



**TABLE OF CONTENTS**

	<u>Page</u>
A. TABLE OF AUTHORITIES .....	iv
B. ASSIGNMENT OF ERROR	
1. Assignment of Error .....	1
2. Issue Pertaining to Assignment of Error .....	1
C. STATEMENT OF THE CASE .....	2
D. ARGUMENT	
<b>I. THE TRIAL COURT DENIED THE DEFENDANT HER     RIGHT UNDER WASHINGTON CONSTITUTION,     ARTICLE 1, § 3 AND UNITED STATES CONSTITUTION,     FOURTEENTH AMENDMENT WHEN IT ENTERED     JUDGMENT OF CONVICTION FOR FELONY     TELEPHONE HARASSMENT BECAUSE THE STATE     FAILED TO PRESENT SUBSTANTIAL EVIDENCE ON     THIS CHARGE .....</b>	<b>5</b>
<b>II. THE TRIAL COURT’S USE OF A “TO CONVICT”     INSTRUCTION THAT FAILED TO SET OUT ALL OF THE     ELEMENTS OF THE ALLEGED OFFENSE DENIED THE     DEFENDANT HER RIGHT TO DUE PROCESS UNDER     WASHINGTON CONSTITUTION, ARTICLE 1, § 3 AND     UNITED STATES CONSTITUTION, FOURTEENTH     AMENDMENT .....</b>	<b>14</b>
E. CONCLUSION .....	18

F. APPENDIX

1. Washington Constitution, Article 1, § 3 .....	19
2. United States Constitution, Fourteenth Amendment .....	19
3. RCW 9.61.230 .....	20
4. Jury Instruction No. 5 .....	21
5. Jury Instruction No. 7 .....	21

**TABLE OF AUTHORITIES**

*Page*

*Federal Cases*

*In re Winship*,  
397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) ..... 5, 14

*Jackson v. Virginia*,  
443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) ..... 6

*State Cases*

*In re Davis*, 142 Wn.2d 165, 12 P.3d 603 (2000) ..... 13

*Redmond v. Burkhardt*, 99 Wn.App. 21, 991 P.2d 717 (2000) ..... 11-13

*State v. Johnson*, 12 Wn.App. 40, 527 P.2d 1324 (1974) ..... 6

*State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996) ..... 6

*State v. Baeza*, 100 Wn.2d 487, 670 P.2d 646 (1983) ..... 5, 14

*State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980) ..... 6

*State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972) ..... 5

*State v. Salas*, 74 Wn.App. 400, 873 P.2d 578 (1994) ..... 14

*State v. Scott*, 110 Wn.2d 682, 757 P.2d 492 (1988) ..... 14

*State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) ..... 6

*State v. Wilcox*, 160 Vt. 271, 628 A.2d 924 (1993) ..... 9

*Constitutional Provisions*

Washington Constitution, Article 1, § 3 ..... 5, 14, 17

United States Constitution, Fourteenth Amendment ..... 5, 17

*Statutes and Court Rules*

13 V.S.A. § 1027 ..... 9, 10  
RCW 9.61.230 ..... 7, 8, 10, 15

*Other Authorities*

Wayne R. Lafave & Austin W. Scott,  
*Criminal Law* § 34, at 243 (1972) ..... 8

## ASSIGNMENT OF ERROR

### *Assignment of Error*

1. The trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment when it entered judgment against her for telephone harassment because substantial evidence does not support this charge.

2. The trial court's use of jury instructions number 5 and 7 denied the defendant her right to a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment because they failed to instruct the jury on all the elements of the crime charged.

### *Issues Pertaining to Assignment of Error*

1. Does a trial court violate a defendant's right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment when it enters judgment for an offense not supported by substantial evidence?

2. Does a trial court's use of a "to-convict" instruction and a definitional instruction that omit an element of the crime charged deny a defendant the right to a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment?

## STATEMENT OF THE CASE

### *Factual History*

In December of 2004, 10-year-old Matthew Scharer and his 11-year-old brother Tyler Sharer were living with their paternal grandmother Lorie Haley at her home at 3050 Kalama River Road in Kalama. RP 5. On December 24, prior to leaving with their grandmother for Christmas in Silverton, Oregon with Lorie's parents, the boys received a call from their mother Defendant Stephanie Paris. RP 9-10. Although neither the boys nor Ms. Haley remembers which brother picked up the a telephone first, within a few seconds, both boys were talking to the defendant on separate telephones. RP 9, 60, 80. When they did, Lorie Haley checked the caller I.D. on the third phone in an attempt to determine if it was the defendant. RP 10-11. Eventually, the two boys seemed to get upset with what their mother was saying so Lorie Haley joined the conversation with the third telephone. RP 11-12. When she did so, the defendant said: "Get off the phone, bitch, or I'm going to fucking have you killed." RP 99. Two days later, after returning from Silverton, Lorie Haley called the police and she and the boys told the Deputy Tory Shelton what the defendant had said on the telephone. RP 23.

### *Procedural History*

By information filed February 15, 2005, the Cowlitz County Prosecutor

charged the defendant Stephanie Rena Lilyblad with one count of Telephone Harassment. The information alleged:

The defendant, in the County of Cowlitz, State of Washington, on or about December 24, 2004, with the intent to harass, intimidate, torment, or embarrass any other person, did make a telephone call to Lori Haley threatening to kill that person or any other person; contrary to RCW 9.61.230(3)(b) and against the peace and dignity of the State of Washington.

CP 1.

The case later came on for trial before a jury with the state calling four witnesses: Lorie Haley, Matthew Scharer, Tyler Scharer, and Deputy Tory Shelton. RP 5, 56, 78, 98. The defense then called three witnesses, including the defendant. RP 106, 115, 122. The defendant and her witnesses testified that on December 24, 2004, the defendant was staying in a residence on Coal Creek, that she attempted to call her children, that Lorie Haley refused to let the defendant speak to her children, and the defendant did not make any threats over the telephone. RP 106-115, 115-122.

Following the reception of evidence, the court instructed the jury and included the following definition of "make a telephone call":

INSTRUCTION NO. 7

"Make a telephone call" refers to the entire call rather than the initiation of the call.

CP 18.

This instruction defining “make a telephone call” was given after the following “to convict” instruction.

#### INSTRUCTION NO. 5

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

- (1) That on or about December 24, 2004, the defendant made a telephone call to Lori Haley;
- (2) That the defendant threatened to kill Lori Haley;
- (3) That the defendant acted with intent to harass or intimidate Lori Haley; and
- (4) The acts occurred in the State of Washington.

If you find from the evidence that each of the elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

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

CP 16.

After argument in this case, the jury deliberated and returned a verdict of “guilty.” CP 24. The court later sentenced the defendant within the standard range, and the defendant filed timely notice of appeal. CP 26-34, 37.

## ARGUMENT

### I. THE TRIAL COURT DENIED THE DEFENDANT HER RIGHT UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3 AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT WHEN IT ENTERED JUDGMENT OF CONVICTION FOR FELONY TELEPHONE HARASSMENT BECAUSE THE STATE FAILED TO PRESENT SUBSTANTIAL EVIDENCE ON THIS CHARGE.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* In addition, evidence that is equally consistent with innocence as it is with

guilt is not sufficient to support a conviction; it is not substantial evidence. *State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996).

“Substantial evidence” in the context of a criminal case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). This includes the requirement that the state present substantial evidence “that the defendant was the one who perpetrated the crime.” *State v. Johnson*, 12 Wn.App. 40, 527 P.2d 1324 (1974). The test for determining the sufficiency of the evidence is whether, “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980).

In the case at bar, there is an absence of substantial evidence on one element of the offense: that the defendant placed the telephone call with the intent to annoy or harass. Rather the evidence, even seen in the light most favorable to the defense, only supports the conclusion that the defendant made the telephone call to speak with her children on Christmas eve, that she did speak to her children, and that she did not even intend to speak to Lorie

Haley. The following sets out this argument.

The crime of telephone harassment, as charged in this case, is defined under RCW 9.61.0230(1). This statute states:

(1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household; is guilty of a gross misdemeanor, except as provided in subsection (2) of this section.

RCW 9.61.230(1).

As the unambiguous language of this sections states, there are three alternative methods of committing this crime. Under subsection (2)(b), the third alternative under (1)(c) changes from a misdemeanor to a felony if the defendant threatens to kill the victim as opposed to injuring. This subsection states:

(2) The person is guilty of a class C felony punishable according to chapter 9A.20 RCW if either of the following applies:

(b) That person harasses another person under subsection

(1)(c) of this section by threatening to kill the person threatened or any other person.

RCW 9.61.230(2)(b).

In this statute, it is apparent that part (1) sets out the *mens rea* of the crime, while sub-parts (a), (b), (c), and (2)(b) set out the *actus rea* in four alternatives. The *mens rea* of the offense is to “make a telephone call” with the intent to harass, intimidate, torment or embarrass” and the *actus rea* is to then perform one of the four alternative acts. As with all crimes that include an element of intent, the crime is not complete until there is joining of the *mens rea* with and *actus rea*. As LaFave and Scott state in their treatise on Criminal Law, “while a defendant can be convicted when he both has the *mens rea* and commits the *actus rea* required for a given offense, he cannot be convicted if the *mens rea* relates to one crime and the *actus rea* to another.” Wayne R. Lafave & Austin W. Scott, *Criminal Law* § 34, at 243 (1972).

In this case, the real issue is what does it mean to “make a telephone call” as that phrase is used in part (1): does it mean that the defendant must have the “intent to harass, intimidate, torment or embarrass” at the time the defendant places the call, or (2) does it mean that the defendant must formulate the “intent to harass, intimidate, torment or embarrass” that any point during the call. This question is critical in the case at bar because the

evidence unequivocally proves that the defendant did not have the intent to “harass, intimidate, torment or embarrass” Lorie Haley when she placed the case as she had no plans to even talk to her, whereas her later statements to Lorie Haley at the end of the call when the two did speak certainly support the conclusion that the defendant did eventually speak with the intent to “harass, intimidate, torment or embarrass.”

In *State v. Wilcox*, 160 Vt. 271, 628 A.2d 924 (1993), the Vermont Supreme Court addressed this very question under 13 V.S.A. § 1027(a). This statute states:

(a) A person who, with intent to terrify, intimidate, threaten, harass or annoy, makes contact by means of a telephonic or other electronic communication with another and

(i) makes any request, suggestion or proposal which is obscene, lewd, lascivious or indecent;

(ii) threatens to inflict injury or physical harm to the person or property of any person; or

(iii) disturbs, or attempts to disturb, by repeated anonymous telephone calls or other electronic communications, whether or not conversation ensues, the peace, quiet or right of privacy of any person at the place where the communication or communications are received shall be fined not more than \$250.00 or be imprisoned not more than three months or both. If the defendant has previously been convicted of a violation of this section or of an offense under the laws of another state or of the United States which would have been an offense under this act if committed in this state, the defendant shall be fined not more than \$500.00 or imprisoned for not more than six months, or both.

13 V.S.A. § 1027(a).

In the *Wilcox* case, the defendant had called a town selectman to lodge a complaint. However, the selectman was not home, so the defendant spoke with the selectman's wife for about 20 minutes. At the end of the conversation, he became upset and said, "How would you like to be shot." He was later charged and convicted under 13 V.S.A. § 1027(a)(ii), and he appealed, arguing that since he did not harbor the *mens rea* of the crime at the time he made the telephone call, he should not have been convicted of the offense. The Vermont Supreme Court reversed the conviction, holding that under the statute, the *mens rea* of the crime should be measured at the time the person makes or initiates the call.

The Washington and Vermont statutes are almost identical in language. The following gives a side by side comparison of the first sections of both statutes:

Vermont Statute	Washington Statute
(a) A person who, with intent to terrify, intimidate, threaten, harass or annoy, makes contact by means of a telephonic or other electronic communication with another and	(1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

13 V.S.A. § 1027(a) and RCW 9.61.230(1).

It is true that in *City of Redmond v. Burkhart*, 99 Wn.App. 21, 991 P.2d 717 (2000), Division I of the Court of Appeals came to the opposite conclusion as the court in *Wilcox*, after an examination of both the Vermont and the Washington Statutes. In that case, Division I concentrated on three factors: (1) that the Vermont statute used the word “and” before setting out the three alternative methods of committing the crime while the Washington Statute did not, (2) that the Vermont interpretation “draws an illogical distinction between threats made to a caller who initiates the call with the intent to intimidate and those made by a caller who formulates the intent to intimidate mid-conversation,” and (3) that the word “make” could also mean the continuing process of completing the whole conversation as opposed to making the initial contact by telephone. *Burkhart*, 99 Wn.App. at 25-26.

The first reason cited by Division I at best notes a difference without a distinction or at worst makes an illogical distinction. In other words, there really is no logical distinction between one who “makes a telephone call *and* threatens to kill” (the Vermont Statute) as opposed to one who “makes a telephone call threatening to kill.” (the Washington Statute). Indeed, *Burkhart’s* analysis on this point actually begs the question: What is a “telephone call threatening to kill.” Can it include an hour long civil conversation that at the very end includes three seconds of a threat made out

of anger and frustration, or must at least five percent or ten percent or fifty percent of the conversation include the threatening language? In fact, both the Vermont and Washington Statutes each require two separate types of actions: (1) the making of a telephone call, and (2) the use of specific language. The *Burkhart* decision illogically collapses both of these actions into a single *actus reus*. By contrast, the plain language of the statute requires two separate and distinct actions.

Second, as was stated above, the court in *Burkhart* criticized the decision in *Wilcox* as “draw[ing] an illogical distinction between threats made to a caller who initiates the call with the intent to intimidate and those made by a caller who formulates the intent to intimidate mid-conversation.” However, this is precisely what the plain language of the statute indicates, and the distinction is far from illogical. It was quite rational for the legislature (1) to want to punish people who, with bad intent, specifically pick up a telephone with the intent using it as a means of abusing another person through threats, but (2) not want to punish people who, without bad intent, use a telephone as a legitimate means of communication, and sometime during the conversation give way to the temptation to utter a threat. In fact, people who fall into this latter category do commit the crime of felony harassment if the person threatened reasonably believes the threat. Thus,

contrary to the Court's argument in *Burkhart*, there is a very logical reason for the legislature to want to only punish who specifically see the telephone as a weapon and initiate calls with the intent to harass.

Finally, in *Burkhart*, the court relied upon its conclusions that the term "make" as in "make a telephone call" could also mean the sum of the entire conversation that ensues, as opposed to the process of placing the call. While this might well be the case, the court does not find that the *Wilcox* interpretation is illogical or strained. Indeed, the court could not come to this conclusion without implying that a telephone call is not made until some conversation ensues. The problem with the court's decision is that it appears to recognize two equally logical definitions for the term "make" without then employing the rule of lenity. Under this rule, the court should construe any ambiguity in favor of the defendant. *In re Davis*, 142 Wn.2d 165, 12 P.3d 603 (2000).

As the following explains, the better interpretation of the phrase "shall make a telephone call" "with the intent to harass, intimidate, torment or embarrass" requires that the *mens rea* be formed not later than the time the first *actus rea* of the crime (the "making a telephone call") is undertaken. When this interpretation of the statute is employed under the facts of this case, the conviction must fail based upon a lack of substantial evidence.

Even under Lorie Haley's version of events, the defendant made the telephone call to talk with her two children. In fact, it is clear from her testimony that the defendant did not even want to talk to Lorie Haley. Thus, there is a lack of any evidence that at the time she made the telephone call the defendant had "the intent to harass, intimidate, torment or embarrass" Lorie Haley. Consequently, the conviction should be dismissed.

**II. THE TRIAL COURT'S USE OF A "TO CONVICT" INSTRUCTION THAT FAILED TO SET OUT ALL OF THE ELEMENTS OF THE ALLEGED OFFENSE DENIED THE DEFENDANT HER RIGHT TO DUE PROCESS UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3 AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT**

As a part of the due process rights guaranteed under both the Washington Constitution and the United States Constitution, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza, supra; In re Winship, supra*. Under this rule, the court must correctly instruct the jury on all of the elements of the offense charged. *State v. Scott*, 110 Wn.2d 682, 688 n. 5, 757 P.2d 492 (1988) (citing *State v. Johnson*, 100 Wn.2d 607, 623, 674 P.2d 145 (1983)). The failure to so instruct the jury constitutes constitutional error that may be raised for the first time on appeal. Id.

For example, in *State v. Salas*, 74 Wn.App. 400, 873 P.2d 578 (1994), the defendant was charged with vehicular homicide under an information

alleging all three possible alternatives for committing that offense. At the end of the trial, the court, without objection from the defense, instructed the jury that to convict, the state had to prove that (1) the defendant drove while intoxicated, and (2) that the defendant's driving caused the death of another person. The court's instruction did not include the judicially created element that intoxication be a proximate cause of accident that caused the death.

Following deliberation, the jury returned a verdict of guilty, and the defendant appealed, arguing that the court's instructions to the jury violated his right to due process because it did not require that the state prove all the elements of the offense charged. The state replied that the defendant's failure to object to the erroneous instruction precluded the argument on appeal. However, the Court of Appeals rejected the state's argument, holding that (1) the court had failed to instruct on the judicially created causation element, and (2) the defense could raise the objection for the first time on appeal because it was an error of constitutional magnitude. Thus, the court reversed the conviction and remanded for a new trial.

In the case at bar, the state charged the defendant with telephone harassment under RCW 9.61.230. As the preceding argument explains, this statute requires that the state to prove that at the time the defendant made the telephone call he had the "intent to harass, intimidate, torment or embarrass."

embarrass.” However, in charging the jury, the court employed a definitional instruction that did not require the state to prove this element. This instruction stated:

**INSTRUCTION NO. 7**

“Make a telephone call” refers to the entire call rather than the initiation of the call.

CP 18.

Similarly, the “to convict” instruction erroneously excludes the requirement that the defendant have the intent to harass when the call was initiated. This instruction stated as follows:

**INSTRUCTION NO. 5**

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

- (1) That on or about December 24, 2004, the defendant made a telephone call to Lori Haley;
- (2) That the defendant threatened to kill Lori Haley;
- (3) That the defendant acted with intent to harass or intimidate Lori Haley; and
- (4) The acts occurred in the State of Washington.

If you find from the evidence that each of the elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you

have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 16.

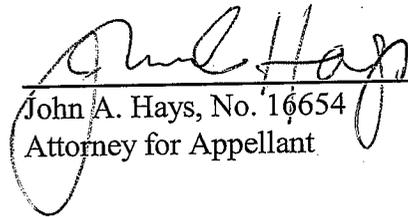
By using these instructions the court violated the defendant's right under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment to have the jury correctly instructed on each and every element of the crime charged. Since the court's instructions herein failed to require the state to prove each element of the crime charged, the defendant is entitled to a new trial.

## CONCLUSION

The trial court erred when it entered judgment of conviction against the defendant because the state failed to present substantial evidence on the crime charged. In the alternative, the trial court's use of instructions that relieved the state of its burden to prove each and every element of the crime charged entitles the defendant to a new trial.

DATED this 17<sup>th</sup> day of November, 2005.

Respectfully submitted,

  
\_\_\_\_\_  
John A. Hays, No. 16654  
Attorney for Appellant

**APPENDIX**

**WASHINGTON CONSTITUTION  
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**UNITED STATES CONSTITUTION,  
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

**RCW 9.61.230**  
**Telephone Harassment**

(1) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:

(a) Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

(b) Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household; is guilty of a gross misdemeanor, except as provided in subsection (2) of this section.

(2) The person is guilty of a class C felony punishable according to chapter 9A.20 RCW if either of the following applies:

(a) That person has previously been convicted of any crime of harassment, as defined in RCW 9A.46.060, with the same victim or member of the victim's family or household or any person specifically named in a no-contact or no-harassment order in this or any other state; or

(b) That person harasses another person under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

### **INSTRUCTION NO. 5**

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

- (1) That on or about December 24, 2004, the defendant made a telephone call to Lori Haley;
- (2) That the defendant threatened to kill Lori Haley;
- (3) That the defendant acted with intent to harass or intimidate Lori Haley; and
- (4) The acts occurred in the State of Washington.

If you find from the evidence that each of the elements have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

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

### **INSTRUCTION NO. 7**

“Make a telephone call” refers to the entire call rather than the initiation of the call.

FILED  
COURT OF APPEALS  
DIVISION II

05 NOV 28 AM 10:35

STATE OF WASHINGTON

BY [Signature]  
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

vs.

STEPHANIE R. PARIS,

Appellant,

COWLITZ CO. NO. 05-1-00173-6  
APPEAL NO: 33322-8-II

AFFIDAVIT OF MAILING

STATE OF WASHINGTON

) vs.

COUNTY OF COWLITZ

DONNA BAKER, being duly sworn on oath, states that on the 21<sup>st</sup> day of NOVEMBER, 2005, affiant deposited into the mails of the United States of America, a properly stamped envelope directed to:

SUSAN I BAUR  
COWLITZ CO. PROSECUTING ATTORNEY  
312 S. First Ave., W.  
KELSO, WA 98626

STEPHANIE R. PARIS  
818 GARDEN ST. #5  
COEUR D ALENE, ID 83814

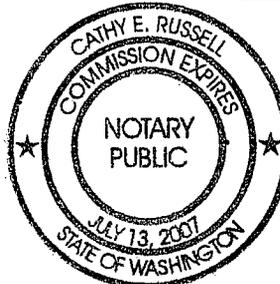
and that said envelope contained the following:

- 1. BRIEF OF APPELLANT
- 2. AFFIDAVIT OF MAILING

DATED this 21<sup>ST</sup> day of NOVEMBER, 2005.

[Signature]  
DONNA BAKER

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of NOVEMBER, 2005.



Cathy E. Russell  
NOTARY PUBLIC in and for the  
State of Washington,  
Residing at: Longview  
Commission expires: 7-13-07