12 respond to that?

13 MR. LARSON: Well, simply to reflect that the
14 evidence of the long relationship between the parties, I
15 think, has been a matter of virtually all the testimony,
16 and I think that supports that statement being
17 threatening in context that it was made. Thank you.

18 THE COURT: Yeah, I think, as to that statement on
19 the recording, if taken in isolation, I think there may
20 be more validity or more reason to have concern about
21 whether or not it's sufficiently stated as a crime.

22 But I think other evidence in the case does
23 indicate that it would have a certain type of meaning.

24 And, given the whole context of the evidence,
25 the Court believes that it is more than sufficient to

1 submit count six to the jury at this time, so I'll deny
2 that motion.

3 MR. TODD: Your Honor, I did have one other thing I
4 wanted to put on the record.

5 As the State is going to be resting, certainly
6 would be the defense's opportunity to present witnesses
7 or testimony.

8 The obvious witness that we would -- would be in
9 the position to call would be Mr. France. However, I did
10 go up and talk to Mr. France over the noon hour. I let
11 him know that this would be his opportunity to be a
12 witness in the case.

13 ~~We had discussed some of the things the State~~
14 ~~could bring up if he were to be a witness. We had~~
15 ~~discussed the pros and cons of testifying and not~~
16 ~~testifying, and so, based on that, Mr. France is choosing~~
17 ~~not to testify, and I would ask the Court to confirm with~~
18 Mr. France that that is indeed the case.

19 THE COURT: I will do so if I can get around here
20 and see Mr. France.

21 Yeah, Mr. France, as a witness in a criminal
22 case, as a defendant in a criminal case, you certainly
23 have a complete right to testify if you want to do that.

24 You also have a right not to testify and, if you
25 do not testify, there would be no mention made of that to

1. the jury, as it might bear upon whether you're guilty or
2. not of this offense.

3. So I take it you have taken -- discussed this
4. option with your attorney, Mr. Todd?

5. THE DEFENDANT: Yes, I have, your Honor.

6. THE COURT: What's your decision?

7. THE DEFENDANT: ~~The decision~~ is that I would rather
8. -- I ~~would rather not testify.~~

9. THE COURT: All right. Okay, that is your decision
10. to make, and I just wanted to confirm that with you.
11. Thank you.

12. THE DEFENDANT: Thank you.

13. THE COURT: Okay, any other matters before the jury
14. comes?

15. MR. LARSON: No, your Honor.

16. THE COURT: Okay, Judy, would you bring the jury?

17. MR. TODD: So, your Honor, the defense would be
18. resting as well.

19. THE COURT: Yes.

20. (The following proceedings were had in the presence
21. of the jury)

22. THE COURT: All right, please be seated all. Ladies
23. and gentlemen, you were given a packet of materials when
24. you walked into the courtroom.

25. Could you set those aside for just a moment or

1 so, then I will tell you a bit more about them.

2 At this point, I have a stipulation of the
3 parties which I'd like to read to you.

4 The ~~parties agree and stipulate~~ that the
5 following fact has been agreed upon, and shall be deemed
6 proven beyond a reasonable doubt for purposes of this
7 trial.

8 One: ~~The defendant, William France, was~~
9 ~~previously convicted of the crimes of felony harassment~~
10 ~~against Anita Paulsen and Insa Daugaard.~~

11 Two: ~~This fact shall be used by the jury to~~
12 ~~consider whether the State has proved an element of the~~
13 ~~charged offense beyond a reasonable doubt. It shall be~~
14 ~~considered by the jury for no other purpose.~~

15 It's signed by Mr. Larson, Senior Deputy
16 Prosecuting Attorney, Mr. Todd, attorney for the
17 defendant.

18 That is a stipulation which will be filed with
19 the Court, and the jury can consider that.

20 Now, at this time, Mr. Larson, anything from the
21 State?

22 MR. LARSON: No, your Honor. ~~We rest.~~ Thank you.

23 THE COURT: Mr. Todd, for defense?

24 MR. TODD: Your Honor, the ~~defense rests~~ as well.

25 THE COURT: All right. All right, ladies and

APPENDIX H

MAR 05 2012

SUPERIOR COURT CLERK
TONJA HUTCHINSON
DEPUTY

Trial
LIST OF EXHIBITS
(EXLST)

CAUSE NO. 11-1-08388-4 SEA

CAPTION:

State of Washington

Plaintiff

vs.

William France

Defendant

LEGEND:

Π= Plaintiff/Petitioner
Δ= Defendant/Respondent
A = Admitted
AN = Admitted but not to go to jury
R = Refused
Re-O&A = Re-offered and Admitted
ID = For Identification Only
Rtn'd = Returned

CODES:

APPENDIX I

11-10-11

Call to Ms. Daugaard:

Hey bitch. You fucked up by coming into the courtroom today. You think for one fucking minute nothing's not going to happen to you? You worthless mother-fucking slut. [Pause] Give a message to Rita, Anita Paulsen, same thing. 8 years. You better find a new job, bitch. You better find a new fucking job.

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the petitioner, Casey Grannis of Nielsen Broman & Koch PLLC containing a copy of the State's Response to Personal Restraint Petition, in IN RE PERSONAL RESTRAINT OF FRANCE, Cause No. 74508-5-1, 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
Done in Seattle, Washington

05-19-16
Date