

09561-4

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Apr 24, 2012, 7:55 am
BY RONALD R. CARPENTER
CLERK

09561-4

RECEIVED BY E-MAIL *bjh* 09561-4
NO. ~~86480-2~~

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

STEPHEN THOMAS LYNCH,
Appellant.

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

The Honorable Leroy McCullough, Judge

OPENING BRIEF OF APPELLANT

JOHN R. MUENSTER
Attorney at Law
MUENSTER & KOENIG
14940 Sunrise Drive NE
Bainbridge Island, WA 98110
(206)855-1025
Email: jrmuenster@muensterkoenig.com

TABLE OF CONTENTS

	Page
A. <i>Assignment of Error</i>	6
B. <i>Introduction and Statement of the Case</i>	6
C. <i>Description of Issues</i>	8
D. <i>Summary of Argument</i>	9
E. <i>Analytical Framework: Motions to Vacate a Judgment of Conviction</i>	9
1. <i>CrR 7.8</i>	9
2. <i>Post-Judgment Relief Principles</i>	10
F. <i>Under the First Amendment, No Conviction of the “Felony Harassment” Statute Can Stand Absent an Allegation and Proof of a “True Threat”</i>	13

G. *The Evidence was Insufficient to Support the Conviction; Mr. Lynch is Innocent of Felony Harassment; Relief Should Be Granted under CrR 7.8(b)(4) and (5) and RCW 10.73.100(4)*.....16

H. *The Judgment is Void; Relief Should be Granted under CrR 7.8(b)(4)*.....18

I. *Relief Should Be Granted Because the Statute Mr. Lynch was Convicted of Violating Was Unconstitutional as Applied to His Conduct. RCW 10.73.100(2); CrR 7.8(b)(5)*.....19

J. *Relief Should be Granted Because the Sentence Was in Excess of the Court’s Jurisdiction, RCW 10.73.100(5), CrR 7.8 (b)(5)*.....20

K. *Conclusion*.....21

Appendix.....22

TABLE OF AUTHORITIES

	Page
 <u>CASES</u>	
<i>Clark v. Baines</i> , 150 Wash.2d 905, 917, 84 P.3d 245 (2004).....	17, 18
<i>Fiore v. White</i> , 531 U.S. 225, 228-29, 121 S.Ct. 712, 148 L.Ed2d 629 (2001).....	10, 11
<i>In Re Hinton</i> , 152 Wash2d 853, 857, 100 P.3d 801(2004).....	10, 11, 12, 13, 17, 18, 19, 20
<i>In re Moore</i> , 116 Wash.2d 30, 37, 803 P.2d 300 (1991).....	11
<i>In Re Vandervlugt</i> , 120 Wash.2d 427, 436, 842 P.2d 950 (1992)....	11, 12
<i>Johnson v. Morris</i> , 87 Wash.2d 922, 927-28, 557 P.2d 1299 (1976)..	11
<i>State v. Darden</i> , 99 Wash.2d 675, 679, 663 P.2d 1352 (1983).....	11
<i>State v. Kilborn</i> , 151 Wn.2d 36, 41, 84 P.3d 1215 (2004).....	14, 15, 16, 18, 19
<i>State v. Schaler</i> , 169 Wash.2d 274, 286-87, 236 P.3d 858 (2010).....	12, 14, 15, 16, 18, 19
<i>State v. Williams</i> , 144 Wash.2d 197, 206-07, 26 P.3d 890 (2001)..	14, 15
<i>Watts v. United States</i> , 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969).....	14

RULE, STATUTES AND CONSTITUTIONAL PROVISION

CrR 7.8.....7, 8, 9, 16, 17, 18, 19, 20

RCW 9A.46.0206, 8, 13, 14, 15

RCW 10.73.100.....8, 9

RCW 10.73.100(2).....7, 9, 19

RCW 10.73.100(4).....7, 9, 16

RCW 10.73.100(5).....7, 10, 20

First Amendment, United States Constitution..12, 13, 14, 15, 16, 18, 19

A. Assignment of Error

The trial court erred by entering an order (1) denying Appellant's motion to vacate judgment, and (2) transferring the case to the Court of Appeals, Division One, for disposition as a personal restraint petition.

B. Introduction and Statement of the Case

Stephen Lynch was charged by amended information with "felony harassment" pursuant to 9A.46.020. The charge was based upon his speech. According to the certificate of probable cause, he was alleged to have stated the following to contractors at his next-door neighbor's house: (a) "don't tell me what to do, you little punk"; and (b) if anyone touches him, he would "bring down more trouble" than they could deal with. He later returned to the scene allegedly waving a rifle and allegedly daring people to come out and fight him. Exhibit B herein, Index page 0014, CP 48-49.

Mr. Lynch entered an *Alford* plea, and was sentenced in 2006. CP 7-25; 26-33.

time-barred. We filed a reply. CP 65-76. The trial court entered an order denying the motion to vacate, and transferring the motion to vacate to the Court of Appeals. CP 77. We timely filed a notice of appeal. CP 78-81.

C. Description of Issues

Four fundamental issues are presented by this appeal.

1. Whether the time bar in RCW 10.73. is inapplicable because RCW 9.46.020 is unconstitutional as applied to Mr. Lynch's speech;
2. Whether Mr. Lynch's *Alford* plea is any bar to relief under the time-bar exception contained in RCW 10.73.100(5), see CrR 7.8(b)(5);
3. Whether Mr. Lynch's *Alford* plea bars him from challenging the sufficiency of the evidence in the motion to vacate;

4. Whether the judgment was void and subject to challenge in Mr. Lynch's motion to vacate.

D. Summary of Argument

The argument is summarized in the Statement of Grounds for Direct Review. The summary is incorporated by reference herein as though fully set forth.

E. Analytical Framework: Motions to Vacate a Judgment of Conviction

1. CrR 7.8

On motion, the Court can relieve Mr. Lynch from the judgment of conviction if the judgment is void. CrR 7.8(b)(4). The Court is also authorized to grant relief for "any other reason justifying relief from the operation of the judgment." CrR 7.8(b)(5).

The reasons include those specified in RCW 10.73.100, a statute cited in the rule. Relief can be granted if the statute Mr. Lynch was

convicted of violating was unconstitutional as applied to his conduct, RCW 10.73.100(2), or if the evidence is insufficient. RCW 10.73.100(4). Relief can also be granted if the sentence imposed was in excess of the Court's jurisdiction. RCW 10.73.100(5). Each provision applies here, as discussed below.

Our motion to vacate set forth the grounds for relief, supported by a declaration setting forth a concise statement of the facts, as required by CrR 7.8(c)(1). The requisite showing was made. The trial court should have granted the relief requested.

2. Post-Judgment Relief Principles

“Where a defendant is convicted of a nonexistent crime, the judgment and sentence is invalid on its face.” *In Re Hinton*, 152 Wash2d 853, 857, 100 P.3d 801(2004). The invalidity of Mr. Lynch's conviction may be shown by case documents: (a) the amended information and certificate of probable cause; (b) Mr. Lynch's plea statement; and (c) the judgment and sentence. *Hinton, supra.*, 152 Wash.2d at 858.

“[I]t is a fundamental due process violation to convict and incarcerate a person for a crime without proof of all the elements of the crime.” *Hinton, supra.*, 152 Wash.2d at 859, citing *Fiore v. White*, 531 U.S. 225, 228-29, 121 S.Ct. 712, 148 L.Ed2d 629 (2001). The elements of the offense are reflected in this Court’s construction of the statute. *Hinton, supra.*, 152 Wash.2d at 859-860; *Fiore, supra.* The Court’s construction establishes what the statute meant at the time of enactment and at the time of a conviction. *In Re Hinton*, 152 Wash.2d at 859-860; *Fiore, supra.*, cited in *Hinton*. There is no “retroactivity” issue:

[I]t is a fundamental rule of statutory construction that once a statute has been construed by the highest court of the state, that construction operates as if it were originally written into it. In other words, there is no “retroactive” effect of a court’s construction of a statute; rather, once the court has determined the meaning, *that is what the statute has meant since its enactment.*

In Re Vandervlugt, 120 Wash.2d 427, 436, 842 P.2d 950 (1992), quoting *In re Moore*, 116 Wash.2d 30, 37, 803 P.2d 300 (1991)

(emphasis by Court) (quoting *State v. Darden*, 99 Wash.2d 675, 679, 663 P.2d 1352 (1983) (quoting *Johnson v. Morris*, 87 Wash.2d 922, 927–28, 557 P.2d 1299 (1976))).

As discussed below, this Court has repeatedly held that under the First Amendment, the felony harassment statute (under which Mr. Lynch was charged) can only prohibit “true threats”. *State v. Schaler*, 169 Wash.2d 274, 286-87, 236 P.3d 858 (2010), and cases cited therein. Those holdings relate back to the enactment of the statute. *Hinton, supra.*, 152 Wash.2d at 869, fn. 2. Mr. Lynch is entitled to have those holdings applied in his case. *Vandervlugt, supra.*; *Hinton, supra.* Accordingly, as is discussed below, his conviction must be vacated.

Mr. Lynch entered an *Alford* plea to the charge. That is no bar to relief here:

The fact that some of the petitioners pled guilty does not make any difference. [*In re Pers. Restraint of Thompson*, 141 Wash.2d [712] at 723, 10 P.3d 380 [2000] (a plea agreement to plead guilty to a nonexistent crime does not foreclose collateral relief because a plea agreement cannot exceed the statutory authority granted to the courts). As this court explained in *In re Pers.*

Restraint of Goodwin, 146 Wash.2d 861, 867-72, 50 P.3d 618 (2002), an individual cannot, by way of a negotiated plea agreement, agree to a sentence in excess of that allowed by law and thus cannot waive such a challenge. The same necessarily follows as to a plea agreement to plead guilty to a nonexistent crime.

In re Personal Restraint of Hinton, supra., 152 Wash.2d at 860-61.

We now turn to the substantive and First Amendment case law analyzing the felony harassment statute under which Mr. Lynch was wrongfully convicted.

F. *Under the First Amendment, No Conviction of the “Felony Harassment” Statute Can Stand Absent an Allegation and Proof of a “True Threat”.*

Mr. Lynch was charged by amended information with felony harassment pursuant to RCW 9A.46.020. A copy of the amended information, Index page 0013, CP 6, is attached hereto as Exhibit A for the Court’s convenience.

RCW 9A.46.020 provides in relevant part:

- (1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person ... [and]

...

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out....

(2)(b) A person who harasses another is guilty of a class C felony if. . .

(ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened....

“The statute criminalizes pure speech. Therefore, it “ ‘must be interpreted with the commands of the First Amendment clearly in mind.’ ”” *State v. Kilborn*, 151 Wn.2d 36, 41, 84 P.3d 1215 (2004), quoting, in part, *State v. Williams*, 144 Wash.2d 197, 206-07, 26 P.3d 890 (2001) (quoting *Watts v. United States*, 394 U.S. 705, 707, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969)). . . To avoid unconstitutional infringement of protected speech, RCW 9A.46.020(1)(a)(i) must be

read as clearly prohibiting only ‘true threats’.”¹ *State v. Kilborn*, 151 Wn.2d 36, 41, 43, 84 P.3d 1215 (2004)(other citations omitted); *State v. Schaler, supra.*, 169 Wash.2d at 862-63.

The statute contains a subjective *mens rea*:

The statute requires that the defendant “knowingly threatens...” RCW 9A.46.020(1)(a)(i). This means that “the defendant must subjectively know that he or she is communicating a threat, and must know that the communication he or she imparts directly or indirectly is a threat to cause bodily injury to the person threatened or to another person.”

State v. Kilborn, supra, 151 Wn.2d at 48 (internal citation omitted). In addition, this Court has concluded that under the First Amendment, the harassment statute must be construed to require a *mens rea* on the part of the defendant as to the “true threat” to kill. *State v. Schaler, supra.*, emphasizes this point:

In the context of criminalizing speech, however, the lack of *mens rea* as to the result is critical. Because the First Amendment limits the statute to proscribing “true threats,”

¹ A “true threat” is “a statement made in a ‘context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted ... as a serious expression of intention to inflict bodily harm upon or to take the life’ ” of another person. *State v. Kilborn, supra*, 151 Wn.2d at 43.

it must be read to reach only those instances “ ‘wherein a reasonable person would foresee that the statement would be interpreted as a serious expression of intention ... to take the life of another person.’ ” *Kilburn*, 151 Wash.2d at 43, 84 P.3d 1215 (emphasis added) (internal punctuation and quotation marks omitted) (quoting *Williams*, 144 Wash.2d at 208-09, 26 P.3d 890). This standard requires the defendant to have some mens rea as to the result of the hearer's fear: simple negligence. See W. Page Keeton, et.al., *Prosser and Keeton on Torts*, § 31, at 169 (5th ed. 1984) (describing negligence as the failure to guard against “a risk of [certain] consequences, sufficiently great to lead a reasonable person ... to anticipate them”). Because the First Amendment requires negligence as to the result but the instructions here required no mens rea as to result, the jury could have convicted Schaler based on something less than a “true threat.” The instructions were therefore in error.

State v Schaler, supra., 169 Wash.2d at 287 (emphasis by Court).

Regarding the burden of proof, this Court has stated:

Because of the First Amendment implications, a conviction for felony harassment based upon a threat to kill requires that the State satisfy both the First Amendment demands—by proving a true threat was made—and the statute, by proving all the statutory elements of the crime. Here, the State has failed to show a true threat, the conviction must be reversed, and we need not decide whether statutory elements are otherwise satisfied.

State v. Kilborn, supra, 151 Wn.2d at 54.

Under these principles, Mr. Lynch is entitled to relief.

G. *The Evidence was Insufficient to Support the Conviction; Mr. Lynch is Innocent of Felony Harassment; Relief Should Be Granted under CrR 7.8(b)(4) and (5) and RCW 10.73.100(4).*

The State attached the certificate of probable cause to the amended information in the case and incorporated the same. A copy of the certificate is attached hereto as Exhibit B, Index pages 0014-0016, CP 48-50. Review of the certificate reveals that Mr. Lynch did not make a true threat to kill to Ms. Laire or to Mr. Vanderhoof. In fact, the certificate reveals no “true threat” to harm, much less a “true threat” to kill, under RCW 9A.46.020.

Based on the foregoing, it appears that Mr. Lynch pled guilty to something that he in fact is innocent of.

As noted above, it is a fundamental due process violation to convict and incarcerate a person for a crime without proof of all the elements of the crime. *In re Personal Restraint of Hinton, supra.*, 152 Wash.2d at 859. The *Alford* plea is no bar to our challenge to the conviction. *Hinton, supra.*, 152 Wash.2d at 860-861; see also *Clark v.*

Baines, 150 Wash.2d 905, 917, 84 P.3d 245 (2004) (*Alford* plea did not preclude subsequent challenge to probable cause in civil action). Mr. Lynch was convicted without proof of all the elements of the crime, in violation of fundamental due process. *In re Personal Restraint of Hinton*, 152 Wash.2d at 859. He is therefore entitled to relief. CrR 7.8(b)(4),(5).

H. *The Judgment is Void; Relief Should be Granted under CrR 7.8(b)(4)*

As discussed above, the harassment statute cannot criminalize speech under the First Amendment, except for “true threats”. However, the statute does not contain any provision restricting its reach to “true threats”. Mr. Lynch was never charged with making a “true threat” to kill. He was not convicted of such a charge either. Here, as in *Hinton*, “the invalidity of [Mr. Lynch’s] judgment and sentence is clearly shown by the “charging documents, statement[s] of guilty pleas, and the judgments and sentences.” *Hinton*, 152 Wash. 2d at 803. Here, as in *Hinton*, Mr. Lynch was convicted under a statute which, as construed in *Schaler*, *Kilburn* and other cases, could not

criminalize his conduct as felony harassment. *Hinton*, 152 Wash.2d at 859-860.

It has long been recognized that a judgment and sentence based on conviction of a nonexistent crime entitles one to relief on collateral review. *E.g.*, *Ex parte Lombardi*, 13 Wash.2d 1, 123 P.2d 764 (1942). Moreover, in *In re Personal Restraint of Carle*, 93 Wash.2d 31, 604 P.2d 1293 (1980), the court held that the petitioner was entitled to relief from a sentence not authorized by law, observing that a court “ ‘has the power and duty to correct [such an] erroneous sentence.’ ” *Carle*, 93 Wash.2d at 33, 604 P.2d 1293 (emphasis omitted) (quoting *McNutt v. Delmore*, 47 Wash.2d 563, 565, 288 P.2d 848 (1955)). Obviously, the same is true where not just the sentence is without authority of law, but the conviction on which that sentence is based is completely without authority of law. The fact that some of the petitioners pled guilty does not make any difference.

In re Personal Restraint of Hinton, *supra.*, 152 Wash.2d at 860.

The judgment is void. This Court should grant relief. CrR 7.8(b)(4).

I. *Relief Should Be Granted Because the Statute Mr. Lynch was Convicted of Violating Was Unconstitutional as Applied to His Conduct. RCW 10.73.100(2); CrR 7.8(b)(5).*

Under the First Amendment, the felony harassment statute was

unconstitutional as applied to Mr. Lynch's conduct, as he did not speak a "true threat" as that term is defined and analyzed in the cases discussed above. He is therefore entitled to relief under RCW 10.73.100(2) and CrR 7.8(b)(5). *State v Schaler, supra.*, 169 Wash.2d at 287; *State v Kilburn, supra.*, 151 Wash.2d at 54.

J. *Relief Should be Granted Because the Sentence Was in Excess of the Court's Jurisdiction, RCW 10.73.100(5), CrR 7.8 (b)(5).*

The foregoing discussion establishes that the trial court did not have jurisdiction to convict Mr. Lynch of felony harassment, since he was neither charged with nor convicted of making a true threat to kill.

His *Alford* plea did not give the Court jurisdiction:

As this court explained in *In re Pers. Restraint of Goodwin*, 146 Wash.2d 861, 867-72, 50 P.3d 618 (2002), an individual cannot, by way of a negotiated plea agreement, agree to a sentence in excess of that allowed by law and thus cannot waive such a challenge. The same necessarily follows as to a plea agreement to plead guilty to a nonexistent crime.

In re Personal Restraint of Hinton, 152 Wash. 2d at 861. Accordingly,

relief should be granted to Mr. Lynch under RCW 10.73.100(5) and CrR 7.8(b)(5).

K. Conclusion

For the reasons stated, the trial court's order should be reversed, and the case remanded with directions to grant Mr. Lynch's motion to vacate judgment.

DATED this the 23rd day of April, 2012.

Respectfully submitted,
MUENSTER & KOENIG

By: S/John R. Muenster
JOHN R. MUENSTER
Attorney at Law
WSBA No. 6237
Of Attorneys for Stephen T. Lynch

APPENDIX

- (a) Amended information, Index p. 0013, attached as Exhibit A, CP 6;
- (b) Certificate of probable cause, Index pp. 0014-16, attached as Exhibit B, CP 48-50;
- (c) Statement of Defendant on [*Alford*] Plea of Guilty, Index pp. 0003-0011, attached as Exhibit C, CP 7-25;
- (d) Judgment and Sentence, Index pp. 0307-0312, attached as Exhibit D, CP 26-33.
- (e) First Amendment, United States Constitution (ratified effective December 15, 1791)

CERTIFICATE OF PROBABLE CAUSE

05-1-13 181-7 KNT

1
2
3 That Thien Do is a detective with the King County Sheriff's Office and
4 has reviewed the investigation conducted in the King County Sheriff's case
5 number(s) 05-284958;

6 There is probable cause to believe that STEVEN T LYNCH DOB 06/11/50
7 committed the crime(s) of ASSAULT 1ST DEGREE-ATTEMPT.

8 This belief is predicated on the following facts and circumstances:

9 In King County, on 09/28/05, at about 1330hrs, Connie Laire was at her house
10 located at 25423 SE 244th St with 3 contractors. The contract workers were
11 later identified as JOSHUA BECKETT, LARRY VANDERHOOF and BRUCE ROGGENCAMP.
12 LAIRE and the contractors were in LAIRE' s house when a male, later
13 identified as LYNCH, entered the house without permission. LYNCH demanded his
'GOD-DAMNED GARAGE DOOR OPENER" from LAIRE. LYNCH continued yelling at her
15 and using obscenities directed at her. LAIRE recognized LYNCH as her
16 neighbor.

17 VANDERHOOF heard the disturbance and told LYNCH that he should leave. LYNCH
18 replied, "DON'T TELL ME WHAT TO DO, YOU LITTLE PUNK". VANDERHOOF became more
19 concerned about LYNCH's behavior and asked him to leave again. LYNCH stated
20 that if anyone touches him, he would "bring down more trouble" than they
1 could deal with and said that he "owned" the King County Sheriff's Office.
2 LYNCH told VANDERHOOF that he would return to the house once the contractors
3 left. LYNCH left as VANDERHOOF called 911.

0014

At 1410hrs, LYNCH returned to LAIRE's house. LYNCH parked his truck to block
the driveway which prevented anyone from coming or going from LAIRE's house.

1 BECKETT saw that LYNCH was now armed with a rifle and that he was waving the
2 rifle. BECKETT warned everyone in the house that LYNCH had a gun. BECKETT saw
3 LYNCH aim the rifle towards the house.

4 VANDERHOOF was standing in the garage and saw LYNCH point the rifle directly
5 at him. VANDERHOOF got scared for his life and ran for cover. He called 911
6 again.

7 LAIRE looked out a window and saw LYNCH point the rifle at the house. LYNCH
8 was also daring people to come out and fight him.

9
10 Deputy Truitt from the King County Sheriff's Office arrived and saw LYNCH
11 placed what is believed to be a rifle in the rear seat of his truck. Deputy
12 Truitt placed LYNCH under arrest and read him his constitutional rights.
13 LYNCH would not acknowledge his rights by continuing to yell at Dep. Truitt.

14
15 Dep. Truitt recovered the rifle from the rear floor board of LYNCH's truck.
16 Dep. Truitt found that the rifle was loaded with 14 rounds of .22 caliber
17 bullets and that there was one round in the chamber. Dep. Truitt saw that the
18 safety on the rifle was not activated and that the rifle was ready to fire a
19 bullet.

20 0015

21 Dep. Lyon read LYNCH his constitutional rights again which LYNCH did
22 acknowledge that he understood his rights. LYNCH stated that he did go to
23 LAIRE's house to demand his garage door opener but the construction workers
24 surrounded him and threatened him. LYNCH said that he left to go the bank and
25 post office and then returned. LYNCH parked his truck and propped his rifle
on the bed of his truck as he made a phone call to code enforcement. LYNCH

ORIGINAL

1 deputy that he had the rifle because he was going to clean the rifle and that
2 he did not point it at anyone. LYNCH also admitted that no one had surrounded
3 him or confronted him when he had returned to LAIRE's house.
4

5 Under penalty of perjury under the laws of the State of Washington, I certify
6 that the foregoing is true and correct. Signed and dated by me this 6 day
7 of OCT, 2005, at County of King, Washington.
8

9
10 

11 Norm Maleng
12 Prosecuting Attorney
13 W 554 King County Courthouse
Seattle, WA 98104-2312
(206) 296-9000
14
15
16
17
18
19
20
21
22

0016

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

FILED

05 SEP 21 PM 2:46

KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

No. 05-1-13181-7 KMT

vs.

Steven Lynch

Defendant,

STATEMENT OF DEFENDANT ON
PLEA OF GUILTY TO FELONY
NON-SEX OFFENSE (STTDFG)

1. My true name is Steven Lynch
2. My date of birth is June 11, 1950
3. I went through the 16th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

(a) I have the right to representation by a lawyer; if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Brad A. Mayhew

(b) I am charged with the crime(s) of Harassment, Felony

The elements of this crime(s) are set forth in the information/ 1st amended information, which is incorporated by reference and which I have reviewed with my lawyer.

ORIGINAL

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself;
- (c) The right at trial to testify and to hear and question the witnesses who testify against me;
- (d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;
- (f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
D	1 to 3 months 0 to 2 years unlimited	N/A	5 years \$ 10,000.
			_____ years \$ _____
			_____ years \$ _____

1 The crime of _____ is a most serious offense as defined by
2 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this
3 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent
4 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence
5 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not
6 applicable, this paragraph should be stricken and initialed by the defendant and the judge.]

7 (b) The standard sentence range is based on the crime charged and my criminal history.
8 Criminal history includes prior convictions and juvenile adjudications or convictions, whether in
9 this state, in federal court, or elsewhere.

10 (c) The prosecuting attorney's statement of my criminal history is attached to this agreement.
11 Unless I have attached a different statement, I agree that the prosecuting attorney's statement is
12 correct and complete. If I have attached my own statement, I assert that it is correct and complete.
13 If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated
14 to tell the sentencing judge about those convictions.

15 (d) If I am convicted of any new crimes before sentencing, or if I was on community
16 placement at the time of the offense to which I am now pleading guilty, or if any additional criminal
17 history is discovered, both the standard sentence range and the prosecuting attorney's
18 recommendations may increase or a mandatory sentence of life imprisonment without possibility of
19 parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this
20 charge is binding on me.

21 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a
22 victim's compensation fund assessment. If this crime resulted in injury to any person or damages to

1 or loss of property, the judge will order me to make restitution, unless extraordinary circumstances
2 exist which make restitution inappropriate. The judge may also order that I pay a fine, court costs,
3 attorney fees, and other costs and fees. Furthermore, the judge may place me on community
4 supervision, community placement or community custody and I will have restrictions and
5 requirements placed upon me.

6 (f) In addition to confinement, the judge will sentence me to a period of community
7 supervision, community placement or community custody.

8 For crimes committed prior to July 1, 2000, the judge will sentence me to: (A) community
9 supervision for a period of up to one year; or (B) to community placement or community custody for
10 a period up to three years or up to the period of earned release awarded pursuant to RCW
11 9.94A.728, whichever is longer. [If not applicable, this paragraph should be stricken and initialed
12 by the defendant and the judge _____.]

13 For crimes committed on or after July 1, 2000, the judge will sentence me to the community
14 custody range which is from ~~20~~ months to ~~24~~¹² months or up to the period of earned
15 release awarded pursuant to 9.94A.728, whichever is longer, unless the judge finds substantial and
16 compelling reasons to do otherwise. During the period of community custody I will be under the
17 supervision of the Department of Corrections, and I will have restrictions and requirements placed
18 upon me. My failure to comply with these conditions will result in the Department of Corrections
19 transferring me to a more restrictive confinement status or other sanctions being imposed. [If not
20 applicable, this paragraph should be stricken and initialed by the defendant and the judge _____.]

21 (g) The prosecuting attorney will make the following recommendation to the judge:
22

30 days home detention, First Offender Waiver, 24 mo, Probation, court costs, \$100 lab fee, \$500 Victim Penalty Assessment, no contact w/ Connie Love or other witnesses, no criminal law violations, obtain mental health evaluation and follow recommended treatment. Real Facts, restitution if any

1
2
3 The prosecutor will make the recommendation stated in the plea Agreement and State's
4 Sentence Recommendation, which are incorporated by reference.

5 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge
6 must impose a sentence within the standard range unless the judge finds substantial and compelling
7 reasons not to do so. If the judge goes outside the standard range, either I or the State can appeal
8 that sentence. If the sentence is within the standard range, no one can appeal the sentence.

9 (i) The crime of _____ has a mandatory minimum sentence
10 of at least _____ years of total confinement. The law does not allow any reduction of this
11 sentence. ~~[If not applicable, this paragraph should be stricken and initialed by the defendant and the~~
12 judge .]

13 (j) The crime charged in Count _____ includes a firearm / deadly weapon
14 sentence enhancement of _____ months.

15 This additional confinement time is mandatory and must be served consecutively to any
16 other sentence and any other enhancement I have already received or will receive in this or any other
17 cause. ~~[If not applicable, this paragraph should be stricken and initialed by the defendant and the~~
18 judge .]

19 (k) The sentences imposed on counts 2, except for any weapons enhancement,
20 will run concurrently unless the judge finds substantial and compelling reason to do otherwise. [If
21 not applicable, this paragraph should be stricken and initialed by the defendant and judge _____.]
22

1 (l) For the crime of vehicular homicide while under the influence of intoxicating liquor or
2 any drug, the sentence will be increased by two years for each prior offense as defined in RCW
3 46.61.5055(8). This additional confinement time is mandatory and must be served consecutively to
4 any other sentence and any other enhancement I have already received or will receive in this or any
5 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and
6 the judge X MS.]

7 (m) Counts _____ are serious violent offenses arising from separate and distinct
8 criminal conduct and the sentences on those counts will run consecutively unless the judge finds
9 substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be
10 stricken and initialed by the defendant and the judge X MS.]

11 (n) The judge may sentence me as a first-time offender instead of imposing a sentence
12 within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much as
13 90 days of confinement plus all of the conditions described in paragraph (6)(e). In addition, I may
14 be sentenced up to two years of community supervision if the crime was committed prior to July 1,
15 2000, or two years of community custody if the crime was committed on or after July 1, 2000. The
16 judge also may require me to undergo treatment, to devote time to a specific occupation, and to
17 pursue a prescribed course of study or occupational training. [If not applicable, this paragraph
18 should be stricken and initialed by the defendant and the judge _____.]

19 (o) The judge may sentence me under the special drug offender sentencing alternative
20 (DOSA) if I qualify under former RCW 9.94A.120(6) (for crimes committed before July 1, 2001, or
21 RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a
22 period of total confinement for one-half of the midpoint of the standard range and community

1 custody of at least one-half of the midpoint of the standard range, plus all of the other conditions
2 described in paragraph (6)(e). During confinement and community custody, I will be required to
3 participate in substance abuse evaluation and treatment, not to use illegal controlled substances, and
4 to submit to testing to monitor that. X

5 (p) This plea of guilty will result in revocation of my privilege to drive under RCW
6 46.20.285 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. If not
7 applicable, this paragraph should be stricken and initialed by the defendant and the judge. X

8 (q) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the
9 judge finds I used a motor vehicle in the commission of this felony. X

10 (r) If this crime involves a sexual offense, prostitution, or a drug offense associated with
11 hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus
12 (HIV). If not applicable, this paragraph should be stricken and initialed by the defendant and the
13 judge. X

14 (s) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a
15 crime under state law is grounds for deportation, exclusion from admission to the United States, or
16 denial of naturalization pursuant to the laws of the United States.

17 (t) I will be required to provide a biological sample for purposes of DNA identification
18 analysis.

19 (u) Because this crime involves a kidnapping or unlawful imprisonment offense involving a
20 minor, I will be required to register with the sheriff of the county of the state of Washington where I
21 reside, study, or work. The specific registration requirements are described in the "Offender
22 Registration" Attachment. X

1 (v) This plea of guilty will result in the revocation of my right to possess, own, or have in
2 my control any firearm unless and until my right to do so is restored by a court of record.

3 7. I plead guilty to the crime(s) of

4 Felony Harassment

5
6 as charged in the information/ 1st amended information. I have received a copy of
7 that information.

8 8. I make this plea freely and voluntarily.

9 9. No one has threatened harm of any kind to me or to any other person to cause me to make
10 this plea.

11 10. No person has made promises of any kind to cause me to enter this plea except as set
12 forth in this statement.

13 11. The judge has asked me to state briefly in my own words what I did that makes me
14 guilty of this (these) crime(s). This is my statement:

15 I do not believe I am guilty of a crime in this
16 matter as I did not intend my actions to be a
17 threat to kill or injure someone. However,
18 after reviewing the police reports and other
19 evidence with my attorney I believe there
20 is a substantial likelihood of conviction
21 at trial. Therefore I am pleading guilty
22 only to take advantage of the state's plea
offer. I agree to the Court's review of
the Certification for Determination of Probable
Cause for this plea and sentencing.

FORM REV 4/03

STATEMENT OF DEFENDANT ON PLEA OF GUILTY

(Felony) - 8

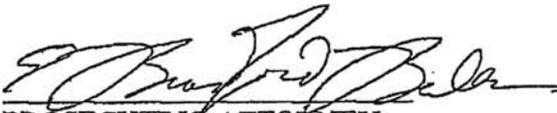
0010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.


DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.


PROSECUTING ATTORNEY
Print Name: E. Bradford Baker
WSBA# 28791


DEFENDANT'S LAWYER
Print Name: BRUCE A. SILVER
WSBA# 26797

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 14 day of Sept, 2006.


JUDGE

RECEIVED
OCT 11 2006
JAMES V. NEWTON

Driv

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

Vs.

STEVEN LYNCH

Defendant,

No. 05-1-13181-7 KNT

JUDGMENT AND SENTENCE
FELONY

I. HEARING

I.1 The defendant, the defendant's lawyer, BRAD MERYHEW, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

II. FINDINGS

There being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 9/14/2006 by plea of:

Count No.: 1 Crime: FELONY HARASSMENT

RCW 9A.46.020 Crime Code: 00498

Date of Crime: 9/28/2005 Incident No. _____

Count No.: _____ Crime: _____

RCW _____ Crime Code: _____

Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____

RCW _____ Crime Code: _____

Date of Crime: _____ Incident No. _____

Count No.: _____ Crime: _____

RCW _____ Crime Code: _____

Date of Crime: _____ Incident No. _____

[] Additional current offenses are attached in Appendix A



EXHIBIT D

0307

SPECIAL VERDICT or FINDING(S):

- (a) While armed with a **firearm** in count(s) _____ RCW 9.94A.510(3).
- (b) While armed with a **deadly weapon** other than a firearm in count(s) _____ RCW 9.94A.510(4).
- (c) With a **sexual motivation** in count(s) _____ RCW 9.94A.835.
- (d) A **V.U.C.S.A** offense committed in a **protected zone** in count(s) _____ RCW 69.50.435.
- (e) **Vehicular homicide** **Violent traffic offense** **DUI** **Reckless** **Disregard**.
- (f) **Vehicular homicide** by **DUI** with _____ prior conviction(s) for offense(s) defined in RCW 41.61.5055, RCW 9.94A.510(7).
- (g) **Non-parental kidnapping** or unlawful imprisonment with a minor victim. RCW 9A.44.130.
- (h) **Domestic violence** offense as defined in RCW 10.99.020 for count(s) _____.
- (i) Current offenses encompassing the same criminal conduct in this cause are count(s) _____ RCW 9.94A.589(1)(a).

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.525):

- Criminal history is attached in **Appendix B**.
- One point added for offense(s) committed while under community placement for count(s) _____

2.4 SENTENCING DATA:

Sentencing Data	Offender Score	Seriousness Level	Standard Range	Enhancement	Total Standard Range	Maximum Term
Count I	0	III	1 TO 3 MONTHS		1 TO 3 MONTHS	5 YRS AND/OR \$10,000
Count						
Count						
Count						

- Additional current offense sentencing data is attached in **Appendix C**.

2.5 **EXCEPTIONAL SENTENCE** (RCW 9.94A.535):

- Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) _____. Findings of Fact and Conclusions of Law are attached in **Appendix D**. The State did did not recommend a similar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and **Appendix A**.

- The Court **DISMISSES** Count(s) _____

0308

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 RESTITUTION AND VICTIM ASSESSMENT:

- Defendant shall pay restitution to the Clerk of this Court as set forth in attached Appendix E.
 - Defendant shall not pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.753(2), sets forth those circumstances in attached Appendix E.
 - Restitution to be determined at future restitution hearing on (Date) _____ at _____ m.
 - Date to be set.
 - Defendant waives presence at future restitution hearing(s).
 - Restitution is not ordered.
- Defendant shall pay Victim Penalty Assessment pursuant to RCW 7.68.035 in the amount of \$500.

4.2 OTHER FINANCIAL OBLIGATIONS: Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

- (a) \$ _____, Court costs; Court costs are waived; (RCW 9.94A.030, 10.01.160)
- (b) \$100 DNA collection fee; DNA fee waived (RCW 43.43.754)(crimes committed after 7/1/02);
- (c) \$ _____, Recoupment for attorney's fees to King County Public Defense Programs; Recoupment is waived (RCW 9.94A.030);
- (d) \$ _____, Fine; \$1,000, Fine for VUCSA; \$2,000, Fine for subsequent VUCSA; VUCSA fine waived (RCW 69.50.430);
- (e) \$ _____, King County Interlocal Drug Fund; Drug Fund payment is waived; (RCW 9.94A.030)
- (f) \$ _____, State Crime Laboratory Fee; Laboratory fee waived (RCW 43.43.690);
- (g) \$ _____, Incarceration costs; Incarceration costs waived (RCW 9.94A.760(2));
- (h) \$ _____, Other costs for: _____

4.3 PAYMENT SCHEDULE: Defendant's TOTAL FINANCIAL OBLIGATION is: \$ 500.00 + Restitution. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms: Not less than \$ _____ per month; On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer. Financial obligations shall bear interest pursuant to RCW 10.82.090. The Defendant shall remain under the Court's jurisdiction to assure payment of financial obligations: for crimes committed before 7/1/2000, for up to ten years from the date of sentence or release from total confinement, whichever is later; for crimes committed on or after 7/1/2000, until the obligation is completely satisfied. Pursuant to RCW 9.94A.7602, if the defendant is more than 30 days past due in payments, a notice of payroll deduction may be issued without further notice to the offender. Pursuant to RCW 9.94A.760(7)(b), the defendant shall report as directed by DJA and provide financial information as requested.

- Court Clerk's trust fees are waived.
- Interest is waived except with respect to restitution.

0309

4.4 **FIRST TIME OFFENDER WAIVER OF PRESUMPTIVE SENTENCE:** The court waives imposition of a sentence within the presumptive sentence range and imposes the following sentence pursuant to RCW 9.94A.650:

(a) Defendant shall serve a term of confinement as follows, commencing: immediately;

(Date): 10/6/2006 by 4:00 a.m. (p.m.):

30 months (days) on count 1; _____ months/ days on count _____; _____ months/ days on count _____

This term shall be served:

in the King County Jail.

in King County Work/Education Release subject to conditions of conduct ordered this date.

in King County Electronic Home Detention subject to conditions of conduct ordered this date. * Stay at Home" monitoring may be approved by DOL.

For burglary or residential burglary offense, before entering Electronic Home Detention, 21 days must be successfully completed in Work/Education Release.

The terms in Count(s) No. _____ are consecutive/ concurrent.

This sentence shall run CONSECUTIVE CONCURRENT to the sentence(s) in cause _____

The sentence(s) herein shall run CONSECUTIVE CONCURRENT to any other term previously imposed and not referenced in this order.

Credit is given for 2 day(s) served days determined by the King County Jail solely for confinement under this cause number pursuant to RCW 9.94A.505(6). Jail term is satisfied; defendant shall be released under this cause.

(b) **COMMUNITY SUPERVISION** (for crimes committed before 7-1-2000)

COMMUNITY CUSTODY (for crimes after 6-30-2000):

is ordered for 24 months (up to 12 months unless treatment is ordered in which case not more than 24 months). The Defendant shall report to the Department of Corrections within 72 hours of release from custody; or this date if currently out of custody; shall comply with any affirmative acts imposed by the Department to monitor compliance with this sentence; shall comply with all rules, regulations and conditions of the Department for supervision of offenders; and shall not possess any firearm or ammunition; shall perform all affirmative acts necessary to monitor compliance and otherwise comply with the other terms of this sentence. APPENDIX F attached for additional conditions.

(c) **COMMUNITY SERVICE:** Defendant shall serve _____ days/ hours of community service under supervision of the Department of Corrections to be completed as follows:

On a schedule established by the defendant's Community Corrections Officer or as follows:

(d) **NO CONTACT:** For the maximum term of 5 year(s), defendant shall have no contact with Larry Vanderhoef and Connie Laire

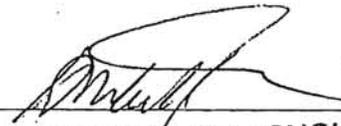
0310

(e) DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing, as ordered in APPENDIX G.
[] HIV TESTING: For sex offense, prostitution offense, drug offense associated with the use of hypodermic needles, the defendant shall submit to HIV testing as ordered in APPENDIX G.

(f) [] OTHER CONDITIONS: _____

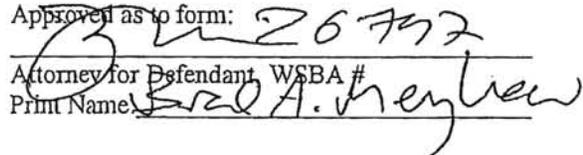
Additional conditions are attached in APPENDIX H

Date: 9/29/06



JUDGE
Print Name: LEROY McCULLOUGH

Presented by:
E. Bradford Bales
Deputy Prosecuting Attorney, WSBA# 28791
Print Name: E. Bradford Bales

Approved as to form: 26792


Attorney for Defendant, WSBA #
Print Name: Brad A. Meyhew

0311

FINGERPRINTS



RIGHT HAND
FINGERPRINTS OF:

DEFENDANT'S SIGNATURE: [Signature]
DEFENDANT'S ADDRESS: P.O. Box 1175
Maple Valley, WA 98038

STEPHEN THOMAS LYNCH

DATED: 09/29/08
[Signature]
JUDGE, KING COUNTY SUPERIOR COURT

ATTESTED BY: BARBARA MINER,
SUPERIOR COURT CLERK
BY: [Signature]
DEPUTY CLERK

CERTIFICATE

OFFENDER IDENTIFICATION

I, _____,
CLERK OF THIS COURT, CERTIFY THAT
THE ABOVE IS A TRUE COPY OF THE
JUDGEMENT AND SENTENCE IN THIS
ACTION ON RECORD IN MY OFFICE.
DATED: _____

S.I.D. NO.
DOB: JUNE 11, 1950
SEX: M
RACE: W

CLERK

BY: _____
DEPUTY CLERK

0312

First Amendment
United States Constitution
(1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

CERTIFICATE OF SERVICE

I certify that on April 23, 2012, I served the King County prosecutor's office appellate unit with the foregoing document via email, per their request.

DATED this the 23rd day of April, 2012.

MUENSTER & KOENIG

By: S/ John R. Muenster
JOHN R. MUENSTER

OFFICE RECEPTIONIST, CLERK

To: John R. Muenster
Cc: PAOAppellateUnitMail@kingcounty.gov; charles.sherer@kingcounty.gov
Subject: RE: State v. Stephen Lynch, Supreme Court No. 86480-2

Rec. 4-24-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: John R. Muenster [mailto:jmkk1613@aol.com]
Sent: Monday, April 23, 2012 7:10 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: PAOAppellateUnitMail@kingcounty.gov; charles.sherer@kingcounty.gov
Subject: State v. Stephen Lynch, Supreme Court No. 86480-2

Ladies and Gentlemen,

Attached as a .pdf file is Appellant's opening brief, with included appendix and exhibits.

Thank you for your attention.

John Muenster

--

Muenster & Koenig
14940 Sunrise Drive N.E.
Bainbridge Island, WA. 98110
(206)467-7500
Bainbridge Telephone: (206)855-1025
Bainbridge Fax: (206)855-1027

This message is confidential, intended only for the named recipient(s) and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that the dissemination, distribution or copying of this message is strictly prohibited. If you receive this message in error, or are not the named recipient(s), please notify the sender at either the e-mail address or telephone number above and delete this e-mail from your computer. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege. Thank you.