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JULY 25, 2013
Court of Appeals
Division III
State of Washington

NO. 31357-3-III

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

STATE OF WASHINGTON,

Respondent,

v.

DAVID SNODGRASS,

Appellant.

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

The Honorable Brian Altman, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court violated appellant David Snodgrass's constitutional right to a unanimous jury verdict by including unproven alternative means of committing witness intimidation in the "to-convict" instruction.

2. The trial court violated Snodgrass's constitutional right to a unanimous jury verdict by including unproven alternative means of committing witness tampering in the "to-convict" instruction.

3. The State failed to prove beyond a reasonable doubt that Snodgrass tampered with a witness on March 29, 2012, as alleged in count four of the information.

4. The trial court exceeded its statutory sentencing authority by imposing 365-day terms for Snodgrass's gross misdemeanor convictions.

Issues Pertaining to Assignments of Error

1. Did the trial court violate appellant David Snodgrass's constitutional right to a unanimous jury verdict by including unproven alternative means of committing witness intimidation in the "to-convict" instruction?

2. Did the trial court violate Snodgrass's constitutional right to a unanimous jury verdict by including unproven alternative means of committing witness tampering in the "to-convict" instruction?

3. Did the State fail to prove Snodgrass attempted to induce a witness to testify falsely, withhold testimony, absent herself from trial, or withhold information that was relevant to a criminal investigation, when the witness was willing on her own to help Snodgrass avoid conviction?

4. Did the trial court impose an illegal sentence when it ordered a term of 365 days for Snodgrass's convictions for violating a no-contact order?

B. STATEMENT OF THE CASE

David Snodgrass was arrested February 13, 2012, for a domestic violence incident involving his girlfriend, who was the mother of his child, Rebecca Trosper. As a result, the trial court entered a no-contact order prohibiting Snodgrass from contacting Trosper. 2RP 43-45, 86-87, 96; Ex. 1.¹

According to Trosper, this was not the first domestic violence incident. 2RP 88-89. She recalled an earlier incident in which Snodgrass

¹ The verbatim report of proceedings is referred to as follows: 1RP – 8/6/12; 2RP – 10/4/12; 3RP – 10/5/12; 4RP 11/5, 12/17/12.

came home, accused her of having sex with a group of men, and proceeded to assault her for several hours. 2RP 89-95. At one point, Snodgrass grabbed Trospers rifle, loaded it, dragged her outside, pointed it at her, and asked her if she had anything to say before she died. 2RP 92-93. The incident ended with Snodgrass taking the rifle and driving off. Trospers did not report the incident to the police because she loved Snodgrass and wanted to help him. 2RP 94-95.

Despite the no-contact order, Snodgrass, an inmate at the Klickitat County Jail, began sending Trospers letters a couple weeks after his February arrest. 3RP 19-44. In the first letter, Snodgrass apologized and said he loved Trospers and wanted to get better. 2RP 96-97. Trospers, using an alias, responded to the letter. She wrote that she loved him but that he would have to make serious changes to have a chance at reconciliation. 2RP 97-99. At some point, Trospers said, she may have offered not to contact the prosecutor. 2RP 109-10.

Because of the no-contact order, jail staff began intercepting Snodgrass's outgoing mail. 2RP 45-51. Staff did not get all the letters and several made their way to Trospers. 2RP 54-62. Trospers responded to most of the letters, reiterating that she loved Snodgrass, would help him, and would not cooperate with the prosecution. 2RP 98-99, 126-27, 132-

50. Even after Snodgrass was in jail for nearly two months, Trospen continued to tell him she would help him. 3RP 9-10.

Trospen saved several of Snodgrass's letters. 3RP 12-13. In one of the letters, Snodgrass told Trospen he rejected the prosecutor's guilty plea offer and counted on her continued help. 2RP 101-02. In the letter, he wrote, "Even if there is nothing left for us, and [*sic*] I hope you can still find it in your heart to be nice and helpful. Anything that you choose to do, nice or not nice, will come back to you in full." 2RP 102; Ex. 3. Trospen took the comment as a threat. She became fearful Snodgrass would inflict "[a]ny and all kinds of harm to me and my children." 2RP 102-03.

In another letter, Snodgrass directed Trospen not to make any statements to the prosecutor unless instructed to do so by his attorney. Apparently referring to a pending robbery charge, Snodgrass encouraged Trospen not to say he took car keys from her by force because, that is what makes it a robbery, the use of force." 2RP 103-05; Ex. 4.

In a later letter postmarked April 17, Snodgrass wrote a script for Trospen to copy in her own handwriting and turn in to defense counsel. Apparently referring to the incident that led to Snodgrass's arrest, Trospen was to write, among other things, that she mistakenly told an officer

Snodgrass had taken her car keys, when in fact he had taken his own. 2RP 107-09; Ex. 5. She was also to write, "I feel that on my behalf as the victim and in the name of justice that the charges he has pending be dropped." In an accompanying letter, Snodgrass wrote, "I will get a copy of your letter from him so make sure you use these words that I wrote." 2RP 108.

Trosper did not copy the script because it was not true. 2RP 109. By the time she received it, she had stopped writing Snodgrass. 2RP 110. Trosper came to realize her relationship with Snodgrass was damaging and dangerous, and that she could not change him, help him or fix him. 2RP 120-21.

In another letter, postmarked on the same date as the script letter, Snodgrass wrote he could probably win his case without any of her help, "but it would get dirty." 2RP 113. Trosper took that to mean that if she did not do as Snodgrass told her to do, "he was going to make sure that there was problems for me." 2RP 113.

Trosper met with the prosecutor shortly thereafter. 2RP 109. Despite her change of heart, Trosper told the prosecutor she did not want to testify against Snodgrass. 2RP 111-12. She said she "did not want anything bad to happen" to her and her children. 2RP 112. During the

conversation, Trospen unintentionally mentioned the letters. 2RP 116. The prosecutor requested the letters Trospen retained. 2RP 116. The prosecutor told her Snodgrass's pending case would be dismissed if she relinquished the letters. 2RP 129. Shortly thereafter, an officer came to Trospen's house and picked up the letters. 2RP 116-17.

Snodgrass sent Trospen a letter after that. He wanted to know what she told the prosecutor, because defense counsel said the prosecutor planned to "continue with the charges of harassment and assault." 2RP 118-19. He accused Trospen of selling him out and said he loved her too much and would not create problems for her. 2RP 119-20.

Two letters were intercepted by jail staff. 2RP 45-54, 121-26. In one, Snodgrass asked Trospen if he needed to take everything from her as it seemed she was doing to him. He told her to contact a "fraud investigator" and tell him "the truth." 2RP 122-23; Ex. 8. He made other allegations that would expose her to federal charges. He warned her that "if you take it there, I will not be the only one to sink." 2RP 123-25.

The second letter was addressed to Trospen's mother. 2RP 125-26; Ex. 9. She said "the story you got from [Trospen] was exaggerated to benefit her image and cover her own ass." 2RP 126.

The State charged Snodgrass with three counts of intimidating a witness, four counts of tampering with a witness, and six counts of violating a no-contact order. CP 66-72. Snodgrass admitted he violated the no-contact order by sending the letters. 3RP 18-19. He sent them because he loved Trosper and the family and believed they could change and make things better. 3RP 19. He said it was initially Trosper's idea to not cooperate with the State. 3RP 19-20.

Snodgrass contested only the intimidating and tampering charges. He also denied assaulting Trosper with a rifle or doing any of the things she accused him of doing during that incident. 3RP 17-18. He acknowledged writing that he rejected a plea offer because he assumed the charges were "going to go away based on the things [Trosper] was telling me." 3RP 21.

As for the comment that anything Trosper did "nice or not nice will come back to you in full," Snodgrass said he meant the nice things would be having a trusting relationship and a nice family. The not nice things would be having the children grow up without a dad and things of that sort. 3RP 22. He did not mean to threaten Trosper. Rather, it was a reference to "karma in its simplest form." 3RP 123.

He sent the script so her statement would have the desired effect that he and Trosper together wanted. He told her he would get a copy of the statement from his attorney to inform her he received copies of every report made. 3RP 62-64. He did not mean it as a threat. 3RP 64.

His statement that "it would get dirty" without her help was meant to inform Trosper he would disclose things that could result in her being charged with a crime, embarrass her, or raise questions about her ability to parent. 3RP 66. It was not meant as a threat.

But the time he sent the letter accusing Trosper of selling him out, Snodgrass had assumed she betrayed him by saying she would do one thing but then do another. 3RP 67. He wanted her to know he had come to terms with being separate from her and would cause no problems if she helped him avoid conviction. 3RP 69-70.

Nor did Snodgrass mean to threaten Trosper in the intercepted letter intended for her. He was instead informing her that if he went to trial, he would expose her in trying to convince the jurors of his "side of things." 3RP 38-40.

Snodgrass was of the impression Trosper was continuing to help him and did not feel the need to continue to encourage her. 2RP 25, 63. Snodgrass continued to believe Trosper was on his side until her last letter

to him. 3RP 31. Even then, Trospen did not tell him she no longer planned to help. 3RP 31-32. He said his letters to Trospen were written with the understanding she wanted him home. 3RP 44.

During closing argument, defense counsel contended the State failed to prove Snodgrass committed witness intimidation because the evidence did not show he had threatened her. 3RP 130-33. Counsel also argued Snodgrass did not attempt to influence or induce Trospen because the idea not to cooperate with the State originated with her. 3RP 134. Therefore, counsel maintained, the State also failed to prove tampering with a witness. 3RP 134-35.

The jury found Snodgrass guilty of two counts of witness intimidation and not guilty of the third, guilty of three counts of tampering with a witness and not guilty of the fourth, and guilty of each of the six counts of violating a no-contact order. CP 107-19; 3RP 145-47. It also found that Snodgrass and Trospen were members of the same family or household. CP 120. The trial court imposed exceptional consecutive sentences totaling 162 months, finding that imposition of a standard range term would result in several offenses going unpunished. CP 121-32; 4RP 28.

C. ARGUMENT

1. SNODGRASS WAS DEPRIVED OF HIS RIGHT TO A UNANIMOUS JURY VERDICT BECAUSE THE JURY WAS INSTRUCTED AS TO ALTERNATIVE MEANS OF COMMITTING WITNESS INTIMIDATION THAT WERE NOT SUFFICIENTLY PROVEN.

Criminal defendants have a right to a unanimous jury verdict. Const. art. 1, § 21; State v. Ortega-Martinez, 124 Wn.2d 702, 707, 881 P.2d 231 (1994). Where a jury is instructed that a crime may be committed by alternative means, the defendant's right to jury unanimity is violated unless the State clearly elects which alternative means it is relying on, or there is sufficient evidence to prove each means. Ortega-Martinez, 124 Wn.2d at 708; State v. Boiko, 131 Wn. App. 595, 599, 128 P.3d 143 (2006), review denied, 158 Wn.2d 1026 (2007). The State did not so elect in Snodgrass's trial. Nor did it prove each means of committing witness intimidation. Convictions for that offense must therefore be reversed.

RCW 9A.72.110(1) provides in pertinent part:

A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:

- (a) Influence the testimony of that person;
- (b) Induce that person to elude legal process summoning him or her to testify;
- (c) Induce that person to absent himself or herself from such proceedings; or

(d) Induce that person not to report the information relevant to a criminal investigation . . . not to have the crime . . . prosecuted, or not to give truthful or complete information relevant to a criminal investigation

Subsections (a) through (d) are alternative means of committing the crime of intimidating a witness. State v. Brown, 162 Wn.2d 422, 428-29, 173 P.3d 245 (2007). The State alleged all of these alternatives in the information. CP 66-72. The jury was instructed accordingly with respect to counts 2 and 13. CP 84-87.

Count 2 was alleged to have occurred "on or about April 17, 2012." CP 84. To aid the jury, the prosecutor during closing argument aligned Exhibit 6, a letter postmarked on April 17, with count 2. 3RP 120. The prosecutor focused on the alleged threats in this portion of her argument. 3RP 116-25. The prosecutor identified the threat as Snodgrass's statement that he could probably prevail at his then-pending trial without Trosper's help, "but it would get dirty." 3RP 120-22; Ex. 6. Trosper had testified she took that to mean if she did not do and say what Snodgrass wanted her to do and say, "he was going to make sure that there was problems for me." 2RP 113.

Exhibit 5 was another letter postmarked April 17. That was the letter requesting Trosper to copy in her own hand the letter Snodgrass

enclosed that was designed to go to the prosecutor. Snodgrass cautioned he would get a copy of the letter from defense counsel, "so make sure you use these words that I wrote." Ex. 5. Trosper did not copy the letter because, according to her, the contents were not true. 2RP 109.

The problem for the State is that nowhere in those letters did Snodgrass attempt to induce Trosper to "elude legal process" or to "absent herself from an official proceeding." In fact, the contrary is true. In his template letter, Snodgrass wanted Trosper to write that if asked to testify against him, she would "be of no use to" the prosecutor because her "loyaltys [*sic*] are with his attorney." Ex. 5. In other, words, Trosper would testify, but not in a way that would help the State. Furthermore, Trosper testified she initially may have offered on her own not to contact the prosecutor. 2RP 110.

In count 13, the State alleged Snodgrass intimidated Trosper between May 1 and May 6, 2012. The prosecutor explained Exhibit 8 supported count 13. 3RP 122. Exhibit 8 was an outgoing letter intercepted by jail staff. Ex. 8. The contents indicate that by then, Snodgrass realized Trosper was no longer supporting him. He asked Trosper if he needed to "take everything from you like it seems that you are trying to do to me?" 2RP 123; Ex. 8. Snodgrass then listed the types

of accusations he would make against her if she testified at the then-pending trial. 2RP 123-25. He warned her he "would not be the only one to sink." 2RP 125.

Whether or not the letter contained a "threat," it nowhere indicated Snodgrass attempted to induce Trosper to "elude legal process" or to "absent herself from an official proceeding." Nor do any of Snodgrass's letters to Trosper. Trosper also did not testify Snodgrass tried to induce her not to participate at all in the process.

State v. Boiko is remarkably similar to Snodgrass's case. Boiko allegedly told a prospective witness he was going to shoot her horse if she did not lie on behalf of a friend who was being investigated for sexually assaulting the witness's son. 131 Wn. App. at 597. The State charged Boiko with intimidating a witness and alleged each alternative means. The jury was instructed accordingly. 131 Wn. App. at 598.

On appeal from the guilty verdict, Boiko contended the trial court erred by failing to provide a unanimity instruction because the State failed to elect as to the alternative means and did not present evidence to support each means. Id. at 598. The State argued there was sufficient evidence to support each means. This Court disagreed, finding that "at the least," the

State failed to prove Boiko attempted to induce the witness to elude legal process or absent herself from the proceedings. Id. at 600.

The State also argued the evidence was sufficient to infer Boiko intended to communicate a threat to the witness and her family if they did anything, including all of the alternative means, to advance the investigation or prosecution of Boiko's friend. This Court rejected this claim as well, noting the intimidation statute does not require intent, but rather that the accused use a threat in an attempt to achieve one or more of the alternative means. 131 Wn. App. at 600-01.

The result was different in State v. Gill, 103 Wn. App. 435, 13 P.3d 646 (2000). Gill wrote a letter to the state's key witness threatening to expose her to charges and "serious problems" for herself 103 Wn. App. at 444. He also wrote "[the] charges have to be dropped" and "I know you are not crazy enough to come to court and lie after all I know." Id. Gill sought to have the witness "get all of [the] charges dropped immediately." Id. at 446. The "to-convict" instruction for intimidating a witness listed all possible means of committing the crime. Id.

On appeal, Gill argued the trial court's failure to provide a unanimity instruction required reversal because the evidence did not support each means. 103 Wn. App. at 446. The court rejected his claim,

finding "a witness might seek to get the charges dropped, however she can[,]" which by itself "is sufficient to support each alternative means." Gill, 103 Wn. App. at 446-47.

For several reasons, this Court should decline to follow Gill. First, the case is distinguishable. Unlike Gill's broad demand to get the charges dropped, Snodgrass was more specific. He repeatedly sought to have Trospen change her initial statement to police and provide the prosecutor with a statement designed to dissuade her from seeking to call Trospen as a witness. At no point, directly or indirectly, did Snodgrass attempt to induce Trospen to elude legal process or to not appear for trial.

Second, the Gill court's reasoning effectively ignores the legislature's clear intent to make the crime of intimidating a witness more specific by providing an array of different means from which a prosecutor can choose to apply to the particular facts at issue. See State v. Peterson, 168 Wn.2d 763, 770, 230 P.3d 588 (2010) (alternative means "describe distinct acts that amount to the same crime."). Gill improperly blurs the distinctions the legislature has drawn.

Third, Gill frustrates the purposes of the alternative means doctrine, which are to prevent jury confusion and to curtail the State from charging every available means, "lumping them together, and then leaving

it to the jury to pick freely among the various means in order to obtain a unanimous verdict." State v. Smith, 159 Wn.2d 778, 789, 154 P.3d 873 (2007). Although Gill gives lip service to the alternative means analysis, its reasoning makes a mockery of it.

Snodgrass urges this Court to follow its decision in Boiko and to find the trial court erred by failing to ensure Snodgrass's right to jury unanimity. The error requires reversal.

If one or more of the charged alternative means is not supported by substantial evidence, the verdict will stand only if this Court can be certain it was based on a means supported by sufficient evidence. State v. Allen, 127 Wn. App. 125, 130, 110 P.3d 849 (2005). If the State, therefore, presented evidence only as to the supported means and focused only on those means during closing argument, the error may be harmless. State v. Fleming, 140 Wn. App. 132, 137, 170 P.3d 50 (2007) (conviction affirmed despite failure to support each alternative means because State presented substantial evidence only that defendant tried to induce witness to absent himself from proceedings), review denied, 163 Wn.2d 1047 (2008), disapproved of on other grounds by State v. Mendoza, 165 Wn.2d 913, 205 P.3d 113 (2009); State v. Nonog, 145 Wn. App. 802, 813, 187 P.3d 335 (2008) (conviction affirmed where State presented no evidence

regarding two of three alternatives, prosecutor focused only on proven alternative during closing argument, and – contrary to definitional instruction – "to-convict" instruction limited consideration to just one means), aff'd., 169 Wn.2d 220 (2010).

The record in Snodgrass's case is not so clear. The State presented evidence that Trosper in fact notified the prosecutor she could not testify in the then-pending case, which resulted in its dismissal when she produced Snodgrass's letters. 2RP 111-12, 128-29. The prosecutor emphasized this in her rebuttal argument to the jury, when she told jurors that Snodgrass's attempts to influence Trosper "worked. And that's what you have to keep in mind. It worked." 3RP 141-42.

So even though there were no attempts by Snodgrass to induce Trosper to elude legal process or absent herself from the trial, a reasonable juror may have concluded he nevertheless effectively achieved those aims. Furthermore, the general tenor of the letters to Trosper, especially with regard to the somewhat veiled threats and vague requests, invited a reasonable juror to read between the lines and make the same mistake the Gill court made.

Under all the circumstances, this Court cannot be certain the guilty verdicts for the intimidation charges were based solely on proven

alternative means. The trial court's failure to give a unanimity instruction was therefore not harmless, and counts 2 and 13 should be reversed.

2. SNODGRASS WAS DEPRIVED OF HIS RIGHT TO A UNANIMOUS JURY VERDICT BECAUSE THE JURY WAS INSTRUCTED AS TO ALTERNATIVE MEANS OF COMMITTING WITNESS TAMPERING THAT WERE NOT SUFFICIENTLY PROVEN.

The crime of tampering with a witness may be committed by attempting to induce a witness to testify falsely, to withhold testimony, to be absent from official proceedings, or to withhold relevant information from a law enforcement agency. RCW 9A.72.120. Witness tampering is an alternative means crime. Nonog, 145 Wn. App. at 812-13. The State charged Snodgrass with committing the offense by each alternative means. CP 68-69 (counts four through six).

The jury found Snodgrass guilty of three counts of tampering with Trospen. The offenses were alleged to have occurred on or about March 29, 2012, April 17, 2012, and April 25, 2012. CP 68-69. The "to-convict" instructions required the jury to find Snodgrass attempted to induce Trospen to testify falsely, to withhold testimony, to absent herself from official proceedings, or to withhold from a law enforcement agency information she had that was relevant to a criminal investigation. CP 93-95. For the reasons set forth above, the State failed to prove Snodgrass

attempted to induce Trosper not to appear for court hearings. Also as explained above, this was error resulting in the real possibility the verdicts were based on the unproven means. This Court should therefore reverse each conviction for witness tampering.

3. THE STATE FAILED TO PROVE WITNESS TAMPERING AS CHARGED IN COUNT FOUR BEYOND A REASONABLE DOUBT.

To sustain a conviction for tampering with a witness, the State must prove the accused attempted "to induce" a witness to testify falsely, withhold testimony, or withhold from a law enforcement agency information relevant to a criminal investigation. RCW 9A.72.120(1); State v. Henshaw, 62 Wn. App. 135, 137-38, 813 P.2d 146 (1991). Because the witness, Trosper, continued to willingly support Snodgrass on March 29, 2012, Snodgrass did not attempt to "induce" her to do any of those things. The State thus failed to present sufficient evidence to support the tampering conviction alleged in count four.

Due process requires the State to prove each essential element of a crime beyond a reasonable doubt. State v. A.M., 163 Wn. App. 414, 419, 260 P.3d 229 (2011). In assessing a challenge to the sufficiency of the evidence, a reviewing court views the evidence in the light most favorable to the State. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009).

The question is whether a rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. State v. Budik, 173 Wn.2d 727, 733, 272 P.3d 816 (2012)

The "to-convict" instruction given to Snodgrass's jury set forth the following elements for the crime of witness tampering as alleged in count four:

(1) That on or about March 29, 2012, the defendant attempted to induce a person to testify falsely; or, without right or privilege to do so, to withhold any testimony; or to . . . herself from any official proceedings; or to withhold from a law enforcement agency information which she has relevant to a criminal investigation; and

(2) That the other person was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings or a person whom the defendant had reason to believe might have information relevant to a criminal investigation; and

(3) That any of these acts occurred in the State of Washington.

CP 93 (instruction 15).

Chapter 9A.72 RCW does not define the word "induce." When a statute provides no definition for a term with an ordinary meaning, resort to a dictionary definition is appropriate. Whidbey Gen. Hosp. v. State, 143 Wn. App. 620, 628, 180 P.3d 796 (2008). The dictionary definition of "induce" is "to move and lead (as by persuasion or influence)." Webster's

Third New Int'l Dictionary 1154 (1993); State v. Knutz, 161 Wn. App. 395, 404 n.6, 253 P.3d 437 (2011). Persuasion or influence is the key feature of the definition. Our Supreme Court has found the unit of prosecution for witness tampering "is the ongoing attempt *to persuade* a witness not to testify in a proceeding." State v. Hall, 168 Wn.2d 726, 734, 230 P.3d 1048 (2010) (emphasis added).

Trosper's own testimony establishes she needed no persuasion to help Snodgrass avoid conviction for the crimes he faced at the time of the exchange of letters. She acknowledged writing a letter April 9, 2012, which was admitted as Exhibit 10. 2RP 148-49. In the letter she professes to love Snodgrass forever. She wrote she missed him very much and "wanted to know" he "was coming home." Ex. 10. She encouraged him to stay strong. Ex. 10. Trosper admitted that in the course of the letter exchange she indicated she would "try to help the situation." 2RP 152. This included lying on his behalf. 3RP 9-10. It was not until April 20 that Trosper spoke with the prosecutor. 3RP 11. And even then, she did not want to testify against Snodgrass. 3RP 11-12.

This evidence indicates the State failed to prove beyond a reasonable doubt that on March 29, Snodgrass attempted to induce Trosper to testify falsely, withhold testimony, or absent herself from the

proceedings. Snodgrass's witness tampering conviction as alleged in count four should therefore be reversed and dismissed with prejudice.

4. THE TRIAL COURT IMPOSED AN ILLEGAL SENTENCE FOR THE MISDEMEANOR VIOLATIONS OF A NO-CONTACT ORDER.

Snodgrass admitted writing the letters to Trosper, thereby violating a no-contact order issued February 14, 2012. 2RP 44; 3RP 19; Ex. 1. The offense is a gross misdemeanor. RCW 26.50.110(1)(a)(i). As of July 26, 2011, the maximum penalty for committing a gross misdemeanor is 364 days. RCW 9A.20.021(2). Snodgrass committed the no-contact violations after July 26, 2011. The trial court nevertheless imposed 365-day terms for the violations. CP 127.

A trial court must impose a sentence authorized by statute. In re Postsentence Review of Leach, 161 Wn.2d 180, 184, 163 P.3d 782 (2007). An illegal or incorrect sentence may be attacked for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). Because the trial court exceeded its statutory sentencing authority, Snodgrass may challenge it for the first time on appeal. This Court should vacate the misdemeanor sentences and remand for imposition of a sentence authorized by RCW 9A.20.021(2).

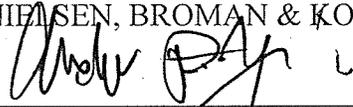
D. CONCLUSION

For the above reasons, this Court should reverse Snodgrass's convictions for witness intimidation and witness tampering. This Court should also vacate Snodgrass's misdemeanor sentences and remand for imposition of terms not longer than 364 days.

DATED this 15 day of July, 2013.

Respectfully submitted,

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State v. David Snodgrass

No. 31357-3-III

Certificate of Service by email

I Patrick Mayovsky, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on the 25th day of July, 2013, I caused a true and correct copy of the **Brief of Appellant** to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing a copy of said document in the United States mail.

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Signed in Seattle, Washington this 25th day of July, 2013.

X 