SUPREME COURT NO. 93378-2

NO. 73250-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BEE SAYKAO,

Petitioner.

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

The Honorable Palmer Robinson, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Bee Thow Saykao, appellant below, asks this Court to review the decision of the court of appeals referred to in section B.

B. COURT OF APPEALS DECISION

Saykao seeks review of the court of appeals decision in State v. Bee Thow Saykao, __ Wn. App. __, 2016 WL 3190529 (Slip Op. filed June 6, 2016). A copy of the slip opinion is attached as an appendix.

C. REASONS TO ACCEPT REVIEW

This Court should accept review because the decision conflicts with the decisions of this Court and decisions from the court of appeals holding unambiguous statutory language means what it says, that statutes should be interpreted to give meaning to all the language in the statute and should render no language meaningless, and in the event there is more than one reasonable interpretation of statutory language in a criminal statute, the version most favorable to the accused applies. RAP 13.4(b)(1)&(2).

D. ISSUE PRESENTED FOR REVIEW

Is a "threat" for purposes of the crime of felony harassment of a criminal justice participant under RCW 9A.46.020(2)(b)(iii), insufficient to convict if it is apparent to the complaining witness that the person making the threat lacks the present ability to carry out the threat?

E. STATEMENT OF THE CASE

A jury convicted Saykao of felony harassment of a criminal justice participant for allegedly threatening to shoot Kathleen Johnson, a Community Corrections Supervisor for the Washington State Department of Corrections (DOC). CP 2-5, 32, 105-115; RP[1] 358. The prosecution alleged Saykao threatened to shoot Johnson as he was leaving her office. CP 2. The jury heard testimony from Johnson and three of her co-workers, Doug Daviscourt, Daniel McDonagh and Rene Vertz. RP 126-274.

According to Johnson, Saykao came to her office to recover property stored there during his incarceration and got upset about missing cigarettes. RP 144-45, 147-48. Johnson's attempts to calm him failed, so she told Saykao to leave and her colleagues, Daviscourt and McDonagh (both DOC Community Corrections Officer, RP 201, 232), were outside her office to escort Saykao out, and Saykao complied. RP 148-50, 160.

As Saykao walked away, Johnson reminded him of his next report date with community corrections, to which Saykao replied, "I'm not coming back." RP 150, 152-53. When Johnson replied "That's your choice[,]" Saykao turned and stated, "If you don't shoot me, I will shoot

[1] The six-volumes consecutively paginated of verbatim report of proceedings for the dates of January 30, 2015 (pretrial before the

you." RP 153-54, 168. Despite this remark, Johnson directed that Saykao be allowed to leave. RP 155-56. After he left, however, Johnson met with her staff and decided to have Saykao arrested. RP 155.

Regarding the impact of Saykao's parting remark to Johnson, she admitted she did not know him, but assumed he had a violent criminal past. RP 129-30, 145-46. Johnson was "stunned" by his remark, as she had been threatened only once before in her 27-year career. RP 154.

Johnson was not concerned Saykao would immediately act on his threat, particularly because he was being escorted out by her colleagues. RP 163. But after looking up Saykao's record, which included two second degree assault convictions, Johnson was concerned Saykao might act on his threat in the future. RP 163-64. On cross examination, Johnson confirmed, "I wasn't worried about him coming back through the staff. What I was concerned about was that he was heading out a door and I would have to leave my office." RP 175. Cross examination concluded with Johnson confirming that the presence of her colleagues, Daviscourt and McDonagh, alleviated any immediate concerns for Saykao acting on this threat. RP 190. And on redirect Johnson again made clear she had no fear Saykao would immediately acts on his threat. RP 192-93.

Honorable Jim Rogers, judge), February 24 & 25, 2015, and March 2, 3 &

On appeal, Saykao argued the evidence was insufficient to convict because there was no evidence Johnson reasonably feared Saykao had both the current and future ability to carry out his threat. Brief of Appellant (BOA) at 1, 6-19. To make this claim, Saykao argued the decision in State v. Boyle, 183 Wn. App. 1, 335 P.3d 954 (2014), review denied, 182 Wn.2d 1002 (2105), was wrong because it concluded a reasonable belief by the criminal justice participant that person had the current ***or*** future ability to carry out the threat was sufficient to elevate harassment from a gross misdemeanor to a felony, only by violating several well established rules of statutory construction. BOA at 10-17.

The court of appeals rejected Saykao argument and followed Boyle. Appendix. The court reasoned that to reach Saykao interpretation it would need to "delete both of the 'nots' from the critical sentence to arrive at the inverse statement that threatening words constitute harassment only if the person has both the present and future ability to carry out the threat." Appendix at 5. Saykao seeks further review.

10, 2015, are collectively referred to herein as "RP."

F. ARGUMENT

THIS COURT SHOULD GRANT REVIEW BECAUSE THE DECISIONS HERE AND IN BOYLE VIOLATE WELL-SETTLED RULES OF STATUTORY CONSTRUCTION.

The pertinent statute unambiguously provides that a conviction for felony harassment of a criminal justice participant is unlawful if it was apparent to the criminal justice participant that the person making the threat lacked the future and present ability to carry out the threat. And to the extent the pertinent statutory language is susceptible to more than one reasonable interpretation, the rule of lenity requires interpreting it in favor of the accused. Because it was indisputably apparent to Johnson that Saykao did not have the present ability to carry out his threat, Saykao's conviction for felony harassment conviction should be reversed.

The crime of "harassment" is defined by statute:

> (1) A person is guilty of harassment if:
>
> (a) Without lawful authority, the person knowingly threatens:
>
> (i) To cause bodily injury immediately ***or*** in the future to the person threatened or to any other person; or
>
> (ii) To cause physical damage to the property of a person other than the actor; or
>
> (iii) To subject the person threatened or any other person to physical confinement or restraint; or
>
> (iv) Maliciously to do any other act which is intended to substantially harm the person threatened or

> another with respect to his or her physical or mental health or safety; and
>
> (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

RCW 9A.46.020(1)(emphasis added).

Harassment is generally a gross misdemeanor. RCW 9A.46.020(2)(a). Under some circumstances, however, it can constitute a Class C felony. For example, it is a Class C felony if the prosecution proves the accused has a prior conviction for harassing the same person or someone in that person's family, or if committed in violation of a no contact or no harassment order. RCW 9A.46.020(2)(b)(i). Likewise, a threat to kill constitutes felony harassment. RCW 9A.46.020(2)(b)(ii).

In 2011 the legislature amended the language of RCW 9A.46.020(2)(b) to make harassment of a "criminal justice participant"[2] a

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[2] A "criminal justice participant" is defined as:

> any (a) federal, state, or local law enforcement agency employee; (b) federal, state, or local prosecuting attorney or deputy prosecuting attorney; (c) staff member of any adult corrections institution or local adult detention facility; (d) staff member of any juvenile corrections institution or local juvenile detention facility; (e) community corrections officer, probation, or parole officer; (f) member of the indeterminate sentence review board; (g) advocate from a crime victim/witness program; or (h) defense attorney.

felony under additional circumstances. Laws of 2011, ch. 64, §1. A felony harassment is now committed if the accused

> (iii) . . . harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the ***present and future*** ability to carry out the threat.

RCW 9A.46.020(2)(b)(emphasis added).

The only published decision addressing harassment in the context of a "criminal justice participant" is Boyle, supra. One issue in Boyle was whether the to-convict instruction for the charge of harassment of a criminal justice participant should have included as an element "[t]hat it was apparent to [the complaining witness] that the defendant had the present and future ability to carry out the threat[,]" as proposed by defense counsel. 183 Wn. App. at 10. The court of appeals rejected the claim:

> RCW 9A.46.020 prohibits a threat that threatens bodily injury "immediately or in the future." For harassment elevated to a felony because the person threatened is a criminal justice participant, the statute

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RCW 9A.46.020(4).

> specifies, "Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat." Boyle misreads the statute when he argues, "Despite its structure, the sentence clearly states that threatening words only constitute harassment if it is apparent to the criminal justice participant that the defendant has the present and future ability to carry them out." To the contrary, as the trial court stated, "[T]his sentence is phrased as an exception, not as an element," and it plainly states that threatening words are not harassment if it is apparent to the criminal justice participant that (1) the speaker does not have the present ability to carry out the threat and (2) the speaker does not have the future ability to carry out the threat. Conversely, if it was apparent to the criminal justice participant that the speaker had either the present ability or the future ability to carry out the threat, the statements would constitute harassment. RCW 9A.46.020(1), which defines harassment to include threats to cause bodily injury "immediately or in the future," is consistent with this conclusion.
>
> Boyle's suggested reading would produce some absurd results. If it must be apparent to the criminal justice participant that the speaker have both the present and the future ability to carry out the threats, then the statute would not prohibit many electronic threats, as it explicitly does. No threats made to third persons not in the speaker's presence would be actionable, nor would any threats of exclusively future harm. The court's instructions here correctly stated the law and did not diminish the State's burden.

Boyle, 183 Wn. App. at 11-12 (emphasis added). The Boyle Court's reasoning is flawed, violates basic rules of statutory construction, and should not have been followed by the court of appeals in Saykao's case.

The "'fundamental objective in construing a statute is to ascertain and carry out the intent of the legislature.'" State v. Veliz, 176 Wn.2d 849, 854, 298 P.3d 75 (2013) (quoting State v. Morales, 173 Wn.2d 560, 567, 269 P.3d 263 (2012)). "If [statutory] language is unambiguous, [courts] give effect to that language and that language alone because [courts] presume that the legislature says what it means and means what it says." State v. Costich, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). "The 'plain meaning' of a statutory provision is to be discerned from the ordinary meaning of the language at issue as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (citing Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 10-12, 43 P.3d 4 (2002)). Courts also construe statutes so that all of the language is given effect, with no portion rendered meaningless or superfluous. State v. Reis, 183 Wn.2d 197, 351 P.3d 127, 133 (2015).

Unfortunately, the Boyle Court failed to adhere to these rules when it concluded, "if it was apparent to the criminal justice participant that the speaker had either the present ability or the future ability to carry out the threat, the statements would constitute harassment." 183 Wn. App. at 11 (emphasis added). The Boyle court is correct, a qualifying threat of

immediate or future harm constitutes "harassment." But it is only felony harassment if it was committed against a criminal justice participant for whom it was not apparent the speaker did not have the "present and future ability to carry out the threat." RCW 9A.46.020(b) (emphasis added).

Contrary to the Boyle Court's conclusion, the pertinent verbiage from RCW 9A.46.020(2)(b) - "Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat" - is clearly phrased in the conjunctive, i.e., it must be apparent to the criminal justice participant that the speaker has both the future and present ability to carry out the threat.

The word "and" is typically interpreted as the conjunctive, meaning something that connects or serves to join. Ahten v. Barnes, 158 Wn. App. 343, 352-53 n.5, 242 P.3d 35 (2010) ("'And' conveys a conjunctive meaning, otherwise the legislature would have used 'or' if it meant to convey a disjunctive meaning."). Although "'or' is sometimes construed to mean 'and,' and vice versa . . . . the plain language of a statute can only be disregarded, and this exceptional rule of construction can only be resorted to where the act itself furnishes cogent proof of the legislative error." State v. Tiffany, 44 Wash. 602, 604, 87 P. 932 (1906) (emphasis added).

The Tiffany court considered Ballinger Code § 7154, a provision that made it unlawful to willfully or maliciously make any aperture in a structure built to conduct water for agricultural purposes. Tiffany, 44 Wash. at 603. The court rejected arguments that the "or" in between willfully and maliciously should be read as an "and," stating, "We are satisfied that the act under consideration contains no such evidence of error or mistake as would warrant us in disregarding its plain language." Id. at 604. As in Tiffany, there is no evidence in this case of a legislative error or mistake that would permit this court to disregard the plain language of RCW 9A.46.020(2)(b). This court should therefore apply the conjunctive meaning of "and."

Division Three's opinion in Mount Spokane Skiing Corp. v. Spokane County, 86 Wn. App. 165, 936 P.2d 1148 (1997), interpreting "and" to mean "or," is instructive. There, Division Three interpreted former RCW 35.21.730(4) (1985), amended by Laws of 2002, ch. 218, §23 (codified as amended at RCW 35.21.730(5)). Mount Spokane Skiing, 86 Wn. App. at 173-74. Former RCW 35.21.730(4) gave cities, towns, and counties the power to create public corporations, commissions, and authorities to "[a]dminister and execute federal grants or programs; receive and administer private funds, goods, or services for any lawful public purpose; and perform any lawful public purpose or public function." Mount Spokane Skiing

Corporation asserted that "[b]ecause the word 'and' connects the three listed functions of a public corporation, . . . all three functions must be undertaken by the municipal corporation." Mount Spokane Skiing, 86 Wn. App. at 174. Rejecting this argument, the court stated,

> It is clear from a plain reading of the statute that the powers listed in paragraph (4) are the possible functions a public corporation may undertake. Nowhere does it appear from the statutory language that the corporation must undertake each and every function in order to be valid and legal.

Id. (emphasis added).[3] Because former RCW 35.21.730 (4) provided only a list of a public corporation's possible functions, Division Three held that the legislature did not intend to require every function be performed for the public corporation to be acting within its lawful authority.

Mount Spokane Skiing focused on the fact that the plain language of former RCW 35.21.730 (4) compelled a particular reading. 86 Wn. App. at 174. It was clear from the language employed by the legislature that the legislature did not intend to require public corporations to perform each of the three functions listed in former RCW 35.21.730(4), but instead meant that any or all of them could be performed. The Mount Spokane Skiing

[3] This Court agreed with this interpretation when it construed the same statute seven months later. See CLEAN v. City of Spokane, 133 Wn.2d 455, 473-74, 947 P.2d 1169 (1997) ("Although it is true the word 'and' appears in the statute, all three statutory elements need not be present for a [Public Development Authority] to be acting lawfully.").

court disregarded legislative language because the statute "itself furnishe[d] cogent proof of the legislative error." Tiffany, 44 Wash. at 604; see also Bullseye Distrib. LLC v. Wash. State Gambling Comm'n, 127 Wn. App. 231, 239, 110 P.3d 1162 (2005) ("In certain circumstances, the conjunctive 'and' and the disjunctive 'or' may be substituted for each other if it is clear from the plain language of the statute that it is appropriate to do so." (emphasis added)).

More recently, the court of appeals analyzed how to interpret the "and" appearing in the definition of "Domestic violence" under RCW 9.94A.030(20), which provides, "'Domestic violence' has the same meaning as defined in RCW 10.99.020 and 26.50.010." State v. Ross, 188 Wn. App. 768, 769, 355 P.3d 306 (2015) (emphasis added). Adopting the reasoning of Division Two in State v. Kozey, 183 Wn. App. 692, 334 P.3d 1170 (2014), review denied, 182 Wn. 2d 1007, 342 P.3d 327 (2015), and its previous decision in State v. McDonald, 183 Wn. App. 272, 333 P.3d 451 (2014), the court held a prior conviction constitutes "Domestic violence" under RCW 9.94A.030(20) if it met the meaning under either RCW 10.99.020 or RCW 26.50.010, noting that any other interpretation would render portions of the statue superfluous and would defeat the legislative purpose of increased punishment for domestic violence perpetrators. 108 Wn. App. at 771-73.

Here, there is no proof of error --- let alone cogent proof -- in RCW 9A.46.020's language that shows the legislature meant that 'Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present or future ability to carry out the threat.' To the contrary, the legislature's use of "and" to separate references to "present" and "future" should be given a plain, ordinary, and unambiguous reading: the language chosen shows the legislature intended that to constitute felony harassment under RCW 9A.46.020(2)(b)(iii) or (iv), the criminal justice participant must reasonably fear the speaker's both "present and future ability to carry out the threat[,]" and if that combined fear does not exists then it is not felony harassment of a criminal justice participant. RCW 9A.46.020(2)(b) (emphasis added).

Moreover, the statute at issue here is readily distinguished from the statute at issue in Ross. Whereas a conjunctive interpretation of "and" in the definition of "Domestic violence" under RCW 9.94A.030(20) would have rendered portion of the statute superfluous and defeat legislative intent, no such problems arise when the "and" in the last sentence of RCW 9A.46.020(2)(b) is given its normal conjunctive meaning. Ross, 188 Wn. App. at 771-73.

Despite the Boyle Court's contrary interpretation, giving "and" its normal conjunctive meaning does not "produce some absurd results." Boyle, 183 Wn. App. at 12. The Boyle Court erroneously assumed that if interpreted in the conjunctive, "the statute would not prohibit many electronic threats," and thwart prosecution of "threats made to third persons not in the speaker's presence" and "any threats of exclusively future harm." Id. This is simply wrong.

What the Boyle Court failed to recognize is that the statute sets forth two forms of harassment; gross misdemeanor harassment under RCW 9A.46.020(1), and felony harassment under RCW 9A.46.020(2)(b). Thus, even if prosecution for felony harassment under subsection (2)(b) fails because it is apparent to the criminal justice participant that the person making the threat does "not have the present and future ability to carry out the threat," prosecution for a gross misdemeanor under subsection (1) is still possible. This is because threats of harm that produce reasonable fear they will be carried out in the future are always actionable under subsection (1). No present ability is required.

Moreover, under the Boyle Court's interpretation, the very language at issue - the last sentence of RCW 9A.46.020(2)(b) - is rendered superfluous. This is because under subsection (1), the general crime of

harassment is not limited to threats of either present or future harm. It allows for both. Thus, in the context of all gross misdemeanor harassments, and all felony harassments except those involving criminal justice participants, a threat of immediate or future harm will suffice. If, however, the last sentence of subsection (2)(b) means what the Boyle Court said - that it must only be apparent to the criminal justice participant that the speaker had either the present or future ability to carry out the threat - then the sentence itself is superfluous because that concept is already conveyed in subsection (1).

The crux of the decision here and in Boyle, seems to be that because the relevant language[4] is written in the negative, "as an exception, not as an element." Appendix at 4; see Boyle, 183 Wn. App. at 11 ("'This sentence is phrased as an exception, not as an element,'" (quoting the trial court)). No authority for this proposition is cited by the Boyle decision. This is not surprising; there is none.

In fact, language negatively phrased in criminal statutes has previously been interpreted to impose an affirmative burden of proof on the State. For example, former RCW 10.99.040(4) provided, "Any assault

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[4] "Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat." RCW 9A.46.020(2)(b)

that is a violation of an order issued under this section and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony punishable under chapter 9A.20 RCW, ..." Emphasis added.[5] Despite this language, the court of appeals held it would be absurd if a first or second degree assault could not be the predicate offense to elevate violation of a court order to a felony because otherwise such a violation would result in only a misdemeanor conviction instead of a felony conviction even though it was violated by way of a more egregious assault. State v. Azpitarte, 95 Wn. App. 721, 728, 976 P.2d 1256 (1999), reversed, 140 Wn. 2d 138, 995 P.2d 31 (2000). This Court recognized the flaw in this reasoning:

> By finding that any assault can elevate a violation of a no-contact order to a felony, the Court of Appeals reads out of the statute the requirement that the assault "not amount to assault in the first or second degree." We will not delete language from a clear statute even if the Legislature intended something else but failed to express it adequately. No part of a statute should be deemed inoperative unless the result of obvious mistake. Cox v. Helenius, 103 Wn.2d 383, 387–88, 693 P.2d 683 (1985). There is no obvious mistake. All assault convictions connected to violation of a no-contact order will result in a felony, either through the assault itself or through the application of subsection (b). The felony verdict here must

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[5] In 2000, the Legislature deleted this language. Laws of 2000, chapter 119, § 18.

> be set aside because the jury could have relied on Azpitarte's second degree assault in finding him guilty of felony violation of a court order.

State v. Azpitarte, 140 Wn.2d 138, 142, 995 P.2d 31 (2000).

Much like the court of appeals' erroneous concern in Azpitarte, the Boyle court's concern that interpreting RCW 9A.46.020(2)(b) as Boyle suggested would result in some threats being non-criminal is simply incorrect. To the contrary, threats of present or future harms are at least gross misdemeanors under RCW 9A.46.020, and therefore still criminal, regardless of who they are committed against.

As it did in Azpitarte, this Court should recognize that Boyle effectively and incorrectly eliminates the very language it sought to interpret. If the State need only prove either present or future ability to carry out the threat, then the sentence, "Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat" - is completely superfluous. This is because the statute already makes it criminal to threaten bodily harm to someone, either "immediately or in the future." RCW 9A.46.020(1).[6]

[6] As set forth in the Reply Brief of Appellant (RBA), legislative history lends support to Saykao's interpretation of the relevant language. RBA at 4-7.

Under the plain meaning of the last sentence of RCW 9A.46.020(2)(b), to convict a person of felony harassment of a criminal justice participant, it must not have been apparent to the criminal justice participant that the speaker did not have the present and future ability to carry out the threat. Any other interpretation violates several well-established rules of statutory construction.

To the extent there is any ambiguity in RCW 9A.46.020, it should be interpreted in Saykao's favor under the rule of lenity. "If a statute is ambiguous, the rule of lenity requires [courts] to interpret the statute in favor of the defendant absent legislative intent to the contrary." State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). When a choice must be made between two readings of a statute, "'it is appropriate, before [courts] choose the harsher alternative, to require that [the legislature] should have spoken in language that is clear and definite.'" State v. Tvedt, 153 Wn.2d 705, 711, 107 P.3d 728 (2005) (quoting United States v. Universal C.I.T. Credit Corp., 344 U.S. 217, 221-22, 73 S. Ct. 227, 97 L. Ed. 260 (1952)).

Thus, even assuming for the sake of argument that RCW 9A.46.020 is susceptible to more than one reasonable interpretation and is therefore ambiguous, the rule of lenity requires applying the interpretation that favors Saykao. The rule of lenity mandates interpreting RCW 9A.46.020(2)(b) in a

manner requiring reversal of a conviction for felony harassment of a criminal justice participant if it was apparent to the criminal justice participant that the person making the threat did not have both the present and future ability to carry it out.

The court of appeals decision here and in Boyle violate decisions from this Court and the courts of appeals regarding well-settled rules of statutory construction, including giving unambiguous language its plain meaning, interpreting statutes as a whole, giving all language in the statute meaning, and, when applicable, applying the rule of lenity in favor of the accused when there is more than one reasonable interpretation of the statute. Review is therefore appropriate under RAP 13.4(b)(3) & (4).

G. CONCLUSION

For the reasons stated herein, this Court should grant review.

DATED this 6th day of July 2016

Respectfully submitted,

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APPENDIX

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

STATE OF WASHINGTON, Respondent, v. BEE THOW SAYKAO, Appellant.	)	No. 73250-1-I UNPUBLISHED OPINION FILED: June 6, 2016

VERELLEN, C.J. — Bee Saykao appeals his conviction for felony harassment of a criminal justice participant. Challenging this court's decision in State v. Boyle,[1] he argues the State was required but failed to prove that criminal justice participant Kathleen Johnson reasonably believed Saykao had the present *and* future ability to carry out his threat. Because we agree with this court's decision in Boyle, we reject Saykao's argument.

Saykao also argues that there was insufficient evidence but, viewed in the light most favorable to the State, the record supports Saykao's ability to carry out his threat in the future. Therefore, we affirm.

FACTS

On July 29, 2014, Bee Saykao went to community corrections supervisor Kathleen Johnson's office to retrieve his backpack after being released from custody.

[1] 183 Wn. App. 1, 335 P.3d 954 (2014), review denied, 184 Wn.2d 1002 (2015).

Saykao became upset after discovering that his cigarettes were missing. After Johnson's attempts to calm Saykao failed, she asked him to leave. Community corrections officers Doug Daviscourt and Daniel McDonagh escorted Saykao towards the exit of the building.

As Saykao walked away, Johnson asked him whether he knew his next report date. Saykao replied, "I'm not coming back."[2] When Johnson told him that was his choice, Saykao turned back towards her and stated, "If you don't shoot me, I will shoot you."[3]

Johnson went into "a state of shock" after hearing Saykao's threat.[4] During her 29-year career with the Department of Corrections, she had only been threatened once, 27 years ago in a phone call. Johnson was not worried that Saykao would carry out his threat instantaneously because he was being escorted out by two community corrections officers, but she was concerned that once she left the building, she would be "findable."[5]

The State charged Saykao with felony harassment of a criminal justice participant under RCW 9A.46.020(2)(b). The jury convicted Saykao as charged.

Saykao appeals.

ANALYSIS

Saykao challenges this court's reading of RCW 9A.46.020(2)(b) in Boyle, arguing that "a threat is insufficient to convict for felony harassment of a criminal justice

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[2] Report of Proceedings (RP) (Mar. 2, 2015) at 153.

[3] Id.

[4] Id. at 154.

[5] Id. at 175.

participant if it is apparent to the criminal justice participant that the person making the threat does not have both the present and future ability to carry out the threat."[6] His argument fails.

We review questions of statutory interpretation de novo.[7] Our primary objective in interpreting a statute is to ascertain and carry out the legislature's intent.[8] "To determine legislative intent, we first look to the plain language of the statute considering the text of the provision in question, the context of the statute, and the statutory scheme as a whole.'"[9] "If the statute is unambiguous after a review of the plain meaning," our inquiry ends.[10] This court presumes "the legislature does not intend absurd results."[11]

Under RCW 9A.46.020(1), a defendant is guilty of harassment if, without lawful authority, he or she "knowingly threatens" to "cause bodily injury immediately or in the future to the person threatened or to any other person" and "by words or conduct places the person threatened in reasonable fear that the threat will be carried out." The offense is elevated to a felony under RCW 9A.46.020(2)(b) if

> (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. *Threatening words do not constitute harassment if it is apparent to the*

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[6] Appellant's Br. at 6.

[7] State v. Evans, 177 Wn.2d 186, 191, 298 P.3d 724 (2013).

[8] State v. Veliz, 176 Wn.2d 849, 854, 298 P.3d 75 (2013).

[9] State v. Reeves, 184 Wn. App. 154, 158, 336 P.3d 105 (2014) (quoting State v. Evans, 177 Wn.2d 186, 192, 298 P.3d 724 (2013)).

[10] State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010).

[11] State v. Ervin, 169 Wn.2d 815, 823, 293 P.3d 354 (2010).

> *criminal justice participant that the person does not have the present and future ability to carry out the threat.*[12]

In Boyle, this court addressed an argument nearly identical to Saykao's: that the last sentence in RCW 9A.46.020(2)(b) "clearly states that threatening words only constitute harassment if it is apparent to the criminal justice participant that the defendant has the present and future ability to carry them out."[13] In Boyle, the defendant was handcuffed when he told a police officer that someone would kill him and his family.[14] Boyle argued that the jury should have been instructed that the State had to prove both a present and future ability to carry out the threat.[15] The Boyle court determined that Boyle misread the statute: "To the contrary, as the trial court stated, '[T]his sentence is phrased as an exception, not as an element.'"[16] Therefore, the court concluded that statements to a criminal justice participant constitute felony harassment if it is apparent to the participant that the speaker had either the present or future ability to carry out the threat.[17] The court noted that this interpretation was consistent with the definition of "harassment" under RCW 9A.46.020(1), which includes threats to cause bodily injury "immediately or in the future."[18]

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[12] RCW 9A.46.020(2)(b) (emphasis added).

[13] Boyle, 183 Wn. App. at 11.

[14] Id. at 5.

[15] Id. at 11.

[16] Id. (alteration in original).

[17] Id.

[18] Id.

Saykao challenges this court's decision in Boyle.[19] He argues that because the language at issue in RCW 9A.46.020(2)(b) is "negatively phrased," it should be "interpreted to impose an affirmative burden of proof on the State."[20] We conclude the legislature did not intend that we delete both of the "nots" from the critical sentence to arrive at the inverse statement that threatening words constitute harassment only if the person has both the present and future ability to carry out the threat. We decline to infer the inverse of a double negative statement in a statute.[21]

Accordingly, we agree with this court's interpretation of RCW 9A.46.020(2)(b) in Boyle. Saykao's argument fails.

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[19] The parties briefed the incorrect and harmful standard for overruling prior decisions. We note that, consistent with Grisby v. Herzog, the standard for determining whether to follow a prior decision in the Court of Appeals does not require a showing that the prior decision is both incorrect and harmful. 190 Wn. App. 786, 806-10, n.6, 362 P.3d 763 (2015) ("it is not obligatory for this court to use, or for parties to brief in this court, a standard developed by the highest state court for its own use in determining whether to overrule one of its own decisions").

[20] Reply Br. at 2.

[21] See Washington Fed. v. Gentry, 179 Wn. App. 470, 483-85, 319 P.3d 823 (2014) review granted sub nom. Washington Fed. v. Harvey, 180 Wn.2d 1021, 328 P.3d 902 (2014) and aff'd sub nom. Washington Fed. v. Harvey, 182 Wn.2d 335, 340 P.3d 846 (2015) ("Moreover, the Gentrys' interpretation of RCW 61.24.100(10) is the inverse of what the plain language says. We also decline to add the inverse to the statute when the Legislature did not expressly do so. . . . [Such a reading] is grounded in a logical fallacy. 'The proposition that "A implies B" is not the equivalent of "non-A implies non-B," and neither proposition follows logically from the other.'"); see also Roe v. TeleTech Customer Care Mgmt. (Colorado) LLC, 171 Wn.2d 736, 748 n.4, 257 P.3d 586 (2011) (explaining "it is logically invalid to adopt as a conclusion the contrapositive (employers are required to accommodate off-site use)") (citing Ruggero J. Aldisert, *Logic for Lawyers: A Guide to Clear Legal Thinking* 156-58 (3d ed. 1997)); Doug Karpa, Loose Canons: The Supreme Court Guns for the Endangered Species Act in National Association of Home Builders v. Defenders of Wildlife, 35 Ecology L.Q. 291, 322 & n.194 (2008) ("Given a proposition, 'if A then B,' only the contrapositive, 'if not B then not A,' is a valid inference. Here the court attempts to infer the inverse, 'if not A then not B' from section 402.03—an invalid inference.").

Saykao also argues that there was insufficient evidence to convict him because he "lacked the present ability to carry out the threat."[22] Because the State is not required to prove that the speaker had the ability to carry out the threat both immediately and in the future, sufficient evidence supports the conviction.

A challenge to the sufficiency of the evidence admits the truth of the State's evidence, and all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.[23]

Johnson was afraid of potentially being assaulted on her way to and from work or at home. Although she was not worried that Saykao would carry out his threat instantaneously, she was concerned that once she left the building she would be "findable."[24]

Therefore, sufficient evidence supports Saykao's conviction for felony harassment of a criminal justice participant.

Affirmed.

WE CONCUR:

COX, J.

Becker, J.

[22] Appellant's Br. at 18.

[23] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

[24] RP (Mar. 2, 2015) at 163, 175.

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SKAGIT COUNTY

STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	CAUSE No. 13-101033-9
	)	
vs.	)	DESIGNATION OF
	)	CLERK'S PAPERS --
IRA LAMAR BLACKSTOCK,	)	**SUPPLEMENTAL**
	)	
Defendant.	)	CT. APP. NO. 74156-0-I
	)	

TO: Superior Court Clerk

Please prepare and transmit to the Court of Appeals, Division One, the following.

Sub no.	Document	Date
97	State's Proposed Instructions to the Jury	9/10/15
126	Declaration of Indigency	10/19/15
140	Agreed Order of Restitution	4/27/16

DATED this 6th day of July, 2016.

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No. 74156-0-I

Certificate of Service

On July 6, 2016, e-served and mailed the supplemental designation of clerk's papers directed to:

Skagit County Prosecuting Atty
skagitappeals@co.skagit.wa.us

Skagit County Superior Court Clerk
205 W Kincaid St., Ste. 103
Mt Vernon WA 98273

Re: Ira Blackstock
Cause No. 74156-0-I, in the Court of Appeals, Division I, for the state of Washington.

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

John Sloane
Office Manager
Nielsen, Broman & Koch
Done in Seattle, Washington

07-06-2016
Date