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STATE OF WASHINGTON  
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**NO. 631471-I**

IN THE COURT OF APPEALS – STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON  
Respondent,

v.

**MICHAEL E. TURNER,**  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable Michael E. Rickert, Judge

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**RESPONDENT'S BRIEF**

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**ORIGINAL**

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## **I. SUMMARY OF ARGUMENT**

Michael Turner challenges his conviction for Felony Violation of a No Contact Order after a stipulated facts trial. After first challenging the validity of the no contact order and asking that it not be admitted to the trial court, Turner stipulated to admission of the order before the trial court. On appeal, Turner claims that there was insufficient evidence to support the conviction claiming that the order was invalid because the warnings to the defendant were on the reverse side of the order.

Because Turner stipulated to admission of the order before the trial court and validity of the no contact order is not an element of the crime of violation of the no contact order, the evidence was sufficient to support the conviction. Turner's claim based upon GR 14 also fails because that rule does not provide a remedy for a potential violation of its terms and because it applies to pleadings filed by a party, not court generated documents.

## **II. ISSUES**

Where the defendant stipulated to admission of the police reports which established all the elements and validity of the order is

not an element, was there sufficient evidence to support the finding of guilt?

### **III. STATEMENT OF THE CASE**

On October 1, 2008, Michael Turner was charged with felony Violation of a No Contact order for a third or subsequent violation of a court order. CP 1-2. The charge was based upon Turner having contact with his sister in violation of a no contact order. CP 4. Turner was inside his sister's residence when officers arrived. CP 4. Turner told officers he had no place else to go. CP 4.

On February 23, 2009, the parties entered into a stipulated facts trial so that Turner could preserve an issue that he raised in a motion in limine regarding the validity of the protection order he violated. 2/23/09 RP 2<sup>1</sup>, CP 15-16, CP 12-3. The trial court had a colloquy with the defendant about the form in which the defendant stipulated to the facts in the police reports and waived his right to a jury trial. CP 15-16, 2/23/09 RP 9-11.

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<sup>1</sup> The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

|            |                             |
|------------|-----------------------------|
| 1/28/09 RP | CrR 3.5 hearing stipulation |
| 2/23/09 RP | Stipulated Facts Trial      |
| 2/26/09 RP | Sentencing.                 |

Turner argued to the trial court that the no contact order was invalid based upon the claim the front of the order did not contain the legend under State v. Marking, 100 Wn. App. 506, 997 P.2d 461, *rev. denied*, 141 Wn.2d 1026, 11 P.3d 825 (2000). 2/23/09 RP 4-5. Turner did not allege a violation of GR 14 before the trial court. There was no information in the police reports indicating that Turner was unaware of the existence of the order or the fact that a crime could be pursued for a violation. CP 18-45. The police reports do not show that the warnings were on the reverse side, but provide the order as separate pages. CP 19-20. Also included with the no contact order issued the same date requiring that Turner “[r]ead thoroughly and strictly comply with the terms of the Domestic Violence No Contact order filed in this case.” CP 21. The reports included two judgment and sentence forms showing Turner had two prior convictions for violation of a no contact order. CP 31-45.

The trial court found that the order entailed both the front and back of the form and that the pertinent information to the order was contained on the front and the warning to the defendant was included on the back. 2/23/09 RP 6-7.

The trial court proceeded to the stipulated facts trial. 2/23/09 RP 8. Based upon the stipulated facts from the police reports, the

trial court found Turner guilty of violation of a felony Violation of No Contact Order. 2/23/09 RP 11.

On February 26, 2009, Turner was sentenced on two cases involving violation of a protection order at the same time. 2/26/09 RP 2. First, the trial court sentenced Turner on the case that was a jury trial. 2/26/09 RP 2-7. At the jury trial, Turner had raised the same issue regarding the language regarding the warnings to the defendant on the back side of the order, and the other judge had ruled in the same manner. 2/23/09 RP 7.<sup>2</sup>

Based upon the defendant's offender score of an eight or a nine, his standard range was the statutory maximum of 60 months. 2/26/09 RP 2, 9-10. Defense agreed that was the range. 2/26/09 RP 2, 9-10.

The trial court sentenced Turner to 60 months to run concurrent with the other case. 2/26/09 RP 10.

On February 26, 2009, Turner timely filed his notice of appeal. CP 58-9.

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<sup>2</sup> Turner's appeal of that conviction is pending in this Court in State v. Michael Turner, COA#63566-2-I. Turner has yet to file the Brief of Appellant in that case and Turner has sought an extension of time to file his brief by December 2, 2009. It is anticipated that Turner will raise the same issue in that case.

#### IV. ARGUMENT

**The validity of the no contact order is not an element of the offense of violation of a no contact order and the evidence was sufficient to convict Turner.**

Turner's sole assignment of error claims that the State failed to prove every element of the charge of violation of a no contact order beyond a reasonable doubt. Brief of Appellant at page 1. On describing the issue, Turner claims that the "order was insufficient to sustain the conviction because the mandatory legend appeared on the back of the order and after the judge's signature." Brief of Appellant at page 1. Thus, Turner's claim is regarding the sufficiency of the evidence.

Validity of a no contact order is not an element of the offense of violation of a no contact order. Validity is for the trial court to decide on for the purpose of admissibility.

We respectfully disagree with the Court of Appeals and hold that the validity of the no-contact order is not an element of the crime. To the extent the cited cases are inconsistent, they are overruled. First, as discussed above, "valid" does not appear in relevant sections of the statute, RCW 26.50.110. Accordingly, the existence of a valid court order is not a statutory element of the crime. The legislature likely did not include validity as an element of the crime because issues concerning the validity of an order normally turn on questions of law. Questions of law are for the court, not the jury, to resolve. Hue, 127 Wn. 2d at 92, 896 P.2d 682.

We also decline to find that the validity of the order is an implied element of the crime

State v. Miller, 156 Wn. 2d 23, 31, 123 P.3d 827 (2005).

Since Turner's assignment of error is to sufficiency of the evidence, this Court must apply the applicable standards.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Salinas, 119 Wn.2d 201. Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

State v. McNeal, 98 Wn. App. 585, 592, 991 P.2d 649 (1999).

In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000), *rev. denied*, 141 Wn.2d 1023, 10 P.3d 1074 (2000). Substantial evidence is evidence that "would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed." State v. Hutton, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). In finding substantial evidence, we cannot rely upon guess, speculation, or conjecture. Hutton, 7 Wn. App. at 728, 502 P.2d 1037.

State v. Prestegard, 108 Wn. App. 14, 22-3, 28 P.2d 817 (2001)

To prove a felony violation of a no contact order, the State must prove beyond a reasonable doubt that there existed a no contact order, the defendant knew of the existence of the order, the defendant violated the order, the defendant had twice been previously convicted for violating a court order, and that the acts occurred in the State of Washington. RCW 26.50.110, 11 Washington Practice: Pattern Jury Instructions Criminal at 632-8 (3<sup>rd</sup> ed.2008) (WPIC 36.51.02).

Turner does not contest that any of these elements were not met by the police reports which he stipulated were admissible for review by the judge. Those reports support the existence of all of the elements of the crime. CP 18-45.

Since, the Washington State Supreme Court has thus determined that the validity of the no contact order is not an element of the crime of violation of a no contact order and the State proved all elements of violation of a no contact order the evidence presented, Turner's claim of evidentiary sufficiency must be denied. CP 18-45.

Turner may attempt to claim that the assignment of error properly raised the issue of validity of the no contact order before this Court. However, to raise the issue of validity of the no contact order Turner would have had to assign error to the trial court's decision to

admit the no contact order into evidence. But Turner stipulated to the admission. Turner could not have assigned error since he did stipulate to admission of the police reports which included the two page of the no contact order. CP 15. Thus, even with the trial court ruling on the validity of the no contact order, Turner's stipulation to admission and failure to assign error precludes review. In re Detention of Brock, 126 Wn. App. 957, 961, 110 P.3d 791 (2005), RAP 10.3(a).

Should this Court choose to address the issue of the validity of the no contact order despite Turner's stipulation to the document at the trial court and his failure to claim error on appeal, this Court should hold that the order was valid.

Turner's claim on appeal boils down to the argument that GR 14 requires that all pleadings filed with the Court shall appear only on one side of the page and the fact that the legend portion of the no contact order was present on the back side of the order renders the order invalid.

State v. Miller, describes that the issue of applicability of the order is for the trial court to determine in the criminal case.

While we are inclined to believe that the Court of Appeals reached appropriate results in Marking and Edwards, issues relating to the validity of a court

order (such as whether the court granting the order was authorized to do so, whether the order was adequate on its face, and whether the order complied with the underlying statutes) are uniquely within the province of the court. **Collectively, we will refer to these issues as applying to the "applicability" of the order to the crime charged. An order is not applicable to the charged crime if it is not issued by a competent court, is not statutorily sufficient, is vague or inadequate on its face, or otherwise will not support a conviction of violating the order.** The court, as part of its gate-keeping function, should determine as a threshold matter whether the order alleged to be violated is applicable and will support the crime charged. [FN4] Orders that are not applicable to the crime should not be admitted. If no order is admissible, the charge should be dismissed.

**FN4. We do not suggest that orders may be collaterally attacked after the alleged violations of the orders. Such challenges should go to the issuing court, not some other judge.**

State v. Miller, 156 Wn.2d 23, 31, 123 P.3d 827 (2005).

It is important to note in Footnote 4 that the Miller court provided that the validity of the no contact order was a matter to be considered by the court issuing the no contact order, not for the court reviewing the applicability of the order in a subsequent trial.

At the hearing on the defendant's motion in limine, the State recognized that the order used by the District Court had the warning on the back of the order. 1/23/09 RP 2, 3. Turner argued to the trial court, without reference to GR 14, that the order was invalid because

the language was contained on the back side of the order. 1/23/09

RP 4-5.

RCW 10.99.040 does require that the no contact order contain a particular legend.

**RCW 10.99.040. Duties of court--No-contact order**

...

(4)(a) Willful violation of a court order issued under subsection (2) or (3) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: **"Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."**

(c) A certified copy of the order shall be provided to the victim.

...

RCW 10.99.040 (bold reference to legend added).

Here, the order did contain that legend, just on the reverse side of the order. The statutory reference to RCW 10.99.040 was on the front side of the order which linked to the statutory reference on the reverse side of the order.

Turner's argument is based upon the language of Washington  
General Rule 14.

**RULE 14. FORMAT FOR PLEADINGS AND OTHER PAPERS**

**(a) Format Requirements.** All pleadings, motions, and other papers filed with the court shall be legibly written or printed. The use of letter-size paper (8-1/2 by 11 inches) is mandatory. The writing or printing shall appear on only one side of the page. The top margin of the first page shall be a minimum of three inches, the bottom margin shall be a minimum of one inch and the side margins shall be a minimum of one inch. All subsequent pages shall have a minimum of one inch margins. Papers filed shall not include any colored pages, highlighting or other colored markings. This rule applies to attachments unless the nature of the attachment makes compliance impractical.

GR 14. Turner did not argue for application of GR 14 at the trial court. The addition of the language to GR 14 pertaining to one sided documents, margins and colored pages was added by amendment to the rule effective September 1, 2000. Amendments to Rules of Court, 141 Wn.2d 1108-9 (2000). By the language of the amendment, it applies to pleadings filed with the court, not for forms prepared by the court. The amendment was to assist in the ability to scan and save documents in an electronic format. One

treatise notes that the change was not intended to apply to court generated documents.<sup>3</sup>

The order adopting the new requirements stated that the requirements were recommended by the Court Management Council. A more detailed explanation found at the Supreme Court's website said the new requirements were designed "to assist courts which scan documents filed in the trial courts." The website also stated that the new requirements were "not intended to apply to court generated documents," nor were they intended to be "an impediment to parties filing pleading with the courts."

2 Karl B. Tegland, *Washington Practice: Rules Practice*, GR 14 at 14 (6<sup>th</sup> ed.2004). In addition, there is no remedy provided under GR 14 for failure to comply with the terms of GR 14. Turner's proposed remedy is to invalidate the order although he has not challenged the validity in the prior court proceeding.

Turner is using a change in the court rules that was intended to assist in converting documents filed with the court by the parties to electronic format to invalidate a court generated order. This challenge must be denied.

## **V. CONCLUSION**

For the foregoing reasons, Turner's conviction and sentence must be affirmed.

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<sup>3</sup> The undersigned counsel has attempted to locate the referenced Court

DATED this 20<sup>th</sup> day of November, 2009.

SKAGIT COUNTY PROSECUTING ATTORNEY

By:   
ERIK PEDERSEN, WSBA#20015  
Deputy Prosecuting Attorney  
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by;  United States Postal Service;  ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Andrew P. Zinner, addressed as Nielsen, Broman & Koch, PLLC, 1908 E Madison Street, Seattle, WA 98122. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 20<sup>th</sup> day of November, 2009.

  
KAREN R. WALLACE, DECLARANT

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Management Council on the present court website, but has been unable to do so.