

92956-4

SUPREME COURT OF THE STATE OF WASHINGTON

MOTION FOR DISCRETIONARY REVIEW

Received  
Washington State Supreme Cou.  
MAR 29 2016  
Ronald R. Carpenter  
Clerk

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BETH RENEE RIETEMA, Respondent,

v.

DEAN ERVIN PHILLIPS, Petitioner,

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APPEALS COURT No. 46884-1-II (combined with 47110-8-II)

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DEAN ERVIN PHILLIPS,

Pro Per

1026 J Street

Centralia WA, 98531

360-388-7480

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## 1. IDENTITY OF PETITIONER

Dean E. Phillips, a living person and petitioner, resident of Washington State, requests this court to accept review of the decision and parts of the decision designated in Part 2 of this motion.

## 2. DECISION

Phillips motions this court to review the Order Denying Appellant's Motion to Modify, filed on March 9, 2016 from The Washington State Court of Appeals, a decision by Commissioner Schmidt, filed on October 15, 2015, which affirmed a decision by Judge Wickham on October 17, 2012 which affirmed Commissioner Lack's decision, from September 12, 2014, to extend an order of protection (OP) for 13 years, until 2026.

A copy of the order denying Phillips' motion is included as **Appendix M** and a copy of Schmidt's decision is in the **Appendix A**, pages 1 through 5. Additional Appendixes have been attached to highlight the crucial issues of this case.

Mr. Phillips request review of the following assignments of error; one (1), two (2), four (4), and five (5), as these errors are all the direct result of the vague and arbitrary misuse and misapplication of **RCW 26.50** which renders the order void due to vagueness. Lack extended the order based, solely, on the testimony of Ms. Rietema who has never proven she was threatened or harmed in any way.

Phillips thus remains restrained from protecting himself and his family in his

home by exercising his inherent rights, granted by his creator, as enumerated in the Bill of Rights as the 2<sup>nd</sup> Amendment, which are guaranteed under the Constitution of the United States, the highest law of the land, and the Constitution of the State of Washington, for the next 12 years.

Additionally, Phillips remains restrained from his inherent freedom of liberty to travel in Lacey and Tumwater, and presumably an area of Olympia based on the misuse of **RCW 26.50** which does not allow for multiple locations of “workplace” for the next twelve years.

### 3. ISSUES PRESENTED FOR REVIEW

In assignment of error one (1) the police and courts allowed Ms. Rietema to claim multiple locations of a “workplace”. **RCW 26.50.070(1)(c) (Appendix B)** states “Prohibiting any party from knowingly coming within, or knowingly remaining within a specified distance from a specified location”, therefore *a* workplace location, for Phillips to avoid. Does **RCW 26.50.070(1)(c)** allow for a protected person to claim multiple locations of “workplace”?

To allow Rietema to use multiple locations (**Appendix H and L**) creates a vague order and one Phillips has still not been given clear direction regarding.

Tumwater Municipal Court’s decision to find Phillips guilty by wrongly applying the RCW has committed an obvious error which renders further proceedings useless due to the Void for Vagueness Doctrine. If Phillips had not been found guilty then we would not even be here still arguing this issue.

In Assignment of error two (2) Schmidt suggests plaintiff claim of an unreasonable search and seizure on his home is a moot point due to “no evidence seized under the warrant was used against him”. However, the evidence, which was the basis for the warrant (**Appendix D**) was, indeed, used against Phillips in Lack’s court (Assignment of error 4) (**Appendix C**).

Assignment of error (4) concerns the decision by Commissioner Lack to extend the OP for another 13 years based on two flyers and Ms. Rietema’s, supposed, fear from the past (**Appendixes C and K**). This ruling by Lack punished Phillips, for the second time, for the act of posting some flyers and the truthful words of them, which constitutes double jeopardy and a violation of Phillips right to exercise his rights secured by the 1<sup>st</sup> amendment. Are these acts in excess of Lack’s subject matter jurisdiction? Does Lack have jurisdiction to punish Mr. Phillips for speaking out? If Ms Rietema never established that a current reasonable threat existed then why was she granted another 13 years of the order for protection based solely on Mr. Phillips’ expression of what Ms. Rietema did to him? Does Mr. Phillips have a right to express himself and tell his story as he did in posting flyers?

The fifth (5<sup>th</sup>) point concerns the decision by Judge Chris Wickham to uphold Lack’s ruling, which should not have happened, but it was made worse by his misuse of **WAC 388-60-0275**, that Phillips, in regards to domestic violence

treatment:

“Presents no evidence that the documentation had been filed with the trial court.”

Wickham claimed this despite the fact that Phillips has shown, twice now (**Appendixes E and J**), that the courts indeed had documentation since November of 2013 of Phillip’s compliance with the court orders. Lack even spoke of his belief that Phillips had learned from the treatment. Wickham did this despite the fact that there is no code or statute that suggests Phillips is required to file any such documentation (**WAC 388-60-0275, Appendix B**) in the first place as Wickham suggested. So Wickham did not follow the Codes of Washington nor did he have subject matter jurisdiction and yet he still upheld the extension of the order.

Is judicial discretion to be the only benchmark for a decision by a Commission or a Judge? These men took an Oath of Office to uphold the Constitution of the United States, the highest law of the land, and of the State of Washington. Neither Lack nor Wickham followed Constitutional laws, Washington State codes, or even precedent in their decisions. Both did not have subject matter jurisdiction over Phillips inherent rights guaranteed under the Constitution of the United States.

And finally, this Supreme Court of Washington State should review the substantive due process of infringing upon Phillips’ inherent, inalienable rights, as guaranteed by the Constitution of United States and of Washington State, by

using the preponderance of evidence standard and expecting Phillips to prove a negative. In essence Phillips is expected to prove that he is not violent and dangerous as based solely on Ms. Rietema's claims. If Ms. Rietema is claiming Phillips is violent and dangerous why is Phillips expected to prove her wrong when she has no evidence to substantiate her claims? Does an expression by Phillips of his rights constitute a threat?

#### 4. STATEMENT OF THE CASE

On February 21, 2012, Rietema filed a petition for an order for protection, citing physical abuse by her then-husband Phillips even though Ms. Rietema presented no proof or evidence of such abuse. The trial court issued the OP for one year on March 2, 2012.

On June 13<sup>th</sup>, 2012, Tumwater Police received a report from Rietema asserting that Phillips had posted derogatory fliers within 500 feet of the headquarters of the state agency for which she worked. However, Ms. Rietema, in her complaint report to Tumwater Police (**Appendix H, page 2**), also states that her office is located in Lacey, WA her true "workplace". (**CP p. 195**) The City of Tumwater charged Phillips in municipal court with violation of the OP and with harassment. In a deal with prosecutor Luke Hansen, Phillips did plead guilty to going within 500 feet of the Tumwater building even though Phillips knew it was not her specific workplace. Phillips was surprised by the fact that Tumwater Police, Prosecutors, and Municipal courts allowed a vague use of the OP by allowing Ms. Rietema to claim multiple locations of a "workplace" which is not supported by

**RCW 26.50.070** allows only one, “specific location”(Appendix B) especially since they made Phillips a criminal under this code.

This vagueness was reaffirmed by the Lacey Police Department who also believe that Rietema can claim multiple locations as evidenced in **Appendix L**. If Rietema worked at Starbucks, for example, would she be allowed to claim every store in the state as a “workplace”? Phillips work is of an underground storage tank inspector for the Washington State Department of Ecology. Mason, Pacific, and Lewis county jails have underground tanks which are inspected by Phillips every few years. If, as Rietema claims, her work as a Critical Incident Stress Management (CISM) responder to these jails constitutes a “workplace” (**Appendix H, page 2**) then Phillips may have violated the OP by merely doing his work. Can Rietema claim all jails and prisons in the state under her work as a CISM responder? How are any of these scenarios reasonable use of **RCW 26.50**?

In this case the OP should be void for vagueness as Phillips cannot know with certainty all of the locations he is to avoid and the police have only added more locations as time has gone on making this a very vague situation for Mr. Phillips. This vagueness makes the order, in respect to Mr. Phillips, void as there was not fair notice given that Rietema has multiple locations of workplace. Also, any flyer presented by Ms. Rietema of causing fear only contains information, presumably about Ms. Rietema, a form of protected speech and not a violation of the OP.

With this in mind, the entire rest of these orders and actions against Plaintiff were

based on this vague and arbitrary use of the RCW statute. Lack, and each court before and since, believed these acts were in violation of the OP but they were all in error to do so. The subsequent search and seizure, Lack's court, Wickham's court, and Commissioner Schmidt all based decisions upon Phillip's supposed violation of the OP.

“The fundamental principle that laws regulating persons or entities must give fair notice of what conduct is required or proscribed, see, e.g., *Connally v. General Constr. Co.*, 269 U. S. 385, 391, is essential to the protections provided by the Fifth Amendment's Due Process Clause, see *United States v. Williams*, 553 U. S. 285, 304, which requires the invalidation of impermissibly vague laws. A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Ibid*. The void for vagueness doctrine addresses at least two connected but discrete due process concerns: Regulated parties should know what is required of them so they may act accordingly; and precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.” *FCC v Fox Television Stations, Inc.* 567 U.S. (2012)

In this same statement to police Ms. Rietema also admits to the truthful nature of the flyers found around the DOC office in Tumwater. (**Appendix H, page 2**) So not only was it not her specific “workplace”, but the flyers merely told the truth *about* Ms. Rietema and her abuse of Mr. Phillips while married, which Phillips showed in his Reply to Response Brief is protected speech under the 1<sup>st</sup> Amendment to the Constitution enumerated in the Bill of Rights. Since Ms. Rietema continues to claim these flyers cause her fear, then her case against Phillips is that she is afraid of the truth. As per *Fox* “rigorous adherence to those

requirements” was not followed and was therefore allowed to chill Phillips free speech.

In reference to the first assignment of error Schmidt states:

“But his appeal of that conviction is untimely because it was filed more than 30 days after his conviction. **RAP 5.2(a)**. And he presents no evidence that his plea was coerced”

Phillips does however show that the charges against him were not actual violations of the OP due to vagueness and therefore void. The OP bears no language to suggest that Phillips right to free speech is, or should be, infringed nor does it give Ms. Rietema the right to claim multiple locations of “workplace” (**Appendix B**). This amounts to overbreadth in this situation as this Code has been used to affect free speech. Because it is still considered a “violation” of the OP this decision of the Tumwater Municipal Court weighed heavily in Lack’s decision (assignment of error 4) to consider Phillips a violent person and therefore extend the OP based on protected speech.

Schmidt argues the Second assignment of error is moot:

“But because no charges resulted from that search, no evidence seized under the warrant was used against him, and his appeal from the warrant is moot”

Schmidt ignores the fact that the search was based on a document sent to Ms. Rietema’s neighbors and family, people not listed on the OP, (**Appendix D, page 2**) who then made the conscious choice to present this upsetting information to Ms. Rietema and yet Ms. Rietema used this flyer as evidence against Phillips in

Lack's court. He specifically called both flyers "abusive" (RP 9/12/2014 p.25 line7) (Appendix C, page 3), used them as part of his decision to grant Rietema 13 more years and then had the flyers sealed (RP 9/12/2014 p.27 lines 24-25). So if the search due to the flyers was moot, then the flyers should also have been moot in regards to Lack's court as no evidence exists to suggest Phillips had anything to do with them, in fact Ms. Rietema could have presented any written document to make Phillips look bad. Why should Rietema be allowed to present a written document that could have presumably been created by anyone? Therefore, Schmidt had no choice but to vacate the order and yet he still affirmed, which constitutes a grave error on Schmidt's part.

It is unreasonable that the flyer-induced search is a moot point but yet it is upheld for Rietema to use those same flyers successfully against Phillips. Here Schmidt makes a grievous flaw in logic, a flaw that Lack and Wickham shared. By using these "moot" flyers against me the courts actions constitutes a violation of Phillips' right to due process and equal protection under the law.

Once it is considered that Lack erred in his decision to not vacate this order, Wickham, Schmidt, and now Worswick, Lee, and Melnick, have all intentionally agreed with Ms. Rietema and joined the conspiracy, by upholding Lack's decision, based on a violation of Phillips freedom to express himself, which deprive Phillips of his right to keep and bear arms as declared as fundamental by the Supreme Court: "we hold that the Second Amendment right is fully applicable

to the States.” in *McDonald v. City of Chicago* 561 U.S. (2010) Thus this court should have no option but to grant Phillips the motion to vacate this OP. It is unreasonable to claim that Judge Wickham and Commissioner Lack are allowed to use discretion while simultaneously ignoring their oath of office to uphold the Constitution of the United States. The very thing that even Washington State’s Constitution claims: Article 1, Section 2 Supreme Law of the Land: “The Constitution of the United States is the supreme law of the land”.

Lack abused his discretion when he stated that Phillips lack of insight was related to flyers in question and their affect on Ms. Rietema, flyers that did not violate the OP or any law, statute, or code and which were verified as containing truthful information by Ms. Rietema herself. Lack hence attributed “abuse” to Phillips truthful statement of his own abuse and to a constitutionally protected form of speech and, even by Ms. Rietema’s statement is a truthful statement (**Appendix H, page 1**). Lack punished Phillips due to the flyer which merely stated Ms. Rietema abused Phillips. Is Lack correct in punishing those abused for telling of said abuse? So Lack is equating telling the truth, telling of the abuse Ms. Rietema perpetrated on Phillips, and exercise of a Constitutional right to abuse and violence. This contradicts precedence set in *Miller v. US* (5<sup>th</sup> Circuit) 230 F. 2d. 486 (1956) “the claim and exercise of a constitutional right cannot thus be converted into a crime.”

Wickham also suggests that Phillips words are indicative of violence and danger when he stated “There is also the issue of the flyers which would create concern

in many people that you still had a motive to carry out further acts of domestic violence” (RP for 10-17-14 p 13, lines 20-23). So Wickham is stating that telling the world what Ms. Rietema did to Phillips is an act of violence. Wickham does not have jurisdiction over protect speech and since a protected act cannot be converted into a crime, Wickham has exceeded his jurisdiction and violated Mr. Phillips rights to express himself which in turn is being used to deprive Mr. Phillips of his rights protected by the 2<sup>nd</sup> amendment.

In *Chan v. Ellis* the courts have upheld that a person has a right to speak *about* a person and that the courts “may not restrict unwanted speech about a person”. Plaintiff made clear in his Reply to Response Brief that a witness, Officer Yancey, and even Ms. Rietema herself stated the flyers were *about* her; hence the flyers are protected acts and cannot thus be used against Phillips as Lack and Wickham, and now Schmidt, Worswick, Lee, and Melnick have also done. It is an abuse of their oath of office, under color of law, to deprive Phillip’s rights and liberties based on constitutionally protected acts.

Schmidt states the court reviewed *In re Marriage of Freeman*, 169 Wn.2d 664, 671, 239 P.3d 557 (2010) but gives no citation to any specific part of that decision, only to say that Lack did not abuse his discretion. Lack never even mentioned Freeman in his ruling. However the Freeman case states:

“The facts supporting a protection order must reasonably relate to physical harm, bodily injury, assault, or the fear of *imminent* harm. It is not enough that the facts may have justified the order in the past. Reasonable likelihood of imminent harm must be in the

present”.

Ms. Rietema fails to assert any likelihood of imminent harm. When questioned in Lack’s court by Counsel Emily Laz on September 12, 2014, Ms. Rietema states “everything he did to me the night that occurred and before then has *continued to cause me fear*” (**RP for 9/12/14 p.13**). In Lack’s court she relies only upon testimony of one, supposedly brutal, evening, from February 2012 when she and Phillips were married and living together (**Appendix K**), and flyers which have already been shown to be protected speech. Lack himself focused on the flyers, flyers from two years ago, as a reason for continuation of the OP, as he considered them “abusive” (**Appendix C, page 3**). As of the writing of this motion of discretionary review it has been over four (4) years since any contact whatsoever has happened. Flyers about Ms. Rietema’s abuse of her husband Mr. Phillips do not represent “imminent harm” nor are there any other facts to support a reasonable fear of imminent harm.

In response to Schmidt’s upholding of Wickham’s decision, assignment of error four (4), he leaves out some critical points brought to light in the Reply to Response Brief due to the fact that Wickham also made his decision based on testimony by Ms. Rietema that she was not contacted by the domestic violence treatment counselor (**Appendix I, page 1**). Plaintiff can prove this was a lie by referring to the documentation from Darlene Tewalt of Awareness Counseling filed on September 10, 2014 (**CP p. 73 and Appendix E**), the counselor who reported that she attempted to contact Ms. Rietema, as prescribe by law, in her

report to the courts (**Appendix J**). The very information presented in Phillips' Appellant Brief the appendix of the brief pages 37-39. Thus Wickham erred in suggesting the treatment counselor did not attempt to communicate with Ms. Rietema. Phillips had indeed completed the program in compliance with **WAC 388-60-0275 (Appendix B)**.

In assignment of error number five, appeals court Commissioner Schmidt suggests Phillips "presents no evidence that that documentation had been filed with the trial court" even though Phillips has shown in the Clerks Papers (**CP p. 73**) proof of compliance with all court orders. This information was part of the record prior to Commissioner Lack's court. Lack, himself, spoke directly to the fact that Phillips had indeed completed domestic violence treatment:

"The Court: So I do appreciate that Mr. Phillips has essentially completed a domestic violence batterer's intervention program." (**RP 9/12/2014 p. 23, lines 17-19**) and (**Appendix C, page 1**).

Schmidt, Lack, and Wickham's primary argument is that under **RCW 6.50.060(3)** Phillips has not proven "by a preponderance of the evidence that the respondent will not resume acts of domestic violence". However, it has now been over 4 years since these issues occurred and no contact, threat, or harms of any sort has happened to Ms. Rietema. Mr. Phillips is not a violent or dangerous man and there is no evidence to suggest otherwise. Flyers with protected speech cannot be used against Phillips as evidence of a crime or threat.

Mr. Phillips argues that this entire process does not meet equal protection under

the law. The Washington State Supreme Court decided in *State v. W.R., Jr.*

88341-6 10/30/2014:

“When a defense necessarily negates an element of the crime charged, the State may not shift the burden of proving that defense onto the defendant. To hold otherwise unconstitutionally relieves the State of its burden of proving every element of the crime beyond a reasonable doubt.”

Thus is it is unconstitutional to place the burden of proof on Phillips to prove his innocence based on **RCW 26.50.060(3)** which states “shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence”. It is unreasonable and it defies all logic to hold anyone accountable for an inability to prove the future.

Schmidt errs in denying the Personal Restraint Petition was untimely due to **RCW 10.73.090(1)** because **RCW 10.73.100** states that the time limit in **10.73.090** is not applicable when “the statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendants conduct”. As shown above, **RCW 26.50** was misused by allowing Rietema to claim multiple locations of workplaces to be avoided. And this statute continues to be used against Phillips by considering him dangerous due to his words.

**RCW 10.73.100(3)** applies when “the conviction was barred by double jeopardy under Amendment V of the United States Constitution or Article I, section 9 of the state Constitution”. By Lack using the first flyer against Phillips he violates double jeopardy as this flyer was already part of the decision in the Tumwater

Municipal Court's ruling against Phillips. Phillips had already been punished for the use of this flyer even though it was found to not violate any code, statute, or law which means Lack should not have been able to use it against Phillips again, which he clearly does. **(Appendix C, page 3).**

**RCW 10.73.100(5) The sentence imposed was in excess of the court's jurisdiction.** Not once have any of these judges or commissioners proved they have subject matter jurisdiction, as there are laws which protect Phillips inherent rights guaranteed under the Constitution of the United States.

Finally, **RCW 10.73.100(6)** refers to significant changes in law as shown in the Washington State Supreme Court's decision in *State v. W.R., Jr.* cited earlier.

5. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

As per **RAP 13.5(b)(3)** "If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court of administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court". The one-page denial by Judges Jj. Worswick, Lee, and Melnick constitute a retaliatory attack on Phillips due to the fact that Phillips has filed Federal Lawsuit which named, among others, Commissioner Eric B. Schmidt. It seems the court does not care for free people standing up for their rights, guaranteed under the Constitution of the United States and of the State of Washington, and so have denied justice to Phillips without so much as an explanation justifying their reasons for denying my motion.

Worswick, Lee, and Melnick therefore agreed with Ms Rietema and by denying justice have committed an overt act thereby including them in Ms. Rietema's conspiracy to deprive Phillips of his rights, a violation of **18 U.S.C § 242** which allows Phillips relief under **42 U.S.C. § 1983**. "The plaintiff is required to make only two allegations in order to state a cause of action under the statute: (1) that some person deprived him of a federal right, and (2) that such person acted under color of state or territorial law" *Gomez v. Toledo* 602 F.2d 1018 (1980)

Additionally, **RAP 13.5(b)(2)** allows for review even "If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act" the definition of which this one-page letter clearly falls into.

Schmidt's decision, and the appeals court decision to not modify Schmidt's ruling, based on flawed logic cited above, to affirm Lack's and Wickham's decisions directly limits Phillip's freedom to protect himself in his own home by possessing a firearm, based on his use of protected speech, constitute deprivations of Phillips' inherent, inalienable, rights enumerated in the Bill of Rights of the Constitution of the United States of America and of the State of Washington, and limits his liberty to move around as he is expected to avoid multiple, vague, locations of "workplace", due to vague and arbitrary use of the OP as cited above and in the Appendix this order is void.

Under this Order for Protection Mr. Phillips has also been deprived of additional inherent and inalienable rights as enumerated under the Bill of Rights of the Constitution of the United States of America. Phillips has been arrested, jailed, forced to pay fines, and ordered to complete a Domestic Violence Treatment Program, his 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendment rights have all been violated, and now these courts continue to punish Phillips for no lawful cause.

#### 6. CONCLUSION

This Supreme Court of Washington State should accept this review in the interest of justice and for the reasons listed in Part 5. Phillips motions this court to vacate the OP, thereby restoring Mr. Phillip's rights and liberties as guaranteed by the Constitution of the United States and should also reverse Wickham's decision to award court fees to Ms. Rietema as Phillips should not have to pay for these repeated violations of his rights.

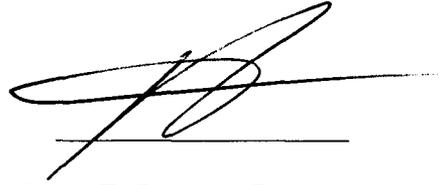
The actions by Lack, Wickham, Schmidt, local police departments, Thurston County Prosecutors office, and now Worswick, Lee, and Melnick, constitute a conspiracy to deprive Phillips of his rights under color of law, which should not be tolerated in this Supreme Court of Washington State or any court of law in these United States of America.

This entire case is merely one of "he said, she said". Mr. Phillips cannot prove that Ms. Rietema is lying, but Ms. Rietema cannot prove any threat of harm either. However, these courts, prosecutors, and police all believe

everything Ms. Rietema says but hold suspect whatever Mr. Phillips says. Equal protection under the law suggests Mr. Phillip's statements should be given proper consideration by this Supreme Court of Washington State and therefore this Court should have Wickham's ruling for payment of court fees reversed and this Order for Protection vacated. Thank you for your service.

3/29/2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Phillips', written over a horizontal line.

Dean E. Phillips, Pro Per  
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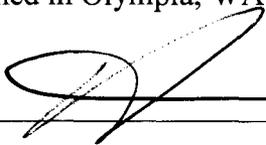
### Certificate of Filing and Service

I certify that on today's date, I mailed a copy of this Motion For Discretionary Review, postage prepaid, to

Kate Forrest  
600 First Avenue, Suite 106  
Seattle WA, 98104

I declare under penalty of perjury under the laws of the State of Washington the foregoing is true and correct.

Signed in Olympia, WA on March 29, 2016

A handwritten signature in black ink, appearing to read 'D. Phillips', is written over a horizontal line.

Dean Phillips  
Pro per, Appellant

# APPENDIX A

RULING GRANTING MOTION ON THE MERITS TO AFFIRM AND DISMISSING PETITION

October 15, 2015

5 pages

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

**DIVISION II**

FILED  
COURT OF APPEALS  
DIVISION II  
2015 OCT 15 AM 9:30  
STATE OF WASHINGTON  
BY DEPUTY

BETH RENEE RIETEMA,  
Respondent,

v.

DEAN ERVIN PHILLIPS,  
Petitioner.

Consol. Nos. 46884-1-II  
47110-8-II

RULING GRANTING MOTION  
ON THE MERITS TO AFFIRM  
AND DISMISSING PETITION

IN THE MATTER OF THE  
PERSONAL RESTRAINT OF:

DEAN ERVIN PHILLIPS,  
Petitioner.

Dean Phillips appeals from trial court's orders finding him guilty of violation of an order for protection and renewing that order until 2026. He also seeks relief from the order for protection through a personal restraint petition. The protected party under the order for protection, Beth Rietema, filed a motion on the merits to affirm the trial court's orders under RAP 18.14(e)(1). Concluding that Phillips's appeal is clearly without merit, this court affirms the trial court's orders and dismisses Phillips's petition for relief from restraint.

On February 21, 2012, Rietema filed a petition for an order for protection, citing physical abuse by her then-husband, Phillips. The trial court issued a temporary order of protection and scheduled a hearing. After that hearing on March 2, 2012, the court issued an order for protection for one year. Among terms of that order was that Phillips was restrained from coming within 500 feet of Rietema's workplace.

On June 13, 2012, Tumwater Police received a report from Rietema asserting that Phillips had posted derogatory fliers within 500 feet of the headquarters of the state agency for which she worked. The City of Tumwater charged Phillips in municipal court with violation of the order of protection and with harassment. On August 30, 2012, Phillips pleaded guilty to violating the order of protection.

On November 20, 2012, Tumwater Police received a report from Rietema asserting that Phillips had mailed a similarly derogatory flier to one of her neighbors. On December 26, 2012, Tumwater Police obtained a search warrant for Phillips's home with authorization to seize a computer that might contain evidence that Phillips created the fliers on it. The warrant was executed on December 27, 2012, but no evidence was found on the computer. No charges against Phillips were filed.

On February 22, 2013, over Phillips's objection, the court extended its order of protection to August 30, 2014. On August 7, 2014, Rietema again petitioned for renewal of the order of protection, asserting that she feared for the safety of herself and her children and that Phillips had previously violated the order of protection in 2012 by posting and sending the derogatory fliers. The court granted Phillips a continuance of the hearing to renew the order for protection. Phillips filed a declaration opposing continuance of the order for protection, asserting that he had not had any contact with Rietema for over two

years and that the order for protection's geographical limitations had interfered with his ability to accept work projects near Rietema's workplaces. After a hearing on September 12, 2014, the court commissioner found sufficient cause to renew the order of protection until September 12, 2026, because Phillips had not met his burden of showing that he would not renew acts of domestic violence. Phillips moved to revise the commissioner's ruling. On October 17, 2014, the trial court judge found no error by the commissioner, denied Phillips's motion to revise the order for protection and awarded Rietema \$1,500 in attorney fees. Phillips appeals from the trial court's orders. He also filed a personal restraint petition, which this court consolidated with his appeal.

In his appeal, Phillips makes five assignments of error. First, he argues that the municipal court erred in accepting his guilty plea on August 30, 2012, because he was not guilty of violating the order of protection and because he was coerced into pleading guilty. But his appeal of that conviction is untimely because it was filed more than 30 days after his conviction. RAP 5.2(a). And he presents no evidence that his plea was coerced.

Second, Phillips argues that the municipal court erred in issuing the search warrant for his home. But because no charges resulted from that search, no evidence seized under the warrant was used against him, and his appeal from the warrant is moot.

Third, Phillips argues that the Nisqually Jail violated the Americans with Disabilities Act (ADA) when it did not provide him timely access to his glucose monitor needed to treat his diabetes. But a claim of violation of the ADA must be brought in a separate civil proceeding and is not pertinent to this appeal.

Fourth, Phillips argues that the court commissioner erred in renewing the order for protection, because the flyers he posted and mailed did not contain any threats against Rietema and because Rietema did not present any evidence to support her claim of being in fear of him. Under RCW 26.50.060(3), once an order for protection has been issued, upon a petition for renewal of that order, the court "shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence." This court reviews the trial court's decision regarding an order for protection for an abuse of discretion. *In re Marriage of Freeman*, 169 Wn.2d 664, 671, 239 P.3d 557 (2010). Given that Phillips has yet to show any insight into his prior acts of domestic violence, and instead continues to seek to blame them on his diabetes, he fails to show that the court commissioner abused his discretion in concluding that Phillips had not met his burden under RCW 26.50.060(3) or in concluding that the order for protection should be extended to 2026.

Fifth, Phillips argues that the trial court judge erred denying his motion to revise because he did not consider the documentation that he completed his domestic violence assessment with Awareness Counseling. But he presents no evidence that that documentation had been filed with the trial court. Phillips further argues that the trial court judge lacked the authority to require such documentation. But even had Phillips filed such documentation, he fails to demonstrate that the judge abused his discretion in denying the motion to revise the court commissioner's ruling. The judge concurred in the court commissioner's conclusion that Phillips had not met his burden under RCW 26.50.060(3).

In his personal restraint petition, Phillips first reiterates his claim that his guilty plea on August 30, 2012, was coerced. But because he filed his petition more than one year

after that plea, his petition is untimely. RCW 10.73.090(1). He also asks that the order for protection be vacated, that the court commissioner's ruling renewing the order for protection be vacated and that the judge's award of attorney fees to Rietema be reversed. But where a petitioner has a remedy at law, he may not seek relief through a personal restraint petition. RAP 16.4(d). Phillips had, and availed himself of, remedies at law regarding the order for protection, the renewal of that order and the award of attorney fees. The fact that he was unsuccessful in obtaining the relief he sought does not make those remedies inadequate. His personal restraint petition must therefore be dismissed.

An appeal is clearly without merit when the issues on review are matters of judicial discretion and the decision was clearly within the discretion of the trial court. RAP 18.14(e)(1)(c). Because Phillips does not show that the trial court abused its discretion in entering any of its orders, his appeal is clearly without merit. Accordingly, it is hereby

ORDERED that Rietema's motion on the merits to affirm is granted and the trial court's September 12, 2014 and October 17, 2014 orders are affirmed. Phillips's personal restraint petition is dismissed. Rietema's request for an award of attorney fees on appeal is denied.

DATED this 15<sup>th</sup> day of October, 2015.



---

Eric B. Schmidt  
Court Commissioner

cc: Dean E. Phillips, Pro Se  
Kate M. Forrest  
Hon. Christopher Wickham

# APPENDIX B

WASHINGTON STATE CODES

1 page

**RCW 26.50.070(1):**

- (b) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace,
- (c) Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

**RCW 26.50.110(1)(a):**

- (i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;
- (ii) A provision excluding the person from a residence, workplace, school, or day care;
- (iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

**WAC 388-60-0275:** What must the treatment program do when a participant satisfactorily completes treatment?

- (1) A treatment program must notify the following people when a participant satisfactorily completes treatment:
  - (a) The court having jurisdiction, if the participant has been court-mandated to attend treatment; and
  - (b) The victim, if feasible
- (2) The program must document in writing its efforts to contact the victim.
- (3) The program may specify only that the perpetrator has completed treatment based on adequate compliance with the participant's contract with the treatment program and any court order.

# APPENDIX C

LACK'S STATEMENT OF COMPLETED DOMESTIC VIOLENCE TREATMENT PROGRAM AND RULING  
BASED ON FLYERS AND LACK OF INSIGHT

September 12, 2014

3 pages

1 THE COURT: That's all right. Let's stick to  
2 the focus of the information that has already been  
3 provided.

4 MS. RIETEMA: Okay. So I just would want to  
5 say that I disagree it has been less than two years  
6 since the last indirect contact took place. And  
7 again, I am -- I fear my safety. I believe the  
8 reason I am safe now from Dean Phillips providing  
9 direct contact is that there is a protection order in  
10 place. He has established a pattern of harassment  
11 with attempting the indirect contact with the flyers  
12 and by acting above the law, trying to scare me,  
13 humiliate me, my family, my children.

14 I'm asking the Court to please provide me the  
15 protection so that I do not have to relocate and I  
16 can go on with my life basically. *Lack's Ruling*

17 THE COURT: So I do appreciate that Mr.  
18 Phillips has essentially completed a domestic  
19 violence batterer's intervention program. It appears  
20 that he has taken that requirement seriously and he  
21 has completed it and he has learned some things from  
22 it. *Lack admits completion of DV counselling*

23 The dilemma that I have in this matter is that Mr.  
24 Phillips' current position is still a little bit  
25 self-centered. The explanation for these quite

1           horrific flyers is not I've learned from my  
2           batterer's intervention program and these are  
3           horrible things to do and I can't believe I did them  
4           and they would never happen again. His explanation  
5           is that I posted them and I didn't really know that  
6           that's where she worked, which shows a lack of  
7           insight.

8           I would also say that Mr. Phillips' position is  
9           this is impacting his health and this is impacting  
10          his ability to work. I think that's all true. I  
11          absolutely believe this is impacting your health. I  
12          believe it's impacting your ability to work.  
13          Conversely, it's also I think substantially impacting  
14          Ms. Rietema's health. She has a sincere concern for  
15          her safety. It has impacted her ability to work.  
16          She indicated there is essentially a safety plan, a  
17          lock-down plan at her work.

18          Oftentimes when a court issues protective orders  
19          people look at the protective orders and they say I'm  
20          not to commit acts of domestic violence, and their  
21          response is okay, I'm not gonna hit somebody, I'm not  
22          gonna call somebody, and then they figure out what  
23          they can do within the context of the order to  
24          essentially abuse the victim.

25          These postings are very concerning to me. The

1 fact that one of them was posted at the child's bus  
2 stop is exponentially concerning to me. The whole  
3 concept of sex shaming, particularly victims of  
4 domestic violence, is growing in our country because  
5 of the significant amount of, you know, social media.  
6 This type of behavior is completely inexcusable. It  
7 is abusive.

8 I do know that in the last we will call it  
9 18 months or almost two years I guess really at this  
10 point that Mr. Phillips essentially has been in  
11 compliance with the order, but the significance of  
12 the violations of the protective order after they  
13 were issued is so severe that I do believe that Ms.  
14 Rietema has an ongoing fear that Mr. Phillips has not  
15 proven that there is a likelihood of non-recurrence.  
16 I am very concerned that there is a potential for  
17 recurrence based on the testimony that I have heard  
18 today, and I am going to reissue the order.

19 I am not only going to reissue the order, I am  
20 going to extend it I believe until your youngest  
21 child finishes high school, which would be 9/12 of  
22 2026, if I'm doing the math directly.

23 Any questions, Ms. Rietema?

24 MS. RIETEMA: No.

25 THE COURT: Any questions, Ms. Laz?

# APPENDIX D

SEARCH WARRANT AFFIDAVIT BASED ON FLYERS SENT TO THOSE NOT LISTED ON THE ORDER  
FOR PROTECTION.

December 26, 2012

5 pages

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

IN RE SEARCH WARRANT FOR

1026 J St  
Centralia, WA 98531

NO.

SEARCH WARRANT AFFIDAVIT

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF THURSTON )

COMES NOW Officer Yancey of the Tumwater Police Department and moves this Court for a search warrant for the following;

1026 J. St., Centralia, WA 98531; A brown one story single family house with brown roof with the address 1026 affixed to the side of the residence, This residence is listed on Lewis County Assessors site as being owned by *Dean E. Phillips, Jr*

My request is based on the following:

I have been employed as a Police Officer for the Tumwater Police Department for eight months. Prior to being a Police Officer with the City of Tumwater I was a Police Officer with the Sumner Police Department for approximately five years. Your affiant has completed the Washington State Criminal Justice Training Commission Basic Law Enforcement Academy. Your affiant has been assigned to general patrol during my career as a Police Officer. During that time I have investigated approximately 50 violations of Domestic Violence No-Contact Orders. Your affiant is currently assigned to the patrol division. Your affiant, through his training and experience, is familiar with Respondents in Domestic Violence No-Contact Orders violating those orders prohibiting contact through first or third party contact. Your affiant is also familiar with subjects who commit crimes often using similar modus operandi, often committing crimes with similar trademarks specific to the suspect. Your affiant is familiar that computers are the common means for preparing documents and flyers.

170  
+ 45  
215  
49

Probable Cause

On 11-19-12 at approximately 0930 hours I, Officer Yancey, contacted Mrs. Beth R. Rietema at the Tumwater Police Department for a report of a protection order violation with her ex-husband, Mr. Dean E. Phillips.

Beth stated on 11-18-12 she was provided with an envelope and flyer which had been mailed to Beth's neighbor, Mrs. Bat-sheva Stein, at [REDACTED] Beth stated Bat-sheva had opened the envelope and removed the flyer. Beth stated she immediately recognized the flyer as being similar to a harassing flyer which had been placed around Department of Correction buildings approximately six months ago (Tumwater PD Case 2012-01280, See attachment B). Beth stated in this earlier incident Dean was arrested for DV violation of a protection order and DV harassment. Dean subsequently pleaded guilty to the DV Violation of a Protection order at the Tumwater Municipal Court on August 30<sup>th</sup>, 2012.

not to Rietema

Beth provided me with the envelope and flyer which had been mailed to Bat-sheva. The envelope had a printed address and return labels which had Bat-sheva's address on both labels. Part of the envelope had not been opened, with an intact seal.

The flyer was very derogatory claiming that Beth married her brother's "gay lover just so he could become a citizen." The flyer also went on to state that Beth "spreads her legs to get pierced" and then allows people to "tie her up, gagged and naked" and drive her around town in the trunk of a car. The flyer ends with "Department of Corrections' finest, deviant, pathological liar.... Beth Rietema." The flyer contains a picture of Beth.

Beth states she believes Dean mailed the flyer and she is concerned for her safety. Beth stated she currently has a protection order against Dean. A check with Communications returned with two confirmed served protection orders protecting Beth from contact with Dean (Order for Protection 12-2-30114-7 and Domestic Violence No-Contact Order

pick

50

C21048).

I provided Beth with a business card with this case number and advised her I would investigate this incident.

I contacted Bat-sheva on the phone. Bat-sheva confirmed she received the flyer in the mail. Bat-sheva stated it may have come in the mail on 11-16-12 or 11-17-12, as she had not picked up her mail on 11-16-12. Bat-sheva stated she believes the flyer was made by Dean. Bat-sheva stated she was friends with both Beth and Dean prior to their divorce. Bat-sheva stated, following the divorce, she has stayed friends with Beth but has not heard from Dean.

I booked the envelope and flyer into evidence.

The following people contacted me and described receiving the same derogatory flyer about Beth, with both the return and to address affixed with pre-printed labels in the mail:

Daniel J. Rietema ( [REDACTED] ), Beth's brother; [REDACTED]  
Kenneth D. Cohen ( [REDACTED] ) Homeowner association president where Beth lives;  
[REDACTED]  
Fredrick D. Rietema ( [REDACTED] ) Beth's father, [REDACTED]

Daniel, Kenneth and Fredrick all stated following Beth and Dean getting a divorce they have continued to have contact with Beth but have not contacted Dean. Daniel, Kenneth and Fredrick all stated they believe the flyers were mailed by Dean. Daniel, Kenneth and Fredrick also stated Dean would have known their address prior to divorcing Beth. Daniel, Kenneth and Fredrick all stated they believe the flyers were designed to harass and degrade their perceptions of Beth, thus damaging her reputation.

I compared the flyer which Dean had previously plead guilty to posting at Beth's work (Attachment B) with the flyer received by Bat-sheva, Daniel, Kenneth and Fredrick (Attachment A).

51

Both of these flyers differ in their exact wording but share the fact that they are both written in a manner intended to degrade Beth's reputation. Both flyers share the following:

- both flyers have the same picture of Beth on them
- both flyers are typed mostly in 20 point "Arial" font
- both flyers refer to Beth as a "liar"
- both flyers were duplicated numerous times by the author

I called Dean on 12-8-12 and left a voice message requesting a return phone call. I called Dean on 12-15-12 and left a voice message requesting a return phone call. On 12-17-12 at approximately 1500 hours I called Dean and he answered.

I told Dean I would like to talk to him about an incident <sup>I want to ask you about the</sup> ~~mailings~~ <sup>mailings</sup> which just occurred and he stated, "I've already talked to my lawyer and she advised me to not give any statements to the Police." I advised Dean I had not even told him what the incident was about. Dean stated his lawyer was Trisha Hahn, in Olympia, WA.

Dean pled guilty in August of 2012 in Tumwater Municipal Court to posting the first flyer (attachment B) at the Washington State Department of Correction building after being seen on video posting numerous flyers at the business.

Due to the fact both flyers appear to have been made by the same author; Dean pleading guilty to mailing the first flyer; two confirmed served protection orders protecting Beth from contact with Dean; Dean knowing Bat-sheva Daniel, Kenneth Daniel, and Fredrick; both flyers being derogatory to Beth; both flyers being most likely made on a computer, scanner and/or printer:

I believe evidence of the **Violation of a Domestic Violence No-Contact Order RCW 9A.46.080, Felony Stalking RCW 9A.46.110** is being committed in, at, or about the following described residence:

52

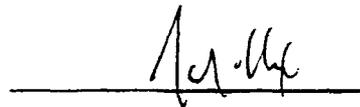
A brown one story single family house with brown roof located at 1026 J St in Centralia, WA, with the address 1026 affixed to the side of the residence. This residence is listed on Lewis County Assessors site as being owned by Dean *E Phillips*. *JY*

And that a search warrant should be issued directing that a search of said residence, and that any computers, portable hard drives, computer disks, computer flash drives, printers, scanners, printer paper, envelopes, mailing labels, flyers, pictures of Beth Rietema be seized, together with evidence of occupancy and/or ownership of said premise.

A copy of this warrant shall be served upon the person or persons found in or on said property, or if no person is present, a copy shall be left at a conspicuous place on or in the property and a copy of this warrant and inventory shall be returned to the above-entitled court within 72 hours after execution.

  
Officer Yancey 0565

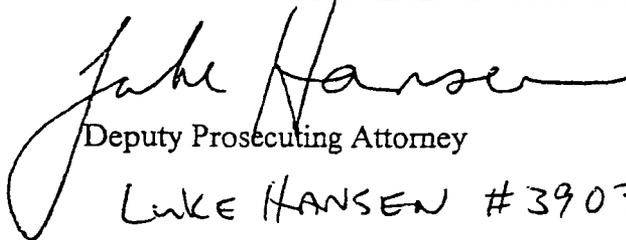
Subscribed and sworn to before me this 26 day of December, 2012.



J U D G E

*James J. Dixie*

APPROVED FOR PRESENTATION BY:

  
Deputy Prosecuting Attorney  
*LUKE HANSEN #39071*

# APPENDIX E

DOCKET INFORMATION EMAILED TO PHILLIPS SHOWING COMPLIANCE WITH DOMESTIC VIOLENCE TREATMENT COUNSELLING ORIGINALLY FILED WITH LACK'S COURT SHOWING THE COURTS HAD PROOF OF COMPLIANCE ALREADY

1 page

12:59:35 Wednesday, August 27, 2014

Compose

D0031I End of Docket

DD1000PI

08/27/14 12:59:31

DD1001MI Case Docket Inquiry (CDK)

THURSTON COUNTY DIST PUB

Case: C00021048 TPD CN

StID: \_\_\_\_\_

Name: \_\_\_\_\_

NmCd: \_\_\_\_\_

Inbox (18)

Drafts (17)

Sent

Spam (21)

Trash (12)

▼ Folders (30)

AAVectra

Acting

Alena

AssSVIT

Bills

Family issu

Freecycle

GarlicFest

ITW

Need Print

Notes

pending

POF

Redbox (4)

Shop.com

Stem Cells

Taxes

untitled

Williams

Work

worth savit

ZZBeth (5)

Case: C00021048 TPD CN Criminal Non-Traffic

NCO Expires 08/30/2014

S	12	10	2012	COU : Counseling, General	SLC
	08	01	2013	CASE TRANSFERRED FROM TUMWATER MUNI COURT	SLC
				PREVIOUS DOCKET ENTRIES EXIST.	SLC
S	11	12	2013	DEF 1 PHILLIPS, DEAN ERVIN Added as Participant	SLC
S				Charge 1: Def. complied with Jail Sentence	SLC
S				Defendant Complied with Domestic Violence Assessment	SLC
S				Defendant Complied with Counseling, General	SLC
S				Accounts Receivable Created	0.00 SLC
S				Order created on 09/13/2012 NO CONTACT entered by	SLC
S				COKER, CHRISTOPHER J expires on 08/30/2014	SLC
	11	21	2013	COMPLIANCE RECD	AET
	08	26	2014	RECVD REC REQST FRM DEF FOR COPY OF DV TX	CMW
	08	27	2014	CALLED DEF FOR CLARIFICATION OF REQUEST; LEFT MSG FOR CALL	CMW
				BACK	CMW

*Domestic Violence treatment  
Counseling finished on this date!*

~~XXXX~~

9-

# APPENDIX F

FIRST FLYER USED AS EVIDENCE AGAINST PHILLIPS CONTAINING THE TRUTH AND NO THREATS  
OF ANY SORT.

1 page

12-1280-06

## WARNING!!!! I am Beth Rietema

And I am a **victim...of not getting my way!** I will say anything to anyone to get my way, and if I don't get my way then look out! I lied when I joined my church, lied to my daughter, and I lied to get Dean to marry me! Told him I accepted him for who he was



but **I was emotionally abusive** from the beginning of our short marriage, **to get him to do what I wanted**, what he wanted was irrelevant! He was supposed to blow off his daughter, just like my dad did to me. My idiot husband thought it was ok to let his kid help him read Lowan to bed! That shit had to stop! The abuse must've got to him; he snapped and got a bit rough, trying to get me to stop the abuse. When he told Leah the truth about our marriage, I was done so got a restraining order and divorced him (**my 5<sup>th</sup> divorce**). He may want peace but I will happily turn him into a felon if he even tries. So boys I'm single again and though I may be a cruel manipulative liar, at least **I swallow!**

**Trust me at your own risk!**

# APPENDIX G

SECOND FLYER USED AS EVIDENCE AGAINST PHILLIPS

1 page

2012-5459

## WHAT KIND OF PERSON.....

..tells her husband she has only been married 3 times before (once to her brothers gay lover just so he could become a citizen) when in fact she had been married 4 times before?

..lies about what she truly believes in, to an entire congregation, just to join a church?

..enjoys eating a marijuana cookie yet publicly decries the evils of marijuana?

..spreads her legs to get pierced while Len and friends watch then allows them to tie her up, gagged and naked, then drove around town in the trunk of a car?

..lies in court, to the police, and to the prosecutor about where she really works, doing her part to create another "criminal" in the system? (a perverse form of job security?)

Department of Corrections finest, **deviant, pathological**

**liar, that's who!!**

Miss.....

**Beth  
Rietema!!**



# APPENDIX H

BETH RIETEMA'S STATEMENT TO POLICE SHOWING TRUTH OF FLYER CONTENT AND MULTIPLE  
LOCATIONS OF WORK

June 12, 2012

2 pages

TUMWATER POLICE DEPARTMENT

DO NOT DISCLOSE ( )

STATEMENT FORM

CASE # 12-1780-06

PAGE OF

RELATED CASE #

SUBJ TYPE

SUBJ #

NAME (LAST, FIRST, MI)

PHONE #

Rietema, Beth R.

[REDACTED]

Dean Phillips and I, Beth Rietema, were married during November of 2011. After we were married an issue came up just between the two of us and trying to establish a bedtime routine that worked for his daughter and my daughters (two). His daughter would stay with us part of the time and slept downstairs while my two daughters slept in their rooms upstairs. Lowan, my then 3 yr. old, gets books read to her at bedtime. Bedtime for her is usually close to 9pm. Dean wanted his daughter to be in Lowan's room with him and Lowan when he helped put Lowan to bed and he wanted his daughter to read the bedtime books. After observing this I found that this didn't seem to be the best process because Lowan wouldn't settle down as quickly for bedtime and it seemed too late on a school night for his daughter and my older daughter not to be in bed themselves. I told Dean I thought it would be best for either him or I - as the adults - to be the one's to put Lowan to bed and reinforce the routine of quiet book reading and bedtime. Dean didn't agree with me and told me I was excluding his daughter. I told him I was not excluding her but again reminded him that it was after 9pm on a school night and that as Lowan's mom (again Lowan only being three) that I wanted to enforce a bedtime routine that would ensure everyone got to sleep at a decent time. This was also so I could go to bed shortly thereafter. I encouraged Dean to help me implement family book reading time - all together - at either 8pm or 8:30pm but he claimed he didn't want to participate in that and he never did help implement this as a compromise to the book reading/bedtime issue. Besides our counselor, Dean and I were the only ones aware of this issue (besides also the children).

**TRUTH!**

RCW 9A.76.175 MAKING A FALSE OR MISLEADING STATEMENT TO A PUBLIC SERVANT:  
 (1) A PERSON WHO KNOWINGLY MAKES A FALSE OR MISLEADING MATERIAL STATEMENT TO A PUBLIC SERVANT IS GUILTY OF A GROSS MISDEMEANOR. (2) MATERIAL STATEMENT MEANS A WRITTEN OR ORAL STATEMENT REASONABLY LIKELY TO BE RELIED UPON BY A PUBLIC SERVANT IN THE DISCHARGE OF HIS OR HER OFFICIAL POWERS OR DUTIES.

10112112 4:00pm 24

STATEMENT FORM

Beth Rietema

I work for the Department of Corrections, my current office location is at the SWRPC in Lacey, WA but I also frequently work out of and have meetings at DOC HQ in Tumwater, WA. I worked at the Tumwater location primarily until November of 2011 and then my job assignment transferred to Lacey. However, as a Curriculum design/developer for DOC I frequently use the HQ location in Tumwater to meet with stakeholder Subject Matter Experts, attend trainings and monthly scheduled meetings. Both DOC HQ and Lacey are considered to be my places of employment. I also represent the Critical Incident Stress Management team (CISM) for DOC's SW Region Team out of our Tumwater HQ location.

# APPENDIX I

EXCERPT OF WICKHAM'S COURT SHOWING HIM CONTRADICTING LACK ON TREATMENT  
COUNSELING AND MAKING UP RULES THAT DO NOT EXIST AND THEN USING THEM AGAINST  
PHILLIPS

OCTOBER 17, 2012

3 pages

1 So the burden was on you to show that it is more  
2 likely than not that you would not commit further  
3 acts of domestic violence. The record, as I

*PROOF*

4 understand it, did not include your treatment  
5 certificate. There was testimony that you had  
6 completed treatment. The certificate was not

*Cert. for*

7 presented. There was also evidence that the  
8 treatment provider had not contacted Ms. Rietema,  
9 which is required under the WACs. Treatment Counselor (H/V)

10 So the record was not particularly persuasive that  
11 you had successfully completed treatment. You may  
12 have, you may not have, but it was your burden to  
13 make that showing, and you didn't make it. But also  
14 with --

*contact  
or  
attempt  
contact*

*Where is RCW or WAC re: this?*

15 MR. PHILLIPS: So it's my burden to have the  
16 counselor communicate with her? I was told not to  
17 communicate, either directly or indirectly, but yet  
18 it was my responsibility to have the counselor  
19 communicate with her? I fail to understand how  
20 that's reasonable.

21 THE COURT: It's your burden to show that you  
22 have successfully completed domestic violence  
23 treatment.

24 MR. PHILLIPS: I showed them that I was in  
25 compliance with the rules, with the law. The Court

1 believed I was in compliance. Is that not evidence  
2 enough that I completed what I was supposed to?

3 THE COURT: Mr. Phillips, I am trying to  
4 explain to you my decision.

5 MR. PHILLIPS: I'm trying to say that your  
6 decision doesn't make sense because I cannot be  
7 responsible for what the treatment counselor did.

8 THE COURT: Well, your responsibility is to  
9 successfully complete treatment in accordance with  
10 the rules of the State of Washington.

11 MR. PHILLIPS: I did all of that.

12 THE COURT: One of those rules is that your  
13 treatment provider is supposed to contact the victim  
14 of the domestic violence.

15 MR. PHILLIPS: She alluded to me that she  
16 would, so I assumed that it would happen.

17 THE COURT: I can't make that assumption. The  
18 burden was on you to prove that you successfully  
19 completed treatment. You didn't carry that burden.

20 There also is the issue of the flyers which would  
21 create concern in many people that you still had a  
22 motive to carry out further acts of domestic  
23 violence. I don't know if that's true or not, but,  
24 again, the burden was on you to show that it's more  
25 likely than not that you weren't going to do that.

1st  
Amend  
Right

1 You didn't carry that burden, so I think the  
2 Commissioner got the right result.

3 I am not saying that you're necessarily dangerous  
4 to anybody. I am just saying that it was your burden  
5 to show that you weren't, and you didn't meet the  
6 burden.

7 I'm going to uphold the Commissioner's decision  
8 based on this record.

9 There is a request for fees. The statute allows  
10 fees to be awarded.

11 How much are you requesting, Ms. Reid?

12 MS. REID: \$1,533, Your Honor.

13 THE COURT: Do I have an affidavit from you?

14 MS. REID: I don't actually prepare one. Ms.  
15 Rietema paid a flat fee for the revision and then  
16 there was a \$33 fee for forms or court documents that  
17 I had to obtain from the court file.

18 THE COURT: All right. I will grant your  
19 request, and I have signed the order denying the  
20 motion and granting the fees.

21 She is going to prepare an order. She will show  
22 it to you. Your signing it doesn't mean you agree  
23 with it. It just means that you had a chance to see  
24 it before it was presented to me.

25 Why don't you take it outside with Ms. Rietema. I

# APPENDIX J

COPY OF AWARENESS COUNSELING COMPLIANCE REPORT SHOWING COMPLETION OF  
COUNSELING AND ATTEMPT TO CONTACT RIETEMA AS REQUIRED UNDER WAC 388-60-0275

November 6, 2013

3 pages

# AWARENESS COUNSELING

INDIVIDUAL, MARRIAGE, AND FAMILY COUNSELING  
DOMESTIC VIOLENCE AND ANGER EVALUATIONS  
SPECIAL PROGRAMS FOR VETS & FAMILIES

107 N. TOWER AVE. #9  
CENTRALIA, WA 98531  
(360) 330-2832 /FAX: 330-0284

## DOMESTIC VIOLENCE COMPLIANCE REPORT

November 6, 2013

Tumwater Municipal Court  
555 Israel Rd. SW  
Tumwater, WA 98501

COPY

RE: **Dean Phillips**

Case #: **C21048**

Began group: **12-17-12**

Attends weekly sessions on regular basis: **Yes**

Does assigned reading and homework: **Yes**

Pays for each group: **Yes**

Behind in payments: **No**

Group participation satisfactory: **Yes**

Has attended: **35** groups.

Missed: **0** groups.

Excused:

Needs to work on: Anger logs \_\_ Clarification letter \_\_ Workbook \_\_  
Empathy letter \_\_ Family of Origin Issues \_\_

Is in compliance with group requirements: **Yes**

Close to termination due to lack of paying: **No**

First portion of group completed: **Yes 5-20-13**

Six return visits completed: **Yes – 11-4-13**

Totally finished with Domestic Violence Program: **Yes – 11-4-13**

If client uses the techniques learned in group he/she should remain safe.

### Comments:

Mr. Phillips is compliant with group requirements and has completed his treatment program.

# AWARENESS COUNSELING

INDIVIDUAL, MARRIAGE, AND FAMILY COUNSELING  
DOMESTIC VIOLENCE AND ANGER EVALUATIONS  
SPECIAL PROGRAMS FOR VETS & FAMILIES

107 N. TOWER AVE. #9  
CENTRALIA, WA 98531  
(360) 330-2832

November 19, 2012

Tumwater Municipal Court  
555 Israel Rd. SW  
Tumwater, WA 98501

COPY

RE: Dean Phillips

DOB: 7-31-68

Case #: C 21048

A Domestic Violence Assessment has been completed for Mr. Phillips. I have interviewed the client, read the police report, and tested him for his propensity for anger and violence. \*\*I have not been able to contact the victim; therefore I am using the statement in the police reports.

REPORT RECEIVED: Yes X No \_\_\_ N/A \_\_\_

ABLE TO CONTACT THE VICTIM: Yes \_\_\_ No X\*\* N/A \_\_\_

PSYCHO-SOCIAL HISTORY: Mr. Phillips is a 44 year old male with one child from a previous marriage. He stated his parents are still married. He has been sent to be assessed for anger and/or assaultive behavior after being charged with Harassment and Violation of a No Contact Order.

REPORTED CRIMINAL HISTORY: Mr. Phillips reported the Harassment and No Contact Order Violation. Nothing else.

DRUG/ALCOHOL INVOLVEMENT IN CURRENT INCIDENT? Yes \_\_\_ No \_\_\_ Unknown X

RISK ASSESSMENT: Low \_\_\_ Moderate \_\_\_ High X

AMENABLE FOR TREATMENT: Yes \_\_\_ No \_\_\_ Unknown X

Diagnostic materials results: All screening instruments are self report answers.

Conflict Reaction Inventory (CRI):

Failed to follow directions.

NOVACO Anger Scale:

Moderately degree of anger arousal.

Inventory of Anger Communications (IAC):

Some interpersonal communication issues.

Anger Impact Inventory:

Fails to recognize the impact of his anger on others.

Anger Styles Quiz: (He has these tendencies.)

# 1 - Sudden Anger - Those with sudden anger are like thunderstorms on a summer day. They zoom in from nowhere, blast everything in sight, and then vanish. Sometimes it's a big show, but often people get hurt. People with sudden anger gain a surge of power. They release all their feelings, so they feel good or relieved. They say and do things they later regret, but by that time it's too late to take them back.

**CRS Abuse Scale:**

Moderately abusive

**BUSS Hostility Inventory:** Low hostility score overall. High individually in:

**Indirect hostility** – Indirect hostility involves the behavior that directs hostility toward someone in a roundabout way. When they become frustrated it allows them to discharge feelings of hostility without directing it at anyone in particular.

**Coopersmith Inventory:**

Few problems with self-esteem.

**Domestic Violence Inventory (DVI):**

**Truthfulness:** Scored in the medium risk range. (45%)

**Alcohol:** Scored in the low risk range. (18%)

**Control:** Scored in the medium risk range. (69%)

**Drugs:** Scored in the problem risk range. (76%)

**Violence:** Scored in the problem risk range. (72%)

**Stress Coping:** Scored in the medium risk range. (53%)

**Michigan Alcohol Screening Test**

Middle stages.

**COMMENTS:**

Based on all gathered information, assessing the screening material, interviewing the client, and reading the report it is surmised Mr. Phillips fits the criteria for a Domestic Violence Program.

Responsibility for inappropriate actions or behaviors always lies with the person doing them. No one has a right to break a No contact Order even if they are angry or upset. Posting slanderous flyers at his ex-wife's work and where her child can read them is not only breaking the Order but way beyond appropriate adult behavior. There were many choice's he could have made that would not have gotten him into trouble but he chose the actions he took.

**Treatment Recommendations:**

- 1) It is recommended Mr. Phillips attend a minimum one year Domestic Violence Treatment Program.
- 2) It is mandatory Mr. Phillips abide by program requirements that he refrain from any form of anger or abusive behavior and abide by the Protection Order.
- 3) It is mandatory Mr. Phillips abide by program requirements that he abstain from any drug or alcohol use for the duration of treatment.
- 4) It is recommended Mr. Phillips attend the Domestic Violence Impact Panel at the Court House.

If there are any questions, please call.

Sincerely,

Darlene R. Tewault, M.A., L.M.H.C.  
Therapist

cc: Tricia Hahn, Attorney

# APPENDIX K

EXCERPT FROM LACK'S COURT SHOWING RIETEMA'S STATEMENT ON FEAR BASED ON PAST  
ACTIONS: NO IMMINENT THREAT

September 12, 2012

1 page

1 MS. LAZ: Yes.

2 CROSS-EXAMINATION

3 BY MS. LAZ:

4 Q. In February of 2013 you filed a petition for renewal  
5 and you used everything that you've just said today  
6 to petition for that renewal, so what -- since the  
7 order has been renewed in 2013, what has happened  
8 since then?

9 A. What has happened since then is as a victim of  
10 domestic violence and the fear and the assault that  
11 this man caused me and the sex offense and everything  
12 he did to me the night that occurred and before then  
13 has continued to cause me fear and a lack of being  
14 able to be safe, a feeling of being safe in my own  
15 home and residence and workplace and all those  
16 things. I need safety so that I can continue to live  
17 and to provide for my family.

18 THE COURT: Ms. Rietema, let me just make  
19 sure. I understand that -- has there been any  
20 contact or behavior by him since the last  
21 re-issuance?

22 Thank you.

23 Anything else, Ms. Laz? All right.

24 MS. LAZ: That was my question, Your Honor, if  
25 there has been any contact since this last

# APPENDIX L

LACEY POLICE DEPARTMENT REPORT SHOWING KNOWLEDGE OF PAST "WORKPLACE" IN  
TUMWATER AND ALLOWING FOR ADDITIONAL LOCATIONS NOT ALLOWED UNDER RCW 26.50

October 5, 2012

1 page



**Lacey Police Department**  
**Officer's Report**  
**October 5, 2012 / 17:20**  
**Case Number: 2012-5459**  
**Reporting Officer: J. Knight / # 411**  
**Related Number(s):**

**Narrative:**

On Friday, October 05, 2012 at 0802 hours, Beth Rietema called to report a D.V. protection order violation at 637 Woodland Square Loop SE – a Washington State Department of Corrections (D.O.C.) administrative office. I called and spoke with Rietema, who informed me that several typed flyers were found posted in the Woodland Square business district containing her photo, name, place of employment, and derogatory statements. Rietema advised that a security officer with Pacific Coast Security turned over one of the flyers to a co-worker of hers, who retrieved several other flyers stapled to trees in the area around her work building. Rietema advised that her ex-husband – Dean Phillips, has been convicted this year of violating a D.V. protection order with her in Tumwater, by posting very similar flyers.

She stated that she would be getting statements from security and the co-worker, and get the flyers together, then call me back. I later contacted her and she provided a written statement of her co-worker that collected the flyers - Sarah Bevers, and the name of the security officer that alerted employees to the flyers – Craig Richardson.

She also provided me with a copy of the D.V. protection order from Tumwater. (See attached). I had DATA confirm the order as well, and had Tumwater P.D. fax me the order. I also contacted Tumwater P.D. and had them e-mail me the prior case resulting in a conviction for violation of the order this year. (See attached documentation)

I noted the flyers from the Tumwater event and this event both contain the same or at least a similar photo of Rietema, and are written in a similar font and style, and speak of many similar details. Rietema advised me that Phillips has not contacted her by other means recently. She stated that he works at the Department of Ecology on Desmond Dr. SE. in Lacey as an underground tank inspector. I responded to that location and asked to speak with him at the reception desk. The receptionist called his desk and received no answer, then checked with a co-worker who said he was at work today, but not in the office.

I left a voicemail on Phillips cell phone requesting a phone call. I later called his office number and cell phone again, and received no answer. It should be noted that Rietema works at several DOC office locations to include the headquarters in downtown Olympia, as well as at 637 Woodland Square Loop, and 4522 Pacific Ave. SE. I collected from Rietema eleven (11) flyers, which I later logged into evidence.

Given the history of this type of violation resulting in conviction, and the very similar but re-worded flyer, it appears Phillips is responsible. I would request the City Attorney review this case for violation of a D.V. No-contact Order.

**CASE STATUS: REFER TO CITY ATTORNEY**

**I certify or declare under penalty of perjury under the laws of Washington that the foregoing is true and correct. This form was completed and signed in Lacey, WA on October 5, 2012.**

J. Knight / # 411

Reporting Officer's Signature: \_\_\_\_\_

Lacey Police Department – PO Box 3400 – 420 College St SE – Lacey, WA 98509-3400 – Phone 360.459.4333 – Fax 360.456.7798

# APPENDIX M

ORDER DENYING MOTION TO MODIFY

MARCH 9, 2016

1 page

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FILED  
COURT OF APPEALS  
DIVISION II  
2016 MAR -9 PM 3:26  
STATE OF WASHINGTON  
BY  DEPUTY

BETH R. RIETEMA,  
Respondent,  
v.  
DEAN E. PHILLIPS,  
Appellant.

No. 46884-1-II Consol. to PRP  
No. 47110-8-II

ORDER GRANTING MOTION TO EXTEND  
TIME TO FILE A MOTION TO MODIFY AND  
DENYING APPELLANT'S MOTION TO  
MODIFY

APPELLANT filed a motion to extend time to file a motion to modify and a motion to modify a Commissioner's ruling dated October 15, 2015 in the above-entitled matter. Following consideration, the court grants the motion to extend time and denies the motion to modify the Commissioner's ruling of October 15, 2015. Accordingly, it is

SO ORDERED.

DATED this 9<sup>th</sup> day of March, 2016.

PANEL: Jj. Worswick, Lee, Melnick

FOR THE COURT:

  
PRESIDING JUDGE

Dean Ervin Phillips  
1026 J St  
Centralia, WA 98531

Kate M Forrest  
The Law Office of Kate M. Forrest, PLLC  
600 1st Ave Ste 106  
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