

FILED
Nov 12, 2015
Court of Appeals
Division I
State of Washington

Supreme Court No: 92551-8
Court of Appeals No: 71818-5-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ANDREA LYNN LISTER,

Appellant.

FILED
DEC -4 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

CRJ

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

PETITION FOR REVIEW

David L. Donnan
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. IDENTITY OF PETITIONER AND THE DECISION BELOW..... 1

B. ISSUE PRESENTED FOR REVIEW 1

C. STATEMENT OF THE CASE 3

D. ARGUMENT 6

 1. This Court should review the denial of Ms. Lister’s request for accommodations in order to overcome her disability and prepare a Statement of Additional Grounds 6

 a. Ms. Lister sought reasonable accommodations 6

 b. Statues and Court Rules supported the request..... 8

 c. Ms. Lister was prejudiced by the failure to accommodate her disabilities 12

 d. Review is warranted and reversal is the appropriate remedy 12

 2. This Court should review whether the information omitted an essential element of felony stalking by failing to specify which protective order Ms. Lister allegedly violated 13

 a. Felony stalking requires proof of priors..... 13

 b. The information must include all elements..... 14

 c. All the elements must be proven beyond a reasonable doubt..... 15

 d. Review is appropriate under RAP 13.4(b) 17

3. This Court should review whether the constitutional right to jury unanimity was violated because the jury was not instructed it must agree on the particular protective order violated or particular conduct that violated the order.....	17
a. The State had to prove knowing violations of valid protection orders.....	17
b. Unanimity was required where multiple violations were alleged.....	18
c. The error was prejudicial because the evidence was disputed.....	20
E. CONCLUSION.....	24

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Handran, 113 Wn.2d 11, 775 P.2d 453 (1989) 19

State v. Kitchen, 110 Wn.2d 403, 756 P.2d 105 (1988)..... 20, 23

State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991) 15

State v. Leach, 113 Wn.2d 679, 782 P.2d 552 (1989) 15

State v. Moavenzadeh, 135 Wn.2d 359, 956 P.2d 1097 (1998)..... 15

State v. Petrich, 101 Wn.2d 566, 683 P.2d 173 (1984)..... 19, 20, 23

State v. Roswell, 165 Wn.2d 186, 196 P.3d 705 (2008) 15

Washington Court of Appeals

City of Bothell v. Kaiser, 152 Wn. App. 466,
217 P.3d 339 (2009) 16, 18

City of Seattle v. Termain, 124 Wn. App. 798,
103 P.3d 209 (2004) 16, 18

State v. Johnson, __ Wn. App. __, 342 P.3d 338 (2015) 16

State v. Love, 80 Wash.App. 357, 908 P.2d 395 (1996)..... 19

United States Supreme Court

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052,
80 L.Ed.2d 674 (1984)..... 8

Statutes

RCW 26.50.110(1) 18

RCW 9A.46.110	4, 13, 15, 18
RCW 9A.46.110(5)(b)(ii).....	4, 13, 15, 18

Rules

GR 33	9, 10, 11
RAP 13.4	1

Constitutional Provisions

Const. art. I, § 22	15, 19
U.S. Const. amend VI.....	12, 19

A. IDENTITY OF PETITIONER AND THE DECISION BELOW

Andrea L. Lister, the appellant below, requests this Court grant review pursuant to RAP 13.4(b)(2), and (3), of the unpublished decision of the Court of Appeals, Division One, in State v. Lister, No. 71818-5-I, filed August 24, 2015, following the denial of Ms. Lister's Motion to Reconsider on October 12, 2015. A copy of the opinion and the order denying motion for reconsideration are attached as appendix A and B.

B. ISSUE PRESENTED FOR REVIEW

1. Ms. Lister is burdened by "a known documented disability" and related "cross-communication problems." As a result of her multiple and overlapping maladies, Ms. Lister sought certain accommodations in the Court of Appeals which were denied. Ms. Lister asks this Court to accept review and examine the propriety of the Court of Appeals denial of her requests for accommodation.

2. The charging document must include all essential elements of this crime, both statutory and non-statutory. Ms. Lister was charged with felony stalking under RCW 9A.46.110(5)(b)(ii), a class B felony.¹

¹ The statutory elements of the crime of stalking are as follows:
(1) A person commits the crime of stalking if,
without lawful authority and under circumstances not

Where the information omitted an essential element of felony stalking by failing to specify which protective order Ms. Lister allegedly violated, did the information fail to provide constitutionally sufficient notice?

3. When the State presents evidence of several acts which could form the basis of a charge, the prosecutor must tell the jury which act to rely upon, or the court must instruct the jury that they must agree on the same underlying criminal act. To establish felony stalking, the State was required to prove the alleged stalking “violated a protective order protecting Daniel Calvin Wiseman.” CP 197. The State presented evidence of *several* different protective orders that could have formed

amounting to a felony attempt of another crime:

- (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
- (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.

the basis of the charge. Was Ms. Lister's right to a unanimous jury verdict violated by the failure to elect or instruct on unanimity?

C. STATEMENT OF THE CASE

Andrea Lister and Daniel Wiseman had a lengthy romantic relationship. 3/27/14RP 41-47; 3/31/14RP 130-36, 147. Mr. Wiseman promised Ms. Lister that their relationship would be exclusive. 3/31/14RP 146. Eventually, though, Ms. Lister found out that Mr. Wiseman was seeing other women. 3/31/14RP 162; 4/01/14RP 148.

On August 23, 2011, Mr. Wiseman returned to Seattle from an out-of-town convention. 3/27/14RP 78-79. Ms. Lister was waiting for Mr. Wiseman when he came home. 3/31/14RP 169. When she saw him arrive with another woman, she knew he had again lied to her. 3/31/14RP 176-79.

In the lobby, Mr. Wiseman stepped on Ms. Lister's ankle and grabbed her by her injured arm, yanking several times while pulling her out of the elevator. 3/27/14RP 83; 3/31/14RP 192. Ms. Lister slapped him in self-defense so that he would let go of her arm. 3/27/14RP 84-85; 3/31/14RP 192. Mr. Wiseman continued to grab and kick Ms. Lister until she eventually got away from him. 3/31/14RP 194, 203.

Mr. Wiseman called 9-1-1, and Ms. Lister was eventually charged with fourth degree assault of Wiseman based on this incident. 3/27/14RP 82; 3/31/14RP 194. Several different no-contact orders were subsequently issued over the next two years, in both King County Superior Court and Seattle Municipal Court. Exhibit 6-10, 22-24. Mr. Wiseman claimed Ms. Lister violated the terms of the no-contact orders several times over the next two years. 3/27/14RP 18-21, 101-02, 127-28, 130-39; 143-44; 3/31/14RP 85; Exhibit 16-18.

Based on these contacts, Ms. Lister was charged with stalking which was elevated to a felony based on the allegation “the stalking violates any protective order protecting the person being stalked.” CP 1-2; RCW 9A.46.110(5)(b)(ii). The jury found Ms. Lister guilty of felony stalking and fourth degree assault against Mr. Wiseman, and guilty of misdemeanor violation of a court order. CP 150-53.

In the Court of Appeals, Ms. Lister had initially filed a motion for discretionary review (No. 71515-1-I), however, when a judgment was subsequently entered in the superior court and a notice of appeal filed, the discretionary review was dismissed in favor of this direct appeal. Appointed counsel on appeal challenged the sufficiency of the charging document, the instructions to the jury and sentence imposed.

Ms. Lister filed a pro se motion requesting new counsel due to a conflict and related barriers. Commissioner Kanasawa denied Ms. Lister's request on April 14, 2015. A subsequent motion for additional time to complete her Statement of Additional Grounds was granted to July 17, 2015.

On July 17th, Ms. Lister filed an "incomplete and only partially drafted" Statement of Additional Grounds as well as a motion requesting further accommodations due to her disabilities and appointed counsel's failure to obtain municipal court records she believed necessary. Ms. Lister specifically outlined the nature and extent of her disabilities including an adjustment disorder, post-traumatic stress disorder, ADHD, and certain physical problems which made it difficult to go through the documentation. The judges considering Ms. Lister's appeal denied the motion.

On August 11, 2015, Ms. Lister filed another motion requesting a continuance in order to make a further showing regarding her disability. That motion was also denied by order of the panel.

Thereafter, on August 24, 2015, this Court issued its opinion affirming Ms. Lister's conviction and sentence. Ms. Lister sought reconsideration of the Court's opinion and moved to supplement the

record with further documentation regarding her disabilities filed under seal. The Court of Appeals granted the motion to supplement the record, but denied her request to reconsider.

Ms. Lister now seeks relief in this Court.

D. ARGUMENT

1. This Court should review the denial of Ms. Lister's request for accommodations in order to overcome her disability and prepare a Statement of Additional Grounds

a. Ms. Lister sought reasonable accommodations.

As Ms. Lister outlined in her "Motion 2 Show Disability," she is burdened by "a known documented disability" and related "cross-communication problems." (Motion 2 Show Disability to the Court of Appeals for Admin. Purposes, filed on July 17, 2015, attached as Appendix C). Ms. Lister's "Urgent Motion for Time Extended," filed on the same day, provided more specific information regarding the multiple and overlapping maladies. (Urgent Motion for Time Extended..., filed July 17, 2015, attached as Appendix D). Ms. Lister then explained:

All of these conditions which I suffer from greatly affect my ability to go thru the documentation myself, relive the trauma of my cases, re-experience which causes ruminations, which also has been a factor of exacerbation

causing trust issues when counsel are ineffective in doing their job and violate my rights.

(App. D at 1).

As a result, Ms. Lister requested an accommodation for her disability in the form of “longer time periods which are necessary for me to gather, compile, and configure concisely after running by counsel to effectively complete the tasks required in submitting my Statements of Additional Grounds/Review.” (App. D at 2).

Ms. Lister therefore requested, *inter alia*, the court continue the oral argument, stay the entire case, hold oral argument but not rule until the Statement of Additional Grounds was filed and she was provided with an opportunity to address the Court. (App. D at 2). She concluded by noting that “[i]t is very important to me and my case that the issues I am trying to raise in my SAG be considered by this Court and preserved so that I may raise them before the State Supreme Court if necessary.” (App. D at 3).

Of particular concern to Ms. Lister was that she had not been provided with copies of Seattle Municipal Court pleadings and transcripts in cases arising out of the incidents at issue here, but ultimately dismissed in favor of proceeding in superior court. Ms. Lister explained:

CURRENTLY there are 2 ENTIRE YEARS MISSING from the Current entered information in COA files for this Direct Appeal and Consolidated Appeal before this Court presently. And in another KCSC case that is being transcribed there is evidence showing that the Alleged Victim Dan Wiseman has both LIED and committed PERJURY under oath to have me wrongfully convicted in THIS case.

(App. D at 2). Ms. Lister explained that these documents are necessary for establishing violations of her rights and are essential in this appeal.

(App. D at 2-3). Ms. Lister seeks to thereby demonstrate the mis-, mal-, and non-feasance of her attorneys in Seattle Municipal Court and the prejudice to the constitutional and statutory rights which ensued. Id.; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

b. Statues and Court Rules supported the request.

The Rules of Appellate Procedure specifically recognize the importance of accommodations such as Ms. Lister requested. RAP 1.2(a) expressly provides:

These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

Furthermore, GR 33(b) specifically addresses requests such as Ms. Lister's.³ Ms. Lister's condition and request for reasonable accommodations in order to permit her to complete the Statement of Additional Grounds falls well within the reach of the GR 33. The rule outlines the considerations which play into the decision-making.

(1) Considerations. In determining whether to grant an accommodation and what accommodation to grant, the court shall:

³ GR 33(b) specifically provides:

(b) Process for Requesting Accommodation.

(1) Requests. Requests for aids, modifications and services will be addressed promptly and in accordance with the ADA and the Washington State Law Against Discrimination, with the objective of ensuring equal access to courts, court programs, and court proceedings.

....

(4) Procedure. An application requesting accommodation should be made on a form approved by the Administrative Office of the Courts and may be presented ex parte in writing, or orally and reduced to writing, to the presiding judge or officer of the court or his or her designee.

(5) Content. The request shall include a description of the accommodation sought, along with a statement of the disability necessitating the accommodation. The court may require the person requesting accommodation to provide additional information about the qualifying disability to help assess the appropriate accommodation. Medical and other health information shall be submitted under a cover sheet created by the Administrative Office of the Courts for use by applicants designated "SEALED MEDICAL AND HEALTH INFORMATION" and such information shall be accessible only to the court and the person requesting accommodation unless otherwise expressly ordered.

(A) consider, but not be limited by, the provisions of the Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 et seq.), RCW 49.60 et seq., and other similar local, state, and federal laws;

(B) give primary consideration to the accommodation requested by the applicant; and

(C) make its decision on an individual- and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation.

GR 33(c)(1). The rule then specifies the limited circumstances under which a request may be denied.

A request for accommodation may be denied only if:

(A) the person requesting application has failed to satisfy the substantive requirements of this rule; or

(B) the court is unable to provide the requested accommodation on the date of the proceeding and the proceeding cannot be continued without significant prejudice to a party ; or

(C) permitting the applicant to participate in the proceedings with the requested accommodation would create a direct threat to the safety or well-being of the applicant or others.

(D) the requested accommodation would create an undue financial or administrative burden for the court or would fundamentally alter the nature of the court service, program or activity under (i) or (ii):

(i) An accommodation may be denied based on a fundamental alteration or undue burden only after considering all resources available for the funding and operation of the service, program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(ii) If a fundamental alteration or undue burden would result from fulfilling the request, the Court shall nevertheless ensure that, to the maximum extent

possible, individuals with disabilities receive the benefits or services provided by the Court.

GR 33(c). Moreover, the decision must clearly specify the basis.

(d) Decision. The court shall, in writing, or on the record, inform the person requesting an accommodation that the request for accommodation has been granted or denied, in whole or in part, and the nature and scope of the accommodation to be provided, if any. A written decision shall be entered in the proceedings file, if any, in which case the court shall determine whether or not the decision should be sealed. If there be no proceedings filed the decision shall be entered in the court's administrative files, with the same determination about filing under seal.

(e) Denial. If a requested accommodation is denied, the court shall specify the reasons for the denial (including the reasons the proceeding cannot be continued without prejudice to a party). The court shall also ensure the person requesting the accommodation is informed of his or her right to file an ADA complaint with the United States Department of Justice Civil Rights Division.

GR 33(d), (e).

By notation ruling entered on July 21, 2015, Ms. Lister's motion was denied.

At the direction of the panel of judges considering this appeal, appellant Andrea Lister's "Urgent Motion for Time Extended" is denied. This Court previously granted her two 30-day extensions to complete her Statement of Additional Grounds, and advised her that no additional extensions would be granted.

(App. E).

c. Ms. Lister was prejudiced by the failure to accommodate her disabilities.

Ms. Lister explained that if provided the reasonable accommodation she requested, she was prepared to also address the violation of her Sixth Amendment Confrontation Clause rights. (Partially Outlined Only Statement of Additional Grounds, filed June 18, 2015, attached as Appendix F). She explains that Judge Bradshaw allowed testimonial evidence in the form of a call to police from a non-testifying witness. (App. F at 1). See also 3/27/14RP 123-26.

Ms. Lister has also detailed the prejudice she suffered as a result of the failure to provide her adequate time and resources. This included her ability to present claims regarding her attorneys' failure to adequately investigate and prepare a defense. (App. F at 1). Ms. Lister also alleges she was unlawful and improperly denied her right to represent herself in the face of the ineffective assistance of counsel she was receiving from the attorneys appointed to represent her. See e.g. 3/27/14RP at 106-21.

d. Review is warranted and reversal is the appropriate remedy.

Ms. Lister requests this Court grant review of the Court of Appeals rulings denying her relief in the form additional time to

prepare her Statement of Additional Grounds challenging the denial of her requests for new counsel, failing to provide records from Seattle Municipal Court which were necessary to illustrate her entitlement to that relief, and the other claims for relief which she has outlined.

2. This Court should review whether the information omitted an essential element of felony stalking by failing to specify which protective order Ms. Lister allegedly violated.

a. Felony stalking requires proof of priors.

Ms. Lister was charged with felony stalking under RCW 9A.46.110(5)(b)(ii).⁴ CP 1. A person who stalks another is guilty of a

⁴ The statutory elements of the crime of stalking are as follows:

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(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

(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.

class B felony if “the stalking violates any protective order protecting the person being stalked.” RCW 9A.46.110(5)(b)(ii).

The information charging felony stalking alleged:

That the defendant ANDREA L. LISTER in King County, Washington, between or about November 10, 2011 and June 1, 2013, did, without lawful authority, intentionally and repeatedly harass or follow Daniel Calvin Wiseman; and Daniel Calvin Wiseman was reasonably placed in fear that the defendant intended to injure Daniel Calvin Wiseman, or another person or property of Daniel Calvin Wiseman, or property of another person; and the defendant either (i) intended to frighten, intimidate, or harass Daniel Calvin Wiseman, or (ii) knew or reasonably should have known that he was afraid, intimidated, or harassed even if the defendant did not intend to place Daniel Calvin Wiseman in fear or intimidate or harass Daniel Calvin Wiseman; and *the stalking violates any protective order protecting Daniel Calvin Wiseman*

CP 1 (emphasis added). An essential element of the offense was, therefore, that the defendant “violate[d] any protective order protecting the person being stalked.”

b. The information must include all elements.

The charging document must include all essential elements of this crime, both statutory and non-statutory. State v. Vangerpen, 125

Wn.2d 782, 787, 888 P.2d 1177 (1995); Const. art. I, § 22.⁵ The information must also allege the particular facts supporting every element of the offense. State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989).

When an information is challenged on appeal, it is construed liberally to determine whether the necessary facts appear in any form, or by fair construction may be found, on the face of the document. State v. Moavenzadeh, 135 Wn.2d 359, 362-63, 956 P.2d 1097 (1998); State v. Kjorsvik, 117 Wn.2d 93, 105, 812 P.2d 86 (1991). Critically, when proof of a particular fact elevates a crime from a misdemeanor to a felony, that fact is an “essential element” that must be proved to the jury beyond a reasonable doubt. State v. Roswell, 165 Wn.2d 186, 192, 196 P.3d 705 (2008).

c. All the elements must be proven beyond a reasonable doubt.

When the State charged felony stalking under RCW 9A.46.110(5)(b)(ii), an essential element of the offense is that the defendant must have “violate[d] any protective order protecting the person being stalked.” To satisfy its burden of proving this essential

⁵ Article I, section 22 of the Washington Constitution provides that “[i]n criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him.”

element, the State was required to prove beyond a reasonable doubt that on at least two separate occasions, the defendant harassed or followed the victim in a manner that violated a protective order. State v. Johnson, 185 Wn.App. 655, 342 P.3d 338, 346 (2015).

The most appropriate legal parallel is where the State charges the crime of violation of a protection order because felony stalking merely aggregates the multiple violations of a no contact order into a felony. In those cases, the specific order alleged to have been violated is an essential element that must be included in the charging document because “the culpable act necessary to establish the violation of a no-contact order is determined by the scope of the predicate order.” City of Bothell v. Kaiser, 152 Wn.App. 466, 475-76, 217 P.3d 339 (2009); City of Seattle v. Termain, 124 Wn.App. 798, 804-05, 103 P.3d 209 (2004).

Where Ms. Lister disputed both the scope and application of the orders in question, it was essential that the charging document identify the specific orders allegedly violated. Just as in a simple violation of court order case, where felony stalking is based on conduct violating such court orders,

[t]he no-contact order is essential to prosecute the violation of the order. A conviction cannot be obtained

without producing the order as it will identify the protected person or location and any allowance for contact or the expiration date.

Kaiser, 152 Wn.App. at 475-76.

d. Review is appropriate under RAP 13.4(b).

The information did not allege the protective order Ms. Lister supposedly violated, nor did it allege facts which would apprise her of the actions deemed to be in violation of the order. The information is therefore constitutionally deficient because it did not adequately inform Ms. Lister of the nature of the charge. State v. McCarty, 140 Wn.2d 420, 425, 998 P.2d 296 (2000). As a result, review is appropriate because the Court of Appeals opinion is inconsistent with the decisions of this Court and the constitutional right to notice. Because an essential element is missing from the information, Ms. Lister's conviction for felony stalking must be reversed and dismissed without prejudice.

3. This Court should review whether the constitutional right to jury unanimity was violated because the jury was not instructed it must agree on the particular protective order violated or particular conduct that violated the order.

a. The State had to prove knowing violations of valid protection orders.

To establish felony stalking, the State was required to prove beyond a reasonable doubt that the alleged stalking "violated a

protective order protecting Daniel Calvin Wiseman.” CP 197; RCW 9A.46.110(5)(b)(ii). The prosecutor was specifically required to prove that: (1) the order was granted pursuant to one of several qualifying statutory provisions; (2) Ms. Lister knew of the order; and (3) she violated a restraint provision of the order. RCW 26.50.110(1).

As discussed, supra, proof of the specific protective order allegedly violated was an essential element of the crime the prosecution was required to prove. See Kaiser, 152 Wn.App. at 475-76; Termain, 124 Wn.App. at 804-05. The State could not prove Ms. Lister violated a protective order without identifying the specific order because “the culpable act necessary to establish the violation of a no-contact order is determined by the scope of the predicate order.” Termain, 124 Wn.App. at 804.

b. Unanimity was required where multiple violations were alleged.

When the prosecution presents evidence of several acts that could form the basis of the charge, either the State must tell the jury which act to rely upon in its deliberations, or the court must instruct the jury that all of them must agree that the same underlying criminal act has been proved beyond a reasonable doubt. State v. Petrich, 101

Wn.2d 566, 570, 683 P.2d 173 (1984); Const. art. I, § 22; U.S. Const. amend VI.

The Petrich rule applies where the State presents evidence of “several distinct acts,” but does not apply where the evidence indicates a “continuing course of conduct.” State v. Handran, 113 Wn.2d 11, 17, 775 P.2d 453 (1989). To determine whether felony stalking constitutes one continuing act, the facts must be evaluated in a commonsense manner and “where the evidence involves conduct at different times and places, then the evidence tends to show ‘several distinct acts.’” Id.; State v. Love, 80 Wash.App. 357, 361, 908 P.2d 395 (1996). The acts in question plainly occurred at different places and times, and constituted several distinct acts for purposes of the unanimity requirement.

Here, the State presented evidence of *several* different protective orders that could have formed the basis of the charge. Exhibit 6-10, 22-24. The jury was then instructed that, in order to convict Ms. Lister, it must unanimously agree that she “violated a protective order protecting Daniel Calvin Wiseman.” CP 197. But the jury was not instructed it must unanimously agree as to *which* of the several alleged protective orders Ms. Lister violated. Instead, the jurors

were specifically instructed they could rely upon *any* of the alleged protective orders in reaching their verdict for the stalking charge.⁶

In closing, the deputy prosecutor specifically told the jury it could rely upon *any* of the no-contact orders that were admitted into evidence. 4/02/14RP 34. Because the jury was not instructed it must agree that the same underlying protective order was violated, and the prosecutor did not elect which order it was relying upon, Ms. Lister's constitutional right to jury unanimity was violated. State v. Kitchen, 110 Wn.2d 403, 409, 756 P.2d 105 (1988); Petrich, 101 Wn.2d at 570.

c. The error was prejudicial because the evidence was disputed.

A rational juror could have easily doubted whether Ms. Lister violated some of the protective orders admitted into evidence. First, Ms. Lister testified she was never served with the protective order

⁶ The court instructed the jury:

Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of court orders other than the court order issued by the Seattle Municipal Court on August 25, 2011. *This evidence may be considered by you only for the purpose of evaluating the State's charge of stalking, as charged in Count I. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.*

CP 195 (emphasis added).

issued in King County Superior Court on April 19, 2012, which was admitted as Exhibit 10. 4/0114RP 112. She was not present in court when the order was entered and she did not sign the order. See Exhibit 10. Consistent with Ms. Lister's testimony, there is no evidence that she received actual notice of the order until August 12, 2012, when she appeared in court and obtained an order terminating the protective order. Exhibit 11.

Second, there was conflicting evidence as to whether the restraint provisions of at least some of the orders were actually violated. For example, the first temporary order for protection was issued in King County Superior Court on August 24, 2011, and was effective until September 7, 2011. Exhibit 6. Ms. Lister was in jail following the August 23, 2011, incident for six or seven days. 4/01/14RP 16. Mr. Wiseman testified she called him from jail and asked him to bail her out and that he did so. 3/27/14RP 100-01. But Ms. Lister testified Mr. Wiseman did *not* bail her out on that occasion. 4/01/14RP 17. Although she admitted she had contact with Mr. Wiseman by telephone sometime after the incident, but she could not say what day that was. 4/01/14RP 18. Thus, there was not proof

beyond a reasonable doubt that Ms. Lister violated a restraint provision of that first protective order during the time it was in effect.

The first temporary order for protection was reissued in King County Superior Court three times, with a final Order for Protection entered April 19, 2012. See Exhibit 7-10. One of the temporary orders was in effect from February 8, 2012, until April 19, 2012. Exhibit 9. The State did not present uncontroverted evidence that Ms. Lister violated any restraint provision of that order during that timeframe. Ms. Lister admitted having an Easter basket delivered to Mr. Wiseman's daughter in April 2012, but testified she believed her actions did not violate the protective order. 4/01/14RP 131. Indeed, the protective order forbade Ms. Lister from coming within 500 feet of Mr. Wiseman's daughter's residence, but did not prohibit her from having something delivered to the daughter's residence by a third party. Exhibit 6, 9. Likewise, Mr. Wiseman testified Ms. Lister came into the appliance store one day in April 2012, and called him several times during spring 2012, but he did not say whether that was before April 19, the date the temporary protective order expired. 3/27/14RP 133, 137. No other evidence was presented to show Ms. Lister violated that protective order while it was in effect.

Similarly, a temporary order for protection was issued in King County Superior Court, under a separate cause number, on May 6, 2013, which was effective until August 26, 2013. Exhibit 13. But no evidence was presented to show Ms. Lister violated any restraint provision of that order during that timeframe.

In sum, because there is either no evidence, or conflicting evidence, to prove that Ms. Lister violated at least some of the protective orders, the error in failing to instruct the jury it must unanimously agree as to which order was violated is not harmless beyond a reasonable doubt. The felony harassment conviction must be reversed and the Court of Appeals opinion to the contrary is inconsistent with the decisions of this Court and perpetuates a violation of the state and federal constitutional guarantees of a unanimous verdict in criminal proceedings. Kitchen, 110 Wn.2d at 411-12; Petrich, 101 Wn.2d at 570.

E. CONCLUSION

Ms. Lister respectfully requests this Court grant review and provide her relief in the form of a new trial.

DATED this 12th day of November, 2015.

Respectfully submitted,

/s David L. Donnan

David L. Donnan – WSBA 19271
Washington Appellate Project
Attorneys for Petitioner

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 71818-5-1
)	
Respondent,)	
)	
v.)	
)	
ANDREA LYNN LISTER,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: August 24, 2015

2015 AUG 24 AM 9:12
COURT OF APPEALS
STATE OF WASHINGTON

VERELLEN, J. — The State charged Andrea Lister with one count of felony stalking, one count of fourth degree domestic violence assault, one count of fourth degree assault, and one count of violation of a court order. At trial, the State presented evidence that Lister violated the terms of several protective orders issued against her. The jury found Lister not guilty of fourth degree assault but guilty on the remaining counts.

On appeal, Lister contends that the information was constitutionally defective for failing to identify the specific order she violated, that a unanimity instruction was required to ensure that the jury agreed on the particular protective order and the particular conduct that violated the protective order; and that her convictions for violation of a protective order and felony stalking violated double jeopardy because they were based on the same conduct.

APPENDIX A

We conclude that the charging document included sufficient facts to apprise Lister of the felony stalking charge. No election or unanimity instruction were required because the continuing course of conduct exception applies. And because her convictions for violation of a protective order and felony stalking are not based on the same conduct, they do not violate double jeopardy.

We affirm.

FACTS

Lister met Daniel Wiseman when she picked up recycling at his store in 2008. Wiseman befriended Lister. In July 2010, they started an intimate relationship. For about two months, Lister stayed at Wiseman's home. On one occasion, Wiseman returned from a business trip to discover that Lister had moved her belongings into his home and changed the locks. Wiseman asked Lister to leave, and she did.

Soon after Lister moved out of Wiseman's home, her behavior turned erratic. Lister began incessantly calling Wiseman at his work "four or five nights a week."¹ Even after Wiseman told Lister to stop coming into his store, Lister showed up several nights a week. Wiseman attended three business conferences each year. He did not tell Lister about these conferences or where they were held, but Lister still called his hotel many times. He would "hang up and she'd call right back."² Lister broke the receiver on the intercom system at Wiseman's home. On another occasion, Wiseman picked up his friend Shirley Honey at the airport. When they arrived at the condominium building where they separately lived, Lister confronted Wiseman and Honey in the lobby. Lister

¹ Report of Proceedings (RP) (Mar. 27, 2014) at 63.

² Id. at 65.

screamed at them. Lister blocked the elevator doors from closing and pushed Honey's hand away from the elevator buttons. Lister screamed at Wiseman and slapped him multiple times. Honey and Wiseman both called 911. Lister also grabbed Wiseman's cell phone and ran away.

Several protective orders were issued against Lister by both the superior court and municipal court prohibiting her from contacting Wiseman and from coming near his home or workplace. Despite the protective orders, Lister repeatedly called Wiseman at his home and workplace and sent him several letters.

In May 2012, Wiseman was admitted into Swedish Hospital for a medical procedure. Lister entered his room multiple times. For several months in mid-2012, Lister called Wiseman on his cell phone and at work, sometimes "five, six, seven [times] a day."³ Wiseman changed his home phone number, but Lister "had the [new] phone number within three days."⁴ Lister continued to frequent Wiseman's business and send mail to his home. In August 2012, Lister approached Wiseman as he picked up a woman to go out for dinner. Lister confronted the woman and yelled at her.

The State charged Lister with one count of felony stalking. For the stalking charge, the charging period was between "November 10, 2011 and June 1, 2013."⁵ The State charged one count of violation of a protective order, alleging that between "September 10, 2011 and October 13, 2011," Lister violated the terms of an August 25, 2011 protective order issued by the municipal court.⁶ The State also charged Lister with

³ Id. at 133.

⁴ Id. at 136.

⁵ CP at 1.

⁶ CP at 2.

No. 71818-5-1/4

one count of fourth degree domestic violence assault and one count of fourth degree assault.

For the stalking charge, Lister did not request and the trial court did not issue a unanimity instruction requiring the jury to agree on the particular protective order she violated and the particular conduct that violated the order. Nor did the State make an election. The jury acquitted on the fourth degree assault charge, but found Lister guilty on all other charges.

Lister appeals.

ANALYSIS

Sufficiency of Charging Document

Lister contends the information charging her with felony stalking is inadequate for failure to identify the particular protective order that she violated. We disagree.

We review a challenge to the sufficiency of a charging document de novo.⁷ Because Lister challenges the sufficiency of the charging document for the first time on appeal, we liberally construe the information in favor of validity.⁸ As long as the necessary facts appear "in any form, or by fair construction can they be found" in the information, and the defendant suffers no actual prejudice, the information is constitutionally sufficient.⁹

⁷ State v. Williams, 162 Wn.2d 177, 182, 170 P.3d 30 (2007).

⁸ State v. Kjorsvik, 117 Wn.2d 93, 102, 105, 812 P.2d 86 (1991).

⁹ Id. at 105-06.

The charging document must include all of a crime's essential elements.¹⁰ "Essential elements" are "those facts that must be proved beyond a reasonable doubt to convict a defendant of the charged crime."¹¹ "The charging document need not list every element of a crime."¹² But the charging document must identify the crime charged and sufficient facts supporting each element of the offense.¹³ There is no additional requirement that the State allege facts beyond those that support the elements of the crime charged or that the State describe the facts with great specificity.¹⁴

The "essential elements rule" is grounded in a constitutional due process requirement that "criminal defendants be informed of the accusations against them."¹⁵ "Notice is provided through the information."¹⁶ The rule's purpose is to sufficiently apprise the defendant of the charges so that he or she may prepare a defense.¹⁷

Lister was charged with and convicted of felony stalking. The information stated

[t]hat the defendant ANDREA L[.] LISTER in King County, Washington, between or about November 10, 2011 and June 1, 2013, did, without lawful authority, intentionally and repeatedly harass or follow Daniel Calvin Wiseman; and Daniel Calvin Wiseman was reasonably placed in fear that the defendant intended to injure Daniel Calvin Wiseman, or another person, or property of Daniel Calvin Wiseman, or property of another person; and the defendant either (i) intended to frighten, intimidate, or

¹⁰ State v. Borrero, 147 Wn.2d 353, 359, 58 P.3d 245 (2002) (quoting State v. Taylor, 140 Wn.2d 229, 236, 996 P.2d 571 (2000)).

¹¹ State v. Zillyette, 178 Wn.2d 153, 158, 307 P.3d 712 (2013) (quoting State v. Powell, 167 Wn.2d 672, 683, 223 P.3d 493 (2009)).

¹² City of Bothell v. Kaiser, 152 Wn. App. 466, 474, 217 P.3d 339 (2009).

¹³ Kjorsvik, 117 Wn.2d at 98; State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989).

¹⁴ State v. Winings, 126 Wn. App. 75, 85, 107 P.3d 141 (2005).

¹⁵ Borrero, 147 Wn.2d at 359.

¹⁶ State v. Kosewicz, 174 Wn.2d 683, 691, 278 P.3d 184 (2012).

¹⁷ Id.

harass Daniel Calvin Wiseman, or (ii) knew or reasonably should have known that he was afraid, intimidated, or harassed even if the defendant did not intend to place Daniel Calvin Wiseman in fear or intimidate or harass Daniel Calvin Wiseman; and *the stalking violates any protective order protecting Daniel Calvin Wiseman.*^[18]

RCW 9A.46.110 defines the essential elements of stalking. A person commits the crime of stalking if without lawful authority 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

(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.^[19]

Stalking becomes a felony offense if “the stalking violates *any protective order* protecting the person being stalked.”²⁰ The information expressly recites that Lister’s stalking violated “any protective order protecting Daniel Calvin Wiseman.”²¹

Lister relies heavily upon cases applying the essential elements rule to the crime of violation of a protective order, not felony stalking.²² Unlike a violation of a protective

¹⁸ CP at 1 (emphasis added).

¹⁹ RCW 9A.46.110(1).

²⁰ RCW 9A.46.110(5)(b)(ii) (emphasis added).

²¹ CP at 1.

²² See Kaiser, 152 Wn. App. at 476; City of Seattle v. Termain, 124 Wn. App. 798, 799-800, 103 P.3d 209 (2004).

order, felony stalking requires a "course of conduct" by the defendant. The two crimes are not equivalent. But even ignoring those differences, the violation of a protective order cases do not support Lister's contentions.

In City of Seattle v. Termain, this court addressed which facts the State must include in an information charging a violation of a protective order.²³ This court held that a "charging document alleging a violation of a domestic violence order must identify the order the defendant is alleged to have violated, or at least include sufficient facts to apprise the defendant of his or her actions giving rise to the charge(s)."²⁴ Confirming Termain, this court in City of Bothell v. Kaiser concluded that the document charging violation of a protective order was deficient because it "did not identify the specific order that was allegedly violated or the scope of that order," did not recite "any additional information about the facts underlying the charge," and did not identify the protected person.²⁵

The use of the disjunctive conjunction "or" in Termain reveals that a charging document need not identify the specific protective order violated as long as it includes sufficient facts apprising the defendant of the charge.

Under a liberal construction standard, the information here included sufficient facts to apprise Lister of the felony stalking charge. The information identified Wiseman as the victim, the charge that Lister faced, the elements of felony stalking, the relevant statutory reference for felony stalking, and the charging period. The

²³ 124 Wn. App. 798, 103 P.3d 209 (2004).

²⁴ Id. at 799-800 (emphasis added).

²⁵ 152 Wn. App. 466, 476, 217 P.3d 339 (2009).

information parrots specific provisions of the felony stalking statute.²⁶ The information apprised Lister that her conduct violated “any protective order” protecting Wiseman, consistent with RCW 9A.46.110. Although the information did not include the specific protective order that she allegedly violated, it did include the victim's identity and sufficient facts apprising Lister of the crime.

Additionally, under the applicable liberal standard, Lister fails to argue or establish how she was “actually prejudiced by the inartful language” in the information.²⁷ The information put Lister on notice of the elements of felony stalking and allowed her to prepare an adequate defense. Therefore, we conclude the information is constitutionally sufficient.

Jury Unanimity

Lister contends a unanimity instruction was required to ensure that the jury agreed on the particular protective order she violated and her particular conduct that violated the order. We disagree.

Lister did not raise the unanimity instruction issue below. But she “may raise it for the first time on appeal, as it concerns an alleged manifest constitutional error.”²⁸

In Washington, a criminal defendant may be convicted only if the jury unanimously concludes the defendant committed the criminal act with which she was charged.²⁹ When the evidence indicates that several distinct criminal acts have been committed but the defendant is charged with only one count of criminal conduct, the jury

²⁶ Leach, 113 Wn.2d at 686.

²⁷ Kjorsvik, 117 Wn.2d at 105-06.

²⁸ State v. Furseth, 156 Wn. App. 516, 519 n.3, 233 P.3d 902 (2010).

²⁹ Id. at 519 (citing State v. Petrich, 101 Wn.2d 566, 569, 683 P.2d 173 (1984)).

must be unanimous as to which act constitutes the charged crime.³⁰ But where the evidence consists of “multiple acts which indicate a ‘continuing course of conduct,’”³¹ or “if the evidence shows only that the defendant committed a single continuing offense,”³² the State need not elect and a unanimity instruction is not required.

“A continuing course of conduct requires an ongoing enterprise with a single objective.”³³ “To determine whether there is a continuing course of conduct, we evaluate the facts in a commonsense manner, considering (1) the time separating the criminal acts and (2) whether the criminal acts involved the same parties, location, and ultimate purpose.”³⁴ “[E]vidence that a defendant engages in a series of actions intended to secure the same objective supports the characterization of those actions as a continuing course of conduct.”³⁵ A series of incidents involving the same victim and same objective that spans a long period of time may satisfy the course of conduct exception.³⁶

Lister’s challenge here is limited to unanimity as to the particular protective order she violated and the acts that constitute the violation. The relevant jury instruction required proof that Lister “violated a *protective order* protecting Daniel Calvin

³⁰ Id. at 519-20.

³¹ State v. Love, 80 Wn. App. 357, 361, 908 P.2d 395 (1996).

³² State v. Simonson, 91 Wn. App. 874, 883-84, 960 P.2d 955 (1998) (emphasis omitted).

³³ Love, 80 Wn. App. at 361.

³⁴ State v. Brown, 159 Wn. App. 1, 14, 248 P.3d 518 (2010).

³⁵ Id. (quoting State v. Fiallo-Lopez, 78 Wn. App. 717, 724, 899 P.2d 1294 (1995)).

³⁶ State v. Garman, 100 Wn. App. 307, 317, 984 P.2d 453 (1999) (multiple incidents of theft from same victim over time aggregated as a common scheme or plan does not trigger a unanimity requirement).

Wiseman.”³⁷ The State presented evidence of several alleged violations. But because the violations all involve the same victim and the same objective, the continuing course of conduct exception applies. Further, Lister’s course of conduct directed at Wiseman supported the common objective of intentionally and repeatedly harassing him. Lister repeatedly called Wiseman’s workplace, repeatedly showed up at his workplace, broke the intercom at Wiseman’s home, repeatedly called Wiseman’s hotels when he traveled on business, and sent mail to Wiseman’s home. There is no need for an election or unanimity instruction as to which conduct constituted a violation of a protective order, nor which protective order was violated. Therefore, we conclude Lister’s constitutional right to jury unanimity was not violated.

Double Jeopardy

Lister contends her convictions for violation of a protective order and felony stalking violate double jeopardy because they were based on the same conduct. We disagree.

The double jeopardy clauses of both the federal and state constitutions protect against multiple prosecutions for the same conduct and multiple punishments for the same offense.³⁸ The prohibition against double jeopardy is violated when “the evidence required to support a conviction [of one crime] would have been sufficient to warrant a conviction upon the other.”³⁹

³⁷ CP at 197 (emphasis added).

³⁸ State v. Kier, 164 Wn.2d 798, 803, 194 P.3d 212 (2008).

³⁹ State v. Freeman, 153 Wn.2d 765, 772, 108 P.3d 753 (2005) (alteration in original) (quoting Morey v. Commonwealth, 108 Mass. 433, 434 (1871)).

The State here charged Lister with one count of violation of a protective order and one count of felony stalking. The trial court's jury instructions for violation of a protective order stated:

To convict the defendant of the crime of violation of a court order as charged in Count IV, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) *That between September 10, 2011 and October 13, 2011, there existed a no-contact order applicable to the defendant;*

(2) That the defendant knew of the existence of this order;

(3) That on or about said date, the defendant knowingly violated a provision of this order which was a restraint provision prohibiting contact with a protected party; and

(4) That the defendant's act occurred in Washington.^[40]

The State based this charge on the August 25, 2011 court order issued by the municipal court.

The trial court's limiting instruction regarding the felony stalking charge stated:

Certain evidence has been admitted in this case for only a limited purpose. This evidence consists of court orders *other than the court order issued by the Seattle Municipal Court on August 25, 2011. This evidence may be considered by you only for the purpose of evaluating the State's charge of stalking, as charged in Count I. You may not consider it for any other purpose. Any discussion of the evidence during your deliberations must be consistent with this limitation.*^[41]

The State argued in closing that "Lister's action in this case violated a number of protection orders," but did not specifically mention the August 25, 2011 court order.⁴²

⁴⁰ CP at 214 (emphasis added).

⁴¹ *Id.* at 195 (emphasis added).

⁴² RP (Apr. 2, 2014) at 34.

Contrary to Lister's contentions, she was not punished twice for the same conduct. The felony stalking relates to incidents charged between November 10, 2011 and June 1, 2013. The trial court properly instructed the jury that it could not base its felony stalking conviction on the August 25, 2011 court order. The misdemeanor violation of a protective order relates to incidents between September 10, 2011 and October 13, 2011. The two counts involve completely separate time periods. Unlike State v. Parmelee, the two convictions are not based on the same conduct.⁴³ Therefore, we conclude that Lister's convictions for felony stalking and violation of a court order do not violate double jeopardy.

Statement of Additional Grounds

Lister filed what she characterizes as a partial but incomplete statement of additional grounds. But she fails to identify any meritorious issues. Lister contends the record for this appeal is incomplete and inadequate because it lacks transcription of other proceedings. But she makes only general suggestions that Wiseman was not candid in such other proceedings. The record on appeal is limited to the proceedings and documents that were before the trial court. Lister makes no showing that the records from other proceedings are material to this appeal. In addition, Lister vaguely contends the trial court violated her confrontation clause rights by admitting the recording of a 911 call. But the record on this appeal does not include any proceedings regarding the admission of the 911 call. We therefore decline to review it. Other general suggestions of inadequate representation on appeal do not support an ineffective assistance of counsel claim.

⁴³ 108 Wn. App. 702, 32 P.3d 1029 (2001).

No. 71818-5-I/13

We affirm.

WE CONCUR:

Speelman, C.J.

Leach, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 71818-5-1
)	
Respondent,)	
)	
v.)	
)	
ANDREA LYNN LISTER,)	ORDER DENYING MOTION
)	FOR RECONSIDERATION
Appellant.)	
_____)	

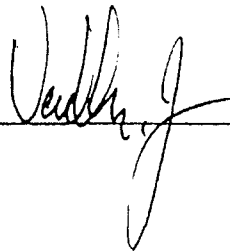
Appellant has filed a motion for reconsideration of the court's opinion entered August 24, 2015. After consideration of the motion, the panel has determined that it should be denied.¹

Now therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

Done this 12th day of October, 2015.

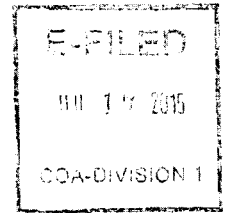
FOR THE PANEL:



2015 OCT 12 AM 11:45
COURT OF APPEALS
STATE OF WASHINGTON

¹ The State argues the court should not accept the one-page doctor's letter that was filed in support of Lister's motion for an accommodation in the form of additional time due to her inability to meet deadlines. The State's primary point is that Lister's motion is untimely. Because we are denying the motion for reconsideration and because the point of the doctor's letter arguably relates to untimeliness, we decline to strike the one-page doctor's letter that has been filed under seal.

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I



State of Washington
Respondent,

v.

Andrea Lister,
Appellant

NO. 71818-5-1

Urgent Motion for Time Extended
due to the fact this is a Consolidated
Appeal which counsel is not
acknowledging and grossly ignored

1. IDENTITY OF MOVING PARTY

Comes now the appellant, Andrea Lister, through prior ineffective assistance Maureen Cyr and now David Donnan, Supervising Attorney at Washington Appellate Project, whom moves this Court for the relief designated below.

- WAP attorney Maureen Cyr filed a brief on my behalf without my knowledge, without my review, without my input and without my documentation. She failed to review any of the substantial evidence that existed in the appeal which became this Direct Appeal along with Consolidation (which is being ignored).
- I have additional grounds that I want this Court to consider in both Appeals on my behalf.
- I am unable to meet the July 17th, 2015 deadline to submit my Statement of Additional Grounds primarily due to my disability which is affecting my ability to do this.
- My disability, known and diagnosed since 1996, was an adjustment disorder with Mixed Disturbance of Emotions and Conduct, aka a mood disorder or Extreme Stress Not Otherwise Specified which later became Complex PTSD in a 2011 diagnosis and remains my primary diagnosis in 2015 as the circumstances have not only relentlessly accrued but remain constant. I was also diagnosed prior with slight ADHD in 2000/2001 and again 2010/2011 where I have both the hyperactive and impulsive type. Also in 2009 I began having physical problems and in subsequent years was diagnosed with Pre-Menstrual Dysphoric Disorder from the extreme stress of the 2009 case where I had 2 periods bi-monthly of heavy bleeding for 10 days each for a total of 20 days for 6+ years and experience extreme moods often with tearfulness which greatly affects my physical ability. Plus I have been a victim of the AV Dan Wiseman's Abuse where I have medical records to that affect. All of these conditions which I suffer from greatly affect my ability to go thru the documentation myself, re-live the trauma of my cases, re-experience which causes ruminations, which also has been a factor of exacerbation causing trust issues when counsel are ineffective in doing their job and violate my rights. My disability and issues of such are circumstantial,

APPENDIX D

meaning after justice, then they will subside as they did in 1996-1998.

- I am requesting the accommodation of my disability in longer time periods which are necessary for me to gather, compile, and configure concisely after running by counsel to effectively complete the tasks required in submitting my Statements of Additional Grounds/Reviews. Problems exist for me when the court administers deadlines that are overlapping in the cases and the given deadlines are too short to realistically achieve when I cannot possibly due to how my disorders prevent me from this and then the time necessary to meet with counsel for review prior to submissions is based on their tight schedules and also the problem of being homeless and transition living, going to therapy and state required appointments under the Guidelines(started in 2012) required for my disability to be State recognized under SSI/SSDI.
- Basically PTSD and ADHD are like Ying/Yang in a circular pattern each boosting the other then pour in the PMDD and it becomes an extreme crash affecting my abilities that under less stress I can manage and succeed at.

2. STATEMENT OF RELIEF SOUGHT

So that justice may be served, I, Andrea Lister, move this Court for an Urgent Order for a Continuance or STAY necessary for time for all the missing files, missing recordings of proceedings, to be properly designated in this case and to be transcribed which is necessary for proving my innocence. CURRENTLY there are 2 ENTIRE YEARS MISSING from the Current entered information in COA files for this Direct Appeal and Consolidated Appeal before this Court presently. And in another KCSC case that is being transcribed there is evidence showing that the Alleged Victim, Dan Wiseman has both LIED and committed PERJURY under oath to have me wrongfully convicted in THIS case. I am relying upon all the files, records and proceedings that occurred in the cases which I appealed before they were UNJUSTLY kicked to Superior Court in 2013.

I WOULD like this COURT to do the following:

- 1) Continue the oral argument set for July 23rd, 2015 or STAY the entire case, until I can realistically file my SAG, or,
- 2) Hold the Oral Argument hearing on July 23rd, 2015, giving me time to speak as well, but not rule in the case until I have been given more time to file my SAG, and hold an additional, separate oral argument, on what I will raise in my SAG at a later time,
- 3) Hold the oral argument hearing on July 23rd, 2015 but not rule in the case until I have been given enough time to file my SAG, and consider what I raise in my

SAG without oral argument.

4) that this Court not make any decisions until the transcripts from SMC 2 years and/or the ones in Lister v. Phan case are completed showing Wiseman perjured his testimony in this case in front of Judge Bradshaw.

Also no circumstances have changed since the last request and continuance.

3. CONCLUSION

It is very important to me and my case that the issues I am trying to raise in my SAG be considered by this Court and preserved so that I may raise them before the State Supreme Court, if necessary.

Respectfully submitted this 17th day of July, 2015.

//ANDREA LISTER//
(Signature waived if emailed)
Andrea Lister, Appellant
todaysgirlfriday@gmail.com

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

July 21, 2015

Maureen Marie Cyr
Washington Appellate Project
1511 3rd Ave Ste 701
Seattle, WA. 98101-3647
maureen@washapp.org

Washington Appellate Project
1511 Third Avenue
Suite 701
Seattle, WA. 98101
wapofficemail@washapp.org

Prosecuting Atty King County
King Co Pros/App Unit Supervisor
W554 King County Courthouse
516 Third Avenue
Seattle, WA. 98104
paoappellateunitmail@kingcounty.gov

Andrea Lister
77 S. Washington St.
Seattle, WA. 98104
todaysgirlfriday@gmail.com

CASE #: 71818-5-1

State of Washington, Respondent v. Andrea Lynn Lister, Appellant

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on July 21, 2015, regarding appellant's urgent motion for time extended to file statement of additional grounds for review due to the fact this a consolidated appeal which counsel is not acknowledging and grossly ignored:

At the direction of the panel of judges considering this appeal, appellant Andrea Lister's "Urgent Motion for Time Extended" is denied. This Court previously granted her two 30-day extensions to complete her Statement of Additional Grounds, and advised her that no additional extensions would be granted.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

khn

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

David L. Donnan
Washington Appellate Project
1511 3rd Ave Ste 701
Seattle, WA. 98101-3647
david@washapp.org

RECEIVED

JUL 21 2015

Jason B Moore
Van Eyk & Moore, PLLC. Washington Appellate Project
1424 4th Ave Ste 528
Seattle, WA. 98101-2257
jason@vaneyk-moore.com

Dennis John McCurdy
King County Prosecutor's Office
516 3rd Ave Ste W554
Seattle, WA. 98104-2362
dennis.mccurdy@kingcounty.gov

APPENDIX E

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

State of Washington,
Respondent

NO. 71818-5-I

v.

Andrea Lister,
Appellant

Partially Outlined Only
Statement of Additional Grounds

1. IDENTITY OF MOVING PARTY

Comes now Appellant Andrea Lister respectfully requesting relief in paragraph 2.

2. STATEMENT OF RELIEF SOUGHT

Appellant needs additional time to perfect this document with Counsel assistance and focusing on specific issues difficult to address under the current deadline and necessary for the listing of significant legal issues not addressed by Appellants attorney Cyr in her brief.

3. FACTS

- A) Appellant has significant disability to perfect this document without the assistance of Counsel.
- B) There is missing documentation that needs reproduced, as in the files and transcripts of SMC cases that were flipped to Superior Court, where the true originating facts began as the distinguishing factors of occurrences of multiple State and Federal law violations and defendant/appellant right were wrongfully prejudicing in this case.
- C) Attorneys caseloads have still been strained. Time allotment has still been difficult in this matter.
- D) I still do not know the proper motion to ask for this as to my disability accommodation or how to submit to COA as of today, yet I am currently placing this to counsel.
- E) There are 2 years of transcripts, documents and court hearings that have not been transcribed which is necessary for review and important to this case. I am working with counsel to correct how this could have occurred improperly or unknowingly. WAP is not seeking these yet they are an integral part of my conviction and the competency violations that grossly occurred in all previous APPEALS assigned yet merged into this ONE appeal.
- F) **My 6th Amendment Confrontation Clause was Duly Violated when Honorable Judge Bradshaw allowed testimonial evidence into trial when the witness did not show up yet subpoenaed, inherently because witness was lying and would have committed Perjury) I have the right to face my accuser(s) and the right to cross-examine also.**
- G) There is new evidence that Appellant is not able to bring forth without the monies allotted and the proper channels to produce copies for all courts and counsel involved. WAP will not absorb these costs that I know of. Maybe I need further monies allotted under the indigency.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 71818-5-1**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

respondent Dennis McCurdy, DPA
[PAOAppellateUnitMail@kingcounty.gov]
[dennis.mccurdy@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit

petitioner

Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: November 12, 2015

WASHINGTON APPELLATE PROJECT

November 12, 2015 - 4:06 PM

Transmittal Letter

Document Uploaded: 718185-Petition for Review.pdf

Case Name: STATE V. ANDREA LISTER

Court of Appeals Case Number: 71818-5

Party Represented: PETITIONER

Is this a Personal Restraint Petition? Yes No

Trial Court County: ____ - Superior Court # ____

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: ____
- Answer/Reply to Motion: ____
- Brief: ____
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: _____

Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org

A copy of this document has been emailed to the following addresses:

PAOAppellateUnitMail@kingcounty.gov
dennis.mccurdy@kingcounty.gov