

**FILED: October 29, 2014**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

JEFFERY LEE MEEK,  
Defendant-Appellant.

Lane County Circuit Court  
211200311, 211200312

A151149 (Control)  
A151150

Josephine H. Mooney, Judge.

Submitted on March 19, 2014.

Peter Gartlan, Chief Defender, and Emily P. Seltzer, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Rebecca M. Auten, Assistant Attorney General, filed the brief for respondent.

Before Duncan, Presiding Judge, and Haselton, Chief Judge, and Wollheim, Judge.

HASELTON, C. J.

In Case No. 211200312, reversed; in Case No. 211200311, affirmed.

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**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Appellant

- No costs allowed.  
 Costs allowed, payable by  
 Costs allowed, to abide the outcome on remand, payable by
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1 HASELTON, C. J.

2 Defendant appeals a judgment of conviction for violating a stalking  
3 protective order (SPO), ORS 163.750, and an adjudication finding defendant in contempt  
4 of court, ORS 33.065, both in connection with a letter defendant sent to a person  
5 protected by an SPO.<sup>1</sup> Defendant assigns error to, *inter alia*, the trial court's denial of  
6 defendant's motions for judgment of acquittal (MJOAs) on both charges. As explained  
7 below, we conclude that defendant was entitled to acquittal on both charges because,  
8 while the state charged defendant with causing an "*object*" to be delivered to the  
9 protected person, the evidence at trial showed only that defendant had sent a *letter* to that  
10 person, and a "written communication," ORS 163.730(3)(d), is not an "object" for  
11 purposes of ORS 163.750(1)(c). Accordingly, we reverse the judgment as to both  
12 charges.<sup>2</sup>

13 The relevant facts, for purposes of our review of the denial of the motions  
14 for judgment of acquittal, are undisputed. Defendant and the complainant, M, dated.  
15 After their relationship ended, defendant sent M hundreds of e-mails and text messages  
16 and, on at least one occasion, sat outside M's house and refused to leave. M eventually  
17 sought an SPO, which the trial court issued in February 2011. The final SPO barred

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<sup>1</sup> On appeal, defendant challenges the conviction and sanction in Case No. 211200312. Although defendant was also convicted of a second SPO violation and found in contempt in connection with a separate incident in Case No. 211200311, defendant does not challenge that conviction or sanction on appeal.

<sup>2</sup> Our disposition obviates any consideration of defendant's assignment of error to the trial court's denial of his motion to dismiss the charge of violating ORS 163.750.

1 defendant from "any contacts" with M, and, as relevant here, explicitly defined prohibited  
2 "contacts" as including "sending or making written communications in any form to [M],"  
3 and "delivering directly or through a third person any object to the home, property, place  
4 of work or school of [M]."<sup>3</sup>

5 On December 12, 2011, defendant sent a letter, via the postal service, to  
6 M's residence. The letter, which was directed to M and her family, read:

7 "I'm deeply sorry for what I put you and your family through as well as my  
8 own. Words cannot express how truly sorry I[ ] am for the anxiety,  
9 frustration and inconvenience I've caused you. I would give my life to  
10 protect you. I was repulsively selfish in my actions and didn't understand  
11 God's Love. His love is for us to put others needs before our own and to  
12 forgive one another.

13 "I have and will continue to leave you alone in peace. A second chance is  
14 all I ask to be free from you and to live life once more. I write you in the  
15 hope that we may place our anger and bitterness aside and to forgive one  
16 another as [our] Heavenly Father would and move on.

17 "Sincerely,

18 "Very Respectfully,

19 "[defendant's signature]"

20 "2 Corinthians 2:5-11"

21 M received the letter on December 15, 2011, and promptly reported it to the  
22 police. Shortly thereafter, defendant was charged by information with violating the SPO,  
23 ORS 163.750 (Count 1), and contempt of court, ORS 33.065 (Count 2). With respect to  
24 Count 1, the original charging instrument alleged that defendant violated the SPO "by

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<sup>3</sup> Defendant, as the respondent in the SPO proceeding, did not appeal the SPO.

1 sending or making *written communication* to [M], thereby creating a reasonable  
2 apprehension regarding the person[al] safety of [M]." (Emphasis added.) With respect to  
3 Count 2, the information alleged that defendant "unlawfully and willfully disobey[ed] an  
4 order of the Lane County Circuit Court, by contacting [M]."

5           The state subsequently filed an amended information--whose allegations  
6 form the predicate for our review of the sufficiency of the state's proof at trial. The  
7 amended information included revisions to the allegations of both counts--those revisions  
8 were not only material, but ultimately (as we will explain) of dispositive significance.  
9 Specifically, the amended information alleged, as to both counts, that defendant violated  
10 the SPO by "by delivering through a third party an *object* to the home \* \* \* of [M]."  
11 (Emphasis added.)

12           At trial, the state adduced evidence that defendant had sent the letter to M's  
13 home. The letter and its envelope were introduced into evidence, and M testified as to  
14 having received the letter on December 15, 2011. Deputy May, who had responded to  
15 M's call that day, corroborated M's testimony and testified that when he spoke with  
16 defendant the next day, on December 16, defendant admitted to having sent the letter.  
17 There was no evidence that defendant caused anything other than the letter to be  
18 delivered to M.

19           Defendant moved for a judgment of acquittal, asserting that, because the  
20 December 15 letter was a "written communication" within the meaning of ORS  
21 163.730(3)(d), the state was required, under ORS 163.750(1)(c), to show that the letter

1 had "created reasonable apprehension regarding the personal safety of the protected  
2 person"<sup>4</sup>--and that the state had adduced no proof that M or her family had experienced  
3 such apprehension. The state countered that, because the letter was an "object" within the  
4 meaning of ORS 163.730(3)(k), ORS 163.750(1)(c) was inapposite and, thus, proof of  
5 "reasonable apprehension" was immaterial. The trial court ultimately agreed with the  
6 state that the letter was an "object" and denied the MJOAs.

7           The jury subsequently found defendant guilty of the SPO violation, and the  
8 court rendered an adjudication of guilt as to contempt of court. Defendant appeals the  
9 ensuing judgment. On appeal, the parties essentially reiterate their arguments before the  
10 trial court. Central to the dispute is the proper construction of the terms "written \* \* \*  
11 communication in any form," ORS 163.730(3)(d), and "any object," ORS 163.730(3)(k),  
12 for the purposes of the application of ORS 163.750(1).

13           ORS 163.730(3) sets out 11 categories of "contact" that may violate an  
14 SPO. That statute provides, in part:

15           "Contact' includes but is not limited to:

16           "(a) Coming into the visual or physical presence of the other person;

17           "(b) Following the other person;

18           "(c) Waiting outside the home, property, place of work or school of  
19 the other person or of a member of that person's family or household;

20           "(d) *Sending or making written or electronic communications in any*  
21 *form to the other person;*

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<sup>4</sup> Those statutes are set out in the text below. \_\_\_ Or App at \_\_\_ (slip op at 4-5).

- 1                   (e) Speaking with the other person by any means;
- 2                   (f) Communicating with the other person through a third person;
- 3                   (g) Committing a crime against the other person;
- 4                   (h) Communicating with a third person who has some relationship  
5 to the other person with the intent of affecting the third person's relationship  
6 with the other person;
- 7                   (i) Communicating with business entities with the intent of  
8 affecting some right or interest of the other person;
- 9                   (j) Damaging the other person's home, property, place of work or  
10 school;
- 11                   (k) *Delivering directly or through a third person any **object** to the*  
12 *home, property, place of work or school of the other person[.]*"

13 (Emphasis and boldface added.)

14                   ORS 163.750(1), in turn, provides:

15                   "A person commits the crime of violating a court's stalking  
16 protective order when:

17                   (a) The person has been served with a court's stalking protective  
18 order \* \* \*;

19                   (b) The person, subsequent to the service of the order, has engaged  
20 intentionally, knowingly or recklessly in conduct prohibited by the order;  
21 and

22                   (c) If the conduct is prohibited contact as defined by ORS  
23 163.730(3)(d), (e), (f), (h) or (i), the subsequent conduct has created  
24 reasonable apprehension regarding the personal safety of a person protected  
25 by the order."

26                   Thus, by its terms, ORS 163.750(1) provides that a criminal violation

27 occurs when a person subject to a valid SPO intentionally, knowingly, or recklessly

28 engages in conduct prohibited by that SPO. Additionally, subsection (1)(c) imposes, for

1 certain types of prohibited "contacts," an additional element--*viz.*, that the conduct  
2 "created reasonable apprehension regarding the personal safety" of the protected  
3 individual. Specifically, that additional element applies to "[s]ending or making written  
4 \* \* \* communications in any form," ORS 163.730(3)(d), but does not apply to  
5 "[d]elivering \* \* \* any object to [the protected person's] home," ORS 163.730(3)(k).

6           Therein lies the rub: For purposes of ORS 163.750(1)(c), is a letter an  
7 "object," a "written communication"--or, possibly, both? As he did before the trial court,  
8 defendant contends that a letter is a written communication, not an object. Defendant  
9 asserts that that understanding comports with the legislature's intent, in response to  
10 constitutional concerns, *see, e.g., State v. Rangel*, 328 Or 294, 977 P2d 379 (1999), to  
11 impose qualitatively different requirements for alleged violations arising from contacts  
12 involving expression. Treating letters as "objects" would, defendant posits, circumvent  
13 that constitutionally informed legislative design.

14           The state remonstrates that the two categories are not mutually exclusive  
15 and, indeed, that, as a matter of plain meaning, a letter qualifies both as a "written  
16 communication" and (because it is "tangible") as an "object." That understanding, the  
17 state suggests, is consistent with the "reasonable apprehension" requirement, because  
18 sending a physical object such as a letter to the victim is "likely to create greater  
19 apprehension than an electronic communication would."

20           In resolving the matter, we employ, of course, the methodology prescribed  
21 in *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). The legislature's intent is

1 our lodestar. In discerning that intent, we begin by examining the text of the statute in  
2 context, along with any pertinent legislative history. *Id.*

3           We begin by acknowledging the obvious: As a matter of plain meaning,  
4 without regard to the statutory design and context, a letter is both a "written  
5 communication" and, because it is tangible, an "object."<sup>5</sup> At the most basic textual level,  
6 the ostensible breadth of both terms is reinforced by their adjectival garnishes: "in any  
7 form" and "any."

8           Text, however, cannot be viewed in isolation, but must, instead, be  
9 considered in the totality of the statutory framework. That inquiry is informed by rules  
10 (or, more precisely, principles) of construction that bear directly on the interpretation of  
11 the statutory provision in context. *PGE v. Bureau of Labor and Industries*, 317 Or 606,  
12 611, 859 P2d 1143 (1993). Here, two such rules of construction are especially pertinent.  
13 The first rule is a general assumption that, when the legislature employs "different terms"  
14 within the same statute, it "intends different meanings for those terms." *State v. Newell*,  
15 238 Or App 385, 392-93, 242 P3d 709 (2010) (internal citation omitted). The second rule  
16 is that, "[a]s a general rule, we construe a statute in a manner that gives effect, if possible,  
17 to all its provisions." *Crystal Communications, Inc. v. Dept. of Rev.*, 353 Or 300, 311,  
18 297 P3d 1256 (2013); *State v. Stamper*, 197 Or App 413, 418, 106 P3d 172, *rev den*, 339  
19 Or 230 (2005) ("[W]e assume that the legislature did not intend any portion of its

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<sup>5</sup> Indeed, given the statutory text's distinction between "written" and "electronic" communications, it would appear that the former are necessarily tangible.



1 enactments to be meaningless surplusage.").

2           In this case, the state's proposed construction is incompatible with those  
3 principles in combination. To be sure, as a literal matter, "written communications" (as  
4 distinct from "electronic communications") and "objects" are not congruent, but, in the  
5 state's construction, the former is subsumed entirely within the latter, effectively  
6 rendering the former nugatory. The state's proposed construction could sanction  
7 subterfuge--that is, any time a letter, or other tangible "written communication," did *not*  
8 create "reasonable apprehension," the state could simply elect to proceed on an "object"  
9 allegation, circumventing the application of ORS 163.750(1)(c).

10           Finally, legislative history confirms the constitutional sensibility underlying  
11 the statutory design. ORS 163.730(3), introduced as Senate Bill (SB) 833, was enacted  
12 by the 1993 Legislative Assembly, as part of a general anti-stalking scheme. Several  
13 anti-stalking bills had been introduced during the 1993 legislative session. SB 833  
14 ultimately became law, but its language, as amended, was largely drawn from House Bill  
15 2412 (1993), and was the product of collaboration amongst legislators from the House  
16 and Senate, law enforcement interests, the criminal defense bar, the American Civil  
17 Liberties Union (ACLU), and victims' advocates. *See* Tape Recording, Senate  
18 Committee on Judiciary, SB 833, May 4, 1993, Tape 140, Side A; Tape Recording,  
19 House Committee on Judiciary, Subcommittee on Crime and Corrections, SB 833, June  
20 9, 1993, Tape 126, Side A.

21           SB 833, as enacted, was designed to accommodate those constituencies'

1 divergent interests. First, the legislature set out to create a manageable, flexible, and  
2 effective statutory scheme, with both civil and criminal components, to enable law  
3 enforcement officers, courts, and victims to combat stalking. Second, because the bill  
4 restricted speech--to the extent that it authorized courts to prohibit communications by  
5 issuing SPOs and criminalized communications that constituted stalking or violated an  
6 existing SPO--the legislature was particularly concerned with, and sought to foreclose,  
7 potential constitutional problems with the bill. As Committee Counsel Bill Taylor  
8 explained, the measure, as enacted, "reflects the work done by district attorneys, the  
9 criminal defense bar, and the ACLU on this issue of making the bill constitutional." Tape  
10 Recording, Senate Committee on Judiciary, SB 833, May 4, 1993, Tape 140, Side A  
11 (statement of Committee Counsel Bill Taylor). Similarly, Senator Ron Cease, the chief  
12 sponsor of SB 833, explained that the amendments were intended to address issues  
13 identified by the ACLU, which had to do with the "nature of the crime itself." Tape  
14 Recording, Senate Committee on Judiciary, SB 833, May 4, 1993, Tape 140, Side A  
15 (testimony of Sen Ron Cease).

16           The distinction, embedded in ORS 163.730(3), between communicative  
17 and noncommunicative contact, as well as the concomitant inclusion of the "reasonable  
18 apprehension" element for communicative contacts that violate an SPO, were crafted to  
19 comply with Article I, section 8, of the Oregon Constitution. *See, e.g., State v.*  
20 *Robertson*, 293 Or 402, 649 P2d 569 (1982).<sup>6</sup> The prohibitions on communicative

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<sup>6</sup> Similarly, the determination as to whether an SPO or a stalking-related criminal

1 "contacts" were designed to be content neutral, to focus exclusively on the effect (*viz.*,  
2 "reasonable apprehension") of such contacts on the recipient, and to restrict only  
3 nonprivileged expression. Tape Recording, Senate Committee on Judiciary, SB 833,  
4 May 4, 1993, Tape 140, Side A (statement of David Fidanque, ACLU); Tape Recording,  
5 Senate Committee on Judiciary, SB 833, May 5, 1993, Tape 142, Side A (statement of  
6 Rep Kevin Mannix); Tape Recording, Senate Committee on Judiciary, SB 833, May 5,  
7 1993, Tape 143, Side A (statements of Rep Kevin Mannix and David Fidanque).

8           In sum, the totality of the statutory design and the legislative history  
9 demonstrates that a "written communication," ORS 163.730(3)(d), is not an "object,"  
10 ORS 163.730(3)(k), for purposes of ORS 163.750(1). Indeed, to construe the statutes  
11 otherwise would not only contradict the patent legislative intent, but also implicate  
12 precisely the same constitutional pitfalls that the legislature sought to avoid. *See Pete's*  
13 *Mountain Homeowners v. Ore. Water Resources*, 236 Or App 507, 522, 238 P3d 395  
14 (2010) ("When confronted with competing, reasonable constructions of a statute, and  
15 there is even a tenable argument that one of them would render the statute  
16 unconstitutional, we generally favor the other construction.").

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conviction is challengeable on constitutional grounds tracks the statutory distinction between communicative and noncommunicative contacts. *See, e.g., State v. Maxwell*, 165 Or App 467, 475-76, 998 P2d 680 (2000), *rev den*, 334 Or 632 (2002) (disallowing constitutional challenge to conviction predicated upon a noncommunicative contact, where entire course of prohibited conduct involved communicative and noncommunicative contacts but the defendant was charged only with violating the SPO by "coming into the visual and/or physical presence of [the victim]," based on the defendant's physical presence at the victim's church).

1                   Thus, defendant's December 15, 2011, letter to M and her family was not an  
2 "object" for purposes of the crime of violating a stalking protective order, ORS  
3 163.750(1).<sup>7</sup> As noted, in the amended information, the state prosecuted solely on the  
4 allegation that defendant had delivered (by way of a third party) an "object," and there  
5 was no proof at trial that defendant delivered, or caused to be delivered, any item, other  
6 than the letter, to the protected person. *See* \_\_\_ Or App at \_\_\_ (slip op at 3). Thus,  
7 defendant was entitled to an acquittal on the charge of violating the stalking protective  
8 order. The same is true with respect to the contempt charge, which, similarly, was  
9 predicated solely upon the alleged delivery of an "object." Accordingly, both the  
10 criminal conviction and the contempt adjudication must be reversed.

11                   In Case No. 211200312, reversed; in Case No. 211200311, affirmed.

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<sup>7</sup> There is, however, one case that potentially supports an interpretation under which ORS 163.730(3)(k) is broad enough to include certain documents. *See State v. Buchalski*, 264 Or App 142, 331 P3d 1049 (2014), *modified on other grounds on recons*, 266 Or App 225, \_\_\_, \_\_\_ P3d \_\_\_ (Oct 8, 2014) (upholding convictions that were predicated upon allegations that, by causing a civil complaint to be delivered to the victim, the defendant "recklessly violated the SPO by delivering an object to the victim's home \* \* \* and workplace") (slip op at 1). *Buchalski*, however, is of limited relevance here, because in that case, we were not asked to determine, and did not purport to resolve, whether a pleading is an "object," as opposed to a "written communication," for purposes of ORS 163.750(1).