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Supreme Court No. _____
Court of Appeals No. 39419-1-III Case #: 1031246

IN THE SUPREME COURT FOR THE STATE OF
WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

RUSSEL RUST,
Petitioner.

PETITION FOR REVIEW

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A. INTRODUCTION

The Court of Appeals has a flawed approach to assessing what constitutes willful in the context of alleged violations of no-contact orders, resulting in unconscionable and unconstitutional convictions.

Its decision here, like many others, relied on RCW 9A.08.010(4) to conclude that the willful element is satisfied if the State proves the accused knowingly violates the terms of an order.

The problem with this equivalency is that it allows for convictions where the accused did not purposefully violate the terms and was unable to rectify the situation due to circumstances outside their control.

Mr. Rust's conviction is one such case. The evidence did not show Mr. Rust intended to violate the order. The evidence did show, however, Mr. Rust was

helpless to resolve the violation because he was severely ill.

The Court of Appeals' reasoning allows for this conviction as it embraced the idea that if Mr. Rust knew he was in violation of the order, then the willfully element was proven. This thinking allowed it to conclude the State properly alleged the offense in the charging document, that there was sufficient evidence for the conviction, and that the jury was properly instructed. Opinion at 7–11.

This Court should grant review of this case to make it clear that an accused's knowledge they are in violation of an order is not sufficient to prove they willfully violated the order. Rather, this case presents an optimal vehicle to hold that a person must purposefully act to violate the order or purposefully fail

to end the violation in a reasonable amount of time once they become aware of the violation.

B. IDENTITY OF PETITIONER AND DECISION BELOW

Russel Rust, petitioner here and appellant below, asks this Court, pursuant RAP 13.4(b)(3) and RAP 13.4(b)(4), to accept review of the Court of Appeals' decision of *State of Washington v. Rust*, no. 39419-1-III, entered on April 30, 2024. A copy of the decision is attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Unless the State alleges the accused willfully violated the terms of a no-contact order, the accused is not properly informed of the charges against him. The Court of Appeals decided the State only needed to allege a knowing violation of the order. This Court should grant review to ensure those accused of

violating no-contact orders are ensured proper notice of their allegedly wrongful conduct.

2. A jury should be instructed that the accused must have purposefully violated a no-order or purposefully failed to end an inadvertent violation in a reasonable time. Failure to instruct a jury as such invites erroneous convictions where the accused did not purposefully violate the order or was unable to end the violation. The Court of Appeals wrongly decided this instruction was unnecessary. This Court should grant review to ensure those accused of violating no-contact orders are not convicted when they did not purposefully violate the order.

3. A conviction for violating a no-contact order must require proof that the accused either purposefully violated the order or purposefully failed to end an inadvertent violation in a reasonable time after they

became of it. The Court of Appeals decided otherwise.

This Court should grant review to ensure that convictions for no-contact orders are based on sufficient evidence the accused purposefully violated the order.

D. STATEMENT OF THE CASE

Officer Meyer responded to a call at the Hennessey Funeral Home regarding two unauthorized people in the parking lot. RP 179. He saw a man and a woman sitting five to eight feet apart on a curb next to the building. RP 179. Officer Meyer learned the man was Mr. Rust and the woman was Jamie Knickerbocker. RP 182.

Officer Meyer ran a check on their names and discovered there was a no-contact order prohibiting Mr. Rust from coming within a certain distance of Ms. Knickerbocker. RP 182–84.

Mr. Rust was in dire straits when Officer Meyer came upon him. RP 191–92. He appeared severely dehydrated which was concerning as it had been a hot summer day in Spokane. RP 191. His face was littered with blisters and open wounds. RP 192. His arm was bandaged and many of his wounds appeared to be oozing fluid. RP 192. Mr. Rust's health was in such poor condition the jail nurse found him unfit for booking and Mr. Rust was rushed to the hospital for medical care. RP 192–93.

At trial, the State only presented testimony from Officer Meyer. RP 174. He testified how he identified the parties and learned that Mr. Rust had a no-contact order prohibiting him from contacting Ms. Knickerbocker. RP 179–84. He also testified about Mr. Rust's obvious health problems and medically fragile state. RP 191–93. There was no testimony regarding

how contact between the Mr. Rust and Ms.

Knickerbocker began. There was no testimony Mr.

Rust knew he was violating the order. There was no testimony the two ever interacted with each other.

Prior to jury deliberation, Mr. Rust sought to dismiss the information for failing to failing to allege he willfully violated the terms of the order. CP 20–24. The trial court denied that motion. RP 214–15.

Mr. Rust also sought an instruction regarding the willful element that would instruct the jury that to find the alleged violation of the order was done purposefully. CP 27–30. The trial court declined to give Mr. Rust's instruction. RP 228.

In closing, Mr. Rust emphasized he did not willfully violate the order because he did not choose to be next to Ms. Knickerbocker. RP 261–63. He also

explained he was incapable of leaving the location because of his poor health. RP 261–63.

The jury found Mr. Rust guilty of violation of a no-contact order. RP 227.

The Court of Appeals upheld Mr. Rust's conviction. Opinion at 1. It noted that RCW 9A.08.010(4) states that a person acts willfully if they act knowingly. Accordingly, it held the information was not deficient for failing to allege Mr. Rust willfully violated the order because it alleged Mr. Rust knowingly violated the order and that was sufficient to put him on notice. Opinion at 7–8.

The Court of Appeals also held there was sufficient evidence to uphold the conviction because the circumstances of the event, specifically their proximity, the nature of the relationship, and Mr. Rust's previous convictions for violating the order, evinced a logical

conclusion Mr. Rust willfully violated the order.

●pinion at 9.

Finally, the Court of Appeals found the jury instructions were not improper for the same reason it determined the information was not deficient. It held that because knowledge and willfulness are interchangeable elements, it was not necessary to specifically instruct the jury on willful or that the violation must be purposeful. ●pinion at 10–11.

E. ARGUMENT

- 1. This Court should grant review as the issues presented raise important constitutional questions and involve matters of substantial public interest.**

All of the issues presented for review revolve around the same questions: does willfully in this context require more than the accused's knowledge they were in violation of no-contact order, and specifically does it require proof that the accused

purposefully violated the order or purposefully failed to end an inadvertent violation when it was discovered. Accordingly, if this Court believes these questions deserves answers, then it should grant review on all the presented issues.

a. The Court of Appeals in this case, and in several others, have not grappled with the entirety of RCW 9A.08.010(4).

The Court of Appeals rejected Mr. Rust's argument regarding why more than knowledge was required to establish he willfully violated the order. Opinion at 7–11. In reaching this conclusion, it relied on RCW 9A.08.010(4). *Id.* Reliance on this statute to equate willfully with knowingly is not a new development for the Court of Appeals. *See e.g., State v. Sanchez*, ___ Wn. App. 2d ___, 544 P.3d 1107, 1110 (2024); *State v. Sisemore*, 114 Wn. App. 75, 77, 55 P.3d 1178 (2002); *State v. Clowes*, 104 Wn. App. 935, 944, 18

P.3d 596 (2001), *overturned on other grounds by State v. Nonog*, 169 Wn.2d 220, 230, 237 P.3d 250 (2010).

However, these cases do not address, nor can Counsel find a case where a Court has addressed, the entirety of this statute.

RCW 9A.08.010 defines different levels of culpability in the criminal context. Subsection four states in relevant part, “A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, *unless a purpose to impose further requirements plainly appears*.” RCW 9A.08.010(4)(emphasis added). The last clause, “unless a purpose to impose further requirements plainly appears,” has not been analyzed by the Court of Appeals. Rather, it has routinely ended its inquiry into what constitutes willful by adopting the text of the first

clause with no further examination. *See, e.g., Sanchez*, 544 P.3d at 1110; *Sisemore*, 114 Wn. App. at 77; *Clowes*, 104 Wn. App. at 944; *State v. Johnson*, 2 Wn. App. 2d 1026 (2018) (unpublished); *State v. Filitaula*, 185 Wn. App. 1044 (2015) (unpublished). However, as Mr. Rust’s case shows, “a purpose to impose further requirements” is open and conspicuous.

b. Requiring nothing more than knowledge to prove willfully in this context can lead to unjust convictions.

An examination of the jury instructions in Mr. Rust’s case demonstrates the obvious problems with requiring only proof the defendant knowingly violated the terms of a no-contact order to establish the willfully element.

The to-convict instruction stated the prosecution had to prove that Mr. Rust “knowingly violated a provision” of the no-contact order. CP 52. Furthermore,

knowledge was defined in a different instruction, which stated, “A person acts knowingly or with knowledge with respect to a fact or circumstance when he or she is aware of that fact circumstance.” CP 48. It also stated that, “When acting knowingly as to a particular fact is required to establish an element of a crime, the element is also established if a person acts intentionally as to that fact.” *Id.*

Several key features of these instructions are readily apparent. The first is that while acting intentionally allows a juror to conclude a person acted with knowledge, it is not necessary to reach that conclusion. Second, the knowledge a person may have can come from mere awareness, *i.e.* Mr. Rust acted with knowledge if he was aware that he was in violation of the order.

Accordingly, a reasonable juror could conclude that even if Mr. Rust never intended to violate the order and was unable to end the violation, they could still convict him because he knew he was in violation of the order. Thus, a conviction could have been obtained even though a juror did not believe Mr. Rust purposefully violated the order and did not believe he purposefully chose to continue the violation. Rather, the conviction could be based solely on the fact Mr. Rust was aware he was in violation of a provision of the order.

This same problem is replicated in other situations. For example, Person A is restrained from Person B by a no-contact order. Both people, unaware of the other, board the same car of the light rail. Person A recognizes Person B and plans to get off at the next stop. However, the train gets delayed and while

waiting for it to move again, Person B observes Person A, tell them they are not supposed to make contact and calls the police.

In this scenario, Person A did not purposefully violate the order and intended to end the violation at the earliest possible moment. The Court of Appeals decision holds Person A's knowledge of the order and proximity to Person B is sufficient for a conviction regardless of an bad act or guilty mind on behalf of Person A.

What Mr. Rust's case and the other hypothetical evince is that the Court of Appeals' current construction of willfully fails to account for these possible situations.

c. These issues raise important constitutional implications.

Allowing convictions in the above situations present obvious constitutional problems. Crimes that

are not strict liability offenses must have both a mens rea and actus reus element to comply with due process. See *State v. Eaton*, 168 Wn.2d 476, 480–81, 229 P.3d 704 (2010); see also Const. art. I, § 3. In Mr. Rust's case and the hypothetical, neither element may exist. The accused never had a guilty mind as there was no intent to violate the order. Nor did they make a bad act as they had no choice but to continue to the violation because of circumstances outside their control. It is unconscionable and unconstitutional to allow convictions in these situations. This Court should grant to review to ensure that it does not happen. RAP 13.4(b)(3).

d. There is substantial public interest in addressing these issues.

Additionally, this case presents issues involving a substantial public interest. No-contact orders are increasingly issued in courts across the state. In any

case where domestic violence is alleged, a court can issue a no-contact order. RCW 10.99.045(3)(a). They can, and often are, also issued after any conviction involving a domestic violence victim. RCW 10.99.050(1). It stands to reason that the issues raised in this case are likely to be repeated. It is in the public's interest to get a definitive answer on the questions raised by these issues. RAP 13.4(b)(4).

F. CONCLUSION

The Court of Appeals decision is another in a long line of cases failing to grapple with the entire text of RCW 9A.08.010(4). Its consistent short shrift of this statute resulted in an interpretation of willfully that can result in convictions for violating a no-contact order where the accused never purposefully violated the order. This exact concern played out in Mr. Rust's case. This Court cannot abide such an outcome to occur

and inevitably reoccur. This case presents a prime opportunity for this Court to meaningfully interpret willfully by instructing courts that convictions for violating for a no-contact order can only be obtained when the accused purposefully violates the order.

For the reasons articulated above, this Court should grant review pursuant to RAP 13.4(b)(3) and RAP 13.4(b)(4).

I certify this briefing is 2,361 words and complies with RAP 18.17(b).

DATED this 29th day of May,
2024.

Respectfully submitted,

/s/ Colin Patrick
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COURT OF APPEALS DECISION

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 39419-1-III
)	
v.)	UNPUBLISHED OPINION
)	
RUSSELL LOUIS RUST,)	
)	
Appellant.)	

FEARING, J. — This appeal asks whether a charging information alleging a knowing violation of a no-contact order and a jury instruction requiring the State to prove a knowing violation of a no-contact order diverged from RCW 10.99.050, which criminalizes a willful violation of an order. Because RCW 9A.08.010(4) equates knowledge with willfulness, we rule to the contrary. We also sustain the sufficiency of evidence to convict Russell Rust of violating a protection order, while we remand to the superior court to strike a victim penalty assessment.

FACTS

This prosecution arises from Russell Rust’s proximity to his girlfriend Jammie Knickerbocker. A domestic violence no-contact order precluded Russell Rust from contact with Jammie Knickerbocker. Rust had signed the order. The no-contact order

directed that he not “knowingly enter, remain, or come within 1,000 ft of the protected person’s residence, school, workplace or any known location.” Ex. P1; Report of Proceedings (RP) at 184.

On July 11, 2022, at 11:00 a.m., the Hennessey Funeral Home in Spokane reported that two people trespassed on its property. When Spokane Police Officer Jared Meyer arrived at the funeral home he spotted a male and female sitting five to eight feet apart on a curb adjacent to the business. Officer Meyer identified the two as Jammie Knickerbocker and appellant Russell Rust.

A cart and baby pram, standing next to Russell Rust, contained disheveled belongings of Rust. Rust bore blisters on his face and an open wound on his arm. Based on concern for Rust being dehydrated, Officer Jared Meyer provided him water. Law enforcement transported Rust to the hospital for medical treatment.

PROCEDURE

The State of Washington charged Russell Rust with felony violation of a no-contact order. The felony, rather than gross misdemeanor charge, resulted from Rust’s previous violations of a no-contact order. The information alleged:

That the defendant, RUSSELL L. RUST, in the State of Washington, on or about July 11, 2022, *with knowledge that the Superior Court had previously issued a No Contact Order*, pursuant to No-Contact Order under 7.105, 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, in State v. Rust, Cause No. 22-1-00211-32 for the protection of Jammie Knickerbocker, *did knowingly violate said order by knowingly violating a provision of the order prohibiting the defendant from knowingly*

coming or remaining within a specified distance of the protected person, contrary to RCW 7.105.450; and furthermore, the defendant has at least two prior convictions for violating the provisions of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, 26.26B RCW, or a valid foreign protection order as defined in RCW 26.52.020, or a Canadian domestic violence protection order as defined in RCW 26.55.010. Furthermore, the State alleges the defendant committed the above crime against an intimate partner as defined by RCW 10.99.020(8).

Clerk's Papers (CP) at 14-15 (emphasis added).

After the State presented its case at trial, Russell Rust moved to dismiss the prosecution. He argued that the information was constitutionally deficient because the charging information failed to notify him of the element of willfulness included in the crime of violation of a no-contact order under RCW 10.99.050. Rust also sought dismissal on the basis that the government presented insufficient evidence to establish that he willfully violated the order. The court denied the motion based on the reasoning that the terms "knowing" and "willful" are interchangeable and that the State introduced sufficient evidence to submit the case to the jury.

At the jury instruction conference, the State proposed the pattern to-convict jury instruction. The instruction read that to convict Russell Rust of the crime of violation of a court order, the State must prove the following five elements beyond a reasonable doubt:

(1) That on or about July 11, 2022, there existed a no-contact [order] applicable to the defendant;

- (2) That the defendant *knew* of the existence of this order;
- (3) That on or about said date, the defendant *knowingly* violated a provision of this order;
- (4). That the defendant has twice been previously convicted for violating the provisions of a court order; and
- (5). That the defendant's acts occurred in the state of Washington.

CP at 128 (emphasis added).

Russell Rust asked the court to include willfulness in the to-convict instruction by changing the pattern language in the third element to “the defendant willfully violated a provision of this order.” RP at 224; *cf.* 11 WASHINGTON PRACTICE: PATTERN JURY INSTRUCTIONS: CRIMINAL § 36.51.02 (5th ed. 2021). He also asked that the jury be instructed that an act must be purposeful in order to be “willful.” The superior court instead delivered the State’s proposed “to-convict” instruction.

The jury found Russell Rust guilty. The superior court sentenced him to 24 months of community supervision in lieu of confinement as a mental health alternative sentence. The court also imposed a \$500 victim penalty assessment notwithstanding his indigency. The superior court commented that it would have waived the assessment if permitted under law.

LAW AND ANALYSIS

Sufficiency of Charging Information

Russell Rust attacks the sufficiency of his charging information because it lacked the word “willfulness” as an element of the crime of violating a no-contact order. Under

constitutional strictures, a charging document must include all essential elements of a crime, statutory and nonstatutory, so as to apprise the accused of the charges against him or her and to allow the defendant to prepare a defense. *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). Omission of a statutory element of a crime in the charging document forms a constitutional defect which may result in the dismissal of the criminal charges. *State v. Holt*, 104 Wn.2d 315, 320, 704 P.2d 1189 (1985).

The superior court, under RCW 10.99.050, had previously issued a protection order restraining Russell Rust's conduct. The first two subsections of RCW 10.99.050 read:

(1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

(2)(a) *Willful violation* of a court order issued under this section is punishable under *RCW 7.105.450*.

(Emphasis added.) In turn, RCW 7.105.450, referenced in Rust's charging information, proclaims in part:

(1)(a) Whenever a domestic violence protection order . . . and the respondent or person to be restrained *knows* of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or the restraint provisions prohibiting contact with a protected party;

. . . .

(iii) A provision prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle.

(Emphasis added.) A violation of RCW 7.105.450 demands knowledge of the order, while RCW 10.99.050 requires a willful violation. Not only must the defendant know of the no-contact order; he must also have intended the contact. *State v. Briggs*, 18 Wn. App. 2d 544, 552, 492 P.3d 218 (2021).

No definition of “willful” is found in either chapter 10.99 RCW or chapter 7.105 RCW. RCW 9A.08.010(4), contrary to common parlance, equates willfulness with knowledge. The statute declares:

Requirement of Willfulness Satisfied by Acting Knowingly. A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears.

Russell Rust attacks his charging instrument as failing to allege a willful violation of the no-contact order. We agree that the information omits the term “willful,” but the information alleges a “knowing” violation of the protection order in addition to Rust's knowledge of the order.

Under Washington State Supreme Court jurisprudence, our standard of review depends on whether the accused challenged the sufficiency of the charging instrument before a verdict or after a verdict. *State v. Kjorsvik*, 117 Wn.2d 93, 104-05, 812 P.2d 86 (1991). Russell Rust sought dismissal before a jury verdict. When a defendant moves to

dismiss at the close of the State's case, the strict construction test applies. *State v. Johnson*, 119 Wn.2d 143, 149-50, 829 P.2d 1078 (1992). Under this analysis, all essential elements of a crime, statutory or otherwise, must be included in a charging document. *State v. Johnson*, 119 Wn.2d 143, 147 (1992). The accused need not show any prejudice by missing elements. *State v. Johnson*, 119 Wn.2d 143, 149 (1992). Merely citing to the proper statute and naming the offense is insufficient to charge a crime unless the name of the offense apprises the defendant of all of the essential elements of the crime. *State v. Vangerpen*, 125 Wn.2d 782, 787, 888 P.2d 1177 (1995). The charging document need not use the exact words of the statute so long as the words used equivalently or more extensively signify the words of the statute. *State v. Tinker*, 155 Wn.2d 219, 221, 118 P.3d 885 (2005).

Russell Rust relies on *State v. Briggs*, 18 Wn. App. 2d 544 (2021), wherein this court held the information insufficient. The State also charged John Briggs with felony violation of a no-contact order. But the charging instrument read in a decisive difference: the defendant, "with knowledge that he was the subject of a . . . no[-]contact order . . . did violate the order." *State v. Briggs*, 18 Wn. App. 2d 544, 551 (2021). None of the words "willfully," "knowingly," or "intentionally" preceded the allegation of the violation of the order. The State only alleged knowledge of the protection order.

We deem RCW 9A.08.010(4) controlling and *State v. Sisemore*, 114 Wn. App. 75, 55 P.3d 1178 (2002) enlightening. An information charged Paul Sisemore with

“knowingly” violating a no-contact order. *State v. Sisemore*, 114 Wn. App. 75, 77 (2002). After a bench trial, the trial court found that Sisemore “knowingly” violated the no-contact order. On appeal, Sisemore emphasized that RCW 10.99.050 demanded proof of a “willful” violation of the protection order. We affirmed because “knowingly” is synonymous with “willful” under RCW 9A.08.010(4).

Although *State v. Sisemore* involved a question of sufficiency of evidence rather than adequacy of the information, the same reasoning inescapably applies to a challenge to the charging instrument. Because the information filed against Russell Rust alleged a knowing violation of the order, in addition to knowledge of the order, we reject Rust’s challenge.

Sufficiency of Evidence

Russell Rust argues that the evidence presented by the government did not establish that he willfully violated a no-contact order. According to Rust, the State does not prove a willful violation of the no contact order by establishing that he sat as close as five feet from Jammie Knickerbocker. No testimony showed that he moved toward Knickerbocker or that he interacted with her. No testimony established that he even knew of Knickerbocker’s presence. He was ill at the time.

We review insufficient evidence claims for whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the charged crime beyond a reasonable doubt. *State v. Embry*, 171 Wn. App.

714, 742, 287 P.3d 648 (2012). Sufficiency challenges admit the truth of the State's evidence and all reasonable inferences drawn from it. *State v. Embry*, 171 Wn. App. 714, 742 (2012). In analyzing the sufficiency of evidence, this court does not treat circumstantial evidence as less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). This court does not review the trier of fact's determinations on credibility and defers to the trier of fact with respect to conflicting testimony and the persuasiveness of evidence. *State v. Embry*, 171 Wn. App. 714, 742 (2012). When reviewing the sufficiency of evidence for violation of an order, the court may infer willfulness from the conduct of the accused. *State v. Bajardi*, 3 Wn. App. 2d 726, 733, 418 P.3d 164 (2018).

We discern sufficient information to confirm a willful violation of the no-contact order. At 11:00 a.m., the funeral home reported Jammie Knickerbocker and Russell Rust seated next to each other on the curb. The two were still sitting next to each other when Spokane Police Officer Jared Meyer arrived on the scene. Despite Rust's illness, no evidence suggested that he was not aware of his surroundings. The two were boyfriend and girlfriend. Rust previously was convicted of violating the order.

State v. Bajardi, 3 Wn. App. 2d 726 (2018) supports our decision. Nicholas Bajardi challenged his conviction for violation of a protection order based on insufficiency of evidence. An order precluded Bajardi from contact with Erin Roblin. Law enforcement officers traveled to a wooded area in response to a report of a

suspicious vehicle. They heard a male and female voice. No officer testified that the two voices spoke to each other. The two approached the vehicle from opposite sides. One officer spoke to the woman in the van, Erin Roblin, while the other officer detained Bajardi. Bajardi denied speaking to Roblin. Because the limited circumstances found by law enforcement logically suggested willful contact between the two, this court held the evidence sufficient to convict Bajardi.

Jury Instruction

Russell Rust argues that instructing the jury on knowledge instead of willfulness was insufficient because it conflates two separate elements: knowledge of the no-contact order's existence versus the willful violation of the order. This argument ignores that the language of the to-convict instruction demands that the State prove that Rust both knew of the protection order and knew he was violating the order. Jury instructions suffice if they enable the parties to argue their theories of the case, are not misleading, and properly inform the jury of the applicable law. *State v. McCreven*, 170 Wn. App. 444, 462, 284 P.3d 793 (2012).

Russell Rust's trial court delivered the pattern "to-convict" jury instruction and defined "knowledge" and "intent." To repeat, "knowledge" and "willfulness" are interchangeable elements of a no-contact order violation. RCW 9A.08.010(4); *State v. Clowes*, 104 Wn. App. 935, 944, 18 P.3d 596 (2001). In *Clowes*, a challenge to jury

instructions on a no-contact order violation, the court held that an instruction that used the word “knowingly,” not “willfully,” properly advised the jury.

Victim Penalty Assessment

Russell Rust asks this court to reverse the imposition of the victim penalty assessment in his judgment based on an amendment to the VPA statute. We grant his request.

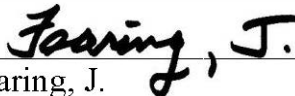
In April 2023, the legislature amended the VPA statute and passed Engrossed Substitute House Bill 1169, 68th Leg., Reg. Sess. (Wash. 2023). The amendment, effective July 1, 2023, prohibits the imposition of the VPA on a defendant who is indigent as defined in RCW 10.01.160(3). LAWS ●F 2023, ch. 449, § 1; RCW 7.68.035(4). The amended statute also requires courts to waive a VPA imposed before the amendment’s effective date on motion by the defendant, if the defendant is found to be indigent as defined by RCW 10.01.160(3). RCW 7.68.035(5)(b). The statutory amendment applies retroactively to Rust’s case. *State v. Ellis*, 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023).

CONCLUSION

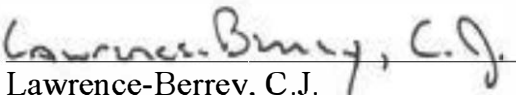
We affirm Russell Rust’s conviction for violating a no-contact order. We remand to the superior court to strike the victim penalty assessment.

No. 39419-1-III
State v. Rust

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Fearing, J.

WE CONCUR:


Lawrence-Berrey, C.J.


Pennell, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 39419-1-III**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Washington Appellate Project

Date: May 29, 2024

WASHINGTON APPELLATE PROJECT

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Appellate Court Case Title: State of Washington v. Russell Louis Rust
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