

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Petitioner,

v.

ANDRE PAUL BECKLIN,

Respondent.

NO. 79354-9

EN BANC

Filed May 1, 2008

BRIDGE, J.P.T.\*—Andre Paul Becklin was accused of stalking his ex-girlfriend, Mary Alison McGee. At trial, the State presented evidence that Becklin had directed several of his friends to follow McGee and report back to him regarding her activities. Both parties argued in closing arguments about whether Becklin had used his friends to stalk McGee, but the State did not propose an instruction on accomplice liability. During deliberations, the jury asked if stalking could be accomplished through a third party and, after hearing from counsel, the trial court answered “yes.” The jury then convicted Becklin of stalking. The Court of Appeals concluded that the trial court’s answer to the jury’s question was

---

\* Justice Bobbe J. Bridge is serving as a justice pro tempore of the Supreme Court pursuant to Washington Constitution article IV, section 2(a).

improper because it was too late to amount to a proper instruction and it was an incorrect statement of the law. The State petitioned this court for review.

We conclude that the trial court's answer to the jury's question accurately communicated that stalking encompasses the act of directing others to harass a victim. Moreover, the trial court did not abuse its discretion when it decided to give the jury further instruction on the law in response to its question, given that both parties had argued the issue to the jury. We therefore reverse the Court of Appeals.

## I

### Facts and Procedural History

Becklin and McGee had a tumultuous relationship that began in 1992. Almost immediately after the relationship became romantic in 1996, Becklin threatened to kill McGee if she ever became involved with someone else. When McGee became pregnant in 1997, Becklin insisted that she have an abortion. When she refused, he punched her in the stomach and then attempted to rape her. She escaped and moved in with friends, but soon returned and gave birth to their son, Ace, in October 1997.

For the next few years, McGee alternatively lived with Becklin, stayed with friends, or lived in her own apartment. When she moved into an apartment for the final time, Becklin began to show up there every day trying to gain entrance. Even after McGee became involved with Aaron Ash, whom she eventually married, Becklin and McGee fought on numerous occasions because Becklin wanted McGee

to return to a relationship with him.

Any civility in the relationship between Becklin and McGee evaporated when McGee announced her intention to marry Ash. In November 2003, McGee and Becklin fought about this issue, and Becklin took Ace without McGee's consent. When friends returned Ace to McGee, Becklin tried to force his way into McGee's house. As a result, McGee obtained a protection order in December 2003, preventing Becklin from having any contact with her and preventing him from coming within 100 feet of her or her home. The order also explicitly prohibited contact through third parties.

The events that led to the charges at issue in this case occurred from March 13 to March 26, 2004. McGee testified that Becklin's friends repeatedly drove Becklin's cars by her house, circling her block several times. Two witnesses testified that they filled out written reports for Becklin recounting their sightings of McGee around town. McGee also testified that on March 26, 2004, Glen Jarmin, a close friend of Becklin's, followed McGee from a court hearing to her home, circled her block several times, and then followed her on an errand. McGee was afraid of Jarmin because he had helped Becklin try to break into her home in the past. Finally, McGee testified that Becklin himself also followed her home from the court appearance and was seen driving near her home.

McGee reported these activities to the police, and Becklin was arrested on April 1, 2004. For incidents that occurred in late February 2004, Becklin was

charged with and found guilty of violating the protection order. Becklin was also charged with stalking McGee between March 13 and March 26, 2004. The stalking information included allegations of “violation of the protection order,” but only for purposes of elevating the stalking from a gross misdemeanor to a class C felony. Clerk’s Papers (CP) at 121; RCW 9A.46.110(5)(b)(ii).<sup>1</sup>

At trial, the jury heard testimony about the foregoing activities from two of Becklin’s friends, from a police officer, and from McGee. The court instructed the jury that to convict Becklin of stalking, it had to find beyond a reasonable doubt that he had “intentionally and repeatedly harassed or repeatedly followed Mary Alison McGee” without lawful authority and that she reasonably feared that he would injure her, another person, or property. CP at 99. The “to convict” instruction also indicated that the jury had to find either intentional harassment or that Becklin knew or reasonably should have known that McGee would feel frightened, intimidated, or harassed. CP at 99-100.

The jury was instructed on the relevant definitions:

To *harass* means to carry out a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct must be one that would cause a reasonable person to suffer substantial emotional distress and which actually causes the person to suffer substantial emotional distress.

*Course of conduct* means a pattern of conduct composed of a series of acts over a period of time, however short, demonstrating the same purpose.

*Willful or willfully* means to act purposefully, not inadvertently or accidentally.

---

<sup>1</sup> The information was amended several times, but the final version incorporated these charges.

CP at 101 (emphasis added). The jury instructions did not include the pattern jury instruction on accomplice liability, nor did they directly set forth the concept that a third party's actions could support criminal accountability for stalking.

During closing arguments, both sides addressed the issue of whether Becklin should be held accountable for the actions of his friends. The prosecutor pointed to the instances in which Becklin's friends allegedly followed McGee and asked the jury to infer from the evidence that Becklin had directed his friends to do so. Defense counsel, on the other hand, argued that the evidence showed that Becklin himself never stalked McGee and there was no direct evidence that Becklin was in fact directing his friends to follow her. In rebuttal the prosecutor asserted, "Assistance. Aiding and abetting. That's what it is, that's what this case is about, is enlisting others to do your own dirty work, and that's what Mr. Becklin did." Report of Proceedings at 331.

After retiring to deliberate, the jury asked:

Is [a] third party included in stalking? Pursuant to our instructions of charges brought against the defendant? Can you stalk a party thru a third person?

CP at 123. After considering arguments from both sides, the trial judge answered "Yes." CP at 123. The jury then found Becklin guilty of the crime of stalking. The jury also returned a special verdict indicating that "[t]he Stalking was in violation of an existing Protection Order." CP at 126. Becklin was sentenced to 12 months of confinement.

Becklin appealed, arguing, among other things, that the trial court improperly answered the jury's inquiry regarding third-party participation in the stalking. The Court of Appeals concluded that the crime of stalking cannot be accomplished through a third person. *State v. Becklin*, 133 Wn. App. 610, 612, 137 P.3d 882 (2006). The majority opined that the court's answer to the jury's question was both too late and an incorrect statement of the law, and thus it reversed the defendant's stalking conviction. Chief Judge Dennis J. Sweeney dissented, arguing that the trial judge had broad discretion to give additional jury instructions after deliberations had begun and the trial judge's response to the jury's question "was a simple and correct 'yes' response to a legal question posed by the jury." *Id.* at 621 (Sweeney, C.J., dissenting). The State petitioned this court for review, which we granted at 161 Wn.2d 1001 (2007).

## II

### Analysis

We review both statutory interpretation and alleged error in the jury instructions de novo. *State v. Hachaney*, 160 Wn.2d 503, 512, 158 P.3d 1152 (2007), *cert. denied*, 128 S. Ct. 1079 (2008); *State v. Barnes*, 153 Wn.2d 378, 382, 103 P.3d 1219 (2005). We must determine whether the trial judge's brief answer to the jury's question was a timely, accurate, and sufficient instruction to the jury on the law.

Washington's complicity statute acknowledges that by their plain language,

some criminal statutes contemplate the involvement of third parties. RCW 9A.08.020(2)(b) (providing that a defendant can be “made accountable for the conduct of such other person . . . by the law defining the crime”). If the definition of the crime of stalking encompasses the act of directing a third party to follow or harass a victim, then no distinct instruction on accomplice liability was necessary. *Id.*<sup>2</sup> While the Court of Appeals suggested that the law defining the crime must “specifically” refer to the actions of third parties, *Becklin*, 133 Wn. App. at 617, the plain language of RCW 9A.08.020(2)(b) contains no such requirement.

RCW 9A.46.110 defines the elements of stalking. According to the relevant portions of the statute:

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she *intentionally and repeatedly harasses* or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person . . . . The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

RCW 9A.46.110 (emphasis added). For purposes of the stalking statute:

(a) “Follows” means deliberately maintaining visual or physical proximity to a specific person over a period of time. . . .

---

<sup>2</sup> While the State seems to argue that Becklin’s own acts of approaching McGee’s house could support his conviction, the jury’s question itself indicates that it was important whether stalking could occur by way of a third party. *See State v. Davenport*, 100 Wn.2d 757, 764, 675 P.2d 1213 (1984).

(b) “*Harasses*” means unlawful harassment as defined in RCW 10.14.020.

Former RCW 9A.46.110(6) (2006) (emphasis added). Under RCW 10.14.020:

(1) “Unlawful harassment” means a knowing and willful *course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person*, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress . . . .

(2) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” includes *in addition to any other form of communication, contact, or conduct*, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(Emphasis added.) Thus, according to the stalking statute, a defendant is guilty of stalking if he or she knowingly or intentionally engages in a repeated course of conduct, which can include “*any . . . form of communication, contact, or conduct*” that seriously alarms, annoys, harasses, or is detrimental to the victim such that it reasonably causes substantial emotional distress, so long as the course of conduct is not constitutionally protected. RCW 9A.46.110; RCW 10.14.020(2) (emphasis added).

The State asserts that directing others to follow or otherwise harass a victim can be a “form of communication, contact, or conduct” that amounts to harassment contemplated under the stalking statute. RCW 10.14.020(2). While the criminal stalking statutory scheme does not explicitly refer to harassment through third parties, the plain language of the definition of “course of conduct” seems to

contemplate a broad range of harassing activities, which may include all types of communication, contact, or conduct that do not amount to activity protected by the constitution. *Id.* In sum, the plain language of the statute is broad enough to encompass the act of directing third parties to follow and intimidate a victim.

Moreover, the legislature has indicated that it intended a broad definition of the type of conduct that could constitute stalking or harassment. When it added electronic communications to the types of communications, contact, or conduct that could be considered stalking or harassment, it included the following statement of intent:

It is the intent of this act to clarify that electronic communications are included in the types of conduct and actions that can constitute the crimes of harassment and stalking. *It is not the intent of the legislature, by adoption of this act, to restrict in any way the types of conduct or actions that can constitute harassment or stalking.*

Laws of 1999, ch. 27, § 1 (emphasis added).<sup>3</sup> Thus both the plain language defining course of conduct and the legislative history suggest that the definition of conduct amounting to harassment is very broad and could include the manipulation or direction of third parties to achieve the intended emotional distress.

For support, the State also points to *State v. Parmelee*, 108 Wn. App. 702, 32 P.3d 1029 (2001). In that case, the defendant's stalking conviction was upheld

---

<sup>3</sup> The term "course of conduct" was originally defined in 1987 as an amendment to the unlawful harassment statute. Laws of 1987, ch. 280, § 2. The final bill report on the 1987 legislation explains that law enforcement had been frustrated with its inability to make arrests in many cases because prior law made only express threats illegal. Final Bill Rep. on Substitute S.B. 5142, 50th Leg., Reg. Sess. at 1 (Wash. 1987). The 1987 legislation (which included the "course of conduct" definition) was intended to protect victims from a wider range of conduct. *Id.*

where he took steps to convince fellow inmates to write sexually explicit e-mails to his estranged wife, convincing at least some of them that she would welcome such communications. *Id.* at 706-07. The legal questions in that case involved whether the stalking conviction merged with a related conviction for violation of a protection order, and whether double jeopardy was violated. *Id.* at 709-10. The opinion does not disclose whether any instruction was given to the jury regarding accomplice liability, or alternatively whether the State relied upon only the definition of stalking. *See id.* at 708. Regardless, the opinion provides a striking factual example of a course of conduct that involved the manipulation of third parties to accomplish harassment and/or stalking.

The Court of Appeals in this case opined that *Parmelee* is distinguishable because there the relevant course of conduct was the *solicitation* of letter-writing from unwitting inmates. *Becklin*, 133 Wn. App. at 617. However, the Court of Appeals did not precisely explain why Becklin's course of conduct was particularly different from the solicitation in *Parmelee*. *See id.* Here the act of *convincing his friends* to harass McGee was the course of conduct that resulted in the impact on the victim, i.e., presumably "solicitation" and "convincing" are part of each scenario which leads to harassment.

We conclude that by defining "course of conduct" so broadly as to include any harassing communication, contact, or conduct that amounts to a series of acts over a period of time, the legislature contemplated that stalking, by definition, could

include the direction or manipulation of third parties. RCW 9A.46.110; RCW 10.14.020. Because we read the stalking statute itself to prohibit directing a third party to harass the victim, the trial court's brief answer to the jury's question accurately reflected the law.

The Court of Appeals also complained that the judge's answer to the jury's question came too late to be a proper instruction. *Becklin*, 133 Wn. App. at 612. Superior Court Criminal Rule 6.15(f), entitled "Questions from Jury During Deliberations," provides, in part, that "[a]ny additional instruction upon any point of law shall be given in writing." CrR 6.15(f)(1). This portion of the rule necessarily assumes that additional instructions on the law *can* be given during deliberation. Whether to give further instructions in response to a request from a deliberating jury is within the discretion of the trial court. *State v. Brown*, 132 Wn.2d 529, 612, 940 P.2d 546 (1997); *State v. Ng*, 110 Wn.2d 32, 42-43, 750 P.2d 632 (1988). The Court of Appeals has held that the trial court should not be allowed to add a legal theory of criminal culpability during deliberations if the parties have not had a chance to argue that theory. *See State v. Ransom*, 56 Wn. App. 712, 714, 785 P.2d 469 (1990). However, in this case *both* parties argued to the jury about the factual validity of the State's theory that Becklin was directing his friends to follow McGee. Given that both parties presented arguments on the theory, we conclude that the trial court acted within its discretion when it gave the jury further instruction on the law by answering its question.<sup>4</sup> We therefore reverse the Court of Appeals and affirm

---

<sup>4</sup> In his answer to the petition for review, Becklin, in one sentence, also disagrees

the conviction.

### III

#### Conclusion

The trial court's brief answer to the jury's question accurately reflected the law: the definition of stalking includes directing or manipulating others to harass the victim. Thus, the trial court's answer to the jury question adequately apprised the jury as to the definition of the crime. In addition, the trial court did not abuse its discretion when it decided to give the jury further instruction on the law in response to the jury question because both parties had presented arguments as to whether Becklin had directed his friends to harass McGee. We therefore reverse the Court of Appeals and affirm the conviction.

---

with the Court of Appeals' conclusion that the trial court properly allowed multiple amendments to the information. Answer to Pet. for Review at 6. However, Becklin neglected to offer any legal analysis supporting this view. Absent any analysis, we conclude that Becklin has failed to offer any convincing argument that we should reverse the Court of Appeals on this issue.

AUTHOR:

Bobbe J. Bridge, Justice Pro Tem.

---

WE CONCUR:

Justice Susan Owens

---

Justice Mary E. Fairhurst

---

Justice Barbara A. Madsen

Justice James M. Johnson

---

Justice Tom Chambers

---