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STATE OF WASHINGTON

NO. 39813-3-II

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

STATE OF WASHINGTON, Respondent

v.

TODD GEOFFREY WALTON, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE JOHN P. WULLE
CLARK COUNTY SUPERIOR COURT CAUSE NO.09-1-01186-9

BRIEF OF RESPONDENT

Attorneys for Respondent:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

MICHAEL C. KINNIE, WSBA #7869
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

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I. STATEMENT OF FACTS

The State accepts, in part, the statement of facts as set forth by the defendant. Where additional facts are necessary they will be set forth in the argument section.

II. ARGUMENT

The argument raised by the defendant is that there is no evidence in this case to find the defendant guilty of Felony Stalking. As part of this, is a claim that the State did not prove all of the elements necessary for conviction.

A copy of the Second Amended Information (CP 26) is attached hereto and by this reference incorporated herein. A copy of the Court's Instructions to the Jury (CP 29) is attached hereto and incorporated by this reference.

Evidence is sufficient to 'support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. State v. Luther, 157 Wn.2d 63, 77, 134 P.3d 205 (*quoting State v. Townsend*, 147 Wn.2d 666, 679, 57 P.3d 255 (2002)), cert. denied, 127 S. Ct. 440 (2006). A defendant claiming insufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn from it.

Luther, 157 Wn.2d at 77-78 (*citing State v. Alvarez*, 105 Wn. App. 215, 223, 19 P.3d 485 (2001)).

In considering the sufficiency of evidence, the Appellate Court gives equal weight to circumstantial and direct evidence. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). The Court defers to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (*citing State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)). It does not substitute its judgment for that of the jury on factual issues. State v. Israel, 113 Wn. App. 243, 269, 54 P.3d 1218 (2002) (*citing State v. Farmer*, 116 Wn.2d 414, 425, 805 P.2d 200, 812 P.2d 858 (1991)), review denied, 149 Wn.2d 1013 (2003). “In determining whether the requisite 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. Jones, 93 Wn. App. 166, 176, 968 P.2d 888 (1998), review denied, 138 Wn.2d 1003 (1999). Substantial evidence exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true. Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 112, 937 P.2d 154, 943 P.2d 1358 (1997), cert. denied, 522 U.S. 1077, 139

L. Ed. 2d 755, 118 S. Ct. 856 (1998); World Wide Video, Inc. v. City of Tukwila, 117 Wn.2d 382, 387, 816 P.2d 18 (1991).

To prove the elements of the crime the State called as one of its witnesses the complaining witness, Charme Crandall. Ms. Crandall testified that at one time she and the defendant were boyfriend-girlfriend. (RP 70-71). They started out seeing each other approximately once a week. That relationship began to terminate when she discovered that he had another girlfriend. That other girlfriend confronted the complaining witness around Thanksgiving, 2007. She didn't hear from him again until approximately March, 2008. (RP 73-74). She described their relationship as a "tumultuous relationship". (RP 76). She indicated that this phase of the on again-off again relationship lasted through and up to May 10, 2009. (RP 77, L7-11). She indicated that during that time period and after that he began monitoring her phone calls and using her passcodes to get into her computer.

QUESTION (Deputy Prosecutor): Okay. All right. Did – during this period did the defendant ever monitor your phone calls or e-mails?

ANSWER (Charme Crandall): Yes, he did. That started in April. It may have started earlier, actually, when I think about it, because – I can't tell you specifically one, but I found out that he had networked himself into my computer and didn't ask me or tell me. He had discovered my passwords. And I believe it was probably when I had passed out from drinking, but – he didn't tell me that either,

but he all of a sudden seemed to know things about my e-mails that I didn't share with him. So I can't tell you when it happened, but, yeah, it was sooner than April.

QUESTION: Okay. And did he contact your ex-husband at some point?

ANSWER: Yes, he did, as a matter of fact, my ex-husband as well as my daughter –

QUESTION: Okay.

ANSWER: - who he never had met before.

QUESTION: Okay. And did he disclose that to you or who'd you find that out through, if you would recall?

ANSWER: Just a minute, I want to think about that. I want to say I learned it from my daughter, but I may be wrong.

QUESTION: Okay. All right. And did that bother you at that point in time when you found that out?

ANSWER: Yes, because I told him that anything he wanted to know about me, I had already told him. His purpose for contact them was because he wanted to find –

MR. KURTZ (Defense Counsel): Objection, speculation.

ANSWER: Sorry.

QUESTION: Did he tell you what his purpose was for –

THE COURT: Are you acquiescing?

MR. HOLMES (Deputy Prosecutor): I can just rephrase.

THE COURT: Okay. I will sustain that objection.

QUESTION: Did he ever tell you what his purpose for contacting your ex-husband and daughter was?

ANSWER: Yes, he did, he said that it was because he wanted to find out what kind of woman I was.

-(RP 77, L12 – 78, L23)

She indicated that also during this period (approximately January, 2009) she came into contact with law enforcement because of her being assaulted by the defendant. She further indicated that she was frightened of the defendant. (RP 79). This ultimately led to the entry of a no contact order where he was to have no contact with her. (RP 79).

Even with the defendant's knowledge of the no contact order he contacted her the minute he got out of jail. It was also during this period of time that the defendant became increasingly violent towards her. (RP 81-82).

QUESTION (Deputy Prosecutor): Can you indicate when that first incident was?

ANSWER (Charme Crandall): it was around the third week of April. I can't remember specifically the date, but I know it was a Thursday night.

QUESTION: Okay.

ANSWER: Again, I had gone home sick from work, and I didn't feel well and I didn't want to pick him up from work because he insisted that I pick him up every night after work after he was released in April and we started seeing

each other again. I didn't want to pick him up because I didn't feel good.

So I picked myself up some whiskey and wanted to sit and drink and have a beer and stuff, and next thing I know he was at my door. And I – 'cause I told him – I e-mailed him and I said I would come around and get him later. And then I just got to the point where I was drinking too much and I said, no, it's not a good idea. So – but then he showed up any ways and.

So – I get sassy when I get drunk, and I guess I got sassy. And I can't tell you what I said, what I did, blah,blah,blah, but he ended up punching me in the lip.

QUESTION: Okay. Did you sustain any injuries from that?

ANSWER: It was bloody and puffy, and when I woke up the next day it was bad enough that I did not want to go to work.

QUESTION: Okay. And did you in fact not go to work the next day?

ANSWER: I did not.

QUESTION: Okay. All right. And I guess suffering that injury, did that make you afraid of the defendant at that point in time?

ANSWER: Yes –

MR. KURTZ: Objection, again, leading.

ANSWER: Sorry.

THE COURT: Okay. Rephrase, Counselor, I'll sustain that one.

QUESTION: Were you afraid of the defendant at that point in time?

ANSWER: Yes, I was.

QUESTION: Can you explain why?

ANSWER: Well, because he followed me around my home that morning making sure that I didn't e-mail anybody, that I didn't – 'cause again the No Contact Order was in place – that I didn't call anyone. I got my phone in the room because I needed to call a co-worker and have her send out some checks that needed to go out that day, so I sat at – by my bedside.

My recollection of that morning was he was still angry, he was calling me names, he was pulling my hair, hitting my head against the wall, and I was getting scared again.

QUESTION: Okay. All right. And did he eventually leave on that day?

ANSWER: No, he did not. He continued to get abusive, and I went ahead and I tried to get my phone next –

MR. KURTZ: Your Honor, I'm going to objection. I have let this go on with – regarding these prior incidences, but under 404(b), I raised it in the motion in limine, I raise it now. I would object to those as – there's been no indication from the witness that she's recanting anything, so there's no state of mind issue here. So I'm going to object to any ore 404(b) evidence.

THE COURT: I've already ruled in this. Overruled. You may proceed.

QUESTION: So – go on.

ANSWER: Okay. Go on from where I was? So I was – again I was wanting to call for help because I was getting frightened, so I grabbed my phone and started to dial 911. He caught me, he grabbed my phone out of my hand, put it in his fist and started repeatedly slugging me in the face.

QUESTION: Okay. When did he finally leave your house?

ANSWER: It would have been the next day. I believe I had said enough to convince him that I needed to go to work to make up for my time loss.

QUESTION: Okay. Has the defendant ever referred to himself as a stalker to you?

ANSWER: Yes, he has.

QUESTION: And when was that said to you?

ANSWER: He would say it to me as kind of a joke, but he would – I'd always say, I never knew how you found me, and he goes, well, a stalker always gets his victim.

QUESTION: Okay. Did that alarm you?

ANSWER: No, 'cause I kind of took it as a joke, but then, you know, the back of mind I was like, really? I mean, I don't consider anybody would be out hunting me down –

QUESTION: Okay.

ANSWER: - you know. Why? So.

QUESTION: Okay.

ANSWER: So.

QUESTION: And after the incident you just detailed, you say that was in late April?

ANSWER: Yes.

-(RP 81, L25 – 85, L16)

Even after all of this, there was again another incident of violence that put her in fear.

QUESTION (Deputy Prosecutor): Okay. All right. And did the defendant become violent with you again after that point in time?

ANSWER (Charme Crandall): Yes. That following morning, I don't know specifically what time, but I guess I upset him with things I was saying to him about his relationship with his daughter who was at that concert that evening. And of course it wasn't anything serious, but I guess taken out of context it got confused.

And so I don't know what started it, but I probably said something and he started taking a picture off the wall – I have pictures behind my bed – and slamming it on the floor. And then I don't know what else – what had happened, then he took another one and another one, before I knew it he was trashing my room.

Then he went out of the room and he started trashing my bedroom. And before I knew it, you know, our – my whole place was trashed. And then I got up and I went into my living room and I was upset and hysterical and I said, if you think this is the way you can hurt me, I'll show you, and I started trashing my own living room.

QUESTION: Okay. And what happened after that, if you recall?

ANSWER: Well, after that my bed had been turned upside down and we were going to try to sleep on the couch, and he didn't like that idea 'cause it was uncomfortable. So he went and he fixed the bed. And the whole time he's fixing the bed he goes don't you go anywhere, don't you go anywhere. And I couldn't go anywhere, I was in a sheet and naked underneath and I was exhausted.

And so – so he was like – got the bed fixed and he took me to bed and then he insisted I kiss him.

QUESTION: Okay. All right. And did you want to at that point?

ANSWER: No.

QUESTION: Okay.

ANSWER: I didn't even want to go to bed with him.

QUESTION: Okay.

ANSWER: And –

QUESTION: And did you tell him that at that point in time?

ANSWER: Probably, but it wouldn't make a difference.

QUESTION: Okay. All right. And so at that point in time you didn't feel as though – as he didn't feel as though your words would make a difference.

ANSWER: No.

QUESTION: Okay. And what was that based on that, that feeling?

ANSWER: That feeling? Of the violence that had just happened and the anger and what would he do next and in fact he said he'd do next is he'd take my clothes and start cutting them up.

QUESTION: Okay. All right. And at some point in time did you call and report these incidents to law enforcement?

ANSWER: Not until early that next morning as I was naked and I had no clothes that I could get to because there was glass between my closet and my bed. I found my skirt

under some glass and a sweater hanging on the door, threw it on, ran out the door and called from a pay phone.

QUESTION: Okay. Okay. And where was the defendant at that point in time?

ANSWER: In my bed.

-(RP 88, L1 – 90, L9)

All during this period the defendant was aware of the no contact order. His response to her on the knowledge of the no contact order was basically that he didn't care about what law enforcement had in mind. (RP 92). She described for the jury her ongoing feelings towards the defendant:

QUESTION: Okay. What sort of affect would it have on you when you'd heard from him via phone call after this period?

ANSWER: I'd start crying uncontrollably, I'd have to leave work. I'd try to get it together. I'd come back the next day and I'd sit there and cry at my desk, just – because I'm trying to keep my job. My boss knew I was going under the – under this pressure. It made my co-workers uncomfortable, which made me uncomfortable. Just things like that, just devastation on why am I going through this and how did this – how come?

QUESTION: Okay. Did you share that with the defendant, the affect that would have on you?

ANSWER: I did in a letter, yes.

QUESTION: Okay. All right. And when did you send the defendant a letter, if you recall?

ANSWER: I believe it was around the 11th of June.

QUESTION: Okay. And where'd you send him that letter?

ANSWER: At the Clark County Jail.

QUESTION: Okay. Were you aware of where he was located in the jail?

ANSWER: Yes, I was, because he had contacted me via mail once, and that was my response to his first contact through the mail.

QUESTION: Okay. All right. And do you recall when you received his first letter?

ANSWER: I would have to say it was prior to June 11th because I had written in response to that letter.

QUESTION: Okay. Do you recall when the next letter you received was?

ANSWER: I would say it probably was a week later.

QUESTION: Okay. And where did you receive those letters?

ANSWER: At my home address.

QUESTION: Okay. And is that the address you listed before?

ANSWER: Yes.

-(RP 94, L11 – 95, L19)

The complaining witness discussed with the jury a series of letters passing between herself and the defendant:

ANSWER (Charme Crandall): I – you know, I tried to share in my letters that I’m no longer his woman. He doesn’t need to keep hurting himself and to – you know, and that’s what he’s doing.

QUESTION (Deputy Prosecutor): Okay.

ANSWER: - you know. I know he violated me, that doesn’t mean I have to stop caring and hate the person.

QUESTION: Okay. So, again, did you write him another letter?

ANSWER: I believe I did, and I think that was my final letter. I may have confused the two, but it might – the general consensus was, I’m fine, I’m living my life again, I’m no longer wanting you in my life, stop hurting yourself by writing to me and move on.

-(RP 103, L10-22)

She was asked to identify a series of letters and she was able to identify the handwriting. And she also was able to identify the time period in question (for example, July 29, 2009 (RP 106)). She told the jury that she just didn’t want any more involvement with him and that was what she was trying to express in the letters. (RP 107). She discussed then with the jury the no contact orders and how he was not to come in contact with her, but continued to do so.

QUESTION (Deputy Prosecutor): After you received that last letter from the defendant did you want him to leave you alone at that point in time?

ANSWER (Charme Crandall): Yes.

QUESTION: Did you want any further contact from him at that point in time?

ANSWER: No.

QUESTION: Okay. Were you in fear for your safety at that point in time?

ANSWER: Yes.

QUESTION: Okay. And why is that?

ANSWER: Well, there were incidents prior to all this where we would be on the offs, and in the middle of the night I'd find him crawling through my window. There were points where he took him mom's car to come and see

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MR. KURTZ (Defense Counsel): Objection -

ANSWER: - me when we were supposedly off.

MR. KURTZ: - Your Honor, that's not relevant.

THE COURT: Overruled.

ANSWER: And it'd be in the middle of the night and he'd pace my floor and tell me how much he loves me and all this stuff. And, you know, we had just made a pact that we weren't going to see each other for a month or - you know, because of my drinking problem or whatever, and - you know, so, yeah. And he would - he came one night with a screwdriver and said, well, if I couldn't get in, I was gonna get in.

QUESTION: Okay. So at that point in time when you were receiving the letters is it safe to say you didn't want a relationship with the defendant anymore?

ANSWER: Exactly I really wanted to move on.

-(RP 110, L24 – 112, L4)

The State submits that the elements of the crime have been proven beyond a reasonable doubt, but certainly to a level to allow the question to go to the trier of fact.

The stalking statute, RCW 9A.46.110, provides that a person can be found guilty of stalking another person if, with the requisite mental state, he or she "repeatedly" harasses the victim to the extent that the victim reasonably fears harm:

A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

- (a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and
- (b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
- (c) The stalker either:
 - (i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person. RCW 9A.46.110(1).

“Repeatedly” is defined as “on two or more separate occasions,” RCW 9A.46.110(6)(e), while “harasses” means “unlawful harassment as defined in RCW 10.14.020.” RCW 9A.46.110(6)(c).

RCW 10.14.020, in turn, requires a “course of conduct,” which is defined as a “series of acts over a period of time, however short”:

(1) “Unlawful harassment” means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

(2) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of “course of conduct.”

An example of Stalking and how it fits the facts is found in State v Askham, 120 Wn. App. 872,882-884, 86 P.3d 1224 (2004):

Stalking requires proof of the following elements: (1) A person intentionally and repeatedly follows or harasses another person. RCW 9A.46.110(1)(a). (2) The victim reasonably fears injury to him- or herself, another, or their property. RCW 9A.46.110(1)(b). (3) The perpetrator either intends to frighten, intimidate, or harass the victim or knows or reasonably should know that the victim feels afraid, intimidated, or harassed by the conduct. RCW 9A.46.110(1)(c)(i), (ii).

The State contends that Mr. Askham's stalking conviction was based on the "following" element as evidenced by his raiding of Mr. Schlatter's curbside trash can. But the trial court's findings and conclusions do not mention following. "Follows" means "deliberately maintaining visual or physical proximity . . . over a period of time." RCW 9A.46.110(6)(a). It has been judicially defined as deliberately and repeatedly correlating one's movements or appearances with those of another person to establish contact with that person. State v. Lee, 82 Wn. App. 298, 306, 917 P.2d 159 (1996), *aff'd*, 135 Wn.2d 369, 957 P.2d 741 (1998).

On its face, RCW 9A.46.110 does not seem to include trash snooping in the definition of "following." Nocturnal trash can surveillance does not involve "visual or physical proximity" intended to instill fear or distress. The courts do not even regard picking through a person's trash as unlawful, absent a local ordinance making it so. See, e.g., State v. Boland, 115 Wn.2d 571, 576, 800 P.2d 1112 (1990) (*citing* Seattle Municipal Code 21.36.100 (only city garbage collectors may handle curbside trash)). One should expect "children, scavengers, or snoops" to get into one's garbage. *Id.* at 578.

But the trial court here found Mr. Askham guilty of stalking based on the entire course of harassing conduct, not just trash snooping: "The defendant repeatedly and intentionally harassed Gerald Schlatter and [Mr. Schlatter] was reasonably placed in fear that the person intended to

injure his livelihood and reputation. The defendant is guilty of Count 4, stalking." CP at 40 (conclusion of law 24).

The offense of stalking imports the definition of harassment from RCW 10.14.020, the civil unlawful harassment statute. RCW 9A.46.110(6)(b). Civil unlawful harassment is defined as:

(1) . . . a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress

(2) . . . "Course of conduct" includes . . . the sending of an electronic communication. RCW 10.14.020.

Additional elements are required, then, when the alleged stalking conduct is harassment. The State must also prove:

A course of conduct such as would cause a reasonable person to suffer substantial emotional distress, and

Actual substantial emotional distress on the part of the victim. RCW 10.14.020(1).

The court made no express finding regarding substantial emotional distress.

We will affirm findings that the victim experienced substantial emotional distress and that the course of conduct would have caused substantial emotional distress to a reasonable person so long as substantial evidence supports these findings. State v. Noah, 103 Wn. App. 29, 39, 9 P.3d 858 (2000). Mr. Askham argues that expert testimony was required to show the necessary level of emotional distress. We find no authority for the proposition that only expert testimony can establish the reasonable person standard for emotional distress. The reasonable

person standard is an objective one "within the ken" of the average fact finder. State v. Marshall, 39 Wn. App. 180, 184, 692 P.2d 855 (1984). "Expert testimony is neither needed nor required." *Id.* The fact finder must ultimately decide this question after considering the evidence with or without the benefit of an expert.

The State established a course of conduct designed to destroy Mr. Schlatter's life, both personally and professionally. This is sufficient to meet the reasonable person standard.

Mr. Askham also contends the record contains no substantial evidence of actual emotional distress.

Substantial evidence exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true. State v. Foster, 135 Wn.2d 441, 471, 957 P.2d 712 (1998). The State concedes that the only evidence in the record that could arguably establish substantial evidence of emotional distress consists of Mr. Schlatter's repeated testimony that he felt threatened by the e-mails. Mr. Schlatter testified: "I felt threatened from the get-go on this situation, and quite clearly someone intended to--to have my job, have my career professionally and my social life destroyed." RP at 162. Mr. Schlatter also testified: "[I]t's embarrassing, no question. And it's irritating I mean, you--you just can't get away from it. And it keeps coming back and coming back; it's not gone away." RP at 163.

We must give the State the benefit of all reasonable inferences from this testimony, as well as from the facts and circumstances of the entire course of conduct. State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980). And when we do so we conclude that a reasonable fact finder could find that the course of conduct was such as would cause emotional distress and that it did in fact cause emotional distress.

In State v Lee, 82 Wn. App. 298, 917 P.2d 159 (1996), the Appellate Court also explained some of the concepts related to the Stalking statute.

This court will not adopt "a forced, narrow, or overstrict construction which defeats the intent of the legislature." 9 The statute as a whole reflects a legislative purpose of proscribing persistent and threatening social contact. We conclude that a person "follows" another within the meaning of the statute if he deliberately and repeatedly correlates his movements or appearances with another person's in order to have contact with the person. The evidence was sufficient to show that Lee followed Gross to her place of work. State v Lee, at 308.

Lee also contends there was insufficient evidence to show that Gross' fear of him was reasonable. The determination of whether Gross' fear was reasonable was one for the finder of fact in light of "all the circumstances", including Lee's staring behavior, his repeated references in the notes to Gross' need for protection, and testimony that Lee's mother had warned Gross to avoid Lee and not to trust him. On this record the trial court's conclusion that Gross' fear was reasonable will not be disturbed. State v Lee, at 308.

Appellants do not show that prohibition of "stalking" intrudes on any substantial private interest. The risk of erroneous deprivation of liberty is minimal, as the statute can only be enforced upon a showing that the defendant's following behavior was intentional, and that it provoked a reasonable sense of fear. Appellants do not deny that the State has a strong interest in curtailing stalking behavior. The statute does not violate procedural due process. State v Lee, at 313.

The evidence in this case showed an ongoing relationship between the defendant and the complaining witness. This relationship oftentimes

was of a violent nature. When the complaining witness would attempt to call it off the defendant would escalate it to the extent it led to law enforcement being called out and the entry of no contact orders for the protection of the complaining witness. Even at that point, it apparently did no good. The defendant continued to make contact and harass, stalk, and intimidate her. The State submits that there is sufficient evidence to allow this question to go to the jury.

III. CONCLUSION

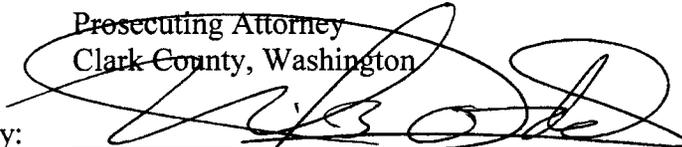
The trial court should be affirmed in all respects.

DATED this 5th day of August, 2010.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

10/28

FILED

SEP 09 2009

Sherry W. Parker, Clerk, Clark Co.

9:48am

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

SECOND AMENDED INFORMATION

Plaintiff,

v.

TODD GEOFFREY WALTON,

No. 09-1-01186-9

Defendant.

(VPD 09-12205)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - FELONY STALKING - VIOLATION OF PROTECTION ORDER/PRIOR CRIME OF HARASSMENT (DOMESTIC VIOLENCE) - 10.99.020 / 9A.46.110(1) / 9A.46.110(5)(b)(i) and (ii)

That he, TODD GEOFFREY WALTON, in the County of Clark, State of Washington, on or between June 10, 2009 and July 6, 2009, without lawful authority, did intentionally and repeatedly harass another person, to wit: Charmae Crandell; and the person being harassed was placed in fear that the Defendant intends to injure the person and the feeling of fear is one that a reasonable person in the same situation would experience under all the circumstances; and the above-named Defendant either did intend to frighten, intimidate, or harass the person or did know or reasonably should have known that the person is afraid, intimidated, or harassed, and the defendant has been convicted of a prior crime of Harassment as defined in RCW 9A.46.060 against the same victim or the stalking violated a protective order protecting the person being stalked; contrary to Revised Code of Washington 9A.46.110(1) and 9A.46.110(5)(b)(i) and (ii).

And further, that this crime was committed by one family or household member against another, and that this is a domestic violence offense as defined by RCW 10.99.020 and within the meaning of RCW 9.41.040. [DV]

INFORMATION - 1
CC

Domestic Violence Prosecution Center
210 East 13th Street
P.O. Box 1995
Vancouver Washington 98660
(360) 487-8530

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COUNT 02 - FELONY DOMESTIC VIOLENCE COURT ORDER VIOLATION (AT LEAST TWO PREVIOUS CONVICTIONS) - 26.50.110(5)

That he, TODD GEOFFREY WALTON, in the County of Clark, State of Washington, on or between June 24, 2009 and July 6, 2009, with knowledge that the Clark County Superior Court, had previously issued no contact orders pursuant to Chapter 10.99 RCW in Cause No. 09-1-00113-8 and 09-1-00827-2, did violate the orders while the orders were in effect by knowingly violating the restraint provisions therein, to wit did have contact with Charmae Crandell, and furthermore, the defendant has at least two previous convictions for violating the provisions of no-contact orders issued under Chapter 10.99 RCW; to wit: Clark County Superior Court Case No. 09-1-00113-8 and 09-1-00827-2, contrary to Revised Code of Washington 26.50.110(5).

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

Date: September 8, 2009

BY: 
Jeffrey W. Holmes, WSBA #37904
Deputy Prosecuting Attorney

DEFENDANT: TODD GEOFFREY WALTON			
RACE: W	SEX: M	DOB: 9/26/1968	
DOL: 4493624 OR		SID: WA24958239	
HGT: 602	WGT: 210	EYES: GRN	HAIR: BRO
WA DOC: 329018		FBI: 221178FB6	
LAST KNOWN ADDRESS(ES):			

25

FILED

SEP 09 2009

Sherry W. Parker, Clerk, Clark Co.
rcvd @ 2:14 pm by
Sarah Vignali,
Deputy Clerk

**SUPERIOR COURT OF WASHINGTON
COUNTY OF CLARK**

STATE OF WASHINGTON,

Plaintiff,

vs.

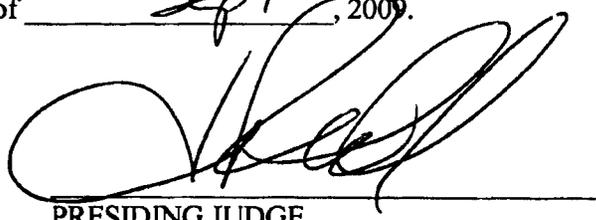
TODD WALTON,

Defendant.

NO: 09-1-01186-9

JUDGE'S INSTRUCTIONS
TO THE JURY

DATED this 9 day of Sept, 2009.



PRESIDING JUDGE

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INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses, and the exhibits that I have admitted, during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful.

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

INSTRUCTION NO. 2

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The State of Washington is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

INSTRUCTION NO. 3

Evidence may be either direct or circumstantial. Direct evidence is that given by a witness who testifies concerning facts that he or she has directly observed or perceived through the senses. Circumstantial evidence is evidence of facts or circumstances from which the existence or nonexistence of other facts may be reasonably inferred from common experience. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 4

A person commits the crime of Stalking when, without lawful authority, he or she intentionally and repeatedly harasses a second person, placing that person in reasonable fear that the first person intends to injure her, either with the intent to frighten, intimidate, or harass, or under circumstances where the first person knows or reasonably should know that the second person is afraid, intimidated, or harassed; and the first person had previously been convicted of any crime of harassment against the second person or the first person violated a protective order protecting the second person.

INSTRUCTION NO. 5

To convict the defendant of the crime of Stalking, each of the following six elements must be proved beyond a reasonable doubt:

(1) That on or between June 10, 2009 and July 6, 2009, the defendant intentionally and repeatedly harassed Charmae Crandall;

(2) That Charmae Crandall reasonably feared that the defendant intended to injure her;

(3) That the defendant

(a) intended to frighten, intimidate, or harass Charmae Crandall; or

(b) knew or reasonably should have known that Charmae Crandall was afraid, intimidated, or harassed even if the defendant did not intend to place her in fear or to intimidate or harass her;

(4) That the defendant acted without lawful authority;

(5) That the defendant

(a) had been previously convicted of the crimes of Assault in the Second Degree or Assault in the Fourth Degree or Unlawful Imprisonment or Domestic Violence Court Order Violation against Charmae Crandall; or

(b) That the defendant violated a protective order protecting Charmae Crandall;
and

(6) That any of the defendant's acts occurred in the State of Washington.

If you find from the evidence that elements (1), (2), (4), (5), and (6), and either of the alternative elements (3)(a) or (3)(b) and (5)(a) or (5)(b), have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict

of guilty, the jury need not be unanimous as to which of alternatives (3)(a) or (3)(b) and (5)(a) or (5)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of the six elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 6

A person acts without lawful authority when that person's acts are not authorized
by law.

INSTRUCTION NO. 7

A person who attempts to contact another person after being given actual notice that the person does not want to be contacted may be inferred to have acted with intent to intimidate or harass the person.

This inference is not binding upon you, and it is for you to determine what weight, if any, such inference is to be given.

INSTRUCTION NO. 8

“Protective order” means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

INSTRUCTION NO. 9

Repeatedly means on two or more separate occasions.

INSTRUCTION NO. 10

To harass means to carry out a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct must be one that would cause a reasonable person to suffer substantial emotional distress and which actually causes the person to suffer substantial emotional distress.

Course of conduct means a pattern of conduct composed of a series of acts over a period of time, however short, demonstrating the same purpose.

Willful or willfully means to act purposefully, not inadvertently or accidentally.

INSTRUCTION NO. 11

The State alleges that the defendant committed acts of Harassment on multiple occasions as an Element of Stalking. To convict the defendant of Stalking, at least two particular acts of Harassment must be proved beyond a reasonable doubt, and you must unanimously agree as to which two have been proved. You need not unanimously agree that the defendant committed all the acts of Harassment alleged.

INSTRUCTION NO. 12

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result which constitutes a crime.

INSTRUCTION NO. 13



A person knows or acts knowingly or with knowledge when ~~he~~ is aware of a fact, circumstance or result which is described by law as being a crime, whether or not the person is aware that the fact, circumstance or result is a crime.

If a person has information which would lead a reasonable person in the same situation to believe that facts exist which are described by law as being a crime, the jury is permitted but not required to find that he or she acted with knowledge.

INSTRUCTION NO. 14

A person commits the crime of Violation of a Domestic Violence Court Order when he knows of the existence of a no-contact order and knowingly violates a provision of the order, and the person has twice been previously convicted for violating the provisions of a court order.

INSTRUCTION NO. 15

To convict the defendant of the crime of Violation of a Domestic Violence Court Order, each of the following five elements of the crime must be proved beyond a reasonable doubt:

(1) That on or between June 24, 2009, and July 6, 2009, there existed a no-contact order applicable to the defendant;

(2) That the defendant knew of the existence of this order;

(3) That on or between said dates, the defendant knowingly violated a provision of this order;

(4) That the defendant has twice been previously convicted for violating the provisions of a court order; and

(5) That the defendant's act occurred in the State of Washington.

If you find from the evidence elements (1), (2), (3), (4) and (5) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of the five elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

It is not a defense to a charge of violation of a court order that a person protected by the order invited or consented to the contact.

INSTRUCTION NO. 17

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

INSTRUCTION NO. 18

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict form for recording your verdict.

You must fill in the blank provided in the verdict form the word "guilty" or the words "not guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form(s) to express your decision. The presiding juror must sign the verdict form(s) and notify the bailiff. The bailiff will bring you into court to declare your verdict.

INSTRUCTION NO. 19

You will also be given a special verdict form for the crimes of STALKING. If you find the defendant not guilty of this crime, do not use the special verdict form. If you find the defendant guilty of this crime, you will then use the special verdict form and fill in the blank with the answer "yes" or "no" according to the decision you reach. In order to answer the special verdict form "yes", you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If any one of you has a reasonable doubt as to the question, you must answer "no". If you unanimously have a reasonable doubt as to this question, you must answer "no".

INSTRUCTION NO. 20

For purposes of this case, "family or household members" means a person sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.

"Dating relationship" means a social relationship of a romantic nature. In deciding whether two people had a "dating relationship," you may consider all relevant factors, including (a) the nature of any relationship between them; (b) the length of time that any relationship existed; and (c) the frequency of any interaction between them.

FILED
COURT OF APPEALS

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STATE OF WASHINGTON

BY ca

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

STATE OF WASHINGTON,
Respondent,

v.

TODD GEOFFREY WALTON,
Appellant.

No. 39813-3-II

Clark Co. No. 09-1-01186-9

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On Aug 5, 2010, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

John A. Hays
Attorney at Law
1402 Broadway
Longview WA 98632

TODD GEOFFREY WALTON
DOC # 329018
McNeil Island Corrections Center
1403 Commercial Street
PO Box 88900
Steilacoom, WA 98388-0900

DOCUMENTS: Brief of Respondent

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

Jennifer Casley
Date: Aug 5, 2010.
Place: Vancouver, Washington.