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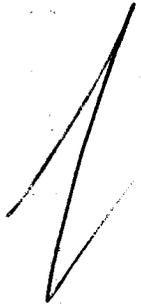
**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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**AKBAR MEAH,**  
Petitioner,

vs.

**CITY OF SEATTLE,**  
Respondent.



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**BRIEF OF RESPONDENT**

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**A. RESPONSE TO ASSIGNMENT OF ERROR**

Defendant has not established that there was insufficient evidence to support his conviction for stalking.

**B. ISSUES PRESENTED FOR REVIEW**

1. Was there sufficient evidence that Defendant's contact with the victim was somehow separable into two or more separate occasions of following or harassment?

2. Was there sufficient evidence that the victim was placed in fear that Defendant intended to injure her or her property?

**C. STATEMENT OF THE CASE**

1. Procedural Facts

Defendant was convicted of one count of stalking under Seattle Municipal Code (SMC) 12A.06.035. Defendant appealed on several grounds, including that there was insufficient evidence that he repeatedly followed or harassed the victim. The superior court on RALJ appeal affirmed the conviction, and this Court granted discretionary review.

## 2. Substantive Facts

On March 6, 2009, at approximately 11:30 p.m., Vera Galbreath, an 87-year-old woman, boarded a bus to go home after grocery shopping. She sat in the front seat directly behind the driver. Defendant was seated across from Galbreath and asked whether he could sit by her. She shook her head no. She described how “he kept trying to want to talk and I just kind of closed my eyes and tried to ignore him but he wouldn’t give up.” Clerk’s Papers (CP) 186-87. When Galbreath would not respond, Defendant reached over and slapped her knee in an attempt to get her attention. She described feeling annoyed because he was “pressuring” her. She then began to worry because he was so persistent. She was afraid that Defendant would follow her if she got off the bus and considered getting off before her usual stop where there would be more people present. Instead, she got off at her usual stop. Defendant followed Galbreath off the bus. CP 189-90. After exiting the bus, Defendant kept trying to talk to her. She described how he got “real close” to her while she waited for a traffic light to change so she could cross the street. He was about 7-8 inches from her and

“it was close enough that he really scared me.” CP 191-92.

Defendant continued to alternately follow, then move in front of her, for a distance of two blocks. Galbreath gestured with her hands, waving him away. When he blocked her way she told him, “Get out of my way. Go away.” In spite of her reaction, Defendant persisted and repeatedly said, “I want to know you.” CP 193.

Collin Ballard testified that he was driving on Aurora Avenue when he saw Galbreath crossing the street. Defendant appeared to be following her from approximately five feet away. CP 131, 34. Galbreath was walking quickly with her head down and had a frightened expression on her face. She appeared distressed. CP 131-32. When Ballard first saw them, Defendant was behind Galbreath. Defendant then walked along side of her and tried to talk to her and “get in her face.” He then walked in front of her and tried to stop her from continuing on. CP 132. Galbreath responded to Defendant’s actions by shaking her head and making a “shooing” motion with the back of her hand. CP 135. Defendant walked in front of Galbreath and tried to stop her approximately four to five times over a distance of two blocks. CP 136-37. Ballard was afraid for Galbreath, so he

drove two blocks ahead and waited for them to approach. CP 137-38. After speaking with Galbreath briefly and seeing how frightened she was, he called 911. CP 138, 168.

**D. ARGUMENT**

The SMC stalking ordinance reads, in pertinent part, that “A person is guilty of stalking when, without lawful authority: (1) He or she intentionally and repeatedly harasses or follows another person...” SMC 12A.06.035(A)(1). The ordinance defines repeatedly as “on two (2) or more separate occasions.” SMC 12A.06.035(E)(3). Defendant claims that the decision of the superior court conflicts with the Supreme Court decision in State v. Kintz, 169 Wn.2d 537, 238 P.3d 470 (2010), because the evidence does not establish that he followed or harassed Galbreath on two or more separate occasions as required by SMC 12A.06.035(E)(3). He argues that this is so because there was no lapse in physical proximity or visual contact between them from the time they were on the bus until Collin Ballard intervened. Because the Court in Kintz does not require such a lapse, Defendant’s claim should be denied.

Defendant's challenge to the sufficiency of the evidence turns on whether his actions fit within the meaning of the stalking statute. The standard of review for interpretation of a statute is a question of law that this Court reviews de novo. State v. Wentz, 149 Wn.2d 342, 346, 68 P.2d 282 (2003). The sufficiency of the evidence turns on whether Defendant's actions fit within the meaning of the stalking statute. If they do not, no rational trier of fact could have found sufficient evidence that he repeatedly harassed or followed another person. Id. at footnote 3.

In Kintz the defendant appealed two convictions for stalking pursuant to RCW 9A.46.110 on the grounds that there was insufficient evidence that he followed or harassed the victims "repeatedly."<sup>1</sup> Each count involved a different victim. One of the victims saw the defendant at least five times. The other victim saw him on two occasions separated by a short period when she lost sight of him. The defendant argued on appeal that the encounters did not amount to separate occasions because each charge resulted from multiple contacts over a very short period of time. State v. Kintz,

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<sup>1</sup> RCW 9A.46.110(6)(e) also defines "repeatedly" as "on two or

144 Wn. App. 515, 521, 191 P.3d 62 (2008). The Court of Appeals affirmed the conviction. It pointed out that neither the statute nor case law provided a definition of “separate occasions” and concluded “[t]he legislature could have defined “separate occasions” as separate days or dates as separated by a minimum time period, but it did not do so. This suggests that the legislature did not intend a stalking charge to hinge on a predefined interval of time between incidents.” 144 Wn.App. at 522-23. On appeal to the State Supreme Court, the defendant argued that there was only one ongoing “following” briefly interrupted by a short break in visual proximity. 169 Wn.2d at 552. The Supreme Court affirmed the Court of Appeals and held that “a stalking conviction requires evidence of two or more distinct, individual, noncontinuous occurrences of following or harassment, and no minimum amount of time must elapse between the occurrences, provided they are somehow separable.” 169 Wn.2d at 551.

In the instant matter, Defendant insisted on talking with Galbreath on the bus, ignored her attempts to ignore him, and

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more separate occasions.”

slapped her knee to get her attention. He then followed her off of the bus. As she walked a distance of two blocks, he alternately followed behind, then moved in front of Galbreath to block her way. He repeated this pattern approximately four to five times in spite of her waving him away and telling him, "Get out of my way. Go away" when he blocked her path. CP 136,187-93. Defendant claims the contact between himself and Galbreath was one ongoing, continuous encounter. Yet, each time Defendant was rebuffed by Galbreath -- on the bus, and four to five times on the street, can be delineated as a separate occurrence. In the alternative, the occurrences can be separated by acts that occurred on the bus and those that occurred on the street.

In reaching its decision in Kintz, the Supreme Court looked to the plain language of the statute but also found that legislative history and case law suggested that the stalking statute should be interpreted broadly. 169 Wn.2d at 549. The Court also stated the rule of statutory interpretation prohibits courts from adding words or clauses to an unambiguous statute when the legislature has chosen not to include that language. Id., citing State v. Delgado, 148 Wn.2d

723, 727, 63 P.3d 792 (2003). Defendant is suggesting that this Court interpret the statute to require a break in physical proximity or visual contact. The legislature could have required such a clause but chose not to. Even if this Court felt that such an omission was a legislative error, the State Supreme Court “has exhibited a long history of restraint in compensating for legislative omissions.” Delgado, 148 Wn.2d at 730, 63 P.3d 792 (quoting State v. Taylor, 97 Wn.2d 724, 728, 649 P.2d 633 (1982)).

The Supreme Court explained why its decision was consistent with the intent of the stalking statute. It pointed out that repetition, not duration, is the essential condition of stalking. Kintz, 169 Wn.2d at 559. “This is perfectly sensible because the repetition of contacts alerts the victim (and the trier of fact) to the stalker’s criminal intent, i.e., that he is purposefully targeting the victim, as opposed to coming into contact with her by chance.” Id. at 560. Kintz’s repeated contact with the victims engendered progressively greater fear on their part because “with each encounter, it became more apparent that the contacts were not accidental and innocent, but intentional and malevolent.” Id. Similarly, this Court should focus

on repetition, as opposed to physical proximity or visual contact, as the key element of the charge. Initially, Galbreath was annoyed with Defendant during the encounter on the bus. Because he was so persistent she began to feel threatened and became progressively more fearful. When asked whether her feelings were different on the bus than on the street, she answered affirmatively indicating that initially she “wasn’t quite that nervous and worried. But by the time he got off and was following all the time and wouldn’t go away and I couldn’t get rid of him, then I was getting more nervous all the time.” CP 196. Even though there was no break in physical proximity or visual contact it was Defendant’s repeated actions that conveyed his criminal intent. This Court should find that Defendant’s actions fit within the meaning of the stalking statute and that there was sufficient evidence of more than one occurrence of following or harassment.

Defendant also claims that there was insufficient evidence that Galbreath subjectively feared that he intended to injure her or her property. Generally, this Court will not consider issues raised for the first time in a supplemental brief after review has been

accepted. State v. Leyda, 157 Wn. 2d 335, 340 138 P.3d 610 (2006).

Because this issue was raised in Petitioner's Brief after this Court granted review, it should not be considered. However, if this Court does consider the issue, Defendant's claim should be denied.

When a defendant asserts that the evidence was insufficient to support a conviction, the appellate court reviews whether a trier of fact could rationally find guilt beyond a reasonable doubt based on the totality of the evidence. State v. Brockob, 159 Wn.2d 311, 336, 150 P.3d 59 (2006). A sufficiency challenge admits the truth of the prosecution's evidence and all reasonable inferences therefrom.

State v. Theroff, 26 Wn.App. 590, 593, 608 P.2d 1254 (1980). The appellate court will draw all reasonable inferences from the evidence in favor of the prosecution and interpret it most strongly against the defendant. State v. Partin, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). Credibility determinations are for the trier of fact and are not subject to review. State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

SMC 12A.06.035 requires both that a reasonable person under the circumstances would be placed in fear that the stalker

intended to injure that person, another person or property, as well as evidence that the victim was subjectively fearful. Defendant singles out and downplays Galbreath's use of the word "nervous" for his assertion that she was not subjectively fearful. Considering the totality of her testimony, it is clear that her use of the word "nervous" conveyed that she was fearful. Galbreath also testified that her concern about Defendant's behavior on the bus caused her to feel threatened. She contemplated getting off the bus where there would be more people around and calling one of her friends. CP 190. Once on the street, Defendant stood so close to her that he "really scared" her. CP 191. Ballard testified that Galbreath's facial expressions and body language conveyed fear and distress. CP 131-32, 135, 169. Taking both witnesses' testimony into account and considering that Galbreath was an elderly woman, alone at 11:30 at night, a reasonable trier of fact could have found that she was fearful of the Defendant.

#### **E. CONCLUSION**

Based on the foregoing argument, the superior court's decision affirming the defendant's conviction for stalking should be

affirmed and the case remanded to Seattle Municipal Court for  
reimposition of sentence.

Respectfully submitted this 21<sup>st</sup> day of March, 2011.

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