No. 74018-1

COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE

In re the Parenting and Support of:

DANIEL RAINBOW;

NATHAN BRASFIELD,

Appellant,

and

LAUREN RAINBOW,

Respondent.

ON APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Suzanne R. Parisien

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Lauren's brief continues the tactic proven successful below. It is mainly a concerted attack upon Nathan's character, untethered to the record or issues on appeal. Lauren again seeks to portray Nathan as someone from whom she and Danny need protection regardless of the actual evidence or law. No such protection is needed or legally justifiable.

The trial court invoked a statute written to protect children from the effects of genuine domestic violence and other abuse and misapplied it in the absence of evidence of any such abuse. This Court's corrective intervention is needed to remove permanent restrictions which, if allowed to remain, will deprive Nathan and Danny of their rightful opportunity for a meaningful father-son relationship. Remand to a different judge is essential to restore apparent and actual fairness, given the trial court's uncritical acceptance of Lauren's portrayal of facts (largely built upon inadmissible evidence) and its willingness to distort the law for her.

In her brief, Lauren repeats and extends the mischaracterizations in the findings without pointing to substantial evidence to support them. What is more, she amplifies her already exaggerated and false allegations by contradicting her own testimony in an attempt to justify the trial court's rulings. Her statement of the case rests on hearsay even more so than the challenged findings she cites, as well as exhibits that were not admitted for

the purpose for which she cites them or were not admitted at all. Her evidence is so thin that she resorts to claiming she witnessed events despite having admitted otherwise at trial. For these reasons, much of Lauren's brief should be stricken and disregarded.

Lauren fails to point to substantial evidence of conduct establishing "a history of acts of domestic violence." Rather, she focuses doggedly on Nathan's nonconfrontational repossession of a jointly-owned car[1] after he warned her to "be prepared to give the car back." But neither this nor her other allegations met the statutory definition of domestic violence. This is not a case where certain testimony, if believed, supports the findings. A court may not impose parenting restrictions based merely on conduct, traits, or attitudes it disapproves, nor may it expand the statutes to enable such restrictions. Yet the trial court did precisely that, expressly embracing an unconstitutionally vague concept of domestic violence appearing nowhere in the defining statutes.

Nor does Lauren point to substantial evidence establishing any "abusive use of conflict." The trial court found no specific instances of such abuse, and Lauren's unproven allegations, even if accepted as true,

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[1] The trial court found that the parties "jointly owned" the car and that its use was subject to their separation agreement. CP 1033 (FOF 20). Unchallenged, this is a verity.

are not shown by any evidence whatsoever to portend *any* potential harm to Danny, let alone the restriction statute's "danger of serious damage."

Ultimately, Lauren fails to point to substantial evidence supporting *any* of the challenged findings, including those implying that Nathan created an unsafe home environment for his son (which become more significant once the parenting restrictions are vacated), and those disparaging Danny's paternal grandparents, supposedly rendering them "unsuitable chaperones" for their grandson. This Court should reverse the trial court's orders and remand to a different judge for entry of new orders.

II. REPLY ARGUMENT

A. The trial court's findings do not support its imposition of parenting restrictions under RCW 26.09.191, nor are the findings supported by substantial evidence.

The trial court's findings fail to support its conclusions in that it found no conduct that could justify imposition of parenting restrictions under RCW 26.09.191.[2] This is not a case of "missing" findings that may be supplied by the record or an oral decision (nonexistent here). *See Brief of Respondent* (BR) at 37. More fundamentally, as explained in Nathan's opening brief, the record contains no evidence to establish a history of acts

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[2] Nathan was not required to object to the findings by way of a motion for reconsideration or otherwise. RAP 2.5(a)(2) (providing that a party may raise for the first time on appeal "failure to establish facts upon which relief can be granted"). Nathan consistently maintained, before and during trial, that none of Lauren's allegations met the statutory criteria. *See, e.g.*, CP 183-98, 640.

of domestic violence, an abusive use of conflict, or any other basis to impose restrictions under section .191. Contrary to Lauren's inapposite urging, no presumption can save the baseless findings or the restrictions resting on them, which therefore must be vacated.

1. Lauren fails to point to substantial evidence of conduct to establish "a history of acts of domestic violence" under section .191(2)(b)(ii).

Only one prong of the definition of "domestic violence" is pertinent: "physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members[.]" RCW 26.50.010(3)(a). Stalking was never previously raised, nor is there evidence of stalking. *See* BR 30. And as it remains undisputed that Nathan never caused physical harm, bodily injury, or assault to a family member, the sole disputed issue is whether he "inflict[ed]...fear" of "imminent" physical harm, bodily injury, or assault.

The trial court did not find that Nathan inflicted such fear (nor was there evidence to support a finding that he did). The trial court instead misconceived the statutory definition of domestic violence and applied its own, broader concept, which explicitly included, among other things, "coercion and control." RP (4/24/2016) 9; *see* Appx. A. The court found that "Nate's aggressive behavior, escalating criminal conduct, open fascination with firearms, direct and indirect threats to Lauren and

unrepentant animosity toward Lauren constitute domestic violence as a matter of law." CP 1026-27 (FOF 6). None of the conduct or states of mind in these broad and vague categories fits the statutory definition. Such notions necessarily are excluded because (1) the statute is subject to strict scrutiny as it authorizes limitations upon the fundamental liberty interests of parents,[3] (2) specific inclusions in a statute operate to exclude all omissions,[4] and (3) the statute would otherwise be too vague to withstand strict scrutiny.[5]

While a trial court need not wait for actual harm to occur before imposing restrictions, neither may it expand the statutory preconditions for such imposition.[6] As will be shown, even as Lauren now contradicts her own testimony in an attempt to amplify the events she characterized as domestic violence at trial, her allegations still fall short.

(a) Repossessing the car was not domestic violence.

Lauren's lead example of domestic violence involves an alleged threat followed by Nathan's "stealing" a car they jointly owned, but which Lauren had been using per their separation agreement. CP 1033 (FOF 20).

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[3] *See Parentage of C.A.M.A.*, 154 Wn.2d 52, 57, 109 P.3d 405 (2005) (applying strict scrutiny to statute that infringed on parent's right to raise his children without state interference).

[4] *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969).

[5] *See State v. Williams*, 144 Wn.2d 197, 204-06, 26 P.3d 890 (2001).

[6] Tellingly, in her argument on .191 restrictions, Lauren cites not one case involving domestic violence allegations or restrictions imposed under section .191(2)(b)(ii).

Lauren's versions of this alleged threat of August 14, 2012, have varied considerably. In her DVPO petition, she attested that Nathan had warned her to "drop the child support" and "if you don't drop this then just see if you come out of this unharmed." CP 1116. At trial, she initially purported to quote Nathan as stating, "[D]rop the child support or see what's coming to you." RP 44. But after Nathan testified he told Lauren she would need to return the car or drop her request for child support, RP 449, Lauren then testified similarly, in Nathan's rebuttal case, that the threat was Nathan saying, "[B]e prepared to give the car back." RP 586.

On appeal, Lauren reverts to alleging that Nathan threatened, shortly before the car repossession, "[D]rop the child support or see what's coming to you." BR 2, quoting RP 44. She ignores evidence that she told police separately of this threat, allegedly voiced on September 26, 2012, six weeks after the car was gone.[7] Exh. 33. In any event, Lauren admits that the act threatened on August 14, 2012, was to repossess the car. BR 11 (quoting RP 137: "He threatened me, he carried out that threat.").

Notwithstanding her testimony that she felt her physical safety had been threatened, *see* RP 45, 587, Nathan's warning to "be prepared to give the car back," RP 586, followed by the repossession, cannot reasonably be

[7] There is no evidence that police admonished Nathan to "stay away" from Lauren or that he even had any contact with police in regards to Lauren until after the latter incident. BR 2; *see* Exh. 33 at 4.

construed as inflicting fear of physical (let alone imminent) harm. Lauren sustained no physical harm, and nothing suggests Nathan intended to inflict fear of such harm, particularly as his warning was specific to property (the car) and there was no prior physical abuse.[8] Lauren does not dispute that fear can be "inflict[ed]" only intentionally, not inadvertently, under RCW 26.50.010(3)(a). *See* OB 23 (citing cases). Imposing restrictions based solely on subjective perception[9] or inadvertent frights would be contrary to a child's best interest and inconsistent with the intent of the restrictions statute as stated in RCW 26.09.002.[10]

Even overlooking the oral separation agreement as context, Nathan's actions were not domestic violence because there was no threat of physical harm (imminent or otherwise). The repossession occurred while Lauren was asleep. RP 171. Although the trial court evidently found it somehow relevant that someone unknown to Lauren effected the repossession, CP 1033-34 (FOF 20), how this relates to fear of imminent harm remains a mystery, especially since 18 months passed before she discovered that the car was repossessed rather than stolen at random. *See*

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[8] No physical abuse has been alleged or attested. In deposition, Lauren confirmed as much: "[H]e has never physically harmed me[.]" CP 653; *see also* CP 906 (Nathan).

[9] Even if subjective perception were the test, no reasonable person should have felt fear of imminent physical harm in any of the incidents alleged by Lauren.

[10] A court interpreting a statute "is to ascertain and carry out the Legislature's intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

Exh. 22 at 0075-76. While Lauren tries to make the unidentified "strange man" ominous, BR 24, 28, 31, no evidence suggests he was prone to violence, and Lauren fails to meet Nathan's argument regarding his irrelevance to any fear of imminent physical harm. *See* OB 25.

Furthermore, the separation agreement is not "irrelevant." BR 38. The issue presently is not whether the agreement was ultimately binding or enforceable; presumably, the parties intended to be bound by it. The trial court found that "the parties informally agreed that the mother would not seek child support in exchange for her continued use of the car they jointly owned." CP 1033 (FOF 20). This agreement's existence thus (1) explains why Nathan would tell Lauren to "be prepared to give the car back" when, just a few months after the parties separated,[11] she sought child support contrary to the agreement, (2) contravenes any intention by Nathan, in repossessing the car, to threaten Lauren for the sake of inflicting fear of imminent physical harm, and (3) renders unreasonable any interpretation of Nathan's actions as a threat of physical harm.[12]

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[11] The parties separated in June 2011, not June 2010 as stated by Lauren. *See* RP 441. Although Lauren testified that she "believe[d]" that they separated in June 2010, RP 39, she testified at her deposition that Danny was "almost two." CP 668. Since Danny was born in September 2009, CP 1139, he was almost two in the summer of 2011.

[12] Negating her claim and testimony that she had "no way to get herself or Danny around" after the car was taken, BR 3, citing RP 46-47, Lauren testified that she purchased a replacement car the next day. RP 455.

Nor can the subsequent alleged threat to "drop the child support or see what's coming to you" sensibly be characterized as domestic violence. No threat of physical harm to come was implicit in this vague statement, particularly where, again, there was no prior abuse.[13] *See* RP 44, 458. But even assuming the worst—*i.e.*, that Nathan intentionally inflicted fear of imminent physical harm by refusing to clarify when Lauren asked, "Are you threatening me"—this could only qualify as an "isolated, de minimus incident," not countable toward "a history of acts of domestic violence" under section .191(2)(b)(ii) and not alone establishing such a history. *See Marriage of C.M.C.*, 87 Wn. App. 84, 88, 940 P.2d 669 (1997), *aff'd sub nom. Caven v. Caven*, 136 Wn.2d 800, 966 P.2d 1247 (1998). *See* OB 20.

Without responding to these points, Lauren attempts to amplify her allegations by claiming vaguely that Nathan became "more aggressive" and "increasingly threatening." BR 2. She also pluralizes her allegations, claiming that Nathan has "carried out his *threats*" and had a "history of sending *people* to her house to remove property." BR 5, 31 (emphasis added).[14] But in fact, Lauren has only ever described one instance of a

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[13] One could reasonably infer that "what's coming" meant legal action. Indeed, two days later, Nathan sought a protection order against Lauren. CP 1249-61.

[14] Lauren attested to a similar pluralization in her DVPO renewal petition. CP 557 ("Nate has a history of sending people....").

"threat" carried out by Nathan (repossessing the car).[15] And even if one considers this act insensitive or uncharitable, as a matter of law, it was not domestic violence under the statutory definition's plain language.

(b) Other alleged events were not domestic violence.

Lauren repeats her various other allegations, all unproven or contradicted by her own testimony and, regardless, not domestic violence. She lists examples of supposed physical "violence"—"road rage incidents toward other drivers, fights with friends, attempting to hit a neighbor with a car, and the destruction of property," BR 31—all addressed in the opening brief at 27-29. She has no response to the points made there, establishing that these alleged events never occurred, were not witnessed by Lauren, or had nothing to do with her, and thus could not qualify as domestic violence. *See* RCW 26.50.010(3)(a).

Lauren did not testify to acts of "road rage" at trial. *See* BR 3. She testified only that Nathan drove "aggressively" in that he sped up because someone had cut him off or drove too slowly. RP 47, 143-44. Similarly, she never testified that Nathan's supposed "fascination" with firearms was "terrifying" or even concerning. BR 3-4; *see* RP 48. There was only ever one "fight" with a friend, in which it is undisputed that Nathan, in self-

[15] Lauren repeatedly exaggerates by converting the singular to plural or the few to many. Other examples include one hole in a wall becoming "holes in walls" and two driving incidents becoming "numerous" or "countless." CP 1116; RP 47-48, 142.

defense, subdued Dave Bemel without hurting him. *See Appellant's Opening Brief* (OB) 27-28. As for attempting to hit a neighbor with a car (which goes beyond the record), the neighbor, forgotten trial witness Josh Boyer, testified there was no such behavior. *See* OB 29. Regardless, as none of these events had anything to do with Lauren, they cannot qualify as domestic violence.

As for "destruction of property," Lauren testified repeatedly before trial that she had "*seen* [Nathan] throw a large television…when he was angry…and it *scared* me" and "*witnessed* [him] punch holes in walls." CP 653, 1116 (emphasis added). She had to recant her purported eyewitness testimony at her second deposition. CP 942, 951. Then, in her direct trial testimony, she again implied that she had witnessed such events, RP 47, before having to admit otherwise on cross-examination and also that she did not know whether Nathan had been angry at the time or, if so, with whom. RP 139-42. *See* Appx. B. With this vacillation, Lauren revealed a propensity to engage in fabulation[16] not just about witnessing events, but about being "scared."

While Lauren still claims it was domestic violence to throw a television and punch a (single) wall, BR 12, 31, absent a finding by the trial court, this Court must presume that these contested allegations (*see* RP 445) were not proven. *Smith v. King*, 106 Wn.2d 443, 451, 722 P.2d

[16] As to whether it has been confabulation, fabrication, or both, Nathan cannot say.

796 (1986). Regardless, like the others, these alleged events did not involve Lauren and so cannot properly be construed as domestic violence.

Lauren references two statements the trial court evidently found to have been "indirect" threats. CP 1026-27 (FOF 6), 1034 (FOF 21).

First, Lauren's assertion that Nathan threatened her "indirectly to the public," BR 31, rests only upon posts in a *private* Facebook forum, viewable only by Nathan's selected family and friends, and to which Lauren admitted she was not privy. RP 144-45, 498; *see* Appx. C. Lauren claims to see a threat in Nathan's statement, in reference to repossessing the car, "Considering what she tried to do, she's lucky that's all I did." Exh. 3 at 0019. This statement, made six months after taking the car, cannot reasonably be characterized as a threat of imminent physical harm, even had it been stated to Lauren (who got it a year later); it is a reference to past events, not a threat of future (let alone imminent) harm.[17]

For the second "indirect" threat, Lauren misstates the record in asserting that Nathan "made...known" to her that he had considered physically harming her. BR 31. Lauren refers to an e-mail in which Nathan wrote to his mother (shortly after his arrest, upon learning that Lauren had just obtained a DVPO) expressing a desire that Lauren be

[17] Again, the only reasonable inference is that Nathan contemplated legal action, not physical harm to Lauren, since what Nathan "did" was repossess the car and seek a protective order; he never caused or threatened physical harm. *See* RP 458; CP 1249-61.

assured that he would *not* harm her. Exh. 12 ("If you decide to talk to Lauren, please tell her that I will not harm her."); *see* RP 491-92.

Regardless of their subsequent discovery by Lauren, Nathan's thoughts, disclosed to third parties in a private forum to which Lauren was not privy, and to his mother in the context of wanting Lauren assured of her safety, cannot properly be considered threats of imminent physical harm. That the trial court would so construe these communications shows the extent to which it disregarded or stretched the statutory definition.

Lauren alleges certain characteristics and feelings she asserts "form the basis" for the domestic violence finding: a criminal record, generalized "anger,"[18] "hatred," and a "propensity for associating with other felons," BR 31-32—but these cannot constitute domestic violence. To the extent the GAL identified "[a]spects of Mr. Brasfield's past that were cause for concern," BR 12, they are derived from hearsay and were likewise not domestic violence. There is no evidence that Nathan intimidated Lauren or other family members or used threats as "control tactics," BR 12; regardless, such conduct is not domestic violence absent infliction of fear of imminent physical harm, which was not established.

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[18] The notion that Nathan has uncontrolled anger that "could not have been any more apparent" during the trial, CP 1034 (FOF 22), is belied by the audio recording of his testimony, identified for this Court's convenience in Appendix E. (Discs containing the audio recording of the trial, authenticated at CP 1306-09, were submitted with this brief.) In any event, the finding is relevant only to judicial bias, as Nathan plainly acknowledges anger about Lauren's actions. RP 473, 486.

Nathan does not "ignore" the June 2014 agreed DVPO, BR 32; rather, Lauren ignores that a DVPO obtained subject to relaxed evidence rules can have no bearing on whether one has a history of acts of domestic violence under RCW 26.09.191(2)(b)(ii). *See* OB 43 & n.25; Appx. D. Facing a hearing at which hearsay would be admissible, *see* ER 1101(c)(4), it was entirely reasonable for Nathan to agree to a temporary DVPO after his arrest in exchange for being assured telephone contact with Danny. Nathan retained the right to dispute the existence of "a history of acts of domestic violence" under section .191(2)(b)(ii) because (1) a DVPO cannot determine a parenting plan,[19] (2) the incident underlying a DVPO may be only an "isolated, de minimus" one, not justifying restrictions under section .191(2)(b)(ii),[20] and (3) a single act is not "a history of acts of domestic violence" per section .191(2)(b)(ii).

This Court should vacate (1) the restrictions imposed under section .191(2)(b)(ii) and (2) the award of fees to Lauren upon denial of Nathan's meritorious motion for partial summary judgment to establish the absence of a history of acts of domestic violence. *See* OB 30; CP 546-47.

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[19] *Marriage of Stewart*, 133 Wn. App. 545, 554, 137 P.3d 25 (2006).
[20] *C.M.C.*, 87 Wn. App. at 88.

2. **Lauren fails to point to substantial evidence of conduct to establish "an abusive use of conflict which creates the danger of serious damage to the child's psychological development" under section .191(3)(e).**

Lauren alleges two instances of abusive use of conflict. First, she points to hearsay, *i.e.*, that Nathan "has told Danny that he 'hates' [her]." BR 19-20 (citing RP 149). She offers no explanation or evidence of how such an isolated statement, even assuming it had been proven with competent, non-hearsay evidence, could cause any (let alone serious) damage to Danny's psychological development per section .191(3)(e). *See* OB 32. Absent such an established nexus, a restriction may not stand. *Marriage of Watson*, 132 Wn. App. 222, 233-34, 130 P.3d 915 (1996).

Second, Lauren asserts that Nathan testified in deposition that he plans to "share all of the details of this court process" with Danny "when he's older." BR 20; RP 153. But searching the deposition transcript (to see *how much* older) will be in vain, as Nathan attested nothing like this.[21] *See* Exh. 26. The actual source appears to be Facebook posts in which Nathan stated he would *never* mention how he felt about Lauren to Danny, but that Danny could review the court record and draw his own conclusions "*when [he] turns 18*." Exh. 3 at 0013-14 (posts 2/26 at 4:27 p.m. & 7:52 p.m., emphasis added). These posts undermine, rather than

[21] Lauren thought she might have seen the alleged statement in the GAL report, but it does not appear there, either. RP 153; Exh. 41.

support, the finding of abusive use of conflict. The parenting restrictions imposed cannot be justified under section .191(3)(e), nor under the "catchall" section .191(3)(g), as Lauren silently concedes. *See* OB 33.

B. Lauren fails to point to substantial, competent evidence to support the findings underlying the denial of visitation during Nathan's incarceration.

In response to Nathan's arguments regarding the lack of competent substantial evidence to support the findings underlying the denial of visitation during incarceration, Lauren relies upon the "diagnosis" of generalized anxiety disorder by therapist Jenna Genzale. *See* BR 21. Lauren fails to address Ms. Genzale's lack of qualification to diagnose any condition, let alone the lack of foundation for her opinion that there is a "potential risk" that prison visits could worsen Danny's anxiety (or cause PTSD) or the clearly speculative nature of that opinion. *See* OB 35-36.

Even if it were otherwise well-founded and admissible, Ms. Genzale's opinion was fatally undermined when she acknowledged that Danny's supposedly abnormal anxiety *stemmed from being separated from his father*. RP 20, 26. Indeed, his main "symptom" was asking a lot of questions about his dad being gone.[22] RP 19-20. Of course, as Ms.

[22] No foundation was laid for Ms. Genzale's testimony that Lauren had provided sufficient "age appropriate" information to Danny about his dad. *See* RP 30.

Genzale also acknowledged, visitation could (and likely would) ameliorate rather than exacerbate such anxiety.[23] RP 26; *see also* OB 35-37 & n.21.

Although Lauren criticizes the GAL, David Hodges, for opining that Danny should have regular visitation with his father because "children need to have ongoing relationship with each of their parents," this is also our state's public policy. *See* RCW 26.09.002, .187(3). In contrast, there is no indication that Ms. Genzale considered this policy, or even Danny's relationship with and attachment to his father, in opining that visitation would pose "more risks than benefits." RP 25. Unlike Ms. Genzale, the GAL was appointed to represent Danny's best interest and took into account Danny's desire and need to see his father. *See* RP 29, 213-17.

Lauren mischaracterizes preschool principal Candace Mangum's testimony. *See* BR 18. The trial court found that Danny would "act aggressively toward other kids and hurt them...and would also talk about guns." CP 1037 (FOF 8). Ms. Mangum's actual testimony provides critical context: Danny would jump off of a structure when others were below, "*kind of* hurting them," and Danny said "his dad had showed him a *pop gun*[.]" RP 114 (emphasis added). Ms. Mangum's testimony does not support restricting or limiting Danny's visitation with his father.

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[23] Ms. Genzale did not testify that she was "concerned about Danny's ability to manage his anxiety in a prison setting," BR 15, citing RP 23, but rather that Danny might be "fidgety" and unable to sit still. RP 23. How this is unique to Danny is not evident.

This Court should vacate the findings supporting the denial of visitation, which are based on incompetent and inadmissible evidence and mischaracterizations of the record. While Nathan anticipates being released from prison in early 2017, these unsupported findings should not be left intact as a potential basis for limitations or restrictions following release.

C. Lauren fails to point to substantial evidence to support findings implying that Nathan created an unsafe home environment for Danny—findings that take on greater significance in the absence of restrictions under section .191.

Absent restrictions under section .191, residential provisions are to be based on the factors in RCW 26.09.187(3) and should "encourage each parent to maintain a loving, stable, and nurturing relationship with the child." RCW 26.09.187(3). The legislature instructs that the "existing pattern of interaction" be altered "only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm." RCW 26.09.002.[24]

Lauren fails to point to substantial evidence to support the findings implying that Nathan created an unsafe environment for Danny. She could only mischaracterize or misstate the record to suggest as much.

For example, Lauren quotes extensively from the criminal complaint against Nathan (Exh. 11), ignoring that this exhibit was

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[24] The "existing pattern of interaction" is the one that existed prior to court intervention, such as issuance of a protective order. *See Watson*, 132 Wn. App. at 235.

admitted for a limited purpose, and specifically not to prove any matters asserted in the document.[25] RP 54. She also cites and refers to a charging document (Exh. 9), detention order (Exh. 10), and guilty plea (Exh. 24), none of which was admitted at trial or designated into the record on review. This Court should disregard Lauren's discussion of these four exhibits, which violates RAP 10.3(a)(5). *See* BR 7-10.

Setting aside matters outside the record, the trial court's findings regarding firearms at Nathan's house are unsupported. Contrary to those findings, the undisputed evidence was that Danny only ever saw a *toy* gun (and an empty box from another toy gun) at Nathan's house, and no real guns were ever there when Danny visited. RP 194, 464-65, 488-90, 548-49, 576; *see also* Exh. 41 at 11; Exh. 12. And while the trial court found that Nathan had a "large arsenal" of firearms in a bag on the floor, CP 1031 (FOF 15), 1037 (FOF 24(d)),[26] the undisputed evidence (and *single* hearsay) was that just three guns were brought in temporarily (again, when

[25] The trial court admitted the criminal complaint, Exhibit 11, ostensibly for the limited purpose of establishing a "motive" for Nathan's animosity toward Lauren and her resultant "fear" as a basis for .191 restrictions. (The complaint referenced purported statements of then four-year-old Danny, relayed to investigators as hearsay by Lauren. RP 54; Exh. 11 at 0052.) Setting aside the unclear relevance of such evidence to any fear of imminent physical harm, this exhibit was not a proper basis to find any facts regarding actual possession of firearms by Nathan.

[26] This finding evidently derives from nested hearsay, *i.e.*, the GAL's repetition of what Lauren supposedly "learned from FBI Special Agent Michael Baldino." Exh. 41 at 7. That Lauren's version of Agent Baldino's statement diverged so greatly from his sworn complaint (also hearsay), *see* Exh. 11 at 9, illustrates why hearsay is disfavored.

Danny was not there), and they were kept unloaded, out of Danny's sight and reach on the top shelf of a closet.[27] RP 465; *see also* Exh. 11 at 9.

Nor does the record contain evidence to support the finding that Nathan had a "large (and profitable) marijuana grow operation" (Lauren adds "illegal") in his basement. CP 1031 (FOF 17); BR 27. The admissible evidence was that Nathan had a dozen plants lawfully owned by a three-person cooperative for personal use; there were no outside or retail sales. RP 493-94. This does not qualify as "large" or "profitable," let alone a "tempting venue for criminal behavior," as the court also found. CP 1031 (FOF 17). In any event, the entire basement was off-limits to Danny. RP 495-96. The unsupported findings must be vacated.

Lauren again misstates the record when she paraphrases the trial court's finding that Nathan allowed "wanted felons" and "drug users" (plural) to live with him. BR 27; CP 1030 (FOF 14). While there was testimony that Nathan's house guest, Craig Rowland, had some criminal and drug history, he was *one* person, and there was no evidence he was "wanted." Moreover, the trial court and Lauren ignore undisputed testimony that Mr. Rowland (and his girlfriend) would leave whenever Danny visited; there is no evidence they ever interacted with Danny or

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[27] Contrary to Lauren's bare assertion, Nathan's possession of firearms was not in violation of any court order, nor was he incarcerated for violating one. *See* BR 31-32.

spent time in his presence. RP 471-72.

Lauren misstates the record yet again in asserting that Nathan's mother testified, and the trial court found, that he was "not good at making sure Danny was fed." BR 22-23. The trial court incorrectly quoted Ms. Brasfield as testifying that Nathan "was not good at feeding Danny at consistent times." CP 1031 (FOF 16). The actual testimony was that Nathan always made sure Danny was fed, but consistent meal timing was something he "could improve on." RP 371. As for the claim that Nathan "did not want to contribute financially to care for Danny in any way" and failed to contribute to day care for Danny, BR 2-3, the undisputed testimony was that Nathan paid half of Danny's preschool and extraordinary expenses, and for Danny's needs while in Nathan's care, all per the parties' agreement. RP 544-45.

Lauren further mischaracterizes the record in suggesting there was admissible testimony that Nathan took Danny "to a construction site and locked him in a room with some toys, food, and a bottle." BR 5, citing RP 59. Lauren's testimony at the cited page was *excluded* when the trial court sustained a hearsay objection. RP 59. This did not stop the trial court from relying on it (or other inadmissible hearsay) to find that Nathan "took Danny to an active construction site...and...placed Danny in a room and left him strapped in his car seat unaccompanied while Nate worked." CP

1036 (FOF 24(c)). This hearsay should have been disregarded along with all the GAL's descriptions of reports to CPS, all based on multiple levels of hearsay, some never investigated. *See* BR 18, citing Exh. 41 at 3.

Overall, the findings disparaging Nathan's judgment as a parent lack required supporting evidence in the record, cannot properly be a basis for determining a parenting plan, and must be vacated.

D. Lauren fails to point to substantial evidence to support the findings pertaining to Larry and Diane Brasfield being unsuitable guardians or chaperones.

Lauren merely repeats the findings that disparage Larry and Diane Brasfield, citing only the findings themselves. BR 21-23, 35. She fails to address the lack of substantial evidence to support the findings, let alone the trial court's multiple mischaracterizations of the Brasfields' testimony. *See* OB 40-42. She even takes the mischaracterizations a step further.

For instance, while the trial court found that Nathan "facilitate[d]" his father's purchase of "an *unregistered semi-automatic firearm*," CP 1030 (FOF 13) (emphasis the court's), Lauren now asserts Larry "asked [Nathan]...to purchase an unregistered semi-automatic firearm for him." BR 22. Yet the trial testimony was that Nathan merely referred his father to the gun seller. RP 340-41. And, as explained in the opening brief (p. 41), the implication that the purchase was somehow illicit because the gun was "unregistered" is false, as Washington has no registration

requirement. The trial court's willingness to enter findings contrary to law and undisputed facts can be explained only as a manifestation of judicial bias. The unsupported findings should be vacated.

E. The five-year DVPO must be vacated along with the .191 restrictions.

Lauren does not dispute that the DVPO must be vacated if the .191 restrictions are vacated for lack of evidentiary basis. *See* OB 43-44. Although this Court thus need not reach the one-year limitation issue, the DVPO unlawfully restrains all *in-person* contact for the duration of Nathan's incarceration, which Lauren acknowledges is at least one year.[28] BR 33. As explained in the opening brief, no exemption applies because the order renewed by the court was issued under chapter 26.50 RCW, not chapter 26.09. *See* OB 44 n.26; *See* CP 1108-13, 1208-12.

F. In the alternative, the unconstitutional denial of due process entitles Nathan to a new trial.

Notwithstanding consolidation with a DVPO proceeding, the Rules of Evidence apply in determining .191 restrictions. RCW 26.09.191(6). Lauren does not dispute this statute was violated when the trial court used hearsay in its findings (despite conveying during trial that the hearsay rule was being applied), which were employed to impair Nathan's fundamental

[28] The statute does not state that a DVPO may last longer than a year so long as it provides for some telephone or written contact, even though it restrains all in-person contact. *See* RCW 26.50.060(2).

liberty interest as a parent. *See* OB 44-46. Lauren ignores RAP 2.5(a)(3), which allows Nathan to raise this unconstitutional denial of due process for the first time on appeal. *See* OB 46. If the parenting restrictions and DVPO are not otherwise vacated, Nathan is entitled to a new trial.

G. Lauren fails to address any of the multiple indicators of judicial bias, warranting remand to a different judge.

Lauren responds to the bias claim only by characterizing it as a "bald assertion." BR 37. She fails to address any of the multiple indicators of bias discussed in the opening brief and appendix with citations to the record. The appellate court will remand to a different judge where the record suggests the original judge would have difficulty overlooking his or her previously stated views or findings. *See Ellis v. U.S. Dist. Court*, 356 F.3d 1198, 1211 (9th Cir. 2004). As already shown, such is the case here.

H. This Court should award fees to Nathan, not Lauren.

Lauren does not respond to Nathan's request for fees, which should be granted to compensate him for having to resist a meritless effort to redefine "domestic violence" and impose unwarranted restrictions.

Lauren's fee request is without merit.[29] First, the frivolous claim statute, RCW 4.84.185, does not authorize an award of fees on appeal. *Hanna v. Margitan*, 193 Wn. App. 596, 373 P.3d 300, 309-10 (2016).

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[29] The fee request fails to comply with RAP 18.1(b) in that it is set forth in the conclusion of the brief rather than in a separate section dedicated to fees.

Even if she had invoked RAP 18.9(a) on frivolous appeals, that rule applies only where the appeal "raised no debatable issues on which reasonable minds might differ and is so totally devoid of merit that no reasonable possibility of reversal exists," with all doubts resolved in the appellant's favor. *Id.* Regardless of who prevails, Nathan's appeal is not frivolous. Second, in exercising its discretion under RCW 26.09.140, the appellate court considers the arguable merit of the issues raised, in addition to the parties' relative financial resources. *C.M.C.*, 87 Wn. App. at 89. Again, Nathan's appeal has merit, and his financial affidavit will establish that he lacks the ability to pay Lauren's (or his own) fees.

III. CONCLUSION

This Court should vacate the trial court's unsupported findings, reverse its orders and parenting plan, and remand to a different judge for entry of a new parenting plan without restrictions under section .191 and formulated to foster and restore Danny and Nathan's relationship. Nathan urges this Court to publish its opinion to clarify the law misapplied below.

Respectfully submitted this 27th day of July, 2016.

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By	By
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document *along with a CD containing the VRP Transcripts* on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 27th day of July, 2016.

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APPENDICES

APPENDIX A: Record Excerpts on the Meaning of "Domestic Violence."

APPENDIX B: Record Excerpts on Lauren Rainbow's Claims to Have "Seen" or "Witnessed" Events, and Her Subsequent Recanting of That Testimony.

APPENDIX C: Record Excerpts on the Public or Private Nature of Facebook Posts and Comments.

APPENDIX D: Record Excerpts on the Relevance of an Agreed DVPO.

APPENDIX E Index to Trial Testimony of Nathan Brasfield with Reference to Audio Recording

Appendix A

Record Excerpts on the Meaning of "Domestic Violence."

1 **A. Summary Judgment Standard**

2 CR 56 provides that a summary judgment may be granted:

3 > If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material
4 > fact and that the moving party is entitled to judgment as a matter of law.

5 CR 56(c).

6 A material fact is one on which the result of litigation depends. *Lybbert v. Grant County*,
7 93 Wn. App. 627, 631, 969 P.2d 1112 (1999). When reasonable minds could reach but one
8 conclusion regarding claims of disputed fact, such questions may be determined as a matter of
9 law. *Miller v. Likins*, 109 Wn. App. 140, 144, 34 P.3d 835 (2001). If the moving party makes an
10 initial showing of the absence of a material fact, the non-moving party must offer prima facie
11 evidence to support each essential element of its claim. *Young v. Key Pharmaceuticals, Inc.*, 112
12 Wn.2d 216, 225, 770 P.2d 182 (1989). The nonmoving party may not rely on speculation or
13 argumentative assertions unresolved factual issues remain.

14 **B. There is no basis for restrictions under RCW 26.09.191**

15 Taken together, RCW 26.09.191(1)(c) and RCW 26.09.191(2)(a)(iii) authorize
16 limitations on a parent's role in decision-making and residential time if there has been "a history
17 of acts of domestic violence as defined in RCW 26.50.010(1)," among other reasons not present
18 in this case. Under RCW 26.50.010(1), domestic violence is defined, in relevant part, as
19 "Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily
20 injury or assault, between family or household members[.]" RCW 26.50.010(1)(a).
21
22 While RCW 26.09.191 does not define "a history of acts of domestic violence, " the
23 phrase excludes "isolated, de minimis incidents which could technically be defined as domestic
24 violence." *In re Marriage of C.M.C.*, 87 Wn.App. 84, 88, 940 P.2d 669 (1997). Mere

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1 THE COURT: But counsel, you would agree with me that
2 domestic violence also includes coercion and control, right? And
3 that that might be something by taking a car that she would need,
4 despite the fact that perhaps it was wrapped around an agreement
5 that should never have been made. But that that could be construed
6 as coercion and control, and that is part of domestic violence as
7 well.
8 MR. CARNEY: Your Honor, the -- the definition of domestic
9 violence that the Statute refers to is as listed in RCW
10 26.50.010(1), physical harm, bodily injury, assault, or the
11 infliction of same. I do not read that Statute to include anything
12 to do with taking of a car, regardless of the motivation for it.
13 THE COURT: Okay.
14 MR. CARNEY: Next Ms. Rainbow alleges that during a verbal
15 argument with a neighbor, Mr. Brasfield nearly ran over the
16 neighbor with the car. Now during her deposition, under oath,
17 Ms. Rainbow admitted that the incident had nothing to do with her,
18 that she was not a party to any argument, and that she was not
19 endangered by the act.
20 Furthermore, the neighbor in question is Joshua Boyer, who
21 confirms by declaration that he was that neighbor. He lived near
22 the parties beginning in 2009. He recalls only one incident even
23 slightly resembling the account that Ms. Rainbow gave, which was
24 that he approached the driver's window of Mr. Brasfield's vehicle
25 to discuss with him some matter of disagreement between them.

1 THE COURT: Sure.

2 MR. CARNEY: -- for the purposes of this record, which may
3 be considered by another Court, is the Court prepared to make a
4 finding of which allegations, if true, would constitute acts of
5 domestic violence as defined in the relevant Statutes?

6 THE COURT: I'm not, counsel. These are all issues to be
7 raised at trial. I have made it very clear that I understand and
8 respect greatly the law that will prohibit anything other than a
9 full analysis of this issue. The fact that there is a temporary
10 Order will have no bearing on this Judge, or whoever else is
11 hearing this case. But I'm not prepared right now to indicate what
12 may or may not be defined as -- in isolation, as an act of domestic
13 violence. That is something that is considered in a totality of
14 the circumstances. And that's what I will do, or whoever the trial
15 judge will do, when this matter comes to trial. Okay.

16 MR. HILTY: Thank you, your Honor. I'll prepare an Order.

17 THE COURT: Okay, thank you.

18 BAILIFF: Please rise. Court is in recess.

19 Court adjourns for a recess.

20 RECESS/COURT RECONVENES

21 Court reconvenes on the same
date and the following is heard
22 in the presence of all parties:

23 THE COURT: Okay, please be seated. Mr. Carney, you
24 wanted a word.

25

1 THE COURT: Okay. The objection is overruled. Exhibit 11
2 is admitted.
3 Respondent's Exhibit No. 11 is admitted into evidence.
4
5 MS. RAINBOW: Thank you, your Honor.
6 MR. CARNEY: Your Honor, may I have the same continuing
7 objection to this Exhibit?
8 THE COURT: Yes, you may.
9 MS. RAINBOW: Thank you, your Honor. I bring to light
10 this Exhibit just to show that I did indeed participate in the
11 investigation with the FBI.
12 THE COURT: I'm going to stop you.
13 MS. RAINBOW: Yes.
14 THE COURT: And I also just want to add for the record
15 that the Court's not admitting this for the truth of the matter
16 asserted. The Court is admitting it for evidence for bias; that
17 she's claiming -- excuse me -- motive; that Ms. Rainbow has claimed
18 that Mr. Brasfield has for his animosity, which is the fact that
19 she participated in his -- the investigation leading to his arrest.
20 And that that motive of Mr. Brasfield contributes to what she has
21 testified to; her fears, which goes directly to her request that
22 this Court enter 191 restrictions.
23 So it's evidence of bias by Mr. Brasfield -- I'm sorry --
24 motive by Mr. Brasfield against Ms. Rainbow. So that's the purpose
25

4. On 4-29-14, the mother petitioned for a Domestic Violence Protection Order and on 6-3-14 an agreed full order was entered. That order expired 6-2-15. The father's criminal history began in 2000 if not before and culminated with his arrest on 4-22-14. Although the father, who had private counsel at the hearing **agreed** to the entry of the DVPO, he later filed a Motion for Summary Judgment seeking a determination as a matter of law that the incidents giving rise to the agreed upon DVPO in June 2014 do **not** constitute domestic violence.[2]

5. Much of the trial was focused on the allegations giving rise to the 2014 DVPO. The relief requested by the father was to have a short term parenting plan, devoid of RCW 26.09.191 restrictions, lasting only until the father is released from incarceration. The father requests that his parents be able to pick up Danny and bring him for regular visits at the detention center.

6. The GAL conducted a thorough investigation with many collateral contacts. The court relied on the GAL's factual investigation but for many reasons that follow, *does not* adopt the GAL's recommendations. Similarly, the court does not accept the GAL's equivocal characterization of events between the parties. This court finds that Nate's

[2] The Motion was denied on April 24, 2015.

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1 aggressive behavior, escalating criminal conduct, open fascination with fire arms, direct
2 and indirect threats to Lauren and unrepentant animosity toward Lauren constitute
3 domestic violence as a matter of law.
4
5
6 7. On behalf of the mother, Jenna Genzale, who has been Danny's therapist for
7 approximately four months, testified. The court found her to be credible. She testified
8 that Danny has a generalized anxiety disorder; worries more than he should as a child;
9 is fearful, and; has difficulty coping with new situations. She fears that if Danny is
10 permitted to visit his father at the detention facility, his anxiety disorder could move to
11 PTSD (post-traumatic stress disorder). She testified that "Danny is not a typical child
12 going to see his parent in jail."
13
14
15 8. On behalf of the mother, Candace Mangum testified. She was Danny's preschool
16 teacher at the Perkins School where she worked for 35 years. She has extensive
17 experience in working with young children and of course, their parents as well. The
18 court found her to be very credible. She described the changes she witnessed with
19
20 Danny during his time with his father (before the father was incarcerated the parents
21 had a shared residential schedule). She testified that on a "Dad Day" (a school day on
22 which the father was going to be picking him up from school and/or return him to
23 school following his residential time) he would get angry and very agitated at school.
24 He would throw things around, act aggressively toward other kids and hurt them. He
25
26

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Appendix B

Records Excerpts on Lauren Rainbow's Claims to Have "Seen" or "Witnessed" Events, and Her Subsequent Recanting of that Testimony

My former boyfriend, Nathan S. Brasfield (DOB: 03/08/1978), poses a high risk to the physical safety of both me and our 4 year old son, Daniel Rainbow. Nathan's house was raided by the FBI Lake Forest Park Police on Tuesday April 22, 2014 and he was arrested for possessing illegally modified firearms. Nathan is a 9 time felon and is not allowed to posses any firearms, yet three guns were found in his home including a sawed-off shotgun and a pistol that he modified into an automatic weapon. His previous felonies include possession of stolen property, misuse of telecommunications to send threaten someone, and property crime.

Nathan has been aggressive towards me for the last two years and has threatened me on multiple occasions. When we were going through the court process of establishing our parenting plan and child support order, Nathan wanted me to "drop the child support" so that he wouldn't have to give me money. When I wouldn't agree with him he verbally threatened me on the phone by saying "If you don't drop this then just see if you come out of this unharmed." I asked Nathan if he was threatening me, he replied "you figure that out, bitch." I then called the police and filed a police report. Nathan then stole my car out of my driveway and denied it to me (and the police after I filed a stolen car report), but he later wrote on Facebook that he did steal my car and that I should be "lucky that's all I did."

Nathan has told me that he will "never forgive" me for attempting to obtain primary custody of our son and also for filing two CPS reports on him for reckless parenting that put our young son in grave danger while in Nathan's care. His sister told me that he said he "hopes Lauren fucking dies." He told me that the only reason he didn't "take me down" is because he thought it "might me hard for Danny to be without his mom."

Nathan has a very violent and unpredictable temper, he is dangerous. I have seen him throw a large television set into our front yard when he was angry, it shattered into pieces and it scared me. When Nathan is angry his whole demeanor changes and he has admitted to me that he is unaware of how threatening he is. He has punched holes in walls when angry and has terrified me with his over-powering physical posturing when he's upset. He has screamed at me when angry and I have witnessed him uncountable times engaged in dangerous road rage acts that could have killed us and other innocent people.

I am afraid for my safety because I informed the Lake Forest Police department that I believed Nathan had guns in his home, which was a part of their search warrant. Nathan knows that I told the police this and he is furious that I spoke to the police. I fear that I am in physical danger if he is released on bail until his court date in July, I fear that he will come to my house, work, or any other place that he knows I frequent and he will kill me. He is dangerous and unpredictable and he has zero regard for the law. Nathan was recorded by an FBI informant bragging about how the government shouldn't have any control over his right to own arms, despite his nine felonies. Nathan doesn't respect or follow any laws that he doesn't agree with, which is why my child and I need heightened protection from him.

1 school textbooks, which we all know are not cheap. There were
2 clothing items, there was an expensive stroller, there was a car
3 seat.
4 So in that action, Nate decided that I had defaulted on an
5 agreement that was never known to me, or was never written down on
6 paper. Nate decided that I had somehow gone against some
7 agreement. And he sent someone to my house to retaliate, and he
8 did. And it was a very big retaliation. It was a huge hardship on
9 me. I -- I was a grad student, I had no money for another car. I
10 wasn't receiving any child support from Nate at that time.
11 So your Honor, that was a very clear example of -- that -- that
12 set a very -- very clear tone in what I felt safe presenting to
13 Nate and how I could interact with him without retaliation.
14 In the time since then I've installed security cameras on the
15 outside of my house because he has shown me that not only is he
16 willing to threaten me verbally, but he's also willing to act on
17 that.
18 In the past when we were together, I had witnessed various
19 other aggressive acts by Nate Brasfield, which are clearly
20 documented throughout all of the -- all of the court paperwork.
21 Nate certainly did throw a TV off of a deck at the house when we
22 were living together. It was thrown into what could be described
23 as a little bit of a vacant lot that was right on the property
24 line. Nate did punch a hole in a wall in the house that we were
25 living in out of anger. Nate did come very close to hitting

1 A I don't know.

2 Q You don't know.

3 A I've read a lot of documents in the last month or two, and I --

4 I don't -- I don't know. Maybe I have.

5 Q Okay. Do you recall seeing a declaration from Josh in which he

6 stated that he could recall no such incident ever occurring?

7 A I may have read that, yep.

8 Q Nathan and Josh are not friends, right?

9 A I don't know.

10 Q Regarding when you described a television being thrown into a

11 vacant lot, like for you to tell me everything that you can

12 remember about how that happened.

13 A What I recall, there was a large flat screen TV that was at our

14 house. And I did not witness Nate throw it off, but he told me

15 that he had gotten angry, he threw the TV off of a -- you could

16 call it a porch -- a carport type thing, over about a 10' drop

17 maybe, into this little vacant lot. It -- there was shattered.

18 I saw the TV. He told me he threw it. He told me he was

19 angry. I concluded that Nate threw the TV off the porch.

20 Q Nate was not angry with you when he threw the television,

21 right?

22 A I don't recall why Nate was angry.

23 Q It wasn't your television?

24 A No.

25 Q You were not there when it happened?

1 A No.
2 Q It wasn't directed at you?
3 A I wasn't there.
4 Q To your knowledge, no one was endangered by that incident?
5 A I don't know. I wasn't there.
6 Q You indicated that twice you have reported Nathan to CPS; once
7 because Danny went to work with Nathan, and once because Nathan
8 reported to you that Danny had drank some rubbing alcohol,
9 right?
10 A Yes.
11 Q Are those the two incidents that you referred to?
12 A Yes.
13 Q In both of those incidents, CPS took no action against Nathan?
14 A Okay.
15 Q I'm asking you.
16 A As far as I know there was no action taken against him, no.
17 Q So CPS did not believe that that was something they needed to
18 do anything about?
19 THE COURT: I'm going to object. You're asking this
20 witness questions that she would have no foundation about; what CPS
21 did or didn't know.
22 MR. CARNEY: Your -- your Honor, you're objecting to my
23 question?
24 THE COURT: I'm not objecting to it. I'm telling you that
25 asking a witness what CPS did or why they did it is not a proper --

1 Q You don't know how that tussle started?

2 A I don't recall.

3 Q You're aware that Nathan and Dave have both said that it

4 happened because Dave was angry with Nate and jumped on him,

5 right?

6 A Okay.

7 Q I'm asking you if you're aware of that?

8 A That's what they said, yeah. Yes.

9 Q So both of them have agreed that Dave started the fight?

10 A Yes.

11 Q Nathan didn't strike Dave?

12 A Not that I recall.

13 Q They continued to be friends after that incident was resolved?

14 A Okay.

15 Q Right?

16 A Yes.

17 Q At no point where either of them angry with you during that

18 incident?

19 A Not that I recall.

20 Q Regarding your conclusion that Nathan had thrown a television,

21 he wasn't angry with you when that happened?

22 A I don't know, I wasn't there.

23 Q So you -- you have no knowledge that he was angry with you when

24 it happened?

25 A I don't know why he was angry.

1 Q You've mentioned on a -- on a few occasions that you allege
2 that Nathan nearly ran over your neighbor -- your former
3 neighbor, Josh?
4 A Yes.
5 Q Were you in the car when that happened?
6 A No.
7 Q Were you outside the car near Josh when that happened?
8 A I don't recall if I was in the house or on the porch. Again,
9 this was about five years ago. I do -- I do recall the
10 incident. But no, I was not in the car, I was not near Josh.
11 It was -- they -- it was in the driveway. Nate was in his car,
12 Josh was standing towards the end of the driveway, Nate backed
13 up very quickly and extremely close. They were in a fight, and
14 it was certainly purposeful. There is no way that was a mere
15 accident.
16 Q And I think we started to discuss earlier, you've read Josh's
17 declaration that nothing like that ever happened, right?
18 A Yeah.
19 Q Nathan was not angry with you when this happened?
20 A No, that -- the -- I was not involved in that altercation.
21 Q During that incident you were in no physical danger?
22 A No.
23 Q You have alleged that Nathan punched a hole in the wall of the
24 residence that you formerly shared with him. You're not able
25 to testify that that occurred in your presence, right?

1 A No, I did not see him punch the hole. I -- I saw his bloodied
2 hand after. Saw his hand afterwards and he told me he punched
3 a hole in the wall.
4 Q He was not angry with you at that time?
5 A I do not recall.
6 Q You were in no physical danger during that incident?
7 A I was not the wall, no.
8 Q You weren't in the room when it happened?
9 A I didn't see it happen.
10 Q I understand that you are highly critical of some of the ways
11 that Nathan has driven when you were in the car with him during
12 your relationship, you've mentioned that. During your
13 deposition you were able to recall two incidents, is that
14 right?
15 A Yes.
16 Q And can you tell us those two incidents?
17 A There is one time, I know I was pregnant. We were driving to
18 Snoqualmie Falls, and Nate was driving very erratically. He
19 was trying to -- I don't remember if he was trying to pass
20 somebody, or somebody had cut him off. Nate then, you know,
21 went in front of them, slowed down. He was -- it was road
22 rage. I was screaming, I was -- I was about seven months
23 pregnant -- eight months pregnant at the time. When we got to
24 Snoqualmie Falls there was an argument between the two of us
25 because he clearly put us in huge danger in that situation.

1 A I'm going to assume you're talking about driving in a car. The
2 answer would be no.
3 Q Do you remember throwing a flat screen TV off the deck of our
4 house?
5 A Absolutely not. I did not do such a thing.
6 Q Do you recall punching a hole in the wall at our old house?
7 A I have not punched a hole in any wall in anger. I remember
8 making several holes for construction purposes in the house.
9 Q Can you explain why you showed me your injured hand, and then
10 told me that you punched a hole in a wall?
11 A I can't explain why I would have done such a thing. In fact I
12 will state I have never done such a thing. You're making that
13 up. I don't punch holes in walls. Anybody that knows anything
14 about construction knows that to do that would risk breaking
15 your hand, and I like my hands.
16 Q Do you recall ever getting into a verbal argument with our
17 neighbor, Josh?
18 A I've got into a couple arguments with Josh, yes.
19 Q Okay. Do you remember the one in which you nearly ran over him
20 with your car while backing out of the driveway?
21 A Could you repeat the question?
22 Q I said do you remember the incident in which you nearly hit
23 Josh with your car while backing out of a driveway -- backing
24 out of our driveway, I should say?
25 A No, I do not remember any such incident, and neither does Josh.

1 was damaged and it was clearly a reaction of anger, so
2 I can talk about those.
3 Q. Okay. Please do. Tell me about those times.
4 A. Sure. So I have witnessed Nate punch holes
5 in walls as a result of being in a fight with his
6 neighbor, our then neighbor. I have seen Nate throw a
7 TV off a porch in anger and it shattered all in the
8 front yard. I've seen Nate come within inches of
9 running somebody over. Again, it was that neighbor.
10 They were in a fight. That was purposeful. He was
11 aware that that person was there. I've seen Nate
12 nearly run people off the road in road-rage incidents
13 when I was in the car and pregnant. Nate, though he
14 has never physically harmed me, has been very
15 aggressive and threatening in his physical posture and
16 gesturing towards me as well as verbally. And I've
17 heard uncountable verbal threats against other people,
18 me, so...
19 Q. Okay. So I'd like to ask you a few questions
20 about some of those.
21 You mentioned -- in a couple of your examples
22 you mentioned a neighbor. Was that the same neighbor
23 in each of the examples?
24 A. Yes.
25 Q. Who was that neighbor?

1 A. I don't know.
2 Q. Was there only one area that you would refer
3 to as the yard in this house or was there multiple
4 areas?
5 A. There were two areas.
6 Q. Okay. Maybe it would be helpful for me if
7 you could just sort of describe the house on 35th for
8 me.
9 A. Sure. So there was a house and then there
10 was a little fenced front lawn area and then there was
11 on the side of the house, this -- I don't know what it
12 was supposed to be, maybe a carport that, you know,
13 was -- below it was some storage area for the
14 landlord, but we could walk on the top part and then
15 there was almost like a small vacant lot, very small.
16 I don't want to call it a lot, but it had, you know, a
17 lot of grass overgrowth and it wasn't maintained, but
18 it was -- I don't even know if that was technically
19 our property, but Nate put his stuff there and threw a
20 TV out there.
21 Q. Was that what you would consider the back of
22 the house then?
23 A. No, no.
24 Q. Okay.
25 A. It was in the front.

1 the house?
2 A. There was -- yeah, there was a porch that
3 kind of wrapped around the back. We rarely went back
4 there. Very rarely.
5 Q. Okay. All right. Thank you for that. That
6 helps me understand.
7 Okay. So you mentioned in the first part of
8 your deposition that you once witnessed Nathan throw a
9 television?
10 A. Mm-hm.
11 Q. Where were you when that happened?
12 A. I was -- I don't remember.
13 Q. Okay.
14 A. I don't remember.
15 Q. This -- the reason I bring it up is this was
16 another incident where when I looked back on it and
17 read my poor questioning, I wasn't 100 percent sure
18 whether it was something that you had seen with your
19 own eyes or had concluded to have occurred afterward
20 by seeing the aftermath.
21 So did you actually see with your own eyes
22 Nathan throw a television?
23 A. I -- I don't remember. I don't know. I do
24 recall him telling me that he did and I do recall
25 seeing the shattered television in this vacant lot.

1 MR. CARNEY: Its origin.
2 MS. SCHNUELLE: -- where it was
3 purchased?
4 MR. CARNEY: Its origin.
5 Q. (By Mr. Carney) How did it come to be in the
6 house?
7 A. I have no idea where Nate got that TV. He
8 had a lot of random electronics that who knows where
9 they came from.
10 Q. Okay. Do you recall anything about what led
11 up to Nathan telling you that he had thrown the
12 television?
13 A. I don't remember.
14 Q. Would it be safe to say that you would
15 probably recall if it had been because he was angry
16 with you?
17 A. I -- no. I have no idea. I don't remember.
18 Q. All right. Do you recall whether you were in
19 Nathan's presence for let's say five minutes before
20 the TV was thrown?
21 A. I don't remember.
22 Q. All right. So another incident where, as I
23 reviewed the transcript, I wanted to clarify a few
24 things was you had mentioned an altercation between
25 Nathan and Dave Bemel. Do you recall that?

1 2010?

2 MR. CARNEY: And, Ms. Schnuelle, I'm

3 sorry to interrupt, but can you distinguish between

4 Exhibit-1 and -2 when you're asking those questions?

5 A. Let's go for --

6 MS. SCHNUELLE: I think -1. Yeah, I

7 think Exhibit-1.

8 A. So you can clearly see --

9 MS. SCHNUELLE: Thank you.

10 A. You can clearly see that the bushes in this

11 vacant lot are extremely overgrown in Exhibit-1. They

12 were not this overgrown when we lived there. I think

13 there was -- at one point, Nate went in and tried to

14 clear this stuff out because he wanted to park cars in

15 that lot, so this is -- this is more overgrown than I

16 recall it being when we lived there.

17 Q. (By Ms. Schnuelle) And you testified that

18 you didn't physically see Nate throw the television?

19 A. Mm-hm.

20 MR. CARNEY: Is that a yes?

21 A. Yes.

22 Q. (By Ms. Schnuelle) But how did you know that

23 he threw the television?

24 A. He told me.

25 Q. Did you have any reason to doubt the veracity

1 letdown. I'll try to do better next time.
2 MS. SCHNUELLE: Okay.
3 Q. (By Mr. Carney) Okay. You mentioned that
4 you had seen Nate punch holes in walls. And was that
5 at the house on 35th?
6 A. Yes.
7 Q. And I think I remember that you used holes,
8 plural, so implying that it had happened more than
9 once. Is that right?
10 A. I remember one incident.
11 Q. And when was that?
12 A. At some point when we lived at the house.
13 Sorry.
14 Q. No, that's okay.
15 So are you saying you're not able to narrow
16 it down any more than that?
17 A. I'm not, no.
18 Q. All right. Do you recall what precipitated
19 that incident?
20 A. A fight with someone. I -- I don't -- I
21 don't remember the specifics or who he was fighting
22 with that time.
23 Q. Earlier I thought you mentioned that it might
24 have been Josh. Are you not sure about that? If
25 you're not sure, that's fine.

1 Q. Okay. And I noticed that you answered sort
2 of a similar thing to a couple questions. And I wrote
3 down some things you said, so with respect to the
4 television being thrown --
5 A. Mm-hm.
6 Q. -- you said you didn't feel comfortable
7 saying anything to Nate at the moment?
8 A. Yeah.
9 Q. And then with respect to the punching in the
10 basement --
11 A. Mm-hm, the wall.
12 Q. -- you said you tried not to spend a lot of
13 time in that room. And with respect to -- and you
14 also said you tried to avoid the situation. I think
15 it was with the same thing.
16 A. Yeah.
17 Q. So would it be fair to say that you tried to
18 sort of minimize your involvement and step away?
19 A. Yes.
20 Q. And why did you do that?
21 A. Because Nathan's anger is explosive and it's
22 unpredictable and maybe it's what I do for a living as
23 a social worker and have been working in mental health
24 for eight years, it's only natural to recognize a
25 situation that has the potential to be really

1 or the specifics on that.

2 Q. Other than believing that you later found out

3 that Nathan had punched a wall, was there at any point

4 where physical violence was involved or threatened?

5 A. I don't remember.

6 Q. Where were you before Nathan came upstairs

7 and told you that he had punched a wall?

8 A. Somewhere in the house.

9 Q. But not in the same room with him?

10 A. I was not in the room with him when he

11 punched a hole in the wall.

12 Q. Was that the only time that you can remember

13 Nathan punching a hole in the wall on purpose?

14 A. I think so.

15 Q. So as you sit here right now, you cannot

16 remember any other time; is that right?

17 A. I can't remember right now, no.

18 Q. Okay. The hole in the wall upstairs, you say

19 came as a result of an accident?

20 A. I think so.

21 Q. Can you recall anything else about how that

22 happened?

23 A. No. The thing that stands out to me about

24 that is we had to cover it with a wall hanging

25 shelf-type thing. That's what I remember.

1 had last time about the guidelines for how a
2 deposition is conducted?
3 A. Yes.
4 Q. Okay. So the one thing that I wanted to go
5 over that I'm not sure if I did last time is in
6 reviewing your transcript, and it would probably
7 reflect more on the quality of my questions than on
8 your answers, but there were times when I had a hard
9 time telling whether there was something that you had
10 concluded from evidence that you witnessed or that you
11 had witnessed it directly.
12 A. Okay.
13 Q. And so I'm going to ask you to keep me on
14 track to make sure that I ask questions that help you
15 tell me whether there was something that you actually
16 saw or something that you concluded had occurred based
17 on other things that you saw. Does that make sense?
18 A. Yes.
19 Q. Okay. So along those lines, we had talked
20 about there being a hole in the wall at the house that
21 you lived with Nathan. Do you remember talking about
22 that?
23 A. Yes.
24 Q. Okay. So what I wasn't sure of I'll go over
25 real quickly here. Do you recall how it was that that

1 hole came to be in the wall?
2 A. Nate punched it with his hand.
3 Q. Okay. So this is one of the questions that I
4 wasn't sure whether we were speaking the same language
5 last time. Did you see him do that?
6 A. I saw him immediately after.
7 Q. How did it come to be that you saw him
8 immediately after?
9 A. He was downstairs and I saw him after. His
10 hands had marks on them from where he hit it. And he
11 told me that he hit the wall with his hand.
12 Q. So you did not see him hit the wall?
13 A. Not that I recall.
14 Q. Do you recall there being other holes in the
15 walls of that house?
16 A. I don't know. I believe there was one in the
17 living room wall. I don't think that was caused by a
18 punch. I think that was an accident when he was
19 trying to hang something on the wall, but I don't
20 think that was like a punch.
21 Q. Any other holes in any other walls that you
22 can remember?
23 A. Probably there were, but I couldn't talk in
24 detail about those.
25 Q. Do you recall Nathan cutting holes in walls

1 to run wiring?

2 A. It wouldn't surprise me.

3 Q. But you're not sure as you sit here today

4 whether that happened or not?

5 A. I'm not sure.

6 Q. What led up to the event where you believe

7 Nathan punched a hole in the wall in the basement?

8 A. He was in a fight with somebody.

9 Q. And what led you to believe that he was in a

10 fight with someone?

11 A. He was -- from what I recall, he was -- I

12 don't remember who it was with or what it was over,

13 but he was in a verbal altercation with someone. He

14 was yelling. He was angry. He was stomping around.

15 He was in a fight.

16 Q. So when you use the word fight, that's what

17 you mean --

18 A. I mean --

19 Q. -- a verbal argument?

20 A. Yeah.

21 Q. Okay. So there were no --

22 MS. SCHNUELLE: I'm going to interrupt

23 here. When you use the word fight in this context, is

24 that what you mean?

25 THE WITNESS: Yeah, when we're talking

1 about this -- this specific -- I'm sick, so bear with
2 me.
3 Q. (By Mr. Carney) That's okay.
4 A. This instance, yeah, he was in a verbal
5 disagreement, altercation with someone.
6 Q. Okay. And I'm not trying to play any tricks
7 on you. I'm not trying to trap you into a definition
8 of a word that you might use differently in a
9 different context.
10 A. Sure.
11 Q. We'll just work through those contexts as
12 they arise. Okay?
13 A. Okay.
14 Q. So I believe I understand you to be saying
15 that you don't remember who the verbal altercation was
16 with?
17 A. I don't remember, no.
18 Q. Was it in person or over the phone?
19 A. I don't remember.
20 Q. Do you have any idea what it might have been
21 about?
22 A. I don't remember.
23 Q. Do you know where you were when it was
24 happening?
25 A. I was in the house, but I don't recall where

1 or the specifics on that.
2 Q. Other than believing that you later found out
3 that Nathan had punched a wall, was there at any point
4 where physical violence was involved or threatened?
5 A. I don't remember.
6 Q. Where were you before Nathan came upstairs
7 and told you that he had punched a wall?
8 A. Somewhere in the house.
9 Q. But not in the same room with him?
10 A. I was not in the room with him when he
11 punched a hole in the wall.
12 Q. Was that the only time that you can remember
13 Nathan punching a hole in the wall on purpose?
14 A. I think so.
15 Q. So as you sit here right now, you cannot
16 remember any other time; is that right?
17 A. I can't remember right now, no.
18 Q. Okay. The hole in the wall upstairs, you say
19 came as a result of an accident?
20 A. I think so.
21 Q. Can you recall anything else about how that
22 happened?
23 A. No. The thing that stands out to me about
24 that is we had to cover it with a wall hanging
25 shelf-type thing. That's what I remember.

claims were made. I will treat these individually below as the reasons they will not occur in the future differ.

16. Ms. Rainbow alleged "[she] witnessed [me] countless times engaged in dangerous road rage acts that could have killed us and other innocent people." In deposition, she could only remember two incidents of scares she claimed to have suffered as a passenger while I drove, neither of which actually appear to support her allegation. One involved my cursing after some traffic incident occurred, cause of which she was ignorant or had forgotten. The other involved what she seems to have considered an overly aggressive passing maneuver, from which she felt she could to infer my rage without any better evidence in her account of the incident. Her memory of "road rage" incidents came to an end with a "driveway rage" incident which the putative near-victim could barely remember five years later because he never felt himself to be in any danger at all. (See Joshua Boyer's declaration filed March 27, 2015.) I do not remember it because it was not enough of an incident to be memorable.

17. There is no reason to believe I will ever again ask or allow Ms. Rainbow to be a passenger in any vehicle I drive, for reasons I will elaborate below. There will certainly be no such rides before I walk out of federal detention in early spring of 2017. Additionally, I contend that those incidents, even if they occurred precisely as Ms. Rainbow has attested, do not constitute domestic violence.

18. Ms. Rainbow alleged "[I have] punched holes in walls when angry". In Ms. Rainbow's deposition, this hole punching behavior is both plural and singular; witnessed and not witnessed for the same, single event; done with Ms. Rainbow near enough to want to step away and done when she was on a different floor, both for the same hole; triggered by a "fight" with a

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1 person known and unknown; where the "fight" was with someone there or elsewhere. (2014
2 April 29 PTORPRT, LR Dep. 12:4, 35:7, 138:17, 167:6, 164:9, 166:18)

3 19. There is no reason to believe I will ever again spend time alone with Ms. Rainbow
4 where she could make a potentially credible claim to have seen me abuse any wall(s), or, as she
5 later testified when her hole punching witnessing story became obviously inconsistent, where she
6 could claim I told her about doing such violence. I detail my determination to preclude such
7 claims below. I also contend that such acts, even if they happened in one of the ways attested by
Ms. Rainbow, do not constitute domestic violence.

8 20. Ms. Rainbow alleged "I have seen him throw a large television set into our front
9 yard when he was angry, it shattered into pieces and it scared me." At various points in her
10 depositions: this alleged event was both seen and unseen; the television was thrown from the
11 front porch and from a carport roof; it landed in the front yard and in a vacant lot beside the
12 house; its tossing scared her and she remembers nothing of it (beside being told of it by me,
13 which did not happen); and its tossing was the result of my anger caused by a "fight" and caused
14 by nothing known. Between those depositions, the television's trajectory exceeded 30 feet over
15 the ground and intersected a roof. (LR Dep 12:6/16:11, 168:5–169:7, 170:23–171:17, 172:4-
173:23, 177:10-21, 207:17-21)

16 21. There is no likelihood that Ms. Rainbow will ever have an opportunity to see me
17 (or any other human) throw a large television over 30 feet, such that it passes through a roof then
18 shatters upon hitting the ground, especially ground covered with vegetation (as both of her
19 imagined landing sites were). Nor is there any likelihood that I will engage in any unrecorded
conversation with her upon which she can make a potentially credible claim that I told her I
20 performed such a feat. The likelihood of such a feat being repeated is independent of my
21

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Appendix C

Record Excerpts on the Public or Private Nature of Facebook Posts and Comments.

1 Nate's possession of explosives. I was talking about a
2 long-standing fascination and involvement with illegal activity
3 regarding firearms and explosives.
4 I was talking about my generalized fear of Nate Brasfield, and
5 reasoning of that, is because this is a person with, when it comes
6 to me, explosive anger. I can also refer to the Guardian ad Litem
7 report in which David Hodges refers to it as venomous anger or
8 rage, I'm not quite sure, which has already been put into evidence.
9 MR. CARNEY: Your Honor, I'm really trying not to object
10 any more than absolutely necessary. But this is clearly argument.
11 THE COURT: Okay.
12 MS. RAINBOW: I'm sorry.
13 THE COURT: It's not argument. It's her telling this
14 Court the factual basis upon which she wants me to enter 191
15 restrictions. So that's --
16 MR. CARNEY: Which that --
17 THE COURT: -- what's --
18 MR. CARNEY: -- is argument --
19 THE COURT: -- happening.
20 MR. CARNEY: -- in my opinion.
21 THE COURT: Okay. Well, you're entitled to your opinion.
22 The objection's overruled.
23 MS. RAINBOW: Thank you, your Honor. The reason that I
24 bring all this up is because there is a clear, documented, history
25 of Nate with firearms and explosives. With regards to me, Nate has

1 a very public and wide known hatred towards me. It is well known
2 that I did participate with the FBI investigation that currently
3 led to Nate -- Nate's current incarceration. And actually maybe we
4 can -- I can ask that that Exhibit be put into evidence as well,
5 the FBI -- that would be Exhibit 11. That is the FBI report signed
6 by Agent -- authored by Michael Baldino. I ask the Court that that
7 Exhibit be entered into evidence.
8 THE COURT: Okay. Any objection to Exhibit 11?
9 MR. CARNEY: Yes, definitely. It is rank hearsay. There
10 is no evidence that any live witness will be called to substantiate
11 any of it. It is clearly being offered, as Exhibit 40 was, for the
12 truth of the matter asserted. The testimony is very clear that
13 without any personal knowledge, this witness intends to rely on
14 what is written in an out of court statement to prove the truth of
15 what is written in that out of court statement --
16 THE COURT: Okay.
17 MR. CARNEY: -- which is not backed up by any live
18 evidence under oath. It is the very definition of hearsay.
19 THE COURT: Okay. It's actually -- it's a court pleading.
20 It's a -- in the United States District Court -- it is the
21 complaint which was filed by the United States Attorney. So it's a
22 court pleading. And --
23 MR. CARNEY: It is still an out of court statement being
24 offered to prove the truth of the matter asserted, your Honor. It
25 is the definition of hearsay.

1 MS. RAINBOW: 16, your Honor.

2 THE COURT: 16.

3 MS. RAINBOW: Yes.

4 THE COURT: Sorry, okay. Any objection to 16?

5 MR. CARNEY: No.

6 THE COURT: Okay, that's admitted.

7 Respondent's Exhibit No. 16 is admitted into evidence.

8

9 MS. RAINBOW: Thank you, your Honor. So Exhibit No. 3,

10 this is just retouching on the domestic that I -- I just wanted to

11 touch base on this. This is a public record. And I'm not going to

12 read it, but --

13 THE COURT: I'm sorry, Exhibit 3, I thought -- is that

14 what you just said?

15 MS. RAINBOW: No. 3 I'm referring to right now.

16 THE COURT: Exhibit 3 is the Facebook posts?

17 MS. RAINBOW: Yes, your Honor.

18 THE COURT: Okay.

19 MS. RAINBOW: Yes. I, just on the break, realized that

20 this is something I had wanted to touch on --

21 THE COURT: Okay, okay.

22 MS. RAINBOW: -- the DV stuff. And I'll just do that

23 quickly, and then move on. This was -- after the CPS report Nate

24 had posted publicly on Facebook that quote, the bitch I had a kid

25 with -- I'm sorry to curse in the courtroom -- is accusing me of

1 false allegations again. You can read through the conversation
2 that Nate has a very public and vocal hostility, and aggressive
3 tone towards me. He also states towards the end that stealing my
4 car is -- that I'm lucky that's all I got as a result of pursuing
5 the child support. Having my car stolen, that I'm lucky that's all
6 I got.
7 So retouching on the DV stuff and why I'm scared of Nate, it's
8 because he very publicly is willing to state things like this. And
9 it sets a tone for what this has been like for me. So moving on
10 from that topic, I just wanted to revisit that briefly.
11 So your Honor, kind of to -- to wrap up, you know, you've --
12 you've heard a lot about what it was like for Nate and I. I -- I
13 certainly did try to co-parent with him. It is in my natural
14 demeanor to find solution. I am -- it's what I do for a
15 profession, it's how I interact with people in my personal life.
16 You can see in the e-mails that I just asked to be put into
17 evidence, starting with Exhibit No. 12, which is an e-mail -- oh,
18 no, I'm sorry -- Exhibit No. 13. Sorry about that. Exhibit
19 No. 13 -- it's a little backwards. The top e-mail is Nathan's
20 response. You can see at the bottom of page 56 is my initial
21 e-mail that I wrote to Nate following the rubbing alcohol incident
22 in which I wanted to just open up a conversation with him about,
23 you know, safety concerns about Danny while in Nate's care. I
24 think the evidence here shows my tone was neutral. I tried to
25 approach Nate in a collaborative manner. And as you can see in his

1 road rage fashion, while I was in the car and pregnant with
2 him, despite me screaming and -- and yelling for him to stop;
3 Nate then arguing with me it wasn't a problem. I'm not going
4 to recount the quotes, but there was -- we got into an -- an
5 argument about it afterwards.

6 Nate telling me to drop the child support -- to stop
7 pursuing child support or I would see what's coming to me; me
8 asking Nate is that a threat, him saying you figure that out,
9 B-I-T-C-H. Later that night Nate sending someone unknown to me
10 to my house to go onto my property and to steal my car,
11 domestic violence.

12 Nate making very public statements on Facebook that were
13 calling me derogatory terms saying that's lucky all I got; Nate
14 voicing to his mother that he has thought many times about
15 hurting me; that he's had to consider whether or not Danny
16 would be better off without his mother in his life, in my view,
17 shows clear contemplation of not only hurting me, but carrying
18 out the act and what the impacts of that would be. That shows
19 a full thought process, and that is -- I certainly take that as
20 a threat.

21 Nate's general aggression and malicious behavior. The --
22 the way that he -- the way that he interacts with me nearly all
23 the time prior to his incarceration has always been
24 intimidating, aggressive, threatening. He uses language and
25 terms towards me -- believe it was referred to in his

1 A I think for the most part.
2 Q During these incidents where you felt his driving was
3 inappropriate, he was not angry at you?
4 A I -- you know, I do not recall six years ago what exactly the
5 tone in that car was. I know that he was not receptive to me
6 asking him to please stop, or I should say yelling at him to
7 stop. So what likely turned in -- or there likely was, you
8 know, anger directed towards another car. I certainly was
9 grouped into that. What do I say? He did not like my
10 feedback, I could say.
11 Q So if I'm understanding correctly, you seem to be saying that
12 he was unhappy with you for criticizing his driving. But your
13 criticism didn't cause the driving?
14 A Not that I recall.
15 Q Do you know anything about Nathan's Facebook profile settings?
16 A No.
17 Q So you wouldn't know, for example, if the documents that you
18 say come from his Facebook account, whether that account is set
19 such that you would never be able to see those in the ordinary
20 course of events?
21 A I don't recall what his settings were as far as limiting my
22 access. I do recall I could see a lot of things that Nate
23 would post. That Exhibit that I presented to the Court was
24 sent to me by his sister because she was concerned.
25

1 Q It wasn't something that you were able to see before she sent
2 it to you, was it?
3 A Not that I recall.
4 Q And so in that sense it did not appear to be directed to you,
5 did it?
6 A The content was certainly directed at me.
7 Q Would you agree that it wasn't --
8 A Nate did not write the message to me.
9 Q Would you agree there's a distinction between content being
10 about you, and content being intended for you to see it?
11 A Can you rephrase?
12 Q Sure. A person can write about another person without
13 intending that other person to ever see what they've written,
14 correct?
15 A Correct.
16 Q Would you, as you sit here, have any knowledge as to whether or
17 not these supposed Facebook profile screen shots are in that
18 category?
19 A You know, I suppose if Nate maybe thought that, you know, I
20 wouldn't be seeing these. However, I would also argue that,
21 you know, Facebook is a very public forum. We had mutual
22 friends who were involved in that conversation. I -- I don't
23 know. I guess I -- yeah.
24 Q Okay. You would agree, would you not, that Nathan loves Danny?
25 A I -- I believe that Nathan loves Danny, yeah.

call said she thought "he doesn't need to go if he's already thrown up and is acting normal." I decided not to take Danny to the hospital. I also decided that I need to report this to CPS and will call them tomorrow morning after I drop Danny off at preschool. In the car today Danny also said at random that "Daddy said that I should never trust a police officer."

February 28, 2014 (07:00 PM)- Nate came over to drop off his portion of Danny's tuition ($400 in cash). Nate seemed angry with me and said "we need to talk." Nate stated "it's fucking bullshit that someone called CPS on me, now I've got those fuckers investigating me." I gave a minimal response, I nodded and didn't say anything. He continued with "whoever made that report has serious issues, and that whole mandated reporter excuse is fucking bullshit. Whoever did this should reconsider their career choice. They had the choice to make that call or not and they certainly did not have to." I said "I really don't want to talk about this with you." Nate said "well, I want to go back to our old schedule." I asked why and Nate stated "first, I miss him, I don't get to see him very much now. Second, I still have major trust issues with you and I'm not convinced that you won't try to pull some legal bullshit on me again. I don't want to deviate from our parenting plan because I don't want that used against me." I replied that "I understand that you miss Danny, that's fair, but I he is doing really well with the new schedule and I don't want to disturb that. His behavior at school and home has drastically improved, he is getting positive daily progress reports from school, he is more grounded and not so chaotic, his speech is improving too. I don't want to change this for him. And this needs to be about Danny's needs, not ours. We need to work together to figure this out." Nate nodded and said "well, we need to figure something out. I want to go back to the old schedule." I started to walk away and said "let's think about some solutions and talk, ok? I have to go." Nate agreed and left. 30 minutes later Nate texted me "It would go a long way towards rebuilding my trust in you if you let know who accused me of child abuse, so I can send them the bill for my wasted time." I did not and will not respond to that text.

March 1, 2014 (09:00 PM)- I spoke with Alicia Brasfield on the phone tonight. She stated that "Nate knows it was you who called CPS and he pissed." I asked Alicia if she would still be willing to write a declaration about the condition of Nate's house and what she has seen going on there, she said that she is very willing to do so. Alicia stated that "it's almost painful to see Danny when he's with Nate or my parents because he's so out of control, no offense to your kid, but he's wild when he's with them." I explained that Danny is calm and well-behaved while in my care and invited her to spend some time with us. She agreed and stated that "it would be good to be able to make that comparison of Danny's behavior in my declaration, I really don't think that Nate is equipped to parent Danny." We agreed to stay in close contact and talk in a few days. She also stated that she is going to go to Nate's house this week to "see what's going on over there, I haven't been there in a while and I want what I write to be accurate."

March 2, 2014 (09:00 PM)- Kim Brasfield texted me today saying "Ugh Nate is suck a fucking jackass, I just read on one of his FB posts that he DID take your car. WTF I

can't believe my own brother is this much of a complete and utter jackass. I am so sorry Lauren." I texted back asking her to take a screen shot of this and to email it to me. She did and I saw that Nate did admit on facebook that he took my car he wrote something along the lines of 'she's lucky that's all I did." I have the pictures in an email as well as all texts from Kim.

March 2, 2014 (01:00 PM)- Kim Brasfield texted me that her mother (Diane) and sister (Alicia) both knew that Nate had stolen my car and withheld that information from me. I recall that I had told the officer who took the stolen vehicle report that I was suspicious that Nate had taken my car, the officer spoke with Nate, and Nate lied to the officer about taking it. I also recall that I had texted Nate the morning that my car was stolen asking if he knew where it was, Nate replied "are you accusing me of stealing the Subaru?" I believe I still have that text.

March 9, 2014 (07:00 PM) When Nate dropped Danny off at my house this afternoon I saw that Danny was riding in the front seat of Nate's car and there was no car seat for Danny. Danny was wearing a seatbelt but it was nearly up to his neck. I wrote Nate an email this evening stating that I noticed he wasn't wearing a seatbelt and asked Nate if he needed one. I said I "have an extra," which I don't, but I will buy one and give it to Nate if he says that he wants my "extra."

March 16, 2014 (7:50 PM)- While driving in my car with my dad and Keith, Danny stated that he went to bed "at 1, it was dark for a long time before I went to sleep." Danny also stated that he does not take his allergy medication while at Nate's house and that the last time he was given his medication was my my house on Thursday March 13th. Danny also stated that "Daddy said I should never talk to cops, that they're bad." I explained that if Danny ever gets hurt or is lost that he should ask a police officer for help, and that I like police officers and trust them.

March 23, 2014 (7:20 PM)- Today Nate dropped Danny off at my house at noon. Danny's clothing had a strong chemical smell on them, so much so that I had him change his clothes as soon as Nate left. I couldn't place the smell, but it reminded me of fertilizer, like the gardening section of Home Depot. Danny was very tired today and said that his neck and stomach hurt. Right before Nate left I told him I need March tuition money and that it is $575 for his portion this month, Nate rolled his eyes and stated "I'll let you know when I have money." I also noticed that Danny was rolling his eyes back and to the side quite a bit. I asked him why and he replied "I can't help it." It looks similar to a twitch or tick to me.

March 30, 2014 (5:00 pm)- nate dropped Danny of at my house at noon. Nate gave me $280 of the$575 he peers me for Danny's April tuition, he stated "this is all I have today, I can drop the rest off tomorrow." I told him that I would be home by 3pm. Later while driving in the car Danny stated at random "daddy says that he hopes someone shoots Obama." I stated "well, even if you don't like someone or they are different from you, killing someone is never ok." Danny's eye tick was markedly more noticaeble today, I

1 what -- what you posted online?
2 A. Oh, I'm sure you have a copy of them.
3 Q. I do. So you -- you don't deny writing -- I'm
4 going to hand you -- so we can make this nice and easy --
5 what has been marked, actually, as Exhibit 2. Exhibit 1
6 will come in later.
7 Are these your -- the words that you wrote
8 underneath your name on this Facebook posting?
9 A. I did write these, and I will note that the
10 privacy restrictions on them restricted them to immediate
11 family and a few of my close friends. This was not a
12 public communication.
13 Q. Now, you say in these remarks that "Lauren Rainbow
14 is an expert on alcohol." What did you mean by that?
15 A. Lauren has a long history with alcohol. She
16 consumed excessive amounts of it during college, enough to
17 get her a DUI and put her through treatment. I believe she
18 went through treatment. I'm not sure about that. I know
19 she got a DUI. She drank large amounts of alcohol when we
20 lived together.
21 Q. Do you think she has a problem with alcohol that
22 needs to be addressed?
23 A. It's hard to say at this point. You know, I know
24 she definitely did in the past. I don't believe that she
25 had a problem large enough to warrant treatment when we

1 **did"?**

2 A. I -- no, I did not, I don't believe.

3 **Q. Did you ever have any physical interactions, ever,**

4 **with Lauren?**

5 MR. CARNEY: You're going to have to rephrase

6 that.

7 THE WITNESS: That's a really broad question.

8 BY MR. THOMAS:

9 **Q. Have you ever pushed Lauren in anger?**

10 A. No.

11 **Q. Did you ever ask other people to cut off contact**

12 **with Lauren?**

13 A. I believe I might have asked certain members of my

14 family to cut off contact with her.

15 **Q. Have you called Lauren a bitch on Facebook?**

16 A. Absolutely. Did I call her a bitch on Facebook

17 where the privacy settings would let her read it? No. To

18 the best of my knowledge, I have not called her a bitch in

19 any public forum where she could access it or in any

20 communications with her except for the one phone call where

21 I did, in fact, call her a bitch.

22 **Q. And when was that?**

23 A. That was the "threatening phone call" incident.

24 **Q. And what did you tell her during that incident?**

25 A. The whole conversation?

APPENDIX D

Record Excerpts on the Relevance of an Agreed DVPO.

1 Mr. Brasfield told him he did not have time to talk about it at
2 that point. Mr. Boyer stepped back. Mr. Brasfield exited the
3 driveway in the vehicle in a normal fashion. Mr. Boyer was in no
4 way endangered.
5 This is not in any way, shape or form an act of domestic
6 violence against a family member.
7 In order to withstand a Motion for Summary Judgment, the
8 non-moving party may not simply rely on argumentative assertions
9 that unresolved factual matters remain, or insist that its
10 affidavits be considered at their face value, but rather must
11 submit specific facts that support their contentions.
12 In this case, in their opposition to the Motion for Partial
13 Summary Judgment, Respondent did not submit any declarations.
14 Instead, they tacked a signature line for Ms. Rainbow on the end of
15 their opposition brief, purporting to have her attest to the truth
16 of all of its contents, without specifying in any way, shape or
17 form which allegations she was or was not endorsing, and including
18 many things which were either blatantly argument, or were facts for
19 which she could not possibly have had any personal knowledge.
20 THE COURT: Well I would like you to address what this
21 Court sees as the biggest issue in this case, which is the
22 existence of an agreed upon permanent Order for Protection which
23 expires, I believe, June 3, 2015. And I do find it -- I was
24 surprised that that would be something that was brought to the
25 attention of the Court only in a response, as opposed to putting it

1 out there, because that's a -- I don't know what Ms. Rainbow would
2 have to do a declaration on besides pointing out an existing Order
3 for Protection which specifically states that the Respondent
4 committed domestic violence, as defined by the Statute, and
5 represents a credible threat to the physical safety of Petitioner.
6 And the Court concludes as a matter of law that the relief below
7 shall be granted. This is an agreed upon Order.
8 What do you think she needed to say in her response that could
9 do more to alert the Court to the fact that there is a genuine
10 issue of material fact, other than an agreed upon order stating the
11 very thing which you are trying to tell the Court doesn't really
12 exist?
13 MR. CARNEY: I'm happy to respond to that, your Honor.
14 THE COURT: Thank you.
15 MR. CARNEY: The law in the State of Washington is that a
16 protection order and/or a temporary parenting plan do not
17 predetermine the outcome of a trial on an issue relating to a
18 permanent parenting plan. There is no prejudice by Statute -- and
19 that's under 26.09.060(10)(a). A temporary order does not
20 prejudice the rights of a party or any child which are to be
21 adjudicated at subsequent hearings in the proceeding.
22 The cases are Marriage of Stewart, 133 Wn. App. 545 (2006),
23 Marriage of Watson, 132 Wn. App. 222 (2006).
24 THE COURT: I'm sorry, 133 -- I'm sure that's in your
25 reply.

1 MR. CARNEY: And so what -- what Respondent would have the
2 Court do is take a hearing, the transcript of which is now in the
3 record, where these issues were not discussed at all, during a time
4 in which Mr. Brasfield had been forbidden from speaking in his own
5 defense by his criminal defense attorney, and bootstrap that into
6 avoiding having to prove the very issue that is at the heart of
7 this case. That is contrary to law.
8 THE COURT: Well I would certainly agree with you,
9 counsel, that the existence of this Order does not establish the
10 presence of domestic violence as a matter of law for purposes of
11 establishing a parenting plan. You're absolutely correct. But to
12 say that its existence doesn't at least raise a question of fact
13 which would prohibit a Summary Judgment Order, that's the part that
14 I'm stuck on. Do you see what I'm saying? Why is that --
15 MR. CARNEY: I do --
16 THE COURT: -- not a --
17 MR. CARNEY: -- understand.
18 THE COURT: -- genuine issue of material fact; an agreed
19 upon statement where the Defendant says exactly that which you're
20 now telling this Court he shouldn't have said, or didn't really
21 say, or doesn't matter? I'm not saying it determines the issue.
22 It's certainly wide open for trial. But it certainly -- the part
23 that I'm having a hard time with is that it doesn't create a very
24 real genuine issue of material fact.
25

1 do it, or to provide that information to the Court. The record is
2 what we have before us. The hearsay allegations that were repeated
3 by this attorney are not evidence in the case, as my objections
4 previously would indicate.
5 The evidence before the Court fails to meet the Statutory
6 definition. For that reason, whereas the allegations may be
7 appropriate for receipt in evidence for other purposes, they don't
8 meet this standard. And so for that reason, we believe that the
9 Motion for Partial Summary Judgment should be granted.
10 THE COURT: Okay. Thank you very much, counsel. I am
11 prepared to rule. I have reviewed everything that's been provided
12 to me. I would say for whatever it is worth, that your motion,
13 Mr. Carney, is a very unusual one, and was incredibly well written
14 and well presented. And I always respect fine workmanship.
15 I do not find that it is an appropriate motion for me to grant
16 for multiple reasons. This is basically -- there are credibility
17 issues which cannot be determined as a matter of law. And while
18 your arguments are compelling, they do not give rise to a Motion
19 for Partial Summary Judgment.
20 Perhaps most important as a genuine issue of material fact is
21 the presence of an agreed upon permanent Order for Protection
22 expiring on June 3rd. In that Order, signed by Mr. Brasfield and
23 represented by very capable counsel I now know, he admitted to
24 committing domestic violence and that he represented a credible
25 threat to the physical safety of Petitioner.

1 THE COURT: Sure.

2 MR. CARNEY: -- for the purposes of this record, which may
3 be considered by another Court, is the Court prepared to make a
4 finding of which allegations, if true, would constitute acts of
5 domestic violence as defined in the relevant Statutes?

6 THE COURT: I'm not, counsel. These are all issues to be
7 raised at trial. I have made it very clear that I understand and
8 respect greatly the law that will prohibit anything other than a
9 full analysis of this issue. The fact that there is a temporary
10 Order will have no bearing on this Judge, or whoever else is
11 hearing this case. But I'm not prepared right now to indicate what
12 may or may not be defined as -- in isolation, as an act of domestic
13 violence. That is something that is considered in a totality of
14 the circumstances. And that's what I will do, or whoever the trial
15 judge will do, when this matter comes to trial. Okay.

16 MR. HILTY: Thank you, your Honor. I'll prepare an Order.

17 THE COURT: Okay, thank you.

18 BAILIFF: Please rise. Court is in recess.

19 Court adjourns for a recess.

20 RECESS/COURT RECONVENES

21 Court reconvenes on the same
date and the following is heard
22 in the presence of all parties:

23 THE COURT: Okay, please be seated. Mr. Carney, you
24 wanted a word.

25

1 A I believe he did not want me to speak at all.

2 Q And was that related --

3 THE COURT: Counsel -- counsel -- counsel, I don't want

4 you asking questions regarding attorney/client conversations,

5 whether you were the attorney or someone else. It's inappropriate,

6 and I think you know that.

7 MR. CARNEY: Well, your Honor, I believe it's his

8 privilege, and he can choose to answer the questions and waive it.

9 THE COURT: It's hearsay. I don't want to hear what

10 another attorney told him, or what he inferred from that attorney,

11 or anything else.

12 MR. CARNEY: Your Honor, if I might make a record on that

13 issue.

14 THE COURT: Please do.

15 MR. CARNEY: The Court has, on more than one occasion,

16 remarked that there is an agreed Protection Order in this case, and

17 that that has some bearing on the Court's determination of whether

18 domestic violence occurred in this case.

19 THE COURT: No. Counsel, I'm going to stop you, because

20 what I have told you before is that -- and I was very clear to

21 you -- that the Domestic Violence Protection Order has no bearing

22 on the Parenting Plan. And I understand that, and I have stated I

23 understand that. So you can make your record, but I want to be

24 clear to you that I have already stated my knowledge of that, and

25 my strict adherence to it. Go ahead, continue.

1
2
4. On 4-29-14, the mother petitioned for a Domestic Violence Protection Order and on 6-3-14 an agreed full order was entered. That order expired 6-2-15. The father's criminal history began in 2000 if not before and culminated with his arrest on 4-22-14. Although the father, who had private counsel at the hearing agreed to the entry of the DVPO, he later filed a Motion for Summary Judgment seeking a determination as a matter of law that the incidents giving rise to the agreed upon DVPO in June 2014 do **not** constitute domestic violence.[2]

5. Much of the trial was focused on the allegations giving rise to the 2014 DVPO. The relief requested by the father was to have a short term parenting plan, devoid of RCW 26.09.191 restrictions, lasting only until the father is released from incarceration. The father requests that his parents be able to pick up Danny and bring him for regular visits at the detention center.

6. The GAL conducted a thorough investigation with many collateral contacts. The court relied on the GAL's factual investigation but for many reasons that follow, *does not* adopt the GAL's recommendations. Similarly, the court does not accept the GAL's equivocal characterization of events between the parties. This court finds that Nate's

[2] The Motion was denied on April 24, 2015.

Judge Suzanne Parisien
King County Superior Court
516 Third Avenue
Seattle, WA 98104

Appendix E

Index to Trial Testimony of Nathan Brasfield with Reference to an Audio Recording

APPENDIX E

Index to Trial Testimony of Nathan Brasfield with Reference to Audio Recording

On the second page of this document is a table that identifies and locates all segments of Nathan Brasfield's non-passive telephonic participation in the trial held before Judge Suzanne Parisien on July 15-22, 2015. The segment references cite the trial transcript and the date/time within the official audio recording from which it was transcribed.

The segments that are not testimony, all well under a minute long, are all calm and indicate no anger or anything like anger. (This is readily verified.[1])

The segments constituting testimony are characterized for emotional tone, both generally and for specific interchanges which deviate from the general tone. This is to permit assessment of "anger"[2] which may be apparent in the audio and thus enable determination of whether substantial evidence supports the trial court's finding, "With regard to Lauren, though [Nathan] was physically absent from the courtroom, his anger could not have been any more apparent to the court." CP 1034 (FOF 22). To permit assessment of the possible significance of whatever emotion(s) may be discerned, the context or topic of the specific interchanges is also provided.

The general tone characterizations in the table below describe a floor level of apparent emotion, (not some kind of average), above which specific deviations are footnoted with a location, tone characterization, and the subject of the associated testimony or discussion.

---

[1] The non-testimony segments are at:
7/15|9:09:25|RP 1:14, 7/16|9:10:25|RP 181:21, 7/20|9:16:31|RP 256:10, 7/20|9:17:27|RP 257:16, 7/21|9:12:10|RP 409:15, 7/21|9:19:34|RP 414:25, 7/22|11:00:42|RP 592:13, 7/22|1:32:11|RP 612:13.

[2] Here, the term "anger" covers irritation, impatience, louder emphasis, and other deviations from a normal speaking voice which may indicate, arise from, or be influenced by feelings of anger.

Date	Audio Interval	Transcript (RP)	General Tone	Tone Deviations
7/21	9:58:34 - 10:36:57	440:3-462:23	Semi-tense[3]	[4] [5] [6] [7] [8] [9] [10]
7/21	10:52:53 – 11:20:23	463:11-479:11	Semi-tense	[11] [12] [13] [14] [15]
7/21	11:20:23 – 12:01:31	479:14-503:2	Normal[16]	
7/22	9:21:56 – 9:51:25	543:6-561:6	Normal	[17]
7/22	9:51:33 – 10:24:38	561:14-582:4	Near-calm[18]	[19] [20] [21] [22] [23]
7/22	10:24:55 – 10:28:12	582:10-584:14	Normal	
7/22	10:28:17 – 10:28:37	584:20-584:24	Normal[24]	

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[3] The term "semi-tense" in this table means an apparently controlled voice level, with a non-relaxed but not much elevated pitch. Tone in segments so characterized varies between a baseline (normal) level and this semi-tense.

[4] Nathan expresses slight irritation with question assuming a fact already denied, at 10:05:37 (RP 444), then progresses to restrained but clear irritation through 10:07:37 (RP 445:15) as Lauren asks questions regarding the clearly disputed issues of fact, issues known to both parties to be the subject of a credibility contest. This is one of the intervals of peak tension in the whole trial.

[5] Slightly tense at 10:14:11 (RP 450:1), where Lauren asks about the disputed "threat" language.

[6] Some impatience at 10:17:16 (RP 451:23) with questioning about named vs. actual roles in the earlier litigation.

[7] Contained (perhaps measured for cause) response at 10:19:52 (RP 453:8), regarding how the car repossession impacted Lauren (maybe a tension peak). This testimony was quoted in the findings. CP 1034 (FOF 23).

[8] Contained, perhaps irritated response at 10:26:15 (RP 457:1) to questioning about "threat" phone call.

[9] Firm, then emphatic response at 10:28:40 (RP 458:10) regarding content of Nathan's email to his mother.

[10] Contained, very level but tense at 10:31:45 (RP 459:24) regarding Lauren's role with police and FBI and how Nathan feels about what she did. (This is where the "unabashedly blames Lauren for arrest" finding is founded. *See* CP 1034 (FOF 22).)

[11] Clear irritation or disgust for one exclamation at 10:57:29 (RP 466:4) (FBI agent is an a**h***).

[12] Condemnation with emphasis at 11:09:40 (RP 473:6) regarding Danny being kept from Nathan's family.

[13] Slightly level and tense at 11:10:57 (RP 473:20) (Nathan is "angry" about Lauren going to police).

[14] Clear disdain at 11:14:28 (RP 475:23) responding to idea that schedule change was gun avoidance, with emphatic assertion that if Lauren let Danny go to Nathan's home when she thought there were guns accessible to him in the house, then she is "a shitty parent." (Compare with the court's characterization of this testimony, CP 1035 (FOF 23).)

[15] Irritation at 11:15:57 (RP 476:15), "I'm not going to answer that question again." (Judge clearly irritated, perhaps more so than Nathan.)

[16] The term "normal" in this table refers to a tone which is calm, with level and pitch fluctuating as is common in speech between people who are not adversaries or engaged in a dispute between them.

[17] Grim remorse at 9:27:27 (RP 546:14) ("I've been cut out of [Danny's] life.").

[18] The term "near-calm" is calm or mildly impatient (with tedious or repeated questions).

[19] At 10:02:34 (RP 569:1-20), with mild impatience, Nathan disagrees in oft-raised calendar dispute. ("I expressed to you....")

[20] Slight exasperation at 10:09:35 (RP 572:23), as Nathan firmly justifies his response to rubbing alcohol ingestion.

[21] Impatience with repeated question at 10:19:18 (RP 578:17).

[22] Emphatic impatience with repeated question at 10:19:45 (RP 579:1).

[23] Disbelief, perhaps sarcastic, at 10:22:10 (RP 580:7) ("Can I remember when Danny was born?").

[24] Tone is more level than is normal, but at a normal level.