

No. 81688-3, 81689-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

vs.

CLARENCE ANDREW KINTZ, Appellant.

ON APPEAL FROM WHATCOM COUNTY SUPERIOR COURT

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. INTRODUCTION

To obtain a conviction for misdemeanor stalking under RCW 9A.46, the state is required to prove, in part, that the Kintz “intentionally and repeatedly harassed or repeatedly followed” another person. RCW 9A.46.110 (1)(b). Repeatedly is defined by statute as meaning “two or more separate occasions.” RCW 9A.46.110 (6)(b). Clarence Kintz was convicted of two counts of stalking for intentionally and repeatedly harassing or following two women on five separate occasions respectively over a short period of time. The question before this Court is what constitutes ‘two or more separate occasions’ and whether Kintz behavior of repeatedly engaging and disengaging in contact with his victims, as delineated by time, place and manner constitutes ‘repeated’ harassment or ‘repeated’ following under the stalking statute.

B. RESTATEMENT OF ISSUES PERTAINING TO PETITIONER’S ASSIGNMENTS OF ERROR

1. Whether the trial court correctly determined that Kintz five discreet contacts with each of his victims, separated by time and place were ‘separate occasions’ of following or harassment as proscribed by the stalking statute?

C. FACTS

1. Kintz Repeatedly followed Jennifer Gudaz

The morning of January 26th, 2206, Jennifer Gudaz left her house between 8:30 to 9:30 a.m. to run around rural Lake Samish, near

Bellingham, Washington. RP 81. Ms. Gudaz testified she typically ran a 10 minute mile and that it generally takes her about an hour to run around the lake. RP 101. The road around Lake Samish is narrow, with little or no shoulder. RP 82. Ms. Gudaz ran on the opposite side of the road to see oncoming traffic. Id. Ms. Gudaz noticed a white van that drove closely past her as she ran.

Most of the people that live on the lake swerve around you to miss you if you are running, and so I noticed because the car in front had swerved around me, so I gave him a courtesy wave, and then the van didn't, and so I kind of-since we don't really have sidewalks or shoulders there, you kind of get a little nervous when cars are next to you, and so that's when I noticed it.

RP 82. In the white van was defendant Clarence Kintz, age 58. Kintz drove past Ms. Gudaz the first time and drove out of sight. RP 82. Gudaz became suspicious when the van turned around and came up next to her again.

He stopped, and I kind of looked over, and he said-I don't remember if he said, "Hey." I don't remember what the first thing he said was, but it wasn't like -it was like you and I talking back and forth today. It was like he said something and then said the address, and before that I kept thinking maybe he doesn't know English, or there's something else, or maybe there's -he wasn't like all there, and so I -when he told me the address, I was like nope, and just kept running.

RP 84. For the second time, Kintz discontinued the contact and drove off. Ms. Gudaz was nervous about the van after this incident but continued running. RP 84. Shortly, Ms. Gudaz again noticed the van parked down

below down a long driveway near a home. RP 86. Gudaz was relieved, thinking the van found the address he was looking for. RP 86.

Later Kintz drove up to Gudaz again, stopped beside her, held out a clipboard and asked her to draw him a map. RP 87. Gudaz tried to draw a map, but Kintz could not tell her whether he wanted to go north or south. RP 88 (“he’s like, ‘get me out of here’”). After drawing a map to the freeway, Gudaz gave Kintz the clipboard, started running again and Kintz drove away. RP 89. Ms. Gudaz saw Kintz a fourth time, sitting in his van parked on the side of the road.

Q. You had another contact with him?

A. Well, as I was running, I saw him on the side of the road, and I just kept running past him. He did have a lighter at that point. I don’t know what he was lighting, but I could see fire in the vehicle.

Q. So he had stopped by the side of the road?

A. (Witness nods.)

RP 90. Ms. Gudaz’s fifth contact with Kintz in his white van alarmed her.

A. He pulled up next to me again. I was still in oncoming traffic. He pulled into the oncoming traffic lane facing the wrong way.

Q. Okay. So he was up pretty close to you?

A. Within a foot.

Q. Okay. How were you feeling at this point?

A. I was debating if I was going to jump in the lake and swim home, or if I was going to run, but I was trying to stay calm.

Q. So what happened?

A. He said, "Do you need a ride?" And I said no, and he said, "Do you need money?" I said no, and he goes, "You don't need money?" and I said, "No. Maybe your road is up there," and pointed and started running.

RP 91. Gudaz kept running until Kintz was out of sight. Gudaz was so scared she then ran down a driveway and hid between a fence and a shed for approximately 10 to 15 minutes. RP 92. When Gudaz saw two bicyclists picking berries by the side of the road, she ran to them yelling for help.

I was a mess. I was crying. I was really scared. I just wanted to go home.

RP 93. The bicyclists called the police. Before an officer could arrive, Kintz drove by a sixth time.

[Y]ou can see coming down from the roadway, you go over a bridge, and the van was going quite slow over the bridge coming around the corner, but as soon as he saw us, he sped up and drove pretty quickly past us, and at this point the bikers were surrounding me so that, I mean, there were people on all sides of me.

RP 94. The bicyclists wrote down the van's license plate number and reported it to the investigating officers. Deputy Wagenaar later spoke to Kintz over the telephone. Kintz admitted that he had spoken with Ms.

Gudaz repeatedly while she was jogging but denied asking her if she needed a ride or money. RP 157.

2. Kintz Repeatedly followed Theresa Westfall

On December 21, 2005, Theresa Westfall, a veterinarian, took her three children and two dogs to walk around Lake Padden in Bellingham.

At the beginning of her walk, Ms. Westfall noticed a white van in the parking lot:

I was pushing the jogging stroller holding leashes, and my two other daughters were walking with me, and when we came into the parking area of Lake Padden, the horse trailer parking area, there was a person parking a white van that looked out of context to me because most people at the lake are either walking their dogs or jogging, and this person was smoking a cigarette and sort of parking a van.

RP 214. Westfall's first contact with Kintz occurred in the parking lot.

[W]hen we walked by, the person said something to me which I didn't quite understand, but I believe it had the word "parking" in it, and I think he thought I was going to my car which was near where he was parking, and he was just backing up and pulling forward again like he was repositioning a car.

RP 215. With her children and dogs in tow, Ms. Westfall began walking down a trail. The trail eventually reconnected with the road, and Ms.

Westfall had her second contact with Kintz:

[W]hen we came out to the road out onto 40th at that corner, he was coming from behind us in the van driving real slow, and so when we got out on the road, you know, I was concerned because there's no sidewalk, and I've still got a whole lot of people and a whole lot of stuff that I'm trying to keep off the road, and the person drove

by with their window down. I glanced up, and their window was down, but I didn't look at them, and they just drove by a walking pace by me, and so I told my kids to all look at the ground, and we just looked at the ground and kept walking.

RP 217. Defendant's white van passed Ms. Westfall and her children and drove off. In a few minutes, defendant slowly drove by Ms. Westfall again – the third separate contact:

[B]efore too long, he came back from behind us again. So as we were still walking down this road, he came from behind me and past us again driving slowly.

RP 218. Ms. Westfall watched as Kintz turned around to make another pass. “[H]e pulled into the, that trailer court parking lot to the right and turned around and came back by us again.” RP 219. After this fourth pass, Kintz made one more. “He came by us, went by really slow again and pulled into the parking lots, backed up and drove back by us the other way.” RP 219. During these five incidents, Ms. Westfall tried not to provoke Kintz while looking for a way to escape him:

[I]nitially, I thought the best thing would be to ignore him, because I'm a veterinarian. Mean dogs you just don't look in the eye. You just don't look at them and try to ignore them and try to not have any sort of encounter, and I was doing that ... When I got right up to this corner on Samish Way, because I was going to cross it to go up to where we live, I did get very, very scared and angry, and I had a slight wish to pick up a rock and throw it in the window as he went by, but I thought that that would antagonize him. So yeah, I didn't do anything until I crossed the street, and then I got my cell phone out and called 911.

RP 221. When Kintz drove away, Ms. Westfall called 911 and quickly took her children home. Officer Brock Crawford from the Bellingham Police Department responded to the call. Shortly after receiving a description of a white van and its license plate number from dispatch, Officer Crawford stopped Kintz in a white van near Lake Padden. RP 250.

D. ARGUMENT

- 1. The evidence supports the jury's determination that Kintz harassed or followed each of his victims on more than two separate occasions.**

Kintz contends there is insufficient evidence to demonstrate he on 'two or more separate occasions' harassed or followed his victims because the separate contacts occurred over a short period of time. Pet. for Rev. at 9. Kintz argues, despite the plain language of the statute, that where the separate discreet contacts occur close in time and place, those separate individual contacts should be legally construed as one continuous occasion and the offensive conduct should fall outside the scope of the stalking statute.

The stalking statute however, is unambiguous on its face and a plain reading of the statute does not require the proscribed conduct to occur over a minimum period of time. Moreover, the facts of this case reveal that a person may reasonably be placed in fear for their personal

safety and suffer substantial emotional distress from two or more individual discreet contacts that occur within a very short period of time. The statute should not therefore be construed to limit application merely because the proscribed conduct occurs over a short period of time where the separate occasions of the conduct can objectively be distinguished by time, place and manner.

A reviewing court will only reverse a criminal conviction for insufficient evidence if no rational trier of fact, viewing the evidence in the light most favorable to the state could have found each element of the crime charged beyond a reasonable doubt. State v. Hundley, 126 Wn.2d 418, 421-22, 894 P.2d 403 (1995). A claim of insufficiency of the evidence admits the truth of the State's evidence and all inferences that can be reasonably drawn therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Where the sufficiency of the evidence depends on the legal meaning of a statutory term, the initial issue is a question of law which is reviewed de novo. State v. McCormack, 117 Wn.2d 141, 812 P.2d 483 (1991).

- a. *The term "repeatedly" defined under the stalking statute as meaning "more than two separate occasions" is not ambiguous. Separate occasion reasonably means independent individual contacts objectively measured by time and place.*

RCW 9A. 46.110 provides in pertinent part:

- (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
 - (a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and
 - (b) The person being harassed or followed is placed in fear that the stalker intends injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
 - (c) The stalker either:
 - (i) Intends to frighten, intimidate, or harass the person; or
 - (ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.
- (6) as used in this section:
 - (b) "Follows" means deliberately maintaining visual of physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears a the person's home, school, place of employment, business, or any other location to maintain visual proximity to the person is sufficient to find the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.
 - (c) "Harasses" means unlawful harassment as defined in RCW 10. 14. 020
 - (d) "Repeatedly" means on two or more separate occasions.

RCW 10. 14.020 defines unlawful harassment as:

- (1) "Unlawful Harassment" means a knowing and willful course of conduct directed a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a

reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or , when the course of conduct would cause a reasonable parent to fear for the well-being of their child.

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

In order to determine the meaning of a statute, courts look first at the plain language of the statute. “If the statute is clear on its face, its meaning is to be derived from the language of the statute alone.” State v. Keller, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning. State v. A.M., 109 Wn.App. 325, 328, 36 P.3d 552 (2001). “Unlikely, absurd or strained consequences resulting from a literal reading [of statutory terms] should be avoided.” State v. McDougal, 120 Wn.2d 334, 350, 841 P.2d 1232 (1992).

A statute is ambiguous when its language is susceptible to two or more reasonable interpretations. Under the rule of lenity, courts must construe ambiguous statutes in the light most favorable to the defendant. State v. McGee, 122 Wn.2d 783, 864 P.2d 912 (1993). The rule of lenity however, does not require courts to “reject an available and sensible

interpretation in favor of a fanciful or perverse one.” *Id.*, *citing*

Commonwealth v. Tata, 28 Mass. App.Ct.23, 545 N.E.2d 1179 (1989).

Repeatedly as used in the stalking statute is defined as meaning “two or more separate occasions,” RCW 9A.46.110(6)(d). The term ‘separate occasions’ is not further defined by the statute. Where there is no statutory definition for a term courts give words their common legal or ordinary meaning. State v. Chester, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997). Non-technical words are given their dictionary definition. *Id.* at 22.

At the pre-trial hearing Whatcom County Superior Court Judge Charles Snyder defined ‘separate occasions’ as repeated contact separated by time and physical distance:

[T]here’s time, space between those incidents, not a lot, obviously but time, space. There’s a period of time where Mr. Kintz and the alleged victim are not even in the same, in sight of each other, in the same or close proximity. They’re separated both physically by sight and over time, and he comes back and makes contact again.

[I]f we take the evidence in a light more favorable to the state we have separate, discrete, levels of contact, separated by periods of time where the parties are not in contact and where the parties are, in fact physically and visually separated. That constitutes to me the second time and third time for a repeat under the purposes of the statute for purposes of this motion.

5/16/06 RP 16.

The Court of Appeals agreed discerning the plain meaning of the statutory language in question by reviewing the common definition for “separate” and “occasion.” The appellate court noted that Webster’s Third New International Dictionary 1560 and 2069-70 (1969) defines ““occasion” as “a particular occurrence; happening, incident” and “Separate” as “set or kept apart,” “not shared with another; individual, single” autonomous, independent, distinct and different.” See, Slip Op. at 7. Other States have similarly construed the term “occasion.” See, Gaither v. Peters, 63 N.C.App. 559, 305 S.E.2d 763 (1983) (the commonly understood definition for “occasion” is “a particular time at which something takes place; a time marked by some happening.” *citing*, Webster’s Third New International Dictionary).

“The rule of lenity does not require us to reject an ‘available and sensible’ interpretation in favor of a ‘fanciful or perverse’ one...” McGee, 122 Wn.2d at 783. Kintz argument that “occasion” should be defined as requiring a “series of events having some identified cohesive meaning or purpose” requires a strained reading of the statute. See Pet. for Rev. at 15. The fact that RCW 9A.46.110(6)(d) is subject to another “strained” reading of the term which is contrary to the plain meaning of the term does not render it ambiguous. McGee, 122 Wn.2d at 783. The rule of lenity

therefore does not apply.¹ The court of appeals appropriately determined that because Kintz engaged in more than two independent, individual discreet acts of following or harassment that he reasonably should have known would reasonably cause substantial distress in these women, each course of conduct, however brief, fell within the plain meaning of the statute proscribing more than two “separate occasions” requirement of the stalking statute. Slip. Op. at 8.

Nothing in the statute prohibits application of the stalking statute where cumulatively the separate discreet acts of following or harassment occurs over a short period of time. If the legislature intended to place parameters requiring a minimum period of time over which a series of individual factual events or occasions needed to occur, it would have done so.

b. The legislative history and case law does not support Kintz request to limit the scope of proscribed conduct that falls within the stalking statute.

The plain meaning of the statute is consistent with case law and with the legislative history of the stalking statute. When the statute was

¹ Kintz also asserts for the first time, albeit in a footnote, that stalking statute is unconstitutionally vague as applied to these facts. Kintz has not met his burden of demonstrating beyond a reasonable doubt that the statute is vague as applied to him and cannot do so where the statute provides an objective standard by which to determine the

first added to the Revised Code in 1992, the statute only prohibited persons from 'intentionally and repeatedly following' another person thereby intentionally placing a reasonable person in fear of injury to their person or property. WASH. Laws of 1992, Ch. 186, §1. The legislature subsequently amended the statute in 1994 to broaden the scope of the proscribed behavior by adding "intentionally and repeatedly harassing" to the type of conduct that constitutes stalking and by eliminating the requirement that the stalker repeatedly follow a person "while in transit from one location to another," instead requiring only that the stalker repeatedly deliberately maintain visual or physical proximity over a period of time in a manner the stalker would reasonably know would instill fear of injury to the victims person or property. WASH. Laws of 1994, Ch.271 §801. The 1994 amendments also added a definitions subsection, including defining "repeatedly" and "follows." See RCW 9A.46.110(6).

In 1999 and 2006 the legislature again expanded the scope of the stalking statute by clarifying that electronic communications were included in the types of conduct that may constitute stalking or harassment and, to expand felony stalking to acts committed against certain

pattern required before the proscribed conduct constitutes stalking. See, Pet. for Rev. at 15.

employees of the Department of Social and Health Services. WASH. Laws of 1999, Ch. 27 §1, LAWS of 2006, Ch.95 §3. When the legislature broadened the stalking statute to include electronic communications to the type of acts that could fall within the scope of the stalking statute, the legislature included the following statement of intent:

It is the intent of this act to clarify that electronic communications are included in the types of conduct and actions that can constitute the crimes of harassment and stalking. It is not the intent of the legislature, by adoption of this act, to restrict in any way the types of conduct or actions that can constitute harassment or stalking.

LAWS of 1999, Ch.27, §1.

This legislative history confirms the legislature intent for broad application of the statute where persons repeatedly engage in proscribed conduct.²

In State v. Lee, 135 Wn.2d 369, 957 P.2d 741 (1998), this Court upheld the stalking statute to constitutional challenge. This Court also identified the right of the stalking victim to be left alone.

Petitioner Yates maintained visual and physical proximity to Ms. Egan for several months in his pursuit of unwanted contact with her, despite her protestations and despite court orders directing him to have no contact with her. His efforts were neither unintentional

² When the legislature enacted the stalking statute it included the following statement of intent: The legislature finds that the prevention of serious personal harassment is an important government objective. Toward that end, this chapter is aimed at making unlawful the repeated invasions of a person's privacy by acts and threats which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim. RCW 9A.46.010.

or accidental. They were deliberate and intentional acts which seriously interfered with the right of his victim to be left alone.

Lee, 135 Wn.2d at 393-394. Kintz contends the important fact in Lee and other cases in Washington wherein courts found sufficient evidence to support stalking convictions, is that the unwanted contacts occurred “over a period of days or longer.” Pet. for Rev. at 11. The length and severity of the proscribed conduct that falls within the stalking statute however, serves only to distinguish the possible consequences for the proscribed behavior. The relevant principle in Lee is that stalking requires “deliberate and intentional acts which seriously interfered with the right of the victim to be left alone.” Lee, 135 Wn.2d at 394. Lee does not require the deliberate or intentional acts occur over a set period of time, such as days, weeks or months, only that there be more than two separate deliberate or intentional acts which the stalker knew or reasonably should have known would cause alarm and result in a reasonable person to fear for the safety of themselves or their property.

The jury had more than sufficient evidence to conclude Kintz intentionally and deliberately committed repeated invasions of both Ms. Gudaz and Ms. Westfall’s privacy by repeatedly leering, stopping, watching and in Ms. Gudaz case-making contact with both of these women in such manner as to cause them to reasonably fear for their safety.

The fact that these repeated events occurred over a short period of time, rather than a day or two, does not make Kintz behavior any less coercive, intimidating or frightening.

In State v. Askham, 120 Wn.App. 872, 86 P.3d 1224 (2004), the Court of Appeals found there was sufficient evidence that the defendant “followed” his victim as proscribed by the stalking statute by sending repeated e-mails to his victim.

We must give the State the benefit of all reasonable inferences from this testimony, as well as from the facts and circumstances of the entire course of conduct. And when we do so we conclude that a reasonable fact finder could find that the course of conduct was such as would cause emotional distress and that it did in fact cause emotional distress.

Askham, 120 Wn.App. at 884.

Again, as in Lee, is the repeated intentional acts by the defendant and their reasonable affect, based on the defendant’s entire course of conduct, on the victim that supports the conviction, not the time frame within which the behavior occurred. Here, Kintz’ course of conduct involved repeated, distinct separate acts directed at Ms. Gudaz and Ms. Westfall over a relatively short period of time. This is sufficient to prove Kintz unlawfully harassed or followed each of his targets on “two or more separate occasions.” RCW 9A.46.110(6)(d).

In State v. Ainslie, 103 Wn.App. 1, 11 P.3d 318 (2000), the court upheld a stalking conviction where the defendant repeatedly parked his car in front of a 14-year old's home even though he never contacted her.

While it is true that the facts of this case are not those in Lee, the evidence nevertheless supports the conclusions that Ainslie followed J.P. Ainslie regularly parked in front of the mailboxes near J.P.'s house during times when J.P. was in the neighborhood, he got out of his car just as J.P. was walking toward him, and he was seen in J.P.'s yard. Perhaps most telling is the fact that neither Proffitt nor C.P. saw Ainslie while J.P. was in Spokane, but Ainslie reappeared in his parked car once J.P. returned.

Ainslie, 103 Wn.App. at 6-7. And in State v. Becklin, 163 Wn.2d 519, 182 P.3d 944 (2008), this Court upheld a stalking by third party holding that the plain language of the stalking statute is broad enough to “encompass the act of directing third parties to follow or intimidate a victim.” Id.

c. Kintz followed or harassed each of his victims on more than two separate occasions.

The harassment statute, RCW 9A.46, prohibits the behavior repeatedly and intentionally engaged in by Kintz. After getting a clear indication that neither Ms. Gudaz nor Ms. Westfall wanted any contact with him, he continued to engage and disengage in following and harassing each of them. Both women reasonably feared for their safety based on Kintz behavior. The fact that Kintz repeatedly engaged and disengaged in concerning contact with each of his victim over the course

of 20 minutes to an hour, rather than a few days is irrelevant. Other jurisdictions have similarly recognized that repeated following or harassment can occur over a short period of time. *See, Pallas v. State*, 636 So.2d 1258 (1994) (50 telephone calls in one day falls within the definition of harassment); *State v. Collins*, 580 N.W.2d 36 (1998) (sending two letters was acting “repeatedly” under the harassment statute); *Johnson v. Indiana*, 721 N.E.327 (1999) (commission of harassing acts, banging on window of home and yelling at victim at 1:00a.m., 3:00 a.m. and 6:00 a.m. on the same night constitute “repeated” acts of harassment to support stalking conviction.). The repeated contacts, separated by time and physical space, satisfy the requirement of separate occasions. The evidence presented below was therefore sufficient to prove Kintz intentionally contacted his victims “on two or more separate occasions.” RCW 9A.46.110.

The Louisiana Court of Appeals’ decision in *State v. Rico*, 741 So.2d 774 (1994), does not compel a different result. First, Louisiana’s stalking statute, unlike Washington’s does not define the terms “repeatedly” or “following.” See, Louisiana Revised Statute 14:40.2, Compare, RCW 9A.46.110 (“repeatedly” means on two or more separate occasions). And, the term “following” under the Louisiana stalking statute, unlike our stalking statute, narrowly requires “pursuit by travelling

after.” See, State v. Ryan, 969 So.2d 1268 at 1274 (2007). Compare, RCW 9A.46.110 (6)(a) (“Follows” means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person’s home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person in transit from one location to another.)

The Rico case involved a continuous car chase between the defendant and his victim. The Louisiana Court concluded that under the Louisiana stalking statute “the evidence supports the conclusion that the conduct was a continuous following which occurred once.” Rico, 741 So.2d at 777. In contrast, Kintz did not maintain visual or physical proximity with either Ms. Gudaz or Ms. Westfall continuously. Instead Kintz, on more than two occasions, deliberately maintained physical and visual proximity with each of these women at different times and places while they were walking/running in a rural area around Lake Samish and Lake Padden respectively. After engaging each of his targets in one manner or another for a short period of time, Kintz would promptly break off the contact-discontinue his visual and physical proximity to these

women and drive away. Kintz repeated this pattern more than two occasions. Given these facts, the jury appropriately considered these individual contacts, as defined by space, time and manner as separate occasions under the Washington stalking statute.

E. CONCLUSION

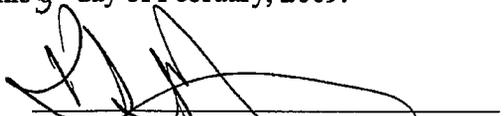
Stalking is a seriously concerning crime. As noted in Lee:

Antistalking legislation was designed to give victims legal means of protecting themselves prior to the actual infliction of physical harm or violence. These statutes were designed to prevent future harms by giving police authority to intervene and to make an arrest whenever an offender displays any stalking behavior.

State v. Lee, 135 Wn.2d at 369 (J. Madsen dissent) *citing, Beth*

Bjerregaard, stalking and the first Amendment: A Constitutional Analysis of Stalking Laws, 32 Crim. L. Bull. 307, 307-311 (1996). Constitutionally sound stalking laws provide much needed protection for victims and provide law enforcement with an important tool to intervene and prevent escalation of criminal behavior. Given the plain language of our stalking statute, its legislative history and case law to date, this Court should not limit application of our stalking laws in cases where perpetrator's engage in individual discreet acts of following or harassment over a short period of time. For the reasons set forth above, the State respectfully asks this Court to affirm Clarence Kintz convictions for stalking as proscribed at RCW 9A.46.110.

Respectfully submitted this 6th day of February, 2009.



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Appellate Deputy Prosecutor
Whatcom County Prosecuting Attorney
Attorney for Respondent

CERTIFICATE

I certify that on this date I placed in the U.S. mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the document to which this certificate is attached, to this Court and petitioner's counsel, Thomas Dunn, addressed as follows:

**Thomas Dunn
Law Offices of Michael Tasker
510 E. Holly Street
Bellingham, WA 98225**

Audrey A. Koss 2/5/2009
Legal Assistant Date