No. 81921-1
consolidated with
No. 81940-8

SANDERS, J. (dissenting)—Former RCW 26.50.110(1) (2006) is unambiguous. It compels us to affirm the Pierce County Superior Court in *State v. Vincent*, No. 07-1-03846-1 (July 23, 2007) and reverse the Court of Appeals in *State v. Bunker* and *State v. Williams*, 144 Wn. App. 407, 183 P.3d 1086 (2008). I dissent.

ANALYSIS

The majority today fumbles several relevant rules of statutory construction. Chiefly, it bypasses the following tenet: "In interpreting a statute, this court looks first to its plain language. *If the plain language of the statute is unambiguous, then this court's inquiry is at an end*. The statute is to be enforced in accordance with its plain meaning." *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) (emphasis added) (citations omitted). The majority similarly ignores the rule that obliges us to derive legislative intent from the plain language of the statute. "When statutory language is unambiguous, *we look only to that language* to determine the

legislative intent *without considering outside sources*." *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003) (emphasis added); *see also Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007) (when a "'statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent'" (quoting *State v. Jacobs,* 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (internal quotation marks omitted))). We review statutory construction de novo. *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006).

Former RCW 26.50.110(1) provides:

> Whenever an order is granted under this chapter, chapter 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, *a violation of the restraint provisions*, or of a provision excluding the person from a residence, workplace, school or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, *for which an arrest is required under RCW 10.31.100(2)(a) or (b),* is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

(Emphasis added.)

While this statute is inelegant, its plain language is also unambiguous. When the irrelevant portions are removed, the statute reads, " [A] violation of the restraint provisions . . . , for which an arrest is required under RCW 10.31.100(2)(a) or (b), is

a gross misdemeanor . . . ." Former RCW 26.50.110(1).

Despite the majority's claim to the contrary, there is no reason the last antecedent rule's corollary should not apply here. Majority at 8-9. The majority's primary reason for dismissing this rule of grammar (i.e., that a subsequent statutory provision contains the word "also") makes little sense. Majority at 9. Aside from being loose justification for such an important aspect of the case, the logic falters. The "also" in former RCW 26.50.110(3) refers to the gross misdemeanor of violating a no-contact order *for which an arrest is required under RCW 10.31.100(2)(a) or (b)*. Subsection (3)'s contempt of court penalty *is* properly "in addition to some other punishment" when that punishment is warranted. Majority at 9. The majority's logic should not discharge the rule of grammar here.

Moreover, the majority's contention that the corollary to the last antecedent rule, if applied, would lead to absurd results does not ring true. *See id*. at 8, 9, 11. That the legislature would characterize as gross misdemeanors only violations that carry the requirement of arrest under RCW 10.31.100—instead of all violations generally—is not absurd. It might not mesh with the majority's preferences, but it is not absurd.

Accordingly I would hold the qualifying phrase "for which an arrest is required under RCW 10.31.100(2)(a) or (b)" applies to all antecedents, not merely

the immediately preceding one. Former RCW 26.50.110(1). The statute unambiguously limits gross misdemeanors to only those violations of no-contact orders for which an arrest is required. It does not criminalize *all* violations of no-contact orders.

The statute's plain language ends our inquiry. *See Armendariz*, 160 Wn.2d at 110. Yet the majority nonetheless delves into external sources, including amendments passed after the violations.[1] Majority at 12-13. Our rules of statutory construction require us to derive legislative intent from the plain language of this unambiguous statute. *Delgado*, 148 Wn.2d at 727; *Tingey*, 159 Wn.2d at 657.[2]

Here, police found Leo Bunker in the willing company of Lillian Hiatt after Bunker was stopped for speeding. Hiatt, who had a restraining order against Bunker, was a passenger in the truck. The same theme applies to Rachel Vincent, whom police discovered in a car with a man who held a no-contact order against

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[1] The majority cites changes in the statute passed after these incidents occurred. Majority at 12-13. But don't these changes inherently support Bunker's argument that, pursuant to the language of former RCW 26.50.110(1), a gross misdemeanor required a mandatory arrest at the time he engaged in his behavior? Don't the changes necessarily mean the statute said something different (and presumably deficient) from what it says now? Why else would the legislature deem the changes necessary? In any event, we must consider the statute in effect at the time the violations occurred.

[2] The majority never explicitly finds the language of former RCW 26.50.110(1) unambiguous, which is the starting point (and in this case the ending point) for statutory interpretation. It strongly implies the statute is unambiguous, *see* majority at 12, but nonetheless derives legislative intent only after referencing other statutes and external sources. *Id*. at 8-13. Because former RCW 26.50.110(1) is plain and unambiguous on its face, this extra-statutory romp is improper.

her. Donald Williams violated a no-contact order by yelling profanities at Linda Poole, grabbing Poole's wrist, trying to take her keys, and threatening to trash her house, steal her truck, and kidnap her dog. He also appeared on Poole's front porch late at night and rattled the doorknob in an attempt to enter her home.

For a conviction to stand the State must prove beyond a reasonable doubt every essential element of a crime charged. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The State charged the defendants with violations of former RCW 26.50.110(1). While each of the incidents here violated the provisions of the respective no-contact orders, the State did not allege—nor prove at trial—that arrest pursuant to RCW 10.31.100(2)(a) or (b)[3] was an essential element of the crimes. The State merely charged violations of each no-contact order.

Accordingly I would hold the State improperly charged the defendants under former RCW 26.50.110(1). The charging documents and jury instructions omit essential elements of the crimes. For Bunker and Vincent, it is not even clear they committed a crime under former RCW 26.50.110(1) because there was no act or threat of violence and no presence in prohibited places requiring arrest. The

[3] RCW 10.31.100(2)(a) requires an officer to arrest a person who violates terms of a no-contact order against "acts or threats of violence," or a person who enters or remains in a prohibited location. RCW 10.31.100(2)(b), which applies to foreign protection orders, is not at issue here.

State—and this court—must live with the version of former RCW 26.50.110(1) in effect when the defendants violated the no-contact orders.

CONCLUSION

Because the majority today misapplies our rules of statutory construction, I dissent. The plain language of former RCW 26.50.110(1) compels a different result.

AUTHOR:
Justice Richard B. Sanders

WE CONCUR: