

SUPREME COURT OF WASHINGTON

State v. Lilyblad, 163 Wn. 2d 1

177 P.3d 686 (2008) · Decided February 7, 2008

SUMMARY

The Washington Supreme Court interpreted RCW 9.61.230, Washington’s telephone harassment statute, to require that a defendant form the intent to harass at the time the defendant initiates the call to the victim. The court held that the trial court’s jury instruction improperly allowed the jury to find that intent formed at any time during the call, reversed the conviction, and authorized a retrial because the evidence was sufficient.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Alexander, C.J.; C. Johnson, J.; Madsen, J.; Sanders, J.; Chambers, J.; Fairhurst, J.; J.M. Johnson, J.; Bridge, J. Pro Tem.
JURISDICTION	Washington
DECIDED	February 7, 2008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State petitioned the Washington Supreme Court for review of a Court of Appeals decision reversing Stephanie Paris's felony telephone-harassment conviction and remanding for a new trial based on an erroneous jury instruction concerning when the required intent must form.
STANDARD OF REVIEW	De novo review of statutory interpretation issues.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	State of Washington v. Stephanie Paris

TOPICS

- statutory interpretation
- criminal procedure
- first amendment
- plain meaning rule

PRACTICE AREAS

- criminal law
- criminal procedure
- statutory interpretation
- constitutional law

QUESTIONS PRESENTED

1. Whether RCW 9.61.230 requires a defendant to form the specific intent to harass, intimidate, torment, or embarrass at the initiation of the telephone call or permits formation of that intent at any time during the call.
2. Whether the trial court's jury instructions improperly stated the temporal requirement for the intent element of felony telephone harassment.
3. Whether reversal of the conviction barred retrial when the evidence was sufficient to support a finding that Paris formed the requisite intent at the initiation of the call.

HOLDINGS

1. Telephone harassment requires proof that the defendant formed the specific intent to harass the victim when the defendant initiated the call to that victim, not at any later point during the conversation.
2. The trial court improperly instructed the jury by stating that making a telephone call referred to the entire call rather than its initiation, because the instruction permitted the jury to find the requisite intent formed after the call began.
3. Reversal of the conviction for instructional error did not bar retrial because the State presented sufficient evidence to support a finding that Paris formed the intent to harass at the initiation of the call.

KEY QUOTATIONS

“We hold that telephone harassment requires that the defendant form the specific intent to harass at the time the defendant initiates the call to the victim.” (163 Wn. 2d 1)

“We hold that the crime of telephone harassment requires proof that the defendant formed the intent to harass the victim at the time the defendant initiates the call to the victim.” (163 Wn. 2d 13)

FACTUAL BACKGROUND

Paris called the home of Lorie Haley, the paternal grandmother of Paris's two sons, who were living with Haley. According to the State's evidence, Paris initially said she was nearby and intended to retrieve the children, but the conversation became argumentative and Paris threatened to kill Haley. The call lasted approximately five minutes, and Haley reported it to law enforcement after the call.

PROCEDURAL HISTORY

A jury convicted Paris of felony telephone harassment based on threats made during a telephone call. The Court of Appeals, Division Two, held that the telephone-harassment statute was ambiguous regarding when intent must form, applied the rule of lenity, reversed the conviction, and remanded for a new trial while holding the evidence sufficient to support a conviction. The Washington Supreme Court granted review to resolve a conflict with Division One's interpretation in *City of Redmond v. Burkhart*.

DISPOSITION

REMAND INSTRUCTIONS

The conviction was reversed and the case was remanded for a new trial; retrial was not barred because the evidence was sufficient to support the required intent finding.

CASES CITED

- State v. Jacobs, 154 Wn.2d 596, 601, 115 P.3d 201 (2005)
- City of Redmond v. Burkhart, 99 Wn. App. 21, 991 P.2d 717 (2000)
- State v. Wilcox, 160 Vt. 271, 628 A.2d 924 (1993)
- State v. Clauson v. Department of Labor & Industries, 130 Wn.2d 580, 583, 925 P.2d 624 (1996)
- State v. Roggenkamp, 153 Wn.2d 614, 621-24, 106 P.3d 196 (2005)
- W. Telepage, Inc. v. City of Tacoma Department of Finance, 140 Wn.2d 599, 609, 998 P.2d 884 (2000)
- In re Personal Restraint of Skylstad, 160 Wn.2d 944, 948, 162 P.3d 413 (2007)
- State v. Young, 125 Wn.2d 688, 696, 888 P.2d 142 (1995)
- C.J.C. v. Corporation of Catholic Bishop, 138 Wn.2d 699, 708, 985 P.2d 262 (1999)
- State v. Alexander, 76 Wn. App. 830, 836-38, 888 P.2d 175 (1995)
- State v. Dyson, 74 Wn. App. 237, 244, 872 P.2d 1115 (1994)
- Thorne v. Bailey, 846 F.2d 241, 243 (4th Cir. 1988)
- State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003)
- Jindra v. Golden West, 52 Wn. App. 124, 128, 758 P.2d 518 (1988)
- People v. Weeks, 197 Colo. 175, 591 P.2d 91, 96 (1979)
- City of Everett v. Moore, 37 Wn. App. 862, 865, 683 P.2d 617 (1984)
- State v. Stearns, 119 Wn.2d 247, 249-50, 830 P.2d 355 (1992)