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**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I**

COA No. 61027-9-1

CITY OF SEATTLE,
Appellant/Plaintiff,

v.

ROBERT MAY,
Respondent/Defendant.

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STATE OF WASHINGTON
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BRIEF OF APPELLANT

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ORIGINAL

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RCW 26.50

I. IDENTITY OF PETITIONER

The City of Seattle asks this court to reverse the decision of the King County Superior Court, on appeal from the Seattle Municipal Court.

II. DECISION

The Order Granting Defendant's Motion to Dismiss, entered on November 20, 2007, declaring a Protection Order used to convict defendant in a criminal matter facially invalid.

III. ISSUES PRESENTED FOR REVIEW

A. The King County Superior Court erred in finding a protection order facially invalid because the language contained on the protection order regarding the findings did not mirror those in the statute. The statute did not require any wording regarding findings be contained on the actual protection order.

IV. STATEMENT OF THE CASE

On May 27, 2005, the defendant was charged with two counts of violating a King County Superior Court Permanent Protection Order (Order), which had been issued in 1996 on behalf of the defendant's ex-wife. CP 2, 16-17. The defendant challenged the validity of the Order in Seattle Municipal Court. The defense claimed the King County Superior Court did not make findings of fact sufficient to issue the Permanent Protection Order. CP 23-24, 29-29. The trial court found that the Order was valid and applicable, and there was nothing to suggest the Superior

Court did not make the correct statutory findings. CP 32. The defense was later allowed to revisit this issue, arguing that the newly located Superior Court record did not contain sufficient information for the trial court to conclude that the correct findings had been made. CP 43. The trial court again found that it was not required for the issuing court to provide an actual recitation of the facts upon which it relied to issue a protection order. CP 43, 44. However, the trial court did review some of the underlying evidence that was presented in 1996, and concluded it likely provided a sufficient basis for issuance of the Order. CP 43.

The defendant appealed these findings, claiming that the trial court erred in finding the Order was applicable and admissible, challenged the sufficiency of the evidence, and claimed that the defendant's due process rights were violated. The King County Superior Court reversed the defendant's conviction, finding that because the language regarding the issuing court's findings on the actual Order did not match the language of the statute exactly, the Order was facially invalid. CP 98. The court did not rule on the defendant's other claims of error and the City appeals the King County Superior Court's limited ruling.

V. ARGUMENT

1. The King County Superior Court erred in finding a protection order facially invalid because the language contained on the protection order regarding the findings did not mirror those in the statute. The statute did not require any wording regarding findings be contained on the actual protection order.

The King County Superior Court ruled that the Order was facially invalid because the wording on the Order did not establish that the findings were made as required by RCW 26.50.060(2). The statute states:

[if] the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period of time or enter a permanent order of protection.

RCW 26.50.060(2)

The language on the Protection Order states:

The Order for Protection is Permanent. If the duration of this order exceeds one year, the court finds that an order of less than one year will be insufficient to prevent further acts of domestic violence.

CP 16, 17.

RCW 26.50 does not require that the findings made by the court that supported the issuance of a protection order be contained on the protection order itself. The findings themselves must of course be made,

and any issue a defendant has regarding the issuing court's original findings must be brought before the issuing court. However, nowhere in RCW 26.50 is there a requirement that these findings be made part of the actual order. RCW 26.50. The only wording actually required on the order is notice of criminal penalties resulting from violation, and a warning to the defendant regarding arrest stemming from invited contact. RCW 26.50.35 (1)(c). This required wording was contained on the Order the defendant violated.

In State v. Wilson, 117 Wn.App. 1, 75 P.3d 573 (2003), this court rejected a defendant's claim that a no-contact order did not comply with due process requirements because it did not specifically state that a third violation of a no-contact order would be a felony. This court reasoned that the no-contact order in question complied with all the requirements of the statute and city code, and that the no-contact order contained all the wording actually required by the statute and cited the penalty provisions of the statute. Id. at 12, 13. Therefore, the no-contact order was valid when issued.

The case at bar is nearly identical to Wilson. The defendant complains because the findings contained on the Order were not verbatim to the findings required by the RCW 26.50.060(2). However, there is no

statutory requirement that these findings be contained on the Order. The Order complied in every way with the requirements of the statute, just as the no-contact order did in Wilson. And here, any potential prejudice is substantially less, as the findings have nothing to do with what the defendant needs to know to keep himself from being criminally charged, or what penalties he would face should he fail to do so.

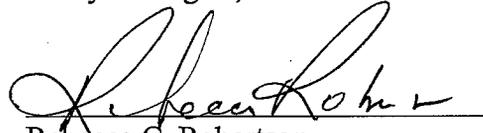
Additionally, the King County Superior Court's decision is in direct conflict with Seattle v. Edwards, 87 Wn.App. 305, 941 P.2d 697 (1997) and Spence v. Kaminski, 103 Wn.App. 325, 12 P.3d 1030 (2000). Those cases state that RCW 26.50.060 does not require any particular wording on protection orders. Edwards at 310, Spence at 331. It should be noted that this rule from Spence is contained in the annotated section of RCW 26.50.060. RCW 26.50.060(2) has not been amended since 1995.

Because there is no requirement that specific wording regarding the issuing Superior Court's factual findings be included on the Order, the decision of the King County Superior Court was clearly erroneous. Any further attack on the findings underlying the Order in the trial court or an appellate court is an impermissible collateral attack. State v. Joy, 128 Wn.App. 160, 114 P.3d 1228 (2005). For this reason, the decision of the King County Superior Court should be reversed.

VI. CONCLUSION

Because the King County Superior Court's decision is in direct conflict with applicable case law, its decision should be reversed.

Respectfully submitted this 29th day of August, 2008.

A handwritten signature in black ink, appearing to read "Rebecca Robertson", written over a horizontal line.

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