

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

STATE OF WASHINGTON,

Respondent,

v.

GARY L. BARCKLEY,

Appellant.

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DIVISION II
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STATE OF WASHINGTON
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Richard Hicks, Judge
Cause No. 07-1-01565-9

BRIEF OF RESPONDENT

Carol La Verne
Attorney for Respondent

2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether RCW 26.50.110, read in conjunction with RCW 10.31.100, is ambiguous, and if so, whether the ambiguity is such as to require reversal of Barckley's convictions for violation of a no-contact order.

2. Whether the evidence was sufficient to find Barckley guilty of violating the provisions of a no-contact order.

B. STATEMENT OF THE CASE.

1. The State accepts the appellant's statement of the case, while noting the following clarifications, corrections, and additions:

No-contact orders were in existence between Ms. Huhtala and Mr. Barckley since at least 2004. [Exhibits 1, 3, 5]. No information exists in the record to confirm or deny H.H.'s older sister's age or capabilities in any capacity. [RP 55]. H.H. has called his father in the past. [RP 55-56]. Mr. Barckley previously attempted to modify at least one of his no-contact orders through the court system. [RP 53-54]. The State reviewed the pre-trial offer with Mr. Barckley numerous times based on the criminal history record the state had at the time and of which the State made Mr. Barckley aware. [Sentencing RP 9]. Mr. Barckley never informed the State that the criminal record the State was basing the sentencing offer on was inaccurate in that it was lacking some of

Mr. Barckley's convictions. [Sentencing RP 9]. The sentencing range which Mr. Barckley received is correct based on his accurate criminal history.

C. ARGUMENT

The Court reviews questions of statutory interpretation de novo. State v. Wofford, 148 Wn. App. 870, 877; 201 P.3d 389 (2009) (citing State v. Alvarado, 164 Wn.2d 556, 561, 192 P.3d 345 (2008)). The Court's "goal in construing a statute is to carry out the legislature's intent." Id. (citing Am. Cont'l Ins. Co. v. Steen, 151 Wn.2d 512, 518, 91 P.3d 864 (2004)). "If a statute is ambiguous, we look to principles of statutory construction and legislative history to discern the legislature's intent." Id. (citing State ex rel. Citizens Against Tolls v. Murphy, 151 Wn.2d 226, 242-43, 88 P.3d 375 (2004)). "If a statute is unambiguous, we apply it according to its plain language." State v. Hogan, 145 Wn. App. 210, 216, 192 P.3d 915 (2008). "A statute is ambiguous if its language is susceptible to more than one reasonable interpretation." State v. Bunker, 144 Wn. App. 407, 415, 183 P.3d 1086 (2008), *review granted* 165 Wn.2d 1003, 198 P.3d 512 (quoting Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 808, 16 P.3d 583 (2001)).

1. RCW 26.50.110 is ambiguous but the legislative history and rules of statutory construction resolve the ambiguity against Barckley.

Mr. Barckley contends that under the former RCW 26.50.110

(1) his conviction for violating a no-contact order should be reversed because it was not a criminal offense. [Appellant's brief, p.

3]. As Barckley correctly states, in 2006, RCW 26.50.110(1) read:

Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.50.020, and the respondent or person to be restrained knows of the order, a *violation of the restraint provisions*, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2)(a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section. . . .

(Emphasis added). RCW 10.31.100(2) read, in pertinent part:

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the

person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person;

RCW 10.31.100(2)(B) required arrest in the event of applicable circumstances for foreign protection orders. Additionally RCW 26.50.110(3) further stated that violation of a no-contact order was “also” punishable as contempt of court.

Barckley contends that under the former version of RCW 26.50.110(1), the statutory language is unambiguous in stating that a violation of the no contact order is criminalized only if it is of the type “for which an arrest is required under RCW 10.31.100(2)(a) or (b),” in other words, one which involved an act or threat of violence or involved a violation of a restraint provision. He relies on Division II’s holdings in State v. Madrid, 145 Wn. App. 106, 192 P.3d 909 (2008) and State v. Hogan, 145 Wn. App. 210, 192 P.3d 915 (2008) where the court held the statutory language was unambiguous and reads as Barckley claims, as support for this premise. However, two different—yet overlapping—panels of this court expressly

rejected those decisions in light of further analysis of the legislative history and statutory construction.

In 2007, the legislature amended RCW 26.50.110 to “clarify[y] that a gross misdemeanor results when the restrained person knows of the order and violates a provision prohibiting acts or threats of violence against, or stalking of, a protected party, or a restraint provision prohibiting contact with a protected party.” 2007 FINAL LEGISLATIVE REPORT, 60th Wash. Leg., at 138. The expressed intent of the legislature was not part of the analysis in either Madrid or Hogan, as Judge Houghton describes in her concurrence to State v. Allen, 150 Wn. App 300, 318-320, 207 P.3d 483 (2009) (“[N]either party argued, nor did we consider, that these 2007 amendment findings were an expression of the legislature's intent to depart from the general rule of applying the criminal statute in effect at the time the crime was committed.” The reasoning for this was two-fold: 1) in Madrid, the issue was not before the court, and 2) in Hogan, both briefs were filed prior to the 2007 amendment).

After and in contrast to Madrid and Hogan, the Court decided State v. Wofford and State v. Allen and determined that the statute was, in fact, “open to more than one reasonable interpretation and, therefore, ambiguous.” Wofford, 148 Wn. App. at

877. As a result, the Wofford court looked to the legislative history and statutory construction to discern the legislature's intent. The Court restated Division I's observation of former RCW 26.50.110(1), noting that the statute "was not a 'virtuosic specimen of legislative drafting,' and there [was] clearly a reasonable dispute as to what the legislature intended." Wofford, 148 Wn. App. at 878 quoting State v. Bunker, 144 Wn. App. 407, 413, 183 P.3d 1086 (2008).

First, the legislative history of RCW 26.50.110 (1) clearly indicates the legislature's original and unwavering intent to criminalize violations of no contact orders. As the Allen Court discussed:

In 2000, the legislature added the RCW 10.31.100(2) cross-reference to former RCW 26.50.110(1). LAWS OF 2000, ch. 119, § 24. The legislative history confirms that "[a] violation of a no-contact order, foreign protection order or restraining order that does not constitute a class C felony is a gross misdemeanor." 2000 FINAL LEGISLATIVE REPORT, 56th Wash. Leg., at 131. The House of Representatives further summarized the bill, stating that "a police officer shall arrest any person who violates the restraint or exclusion provision of a court order relating to domestic violence." H.B. REP. on Engrossed Second Substitute S.B. 6400, at 4 56th Leg., Reg. Sess. (Wash. 2000). The policy behind the 2000 amendment was to strengthen domestic violence laws, and the legislature plainly intended that a person commits a crime if he or she violates any no-

contact order and that the violation need not involve an act or threat of violence or presence within a specified distance of a location to be criminal.

Allen, 150 Wn. App. at 309.

In 2007, the legislature again amended the statute in order to further clarify its intent, but not to change or expand the law in any substantive manner. The bill's purpose was to again re-emphasize and re-clarify that the legislature never intended for willful violations of no-contact provisions to escape criminal penalties due to the lack of any act or threat of violence. LAWS OF 2007, ch. 173, § 1. Instead, the amendment clarified that "a gross misdemeanor results when the restrained person knows of the order and violates a provision prohibiting acts or threats of violence against, or stalking of, a protected party, or a restraint provision prohibiting contact with a protected party." Allen, 150 Wn. App. at 310, citing 2007 FINAL LEGISLATIVE REPORT, 60th Wash. Leg., at 138. The Wofford Court noted (and the Allen Court restated) that this history, even though subsequent, was permissible in using to determine the legislature's original statutory intent. Wofford, 148 Wn. App. at 879; Allen, 150 Wn. App. at 310. As a result, the Court in both Wofford and Allen determined that Barckley's statutory interpretation, like that of Wofford and Allen, "is, and has always

been, erroneous.” Wofford, 148 Wn. App. at 879; Allen, 150 Wn. App. at 310.

Second, to hold as Barckley argues the Court should and apply the last antecedent rule would render related statutory provisions meaningless. In Madrid and Hogan, the Court held that the statutory language was unambiguous and applied the last antecedent rule. See Madrid, 145 Wn. App. at 108; Hogan, 145 Wn. App. at 212. The last antecedent rule states “that unless contrary intent appears in the statute, a qualifying phrase refers to the last antecedent, and a comma before the qualifying phrase is evidence that the phrase applies to all antecedents.” Allen, 150 Wn. App at 311, citing In re Sehome Park Care Ctr., Inc., 127 Wn.2d 774, 781-782, 903 P.2d 443 (1995). Thus, in those cases the court interpreted the statute as Barckley does and found that the clause “for which an arrest is required under RCW 10.31.100(2)(a) or (b)” modified all of the preceding clauses. Madrid, 145 Wn. App. at 114-15; Hogan, 145 Wn. App. at 217-218. However, “the last antecedent rule applies only if a statute is ambiguous and should not be read as inflexible or universally binding.” Allen, 150 Wn. App at 311. While it is unclear to the State why the Court applied the last antecedent rule in cases where it determined the statutory

language unambiguous, the flexibility consideration referred to in the next breath makes perfect sense. A strictly applied grammatical rule that renders related statutory provisions meaningless is illogical. *Id.* at 310-12.

For example, the Allen court notes that if the clause “for which an arrest is required under RCW 10.31.100(2)(a) or (b)” applies to all preceding clauses, then by definition, it would also apply to RCW 10.99. RCW 10.99.040, however, “requires that all no-contact orders state that a violation of the order is a crime.” Allen, 150 Wn. App. at 311. If the court were to apply the last antecedent rule, though, then this requirement “would be meaningless and superfluous if only certain no-contact order violations were criminal.” Wofford, 148 Wn. App. at 883. Further, RCW 26.50.110(3) says “violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW ... shall *also* constitute contempt of court.” (Emphasis added.) If the clause applies to every preceding clause as Barckley suggests, then it would also apply to 26.50.110(3) and thus would render it meaningless. *Id.* The plain meaning of “also” clearly intends an additional penalty for the violation of a no-contact order, but under Barckley’s interpretation it would become a victim’s only remedy. *Id.*

This is in direct conflict with the legislature's clear intent through the use of the term "also."

Lastly, Barckley's argument focuses on the split of authority on this issue, but it does so in a manner that is not seemingly representative of the Court's position. First, while Barckley notes that Wofford and Allen were decided after Hogan and Madrid, he fails to note that Wofford and Allen did not occur in a vacuum, but rather while specifically acknowledging Hogan and Madrid. Wofford, 148 Wn. App. at 884 (Houghton, J., concurring); Allen, 150 Wn. App. at 318 (Houghton, J., concurring), (Hunt, J., concurring).

Second, and as previously noted, the Court decided the earlier cases without the benefit of the clear and contrary legislative intent present in the later cases. Allen, 150 Wn. App. at 318 (Hunt, J., concurring).

Third, two of the five justices who heard and decided Hogan (J. Bridgewater, J. Hunt, and J. Quinn-Brintall) and Madrid (J. Penoyar, J. Houghton, and J. Hunt) were also present in Wofford and Allen and expressly noted their careful reasoning for changing positions on the issue. Wofford, 148 Wn. App. at 884 (Houghton, J., concurring); Allen, 150 Wn. App. at 318 (Houghton, J., concurring),

(Hunt, J., concurring). Thus, the departure from Madrid and Hogan was not due to differing legal conclusions by wholly different panels of this court as Barckley appears to imply, but rather due to a more thorough and informed analysis by members already intimately familiar with the issue. Id.

Finally, Division I reached the same conclusion in Bunker as this court did in Wofford and Allen, thus making it one on which the appellate courts of this state have spent significant time and independently agreed. Bunker, 144 Wn. App. at 415. As the law stands, there appears to be little confusion as to the correct interpretation and application of RCW 26.50.110(1), current or former. That interpretation and application does not support Barckley's position.

2. The evidence is sufficient to sustain Barckley's conviction for violating the provisions of a no-contact order under RCW 26.50.110.

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).

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Cite omitted.) This inquiry does not require a reviewing court to determine whether *it* believes the evidence at trial established guilt beyond a reasonable doubt. “Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found the essential elements of the crime *beyond a reasonable doubt*. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Salinas, *supra*, at 201. Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the

persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Barckley claims that based on the evidence at trial, there is no way any reasonable trier of fact could have determined he knowingly violated the no-contact order by calling Ms. Huhtala's house to speak with his son. The State maintains, however, that the evidence was sufficient, under the Salinas standard, to support the jury in making such a finding. Applying Salinas, Barckley admits the truth of the State's evidence and all reasonable inferences. The State presented the jury with a litany of evidence and reasonable inferences from which it could rationally determine the State satisfied each element of the charge.

First, the order stated, "It is hereby ordered that the defendant shall have *no contact* directly, indirectly, in writing, by telephone, personally, or through other persons with the person named below." (RP 26, Exhibits 1, 3, 5) A reasonable jury could have found sufficient evidence existed which demonstrated that by calling Huhtala's home, regardless of whom he was calling for, Barckley clearly and indirectly, if not directly, contacted Huhtala in violation of the no-contact order. A rational trier of fact could also reasonably agree that the State's interpretation of events is

significantly more likely to be true than the defense's interpretation of the same. This is especially true since Barckley's interpretation was primarily based on a claim of lack of knowledge presented through self-serving testimony—testimony the jury was not required to find credible.

Based on the above, a jury could rationally find from the evidence that Barckley intentionally called the home of Ms. Huhtala under the guise of speaking with his son, but knowing that, at a minimum, it would constitute indirect contact with Ms. Huhtala, if not potentially direct contact had she been the one to answer the phone. To that point, he does not claim that he believed Ms. Huhtala would not answer the phone as the only adult in residence (and the sole owner of the phone and home). In fact, he expressly admitted he knew it was her house and her phone and called her home anyway, (RP 54), and a jury was within its purview to construe this admission against Barckley.

Second, Barckley not only knew of the no contact order and its express provisions, he also signed and received a copy of it. (RP 30). A jury could reasonably find his claim that he did not fully understand it unbelievable.

Third, this was not the first no-contact order between the parties. Continuous and similar orders existed for at least the five years preceding. (RP 26, 44; Exhibits 1, 3, 5). By his own admission, Barckley indicates he had contact with his son at various points in the six years prior to this incident, but as the record also indicates, the contact did not seemingly result from Barckley calling his son at Ms. Huhtala's home. A jury could reasonably interpret this to mean two things: 1) that an alternate method of contact was in place for Barckley to talk to his son which Barckley was aware of, and, 2) that Barckley had previously used these non-prohibited methods to accomplish the same purpose. To that effect, Barckley makes no claim that this was his first attempt in six years to contact his son by phone or that he was new to, and thus unfamiliar with, the process. A jury could reasonably find Barckley's history to, again, weigh against his claim that he was unaware he could not call Ms. Huhtala's home for the purpose of speaking to his son and instead, infer from it that he was aware the order prohibited him from calling *her home* for *any* reason.

Fourth, Barckley's son, H.H., was six years old. A jury was within its purview as the trier of fact to find incredible Barckley's proposition that H.H. or his older sister a) might have known what a

social security number was, b) might have known how to get it even if either knew what it was, or c) been responsible enough to get it without going through Ms. Huhtala. Additionally, Barckley did not claim that either H.H. or his sister, in fact, knew H.H.'s social security number, nor does any information exist in the record as to H.H.'s sister's age or capabilities in general. Barckley's brief describes the sister's ability to get the information as "unrebutted," which is a far cry from his claim actually being "true." Instead, the State simply views the sister's undetermined capabilities (she was not a witness in this case) as irrelevant to the issue of whether Barckley violated the no-contact order by calling Ms. Huhtala's home and knew he was doing so at the time.

Again, based on the above, the jury could quite rationally have agreed with the State's theory of the case that Barckley's call was a merely a ruse. It was also reasonable for the jury to accept the State's theory that, at six, H.H. was not fully capable of working the house answering machine to retrieve a message he had no reason to be expecting or would likely understand even upon discovery. An ability to push a button does not equate to an ability to operate the machine, which Barckley admitted in his testimony.

[RP 55]. Thus, not only did contact with Ms. Huhtala occur, it was inevitable. The State maintains this was Barkley's intent throughout.

Fifth, according to Barkley's logic, it would seem he is arguing that although no-contact orders are intended to protect victims of domestic violence from threats and harassment by abusers, somehow the order protecting Ms. Huhtala would not function in the same manner. According to him, his order would still allow him to call Huhtala's home at any time, day or night, and as often as he wanted as long as he couched his requests for contact with the household in terms of their minor child who resided there, directed his comments towards the child, and was careful not to mention Ms. Huhtala by name. The only evidence he offers to support his right to call Ms. Huhtala's residence is based on who he was calling for, as well as his lack of request to speak with Ms. Huhtala.¹

Taking this logic even one step farther, by his argument, Barkley could call Ms. Huhtala's house whenever he wanted for

¹ While the State does not offer it as evidence in this brief, because it did not go before the jury, there is a brief mention in the record at sentencing by Judge Hicks that at the end of the recording, Barkley made a comment unrelated to the social security number request. The Judge stated, "But in that phone call you also let slide a little remark about, you know, 'I'm going to go to court and see if your mother and I can work out some better type of visitation.' That's exactly the kind of thing you know you're not supposed to do." (Sentencing RP 7).

any purpose and to call anyone, whether that individual resided there or not, and whether he had a familial relationship with them or not, again, as long as he did not address Ms. Huhtala directly or indirectly. This not only defies logic, but it is simply untrue and he offers no legal authority to support his position. In contrast, the statutory language and the legislative history of the Domestic Violence Protection Act indicate that this behavior is extremely destructive and is of the type which the legislature is actively working to prevent. RCW 10.99.010 states:

The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse. . . . Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated.

The legislative history notes the seriousness of the issue in LAWS of 1991 chapter 301, stating:

The collective costs to the community for domestic violence include the systematic destruction of individuals and their families, lost lives, lost productivity, and increased health care, criminal justice, and social service costs. Children growing up

in violent homes are deeply affected by the violence as it happens and could be the next generation of batterers and victims. . . . However, the process for breaking the cycle of abuse is lengthy. No single system intervention is enough in itself. . . . These services need to be coordinated and multidisciplinary in approach and address the needs of victims, batterers, and children from violent homes. Given the lethal nature of domestic violence and its effect on all within its range, the community has a vested interest in the methods used to stop and prevent future violence.

RCW 10.99.020(5)(r) then defines domestic violence as:

. . . (5) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

. . .
(r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145).

The legislature further emphasized the gravity of domestic violence in RCW 10.99.040(2)(A) by noting the "likelihood of repeated violence directed at those who have been victims of domestic violence in the past."

Sixth, Barckley stipulated to two previous convictions for violating a protection, restraining, or no-contact order. (RP 46-47).

A jury could reasonably find this to be evidence that not only was he intimately familiar with the various provisions of his order, but also that he had a history of disregarding those provisions. Thus, his testimony of intent to the contrary regarding the phone call was not credible. This was within the jury's purview to weigh.

Seventh, Barckley previously and personally attempted to modify a no-contact order in order to visit with his children testifying that:

Q: Okay, I'm going to ask you, Mr. Barckley, if you'll please read the second paragraph of page one of your – or page two of your motion that you filed with the court.

A: "Mr. Barckley and his fiancé, Ms. Brenda Huhtala, had plans to be getting married once Mr. Barckley is released from prison. Being that they are trying to enhance their family ties, Mr. Barckley asks this court to please remove the no-contact order so that *he may be able to have visits from his family while he is incarcerated.*"

Q: And what – is that written by you?

A: I believe it was.

Q: Okay. And to have family visits. Would that include [H.H.]?

A: Yes.

Q: And Mr. Barckley, I'm going to ask you to turn to the last page of your motion, and read the second paragraph, please.

.....

A: "...Mr. Barckley's children . . . are dependent upon him as well as his fiancé, Ms. Brenda Huhtala. The children need to be united with their father so that their lives can be complete."

Q: Thank you. So this is the motion that you filed.

A: I believe it is.

Q: Okay, so in this motion you're asking the court to modify the no-contact order *so that you can have contact with your children, correct?*

A: Yes.

(RP 53-54) (Emphasis added). As previously noted, a jury could interpret this evidence two-fold: 1) that Barckley was aware he needed to pursue legal channels for visiting with H.H., and 2) that whether or not his son was, in fact, covered by the no-contact order, he believed him to be. While Barckley claims in his brief that he had to request a modification to see his son because his child could not drive himself to the prison for visits, he made no such claim at trial. He simply requested the order be modified so that he could have contact with his family while incarcerated. While the order only prohibited contact with Ms. Huhtala, a jury could reasonably interpret his motion and this testimony in the same manner as the State—that Barckley did not believe he was allowed to contact his children without going through the courts because it would inherently violate the prohibition against direct or indirect contact with Huhtala. It was not the contact with H.H. himself that was the issue, but Barckley's method of contact which, past actions demonstrate, he was aware the order prohibited.

Lastly, and to reiterate, the fact remains that the order expressly prohibited Barckley from calling the home of Ms. Huhtala, for any purpose and regardless of who lived there. He did not have a legal right to contact his son at Ms. Huhtala's residence. The appropriate manner for doing so was through the family court system as he previously attempted to do and which case law supports. See generally State v. Foster, 128 Wn. App. 932; 117 P.3d 1175 (2005) (A Division I case noting that family court is the appropriate channel for parents to contact their children where a no-contact order exists between the parents. "Foster has always had the ability to ask the family court to establish visitation rights with his daughter and avoid contact with Christie. While the order may be an inconvenience, any interference with his parental rights is not substantial or beyond that which is justified by the need to protect the mother of his child.").

Based on the above, sufficient evidence existed for a jury to find that not only was Barckley familiar with the system, but further that he had an abiding belief he needed its approval prior to initiating contact with H.H. at Ms. Huhtala's home. Again, other than Barckley's self-serving statements on the stand to the contrary, which is an issue of credibility for the fact finders to weigh, the

defense offered no evidence to corroborate Barckley's claim that he did not know he could not call H.H. at Ms. Huhtala's home. The State, on the other hand, offered strong and convincing evidence of the exact opposite.

As the language of his no-contact orders [Exhibits 1, 3, 5] makes clear, "even if [Ms. Huhtala, herself,] invite[d] or allow[ed] Barckley] to violate the order's prohibitions," he could still be arrested. It was Barckley's "sole responsibility to avoid or refrain from violating the order's provisions [and] [o]nly the court can change th[is] order." The evidence shows the court made no such change and Barckley failed to meet his responsibility. Taking the totality of the trial evidence into account the jury properly and carefully considered all of the testimony and evidence presented by both sides, including the credibility of all witnesses, and applied the appropriate legal standard in making its finding. As a result, Barckley's claim of insufficient evidence fails.

D. CONCLUSION

For the reasons previously stated, the State respectfully requests this court to affirm this conviction.

Respectfully submitted this 5th of November, 2009.



Carol La Verne, WSBA# 19229
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent, on all parties or their counsel of record on the date below as follows:

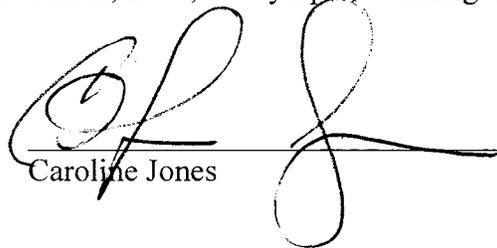
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KALAMA, WA 98625

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

Dated this 5 day of November, 2009, at Olympia, Washington.



Caroline Jones