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

**COA No. 61027-9-I**

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**CITY OF SEATTLE,**  
Appellant/Plaintiff,

v.

**ROBERT MAY,**  
Respondent/Defendant.

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**REPLY BRIEF OF APPELLANT/CROSS-RESPONDENT**

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**STATUTES AND OTHER AUTHORITY**

RCW 10.31.100(2)

RCW 10.99

RCW 26.50

RCW 71.09.090(2)

Substitute House Bill 1642



## **I. ISSUES PRESENTED FOR REVIEW**

- A. The trial court did not abuse its discretion in admitting the Order.
  - 1. The defendant's challenge to the Order is an impermissible collateral attack.
  - 2. The defendant attempted to attack the sufficiency of the evidence supporting the Order.
  - 3. The term "applicable" does not create a new avenue for reviewing the issuing court's decision to issue a no contact order.
- B. The Order substantially complied with RCW 26.50.
- C. The defendant was afforded due process and the Order informed him of what conduct was criminal.
  - 1. The defense interpretation creates an entirely absurd result.
  - 2. The defense interpretation is inconsistent with the statutory scheme.
  - 3. The defense interpretation is inconsistent with the broader purpose.
  - 4. Neither the rule of lenity nor the last antecedent rule apply.

## **II. STATEMENT OF THE CASE**

On May 27, 2005, the defendant was charged under Seattle Municipal Code 12A.06.180 with 2 counts of violating a Protection Order (Order), which had been issued by King County Superior Court in 1996 to protect his wife and children. The defendant challenged the validity of the Order in Seattle Municipal Court only upon being charged with its violation. The defense claimed the King County Superior Court did not make findings of fact sufficient to issue the Permanent Protection Order. CP 23-24,

28-29. The defense attorney argued to the trial court that because additional findings were required to issue a permanent order, he had attempted to go through the original King County Superior Court record to determine if they had actually been made, stating “Without this file we can’t know if it was a lawfully issued order.”

CP 23. Defense counsel argued that the trial court should review the findings of the original court, citing case law regarding truth and sufficiency of findings on direct appeal. CP 28-29. The trial court found that the Order was valid and applicable, there was nothing to suggest the Superior Court did not make the correct statutory findings, and that the Order was valid on its face and not void. 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, 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 Superior Court reversed the defendant's conviction, finding that because the language on the actual Order did not match the language of the statute exactly, the Order was invalid. CP 98. The court did not rule on the other claims of error, and the City appealed the limited ruling. The defendant cross-appeals on the issues not reached by the King County Superior Court.

### III. ARGUMENT

#### A. The trial court did not abuse its discretion in admitting the Order.

##### 1. The defendant's challenge to the Order is an impermissible collateral attack.

The defendant claims Seattle Municipal Court erred in determining that the Order he was charged with violating was valid and applicable. However, the case defendant cites as authority creates no new avenue of challenge to a facially valid order, and the trial court did not abuse its discretion in determining that the Order was valid. Unless the Order was

absolutely void, the Defendant had a duty to obey it, and the Order could only be void if King County Superior Court had no jurisdiction to impose it. When the Defendant violated the Order, it was in full force and effect. Therefore, his challenge is an impermissible collateral attack.

Erroneous orders may be attacked in a collateral proceeding only if absolutely void. State ex rel Ewing v. Morris, 120 Wash. 146, 207 P. 18 (1922), State v. Lew, 25 Wn.2d 854, 172 P.2d 289 (1946), State ex rel Snohomish County v. Sperry, 79 Wn.2d 69, 483 P.2d 608 (1971). A collateral proceeding is “any proceeding which is not instituted for the express purpose of annulling, correcting, or modifying the judgment, or enjoining its execution.” Peyton v. Peyton, 68 P. 757 (Wash. 1902), citing Morrill v. Morrill, 25 Pac. 362, 11L.R.A. 155, 23 Am.St.Rpe. 94 (Ore. 1890) and Kalb v. Society, 65 Pac. 559 (Wash. 1901). A judgment is void only where the court lacks jurisdiction of the parties or the subject matter or lacks the inherent power to enter the particular order involved, “even if there is a fundamental error of law appearing upon the face of the record.” Dike v. Dike, 75 Wn.2d 1, 448 P.2d 490, 495 (1968), quoting Robertson v. Commonwealth of Virginia, 181 Va. 520, 536, 25 S.E. 2d 352, 358, 146 A.L.R. 966 (1943), quoting Freeman on Judgments, 5th Ed., s 357, p. 744, and see also State v. Alter, 67 Wn.2d 111, 406 P.2d 765 (1965), Bresolin

v. Morris, 86 Wn.2d 241, 543 P.2d 325 (1975).

A decision regarding an impermissible collateral attack on an anti-harassment order is instructional. In State v. Noah, 103 Wn. App. 29, 9 P.3d 858 (2000) review denied, Calof v. Casebeer, 143 Wn.2d 1014, 22 P.3d 802 (2001), the defendant was found in contempt of an anti-harassment order, issued by a district court. Id. at 33. On appeal, Noah contended the anti-harassment order was unenforceable because the distance provision was excessive, and its terms constituted a “prior restraint” on his right to free speech. Id. at 36-43. Division One found that even assuming the anti-harassment order’s terms were unconstitutional, the order was only voidable. Id. at 44. “The collateral bar rule generally states that a court order cannot be ‘collaterally attacked in contempt proceedings arising from its violation, since a contempt judgment will normally stand even if the order violated was erroneous or was later ruled invalid.’” Id. at 46. Because Noah violated the order before attacking it, the contempt order was affirmed. Id. at 48.

In Noah, Division One cited the “inviolable rule” set down by the United States Supreme Court in Walker v. City of Birmingham, 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967), which stated that even if unconstitutional, a rule of law must be obeyed until set aside in an

appropriate proceeding. Noah, 103 Wn. App. at 45. Division One concluded “any attack on the order in a contempt proceeding would be collateral and unsuccessful.” Id. at 46. See Walker, 388 U.S. at 309-315 (Petitioners violated an anti-parade injunction before challenging its validity. Therefore, although *substantial* constitutional issues had been raised, the court refused to consider them); Howat v. State of Kansas, 285 U.S. 181, 189-190, 42 S.Ct. 277, 66 L.Ed 550 (“It is for the court of first instance to determine the question of the validity of the law, and orders based on its decisions are to be respected, and disobedience of them is contempt of its lawful authority.”)

Here, as in Noah and Walker, even if the King County Superior Court did not make the required findings of fact necessary to issue the Order, the Order would not be void, but merely voidable. The Order was akin to the anti-harassment order in Noah and the injunction in Walker. The defendant’s violation of the Order, like Noah’s contempt of the anti-harassment order, barred any subsequent collateral attack on its validity based on the underlying facts that supported its issuance in the trial court or claim that the issuing court did not follow proper procedures. The King County Superior Court’s decision should be respected by other courts and the defendant until it is changed by direct challenge or appeal.

Because King County Superior Court had jurisdiction to impose the Order, until the Order is invalidated by a direct challenge, the defendant is required to obey it. The defendant raised no such direct challenge, or if he did in the many times he went back before the King County Superior Court under the same cause number, it was unsuccessful. Therefore, he had a duty to obey the Order.

The defendant claims that the Seattle Municipal Court did not view their challenge as a collateral attack. If so, the Seattle Municipal Court erred. However, the record indicates that the court did believe the defendant's challenge was akin to a collateral attack. The court used words and language that mirrored the case law regarding collateral attacks on valid orders when making her ruling. The trial court stated:

In examining these particular orders, they appear to be issued by a court of competent jurisdiction. They appear to be issued pursuant to statute. They appear to be applicable to the parties. They appear to be exercised pursuant to statute. The issue is whether there were findings that supported the court's issuing the orders permanently....

In considering the Miller case with other cases on void or voidable orders, the court would have to find that this order is not void on its face. There is nothing to show that it is inapplicable. The only possibility would be that it might be voidable if the court did not make the appropriate findings....there is nothing from looking at all terms of the order to conclude merely from the order that for some reason this court should determine that in 1996 the court and the judge at that time made an incorrect decision.

Obviously, that kind of determination would have to be made by appealing the order.

CP 22.

The trial court correctly determined that the defense was attempting to collaterally attack a facially valid order some ten years after it was issued. This is not allowed under the law. While defense claims that the trial court incorrectly shifted the burden to the defense to show the order was invalid, this is not the case. In dicta, the trial court stated that if an order was not void, but merely voidable, prosecution would not be hindered as the City would have established facial validity, and the defense would have to provide more information. The burden was not shifted to the defendant to establish that the Order was invalid in the trial court. The defendant was merely asked to provide some sort of argument as to why he believed that the Order was invalid, when the Order appeared valid on its face. Case law regarding constitutional validity of predicate convictions is instructive. A defendant may challenge the constitutionality of predicate convictions, but he bears the initial burden of offering a “colorable, fact specific argument” in support of his claim of error. State v. Summers, 120 Wn.2d 801, 812, 846 P.2d 490 (1993). At that point, the burden shifts to the prosecution to prove validity. The defendant could not provide any fact specific argument that the correct findings were not made,

other than their claim that the findings were not on the Order and their belief that the issuing court had erred.

In State v. Snapp, 119 Wn.App. 614, 625, 82 P.3d 252 (2004) a defendant challenged the issuance of a no contact order after he violated it, claiming that the court had no jurisdiction to issue the order and the state had to prove the validity of the order to the jury. In rejecting the defendant's claim, the court stated that the State is not required to anticipate every possible challenge to the validity of a protection order, prove to the trial court that every procedure was followed by the issuing court, and not every defect in a no contact order renders it invalid. Id. at 624, 625. The Snapp court stated that the State must only prove that there is an order, granted under the appropriate statute, the person restrained knew of the order, and there was a violation of one of its provisions. Id. at 625. Therefore, the City only had to prove that the Order was facially valid.

Given the great risk to society posed by domestic violence situations, and the City's great interest in providing protection to domestic violence victims, the defendant's attempt to challenge King County Superior Court's findings of fact undermines long established legal principles. If the defendant was in any way confused by the Order or

believed it to be unlawfully issued, he was free to petition King County Superior Court for clarification, revision, or vacation. He failed to do so. The fact that the terms in the Order indicating that it is permanent do not exactly mirror what is contained in the statute does not allow the Defendant to raise a collateral attack. As demonstrated in the City's opening brief, specific findings of fact are not included or required on the no contact orders. 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). The Order stated "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." RCW 25.50 requires the court find "the respondent is likely to resume acts of domestic violence against petitioner...when the order expires." The trial court was correct that these are one in the same, the boilerplate language on the Order was statutorily sufficient, and is not even required.

2. The defendant attempted to attack the sufficiency of the evidence supporting the Order.

The defendant characterizes his appeal now as a challenge to the Seattle Municipal Court's finding that the Order was valid; however it is a challenge to the sufficiency of the evidence supporting the original court's decision to issue a permanent protection order in 1996.

A defendant may not collaterally challenge the sufficiency of the evidence supporting a protection order. In State v. Joy, 128 Wn.App. 160, 114 P.3d 1228 (2005), the defendant was charged with violating a protection order and asked the criminal trial court to evaluate whether the order should have been issued in the first place. Id., at 164. The court distinguished between the facial validity of an order and the evidence supporting the order, and held that while a criminal trial court may evaluate the facial validity of an order, defendants cannot challenge the sufficiency of the evidence supporting the issuing court's decision. Id., at 164. No authority cited by defense contradicts the Joy rule.

The defense at trial essentially asked the trial court to review the evidence and findings of the King County Superior Court, arguing that this was the trial court's job when reviewing no contact orders. And then they requested that the Superior Court review the trial courts findings, *and* the findings of the original issuing court. If defendants are allowed this kind of collateral challenge to orders they have already violated, where does it end? Do defendants have no duty to obey orders until the Unites States Supreme Court reviews the facts underlying their issuance? This is essentially what defense is asking the court to allow. This is an impermissible collateral attack, and the defendant's appeal should be

denied.

It should be noted that the Seattle Municipal Court did review the underlying facts that supported the issuance of the Order. The court, while stating that direct appeal was the proper way to challenge the Order, stated that there was no showing that the judge in 1996 abused his or her discretion in issuing the Order, as there were allegations of assault against the defendant's wife at the time and a former wife, possible property damage, and maintaining unwanted contact. The Seattle Municipal Court found that these acts have been found sufficient by appellate courts, and so found in this case. CP 43. Should the defense be successful in getting this court to review the allegations underlying the Order, made in 1996, this court should also find that these allegations were sufficient to support issuance of a permanent order, given the history of domestic violence.

This collateral attack is precisely the kind of challenge that the Joy court held is not appropriate during (or after) any resulting criminal trial for a violation of an order.

3. The term "applicable" does not create a new avenue for reviewing the issuing court's decision to issue a no contact order.

The defendant claims that the use of the word "applicable" in State v. Miller, 156 Wn.2d 23, 123 P.3d 827 (2005) creates authority for a

defendant to collaterally attack a protection order, allowing a defendant to challenge the issuing court's findings of fact and conclusions of law before a criminal trial court after the defendant is charged with violating the order. Additionally, the defendant claims that because the findings were not contained on the Order, the Order was facially invalid and therefore the trial court had to evaluate the underlying facts that supported the issuance of the Order.

The term "applicable" as used in Miller essentially means facially valid and relevant. An order should contain what is statutorily required to be on its face, should be issued under an appropriate statute, apply to the parties, and support the charge. It does not allow collateral challenge or allow a defendant to challenge what occurred in the issuing court before the criminal trial court. There is no statement in Miller that a new test has been created.

In Miller, the Supreme Court ruled that the validity of a no contact order was not an implied element of Violation of a No Contact Order. Instead, the validity of a no contact order was a question of law to be determined by the trial court. Miller, 156 Wn.2d at 24. Miller discussed several prior cases regarded the facial validity of no contact orders, including State v. Carmen, 118 Wn.App. 655, 77 P.3d 368 (2003), stating

“Carmen rested in part on the comparative expertise of a judge to make reasoned judgments about the legal authority by which predicate no contact orders were issued. Carmen also noted, properly, that ‘the very relevancy of the prior convictions depended upon whether they qualified as predicate convictions under the statute. If they had not so qualified, the jury should never have been permitted to consider them.’” Miller, 156 Wn.2d at 30, quoting Carmen, 118 Wn.App. at 664.

What the court in Miller was discussing was the orders *relevancy*. This is what is meant by “applicability.” Does this order have anything to do with the crime charged? If not, it is not relevant and therefore does not apply to the current criminal charges. “Applicable” does not mean that the trial court needs to determine that, beyond what is on the face of the document, all statutory requirements were met when the order was issued by another court.

Post-Miller case law support this interpretation of “applicability.” In State v. Gray, this court held that the validity of prior convictions that operated as predicate offenses for a Felony Violation of a No Contact Order were legal issues to be decided by the trial court. State v. Gray, 134 Wn.App. 547, 549, 138 P.3d 1123 (2006). In this court’s analysis in Gray, Miller was discussed in terms of its holding that the validity of a no

was up to the trial court to determine, not the jury. This court stated “But Miller explicitly approved of Carmen’s holding that whether the prior convictions qualified as predicate convictions under the statute was a threshold determination of **relevance, or applicability**, properly left to the court.” Gray, 134 Wn.App. at 555 (emphasis added). Miller’s analysis of Carmen and Gray’s analysis of Miller make clear that the term “applicable” is used almost interchangeably with the term “relevant.” Meaning, does this order apply to these people and this charge or is it in effect “relevant” to this proceeding. Expanding the term “applicable” to mean that the trial court should somehow determine that the issuing court had complied with all statutes is legally and practically untenable, and goes against all existing case law regarding collateral attacks on no contact orders. If the defendant did not believe the proper finding had been made in the issuing court, he should have challenged it there.

Because the term “applicability” does not allow a defendant to challenge the underlying findings and conclusions of an issuing court, the defendant’s collaterally attacked a facially valid order. The defendant’s challenge should be denied.

**B. The Order substantially complied with RCW 26.50.**

Should this court determine that the findings were required to be

placed on the Order, the Superior Court should still be reversed and the defendant's conviction affirmed because the Order substantially complied with the statute because the Order notified the defendant what conduct was proscribed, and the findings contained on the Order were essentially the same as those required in the statute.

Due process requires that citizens be afforded fair warning of proscribed conduct. City of Spokane v. Douglass, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). "Citizens must have notice not only of what conduct is criminal, but also of the severity of the penalty." State v. Hunter, 102 Wn. App. 630, 638, 9 P.3d 872 (2000) (citing BMW of North America, Inc., v. Gore, 517 U.S. 559, 574, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996))

However, "substantial compliance has been defined as actual compliance in respect to the substance essential to every reasonable objective of the statute," Continental Sports Corp. v. Dept. of Labor and Industries, 128 Wn.2d 594, 602, 910 P.2d 1284 (1996), quoting City of Seattle v. Public Employment Relations Comm'n, 116 Wn.2d 923, 928, 809 P.2d 1377 (1991), (quoting In re Santore, 28 Wn. App. 319, 327, 623 P.2d 702, review denied, 95 Wn.2d 1019 (1981)) ("there need not be strict compliance with each and every provision of [the statute], *even though such provisions may be couched in mandatory language*").

(Emphasis added).

Technical defects have been held non-fatal under similar circumstances. See, e.g., State v. Storhoff, 133 Wn.2d 523, 946 P.2d 783 (1997). In Storhoff, the Department of Licensing sent notices incorrectly stating defendants had only ten days to request a formal revocation hearing, as opposed to the fifteen days authorized by statute. Id. at 526. The Washington State Supreme Court held that “minor procedural errors do not necessarily rise to the level of due process violation.” Id. at 527.

A misstatement of law or an omission does not support judicial relief absent a showing of actual prejudice to the defendant. See Grewal v. Dep’t of Licensing, 108 Wn. App. 815, 822-23, 33 P.3d 94 (2001) (inaccuracy in statutory breath test warnings did not render them invalid absent prejudice), State v. Harper, 118 Wn.2d 151, 822 P.2d 775 (1992) (absent prejudice, incorrect statutory citation in criminal charging document not grounds for reversal). The defense failed to show that how the findings were written on the order prejudiced him in any way.

In Storhoff, the court held that absent actual prejudice to the defendants it would not invalidate their license revocations: “We are reluctant to excuse the Defendant’s serious criminal violations due to a minor procedural error that did not actually prejudice the Defendants.”

Storhoff, 133 Wn.2d at 532. Acts of domestic violence, too, are serious criminal violations. See RCW 10.99.010. This Court should not uphold the King County Superior Court's ruling absent any actual prejudice to the defendant or his due process rights.

Without a showing of prejudice, the court will presume prejudice only in the case of a material departure from a statute. State. v. Tingdale, 117 Wn.2d 595, 603, 817 P.2d 850 (1991), quoting Roche Fruit Co. v. Northern Pacific Ry., 18 Wn.2d 484, 487, 139 P.2d 714 (1943).

Here, the defendant was provided with notice regarding what conduct was proscribed. The Order complied with everything that was required in the statute. And the findings as written on the Order were essentially the same as those required by the statute. Therefore, the Order substantially complied with the statute, is valid on its face, and the trial court did not err in admitting it. The defendant cannot claim he was prejudiced because the wording regarding findings on the Order did not exactly match the wording regarding findings contained in the statute. The defendant had ten years to correct any perceived mistake, and he failed to do so until after he had violated the Order. The defendant's request should be denied.

**C. The defendant was afforded due process and the Order informed him of what conduct was criminal.**

The defendant claims he was misled by the Order because it did not specifically state that it was also a violation under the Seattle Municipal Code. Additionally, he claims that the Order did not prohibit the conduct he engaged in.

First, the defendant's assertion that he was not given notice that his violation of the Order was a crime under the Seattle Municipal Code is without merit. Under his reasoning, any protection order would have to list every single jurisdiction that could charge him with a crime when he violated the Order. The Order told defendant that violation of its terms was a crime. He was therefore on notice as to what conduct was criminal. Although State v. Wilson, 117 Wn.App. 1, 75 P.3d 573 (2003) was cited by defense to support their argument in the lower court, the court in Wilson rejected the argument that an order was misleading because the order 'did not specify that the listed felonies were the only felonies which would result from a violation of the order.' Id. at 13. The same analysis should be used here. Just because the Order did not list all the jurisdictions where defendant could be charged with a crime did not mean he was not informed of what conduct was criminalized under the statute. RCW 26.50 did not require this kind of notice. The defendant's due

process rights were not violated.

As stated above, a misstatement of law or an omission does not support judicial relief absent a showing of actual prejudice to the defendant. *Grewal*, 108 Wn. App. at 822-23, and without a showing of prejudice, the court will presume prejudice only in the case of a material departure from a statute. *Tingdale*, 117 Wn.2d at 603. The defense failed to show that how the absence of warnings that violation of the Order could subject the defendant to criminal prosecution in all other jurisdictions prejudiced him in any way. He cannot make any factual assertion that he was actually misled.

In comparative cases, a court's failure to inform a defendant that his conviction would strip him of his firearms rights was not a violation of due process because the defendants were not affirmatively misled. *State v. Carter*, 127 Wn.App. 713, 720, 112 P.3d 561 (2005) ("The sentencing court need not make express affirmative assurances on the status of the convicted defendant's rights"); *State v. Blum*, 121 Wn.App. 1, 85 P.3d 373 (2004) (Although Colorado court did not notify defendant he could not possess firearms, court did not actively mislead him into believing he could, so there was no due process violation); *State v. Minor*, 133 Wn.App. 636, 137 P.3d 782 (2006) (Court failed to check box indicating

defendant had lost firearms rights, but defendant could not demonstrate he relied on the judgment and sentence to determine whether he could possess a firearm and court did nothing to affirmatively indicate that defendant could possess a firearm). In these cases, the courts ruled that the defendants could not demonstrate that they relied on the courts' omissions, so there was no prejudice.

Here, defendant claims that because the Seattle Municipal Code is broader than the RCWs (see argument below) the defendant was misled. However, that argument has no merit, and the defendant cannot point to any specific facts to demonstrate that he was affirmatively misled.

Additionally, the defendant's claim that his conduct did not violate the Order because it was not criminalized under RCW 26.50 is also without merit. This question has already been decided in the City's favor in State v. Bunker, 144 Wn.App. 407, 183 P.3d 1086 (2008). In Bunker, this court found that although former RCW 26.50.110 was poorly written, under rules of statutory construction and legislative intent, it was clear that the legislature meant to criminalize exactly the conduct in which the defendant engaged. Bunker, 183 P.3d at 1089-1093. Thus, the defendant's argument should be rejected. Although Division II disagreed in State v. Hogan, 145 Wn.App. 210, 218, 192 P.3d 915 (2008), that

matter will likely be accepted for review.

However, the Washington State Supreme Court should affirm this court in Bunker because the defense assertion that RCW 26.50 does not criminalize the defendant's conduct is without merit. This Court should, and did, interpret the statute with the sole purpose of determining the legislature's intent. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). In this situation the legislature's intent as to whether the defendant's conduct constitutes a crime *is* entirely clear. This is because the legislature tells us what their intent was -- and is -- in relation to RCW 26.50.

Substitute House Bill 1642 removes the language "for which an arrest is required under RCW 10.31.100 (2)," the language relied upon by the defendant.

The new bill states its purpose when in section 1 it reads:

The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a *criminal offense* and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. (Italics included).

This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington.

Substitute House Bill 1642.

The legislature has spoken in no uncertain terms -- and it has indicated that the intent of RCW 26.50 always was, and still is, that any violation of a protection order under RCW 26.50 constitutes a crime. Had the statute been intended to be read the way the defense argues, one could have expected to have seen language to the effect that after decriminalizing certain actions the legislature is now going back to criminalizing this behavior. But that expression is not found. The legislature never once contemplated that some courts would read RCW 26.50 out of context with the rest of the domestic violence statutes and decriminalize acts that have always been intended to be deemed crimes.

The same is true here. The clarification provided by the legislature allows us to see the legislature's intention in drafting RCW 26.50, and there is no reason why this Court should not follow that intention.

1. The defense interpretation creates an entirely absurd result.

When interpreting statutes, a court should try to avoid absurd results. Roy v. City of Everett, 118 Wn.2d 352, 357, 823 P.2d 1084 (1992) (“Any statutory interpretation which would render an unreasonable and illogical consequence should be avoided.”). Here, if the court adopted the defense interpretation, this would be absurd, allowing a foreign protection order -- e.g., a no-contact order issued by a court in Guam -- to

have greater force than an order issued by a Washington court. This would also mean that the respondent of a no contact order could not go within 500 feet of a protected person's residence, but could start to yell in the protected person's face if they were both 501 feet away from the residence. And finally, this would also mean that for the government to ensure any meaningful protection for victims, it would have to list every possible area in Seattle where the victim would possibly go (i.e., the store, the park etc.). These examples strongly suggest why the defense position is entirely untenable.

2. The defense interpretation is inconsistent with the statutory scheme.

When interpreting a statute, a court must interpret the provisions to effectuate a consistent statutory scheme: State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282 (2000) (noting how related statutory provisions must be harmonized to effectuate a consistent statutory scheme). Here, the statutory scheme -- which provides for expansive protection of victims of domestic violence by criminalizing particular behaviors -- shows that the defense interpretation of RCW 26.50.110 renders the rest of the statutory scheme nonsensical. For example:

The defense reading of the statute simply does not comport with the statutory scheme against domestic violence. Additionally, it renders

important victim protections essentially meaningless. When a respondent of a protection order violates the order to not contact the victim directly or indirectly, under the defense interpretation, the victim has no criminal remedy. In fact, the victim is unable to count on the police to get involved. According to the defendant's reasoning, the best a victim could do is go back to the issuing court and ask that the respondent be held in contempt of court.

3. The defense interpretation is inconsistent with the broader purpose.

Further, the defense interpretation is entirely inconsistent with the broader legislative goal to protect victims of domestic violence. Courts must attempt to interpret a statute consistent with the overall statutory purpose. Roy, 118 Wn.2d at 357 (“Legislative intent is to be determined in the context of the entire statute, interpreted in terms of the statute’s general purpose.”). First and foremost, this court should bear in mind that the Legislature’s purpose in creating no-contact orders and punishments for violating them is “to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010, quoted in State v. Ward, 148 Wn.2d 803, 810; 64 P.3d 640 (2003) (describing the felony enhancement

provisions associated with violations of former Chapter 10.99 RCW). To effectuate this goal, the Legislature created several statutory means of obtaining no-contact and/or protection orders and allowed victims and petitioners to use any of those means available to obtain an order when needed. See inter alia, RCW chapters 10.99, 26.09, 26.10, 26.26, and 26.50. In addition, the Legislature provided that Washington courts would recognize no-contact or protection-type orders issued in other jurisdictions, as long as certain fundamental due process requisites were satisfied. See RCW 26.50.110 and 26.52.020. Indeed, in regard to foreign protection order, the Legislature went so far as to declare "a presumption in favor of validity where the order appears authentic on its face." RCW 26.52.020. See also State v. Snapp, 119 Wn.App. 614, 82 P.3d 252 (2004).

4. Neither the rule of lenity nor the last antecedent rule apply.

In Re Post Sentencing Review of Charles, 135 Wn 2d. 239, 955 P. 2d 798 (1998) clarifies that the rule of lenity requires the court to interpret a statute in the defendant's favor but only if two prerequisite conditions apply. First, the statute must be ambiguous. Id. Second, legislative intent to the contrary must be absent. Id. Here, the statute is not ambiguous when the court interprets the statute in concert with the entire domestic violence statutory scheme. Second, this court would be hard pressed to

reach the conclusion that legislative intent to the contrary is absent in view of the purpose of the domestic violence statute and the current legislature's clarification. Because the defense fails to establish both of these condition precedents, the court should not consider the rule of lenity.

The Last Antecedent Rule should also not control. In Berrocal v. Fernandez, 155 Wash. 2d 585, 121 P. 3d 82 (2005) the Washington State Supreme Court found that the court needs to make sure than the last antecedent rule does not run afoul of the requirement that they "remain careful to avoid unlikely, absurd or strained" results. Id. The court found that the practical implication of applying the last antecedent rule was that individuals were not considered employees when they were sleeping but when awoken to ward off predators they would be considered employees. As in Berrocal, there would be absurd outcomes and practical difficulties that would arise should this court apply the last antecedent rule. As a result, this court should adopt the approach taken by the Washington State Supreme Court and determine that it cannot adopt the reasoning of the last antecedent rule without running afoul of creating unlikely, absurd, or strained results.

In short, by ignoring what the legislature stated about its intent and focusing solely on "rules" of statutory interpretation, the defense argument

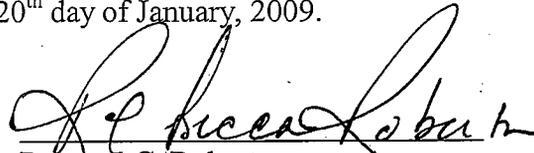
would still fail, as the defense interpretation is inconsistent with the interpretation of the statute as a whole, with the purpose of the statute, and would create an absurd result and lead to other portions being meaningless.

The defense challenge to the Order should therefore be denied.

IV. CONCLUSION

For the foregoing reasons the Court should find the defendant's attack on the Order is collateral and reverse the decision of King County Superior Court.

Respectfully submitted this 20<sup>th</sup> day of January, 2009.

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

Rebecca C. Robertson,  
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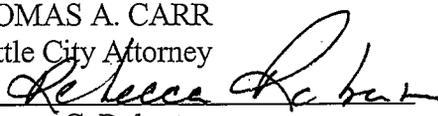
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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION I

City of Seattle )  
)  
Petitioner, ) NO. 61027-9-1  
) Superior Court No:  
) 06-1-07479-0 SEA  
vs. )  
) CERTIFICATE OF SERVICE  
Robert May )  
)  
Respondent. )  
)  
)  
)

I certify that I delivered a copy of the Reply Brief of  
Appellant/Cross-Respondent to Christine Jackson, Petitioner's attorney, at  
The Defender Association, 810 Third Ave, Ste 800, Seattle, WA 98104,  
via ABC Legal Messengers , on the 20<sup>th</sup> of January, 2009.

DATED this 20<sup>h</sup> day of January, 2009.

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