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COURT OF APPEALS OF  
THE STATE OF WASHINGTON  
DIVISION TWO

THURSTON COUNTY SUPERIOR COURT NO. 09-3-00985-7

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SCOTT E. CRUMP,  
Appellant,

and

MARIA R. CRUMP,  
Respondent.

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OPENING BRIEF OF APPELLANT

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ORIGINAL

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Table of Contents

I.	INTRODUCTION .....	1
II.	ASSIGNMENTS OF ERROR .....	2
III.	STATEMENT OF THE CASE .....	3
IV.	ARGUMENT .....	17
A.	Standard Of Review .....	17
B.	The Court Did <i>Not</i> Have To Impose Restrictions In the Parenting Plan On Scott In the Absence Of Evidence He Committed Acts Of Domestic Violence Meeting the Statutory Definition Of RCW 26.50.010(1) .....	20
C.	The Court Was Required To Impose .191 Restrictions On Maria Based On the Uncontradicted Evidence Of Acts Of Domestic Violence Adduced At Trial .....	24
1.	The Findings Entered By the Court Establish, As a Matter Of Law, Domestic Violence As Defined By RCW 26.50.010(1) .....	25
2.	The Trial Evidence Regarding Maria’s Conduct Established a History Of Acts Of Domestic Violence Under RCW 26.50.010 .....	27
3.	The .191 Restrictions Were Consequently Reversed In This Case .....	29
D.	Conclusion Of Law 7 Was In Error: Nothing In the Record Or Findings Connected Domestic Violence-Related Behavior By Scott To a Parenting Concern .....	33
E.	The Trial Court Failed To Evaluate the Statutory Factors In RCW 26.09.187 In Setting the Final Parenting Plan ... ..	34

F. Many Of the Other Parenting Plan Provisions Should Be  
Vacated In Light Of the Trial Court's Mis-Application Of  
RCW 26.09.191 ..... 36

V. CONCLUSION ..... 41

APPENDIX A

Table of Authorities

WASHINGTON STATE CASES

<u>Case Citation</u>	<u>Page(s)</u>
<i>In re: Marriage of Burrill</i> , 113 Wn. App. 863, 56 P.3d 993 (Div. I 2002) . . . . .	18
<i>In re: Marriage of C.M.C.</i> , 87 Wn. App. 84, 940 P.2d 669 (Div. I 1997) . . . . .	22
<i>In re: Marriage of Caven</i> , 136 Wn.2d 800, 966 P.2d 1247 (1998).. . . . .	17, 18, 31, 39
<i>In re: Marriage of Flynn</i> , 94 Wn. App. 185, 972 P.2d 500 (Div. III 1999).. . . . .	18, 19
<i>In re: Marriage of Katare</i> , 125 Wn. App. 813, 105 P.3d 44 (Div. I 2004).. . . . .	18, 19
<i>In re: Marriage of Mansour</i> , 126 Wn. App. 1, 106 P.3d 768 (Div. I 2004).. . . . .	37
<i>In re: Marriage of Rich</i> , 80 Wn. App. 252, 907 P.2d 1234 (Div. III 1996) . . . . .	18
<i>In re: Marriage of Thomas</i> , 63 Wn. App. 658, 821 P.2d 1227 (Div. III 1991).. . . . .	18
<i>Rossmiller v. Rossmiller</i> , 112 Wn. App. 304, 48 P.3d 377 (Div. II 2002) . . . . .	18-19

OUT-OF-STATE CASES

<i>Headrick v. Headrick</i> , 916 So.2d 610, 613 (Ala. 2005) . . . . .	40
<i>Heck v. Reed</i> , 529 N.W.2d 155, 166 (N.D. Supr. Ct. 1995) . . . . .	40
<i>Parks v. Parks</i> , 214 P.3d 295, 299 (Alaska Supr. Ct. 2009). . . . .	40

WASHINGTON STATUTES

RCW 9A.46.110 . . . . .	20
RCW 26.09.004(3) . . . . .	35
RCW 26.09.187. . . . .	34
RCW 26.09.187(2)(b)(i) . . . . .	39, 41

RCW 26.09.187(3) .....	34
RCW 26.09.187(3)(a) .....	34
RCW 26.09.191 .....	1, 19, 22, 29, 32, 36, 37, 39, 41
RCW 26.09.191(1) .....	39, 41, 42
RCW 26.09.191(2) .....	19, 26, 27, 28, 37
RCW 26.09.191(2)(a) .....	20, 21
RCW 26.09.191(2)(a)(iii) .....	23
RCW 26.09.191(2)(m) .....	37, 38
RCW 26.09.191(2)(n) .....	39, 41
RCW 26.50.010 .....	1, 19, 23, 26, 27, 29, 43
RCW 26.50.010(1) .....	20, 21, 22, 25, 26, 27

OUT-OF-STATE STATUTES

Ala. Code 1975, § 30-3-13 .....	40
AS 11.56.740(a)(1) .....	40
NDCC 14-09-06.2(1)(j) .....	40

MISCELLANEOUS

Anne L. Ganley, <i>Chapter 2 Domestic Violence: The What, Why, and Who, As Relevant To Criminal and Civil Court Domestic Violence Cases</i> , DV Manual For Judges, Washington State Administrative Office of the Courts, 2006, at 2-2 .....	21
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## I. INTRODUCTION

In this case, the trial judge confused two distinct definitions of “domestic violence” and consequently misapplied the laws as they relate to domestic violence and parenting plans. The court heard evidence of “behavioral domestic violence” — the expansive definition of domestic violence-connected behavior used by therapists in the field — by the father and applied mandatory parenting plan restrictions under RCW 26.09.191. The court heard evidence of “legal domestic violence” — the more restrictive definition of domestic violence contained in RCW 26.50.010 — by the mother but did *not* apply “.191 restrictions,” relying on a domestic violence expert’s assessment that the mother’s physical violence were merely “acts of anger” in response to the father’s DV behavior. Both of these decisions were error, and the resulting effect of the reversed .191 restrictions was that the child was removed from the primary care of his father and placed with the mother. Accordingly, Mr. Crump asks this Court to reverse these rulings and require the trial court to impose .191 restrictions against the mother rather than him, and then remand the case back to the trial court for reconsideration of the residential schedule.

## II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering Conclusion of Law 6: “The parenting plan that is entered must contain RCW 26.09.190(1) [sic] limitations on Mr. Crump because he displays characteristics of a domestic violence perpetrator.”

2. The trial court erred in entering Conclusion of Law 7: “Because Mr. Crump displays characteristics of domestic violence perpetrator, Roberto should live primarily with Ms. Crump. It would not be healthy for Roberto to be raised by his dad because of the domestic violence traits Mr. Crump demonstrated with respect to M\\$. Crump during the parties’ relationship.”

3. The trial court erred in entering Conclusion of Law 5: “Ms. Crump’s violent actions were not acts of domestic violence that involved coercion and control but were unreasonable acts of anger.”

4. The trial court erred in entering Conclusions Of Law 9-11 and 13 concerning the residential provisions of the final parenting plan.

5. The trial court erred in entering paragraphs 2.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.10, 3.12, and 4.2 of the final parenting plan.

### III. STATEMENT OF THE CASE

Scott and Maria Crump (“Scott” and “Maria”) were married on August 2, 2004.<sup>1</sup> They met in 2004 through an Internet website called myforeignbride.com.<sup>2</sup> Scott was in the Army, located in Mosul, Afghanistan at the time, and Maria resided in the Dominican Republic, her native country.<sup>3</sup> They first met in person in the Dominican Republic on July 29, 2004.<sup>4</sup> Maria got pregnant shortly after arriving in the United States, and their son Roberto (“Bobby”) was born on July 13, 2005.<sup>5</sup>

During the next few years, Scott got orders for different military assignments, and spent about seven months in Korea on assignment beginning in the Fall 2006.<sup>6</sup> Maria made two trips with Bobby to the Dominican Republic during this time so her mother could help her care for Bobby.<sup>7</sup> On July 16, 2007, for the first time in the marriage, Maria went to work, at State Farm Insurance.<sup>8</sup> Bobby was two and Scott was caring for him during the week, since he had limited duties for the Army at this point

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<sup>1</sup>RP 21.

<sup>2</sup>RP 20, 291.

<sup>3</sup>RP 20.

<sup>4</sup>RP 21.

<sup>5</sup>RP 21-22.

<sup>6</sup>RP 23-25, 300-01.

<sup>7</sup>RP 25, 301.

<sup>8</sup>RP 27, 303.

because of combat injuries.<sup>9</sup>

Scott described the marriage from the get-go as “chaotic.”<sup>10</sup> On December 4, 2007, during an argument over tax preparation, Maria grabbed a coffee cup and threw it at the wall above Bobby’s empty crib, in Scott’s general direction.<sup>11</sup> Scott escaped downstairs and called his squad leader for help, but Maria followed him downstairs and threw a glass plate onto the ground.<sup>12</sup> Bobby came into the room and said, “Stop, Mom. Stop.”<sup>13</sup> Maria threw a second plate, then looked at Scott and threatened to physically assault him.<sup>14</sup> She then pushed Scott against the wall, but Scott began cleaning up the broken glass since Bobby was in the vicinity.<sup>15</sup> Maria went back upstairs, and Scott’s squad leader arrived.<sup>16</sup> Maria began packing her bags.<sup>17</sup> Scott called 911.<sup>18</sup> He was advised that if Maria brought her bags downstairs and left, Scott should shut and lock the door, so he did.<sup>19</sup> Maria began kicking the door, kicking it so hard that she

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<sup>9</sup>RP 27-28.

<sup>10</sup>RP33.

<sup>11</sup>RP 34.

<sup>12</sup>RP 34-35.

<sup>13</sup>RP 35.

<sup>14</sup>RP 35.

<sup>15</sup>RP 35.

<sup>16</sup>RP 35.

<sup>17</sup>RP 35.

<sup>18</sup>RP 36.

<sup>19</sup>RP 36.

cracked the door frame all the way around.<sup>20</sup>

Scott reported that prior to this incident in 2007, there were a couple of instances where Maria poured water on Scott while he was sleeping because she wanted him to take her somewhere.<sup>21</sup> On another occasion, the parties were driving up the freeway, with Scott driving, discussing why Maria's brother got deported.<sup>22</sup> When Scott suggested that it might be for drug trafficking, Maria got upset and punched Scott with a closed fist so hard that sunglasses flew out the car window.<sup>23</sup> In July 2009, Maria got angry and threw Scott's laptop computer at the fireplace and broke the screen while he was present.<sup>24</sup> She proceeded upstairs, Scott asked for her computer since she had broken his, and she threw it over the balcony from the second floor down into the entryway, and it also broke.<sup>25</sup> Maria denied these incidents.<sup>26</sup>

Maria reported that in 2007, right after she started at State Farm, Scott followed her in his car while she was riding with a co-worker to an outside meeting. When they arrived, Maria testified that Scott forced her

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<sup>20</sup>RP 36, 39-40.

<sup>21</sup>RP 38.

<sup>22</sup>RP 39.

<sup>23</sup>RP 39.

<sup>24</sup>RP 40, 271.

<sup>25</sup>RP 43.

<sup>26</sup>RP 423-24.

to get out of the car and insulted her.<sup>27</sup> She claimed he called her incessantly at work and when she was in the Dominican Republic in an attempt to control and monitor her.<sup>28</sup> Maria testified that Scott would not let her go anywhere alone, and often checked the odometer on her car when she got home from work.<sup>29</sup> She stated that he constantly made accusations of infidelity.<sup>30</sup> On one occasion in February 2008, right after a reconciliation from a near-divorce, Maria reported Scott struck her in the temple with his fist and knocked her unconscious during an argument about Scott's jealousy, although she did not call the police or seek any medical treatment, or follow through with previous plans for a divorce.<sup>31</sup> She also did not report the incident under the DV History section of a protection order petition she filed in September 2009.<sup>32</sup> Scott denied the allegation.<sup>33</sup> Maria does not report any physical acts of violence by Scott after the February 2008 incident.

Things came to a head in August 2009. On August 13, a friend of Scott's named Toni Wheeler had been a victim of an attempted sexual

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<sup>27</sup>RP 306.

<sup>28</sup>RP 293, 301-02, 307, 503-04.

<sup>29</sup>RP 293.

<sup>30</sup>RP 312.

<sup>31</sup>RP 312-15. 448.

<sup>32</sup>RP 449.

<sup>33</sup>RP 529.

assault and needed a place to stay.<sup>34</sup> Scott asked Maria's permission and she agreed.<sup>35</sup> Later, Maria was upset Ms. Wheeler was there, and left the home and stayed the night in a motel.<sup>36</sup> She returned to the home the next day.<sup>37</sup> She went upstairs, and Scott tried to talk to her.<sup>38</sup> Maria told him, "You tell that [expletive] that she's to leave now or I'm going to kill her. I'm going to stab her with a knife."<sup>39</sup> Maria then came downstairs, saw that Ms. Wheeler was doing laundry, and became enraged.<sup>40</sup> She subsequently headed back up the stairs, grabbed a picture frame with a family photo from a wall and slung it to the ground, took an Exacto knife and carved deep gashes into Scott's dresser, and was banging things around upstairs.<sup>41</sup>

Maria then began looking for Bobby's passport.<sup>42</sup> In the course of doing so, she "ripped apart" the office area downstairs, slammed the garage door open so hard it went through the door stopper and through the

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<sup>34</sup>RP 43, 318.

<sup>35</sup>RP 44, 318.

<sup>36</sup>RP 45, 319.

<sup>37</sup>RP 319.

<sup>38</sup>RP 46, 319.

<sup>39</sup>RP 46.

<sup>40</sup>RP 47.

<sup>41</sup>RP 47-49.

<sup>42</sup>RP 49, 320.

wall, and started going through Scott's truck and toolbox.<sup>43</sup> Scott went to the office to get his camera to document the property damage.<sup>44</sup> Maria ripped the camera out of Scott's hands with a meat tenderizer hammer in her hand, placed the camera on the ground, stomped on it with her foot, then took the meat tenderizer hammer and smashed the camera with it.<sup>45</sup> Maria admitted all of these acts.<sup>46</sup>

Bobby was present during the entire incident.<sup>47</sup> At this point, Bobby was sitting under his highchair with his hands clasped tight to the chair.<sup>48</sup> Ms. Wheeler pried Bobby's hands off the highchair and took hold of him.<sup>49</sup> Maria, with the meat tenderizer still in her hand, looked at Ms. Wheeler and asked, "Do you want some of this?"<sup>50</sup> Ms. Wheeler rushed Bobby outside and away from Maria.<sup>51</sup> Scott tried to get to the garage, but Maria grabbed him and slung him against the wall.<sup>52</sup> Scott tried to pull away, but Maria slung him against the other wall before Scott was able to

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<sup>43</sup>RP 49, 321, 322.

<sup>44</sup>RP 49-50, 321.

<sup>45</sup>RP 50, 321, 322.

<sup>46</sup>RP 321, 322, 462.

<sup>47</sup>RP 47-48, 50.

<sup>48</sup>RP 50.

<sup>49</sup>RP 50.

<sup>50</sup>RP 50.

<sup>51</sup>RP 50.

<sup>52</sup>RP 50 457.

break free.<sup>53</sup> His phone was in his hand.<sup>54</sup> He tried to dial 911, and Maria tried to take the phone from him.<sup>55</sup> Maria admitted she “grabbed his shirt to stop him.”<sup>56</sup> Scott got away, and started going around the island in the kitchen, to keep the island between he and Maria.<sup>57</sup> Maria held the meat tenderizer above her head as a weapon and was threatening to break the granite countertops unless Scott gave her Bobby’s passport.<sup>58</sup> Ms. Wheeler ran next door to a neighbor’s and had them call 911.<sup>59</sup> Police responded and Maria was arrested.<sup>60</sup> She was later charged by the City of Yelm with Assault in the Fourth Degree/DV.<sup>61</sup>

In that aftermath of that incident, Scott filed for a domestic violence protection order, and two weeks later filed for divorce.<sup>62</sup> A time was arranged for Maria to retrieve some belongings from the home.<sup>63</sup> Ms. Wheeler was there as a witness to what Maria removed, on advice of Scott’s counsel.<sup>64</sup> During the visit, Maria, finding Ms. Wheeler upstairs

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<sup>53</sup>RP 50.

<sup>54</sup>RP 50.

<sup>55</sup>RP 50-51.

<sup>56</sup>RP 321, 322, 323.

<sup>57</sup>RP 51.

<sup>58</sup>RP 51.

<sup>59</sup>RP 51.

<sup>60</sup>RP 52, 322.

<sup>61</sup>RP 59.

<sup>62</sup>RP 52.

<sup>63</sup>RP 53-54.

<sup>64</sup>RP 53, 55.

watching TV, grabbed her and started taking pictures of her.<sup>65</sup> Maria began screaming obscenities at Scott.<sup>66</sup> After taking all Bobby's clothes, she went outside, ripped Ms. Wheeler's purse away from her and threw it.<sup>67</sup> She then grabbed Ms. Wheeler, put her arm behind her back and slammed her into the wall, in the course of doing so knocking Bobby out of a chair he was sitting in and up underneath a glass table on the back porch.<sup>68</sup> She marched in the home, grabbed the clothes with Bobby in the other hand, approached Scott and stomped on his foot.<sup>69</sup> Scott again called 911 and police responded; Maria had already left the scene.<sup>70</sup> Scott was denied a long-term order — the Court found that although acts of domestic violence had occurred, Scott was not afraid of Maria because he allowed her to reside next door.<sup>71</sup> Scott contended that he was afraid, but knew that Maria had nowhere else to go and he worried she might return to the Dominican Republic.<sup>72</sup>

Maria then, in mid-September 2009, sought a protection order

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<sup>65</sup>RP 55.

<sup>66</sup>RP 56.

<sup>67</sup>RP 56.

<sup>68</sup>RP 56.

<sup>69</sup>RP 57.

<sup>70</sup>RP 57.

<sup>71</sup>RP 177.

<sup>72</sup>RP 176.

against Scott in Pierce County based on alleged domestic violence from 2007.<sup>73</sup> The order was denied.<sup>74</sup> Scott, however, was protected by a No Contact Order (“NCO”) in the Yelm criminal case.<sup>75</sup> He reported that Maria violated the NCO on multiple occasions.<sup>76</sup> First, she would park in a lot adjacent to Bobby’s daycare, putting her less than 500 feet from Scott during pickups.<sup>77</sup> Second, Maria followed Scott’s vehicle in her own vehicle on at least one occasion.<sup>78</sup> Third, she initiated third-party contact through a neighbor about a holiday pickup.<sup>79</sup> Fourth, on one occasion she provided Bobby a cell phone with a lock code that he could not answer. When it rang, Bobby took the phone from his pocket and showed it to Scott, and it said, “You’ve been located.”<sup>80</sup>

A temporary parenting plan was entered by the Thurston County Superior Court on September 21, 2009, placing Bobby in the primary care of Scott, with visitation for Maria each weekend from Friday evening to Monday morning. This parenting schedule remained in place until after

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<sup>73</sup>RP 58-59.

<sup>74</sup>RP 59.

<sup>75</sup>RP 59.

<sup>76</sup>RP 60.

<sup>77</sup>RP 60.

<sup>78</sup>RP 61; RP 386.

<sup>79</sup>RP 61-62.

<sup>80</sup>RP 63-64.

the parties' trial at the end of 2011.

During the pendency of the divorce, Bobby was seeing a counselor, on the advice of his pediatrician, to deal with extreme nightmares resulting from the violent incidents involving Maria.<sup>81</sup> An elaborate arrangement was implemented to allow both parents to participate in the counseling but still keep them separate and keep Bobby supervised at all times.<sup>82</sup> The arrangement involved Scott having a second person present.<sup>83</sup> On January 20, 2011, when Scott's friend Terra Humphreys was watching Bobby in the car while Scott was talking to the counselor, Maria backed her car to where Ms. Humphreys was sitting and threatened to kill her.<sup>84</sup>

The Guardian ad Litem in the dissolution case was Jim Berg, appointed on November 9, 2009.<sup>85</sup> He wrote a report that was filed in May 2010.<sup>86</sup> He also followed up by talking to Bobby's teachers and counselors in the days prior to trial.<sup>87</sup> In the home visit and client interviews, Maria described mental and emotional abuse by Scott, being

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<sup>81</sup>RP 67-68.

<sup>82</sup>RP 69.

<sup>83</sup>RP 378.

<sup>84</sup>RP 70; RP 379.

<sup>85</sup>RP 83, 85.

<sup>86</sup>RP 85.

<sup>87</sup>RP 87.

surveilled and controlled by him.<sup>88</sup> Scott described being physically struck by Maria.<sup>89</sup> One of Bobby's counselors told the GAL that Bobby had reported being choked by Maria, and that allegation was investigated by CPS and law enforcement.<sup>90</sup> Another of Bobby's counselors told the GAL that Bobby was well bonded to both parents.<sup>91</sup> Mr. Berg's recommendation for the final parenting plan was that Bobby remain in the primary care of his father and spend three weekends per month with Maria.<sup>92</sup>

On November 26, 2010, Jennifer Goodwin, a psychologist and domestic violence treatment provider at Olympia Psychotherapy, did mental health evaluations of both parties to look at the question of domestic violence.<sup>93</sup> As to Scott, Ms. Goodwin determined that Scott had engaged in "a pattern of coercive control" with respect to Maria, based on one incident of physical violence, one incident of sexual violence, and high degrees of sexual jealousy.<sup>94</sup> Ms. Goodwin recommended that Scott complete a state-certified domestic violence treatment program, including

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<sup>88</sup>RP 90.

<sup>89</sup>RP 90.

<sup>90</sup>RP 92-93.

<sup>91</sup>RP 94.

<sup>92</sup>RP 103.

<sup>93</sup>RP 324-26, 328.

<sup>94</sup>RP 329.

a polygraph, and a psycho-sexual evaluation.<sup>95</sup>

As to Maria, Ms. Goodwin concluded that although Maria did engage “in violent and inappropriate aggression”<sup>96</sup> and committed acts of “legal” domestic violence for which she should be held accountable, “it’s not uncommon that you’re going to see victims become frustrated and start acting out in that way.”<sup>97</sup> Ms. Goodwin admitted her evaluation was completed before she learned that Maria had threatened to kill Terra Humphreys, and that such information would have been pertinent to her treatment recommendations.<sup>98</sup> Ms. Goodwin recommended that Maria engage in a minimum of 6 months of mental health treatment, comply with prescribed medications for anxiety and depression, complete an anger management course, and complete a parenting program.<sup>99</sup> Ms. Goodwin emphasized that she did not conduct a parenting evaluation of either party or make determinations about whether the parties’ violence-related behavior posed a risk to Bobby.<sup>100</sup> Neither party made any attempt to comply with Ms. Goodwin’s recommendations during the 9 months

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<sup>95</sup>RP 336.

<sup>96</sup>RP 350.

<sup>97</sup>RP 332.

<sup>98</sup>RP 362.

<sup>99</sup>RP 332.

<sup>100</sup>RP 331.

between the time they were made and trial.<sup>101</sup>

During closing argument at the dissolution trial, both attorneys argued for parenting plan restrictions under RCW 26.09.191 (“191 restrictions”) based on a history of acts of domestic violence by the other party.<sup>102</sup> The Court, however, entered 191 restrictions against Scott “because he displays characteristics of a domestic violence perpetrator.”<sup>103</sup> As to the one act of physical violence by Scott testified to by Maria, the Court ruled that, “I don’t know if that happened or not.”<sup>104</sup> Instead, the Court focused on the fact that Scott had kept track of Maria’s activities, and “attempted to exert control over Ms. Crump to be sure that Ms. Crump did not have an independent life outside of his presence.”<sup>105</sup> The Court’s Conclusions Of Law placed Bobby in the primary custody of Maria, stating: “It would not be healthy for Roberto to be raised by his dad because of the domestic violence traits Mr. Crump demonstrated with respect to Ms. Crump during the parties’ relationship.”<sup>106</sup>

As to Maria’s violent behavior, the Court made findings that “Ms.

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<sup>101</sup>RP 559.

<sup>102</sup>RP 533, 549.

<sup>103</sup>RP (“Ruling of the Court”) 13-14; CP 57. The Verbatim Report of Proceedings volume titled “Ruling of the Court” will hereinafter be designated as “2RP.”)

<sup>104</sup>2RP 9.

<sup>105</sup>CP 54.

<sup>106</sup>CP 57; 2RP 14.

Crump was physically aggressive toward Mr. Crump and engaged in incidents of unruly behavior and threw objects when she became angry with Mr. Crump, actually breaking property.”<sup>107</sup> The Court further found: “At the time of separation in 2009, Ms. Crump engaged in acts of uncontrolled anger and a display of rage that resulted in a domestic violence protection order being issued.”<sup>108</sup> The Court also found that “Ms. Crump is a person who has a serious anger management problem and is in need of treatment and counseling.”<sup>109</sup> Yet the Court did not enter 191 restrictions against Maria.<sup>110</sup>

In explaining these rulings, the Court opined: “I think Jennifer Goodwin’s testimony helped clarify for everyone in the courtroom the distinction between acts of domestic violence that are motivated by coercion and control and acts of violence that are perpetrated in moments of frustration and uncontrolled anger.”<sup>111</sup> As to Maria’s acts of violence on August 13, 2009, the Court further stated: “To me this did not seem to be acts of domestic violence that would involve coercion and control but

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<sup>107</sup>CP 54.

<sup>108</sup>CP 54.

<sup>109</sup>CP 54.

<sup>110</sup>CP 56-57; 2RP 14.

<sup>111</sup>2RP 9.

rather seemed to be unreasonable acts of anger being displayed.”<sup>112</sup> The Court, in its ruling, also stated that “any parenting plan that is entered today must contain RCW 26.09.190(1) [sic] limitations on Mr. Crump because of my domestic violence finding. In doing that, I could place Roberto with his dad on condition that he complete his domestic violence program, but the limitation must be reflected in the parenting plan ....”<sup>113</sup>

#### IV. ARGUMENT

##### A. Standard Of Review

“In matters affecting the welfare of children, such as parenting plans, the trial court has broad discretion, and its decisions are reviewed only for abuse of discretion.” *In re: Marriage of Caven*, 136 Wn.2d 800, 806, 966 P.2d 1247 (1998). “A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *Rossmiller, v. Rossmiller*, 112 Wn. App. 304, 309, 48 P.3d 377 (Div. II 2002). “A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual

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<sup>112</sup>2RP 9-10.

<sup>113</sup>2RP 14.

findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *In re: Marriage of Katare*, 125 Wn. App. 813, 822-23, 105 P.3d 44 (Div. I 2004).

An appellate court will not re-try the facts on appeal, and will accept findings of fact as verities if they are supported by substantial evidence in the record. *In re: Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (Div. III 1991). Evidence is substantial when there is a sufficient quantum of evidence “to persuade a fair-minded person of the truth of the declared premise.” *In re: Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (Div. I, 2002). “So long as substantial evidence supports the finding, it does not matter that other evidence may contradict it.” *Id.* This court does not review the trial court’s credibility determinations, nor can it weigh conflicting evidence. *In re: Marriage of Rich*, 80 Wn. App. 252, 259, 907 P.2d 1234 (Div. III 1996).

“[I]ssues of statutory construction,” however, “are questions of law which [the appeals] court reviews de novo.” *Caven*, 136 Wn.2d at 806. Similarly, an appellate court reviews a trial court’s application of the law de novo. *Rossmiller, v. Rossmiller*, 112 Wn. App. 304, 309, 48 P.3d 377

(Div. II 2002); *In re: Marriage of Flynn*, 94 Wn. App. 185, 192, 972 P.2d 500 (Div. III 1999).

The court entered several findings regarding the evidence taken at trial that are not contested on appeal by Scott. Scott's primary argument on appeal is that the trial court — based on the Findings Of Fact — improperly applied the legal standards contained in RCW 26.09.191(2), resulting in him being subjected to mandatory parenting limitations and absolving Maria of any residential limitations under the same statute.

Under the logic of *Katere*, an appellate court should determine whether the trial court case abused its discretion in limiting Scott's residential time while expanding Maria's residential time. In doing so, the appellate court should review the decision to determine whether the trial court had a tenable legal reason supporting its particular application of RCW 26.09.191(2) in its Findings Of Fact. If the court did not have a tenable reason, its decision is manifestly unreasonable. But in establishing the limitations contained in the parenting plan, the trial court's particular interpretation of RCW 26.09.191 and RCW 26.50.010 should be reviewed *de novo*.

B. The Court Did *Not* Have To Impose Restrictions In the Parenting Plan On Scott In the Absence Of Evidence He Committed Acts Of Domestic Violence Meeting the Statutory Definition Of RCW 26.50.010(1).

The trial court concluded that it was required to place limitations on Scott even though Scott's behavior does not meet the statutory definition of domestic violence. RCW 26.09.191(2)(a) requires parenting plan limitations based on acts of domestic violence when a court finds that a parent has engaged in "a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm." The definition of domestic violence in RCW 26.50.010(1) ("legal domestic violence") is: "(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member."

By contrast, "behavioral domestic violence" is a broader concept applied by experts in the field of domestic violence treatment. According to the "DV Manual For Judges" prepared by the Washington State Administrative Office Of the Courts: "The behavioral definition is more

comprehensive than the legal definition in defining domestic violence conduct ....” Anne L. Ganley, *Chapter 2 Domestic Violence: The What, Why, and Who, As Relevant To Criminal and Civil Court Domestic Violence Cases*, DV Manual For Judges, Washington State Administrative Office of the Courts, 2006, at 2-2.<sup>114</sup> “The legal definition for Washington State is ... somewhat narrower in defining the conduct.” *Id.* Washington judges receive direct training in their judges’ DV Manual regarding the important distinction between the definition of behavioral domestic violence versus legal domestic violence: “Understanding both definitions is useful in making the complex decisions facing judicial officers hearing these cases.” *Id.*

In order for RCW 26.09.191(2)(a) to apply and require parenting plan limitations (“.191 limitations”), not only do the predicate acts have to meet the definition of legal domestic violence under RCW 26.50.010(1), but there must be a “*history*” of “*acts*” of such violence — a mere single act not rising to the level of an assault causing “grievous bodily harm or the fear of such harm” will not suffice. *In re: Marriage of Caven*, 136

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<sup>114</sup>Sections I and II of this manual, which concern the legal definition versus the behavioral definition of domestic violence, are attached as Appendix A, or can be viewed on-line at [www.courts.wa.gov/content/manuals/domViol/chapter2.pdf](http://www.courts.wa.gov/content/manuals/domViol/chapter2.pdf)

Wn.2d 800, 807-08, 966 P.2d 1247 (1998); *In re: Marriage of C.M.C.*, 87 Wn. App. 84, 88, 940 P.2d 669 (Div. I 1997) (discussing legislative history behind language of RCW 26.09.191 requiring “history” of “acts” of DV rather than isolated incidents).

Rather than entering detailed findings about actual acts of domestic violence committed by Scott, the trial court instead chose to enter a number of non-specific findings about Scott’s behavioral profile. The court found that Scott “began keeping track of Ms. Crump’s activities; where she was, what she was doing.”<sup>115</sup> Further, the trial court found that Scott “attempted to exert control over Ms. Crump to be sure that Ms. Crump did not have an independent life outside of his presence.”<sup>116</sup> Finally, the court found that “Mr. Crump displays characteristics of a perpetrator who is in need of domestic violence treatment.”<sup>117</sup>

None of these amorphous factual findings support a conclusion that Scott’s conduct rose to the level of domestic violence defined by RCW 26.50.010(1). As a result, .191 restrictions — as a matter of law — are not mandatory in this case. The trial court concluded, however, that “the

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<sup>115</sup>Finding of Fact 7; CP 54.

<sup>116</sup>Finding Of Fact 9; CP 54.

<sup>117</sup>Finding Of Fact 12; CP 54.

parenting plan that is entered *must* contain RCW 26.09.190(1) [sic] limitations on Mr. Crump because he displays characteristics of a domestic violence perpetrator.”<sup>118</sup>

The trial court could not make a finding that Scott had committed a history of acts of *legal* domestic violence because there was no evidence to support such a finding. The only evidence in the case that Scott committed an act satisfying RCW 26.50.010 was Maria’s allegation that he punched her in the face on one occasion in February 2008. The trial court, however, explicitly ruled that “I don’t know if that happened or not.”<sup>119</sup> Moreover, even if that act had been found by the Court, it would not satisfy the requirement of RCW 26.09.191(2)(a)(iii) of a *history* of *acts* of domestic violence because only solitary act was alleged.

In sum, the trial court erred in applying the definition of domestic violence contained in RCW 26.50.010 to the relevant findings regarding the characteristics of Scott’s behavior. Based on that error, the court improperly concluded that .191 limitations were mandatory as to Scott.

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<sup>118</sup>Conclusion Of Law 6; CP 57 (emphasis added).

<sup>119</sup>2RP 9.

C. The Court Was Required to Impose .191 Restrictions On Maria Based On the Uncontradicted Evidence Of Acts Of Domestic Violence Adduced At Trial.

In addition to erroneously imposing parenting limitations on Scott, the trial court failed to place any limitations on Maria despite findings that Maria had committed acts of legal domestic violence. The evidence at trial established multiple instances of actual physical violence perpetrated by Maria and directed towards Scott. In its Findings Of Fact, the trial court made two findings related to Maria's violent acts:

10. Ms. Crump was physically aggressive toward Mr. Crump and engaged in incidents of unruly behavior and threw objects when she became angry with Mr. Crump, actually breaking property.<sup>120</sup>
11. At the time of separation in 2009, Ms. Crump engaged in acts of uncontrolled anger and a display of rage that resulted in a domestic violence protection order being issued. The parties separated after this incident.<sup>121</sup>

Despite these findings, the trial court concluded that "Ms. Crump's violent actions were not acts of domestic violence that involved coercion and control but were unreasonable acts of anger."<sup>122</sup>

The court does not specify whether it believes these findings satisfy

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<sup>120</sup>Finding Of Fact 10; CP 54.

<sup>121</sup>Finding Of Fact 11; CP 54.

<sup>122</sup>Conclusion Of Law 5; CP 56-57.

the legal definition of domestic violence. Thus, there are two possibilities regarding the trial court's findings and conclusions on this point. One is that the trial court's factual findings as stated meet the statutory definition of a history of acts of legal domestic violence as a matter of law and thus the trial court erred in failing to impose .191 limitations on Maria. A second is that the factual findings do not establish a history of acts of legal domestic violence, in which case the findings entered by the trial court are legally insufficient based on the uncontradicted evidence at trial.

*1. The Findings Entered By the Court Establish, As a Matter of Law, Domestic Violence As Defined By RCW 26.50.010(1)*

Taken together, Finding Of Fact 10 and 11 establish a "history of acts of domestic violence," as "domestic violence" is defined in RCW 26.50.010(1). The court explicitly found that Maria engaged in the acts that "resulted in a domestic violence protection order being issued."<sup>123</sup> That order could not have been issued absent a judicial determination that the alleged behavior constituted domestic violence under RCW 26.50.010(1). Thus, it is implicit in Finding Of Fact 11 that Maria's "acts of uncontrolled anger and [] display of rage" in 2009 were, in fact, acts of

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<sup>123</sup>Finding of Fact 11, CP 54.

legal domestic violence.

Similar to Finding Of Fact 11, the court found that Maria had historically been physically aggressive toward Mr. Crump, engaged in incidents of unruly behavior, and threw objects when she became angry with Scott. At the very least, those findings support a conclusion that Mr. Crump was placed in reasonable fear of imminent physical harm as required by RCW 26.50.010(1). Based on these findings, the Court was required to impose limitations in the parenting plan pursuant to RCW 26.09.191(2).

Finally, the trial court's conclusion that Maria's violent actions were not acts of domestic violence involving coercion and control implicitly acknowledges that Maria's conduct rose to the level of domestic violence defined by RCW 26.50.010 but was otherwise excusable based on a lack of wrongful motivation.

Despite its findings of acts mandating .191 limitations, the trial court instead relied heavily on expert testimony that there is a "distinction between acts of domestic violence that are motivated by coercion and control and acts of violence that are perpetrated in moments of frustration

and uncontrolled anger.”<sup>124</sup> However, the trial court’s conclusion that Maria’s acts “did not involve coercion and control” is a distinction without a difference. RCW 26.50.010(1) does not distinguish between acts of domestic violence that involve coercion and control and acts of domestic violence that do not involve coercion and control. Concluding that acts of domestic violence do not involve coercion and control is not a justification for avoiding the mandatory parenting plan restrictions required by RCW 26.09.191(2).

2. *The Trial Evidence Regarding Maria’s Conduct Established a History Of Acts Of Domestic Violence Under RCW 26.50.010*

If, alternatively, it is assumed that the court’s findings as they are written do not establish a history of acts of domestic violence, then those findings are not supported by the trial evidence. The trial evidence regarding Maria’s conduct established a history of acts of domestic violence under RCW 25.50.010.

The uncontradicted evidence at trial supporting Finding Of Fact 11 was that Maria grabbed Scott’s shirt,<sup>125</sup> destroyed a camera in front of

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<sup>124</sup>2RP 9.

<sup>125</sup>RP 50-51.

Scott with a meat tenderizer hammer,<sup>126</sup> threw a family photo to the ground, and took an Exacto knife and carved deep gashes into Scott's dresser.<sup>127</sup> Evidence of previous of several altercations during the marriage supported the trial court's finding that Maria was physically aggressive toward Scott and threw objects when she became angry with Scott. In December 2007, Maria smashed plates, damaged the doorway by kicking it and pushed Scott against the wall.<sup>128</sup> Additionally, there was evidence that Maria poured water on Scott while he was sleeping, that she had punched Scott while driving, and broke a laptop computer by throwing it at the fireplace.<sup>129</sup>

The evidence at trial supports a reading of the trial court's findings in a manner that reinforces that the acts actually committed by Maria were conclusively a history of acts of domestic violence for the purposes of RCW 26.09.191(2). If that is not the interpretation of the findings by this Court, then the findings are insufficient and not consistent with the evidence adduced at trial.

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<sup>126</sup>RP 50, 321, 322.

<sup>127</sup>RP 47-49.

<sup>128</sup>RP 34-35.

<sup>129</sup>RP 38-40.

3. *The .191 Restrictions Were Consequently Reversed In This Case*

In this case, then, the trial court confused the clinical definition of behavioral domestic violence with legal domestic violence in imposing .191 limitations. In doing so, the trial court applied the incorrect legal standard to the behavior of *both* parties. It found Scott had committed acts of behavioral domestic violence — abusive and controlling behaviors that did not rise to the level of statutory domestic violence — but nonetheless concluded that .191 restrictions were mandatory. Conversely, the trial court found that Maria committed statutory, legal domestic violence — physical aggression and infliction of fear of assault by throwing and breaking objects — but did not impose .191 restrictions, either concluding that such acts did not meet the legal definition of domestic violence or mis-applying the behavioral DV definition in its place. Either way, these conclusions of law are incorrect applications of the plain language of RCW 26.09.191 and are in error.

The evidence at trial did establish that domestic violence treatment counselors use the term “domestic violence” much more broadly than the legal definition contained in RCW 26.50.010 and incorporated into RCW 26.09.191. In questioning Jennifer Goodwin, Maria’s counsel had the

following exchange with the witness:

Mr. Benjamin: Now, what about the fact that Maria admitted taking a meat tenderizer and smashing the camera and grabbing Mr. Crump by the shirt when she was looking for the passports or he was refusing to talk to her about the passports and she messed up the den when she was digging through everything? How do you put that into the context of this relationship? Is that domestic violence by her against him?

Ms. Goodwin: Well, it – it's legally domestic violence, but if I look at it in the context of the dynamics of the relationship, you know, while her appropriate – while her behavior is not appropriate in any way shape or form, and she needs to be held accountable to that, you know, it's not uncommon that your going to see victims become frustrated and start acting out in that way. Again, I'm not saying that that's appropriate behavior.<sup>130</sup>

Later, in discussing her conclusions about Scott's behavior, Ms. Goodwin believed that Scott had a different motivation for the behavior exhibited during the relationship:

Mr. Benjamin: And so what are some of your most significant concerns about Mr. Crump?

Ms. Goodwin: ... based on my interview and review of the collateral information and the testing data, that I believed that there was a pattern of coercive control by him towards his wife ....<sup>131</sup>

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<sup>130</sup>RP 331-332.

<sup>131</sup>RP 336.

On cross-examination, Ms. Goodwin further reinforced the idea that there is a difference between violent behaviors motivated by frustration and violent behavior motivated by coercive control.

Mr. Rue: ... I know that Mr. Crump reported to you that – this incidence of violence with a meat cleaver.

Ms. Goodwin: Yes, he did.

Mr. Rue: And did you disbelieve that?

Ms. Goodwin: No, I did not disbelieve it.

Mr. Rue: So you essentially believe that –

Ms. Goodwin: I do believe it.

Mr. Rue: And why isn't this a more important factor in your report?

Ms. Goodwin: I believe it is an important factor in the report, which led to the recommendation for the anger management and ongoing – the 20 hours of counseling.

Mr. Rue: For Mrs. Crump.

Ms. Goodwin: For Ms. Crump. Often what I'm trying to delineate is was the behavior frustration-based or was it solely an act of coercive control.<sup>132</sup>

We know that this testimony from Goodwin about acts of domestic violence and their differing motivations was heavily relied upon by the

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<sup>132</sup>RP 355-56.

trial court because Judge Casey explicitly stated so in her ruling: “I think Jennifer Goodwin’s testimony helped clarify for everyone in the courtroom the distinction between acts of domestic violence that are motivated by coercion and control and acts of violence that are perpetrated in moments of frustration and uncontrolled anger.”<sup>133</sup> And as to Maria’s August 13, 2009 acts of domestic violence against Scott, the Court further stated: “To me this did not seem to be acts of domestic violence that would involve coercion and control but rather seemed to be unreasonable acts of anger being displayed.”<sup>134</sup>

Thus, the trial court relied heavily on Jennifer Goodwin’s testimony to separate acts of domestic violence motivated by coercion and control from acts of domestic violence motivated by anger and frustration. While this distinction may have some usefulness in a domestic violence treatment program, it does not have any relevance to an assessment of parenting plan restrictions under RCW 26.09.191. The court must apply the definitions contained in Washington law, not the definitions of domestic violence experts and their scholarly articles. Evidence of a broader clinical standard for domestic violence cannot replace the legal

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<sup>133</sup>2RP 9.

<sup>134</sup>2RP 9-10.

definition of domestic violence established by the Legislature.

D. Conclusion Of Law 7 Was In Error: Nothing In the Record Or Findings Connected Domestic Violence-Related Behavior By Scott To a Parenting Concern.

In crafting a parenting plan, the trial court summarily concluded that it would be unhealthy for Scott to raise Bobby based on domestic violence traits identified by expert Jennifer Goodwin. Conclusion Of Law 7 states:

Because Mr. Crump displays characteristics of a domestic violence perpetrator, Roberto should live primarily with Ms. Crump. It would not be healthy for Roberto to be raised by his dad because of the domestic violence traits Mr. Crump demonstrated with respect to Ms. Crump during the parties' relationship.

In reaching that conclusion, the trial court had made a predicate finding that Scott "displays characteristics of a perpetrator who is in need of domestic violence treatment." The court, however, did not make a finding that a parent demonstrating "characteristics of a domestic violence perpetrator," by itself, means he or she will be an unhealthy parent, or that Scott's particular behavior in this case connected to a parenting concern. Even if the trial court had explicitly made such a finding, there was no evidence in the record to support a connection between Scott's domestic violence characteristics and a parenting concern in this case. Jennifer

Goodwin, for her part, testified that she had not evaluated either of Scott or Maria's parenting ability.<sup>135</sup> Similarly, the GAL recommended primary placement with Scott and gave no testimony that a parent exhibiting characteristics of domestic violence is necessarily an unhealthy parent. Thus Conclusion Of Law 7 was not supported by any finding or evidence in the trial record.

E. The Trial Court Failed To Evaluate the Statutory Factors In RCW 26.09.187 In Setting the Final Parenting Plan.

Moreover, in summarily concluding that Scott was unfit as a parent based on a misapplication of .191, the trial court's analysis regarding Bobby's placement is incomplete. Ordinarily, in setting a residential schedule, a trial court must consider the seven basic parenting plan factors contained in RCW 26.09.187(3) (".187 factors"). In pertinent part, RCW 26.09.187(3)(a) provides that:

(a) ... The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were

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<sup>135</sup>RP 331.

entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

In this case, the trial court's conclusion that a person who displays characteristics of a DV perpetrator is an unhealthy parent stands alone as the only Conclusion Of Law that touches on either Scott or Maria's fitness as parents. In failing to fully assess the .187 factors, the trial court implicitly reasoned that .191 limitations as to Scott were dispositive regarding Bobby's placement and further consideration of the .187 factors were not required. The trial court made limited findings about Bobby's

bond with both Maria and Scott, finding a virtual tie in terms of the child's bond with each parent: "Roberto has a good relationship with both parents"<sup>136</sup> ... "After the first several years of Roberto's life, Roberto was bonded well to both of his parents."<sup>137</sup>

Despite these findings equally sanctioning the bond between Bobby and both of his parents, the trial court did not reach any legal conclusions regarding the residential schedule in light of the .187 factors. The trial court jumped to the conclusion that .191 limiting factors were dispositive and that Bobby must be primarily placed with Maria. Mandatory .191 limitations, however, should not have been dispositive in deciding the parenting plan because the .191 limitations imposed by the trial court were based on a misapplication of the definitions of domestic violence, as argued above. Therefore, the failure to consider the .187 parenting factors in reaching a decision about Bobby's residential placement was in error.

F. Many Of the Other Parenting Plan Provisions Should Be Vacated In Light Of the Trial Court's Mis-Application Of RCW 26.09.191.

In making residential provisions, the trial court acted outside the

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<sup>136</sup>Finding of Fact 15, CP 55.

<sup>137</sup>Finding of Fact 19, CP 55.

range of legally acceptable choices in placing Bobby primarily with Maria. When a court finds a history of acts of domestic violence, the RCW 26.09.191(2) requires that “[t]he parent’s residential time with the child shall be limited.” Case law supports the plain reading of RCW 26.09.191, unequivocally requiring limitation on an abusive parent’s residential time on a finding that a parent engaged in physical abuse. *See, In re: Marriage of Mansour*, 126 Wn. App. 1, 10, 106 P.3d 768 (Div. I 2004).

A limitation, according to to the plain language RCW 26.09.191(2), must include a temporal limitation. Specifically, the statute says that “residential time” must be limited. The trial court was required to restrict Maria’s “residential time” because it implicitly found that Maria had engaged in a history of acts of domestic violence as discussed in section C, *supra*.

While RCW 26.09.191 requires a limitation on the offending parent’s residential time, no Washington case specifically says how much time should be limited. Under RCW 26.09.191(2)(m), the legislature gives expansive discretion to create additional “limitations” that may be unconnected with the amount of residential time, such as requiring

supervised visitation.<sup>138</sup> At the very least, the statute requires that the “limitations” placed on an offending parent be reasonably calculated to protect the child. The statutory phrase “residential time shall be limited” would hardly have any meaning, however, if that language could be consistent with primary placement with the offending parent. Put another way, primary placement with an offending parent would, under no circumstance, be “reasonably calculated” to protect a child physical or emotional abuse or harm.

While a court may have discretion to create additional limitations on an offending parent, a trial court — at the very least — has no discretionary authority to primarily place a child with an offending parent. Similar to mandatory limitations on residential time, a trial court completely loses its discretion when dealing with mandatory restrictions in

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<sup>138</sup>RCW 26.09.191(2)(m) provides:

The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

parental decision-making under RCW 26.09.191(1). In *Marriage of Caven*, for example, the trial court found that the father had committed a history of acts of domestic violence. The father successfully argued at trial that the trial court had discretion to order mutual decision-making in the absence of additional evidence that the mother feared the father. The Court disagreed, holding that a trial court *must* impose sole decision-making (in favor of the non-offending parent) when a .191 finding is made by the trial court. *In re: Marriage of Caven*, 136 Wn. 2d 800, 806, 966 P.2d 1247 (1998).

Although the Washington statutes themselves are not entirely clear on this point, it makes sense. It would defy logic to give an offending parent primary residential placement but, per *Marriage of Caven*, give decision-making to the non-offending, non-primary parent. Moreover, a careful reading of the statutes demonstrates this could not be the case. While RCW 26.09.191(2)(n) allows a trial court to lessen the effect of mandatory residential limitations on the basis of certain specific findings, there is no such exception for decision-making findings under RCW 26.09.191(1). Further, RCW 26.09.187(2)(b)(i) also *requires* sole decision-making when it is “mandated by RCW 26.09.191.”

Such a reading is consistent with the approach of other jurisdictions that have statutorily imposed a rebuttable presumption that an offending parent cannot have sole custody of a child if there has been a finding of domestic violence. Under North Dakota's legislative scheme, it takes compelling or exceptional circumstances to award custody to the perpetrator of domestic violence. NDCC 14-09-06.2(1)(j); *Heck v. Reed*, 529 N.W.2d 155, 166 (N.D. Supr. Ct. 1995). Alaska has a statutory rebuttable presumption against awarding joint legal or physical custody of a child to a parent who has a history of perpetuating domestic violence against the other parent. *Parks v. Parks*, 214 P.3d 295, 299 (Alaska Supr. Ct. 2009); AS 35.24.150(g). Alabama's Custody and Domestic or Family Abuse Act has rebuttable presumption that a party who has committed domestic violence cannot have joint or sole custody. *Headrick v. Headrick*, 916 So.2d 610, 613 (Ala. 2005); Ala. Code 1975 § 30-3-131.

Analogous to the rebuttable presumption found in other jurisdictions, Section .191 gives the trial court discretion to place a child primarily with an offending parent but requires express findings that recurrence of physical, emotional abuse or harm to the child is remote or

that the offending parent's conduct did not have an impact on the child.<sup>139</sup>

But no such findings were made by the trial court in this case.

In sum, the .191 restrictions in this case were erroneously reversed. Based on a close reading of RCW 26.09.191 and its related provisions, these reversed restrictions *require* — as a matter of law — that Bobby be placed in Scott's primary care. Scott must also be granted sole decision-making per RCW 26.09.191(1) and RCW 26.09.187(2)(b)(i), and as a logical result, must be the primary parent for the reasons described above. No findings under RCW 26.09.191(2)(n) were made to suggest a different result. This mandatory change impacts many of the other parenting plan provisions as well, which should be vacated and remanded for re-fashioning in an manner consistent with the appellate rulings of this Court.

## V. CONCLUSION

Domestic violence experts operate in a different context than state court judges. These experts' job is to treat domestic violence behavior,

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<sup>139</sup>RCW 26.09.191(2)(n) provides in pertinent part:

If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection ....

and they are concerned with every aspect of that problem, including preliminary forms of controlling-type behaviors that can develop into future domestic violence problems. The domestic violence laws as they connect to mandatory restrictions in parenting plans, however, are not so far reaching. Mandatory parenting plan restrictions under RCW 26.09.191(1)-(2), for example, only apply where the court makes a finding of a “*history of acts* of domestic violence” as defined in RCW 25.50.010 — a much more limited definition of what qualifies as domestic violence. Judges must be mindful of these distinctions, and careful in how they apply the domestic violence laws, especially where they hear evidence in a case from a domestic violence expert that is working with a completely different set of concepts and definitions with respect to domestic violence.

It is not difficult to understand what happened in this case. The court heard (apparently) persuasive testimony from a domestic violence expert that was evaluating mutual DV-related behavior in the Crumps’ relationship. The expert drew conclusions about the domestic violence risks based on behavioral domestic violence concepts used in her field. The expert felt that Scott displayed characteristics of a domestic violence perpetrator and Maria responded with violence.

The trial judge seized on these conclusions and failed to be rigorous in her application of the applicable laws. She imposed mandatory parenting plan restrictions in the absence of a finding that Scott had engaged in a history of acts of domestic violence as it is defined in RCW 26.50.010. She did not impose restrictions on Maria despite uncontradicted evidence of physical violence, calling them “unreasonable acts of anger” but never explaining how that characterization exempted the behavior from the legal definition of domestic violence. Because of these two critical mistakes, the residential schedule in the parenting plan must be re-evaluated, and Bobby must be returned to the primary care of his father.

Respectfully submitted,



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# APPENDIX A

## CHAPTER 2

# DOMESTIC VIOLENCE: THE WHAT, WHY, AND WHO, AS RELEVANT TO CRIMINAL AND CIVIL COURT DOMESTIC VIOLENCE CASES

By Anne L. Ganley, Ph.D.<sup>1</sup>

Domestic violence is a widespread societal problem with consequences both inside and outside the family. Its devastating effects on the abused parties, the children, as well as the entire community are often both long and short term. Domestic violence impacts all areas of a person's life: physical and mental health, housing, education, employment, family stability, social relationships, and spirituality. In addition to its immediate effects, there is increasing evidence<sup>2</sup> that violence within the family becomes the breeding ground for other social problems such as substance abuse, juvenile delinquency, and violent crimes of all types. Consequently, the financial costs of domestic violence to both individuals and communities are enormous.

The roots of domestic violence are embedded in our social structures and customs.<sup>3</sup> To eliminate the abuse and to bring about change, a coordinated community response is required.<sup>4 5</sup> In the past twenty years there has been greater awareness of domestic violence as well as a dramatic increase in specialized services needed to respond more effectively to adult victims and their children and to intervene with the domestic violence perpetrators.

Each part of a community has a role to play: mental/medical health providers, victim advocates, educators, child welfare workers, clergy, the media, social activists, as well as the civil and criminal justice systems. How each segment carries out its respective role in responding to this problem is greatly influenced by its understanding of the realities of domestic violence: what it is, why it occurs, who is involved, and its impact on the adult victims, the children, and the community. In order to strengthen and to continue to improve the role of the courts, this chapter covers those basic elements:

- **The What: Behavioral and Legal Definitions of Domestic Violence**
- **The Why: Causes of Domestic Violence**
- **The Who: The Domestic Violence Perpetrator, the Abused Party, the Children, and the Community**
- **The Impact of Domestic Violence: Specifically the Issues Related to Criminal and Civil Courts**

Domestic violence is a pattern of behavior that consists of multiple, oftentimes daily behaviors, including both criminal and non-criminal acts. While the criminal justice (and sometimes even the civil court) process tends to focus on individual events, it is the entire pattern of the perpetrator's conduct that shapes how the abuser and the abused party are effected and function. Not only are the adult victims impacted by patterns of abuse, but so

are the children, as they are used by the perpetrator to control the adult victim and/or as they witness one parent abuse the other. The entire pattern of the perpetrator's conduct needs to be considered as courts deliberate about the most appropriate findings, sanctions, and court orders.

The presence of domestic violence is relevant in both criminal and civil court proceedings. Criminal courts must respond to the multiple issues raised by domestic violence cases, such as the domestic violence perpetrator's criminal conduct and the safety of the victims/witnesses, their children, and the public. Civil courts face other sets of issues raised by domestic violence when present in cases, such as dissolution of marriages, parenting plans, dependency issues, court orders, and tort actions. Understanding the what, why, and who, as well as the impact of domestic violence, enables judges to improve the court's fact-finding and decision-making in domestic violence cases, and to develop appropriate court procedures to handle these cases more effectively, efficiently, and safely.

## **I. The What: Behavioral Definitions of Domestic Violence**

Understanding domestic violence (whether it is called battering, spousal assault, wife beating, intimate partner violence, etc.) requires an understanding of both the behavioral definition and the legal definitions of domestic violence. Both the behavioral and the legal definitions delineate (1) the relationship between the parties that constitutes the context for the abuse, as well as (2) the behaviors that constitute domestic violence conduct. The behavioral definition is more comprehensive than the legal definition in defining domestic violence conduct and is particularly salient to understanding the impact of the dynamics on the adult victim, children, and perpetrator. The legal definition for Washington State is somewhat broader than the behavioral definition in defining the context and somewhat narrower in defining the conduct. And, there is a great deal of overlap between the two definitions. Understanding both definitions is useful in making the complex decisions facing judicial officers hearing these cases. The following is a review, first of the behavioral definition and then of the legal definition.

### **Behavioral Definition of Domestic Violence**

**Domestic Violence is:**

- **A pattern of assaultive and coercive behaviors;**
- **Including physical, sexual, and psychological attacks, as well as economic coercion;**
- **That adults or adolescents use against their intimate partners.**

## **Examples of Domestic Violence Behavioral Tactics**

### **1. Physical abuse**

Spitting, poking, shaking, grabbing, shoving, pushing, throwing, hitting with open or closed hand, restraining, blocking, choking, hitting with objects, kicking, burning, using weapons, etc.

### **2. Sexual abuse**

Pressured, coerced, or physically forced sex

### **3. Psychological abuse**

- Acts of violence against others, property or pets
- Intimidation through threats of violence against victims, children, others, or self (suicide), as well as through yelling, stalking, and hostage taking
- Physically or psychologically isolating victims from family, friends, community, culture, accurate information, etc.
- Attacks against victim's self-esteem and competence, forcing victims to do degrading things, controlling victim's activities, etc.
- Alternating use of indulgences: promises, gifts, being affectionate

### **4. Economic coercion**

- Control of funds: spending family funds, not contributing financially to family, withholding funds, etc.
- Control of victim's access to resources: money, health insurance, transportation, child care, employment, housing, etc.

### **5. Use of children to control victim**

- Interrogating children about victim's activities,
- Forcing child to participate in the physical or psychological abuse of adult victim
- Using children as hostages, using visitation with children to monitor adult victim
- Undermining parenting of adult victim, custody or visitation fights, etc.
- False reports to Child Protective Services

**A. Domestic Violence Context: Adult or Adolescent Intimate Relationships**

**1. Variety of intimate relationships**

Domestic violence occurs in a relationship where the perpetrator and victim are known to each other. The abused party and the perpetrator are or have been or may become intimate partners. It occurs in both adult and adolescent intimate relationships. The victim and perpetrator may be or have been dating, cohabiting, married, divorced, or separated. They may or may not have children in common. The relationships may be heterosexual, gay, or lesbian.<sup>6</sup> The relationships may be of short or long duration.

**2. Increased access and control due to intimate context**

While the abused party is affected by domestic violence in many of the same ways as victims of violence perpetrated by strangers, the domestic violence victim also experiences effects unique to the fact that the abuser is an intimate. Both domestic violence and stranger violence result in the victim being physically and/or psychologically traumatized. However, the effects of trauma are accentuated in domestic violence cases by the fact that the domestic violence perpetrator is known to the victim. The domestic violence perpetrator has on-going access to the victim, knows the victim's daily routine, and can continue to exercise considerable power and control over the victim's daily life, both physically and emotionally. Perpetrators of stranger violence usually do not have this continued access or control over their victims. The intimate context of domestic violence shapes the behavior of both the abused party and the perpetrator during criminal and civil court process. (See Sections IV and V)

**3. Entitlement and social supports for domestic violence**

Victims of domestic violence not only deal with the particularities of a specific trauma (e.g., head injury) and the fear of future assaults by a known assailant, but also they must deal with the complexities of an intimate relationship with that assailant. Many perpetrators believe that they are entitled to use tactics of control with their partners and too often find social supports for those beliefs. And unfortunately, the intimate context all too often leads those outside the relationship to take domestic violence less seriously than other types of violence. It is the "intimate partner" or "family" nature of the relationships that sometimes gives the perpetrator social, if not legal, permission to use abuse. Unlike victims of stranger violence, victims of domestic violence face

social barriers to separation from the perpetrators, as well as other barriers to self-protection.<sup>7</sup> (See Section V, H. Barriers.)

**4. Child victims of domestic violence**

The behavioral definition of domestic violence focuses on the pattern of abuse and violence in relationships between adult or adolescent intimate partners and does not technically include child abuse or neglect. However, in many domestic violence cases, children may also be physically harmed or emotionally and developmentally damaged as a result of being used as weapons by the perpetrator against the abused party or as a result of being exposed to the violence. (For discussion on the impact of domestic violence on children, see Section VI, Children as Victims.)

**5. Adolescent domestic violence**

Sometimes in domestic violence cases, the perpetrator and/or the victim may be an adolescent rather than an adult. In cases involving adolescents, there is the same pattern of assaultive and coercive behaviors as that which occurs in adult relationships.<sup>8</sup> For the purposes of the behavioral definition, domestic violence includes the abusive control done by one adult intimate to another, or by one adolescent intimate to another.<sup>9</sup>

**B. Domestic Violence is a Pattern of Assaultive and Controlling Behaviors, Including Physical, Sexual, and Psychological Attacks, as well as Economic Coercion, that One Adult or Adolescent Uses Against an Intimate Partner**

**1. Domestic violence consists of a wide range of behaviors.**

Some acts of domestic violence are criminal such as hitting, choking, kicking, assault with a weapon, shoving, snatching, biting, rape, unwanted sexual touching, forcing sex with third parties, threats of violence, harassment at work, attacks against property, attacks against pets, stalking, harassment, kidnapping, arson, burglary, unlawful imprisonment, etc. Other abusive behaviors may not constitute criminal conduct, e.g., degrading comments, interrogating children or other family members, suicide threats or attempts, controlling the victim's access to the family resources: time, money, food, clothing, and shelter, as well as controlling the abused party's time and activities, etc. Whether or not there has been a finding of criminal conduct, evidence of such behaviors indicates a pattern of abusive control, domestic violence.

2. **Domestic violence is a pattern of behavior, not an isolated, individual act.**

The pattern may be evidenced either (a) in multiple tactics in one episode (e.g., physical assault combined with threats and emotional abuse), or (b) in multiple episodes over time. One battering tactic or episode builds on past tactics or episodes and sets the stage for future tactics or episodes. All incidents or tactics of the pattern interact with each other and have a profound effect on the abused party. The use of physical force combined with psychological coercion establishes a dynamic of power and control in the relationship. Also there is a wide range of consequences from the pattern, some physically injurious and some not; all are psychologically damaging. (See Section V.)

3. **Acts of violence against others or property to control the adult victim.**

Some of the acts may appear to be directed against or involve the children, property, or pets when in fact the perpetrator is behaving this way in order to control or punish the intimate partner (e.g., physical attacks against a child, throwing furniture through a picture window, strangling the adult victim's pet cat, etc.). Although someone or something other than the abused party is physically damaged, that particular assault is part of the pattern of abuse directed at controlling the intimate partner.

4. **Psychological attacks through verbal abuse.**

Not all verbal insults between intimates are necessarily psychological battering. A verbal insult done by a person who has not also been physically assaultive is not the same as a verbal attack done by a person who has been violent in the past. It is the perpetrators' use of physical force that gives power to their psychological abuse through instilling the dynamic of fear in their victims. The psychological battering becomes an effective weapon in controlling abused parties because abused parties know through experience that perpetrators will at times back up the threats or taunts with physical assaults. The reality that the perpetrators have used violence in the past to get what they want gives them additional power to coercively control the victims in other non-physical ways. For example, an abuser's interrogation of the abused party about the victim's activities becomes an effective non-physical way to control the abused party's activities when the perpetrator has assaulted the victim in the past. Sometimes abusers are able to gain compliance from the abused party by simply

saying “Remember what happened the last time you tried to get a job . . . to leave me . . . etc.?” (e.g., subtly reminding the victim of a time when the perpetrator assaulted the abused party). Because of the past assaults, there is the implied threat in the statement.

5. **Psychological control maintained by intermittent use of physical force and psychological attacks.**

The psychological control of abused parties through intermittent use of physical assault along with psychological abuse (e.g., verbal abuse, isolation, threats of violence, etc.) is typical of domestic violence. These are the same control tactics used by captors against prisoners of war and hostages. Perpetrators are able to control abused parties by a combination of physical and psychological battering since the two are so closely interwoven by the perpetrator. The incident of physical assault may be in the distant past but the coercive power is kept alive by the perpetrator’s other tactics of control.

6. **Perpetrator’s use of indulgences to control victim.**

Domestic violence perpetrators, like captors of prisoners of war, also alternate their abusive tactics with occasional indulgences, such as flowers, gifts, sweet words, promises to get help, attention to children, etc. Some victims may think that the abuse has stopped, whereas for batterers they have simply changed control tactics. Early domestic violence literature sometimes referred to this conduct as part of a “honeymoon phase” when, in fact, these are merely different tactics of control.

7. **Some mistakenly argue that both the perpetrator and the abused party are “abusive,” one physically and one verbally.**

While some abused parties may resort to verbal insults, the reality is that verbal insults are not the same as a fist in the face. Furthermore, domestic violence perpetrators use both physical and verbal assaults. Early research indicates that domestic violence perpetrators are more verbally abusive than either their victims or other persons in distressed/non-violent or in non-distressed intimate relationships.<sup>10</sup>

8. **Determining primary aggressor.**

Some argue that there is “mutual battering” where both individuals are using physical force against each other. Careful fact-finding often, but not always, reveals that one party is the primary physical aggressor and the other party’s violence is in self-defense (e.g., she stabbed him as he was choking her) or that one party’s violence is more severe than the violence of the other (e.g., punching/choking versus scratching).<sup>11</sup> Sometimes the domestic violence victim uses physical force against the batterer in retaliation for chronic abuse by the perpetrator, but this retaliation incident is not part of a pattern of assaultive and coercive behavior.

9. **Research of heterosexual couples indicates that women’s motivation for using physical force is self-defense, while men use physical force for power and control.<sup>12</sup>**

“Mutual combat” among gay and lesbian partners is also rare. Even though gay and lesbian partners may be approximately the same size and weight, there is usually a primary aggressor who is creating the atmosphere of fear and intimidation that characterizes battering relationships.<sup>13</sup> Self-defense against a violent partner does not constitute “mutual battering.”

**C. The Consequences of Domestic Violence are Often Lethal or Health Shattering**

1. Approximately 1.5 million women are physically assaulted or raped by an intimate partner annually in the United States. Since many women experience multiple victimizations, an estimated 4.8 million women experience intimate partner rapes and physical assaults each year.<sup>14</sup> According to the *Washington State Uniform Crime Report*, there were 53,770 domestic violence offenses reported by 245 law enforcement agencies in 2005.<sup>15</sup>
2. The United States Department of Justice reported that 37 percent of all women who sought care in hospital emergency rooms for violence related injuries were injured by a current or former spouse, boyfriend, or girlfriend.<sup>16</sup> In 2002, approximately 1,455 murder victims were attributed to intimates. More than three out of four of these had a female victim.<sup>17</sup>
3. Domestic violence has a major health impact on victims and their children, not only through direct injury/death but also in terms of impact on illnesses. For a complete review of the health impact of domestic violence, see the introduction by P. Salber, M.D., to *Improving the Health Care Response to Domestic Violence*.<sup>18</sup>

There is a large body of health research documenting the health impact on adult victims.<sup>19</sup>

4. Without intervention, the perpetrator's pattern of abusive behaviors will most likely escalate in both frequency and severity. The pattern may change with more emphasis on the psychological abuse, or the physical assaults, over time. Regardless of these variations, damage to the abused party and the children may become more severe.
5. The lethality of domestic violence often increases when the perpetrator believes that the abused party is leaving or has left the relationship.<sup>20</sup> Other risk factors for dangerousness: threats to kill or maim, stalking, use of weapons, suicidality of the perpetrator, use of alcohol or drugs, co-occurrence of child abuse, and failure of past systems to respond appropriately. (See following section on Assessing Lethality.) For this reason, it is critical that the courts use all available legal remedies, such as protective orders, jail, etc., to provide the victim with protection throughout the duration of the court proceedings.
6. The lethality of domestic violence is tragically clear when the perpetrators kill their partners, as well as the children or other family members, and then kill themselves, or when abused persons, desperate to protect themselves and their children, kill their perpetrators.<sup>21</sup> Effective intervention in domestic violence cases may stop the violence before it becomes a homicide case.<sup>22</sup>

#### **D. Assessing Lethality**

One of the more troubling aspects of responding to domestic violence is assessing how dangerous the domestic violence may be in a specific individual case. The research indicates that domestic violence may cause death or severe injury to the adult victim, the perpetrator, the children, or others due to the behaviors of the perpetrator, or the adult victim, or the children. The research on predicting domestic violence homicides reveals crucial but only partial elements of dangerousness. Adult victims have to die to make their way into homicide studies. In many domestic violence cases, the abused parties are left paralyzed, deaf, blind, brain damaged, etc., but not dead. Also, domestic violence homicide statistics often do not capture the perpetrators' violence toward children, others, or themselves. Nor does homicide research capture the damage done when victims or children fight back to escape or protect themselves.

There are a variety of risk assessment instruments that have become available in last ten years. While they all purport to evaluate the risk of

domestic violence, often times they evaluate different aspects of domestic violence, such as:

1. Re-offending or recidivism in legal system (DV Moosaic deBecker), DVSI (Williams & Houghton), K-SID (Gelles & Lyon), O.D.A.R.A. (Z. Hilton), SARA (Kropp et al).
2. A systems safety audit ( PSI -Duluth)
3. Predicting homicides (Danger Assessment)
4. Measures based on offender intervention programs (PAS- D. Dutton)

No psychological testing (e.g. MMPI's or other personality measures) is helpful in predicting domestic violence aggressive behavior or dangerousness. (See Appendix B on domestic violence assessments.) There have been some attempts to develop instruments to predict child abuse, but these are not useful in predicting either intimate partner abuse or the risk to children posed by intimate partner perpetrators.

What domestic violence fatality reviews in various states<sup>23</sup> have shown is that much of the salient information related to the homicides or severe injuries was known prior to the homicides by various community systems, but too often decision-makers did not understand the connection between the domestic violence and individual factors or knew only part of the information.

When the courts and the community are weighing the safety needs of the victims and the community, they must consider all the factors and must gather information from multiple sources: the adult victim, children, other family members, perpetrators, and others (probation, counselors, and anyone having contact with family).

What follows is a list of factors to consider when attempting to assess the danger to any party, either through significant injury or death (not just related to DV perpetrator homicide potential) in a particular domestic violence case:

## **LETHALITY ASSESSMENT: FACTORS TO CONSIDER<sup>24</sup>**

- 1. Perpetrator's access to the victim**
- 2. Pattern of the perpetrator's abuse**
  - a. Frequency/severity/escalation of the abuse in current, concurrent, past relationships
  - b. Use of weapons and use of dangerous acts
  - c. Threats to kill adult victim, children, self
  - d. Imprisonment, hostage taking, stalking
- 3. Perpetrator's state of mind**
  - a. Obsession with victim, jealousy
  - b. Ignoring negative consequences of their abusive behavior
  - c. Depression/desperation
- 4. Individual factors that reduce behavioral controls of either adult victims to protect themselves or perpetrators to monitor consequences**
  - a. Substance abuse
  - b. Certain medications
  - c. Psychosis
  - d. Brain damage
- 5. Suicidality of victim, children, or perpetrator**
- 6. Adult victims' use of physical force**
- 7. Children's use of violence**
- 8. Situational factors**
  - a. Separation violence/victim autonomy
  - b. Presence of other stresses
- 9. Past failures of systems to respond appropriately**

## II. Legal Definitions of Domestic Violence

### A. Legal Definitions of Domestic Violence Delineate the Relationship between the Parties, and the Scope of the Perpetrator's Abusive Behavior

1. Washington State defines domestic violence as certain crimes committed by one family or household member against another. Most of the family or household members defined by the state in 10.99.020 RCW fit the behavioral definition of intimate partner: "spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time . . . persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship . . ." The behavioral pattern and effects of domestic violence are similar for all adult or adolescent intimate relationships regardless of whether they are spouses, ex-spouses, boyfriend/girlfriend, ex-boyfriend/girlfriend, adult child/adult parent, gay and lesbian relationships, individuals who currently live together and are intimately involved, those who have lived together in the past, or individuals who have children in common.
2. However, RCW 10.99.020 also includes household or family members who are not, nor have they ever been, intimate partners: "adult persons who are presently residing together or who have resided together . . . persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren."
3. While intimate partner violence is the most common form of domestic violence, non-intimate partner violence as defined by Washington law may also appear in the courts. The dynamics are different for intimate-partner violence and domestic violence perpetrated by household members who are not, nor have they ever been, intimate partners with their victims (i.e., adult siblings, adult child to parent roommates, etc.). This chapter and Appendix A on treatment focus primarily on intimate partner violence. The focus of this manual is on intimate partner domestic violence, although the statutory framework does not make this distinction.

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The following charts are provided to assist the court in identifying these cases.

**B. Relationships Provided for by Domestic Violence Statutes: Chart**

Relationship Between Parties	Applicable Statutes
Current Spouses	<u>RCW 26.50.010(2)</u> ; <u>10.99.020(3)</u>
Former Spouses	<u>RCW 26.50.010(2)</u> ; <u>10.99.020(3)</u>
Parents of Child in Common	<u>RCW 26.50.010(2)</u> ; <u>10.99.020(3)</u>
Adult Persons Related by Blood or Marriage	<u>RCW 26.50.010(2)</u> ; <u>10.99.020(3)</u>
Unmarried Persons of Same or Different Genders Currently or Previously Residing Together	<u>RCW 26.50.010(2)</u> ; <u>10.99.020(3)</u>
Intimate Partners of Same Gender	<u>RCW 10.99.020(1)</u> ; <u>10.99.020(3)</u>
Dating Relationships	<u>RCW 26.50.010(2)</u> ; <u>10.99.020(3)</u>
Biological or legal parent-child relationship	<u>RCW 26.50.010(2)</u> ; <u>10.99.020(3)</u>

**C. Behaviors Included in Domestic Violence Statutes: Chart**

Behavior	Statute Citation
Physical Harm, Bodily Injury	<u>RCW 26.50.010(1)</u>
Assault	<u>RCW 26.50.010(1)</u>
Infliction of Fear of Imminent Physical Harm, Bodily Injury, or Assault	<u>RCW 26.50.010(1)</u>
Sexual Assault of One Family or Household Member by Another	<u>RCW 26.50.010(1)</u>
Stalking	<u>RCW 9A.46.010</u> ; <u>10.14.020</u> ; <u>26.50.010(1)</u>

**D. Criminal Charges that Can Result from Domestic Violence**

The following chart is not an exhaustive list but illustrates both the behavioral and legal definitions of domestic violence as well as the criminal charges that can result from these acts. Note that some of the behaviors are not considered criminal, but they are nonetheless used by the perpetrator as part of the pattern to control the victim.

## DOMESTIC VIOLENCE - DEFINITIONS AND CRIMINAL CHARGE

Type of Domestic Violence	Behaviors (examples of both criminal and non-criminal acts)	Criminal Charges	Relevant RCWs
<b>Physical Battery</b>	Shoving, grabbing, pushing, slapping, punching, kicking, choking, hitting, burning, assault with a weapon, or shoving, etc.	Assault Manslaughter or Murder Reckless Endangerment Drive by Shooting	<u>9A.36.011-.041</u> <u>9A.32.060-.070</u> <u>9A.32.010-.050</u> <u>9A.36.050</u> <u>9A.36.045</u>
<b>Sexual Battery</b>	Forced sex, attacks against genitals, forcing sex in front of children, pressured sex, unwanted sexual touching, etc.	Rape Rape of a Child Indecent Liberties Assault with Intent to Commit Rape	<u>9A.44.040-.060</u> <u>9A.44.073-.079</u> <u>9A-44.100</u>  <u>9A.36.021(2)(b)</u>
<b>Psychological Battery</b>	Threats of violence against victim or others, suicidal threats or acts, false reports to third parties (CPS, INS, employers), child snatching, reckless driving to intimidate victim, isolating, interrogating, controlling, or degrading victim, etc.	Coercion Telephone Harassment Custodial Interference Harassment Criminal Trespass Stalking Cyberstalking Unlawful Imprisonment Reckless Driving Violation of Court Orders	<u>9A.36.070</u> <u>9.61.230</u> <u>9A.40.060-.070</u> <u>9A.46.020</u> <u>9A.52.070-.080</u> <u>9A.46.110</u> <u>9.61.260</u> <u>9A.40.040</u> <u>46.61.500</u> <u>10.99.040, 10.99.050,</u> <u>26.09.300, 26.10.220,</u> <u>26.26.138, 26.44.063,</u> <u>26.44.150, 26.50.060,</u> <u>25.50.070, 26.50.130,</u> <u>26.52.070, 74.34.145</u>
<b>Battery of Property/Pets</b>	Attacks against property to control victim, hitting walls, destroying objects, giving away property, setting fire to property, tormenting pets, etc.	Cruelty to Animals Malicious Mischief Theft Arson or Reckless Burning Burglary	<u>9.08.070</u> <u>9A.48.070-.090</u> <u>9A.56.030-.050</u> <u>9A.48.020-.050</u> <u>9A.52.025</u>
<b>Use of Children to Control Victim</b>	Injury to child during assault on victim, physical or sexual abuse of child, threats of violence, kidnapping, child concealment, children witnessing violence, etc.	Assault of a child Kidnapping Custodial Interference Criminal Mistreatment Homicide by Abuse	<u>9A.36.120-140</u> <u>9A.40.020-.030</u> <u>9A.40.060-.070</u> <u>9A.42.020-.035</u> <u>9A.32.055</u>
<b>Economic Coercion</b>	Control of family resources: money, transportation, health care, telephone, retirement/investment funds, lengthy court battles to impoverish victims, etc.		

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STATE OF WASHINGTON

BY [Signature]  
DEPUTY

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

SCOTT CRUMP, )  
Appellant )  
vs. )  
MARIA CRUMP, )  
Respondent. )  
\_\_\_\_\_ )

No. 42996-9-II

AFFIDAVIT OF SERVICE

Thurston County Superior  
Court. No. 09-3-00985-7

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF THURSTON )

The undersigned, being first duly sworn on oath, now deposes and states:

The undersigned is now and at all times herein mentioned was a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein.

I certify that on June 4, 2012, a true and correct copy of the Opening Brief of Appellant was mailed by U.S. Mail, postage prepaid to:

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Division Two  
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DATED this 4<sup>th</sup> day of June, 2012, at Olympia,

Washington.

Cherry L. Dalrymple  
Cherry L. Dalrymple, Paralegal for  
MORGAN HILL, P.C.

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of  
June, 2012, by Cherry L. Dalrymple.



Tracy Goodin  
Notary Public in and for the State of  
Washington, residing at Olympia  
My commission expires 8/16/15