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STATE OF WASHINGTON
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NO. 95192-6

**SUPREME COURT OF THE
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

STEVEN BRIAN YELOVICH, PETITIONER

Appeal from the Superior Court of Pierce County
The Honorable Jerry Costello, Judge

Court of Appeals No. 48949-0
Superior Court No. 15-1-02224-7

Supplemental Brief of Respondent

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A. ISSUES PRESENTED FOR REVIEW.

1. Is RCW 9A.16.020(3)'s general privilege to protect property with force limited by RCW 26.50.080's specific civil standby provision to ensure property disputes among people under domestic violence no-contact orders will not escalate into the predictably deadly conflicts our Domestic Violence Prevention Act is intended to preempt?

2. Did Division II correctly interpret RCW 9A.16.020 (3)'s scope by holding defense of property is not available when a claimed interference is completed outside the lawful possessor's presence as the statute does not permit vigilantes to forcibly retake property once it has been reduced to another's possession?

3. Should defendant's domestic violence conviction be otherwise affirmed since it was proper to withhold a defense of property instruction from a first aggressor who used excessive force to allegedly retake a phone he had no reason to believe his victim possessed?

B. STATEMENT OF THE CASE.

Defendant was convicted by a properly instructed jury for violating a domestic violence ("DV") no-contact order through an assault upon the protected party. CP 62-65. He was also convicted for bail jumping, but that conviction is not at issue on appeal. *Id.* He was previously convicted of DV assault, DV harassment and violation of a DV no-contact order. CP 100. On June 7, 2015, De Armond had been with him for 5 years when he attacked her in broad daylight on a public street.[1] She is "a small lady" with "fragile skin." 2RP 168. He is larger than her. 3RP 277. According to her, she fled from the house where they were living in violation of the no-contact order when she sensed he was "getting violent" and "ready to snap."[2] He reacted by nearly running her down with his car. 4RP 329, 349. He then pushed her to the ground where he dragged her across gravel to the place he repeatedly punched her in the face while trying to take her purse.[3] The brutal beating continued until a Good Samaritan intervened. *Id.*

The version of events advanced to secure an instruction on defense of property derived from defendant's testimony. According to him, he had left his phone unsecured for 45 minutes to 1 hour along a busy street in a car with a broken window as he moved boxes on the other side of a fence.

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[1] 3RP 254; 4RP 320, 322-24.
[2] 2RP 124; 3RP 245-46; 4RP 326-28, 341-42, 348; Ex.1
[3] 2RP 125-28, 138, 141-43, 152-55, 165-66; 4RP 325, 333, 337, 349, 351-53; Ex. 4-11.

3RP 245; 4RP 297-306.[4] His attention was allegedly drawn to the street by a passerby who may not have even walked on the same side of the street as his unattended car.[5] This purportedly prompted his discovery of a phone missing from his car; whereupon, he noticed De Armond down the street looking back at him. *Id.* Based on no more proof than that he concluded she was the thief, so he chased her down, then tried to tear off a purse strapped to her body not knowing if it contained his phone. *Id.* At trial, he conceded she never posed a threat to him. 3RP 270. He also acknowledged knowing a court order prohibited him from having any contact with her.[6]

The trial court decided defendant was not entitled to a defense of property instruction as a matter of law, for the defense does not permit the recovery of property possessed by another when its theft is discovered. 4RP 379, 381-83. According to the court, defendant "was acting offensively, not defensively" when he used force against De Armond. *Id.* Self-defense instructions were withheld due to a lack of supporting evidence. *Id.* Division II affirmed, holding defense of property is not available unless its proponent is present when the disputed property is taken. No. 48949-0-II. Review was granted with a request for discussion on whether defense of property can be asserted in domestic violence cases.

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[4] 3RP 247-48, 260-64, 280-81.
[5] 3RP 248-50, 260-63, 267.
[6] 3RP 256-57, 267-68; Ex.1.

C. ARGUMENT.

1. RCW 9A.16.020(3)'S GENERAL PRIVILEGE TO PROTECT PROPERTY WITH FORCE MUST BE LIMITED BY RCW 26.50.080'S SPECIFIC CIVIL STANDBY PROVISION TO ENSURE THE INEVITABLE PROPERTY DISPUTES AMONG PEOPLE UNDER DV NO-CONTACT ORDERS WILL NOT ESCALATE INTO THE DEADLY ENCOUNTERS OUR DOMESTIC VIOLENCE PREVENTION ACT SEEKS TO PREEMPT.

Our Legislature has recognized domestic violence is a community problem that accounts for a significant percentage of the nation's violent crimes. ***Danny v. Laidlaw Transit Service, Inc.***, 165 Wn.2d 200, 209, 193 P.3d 128 (2008). Domestic violence is the leading cause of injury among women. *Id.* at 215[7] Statutes were enacted in Washington to ensure victims of domestic violence receive the "maximum protection" from abuse which the law and those who enforce it can provide. ***Danny,*** 165 Wn.2d at 209; RCW 10.99.010. No-contact orders are integral tools for increasing victim safety. *Id.* So are civil standby orders which command police to oversee the safe transfer of comingled property peacefully divided by impartial courts. RCW 26.50.080; ***Osborne v. Seymour***, 164 Wn.App. 820, 857, 265 P.3d 917 (2011). Despite such measures the societal "crisis" caused by domestic violence continues to grow. ***Danny,*** 165 Wn.2d at 209.

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[7] RCW 43.70.610; Catherine Klein & Leslye Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statues and Case Law, 21 Hofstra L.Rev. 801, 807-11 (1993).

This Court directed discussion on whether defense of property under RCW 9A.16.020(3) can be raised by one charged for violating a no-contact order through assault. That general statute cannot be coherently applied in domestic violence cases. The pretext for attack it makes available to those restrained by domestic violence orders undermines the maximum protection the specific provisions of the Domestic Violence Prevention Act provide. Specific statutes like it modify general statutes like RCW 9A.16.020(3) when they address the same subject such as physical contact amid a property dispute. RCW 26.50.080; ***Diaz v. State***, 175 Wn.2d 457, 470, 285 P.3d 873 (2012); ***Leonard v. City of Spokane***, 127 Wn.2d 194, 200, 897 P.2d 358 (1995). If alternative constructions are possible, the one that best fulfills the legislative intent to protect victims should prevail. ***Roy v. City of Everett***, 118 Wn.2d 352, 357, 823 P.2d 1084 (1992).

People unrestrained by domestic violence no-contact orders may generally use force to prevent interferences with their lawfully possessed property. RCW 9A.16.020(3). But one cannot logically use lawful force against another one cannot lawfully contact. RCW 26.50.110 (2) (contact triggers arrest). Most states empower courts to resolve property disputes in domestic violence cases to eliminate arenas of deadly conflict. 21 Hafstra L. Rev. at 938. Enactment of RCW 26.50.080's civil standby provision put Washington squarely in the main.

By statute, trial courts are authorized to issue no-contact orders at every possible juncture of a domestic violence case. ***State v. Schultz***, 146 Wn.2d 540, 544, 48 P.3d 301 (2002). Those orders are broadly construed to ensure victims are not left unprotected. *Id.* at 546. Civil orders of protection are to be likewise construed to protect victims while vindicating the public interest in preventing domestic violence. ***State v. Dejarlais***, 136 Wn.2d 939, 944, 969 P.2d 90 (1998). The standby provisions of RCW 26.50.080 serve both purposes by ensuring peaceful transfers of commingled property:

> (1) When an order is issued under this chapter upon request of the petitioner, the court may order a peace officer to accompany the petitioner and assist in placing the petitioner in possession of those items indicated in the order or to otherwise assist in the execution of the order of protection. The order shall list all items that are to be included with sufficient specificity to make it clear which property is included. Orders issued under this chapter shall include a designation of the appropriate law enforcement agency to execute, serve, or enforce the order.
>
> (2) Upon order of a court, a peace officer shall accompany the petitioner in an order of protection and assist in placing the petitioner in possession of all items listed in the order and to otherwise assist in the execution of the order.

Id. This provision provides a specific means by which those restrained under no-contact orders can recover property from protected parties. The general privilege to defend property under RCW 9A.16.020(3) is available to restrained parties beyond the specific DV context covered by the order.

Neither the standby statute nor others in our Legislature's domestic violence scheme include defense of property exceptions. It is presumed they were deliberately excluded based on the presumption legislators are aware of existing law into which new statutes are enacted. ***Maziar v. Washington State Dep't of Corr.***, 183 Wn2d 84, 89, 349 P.3d 826 (2015); *e.g.* ***Diaz***, 175 Wn.2d at 470 (more recently enacted statute controls); RCW 9A.16.020(3) (Laws of 1975); RCW 26.50.080 (Laws of 1984). Exceptions are only implied to avoid absurd or unconstitutional results. ***Maziar***, 183 Wn.2d at 89; ***United States v. Rutherford***, 442 U.S. 544, 552, 99 S.Ct. 2470 (1979). Excluding defense of property from domestic violence cases is not absurd as it furthers the scheme's life preserving purpose. Constitutionality is also assured for the codified common law privilege to defend property can be regulated to ensure public order.[8]

Reading RCW 9A.16.020 (3) to inject an exception into no-contact orders would offend the DV scheme's remedial purpose of providing relief to DV victims through clear regulation of conduct. RCW 26.50.080's standby provision is one of "consistent pronouncements over ... 30 years evinc[ing] clear ... policy to prevent domestic violence—a policy the

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[8] *See* ***State v. Bunker***, 169 Wn.2d 571, 580, 238 P.3d 487 (2010); ***Dejarlais***, 136 Wn.2d at 944; ***Gourley v. Gourley***, 158 Wn.2d 460, 468, 145 P.3d 1185 (2006); ***State v. Riley***, 121 Wn.2d 22, 37-38, 846 P.2d 1365 (1993); ***Scheib v. Crosby***, 160 Wn.App. 345, 352, 249 P.3d 184 (2011); ***Peasley v. Puget Sound Tug & Barge Co.***, 13 Wn.2d 485, 125 P.2d 681 (1942); ***State v. Fischer***, 23 Wn.App. 756, 760-61, 598 P.2d 742 (1979).

[L]egislature ... sought to further by taking clear, concrete actions to encourage domestic violence victims to end abuse, leave their abusers, protect their children, ... and cooperate with ... efforts to hold ... abuser[s] accountable." ***Danny***, 165 Wn.2d at 213; ***City of Tacoma v. State,*** 117 Wn.2d 348, 352, 816 P.2d 7 (1991).

Empowering people restrained by no-contact orders to decide when protected parties improperly flee with property capable of being forcibly defended under RCW 9A.16.020 (3) would enable abusers to lawfully erect deadly barriers to the safe escapes so many statutes have been enacted to facilitate. *E.g.*, RCW 26.50.110 (1)(a)(iv) (cannot interfere with protected party's removal of respondent's pet).[9] That defense undermines the domestic violence scheme by enabling the harm the scheme is designed to prevent. *See* ***Shultz***, 146 Wn.2d at 546; ***Roy***, 118 Wn.2d at 358 (immunity for DV arrests insulates police for their protective action, not inaction). It has been recognized an abuser's general right to defend property cannot be reconciled with the reality of DV relationships where property rights are often misused as a means for abusers to exert control over their victims.[10]

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[9] *See also* RCW 7.69.010 (cooperation with enforcement); 9A.36.150 (crime to interfere with DV report); 26.50.110 (3) (also contempt of court to violate orders issued under RCW 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34), RCW 26.50.140 (officer immunity for good faith DV arrests); RCW 50.20.050(1)(b)(iv); RCW 59.18.575, RCW 59.18.580.

[10] 25 Am.Jur.2d Domestic Abuse and Violence § 24 (citing ***Raynes v. Rogers***, 183 Vt. 513, 516-18, 955 A.2d 1135) (2008); Spousal Rights or Spousal Crimes: Where and When are the Lines to be Drawn. 2006 Utah L. Rev. 351, 364 (2006).

Precluding those under no-contact orders from asserting defense of property against protected parties accords with our society's highest priority of protecting life. ***Danny***, 165 Wn.2d at 219. DV relationships involve a pattern of controlling behavior between two people known to each other who often cohabitated, which distinguishes it from other violence regulated under general laws. ***Danny***, 165 Wn.2d at 213; *see* ***Westerman v. Cary***, 125 Wn.2d 277, 295, 892 P.2d 1067 (1994). Another distinguishing attribute is "an increase in the level of violence associated with domestic violence ... as well as increases in the number of repeat offenders[.]" ***Cary***, 125 Wn.2d at 295; ***Feis v. King County,*** 165 Wn.App. 525, 267 P.3d 1022 (2011).

A corresponding "hallmark of our civilization" is that "the rule of law should prevail over needless confrontation." ***State v. Mierz***, 127 Wn.2d 460, 480, 901 P.2d 286 (1995). Encouraging parties to a no-contact order to test their beliefs about property ownership through force returns them to the trial by combat the order is to preempt. *See Id.*; ***Danny***, 165 Wn.2d at 213. The proper and in a DV context only safe place for dealing with those issues is in court. *Id.*; RCW 26.50.080. People restrained by DV orders are too prone to indiscriminate violence that cannot be used to protect property. *E.g.*, ***Brewer v. Furtwangler***, 171 Wash. 617, 622, 18 P.2d 837 (1933).

Preventing the general privilege to physically defend property from undermining the specific protections promised by the domestic violence scheme's regulatory provisions does not leave restrained parties without a means of redress if protected parties wrongfully interfere with property. A restrained party can petition a court to restore possession pursuant to RCW 26.50.080. The remedy of replevin is likewise available to recover property. 20 Wash.Prac., Fam. & Comm. Prop. L § 32.46. A claim for conversion can be joined to secure damages for property incapable of being returned. *Id.*; RCW 7.64.020. Protected parties can also be prosecuted. 9A.56 RCW.

All of these available remedies ensure restrained parties will have a meaningful opportunity to protect their property rights within a government controlled environment more likely to prevent loss of life. *Id.*; ***Danny***, 165 Wn.2d at 213; ***State v. Karas***, 108 Wn.App. 692, 699-700, 32 P.3d 1016 (2001); *see also* ***State v. Madry***, 12 Wn.App. 178, 181, 529 P.2d 463 (1974). Whereas *excusing* force used by restrained parties to engage in violent self-help would confound the Legislature's clear intent to protect victims and "communicate the attitude … violent behavior *is not excused* or tolerated." RCW 10.99.010 (emphasis added).

Defendant is emblematic of how recidivist DV offenders frequently misuse property rights to circumvent DV protections. He made a decision about the force allegedly required to defend his telephone from the protected

party with three prior DV convictions under his belt. CP 100. The protected party fled, perceiving defendant was about to violently "snap."[11] She was right. *Id.* Based on no more than a completely unfounded suspicion she took his long-unattended telephone, he nearly ran her over with a car before brutally pummeling her on a public street in a fit of rage he described as an "irrational, radical move." *Id.*; 3RP 267. Who knows how much force he would have inflicted on her to *defend* his phone had a machete-wielding citizen not intervened. Given how viciously she was attacked in public, there is good reason to believe she would have fared far worse if defendant had been able to *defend* his phone in private.

Hair triggers of indiscriminate violence are not trusted. ***Brewer***, 171 Wash. at 622. Defendant, like most DV offenders, demonstrated himself to have all the discretion of a spring gun, bear trap or vicious dog—none of which can be lawfully used to protect property. While a holding that defense of property instructions cannot be used in DV cases is unnecessary to affirm defendant's conviction, it would advance the Legislature's aim of protecting victims while holding abusers accountable. Whatever decision is reached on this issue, defendant was not entitled to a defense of property instruction under the circumstances of his case.

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[11] 2RP 124; 3RP 245-46; 4RP 326-28, 341-42, 348; Ex.1.

2. DIVISION II CORRECTLY INTERPRETED RCW 9A.16.020(3)'S SCOPE TO PRECLUDE DEFENSE OF PROPERTY FROM BEING ASSERTED IF THE INTERFERENCE IS COMPLETED WHEN THE LAWFUL POSSESSOR IS NOT PRESENT BECAUSE THE STATUTE DOES NOT PERMIT VIGILANTES TO RETAKE PROPERTY WITH FORCE ONCE IT HAS BEEN REDUCED TO THE POSSESSION OF ANOTHER.

As recently as December, 2017, the Washington Practice Series reported: "Whether a person can use force to recover possession of property has not been determined." 13B Wash.Prac., Crim. Law § 3304 (2017-2018 ed.) (*citing* ***Madry***, 12 Wn.App. at 180-81). Division II answered that question in the negative when it decided defendant's case. ***State v. Yelovich***, 1 Wn.App. 38, 403 P.3d 967 (*rev. granted* 409 P.3d 1071 (2018)). The decision interpreted RCW 9A.16.020(3), which states use of force is lawful:

> [w]henever used by a party about to be injured, or by another aiding him or her, in preventing or attempting to prevent ... a malicious interference with ... personal property lawfully in his or her possession, in case the force is not more than is necessary.

Id. From this language Division II developed the following test:

> [A]n owner of property cannot use force to defend ... property when (1) the interference with the property occurs when the [owner] was not present, (2) the interference has been completed and the property is no longer in the owner's possession, and (3) the property has been removed from an area within the owner's control.

Id. at 47. This test does not address situations where property is taken in the lawful possessor's presence followed by immediate pursuit. *Id.* at n.7.

Division II should be affirmed as its test is faithful to the statute's text, which only empowers private citizens to prevent or attempt to prevent unlawful interference with their property. RCW 9A.16.020(3). Nowhere does it authorize them to forcibly *recover* property reduced to a thief's possession outside their presence. *Id.* Such omissions are presumed to be deliberate. ***Maziar***, 183 Wn.2d at 89. Clauses are not added to unambiguous statutes. ***State v. Delgado***, 148 Wn.2d 723, 730, 63 P.3d 792 (2003). Without adding to RCW 9A.16.020(3)'s text, its plain meaning only permits a resort to force before the interference with lawful possession is complete. That plain-unambiguous meaning should be given effect. ***State v. Jacobs***, 154 Wn.2d 596, 600, 115 P.3d 281 (2015); ***Wingert v. Yellow Frieght Sys.***, 146 Wn.2d 841, 50 P.3d 256 (2002). Possible but strained interpretations are avoided. ***State v. Garcia***, 179 Wn.2d 828, 837, 318 P.3d 266 (2014).

Division II's interpretation of RCW 9A.16.020(3) accords with the meaning derived from it by a differently comprised court 16 years ago. ***State v. Walther***, 114 Wn.App. 189, 192, 56 P.3d 1001 (2002). A defense of property instruction was withheld in ***Walther*** for a few reasons to include the car at issue had been reduced to the victim's possession when the force deemed unlawful was used against her. *Id.* at 192. Other states with defense of property privileges similarly drawn from common law have explained that important limitation to the defense's scope. ***Yelovich,*** 1 Wn.App. at 46

(citing ***Yocum v. State***, 777 A.2d 782, 783 (Del.2001); ***People v. Oslund***, 292 P.2d 1025, 1027 (Colo. 2012); ***State v. Nelson***, 329 N.W. 2d 643, 646-47 (Iowa 1983); ***State v. Marley***, 54 Haw. 450, 509 P.2d 1095 (1974)); *see also* ***People v. Scearce***, 87 P.3d 228, 231 (2003) ("even rightful owners should not be permitted to ... use force to regain ... property once it has been taken"); ***State v. Miller***, 622 N.W. 2d 782, 786 (2000) (***People v. Goedecke***, 730 P.2d 900, 901 (Colo. 1986) (assault took place "after the alleged theft ... had already occurred").

These cases consistently take the position "a justification defense does not exist for a defendant who attempts through force to recapture property that was taken at an earlier time[.]" *E.g.,* ***Miller***, 622 N.2d at 786, 787 ("We align ourselves with the majority of states that do not recognize a claim-of-right defense to violent reclamations of property"); ***Yocum***, 777 A.2d at 784 ("refuse to extend the defense to efforts to retrieve or recover property after it has been stolen"). Efforts to apprehend thieves to recover stolen property are perceived to be unduly dangerous "vigilante self-help" incompatible with rule-of-law societies where thieves are to be apprehended by trained police. *Id.*

A majority of courts likewise require the interference to occur in the presence of the would-be defender to ensure violent force is not misapplied to innocent people based on nothing more than unfounded suspicion. *E.g.,*

Yocum, 777 A.2d at 784 ("actions in restraining and searching [victim] were based entirely on suspicion—a suspicion that proved unwarranted"). Also missing from thefts completed outside the lawful possessor's presence is a "present danger" requiring defense. *E.g.*, ***Nelson***, 329 N.W.2d at 647; ***Marley***, 54 Haw. at 470 ("presence … is the concomitant of the immediate harm requirement"). Even the common law right to make a citizen's arrest depends on a breach of the peace committed in the citizen's presence. ***State v. Malone***, 106 Wn.2d 607, n.1, 724 P.2d 364 (1986).

Defendant proves emblematic of why defense of property does not permit people to forcibly recover property that has already been reduced to another's possession. Based on nothing more substantive than the barest self-serving suspicion, defendant decided his victim stole a phone from a car he left unattended on a busy street for about an hour.[12] Yet he allegedly thought himself entitled to at least chase her down, then try to tear a purse from her body as she was repeatedly thrown to the ground. A phone was not recovered from her, so he appears to have been as mistaken as the vigilante in ***Yocum***. This Court should affirm Division II so people will be less likely to privately enforce rash judgments instead of leaving the apprehension of thieves to police and their punishment to courts.

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[12] 3RP 245, 247-50, 260-64, 267; 4RP 297-306.

Defendant principally challenges Division II's decision by claiming defense of property should permit a lawful possessor to pursue a thief seen walking away with stolen property. Pet. at 10. No explanation for how RCW 9A.16.020(3)'s plain text could support his interpretation is attempted. That failing should bar review. ***Cowiche Canyon Conservancy v. Bosley***, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). It is also irrelevant here as defendant did not see his victim with the allegedly stolen phone. One can envision jurors met his hypothetical thinking the control required for theft was not complete, so the interference was ongoing in the owner's presence. "Fresh pursuit" cases might be consulted to create a privilege to pursue escaping thieves perceived to be in possession of a pursuer's stolen property. *E.g.*, ***City of Tacoma v. Durahm***, 95 Wn.App. 876, 879, 978 P.2d 514 (1999).

Yet such a privilege will have to be found in sources extrinsic to RCW 9A.16.020(3)'s plain text. Once identified, it should be proposed to our Legislature as this Court will not add clauses to unambiguous statutes however wise the proposed addition may be. ***Wingert***, 146 Wn.2d at 852. Drafters of the Model Penal Code designed a defense which permits people to retake stolen property by force immediately or on fresh pursuit after dispossession. MPC § 3.06. Our Legislature did not. If the omission was a mistake, it is one our Legislature can readily correct. Division II's accurate interpretation of RCW 9A.16.020(3)'s plain text should be affirmed.

3. THE DOMESTIC VIOLENCE CONVICTION IS OTHERWISE SOUND AS DEFENDANT WAS A FIRST AGGRESSOR WHO USED EXCESSIVE FORCE TO ALLEGEDLY RETAKE A PHONE HE HAD NO CREDIBLE REASON TO BELIEVE HIS VICTIM HAD WHEN HE ATTACKED HER.

Division II did not reach most of the reasons offered for affirming the trial court's decision to refrain from giving the defense of property instruction in defendant's case. Yet this Court can affirm a lower court's decision on any basis adequately supported by the record. ***Barrett v. Lucky Seven Saloon, Inc.***, 152 Wn.2d 259, 283, 96 P.3d 386 (2004). The record in defendant's case proves he was a first aggressor who used excessive force against his victim without a credible reason to believe she stole the phone he allegedly sought to defend. As detailed in the State's response below, each of those circumstances justify the requested instruction's omission.[13]

The omission is otherwise harmless, if error. Overwhelming proof at least established defendant violently overreacted to his fanciful suspicion that his victim committed a petty theft. It is far more likely the allegedly stolen phone is pure fiction conjured to explain why he snapped, then beat her according to his habit. Either way, his conviction should be affirmed.

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[13] St.Br. at 7, 11-13, 19-22 (citing ***State v. Read***, 147 Wn.2d 238, 243, 53 P.3d 26 (2002); ***State v. Janes***, 121 Wn.2d 220, 240, 850 P.2d 495 (1993); ***State v. Theroff***, 95 Wn.2d 385, 389-90, 662 P.2d 1240 (1980)).

D. CONCLUSION.

There are an array of fine reasons to affirm defendant's conviction. The general privilege to defend property cannot be asserted against a person protected under a domestic violence no-contact order by a person that order restrains. A contrary rule would absurdly undermine the Legislature's effort to protect DV victims and punish DV offenders. Another reason exists in defense of property's inapplicability to force used to retake property stolen outside the lawful possessor's presence. Other reasons can be found in the facts, for they only prove defendant was a first aggressor who excessively beat his girlfriend without a credible reason to believe she even took the phone he was allegedly trying to defend through that attack. His lawfully secured conviction should stand.

RESPECTFULLY SUBMITTED: March 12, 2018.

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Certificate of Service:
The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3/12/18
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

March 12, 2018 - 1:24 PM

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