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SUPREME COURT
STATE OF WASHINGTON
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NO. 91050-2

THE SUPREME COURT OF
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

NANAMBI I. GAMET,

Appellant.

RESPONSE TO PETITION FOR REVIEW
BY YAKIMA COUNTY

David B. Trefry WSBA #16050
Deputy Prosecuting Attorney
Attorney for Respondent

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 ORIGINAL

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii-iii

A. INTRODUCTION 1

B. ISSUES PRESENTED BY PETITION 2

ISSUES PRESENTED BY ASSIGNMENTS OF ERROR..... 2

1. The Court of Appeals ruling that prior convictions for violation of a no contact order are elements of the charged crime is contrary to decisions of this court and federal courts. 2

2. The Court of Appeals decision regarding the privilege was incorrect. 2

ANSWERS TO ASSIGNMENTS OF ERROR..... 2

1. The Court of Appeals regarding prior convictions was correct. And not contrary to decisions by this court or federal court decisions. 2

2. The Court of Appeals decision regarding Mr. Gamet’s assertion regarding privilege is correct and is not contrary to state or federal decisions. 2

C. STATEMENT OF THE CASE..... 2

D. ARGUMENT 2

RESPONSE TO ALLEGATION 1..... 3

RESPONSE TO ALLEGATION 2-RIGHT OR PRIVILEGE..... 8

E. CONCLUSION 13

APPENDIX A

TABLE OF AUTHORITIES

PAGE

Cases

MacKay v. MacKay, 55 Wn.2d 344, 347 P.2d 1062 (1959) 10

State v. Carmen, 118 Wn.App. 655, 77 P.3d 368 (2003) 7

State ex rel. Carroll v. Junker, 79 Wn.2d 12, 482 P.2d 775 (1971)..... 9-10

State v. Castellanos, 132 Wn.2d 94, 935 P.2d 1353 (1997) 3

State v. Castle, 156 Wn.App. 539, 234 P.3d 260 (2010)..... 6

State v. Chambers, 157 Wn.App. 465, 237 P.3d 352 (2010)..... 6

State v. Cochrane, 160 Wn.App. 18, 253 P.3d 95 (2011)..... 6

State v. Davis, 116 Wn.App. 81, 64 P.3d 661 (2003)..... 7

State v. Downing, 151 Wn.2d 265, 272-3 (2004)..... 9

State v. Oster, 147 Wn.2d 141, 52 P.3d 26 (2002) 6

State v. Young, 160 Wn.2d 799, 161 P.3d 967 (2007)..... 3

Federal Cases

Almendarez-Torres v. United States, 523 U.S. 244, 118 S.Ct. 1219,
140 L.Ed.2d 350 (1998) 3-5, 7

Blockburger v. United States, 284 U.S. 299, 304 (1932) 5

Additional Authorities

Sentencing Reform Act, chapter RCW 9.94A 7

TABLE OF AUTHORITIES (continued)

	PAGE
Rules and Statutes	
RAP 13.4	12-13
RAP 13.4(b)	2, 13
RCW 9A.72.120	1
RCW 26.50.110	5
RCW 26.50.110(5)	1
RCW 26.52.020	5
RCW 46.61.502(1)	6
RCW 46.61.502(6)	6

A. INTRODUCTION

Petitioner/Appellant Gamet was found guilty by a jury on October 30, 2012 in a consolidated trial. He was found guilty in cause number 12-1-00931-2 of three counts of Felony Violation of a Protection Order – Domestic Violence RCW 26.50.110(5) and in cause number 12-1-00994-1 of five counts of Felony Violation of a Protection Order – Domestic Violence RCW 26.50.110(5) and one count of Tampering with a Witness – Domestic Violence RCW 9A.72.120.

His criminal history is set forth in the attached judgment and sentence in Appendix A.

Gamet appealed his convictions and the unpublished decision in that appeal was filed on October 28, 2014. Gamet “challenges the (trial) court’s ruling on the uncharged telephone calls, the admission of the prior convictions, the sufficiency of the evidence to support the witness tampering count, the validity of the elements instruction on the witness tampering count, and the imposition of community custody.” (Opinion at 3)

The Court of Appeals Division III upheld actions of the trial court. It should be noted that Gamet challenged other actions in of the trial court that have not been addressed in this petition therefore those portions of the Court of Appeals decision are not under review by way of this petition.

B. ISSUE PRESENTED BY PETITION

Petitioner alleges;

ISSUES PRESENTED BY ASSIGNMENTS OF ERROR

1. The Court of Appeals ruling that prior convictions for violation of a no contact order are elements of the charged crime is contrary to decisions of this court and federal courts.
2. The Court of Appeals decision regarding the privilege was incorrect.

ANSWERS TO ASSIGNMENTS OF ERROR

1. The Court of Appeals regarding prior convictions was correct. And not contrary to decisions by this court or federal court decisions.
2. The Court of Appeals decision regarding Mr. Gamet's assertion regarding privilege is correct and is not contrary to state or federal decisions.

C. STATEMENT OF THE CASE

The Court of Appeals set forth the facts extensively in its decision the State shall not repeat those here.

D. ARGUMENT

1. Standards of Review.

RAP 13.4(b) Considerations Governing Acceptance of Review.;

This case does not 1) Conflict with any decision by this court, the claim that the Court of Appeals ruling is incorrect is baseless. This allegation is based on a reading of the courts decision which is incorrect

and does not take into account the plain meaning of that ruling nor the facts of the case nor the standard set forth in Alvarado, infra.;

2) This ruling does not conflict with any ruling by any other division of the Court of Appeals or for that matter any court. This issue has been ruled on previously as indicated by the cases cited by the Court of Appeals.

3) The ruling of the Court of Appeals does not raise a significant question under either the State or Federal Constitution; the ruling merely reiterates the proof standard needed to support the introduction of evidence pursuant to court rule and case law.

RESPONSE TO ALLEGATION 1

As the Court of Appeals stated “Decisions involving evidentiary issues lie largely within the sound discretion of the trial court and ordinarily will not be reversed on appeal absent a showing of abuse of discretion. State v. Castellanos, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997). A trial court abuses its discretion if it improperly applies an evidence rule. State v. Young, 160 Wn.2d 799, 806, 161 P.3d 967 (2007).

Cases cited by Gamet are not controlling nor does the decision of the Court of Appeals contradict those cases of any other case. The attempt to compare a case such as Almendarez-Torres v. United States, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed2d 350 (1998) to the statute under which

the conviction of Gamet arose is incorrect. The court in Almendarez-Torres specifically indicated that the changes made in the United States Code pertaining to the charges against Almendarez-Torres were a sentence enhancement not the creation of a new crime. The crime charged and proven against Appellant while carrying the same “name” as the previous non-felony version is in fact a new crime. There is no method by which a court could “enhance” the a crime charged as a something other than a felony to a felony without the actions of a jury. Further, in Almendarez-Torres the court discusses that what is being addressed is “recidivism.” “At the outset, we note that the relevant statutory subject matter is recidivism. That subject matter—prior commission of a serious crime—is as typical a sentencing factor as one might imagine.” Id at 230.

While it is true that the actions of Gamet in continually violating no contact orders would be considered as “recidivism” it is clear that the legislature was enacting a new law that would punish the very specific actions of an individual violation orders to stay away from a victim. The most common scenario is that of a victim being violated by the same offender such and in this case. The crime charged and proven against Gamet, unlike Almendarez-Torres is not based on the prior conviction for any “aggravated felony” as was Almendarez-Torres. Here there has to be proof of a very specific crime, here the information alleges two prior

convictions. RCW 26.50.110 states that “Whenever an order is granted under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020 , and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, **except as provided in subsections (4) and (5) of this section:**” (Emphasis mine.) Thereafter the statute sets forth the separate crime; “A violation of a court order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020 , is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020 . The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.”

Almendarez-Torres states “If Congress intended subsection (b) to set forth substantive crimes, in respect to which subsection (a) would define a lesser included offense, see Blockburger v. United States, 284 U.S. 299, 304 (1932), what are those words doing there?” Id at 231. (Emphasis mine.) Here there is a lesser crime, one that is such that it is

charged, tried and sentenced in another division of the court, district court, a court of limited jurisdiction. If the crime charged was not a new or separate crime it would be able to be plead, proven and sentenced in the lower court.

Once again this is not a “sentence enhancement.” Gamet states that Oster, *infra*, does not address his issue which is “recidivism” as an element, as opposed to “prior convictions” a distinction without a distinction. State v. Oster, 147 Wn.2d 141, 146, 52 P.3d 26 (2002) (explaining that, where the existence of two prior convictions elevated the crime of violation of a no contact order from a misdemeanor to a felony, that, “[a]s set forth in the statute, the prior convictions function as an element of the felony violation of a no contact order.”); State v. Cochrane, 160 Wn.App. 18, 25, 253 P.3d 95 (2011) (holding that the existence of four prior DUI offenses within ten years is an essential element of felony DUI that must be alleged in the charging document); State v. Chambers, 157 Wn.App. 465, 475, 237 P.3d 352 (2010), (“[p]roof of the existence of the prior offenses that elevate a crime from a misdemeanor to a felony is an essential element that the State must establish beyond a reasonable doubt”); State v. Castle, 156 Wn.App. 539, 543, 234 P.3d 260 (2010) (“[b]y a plain reading of the statute, RCW 46.61.502 subsection (6) adds an element to the list of elements stated in subsection (1) to define the

offense of felony driving under the influence"); State v. Davis. 116 Wn.App. 81, 93-94, 64 P.3d 661 (2003) (holding that where statute requires proof of a prior conviction in order to elevate the underlying crime from a misdemeanor to a felony, the prior convictions are elements of the crime that must be proved to a jury beyond a reasonable doubt); State v. Carmen. 118 Wn.App. 655, 667, 77 P.3d 368 (2003) (acknowledging that, where statute provides that upon proof of two prior convictions for violating a no contact order, a third or subsequent offense elevates the crime from a gross misdemeanor to a felony, the prior convictions are an essential element of the crime).

The language of the statute in this case bears little resemblance to that considered in Almendarez-Torres. Moreover, Almendarez-Torres, does not address the circumstances presented here, where the prior conviction actually changes the classification of the crime from a gross misdemeanor to a felony. Not only does the statute increase the possible sanction for the crime, it expressly directs that the sanction be determined under a completely different statutory scheme, the Sentencing Reform Act, chapter RCW 9.94A. This supports the conclusion that the legislature intended to create a different crime by adding the element of qualifying prior offenses.

This court and numerous other courts of review have determined that this type of crime must be pleaded and proven as the State did in this case. The Court of Appeals decision conflicts with nothing and should not be disturbed. As stated by the Court of Appeals:

At oral argument to this court, his counsel explained that this argument was made in anticipation of the United States Supreme Court changing its jurisprudence. In light of the fact that this argument currently is precluded by existing authority, we will address it only briefly.

The essence of the argument is that because the existence of a prior conviction does not have to be proven to the jury, it cannot and should not be submitted to the jury. This argument is foreclosed by the decisions in State v. Roswell, 165 Wn.2d 186, 196 P.3d 705 (2008), and State v. Oster, 147 Wn.2d 141, 52 P.3d 26 (2002).

RESPONSE TO ALLEGATION 2 – RIGHT OR PRIVILEGE.

Gamet notes that the Court of Appeals “questioned without deciding, whether the challenged phrase was an element of the offense or and affirmative defense.” Then Gamet claims in the next paragraph “this ruling implicitly found that right or privilege belonged to the defendant and the challenged phrase is an affirmative defense.”

The State is uncertain how Gamet can determine that the very explicit words of a Court of Appeal are in fact not what that court meant. This interpretation is in complete opposition to the actual wording of the Court of Appeals ruling that explicitly ruled “We need not resolve the debate whether the challenged phrase is an element of the crime or an

affirmative defense, because even if the phrase is an element of the crime, its absence from the jury instructions in this case was harmless beyond a reasonable doubt.” (Slip opinion at 13) As indicated in Merriam-Webster’s Online Dictionary, “implicit adjective \im- 'pli-sət\ : understood though not clearly or directly stated.”

The words “We need not resolve the debate whether the challenged phrase is an element of the crime or an affirmative defense,…” Are the very definition of explicit; ex·plic·it, adjective \ik- 'spli-sət\ 1a : fully revealed or expressed without vagueness, implication, or ambiguity : leaving no question as to meaning or intent <explicit instructions>” By this statement the Court of Appeals was not attempting to impart some hidden message that “the right or privilege belonged to the defendant and the challenged phrase is an affirmative defense.” (Pet. for Review at 14)

The standard of review regarding the alleged failure is also explicitly set forth in the Court of Appeals decision. The basis for the trial court’s decision was sound. This type of decision is, as the Court of Appeals ruled, a matter of discretion. State v. Downing, 151 Wn.2d 265, 272-3 (2004) “We will not disturb the trial court's decision unless the appellant or petitioner makes "a clear showing . . . [that the trial court's] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26,

482 P.2d 775 (1971) (citing MacKay v. MacKay, 55 Wn.2d 344, 347 P.2d 1062 (1959)).”

If Gamet’s argument were to hold, it would be incumbent on the State to prove for each and every witness who took the stand in a trial that they did not have some privilege that could be “asserted” by the defendant. Each and every witness would have to be vetted to determine if they had ever had a priest- penitent relationship or been married to the defendant or had been an attorney, doctor, nurse, reporter who had spoken with that witness with regard to the defendant each and every time a witness took the stand. Clearly that is not the requirement of the law. If Appellant had the right to assert a marital privilege his attorney would have done so, in the discussion regarding this issue in the trial court. The following is the discussion in the trial court;

MR. SOUKUP: Yeah, I don't think it should be in there. It is bracketed and my understanding of it is that if there's some evidence that the person -- you know, the Defendant had some right or privilege to do these things, to induce a person to testify in a certain way.

...

MR. SOUKUP: I think it does modify withhold any testimony or absent them self, but I also think that there's a burden on the Defense to put on some evidence of that before it becomes an issue, and that's why they have it bracketed. Because it's kind of hard to show – I don't know how you prove that he doesn't have right or privilege. Oh, for example, if he was -- let's say they were married and there was marital privilege.

THE COURT: Right.

MR. SOUKUP: Then he would have a right to, you know, tell his wife, I don't want you to testify.

THE COURT: Right. So you're saying it should cross out without right or privilege to do so?

MR. SOUKUP: Right, because there's no evidence of that.

THE COURT: Mr. Krom? You don't think this should be given at all, I realize that.

MR. KROM: Right. Yeah, we're excepting to the giving of the instruction at all. To the extent it is given, I don't know if that could arguably refer to any right or privilege that the witness in this case, Sandra Castillo, might have and I think there is the possibility that she may have a Fifth Amendment right or privilege to withhold information. She doesn't have to provide relevant information to a criminal investigation if she thinks it may incriminate her. (Emphasis mine)

MR. SOUKUP: Well, Your Honor, there's absolutely no evidence of that.

MR. KROM: Well, we objected to her being questioned about certain areas along those lines and there is, at least according to the interpretation of the detective, discussion about drug usage and whatnot in the recordings that could potentially incriminate the speaker. So I think it should probably just be left in.

MR. SOUKUP: Your Honor, I think under this instruction the Defendant has to have the right or privilege, not the --

THE COURT: I think that's what it's saying, too. It's the person who commits the crime. Well, I don't see that there's any evidence even if there was any right or privilege to do so that she would have.

MR. SOUKUP: Right.

THE COURT: Because he would have to assert that she had this right and she didn't say or do any -- it seems kind of strange that it would be in there. Well, let's look.

MR. SOUKUP: Think it must apply to actual evidentiary privileges. If she were his attorney, he could tell her, don't reveal my confidential information to law enforcement.

THE COURT: All right. I must not have -- I don't think that -- let's see. I think you're correct in that it says without right or privilege to do so to withhold any testimony, it alters that one -- I mean, it relates to that. I'm going to read it more carefully. Without right or privilege to do so, I do not believe it applies to this circumstance. It'll have to be changed.

MR. KROM: We're going to strike that out?

THE COURT: Yes.

MR. KROM: All right.

RP 787-8 (Emphasis mine.)

As stated in Respondent's opening brief;

"There was no "right of privilege" which could have been raised by Appellant, there was no error here. Appellant has not explained how this "element" was "essential" to this case when in fact there was no right or privilege that existed that could have been raised or that needed to be proven." Before this court Appellant has not set forth anything upon which this court could or should grant further review.

As noted by the Court of Appeals;

We need not resolve the debate whether the challenged phrase is an element of the crime or an affirmative defense, because even if the phrase is an element of the crime, its absence from the jury instructions in this case was harmless beyond a reasonable doubt. Omission of an element from a "to-convict" instruction is harmless error if it is clear beyond a reasonable doubt that the error did not contribute to the verdict. Neder v. United States, 527 U.S. 1, 15, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999) (citing Chapman v. California, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)); State v. Thomas, 150 Wn.2d 821, 840-41, 83 P.3d 970 (2004). That is the situation here. Mr. Gamet never contended that he was privileged to attempt to dissuade S.C. from cooperating with the prosecution of the case against him. If the privilege language is an element of the offense, it was not an element at issue in this case. Accordingly, if there was any error, it was harmless beyond a reasonable doubt." (Slip opinion at 13)

What this court must consider when reviewing a matter under RAP 13.4 is not the speculative argument of the petitioner but the rulings

made by the lower court and determine if those rulings are such that the party, pursuant to RAP 13.4(b) should be granted further review.

In this case Mr. Gamet has not met the test. There is no conflict with either State or Federal case law. There noting in the Court of Appeals decision that would allow for review of that court's ruling under RAP 13.4(b).

E. CONCLUSION

Gamet's claims do not meet the requirements of RAP 13.4. The actions of the trial court and the Court of Appeals well reasoned decision should not be disturbed.

Respectfully submitted this 6th day of January 2015.

s/ David B. Trefry

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APPENDIX A

13-9-00034-7

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KIM EATON
EX OFFICIO CLERK OF
SUPERIOR COURT
YAKIMA, WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON

NO. 12-1-00931-2

Plaintiff,

FELONY JUDGMENT AND SENTENCE
(FJS)

vs

NANAMBI IBO GAMET

Defendant

Prison
 Community Custody Ordered
 Clerk's Action Required: 4.D.8 (Payroll
Deduction); 5.2 (NLVR); 5.5 (NTIPF)

SID NO WA14218219
Motor Vehicle Involved No
D L # GAMETN1262CZ, DOC 996903,
DOB 2/9/1974, SEX Male, RACE Black

I. HEARING

1.1 **Hearing:** A sentencing hearing was held ~~December 5, 2012~~ ¹⁻³⁻¹³ Present were the defendant, MICKEY L KROM, attorney for the defendant, and DAVID M SOUKUP, Deputy Prosecuting Attorney

1.2 **Allocution:** The defendant was given the right of allocution and asked if any legal cause existed why judgment should not be entered There being no reason why judgment should not be pronounced, the Court makes the following findings and judgment

II. FINDINGS

Based on testimony heard, statements by the defendant and/or victims, argument of counsel, any pre-sentence report, and case record to date, the court finds

2.1 **Current Offense(s):** On October 30, 2012, the defendant was found guilty by a jury verdict of

Count 1 **Crime: FELONY VIOLATION OF A PROTECTION ORDER
DOMESTIC VIOLENCE
RCW 26.50.110(5)
Date of Crime May 8, 2012
Law Enforcement Incident No Yakima PD #12Y023762**

Count 2 **Crime: FELONY VIOLATION OF A PROTECTION ORDER
DOMESTIC VIOLENCE
RCW 26.50.110(5)
Date of Crime May 10, 2012
Law Enforcement Incident No Yakima PD #12Y023762**

ORIGINAL

Count 3 **Crime: FELONY VIOLATION OF A PROTECTION ORDER
DOMESTIC VIOLENCE
RCW 26.50.110(5)**
Date of Crime May 10, 2012
Law Enforcement Incident No Yakima PD #12Y023762

2.2 Special Findings: The Court makes the following special findings, based either upon a special verdict or upon the Court's own review of the evidence pursuant to a plea of guilty

Counts 1, 2, and 3 do not encompass the same criminal conduct and **do not count as one crime** in determining offender score, pursuant to RCW 9 94A 589

The crimes in Counts 1, 2, and 3 involve **domestic violence – pled and proven.**

2.3 Criminal History: Prior criminal history used in calculating the offender score (RCW 9 94A 525)

Crime	Date of Sentence	Sentencing Court (County & State)	Date of Crime	Adult or Juvenile	Type of Crime*
Assault 3 – DV 09-1-02221-1	4-9-2010	Yakima, WA	11-25-2009	A	NV
VUCSA 08-1-04032-8	9-19-2008	King, WA	3-22-2008	A	DRUG
Felony Prot Order Viol 04-1-01201-1	8-25-2004	Yakima, WA	5-23-2004	A	NV
Theft 2 (not firearm) 01-1-01927-4	3-13-2002	Yakima, WA	10-18-2001	A	NV
Robbery 2 96-1-00159-3	9-6-1996	King, WA	12-29-1995	A	V
Residential Burglary 94-1-03242-5	7-8-1994	King, WA	5-15-1994*	A	NV
Robbery 2 94-1-03242-5	7-8-1994	King, WA	5-15-1994*	A	V
TMWOP 93-1-01138-1	8-23-1993	Yakima, WA	7-20-1993	A	NV
Residential Burglary 93-1-01075-9	8-23-1993	Yakima, WA	7-13-1993	A	NV
Residential Burglary 92-1-01073-4	8-5-1992	Yakima, WA	7-6-1992	A	NV
VUCSA 91-8-00065-5	2-15-1991	Yakima, WA	1-18-1991	J	DRUG
VUCSA 89-8-00250-8	5-5-1989	Yakima, WA	4-14-1989	J	DRUG
Assault 3 88-8-00382-4	6-21-1988	Yakima, WA	5-4-1988**	J	NV
Theft 2 (not firearm) 88-8-00382-4	6-21-1988	Yakima, WA	5-4-1988**	J	NV
Theft 2 (not firearm) 88-8-00382-4	6-21-1988	Yakima, WA	5-4-1988**	J	NV
Theft 2 (not firearm) 88-8-00237-2	4-12-1988	Yakima, WA	3-21-1988	J	NV
Malicious Mischief 3 - DV Y11200286	9-22-2011	SeaTac Municipal King Co, WA	9-8-2011	A	GM

The Court finds the above-listed concurrent prior convictions (indicated by * and **) are not the same criminal conduct under RCW9 94A 525(5)(a)(i), and shall count separately

2.4 Other Current Convictions under other cause number(s) used to determine offender score

Crime	Cause Number	Court (County and State)
Felony Violation of Protection Order DV	12-1-00994-1	Yakima, WA
Felony Violation of Protection Order DV	12-1-00994-1	Yakima, WA
Felony Violation of Protection Order DV	12-1-00994-1	Yakima, WA
Felony Violation of Protection Order DV	12-1-00994-1	Yakima, WA
Felony Violation of Protection Order DV	12-1-00994-1	Yakima, WA
Tampering with a Witness DV	12-1-00994-1	Yakima, WA

2.5 Sentencing Data: The following is the defendant's standard range for each crime pursuant to RCW 9 94A 510

Count	Offender Score	Seriousness Level	Standard Range	Enhancements*	Enhanced Range	Maximum Term
1	9+	V	60 mos			5 years
2	9+	V	60 mos			5 years
3	9+	V	60 mos			5 years

2.6 Exceptional Sentence: Substantial and compelling reasons exist which justify an exceptional sentence Pursuant to RCW 9 94A 535(2)(c), the defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished

2.7 Financial Ability: The Court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change The court finds that the defendant is an adult and is not disabled and therefore has the ability or likely future ability to pay the legal financial obligations imposed herein RCW 9 94A 753

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9 94A 753)

III. JUDGMENT

3.1 Guilty: IT IS ADJUDGED that the defendant is guilty of the counts and charges listed in paragraph 2 1

3.2 Exceptional Sentence: Pursuant to aggravating circumstance in RCW 9.94A535(2)(c), the Court is justified in entering an exceptional sentence to run the confinement time in 12-1-00931-2 consecutive to the confinement time in 12-1-00994-1

IV. SENTENCE AND ORDER

IT IS ORDERED that the defendant serve the sentence and abide by the conditions set forth below

A. CONFINEMENT

4.A.1 Confinement: The defendant is sentenced to the following term of confinement

**60 Months on Count 1
60 Months on Count 2
60 Months on Count 3**

PJ
To be determined

Credit for Time Served in the Yakima County Jail The defendant shall be given credit for _____ days served on this charge only. The defendant shall be given credit for good behavior as administered and computed by the Yakima County Department of Corrections

Credit for Time in Other Jail: The defendant shall receive _____ days credit for time served on this case in jail or prison _____, in transport from _____, in other _____

4.A.2 Concurrent or Consecutive:

Concurrent: The confinement time of Counts 1, 2, and 3 are concurrent for a total term of 60 Months

~~Consecutive With Other Sentence:~~ The terms of this sentence shall be concurrent with the sentence in Cause Number 12-1-00994-1

Consecutive With Other Sentences: Unless otherwise specified here, this sentence shall be consecutive with prior sentences

4.A.3 Means of Confinement: The defendant shall serve this sentence as follows

Total Confinement The defendant shall serve the balance of confinement in a prison operated by the Washington State Department of Corrections because the term of confinement is over one year

4.A.4 Time of Confinement: If not already in custody, the defendant shall report to the above facility immediately on or before _____ by _____ a m/p m to begin serving this sentence

B. SUPERVISION BY THE DEPARTMENT OF CORRECTIONS

4.B.1 Community Custody: The defendant shall serve community custody for a period of 12 months on Counts 1, 2, and 3, pursuant to RCW 9 94A 701 to commence upon the date of this order and shall comply with the conditions and crime related prohibitions as set forth below. During the time the defendant is in total or partial confinement pursuant to this sentence or a violation of the sentence, the period of community custody shall toll. The defendant shall report, in person, within 24 hours of this order or release from incarceration, whichever is later, to the Washington State Department of Corrections, 210 North Second Street, Yakima, Washington

4.B.2 No Community Custody or Probation: If checked and initialed by the Court, the defendant shall not be subject to community custody or probation

C. SENTENCE CONDITIONS

4.C.1 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. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. If you are out of custody at the time of sentencing, you will immediately report to the front desk of the Yakima County Jail for the taking of a DNA sample. RCW 43 43 754

4.C.3 Conditions of Community Custody or Probation: While the defendant is on community custody, community placement, or probation, the defendant shall comply with each of the conditions below

- Report to and be available for contact with the assigned community corrections officer as directed
- Cooperate fully with the supervising Community Corrections Officer
- Perform such affirmative acts necessary for the Department of Corrections to monitor compliance with the court's orders
- Work at Department of Corrections-approved education, employment and/or community service
- Do not unlawfully possess or consume any controlled substances except pursuant to a lawfully issued prescription

- Pay supervision fees as determined by the Department of Corrections
- Residence location and living arrangements are subject to the prior approval of the Department of Corrections while in community custody
- Allow home visits by the Department of Corrections to monitor compliance with supervision. Home visits must include access for the purposes of visual inspection of all areas of the residence in which the defendant lives or has exclusive or joint control or access
- Not own, use, or possess, including constructively, any firearm or ammunition
- Maintain law-abiding behavior and commit no new crimes
- If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify the Department of Corrections, and the defendant's treatment information must be shared with the Department of Corrections for the duration of the defendant's incarceration and supervision. RCW 9 94A 562
- ~~Have no direct or indirect contact with Sandra Castillo~~
- Report promptly to a Washington State Certified Domestic Violence Perpetrator Treatment Program for evaluation and promptly enter into and complete any recommended treatment by the end of supervision
- Obey all no contact, protection, and/or anti-harassment orders now or hereafter in effect
- Other _____

D. FINANCIAL OBLIGATIONS

4.D.1 Financial: The defendant shall pay financial obligations and abide by the conditions as set forth below. The defendant shall be under the jurisdiction and supervision of this Court for purposes of payment of financial obligations ordered until they are paid. The defendant shall report to the Yakima County Clerk, Yakima County Courthouse, Room 323, 128 North Second Street, Yakima, WA, within 24 hours of this order or release from incarceration, whichever is later. The defendant must notify the Yakima County Clerk's Office of changes in address or employment. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule. RCW 9 94A 760(7)(b)

4.D.2 Jurisdiction: All legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The clerk of the court is authorized to collect unpaid financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her financial obligations. RCW 9 94A 753(4) and RCW 9 94A 760(4)

4.D.3 Restitution, Costs, Assessments, and Fine: Defendant shall pay the following to the Yakima County Superior Court Clerk, Room 323, Yakima County Courthouse, Yakima, WA 98901

RTN	\$	0.00	Restitution distributed to _____, subject to modification
PCV	\$	500.00	Crime Penalty Assessment – felony or gross misd (RCW 7 68 035)
FRC	\$	200.00	Criminal filing fee
PUB	\$	600.00	Court appointed attorney recoupment (RCW 9 94A 760)
DNA	\$	100.00	DNA collection fee (any felony committed after 7/1/02) (RCW 43 43 7541)
PDV	\$	100.00	Domestic Violence Assessment (RCW 10 99 080)
	\$	1,500.00	TOTAL

4.D.4 Costs of Incarceration: In addition to the above costs, the court finds that the defendant has the means to pay for the costs of incarceration, in prison at a rate of \$50 00 per day of incarceration or in the Yakima County Jail at the actual rate of incarceration but not to exceed \$100 00 per day of incarceration (the rate in 2012 is \$65 00 per day), and orders the defendant to pay such costs at the statutory rate as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 9 94A 760(2) *Capped at \$500.*

4.D.5 Costs of Medical Care: In addition to the above costs, the court finds that the defendant has the means to pay for any costs of medical care incurred by Yakima County on behalf of the defendant, and orders the defendant to pay such medical costs as assessed by the Clerk. Such costs are payable only after restitution costs, assessments and fines listed above are paid. RCW 70 48 130

4.D.6 Forfeiture of Funds: The financial obligations ordered above, in part or in full, shall be paid from defendant's funds held by _____ who is ordered to pay such funds to the Clerk of the above Court. Any balance shall be paid by the defendant.

4.D.7 Payments: Unless provided above, the Yakima County Clerk shall, after investigation, set a minimum monthly payment for the defendant to pay towards the financial obligations. The Clerk may modify the monthly payment amount. Payments shall first apply to any restitution. Costs and assessments shall be paid in 180 days after restitution is paid in full/release. All other fees shall be paid in 270 days after restitution is paid in full/release. The defendant shall pay financial obligations to the Clerk of the Court, Room 323, Yakima County Courthouse, Yakima, Washington.

4.D.8 Payroll Deduction: Without further notice, the Yakima County Clerk may issue a Notice of Payroll Deduction at any time until all financial obligations are paid. RCW 9 94A 7602. Other income-withholding action under RCW 9 94A 760 may be taken without further notice. RCW 9 94A 7606

4.D.9 Interest, Judgment, and Collection: The financial obligations listed herein shall bear interest from the date hereof until paid in full at the rate applicable to civil judgments. RCW 10 82 090. An award of costs on appeal against the defendant may be added to the total financial obligations. RCW 10 73 160. The financial obligations listed above may be enforced in the same manner as a civil judgment. The defendant shall pay the costs of services to collect unpaid legal financial obligations.

4.D.10 Petition For Remission: The defendant, if not in willful default on financial obligations due hereunder, may at any time petition the court for remission of all or part of the financial obligations due, except restitution or interest on restitution, or to modify the method of payment under RCW 10 01 160 through RCW 10 01 180 and RCW 10 73. Non-restitution interest may be waived only after the defendant has either (a) paid the principal amount in full or (b) made at least fifteen monthly payments within an eighteen-month period, as set by the Clerk, and further payment of interest will cause a significant hardship. RCW 10 82 090

V. NOTICES

The defendant, by signing below, acknowledges each of the statements in this section.

5.1 Collateral Attack: The defendant may not file a petition or motion for collateral attack on a judgment and sentence in a criminal case more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction. For purposes of this section, "collateral attack" means any form of post-conviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw a guilty plea, a motion for a new trial, and a motion to arrest judgment under RCW 10 73 090 and RCW 10 73 100.

5.2 Loss of Voting Rights: The defendant understands and acknowledges that

- 1 The defendant's right to vote is lost because of this felony conviction
- 2 If the defendant is registered to vote, his or her registration will be canceled
- 3 The defendant's right to vote is provisionally restored as long as the defendant is not under the authority of the department of corrections
- 4 The defendant must reregister before voting
- 5 The provisional right to vote may be revoked if the defendant fails to comply with all the terms of his or her legal financial obligations or an agreement for the payment of legal financial obligations
- 6 The defendant's right to vote may be permanently restored by one of the following for each felony conviction
 - a A certificate of discharge issued by the Yakima County Superior Court, as provided in RCW 9 94A 637, or
 - b A court order issued by the Yakima County Superior Court restoring the defendant's right to vote, as provided in RCW 9 92 066, or
 - c A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9 96 050, or
 - d A certificate of restoration issued by the governor, as provided in RCW 9 96 020
- 7 Voting before the right to vote is restored is a class C felony under RCW 29A 84 660

5.3 Sentence Condition Violation: Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement for any violation related to a felony charge RCW 9 94A 633 Any violation of this Judgment and Sentence is punishable by up to the total number of confinement days suspended for any violation related to a non-felony charge

5.4 Successful Completion: Upon successful completion of the requirements of the sentence, the defendant shall be eligible for a certificate of discharge RCW 9 94A 637

5.5 Firearms: The defendant understands that he or she must immediately surrender any concealed pistol license and may not own, use, or possess any firearm unless the right to do so is restored by a court of record (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment) RCW 9 41 040, 9 41 047

5.6 Restitution Hearing: If this box is checked and initialed here _____ then the defendant gives up or waives the right to be present at any restitution hearing _____

VI. SIGNATURES

1-3-13
DATED December 5, 2012

Presented by

DAVID M SOLKUP
Deputy Prosecuting Attorney
Washington State Bar No 18177

JUDGE

Approved as to form

MICKEY L KROM
Attorney for Defendant
Washington State Bar No 7064

Acknowledging the notices in Section V and receiving a copy

DEFENDANT

VII. WARRANT OF CONFINEMENT

THE STATE OF WASHINGTON

TO The Yakima County Sheriff
TO The Yakima County Department of Corrections
TO The Washington State Department of Corrections

The defendant has been convicted in the Superior Court of the State of Washington of the crimes of

- COUNT 1 - FELONY VIOLATION OF A PROTECTION ORDER – DOMESTIC VIOLENCE
- COUNT 2 - FELONY VIOLATION OF A PROTECTION ORDER – DOMESTIC VIOLENCE
- COUNT 3 - FELONY VIOLATION OF A PROTECTION ORDER – DOMESTIC VIOLENCE

and the court has ordered that the defendant be punished as set out in the attached Judgment and Sentence

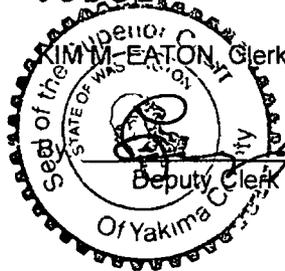
YOU ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence

1-3-13
DATED ~~December 5, 2012~~

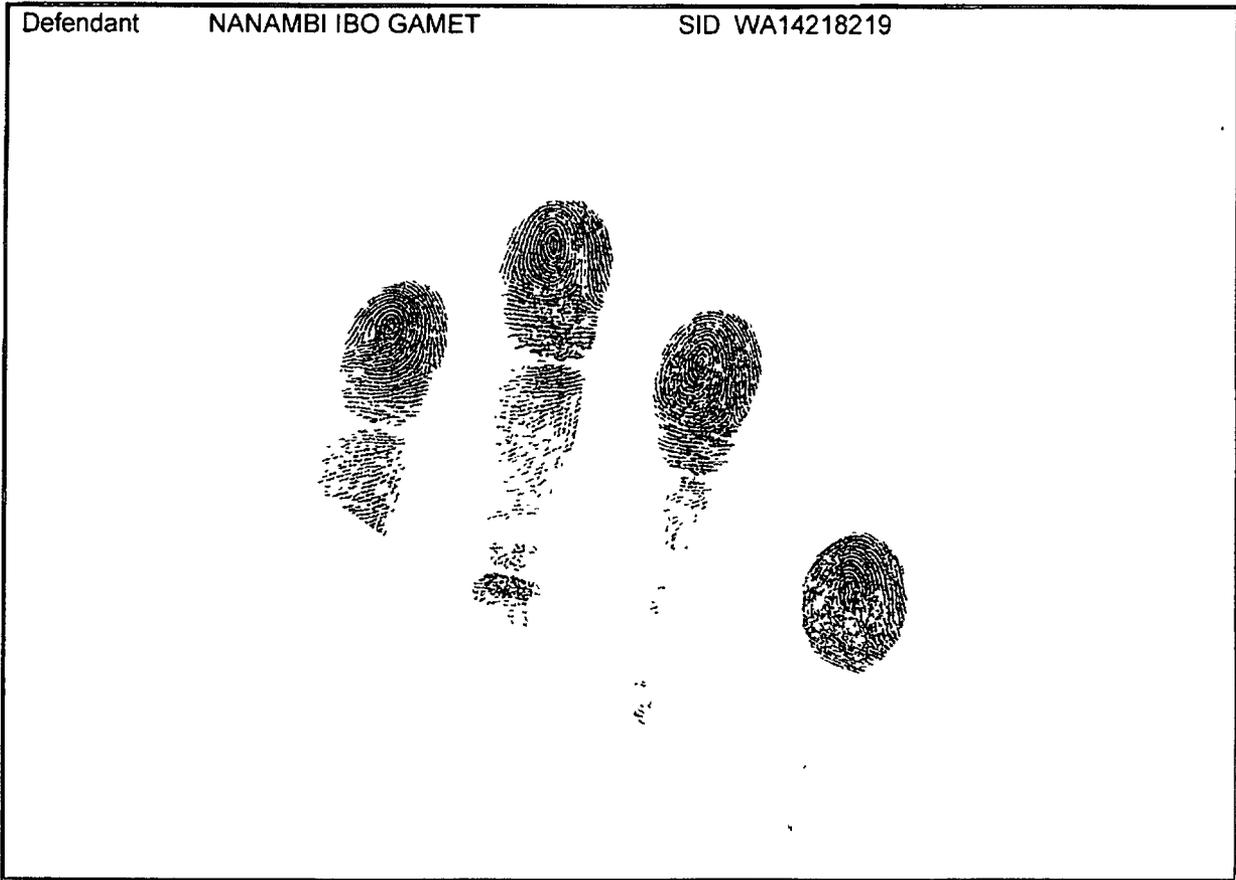
By the Direction of the Honorable

F. James Gavin

JUDGE



[Handwritten Signature]



FINGERPRINT CERTIFICATE OF ATTESTATION

STATE OF WASHINGTON)
)
 County of Yakima) ss

I, Kim M Eaton, Yakima County Clerk and ex-officio Clerk of the Superior Court, hereby attest that the fingerprints appearing on this certificate are the fingerprints of the above-named defendant, and were affixed in open court on ~~December 5, 2012~~

1-3-13 *1-3-13*
 DATED ~~December 5, 2012~~

KIM M. EATON, Clerk
 By 
 Seal of the Superior Court
 State of Washington
 Deputy Clerk
 Of Yakima County

Address of Defendant

Certificate of Service

I, David B. Trefry, hereby certify that on this date I emailed a copy of this motion, by agreement of the parties to Sarah Hrobsky at wapofficemail@washapp.org.

Dated at Spokane, WA this 6th day of January, 2015.

s/ David B. Trefry
David B. Trefry WSBA 16050
Senior Deputy Prosecuting Attorney
Attorney for Yakima County
P.O. Box 4846, Spokane, WA 99220
Telephone: (509) 534-3505
Fax: (509) 535-3505
David.Trefry@co.yakima.wa.us

OFFICE RECEPTIONIST, CLERK

To: David Trefry
Cc: wapofficemail@washapp.org
Subject: RE: State v. Gamet 91050-2

Received 1-06-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: David Trefry [mailto:David.Trefry@co.yakima.wa.us]
Sent: Tuesday, January 06, 2015 4:17 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: wapofficemail@washapp.org
Subject: State v. Gamet 91050-2

Please find attached the State's response to Mr. Gamet's motion for review.

David B. Trefry
Senior Deputy Prosecuting Attorney
Appellate Division
Yakima County Prosecuting Attorney's Office
P.O. Box 4846, Spokane, WA 99220
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FAX: (509) 534-3505
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