

**CRIMINAL LAW—THE RESTRAINT OF COMMON
SENSE, NOT VIOLENT ABUSERS:
THE MINNESOTA SUPREME COURT’S
MISGUIDED ANALYSIS IN *STATE V. COLVIN***

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I. INTRODUCTION

In *State v. Colvin*,¹ the Minnesota Supreme Court struggled with whether the violation of an order for protection (“OFP”) could satisfy the predicate crime element of first-degree burglary.² The court ultimately

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1. 645 N.W.2d 449 (Minn. 2002).

2. See MINN. STAT. § 609.582, subd. 1 (2003) (providing that a defendant is guilty of first-degree burglary if he/she enters an occupied dwelling without consent and commits or intends to commit a crime while inside).

held that an OFP violation was insufficient to provide the basis for a first-degree burglary conviction.³ The court asserted that its review was limited to the stipulated facts of the trial court.⁴ Those facts, as interpreted by the Minnesota Supreme Court, suggested that Colvin intended to violate only the “no-entry” provision of the OFP.⁵ Since the court found that Colvin merely intended to *enter* his ex-wife’s residence, his illegal conduct thereby resembled criminal trespass,⁶ not first-degree burglary.⁷ As a result, the court reversed Colvin’s burglary conviction.⁸

This case note explores the history of protective orders both around the country and in Minnesota.⁹ It analyzes the law of burglary and its recent interaction with OFP violations in Minnesota,¹⁰ and then summarizes the *Colvin* case’s facts, procedural history, and Minnesota Supreme Court decision.¹¹ Subsequently, this note criticizes the court’s decision amid its apparent misapplication of the trial court record and relevant law.¹² Finally, the note analyzes Colorado’s approach to the issue of whether an OFP violation can satisfy the predicate crime requirement of burglary.¹³

II. HISTORY OF PROTECTIVE ORDERS

A. *The Fight for Protection*

Domestic violence has consistently led to an overwhelming number of injuries and deaths in the United States. According to government statistics, domestic violence is the leading cause of injuries to women ages 15 to 44, and is more common than automobile accidents, muggings, and cancer deaths combined.¹⁴ Forty percent of all injured

3. *Colvin*, 645 N.W.2d at 453-56.

4. *Id.* at 453.

5. *Id.*

6. See BLACK’S LAW DICTIONARY 1508 (7th ed. 1999) (defining *trespass* as “wrongful entry on another’s real property”).

7. *Colvin*, 645 N.W.2d at 453-456.

8. *Id.* at 456.

9. See *infra* Part II.

10. See *infra* Part II.D.

11. See *infra* Part III.

12. See *infra* Part IV.A-B.

13. See *infra* Part IV.D.

14. H.R. REP. NO. 103-395, at 26 (1993). In addition, each year approximately 1.5 million women and 500,000 men in the United States require immediate medical attention because of a domestic assault. See Eve S. Buzawa & Carl G. Buzawa, *Introduction to DO ARRESTS AND RESTRAINING ORDERS WORK?* 1, 3 (Eve S. Buzawa &

women who need emergency room care have been assaulted by their partners.¹⁵

In response to staggering statistics like these, and a surmounting social movement for gender equality, states have fought to enact domestic abuse protection laws to provide specific legal protection to abuse victims.¹⁶ This legislative effort directly addressed and contradicted thousands of years of adverse history¹⁷—a history that approved of and sanctioned domestic violence against women.¹⁸

The history of domestic abuse can be traced as far back as Roman civil law, which gave a husband legal guardianship over his wife and included the right to physically chastise her.¹⁹ The Bible even condones the patriarchal institution of male dominance and implies physical abuse against women.²⁰

Moreover, English common law, which formed the basis for many statutes and policies in the United States, permitted a man to dominate and chastise his wife without legal repercussion.²¹ William Blackstone, the acclaimed English legal scholar, noted that “for as the husband is to answer for her misbehavior, the law thought it reasonable to entrust him with the power of refraining her, by domestic chastisement.”²² Historically, domestic abuse in the United States had been viewed as a

Carl G. Buzawa eds., 1996) (observing that more than one-half of individuals injured in a domestic dispute seek medical care via a hospital emergency room).

15. See Mary E. Asmus et al., *Prosecuting Domestic Abuse Cases in Duluth: Developing Effective Prosecution Strategies from Understanding the Dynamics of Abusive Relationships*, 15 HAMLIN L. REV. 115, 120 (1991) (citing Demie Kurz & Evan Stark, *Not-So-Benign Neglect: The Medical Response to Battering*, in FEMINIST PERSPECTIVES OF WIFE ABUSE 249-51 (Kersti Yllo & Michele Bograd eds., 1988)).

16. EVE S. BUZAWA & CARL G. BUZAWA, *DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE* 109 (3d ed. 2003).

17. *Id.*

18. *Id.*

19. *Id.* at 57.

20. *Id.* at 58. The Bible states, in part, that “[w]ives be subject to your husbands as you are to the Lord. For the husband is the head of the wife just as Christ is the head of the church . . .” *Ephesians* 5:22-23. Further, the Bible notes that, “when a wife while under her husband’s authority, goes astray and defiles herself or when a spirit of jealousy comes on a man and he is jealous of his wife, then he shall set the woman before the Lord and the priest shall apply this entire law to her.” *Numbers* 5:29-30.

21. BUZAWA & BUZAWA, *supra* note 16, at 60.

22. Pamela M. Macktaz, *Domestic Violence: A View from the Bench*, 6 MD. J. CONTEMP. LEGAL ISSUES 37, 38 (1994-95) (citing 1 WILLIAM BLACKSTONE, COMMENTARIES 444); see also Gretchen P. Mullins, *The Battered Woman and Homelessness*, 3 J.L. & POL’Y 237, 239 (1994) (noting that historically under the doctrine of coverture a husband was entitled to discipline his wife without legal consequence).

private matter that should not monopolize precious judicial resources.²³

However, in the last thirty years states have begun to recognize that domestic abuse cannot be overlooked, and that victims must be afforded legal protection from their violent abusers.²⁴

B. Protective Orders Around the Country

States enacted comprehensive domestic violence protection laws in the late 1970s.²⁵ These laws specifically demanded that the legal system no longer ignore domestic abuse issues.²⁶ One of the most significant advances in these domestic abuse laws, now in all fifty states,²⁷ has been

23. See BUZAWA & BUZAWA, *supra* note 16, at 79-80 (asserting that police and judges would not typically arrest or convict men who abused their wives because the legal system did not regard domestic abuse as a top priority).

24. See Asmus et al., *supra* note 15, at 124.

25. In 1977, Pennsylvania became the first state to enact a comprehensive domestic violence act. BUZAWA & BUZAWA, *supra* note 16, at 109.

26. See *id.* at 71-96; see also Macktaz, *supra* note 22, at 39 (pointing out the apparent paradox when there was an “extended period of time when the criminal justice system responded one way to ‘stranger’ violence and another way to violence between intimates”).

27. ALA. CODE § 30-5-7 (2003); ALASKA STAT. § 18.66.100 (Michie 2002); ARIZ. REV. STAT. § 13-3602 (West 2003); ARK. CODE ANN. §§ 9-15-201 to 209 (Michie 2002) (amended by 2003 Ark. Acts 1221); CAL. FAM. CODE §§ 6320-6322 (West 2003); COLO. REV. STAT. § 13-14-102 (West 2003) (amended by 2003 Colo. Legis. Serv. ch. 139 (West)); CONN. GEN. STAT. § 46b-15 (West 2003) (effective Oct. 1, 2003); DEL. CODE ANN. tit. 10, § 1042 (2002); FLA. STAT. ch. 741.30 (Harrison 2003); GA. CODE ANN. § 19-13-4 (Harrison 2002) (amended by 2003 Ga. Laws Act 298); HAW. REV. STAT. § 586-3 (Michie 2002); IDAHO CODE § 39-6306 (Michie 2003); 750 ILL. COMP. STAT. 60/214 (West 2003); IND. CODE § 34-26-5-2 (West 2002); IOWA CODE § 236.4 (West 2002); KAN. STAT. ANN. § 60-3107 (2003); KY. REV. STAT. ANN. § 403.750 (Banks-Baldwin 2003); LA. REV. STAT. ANN. § 46:2136 (West 2003); ME. REV. STAT. ANN. tit. 19-A, § 4006 (West 2003) (amended by 2003 Me. Legis. Serv. 372 (West)); MD. CODE ANN., FAM. LAW § 4-506 (2003); MASS. GEN. LAWS ch. 209A, § 3 (West 2003); MICH. COMP. LAWS § 600.2950 (West 2003); MINN. STAT. § 518B.01 (2002); MISS. CODE ANN. § 93-21-15 (2003); MO. REV. STAT. § 455.020 (West 2003); MONT. CODE ANN. § 40-15-204 (2002); NEB. REV. STAT. § 42-924 (2002); NEV. REV. STAT. 33.020 (Michie 2002); N.H. REV. STAT. ANN. § 173-B:4 (2002); N.J. STAT. ANN. § 2C: 25-28 (West 2003); N.M. STAT. ANN. § 40-13-5 (Michie 2002); N.Y. FAM. CT. ACT § 842 (McKinney 2003); N.C. GEN. STAT. § 50B-3 (2003) (amended by 2003 N.C. Sess. Laws 2003-107); N.D. CENT. CODE § 14-07.1-02 (2001); OHIO REV. CODE ANN. § 3113.31 (West 2003); OKLA. STAT. tit. 22, §§ 60.2-60.4 (West 2002) (amended by 2003 Okla. Sess. Law Serv. 407 (West)); OR. REV. STAT. § 107.718 (2001); 23 PA. CONS. STAT. § 6108 (West 2003); R.I. GEN. LAWS § 15-15-3 (2002); S.C. CODE ANN. § 20-4-40 (Law. Co-op. 2002); S.D. CODIFIED LAWS § 25-10-3 (Michie 2003); TENN. CODE ANN. § 36-3-605 (2003); TEX. FAM. CODE ANN. § 85.021 (Vernon 2003); UTAH CODE ANN. § 30-6-4 (2002); VT. STAT. ANN. tit. 15, § 1103 (2002); VA. CODE ANN. § 16.1-279.1 (Michie 2003); WASH. REV. CODE § 26.50.030 (West 2003); W. VA. CODE § 48-5-509 (Michie 2003); WIS. STAT. § 813.12

the explicit power given to judges to grant injunctive protective orders to stop abuse immediately.²⁸ Until specific domestic violence statutes were passed, injunctive orders to stop domestic abuse were extremely rare and were granted only in conjunction with divorce proceedings.²⁹ These statutes now allow and encourage victims of domestic abuse to obtain a temporary restraining order against their alleged abusers. Overall, domestic violence is a crime of terror and control in which the batterer establishes power over an intimate partner; protective orders seek to disrupt that pattern of control by providing legal protection from future harassment and violence.³⁰

Simply, an order for protection is a binding court mandate that provides immediate legal relief to victims by enjoining abusers from, at a minimum, future violence against their partners.³¹ Protective orders can also mandate child support and custody, prohibit future contact with the victim, and forbid entry into the victim's residence.³²

A protective order can be obtained in an *ex parte* proceeding when the victim needs instant physical protection.³³ An *ex parte* protection order is crucial because it provides immediate legal protection for the victim before a hearing is scheduled.³⁴

(West 2003); WYO. STAT. ANN. § 35-21-105 (Michie 2002).

28. BUZAWA & BUZAWA, *supra* note 16, at 109-12.

29. *Id.* at 233.

30. Domestic abuse has been regarded as:

[A] pattern of coercive behavior that changes the dynamics of an intimate relationship within which it occurs. Once the pattern of coercive control is established, both parties understand differently the meaning of specific actions and words. Domestic violence is not simply a list of discrete behaviors, but is a pattern of behavior exhibited by the batterer that includes words, actions, and gestures, which, taken together, establish power and control over an intimate partner.

Mary Ann Dutton, *Expert Witness Testimony*, in *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A LAWYER'S HANDBOOK*, ABA COMMISSION ON DOMESTIC VIOLENCE 8-8, 8-8 (Deborah M. Goelman et al. eds., 1996).

31. Peter Finn, *Statutory Authority in the Use and Enforcement of Civil Protection Orders Against Domestic Abuse*, 23 *FAM. L.Q.* 43, 59 (1989) (concluding that temporary restraining orders are necessary tools in order to protect the victim from imminent harm from the batterer).

32. Cathleen A. Booth, *No-Drop Policies: Effective Legislation or Protectionist Attitude?*, *U. TOL. L. REV.* 621, 626 (1999).

33. Protective orders are distinguishable from criminal prosecutions in two respects: (1) civil rules of procedure apply and (2) the purpose of the order is meant to prevent future unlawful conduct and not to vindicate past offenses. Finn, *supra* note 31, at 44.

34. Courts have consistently held that *ex parte* restraining orders, if administered properly, do not violate a defendant's due process rights. *See Blazel v. Bradley*, 698 F. Supp. 756, 768 (W.D. Wis. 1988); *Baker v. Baker*, 494 N.W.2d 282, 287-88 (Minn.

Furthermore, domestic abuse laws carry strict penalties in an attempt to address a serious social problem. The punishment for the violation of a protective order varies by state.³⁵ Protective order violations can be punished via criminal charges, contempt of court, or a combination of the two.³⁶ In forty-eight states, violation of a protective order is a separate offense.³⁷ Thereby, no underlying crime of domestic abuse need be proven.³⁸

In 1994, Congress enacted the Violence Against Women Act (“VAWA”) to address the widespread domestic violence crisis.³⁹ One of the most notable provisions of the VAWA is the section that institutes mandatory enforcement of protective orders in state and tribal courts.⁴⁰ This section, known as the full faith and credit provision, commands the states and Native American tribes to honor valid protective orders issued by sister states and tribes,⁴¹ and to treat those orders as if they were their own.⁴²

The VAWA seeks to underscore the necessity of state domestic

1992); *State ex rel. Williams v. Marsh*, 626 S.W.2d 223, 229-36 (Mo. 1982); *Marquette v. Marquette*, 686 P.2d 990, 995-96 (Okla. Ct. App. 1984). For instance, the Minnesota Domestic Abuse Act contains built-in procedural safeguards to protect defendants’ due process rights. *Baker*, 494 N.W.2d 282 at 287-88. These safeguards include proper service-of-process upon the defendant, a sworn affidavit alleging specific facts and circumstances of domestic violence, and allowing only judges to issue such orders. *Id.*

35. David M. Zlotnick, *Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders*, 56 OHIO ST. L.J. 1153, 1194-97 (1995).

36. *Id.* at 1194.

37. BUZAWA & BUZAWA, *supra* note 16, at 114.

38. *Id.*

39. The Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902-1955 (1994) (officially codified in various sections of 8 U.S.C., 18 U.S.C., & 42 U.S.C.). See *United States v. Morrison*, 529 U.S. 598, 605 (2000) (holding parts of the VAWA unconstitutional because Congress did not have proper authority under the Commerce Clause to enact the civil remedy provision; however, the provision prohibiting and criminalizing interstate violations of restraining orders remains good law).

40. 18 U.S.C. § 2265 (2002).

41. However, protective orders are afforded full faith and credit under the VAWA only if the due process requirements of the issuing state were sufficiently met. Catherine F. Klein, *Full Faith and Credit: Interstate Enforcement of Protection Orders Under the Violence Against Women Act of 1994*, 29 FAM. L.Q. 253, 256 (1995). The issuing court must have had both personal and subject matter jurisdiction over the defendant. *Id.* Furthermore, the defendant must receive proper notice and an opportunity to be heard. *Id.*

42. 18 U.S.C. § 2265(a) (2002) (stating that any order of protection “that is consistent with subsection (b) of this section by the court of one State or Indian tribe . . . shall be accorded full faith and credit by the court of another State or Indian tribe . . . and enforced as if it were the order of the enforcing State or tribe”).

violence legislation by requiring states to acknowledge protective orders issued by sister states.⁴³ The VAWA responds to the critical domestic abuse problem in the United States, and displays the federal government's integrated efforts to recognize and enforce protective orders.

C. *Protective Orders in Minnesota*

In 1978 it was estimated that in Minnesota there were 26,900 assaults on women by their partners.⁴⁴ Faced with such tragic statistics, the Minnesota legislature enacted the Minnesota Domestic Abuse Act in 1979.⁴⁵ This statute combated the specific problem of domestic abuse.⁴⁶ Originally, this statute provided a two-step procedure for a victim of domestic abuse to obtain an emergency ex parte restraining order.⁴⁷ First, the victim would need to petition the court ex parte for a temporary order for protection.⁴⁸ This would be granted only if the victim alleged immediate and present physical danger.⁴⁹ The emergency order, if granted, would stay in effect for no longer than seven days and would remain temporary in nature pending a final mandatory hearing.⁵⁰ Second, the court would schedule a subsequent hearing.⁵¹ At this time,

43. See Klein, *supra* note 41, at 253 (noting that the VAMA attempts to make "crimes committed against women considered in the same manner as those motivated by religious, racial, or political bias").

44. Baker v. Baker, 494 N.W.2d 282, 285 (Minn. 1992) (citing Minn. Dep't of Corrections, *Minnesota Program for Battered Women*, Biennial Report 1986-87, p. 12).

45. MINN. STAT. § 518B.01 (2002).

46. "Domestic abuse" as defined by the Minnesota Domestic Abuse Act:
means the following, if committed against a family or household member by a family or household member:
physical harm, bodily injury, or assault;
the infliction of fear of imminent physical harm, bodily injury, or assault; or
terroristic threats, within the meaning of section 609.713, subdivision 1;
criminal sexual conduct, within the meaning of section 609.342, 609.343,
609.344, 609.345, or 609.3451; or interference with an emergency call
within the meaning of section 609.78, subdivision 2.

MINN. STAT. § 518B.01 (2)(a) (2002).

47. MINN. STAT. § 518B.01, subd. 7(a) (1994); see also Baker, 494 N.W.2d at 285 (stating that the Minnesota Domestic Abuse Act is only a "band-aid" because the Act curbs short-term, not long-term, domestic abuse issues).

48. MINN. STAT. § 518B.01, subd. 7(a) (1994).

49. MINN. STAT. § 518B.01, subd. 4(b) (1994) (stating that the petition for the ex parte order must be accompanied by a sworn affidavit).

50. MINN. STAT. § 518B.01, subd. 7(c) (1994).

51. *Id.*

the judge could formally extend the duration of the protective order.⁵²

In 1995 the Minnesota legislature amended the Domestic Abuse Act to allow victims of imminent violence to obtain a one-step, self-finalizing ex parte protection order.⁵³ Although a hearing is available for an alleged abuser, it is now not mandatory.⁵⁴ If the abuser does not request a hearing, the protective order becomes final after five days.⁵⁵ The law now strives to eliminate administrative barriers that complicate applying for and obtaining protective orders.⁵⁶

A judge considering an ex parte order has a wide variety of relief within his/her discretion. These include mandates that forbid future domestic abuse, exclude the batterer from the victim's residence and workplace, order the continuance of insurance coverage, require counseling or treatment for the batterer, and provide for child custody, visitation and support.⁵⁷

In Minnesota, an OFP violation constitutes a misdemeanor crime punishable by three or more days in jail coupled with some form of counseling or court-designated program.⁵⁸ However, if the defendant has committed an OFP violation or domestic violence crime in the past five years, the offense is upgraded to a gross misdemeanor,⁵⁹ which results in a minimum of ten days of jail time accompanied by a counseling or court program.⁶⁰ Finally, a defendant will be guilty of a felony, which carries a presumptive prison sentence, if the OFP violation amounts to the defendant's third OFP infringement in the past five years or the defendant uses a dangerous weapon during the OFP violation.⁶¹ A violation of an order for protection also constitutes contempt of court.⁶²

52. *Id.*

53. MINN. STAT. § 518B.01, subd. 7(a) (2002).

54. MINN. STAT. § 518B.01, subd. 7(c) (2002).

55. *Id.*

56. Presently, most domestic abuse protection order requests are handled and prepared by the clerk of the designated court to eliminate confusion and promote efficiency. See MARTIN L. SWADEN & LINDA A. OLUP, 14 MINNESOTA PRACTICE SERIES—FAMILY LAW § 17.3 (2d ed. 2000). For example, Hennepin County assists each petitioner in the preparation of both the OFP petition and affidavit through their domestic abuse office. *Id.*

57. MINN. STAT. § 518B.01, subd. 7 (2002); see also 9A HENRY W. MCCARR & JACK S. NORDBY, MINNESOTA PRACTICE SERIES—CRIMINAL LAW & PROCEDURE § 57.3 (3d ed. 2000).

58. MINN. STAT. § 518B.01, subd. 14(b).

59. MINN. STAT. § 518B.01, subd. 14(c).

60. *Id.*

61. MINN. STAT. § 518B.01, subd. 14(d).

62. MINN. STAT. § 518B.01, subd. 14(b).

Overall, the Minnesota legislature has continually strived to curb domestic abuse by enacting and amending the Minnesota Domestic Abuse Act.⁶³

D. The Intersection of OFP Violations and Burglary in Minnesota

1. Burglary

The crime of first-degree burglary contains two elements: the defendant must (1) enter a dwelling without consent, and (2) intend to commit or commit a crime while another person, not an accomplice, is present inside.⁶⁴ The state, when charging a defendant with first-degree burglary, has the burden of proving, beyond a reasonable doubt,⁶⁵ that the defendant intended to commit or committed “some independent

63. Listed *infra* is a brief chronological history of several notable amendments to the Minnesota Domestic Abuse Act since its inception in 1979: MINN. STAT. § 518B.01 (1979) (allowing domestic abuse victims to obtain an OFP against abuser); MINN. STAT. § 518B.01, subd. 6(f) (1981) (stating that an order for restitution issued under the Act is enforceable as a civil judgment); MINN. STAT. § 518B.01, subd. 17 (1987) (mandating that in a custody proceeding, a court must consider the findings in a proceeding under the Act, or under a similar law of another state, that domestic abuse has occurred between the parties); MINN. STAT. § 518B.01, subd. 6(a)(9) (1990) (adding in part that a judge may order the petitioner’s protection at work); MINN. STAT. § 518B.01, subd. 20 (1992) (providing that an OFP issued under the Act applies statewide); MINN. STAT. § 518B.01, subd. 6(a)(11) (1993) (permitting the judge to order continuance of all insurance coverage); MINN. STAT. § 518B.01, subd. 6(a)(3) (1994) (including provision that allows a judge to exclude the abusing party from a “reasonable area surrounding the dwelling or residence”); MINN. STAT. § 518B.01, subd. 7(a) (1995) (eliminating requirement that ex parte order be granted only pending a full hearing); MINN. STAT. § 518B.01, subd. 6(a)(7) (2001) (authorizing the court to require the abusing party to successfully complete a domestic abuse counseling program or educational program).

64. In this case, only subsection (a) of Minnesota Statutes section 609.582 is pertinent to Colvin’s burglary conviction. Thus, sections (b) and (c), dealing with dangerous weapons and assault, will not be discussed. Minnesota Statutes section 609.582 subdivision (1)(a) prescribes the elements of first-degree burglary, and reads as follows:

Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while inside the building, either directly or as an accomplice, commits burglary in the first degree and may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both, if: the building is a dwelling and another person, not an accomplice, is present in it when the burglar enters or at any time while the burglar is in the building.

65. See 12A C.J.S. *Burglary* § 100 (2003) (noting that to sustain a burglary conviction, the state must prove the burglary elements beyond a reasonable doubt).

crime [other than trespass] after entering the building illegally.”⁶⁶ Intent to commit a predicate crime for the purposes of a burglary conviction is usually proven by circumstantial evidence.⁶⁷

For example, in *State v. Adamson*,⁶⁸ the defendant kicked open the door to a residence and subsequently tried to escape by giving the occupant of the house a fake story, address, and phone number.⁶⁹ The appellate court, looking at the totality of the circumstances surrounding the defendant’s entry into the house, affirmed the defendant’s first-degree burglary conviction.⁷⁰ The court stated, “[t]he evidence reasonably supports an inference appellant intended to commit a theft on the premises.”⁷¹

However, if the court does not find sufficient evidence that the defendant intended to commit an independent crime, the burglary conviction will not stand. In *State v. Larson*,⁷² the court reversed the defendant’s burglary conviction because no evidence supported the conclusion that the defendant intended to commit a crime when he entered his ex-wife’s home.⁷³ *Larson* stands for the proposition that the state may not punish a defendant, via a burglary charge, by only presenting evidence that the defendant intended to commit a trespass and a trespass alone.⁷⁴

2. *State v. Roberson: Is an OFP violation enough?*

In *State v. Roberson*,⁷⁵ the Minnesota Court of Appeals considered, for the first time, whether an OFP violation could satisfy the predicate crime requirement of a burglary conviction.⁷⁶ The defendant in the case was subject to a valid OFP, which specifically prohibited him from

66. *State v. Larson*, 358 N.W.2d 668, 670 (Minn. 1984).

67. *State v. Ring*, 554 N.W.2d 758, 760 (Minn. Ct. App. 1996). Intent may be proven by circumstantial evidence since intent consists of a *state of mind* that is not directly physically observable. *State v. Hardimon*, 310 N.W.2d 564, 566 (Minn. 1981); see also *State v. Baskett*, No. C6-00-931, 2001 WL 290627, at *3 (Minn. Ct. App. Mar. 27, 2001).

68. 365 N.W.2d 282, 283 (Minn. Ct. App. 1985).

69. *Id.*

70. *Id.*

71. *Id.*

72. 358 N.W.2d 668, 670 (Minn. 1984).

73. *Id.*

74. *Id.*

75. No. C7-98-211, 1998 WL 690846, at *1 (Minn. Ct. App. Oct. 6, 1998).

76. *Id.*

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entering his ex-girlfriend's residence.⁷⁷ Despite the OFP restrictions, the defendant illegally entered his ex-girlfriend's residence by cutting a hole in a window screen while she was not home.⁷⁸ When she returned home, the defendant, following a brief conversation with her, left the premises after she threatened to call 911.⁷⁹ After being arrested, the defendant admitted he was aware of the OFP restrictions and that he violated those restrictions when he entered his ex-girlfriend's residence.⁸⁰ The defendant was charged and convicted of first-degree burglary.⁸¹ The defendant argued, on appeal, that an OFP violation cannot serve as the independent crime element of burglary because "like criminal trespass, the very act of entering the premises constitute[s] the OFP violation."⁸²

The court of appeals rejected this reasoning and affirmed the defendant's burglary conviction, asserting that "[v]iolation of an OFP is not an offense completely encompassed by the element of nonconsensual entry."⁸³ The court observed, "every burglary involves a trespass, but not every burglary involves a violation of an OFP."⁸⁴

As the court noted, to secure a burglary conviction, the state must prove, in addition to a mere trespass, that the defendant both knew of and intentionally violated a valid OFP.⁸⁵ Because the state is required to prove elements in addition to trespass, the court held that intent to violate an OFP satisfies the independent crime requirement of first-degree burglary.⁸⁶

III. CASE DESCRIPTION

A. *Facts and Procedural History*

On February 25, 1999, the Rochester Police Department received a

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at *2 (noting that an OFP violation has fundamentally distinct elements and simply because a violation of an OFP is easily proven should not take away from the fact that it is an independent crime).

84. *Id.*

85. *Id.*

86. *Id.* The court concluded that the elements of first-degree burglary, as construed by *Larson*, were sufficiently fulfilled by the facts of this case. *Id.* The three-judge panel unanimously affirmed Roberson's burglary conviction. *Id.*

call from Michelle Colvin who reported that her ex-husband, Peter Allen Colvin, entered her residence in violation of a valid OFP.⁸⁷ After arriving at her residence, the police officers learned that Peter Colvin illegally entered her home, possibly through an unlocked window, while Michelle was at work.⁸⁸ At approximately 6:10 p.m., A.M.E, a 15-year-old girl who was staying with Michelle Colvin, came home and discovered Peter Colvin inside the residence drinking a beer and watching television.⁸⁹ Mr. Colvin left immediately after A.M.E. asked him to do so.⁹⁰

The police later confirmed that Peter Colvin was prohibited, via a valid OFP,⁹¹ from contacting Michelle Colvin, entering her home or workplace, and committing domestic abuse against her.⁹² The OFP was valid for one year and was properly served on Mr. Colvin the same day it was issued.⁹³ It was his third violation of that order.⁹⁴

The Olmsted County Attorney charged Mr. Colvin with violation of the OFP⁹⁵ and first-degree burglary.⁹⁶ Mr. Colvin moved to dismiss the burglary charges, arguing that he did not intend to commit a crime other than illegal entry.⁹⁷ The trial court denied Mr. Colvin's motion to dismiss.⁹⁸ Pursuant to a plea agreement, the parties then submitted the

87. *State v. Colvin*, 645 N.W.2d 449, 451 (Minn. 2002).

88. *Id.* Michelle Colvin reported to police that the defendant likely gained entry to her residence through a window in the dining room because that particular window would not properly lock and the blinds were disturbed. *Id.*

89. *Id.* Mr. Colvin had no legal interest in his ex-wife's residence. Respondent's Brief at 5. However, even if Mr. Colvin retained a legal ownership interest in the residence, the issuance of an OFP divests him of the right to lawfully enter the residence. *See State v. Evenson*, 554 N.W.2d 409, 412 (Minn. Ct. App. 1996) (holding that the defendant's OFP, which prohibited him from entering the marital home, severed his right to lawfully possess/enter the marital home, and therefore he could rightfully be convicted of first-degree burglary when he broke into the residence and assaulted his ex-wife).

90. *Colvin*, 645 N.W.2d at 451.

91. *Id.* at 450. Michelle Colvin obtained an emergency ex parte order for protection, pursuant to Minnesota Statutes section 515B.01 (2002), against her ex-husband for the period of one year beginning on October 14, 1998. *Id.*

92. *Id.* at 451. The OFP prohibited Peter Colvin from entering any present or future residence that Michelle Colvin may inhabit, even if he was invited to do so. *Id.*

93. *Id.* at 450-51.

94. *Id.* at 451; Respondent's Brief at 5-6. Since this was Mr. Colvin's third infringement of the OFP, the violation ascends from a misdemeanor to a felony charge. *See* MINN. STAT. § 518B.01, subd. 14(d)(1) (2002).

95. MINN. STAT. § 518B.01, subd. 14(d)(1) (2002).

96. MINN. STAT. § 609.582, subd. 1(a) (2002).

97. *Colvin*, 645 N.W.2d at 451.

98. *Id.*

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burglary charge to the court on stipulated facts⁹⁹ and dropped the OFP charge.¹⁰⁰ Mr. Colvin was found guilty of first-degree burglary.¹⁰¹

The Minnesota Court of Appeals affirmed the conviction, holding that an OFP violation satisfies the predicate crime element¹⁰² of burglary.¹⁰³ The court reasoned that since the state must prove that the defendant committed or intended to commit additional illegal actions, as well as trespass (namely the knowing violation of a valid OFP), Colvin's burglary conviction could stand.¹⁰⁴ The court noted that Colvin was imminently aware of his OFP restrictions because he was properly served with the OFP and had been charged and convicted of a previous OFP offense not less than six months earlier.¹⁰⁵ Colvin appealed to the Minnesota Supreme Court on the issue of whether an OFP violation is sufficient to provide the basis for a burglary conviction.¹⁰⁶

B. The Minnesota Supreme Court's Holding

The Minnesota Supreme Court, Justice Lancaster¹⁰⁷ writing for the

99. *Id.* A stipulated fact trial is a procedure outlined in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980) in which the defendant may preserve and obtain review of a pretrial issue without the need for a full trial. *Id.* at 857. Accordingly, the defendant stipulates to the evidence against him/her. *Id.* A *Lothenbach* stipulated fact trial is held before a judge who examines the complaint and evidence against the defendant and rules subsequently (more than likely finding the defendant guilty). See HENRY W. MCCARR & JACK S. NORBY, 9 MINNESOTA PRACTICE SERIES—CRIMINAL LAW AND PROCEDURE § 37.4 p. 245-48 (3d ed. 2001). The defendant waives his/her right to a jury trial, the right to call witnesses and the right to be confronted with his/her accuser. *Id.*

100. *Colvin*, 645 N.W.2d at 451.

101. *Id.* (noting that the district court found Mr. Colvin violated Minnesota Statutes section 609.582, subd. 1(a) by entering Ms. Colvin's residence without consent and intending to commit the crime of violating an OFP while another person was present inside the residence).

102. See MINN. STAT. § 609.582, subd. 1(a) (2002) (states that a defendant must enter an occupied dwelling without consent and intend to commit or commit a crime).

103. *State v. Colvin*, 629 N.W.2d 135, 139 (Minn. Ct. App. 2001) (distinguishing an OFP violation from a mere trespass by asserting that "every burglary involves a trespass, but, not every burglary involves a violation of an order for protection"). *Id.* at 138.

104. *Id.*

105. *Id.* at 138-39.

106. *Colvin*, 645 N.W.2d at 450.

107. President George W. Bush subsequently selected Justice Joan Lancaster to succeed Judge Paul A. Magnuson on the federal district court of Minnesota. The U.S. Senate unanimously confirmed her appointment on April 25, 2002. See Tom Webb, *U.S. District Court: Senate Confirms Lancaster for Judgeship*, ST. PAUL PIONEER PRESS, Apr. 26, 2002, at B3, available at <http://www.twincities.com/mld/twincities/news/local/3139695.htm> (last visited Nov. 29, 2003).

majority, held¹⁰⁸ that Mr. Colvin's OFP violation was insufficient to establish first-degree burglary,¹⁰⁹ absent commission of or intent to commit a crime other than violation of an OFP.¹¹⁰ According to the court, if the state had established the commission of or intent to commit another crime, such as assault or terroristic threats, the predicate crime requirement, and in turn a burglary conviction, could be sustained.¹¹¹ However, the court asserted that it was bound to the trial court's stipulated facts.¹¹² It noted that the record lacked any evidence suggesting Colvin committed or intended to commit a crime other than an OFP violation.¹¹³

As maintained by the court, not only was the violation of the OFP the sole crime Colvin intended to commit, but also the only stipulation of the OFP he intended to break was the "no-entry" provision.¹¹⁴ If Colvin intended to violate the other OFP provisions,¹¹⁵ his actions would not resemble a trespass.¹¹⁶ According to the supreme court's reading of the trial court's findings, Colvin intended only to *enter* his ex-wife's house and not to contact, harass, or abuse her.¹¹⁷ The court held that the trial court's stipulated facts definitively established Mr. Colvin's lack of intent to commit any crime other than a violation of the "no-entry" provision of the OFP.¹¹⁸

The majority relied heavily on *State v. Larson*¹¹⁹ when reasoning

108. Colvin, 645 N.W.2d at 456 (Russell A. Anderson & Gilbert, JJ., dissenting).

109. The court stated that construction of a criminal statute, such as the one here, is a question of law subject to *de novo* review and all reasonable doubt in the statute should be resolved in favor of the defendant. *Id.* at 452 (citing *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996)); *see also* *State v. Olson*, 325 N.W.2d 13, 19 (Minn. 1982).

110. Colvin, 645 N.W.2d at 453.

111. *Id.* at 452.

112. *Id.* at 455.

113. *Id.* at 456 (noting that "[u]nder the stipulated facts . . . there is no allegation that Colvin committed or intended to commit a crime other than a violation of the OFP"; thus a burglary charge would be inappropriate).

114. *Id.* at 452.

115. Once again, Colvin was prohibited from contacting his ex-wife, entering her home and workplace, and committing any acts of domestic abuse against her. *Id.* at 451.

116. *Id.* at 452.

117. *Id.* The court asserts that, as an appellate court, it cannot engage in extrinsic fact-finding, and it will accept the trial court's findings of fact unless those findings are clearly erroneous. *Id.* at 453 (citing *State v. Robledo-Kinney*, 615 N.W.2d 15, 32 (Minn. 2000)).

118. *Id.*

119. 358 N.W.2d 668 (Minn. 1984) (holding that when the state's evidence proves only trespassory intent, and not intent to commit an independent crime, the defendant's conviction of burglary must be vacated).

that violation of a “no-entry” provision of an OFP cannot serve as the predicate crime to establish a burglary.¹²⁰ The court reiterated and applied the holding in *Larson* when it ruled that the state must “do more than establish an intent to commit the crime of trespass” to fulfill the elements of first-degree burglary.¹²¹

The court stressed that the violation of the “no-entry” provision of an OFP is similar to actions of a trespass¹²² and thus cannot satisfy both elements of burglary.¹²³ As a result, the court reversed Mr. Colvin’s conviction in its entirety.¹²⁴

IV. ANALYSIS OF THE *COLVIN* DECISION

State v. Colvin gave the Minnesota Supreme Court a pivotal opportunity to recognize, in burglary cases, the unmistakable distinction between a mere trespasser and an abusive ex-spouse who acts in direct contravention of a court order. Unfortunately, the court improperly analyzed both the trial court record and the relevant case law. The court’s forced interpretation of the facts and law in *Colvin* has led to a misguided and absurd result that undermines the very purpose of Minnesota’s domestic violence legislation.¹²⁵

A. *Misstating the Record*

The court states, repeatedly, that *Colvin* came before it on stipulated facts, and therefore it must accept the trial court’s findings.¹²⁶ This may be accurate regarding the scope of an appellate court’s review;¹²⁷ however, the court grossly misinterpreted the trial court’s decision. The

120. *Colvin*, 645 N.W.2d at 453-54.

121. *Id.* at 454 (quoting *Larson*, 358 N.W.2d at 670).

122. *Id.* at 455 (stating that violation of an OFP and trespass satisfy only the illegal entry element of burglary and not the predicate crime element).

123. *Id.* at 454-55; See MINN. DIST. JUDGES ASS’N, COMM. ON JURY INSTRUCTION GUIDES, MINNESOTA JURY INSTRUCTION GUIDES (CRIMINAL) CRIMJIG 17.02 (Richard D. Hodson, rep.) in 10A MINN. PRACTICE, 5-6 (3d ed. 1990) (defining first-degree burglary as entering a dwelling with the intent to commit an independent crime while another person, not an accomplice, is present inside the dwelling).

124. *Colvin*, 645 N.W.2d at 456.

125. See generally Mary Schouvieller, *Leaping without Looking: Chapter 142’s Impact on Ex Parte Protection Orders and the Movement Against Domestic Violence in Minnesota*, 14 LAW & INEQ. 593, 598-610 (1996).

126. *Colvin*, 645 N.W.2d at 453.

127. See, e.g., *State v. Robledo-Kinney*, 615 N.W.2d 25, 32 (Minn. 2000).

trial court, according to the Minnesota Supreme Court, held that Mr. Colvin intended to violate only the “no-entry” provision of the OFP.¹²⁸ This is not an accurate reading of the trial court’s decision. The entire trial court decision, issued by Judge Joseph F. Chase, is as follows:

Pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), Defendant waived his right to jury trial in this matter and stipulated to the prosecution’s evidence, submitted to the court in the form of police reports. The court, having reviewed those reports, as well as Judge Jacobson’s September 29, 1999 Order and Memorandum on the legal issue raised by the defense in this matter, hereby finds as follows:

1. On February 25, 1999, Defendant entered the building located at [address];
2. He did so without consent;
3. In entering the building, he intended to and did commit a crime—specifically violation of the October 14, 1998 Order for Protection which excluded Defendant from that building;
4. The building was a dwelling, and;
5. Another person, not an accomplice, was present in the building during some of the time that Defendant was in the building.¹²⁹

The supreme court rests its entire decision on two short phrases found in section 3, “in entering the building” and “which excluded Defendant from that building.”¹³⁰ These phrases are used to conclusively establish that the trial court found Colvin in violation of only the “no-entry” provision of the OFP, rather than the OFP as a whole.¹³¹

However, if the findings are critically analyzed, a different practical deduction emerges. The two phrases in section 3 are simply modifiers that are not meant to specify the exact provision of the OFP that was violated. The first phrase observes that the defendant had the intent to break the OFP when entering the dwelling. The other phrase acts as a simple additive, referring the reader back to section 1, noting that the building Colvin entered was the same listed in the OFP. In fact, the trial court explicitly stated that Colvin’s predicate crime was the violation of

128. *Colvin*, 645 N.W.2d at 453.

129. *State v. Colvin*, No. K7-99-1441 (3d Dist. Ct. Minn. Apr. 10, 2000) (finding defendant guilty of burglary in the first degree).

130. *See Colvin*, 645 N.W.2d at 453.

131. *Id.* at 453-55.

the OFP; Colvin “intended to and did commit a crime—specifically violation of the October 14, 1998 Order for Protection.”¹³² The phrases the majority relies upon were added for grammatical ease and should not detract from the court’s straightforward holding, which did not list the exact provision that Colvin violated. If the decision was ambiguous to the supreme court, then it should have remanded the decision for clarification and should not have, in one fell swoop, reversed Colvin’s conviction while categorically barring every OFP violation from ever providing the predicate crime for a burglary charge.

Furthermore, if the court did not wish to remand the case, it could have looked to what the trial judge relied upon in making his decision—namely, Judge Debra J. Jacobson’s Omnibus Order and legal Memorandum.¹³³ Essentially, the legal issue of whether an OFP can satisfy the burglary elements was heard and decided by Judge Jacobson.¹³⁴ Judge Chase then simply entered a guilty finding in accordance with Judge Jacobson’s ruling after the parties agreed to stipulate to the facts.¹³⁵

Judge Jacobson’s Memorandum mentions Colvin’s OFP violation only in the general sense¹³⁶ and does not qualify the violation to any one provision therein.¹³⁷ The Memorandum states, in part, “[t]he violation of an order for protection is sufficient to act as the predicate crime to the charge of burglary in the first degree.”¹³⁸ Judge Jacobson’s thoughtful and clear-cut Memorandum was sufficiently examined by Judge Chase before he issued his ruling.¹³⁹ Once again, the trial court unmistakably held that an OFP violation, in its general sense, can satisfy the elements of first-degree burglary.¹⁴⁰ The majority of the supreme court erroneously misstated the trial court’s findings¹⁴¹ and consequently

132. *Colvin*, No. K7-99-1441.

133. See Omnibus Order and Memorandum, *State v. Colvin*, No. K7-99-1441 (3d Dist. Ct. Minn. Sept. 29, 1999).

134. *Id.*

135. *Colvin*, No. K7-99-1441.

136. See Omnibus Order and Memorandum, *supra* note 133, at 3.

137. In fact, according to the memorandum, the defendant did not even argue that his OFP violation was *only* an infringement of the “no-entry” provision. *Id.* Judge Jacobson, in referring to the defendant’s legal argument, states that “[d]efendant asserts that burglary cannot be predicated upon the intent to violate an order for protection.” *Id.*

138. *Id.* at 3-4.

139. See *Colvin*, No. K7-99-1441 (“The court, having reviewed those reports, as well as Judge Jacobson’s September 29, 1999 Order and Memorandum on the legal issue raised by the defense in this matter, hereby finds as follows . . .”).

140. *Id.*

141. *State v. Colvin*, 645 N.W.2d 449, 456 (Minn. 2002) (Russell A. Anderson, J.,

based its decision on a skewed and narrow reading of the trial court's holding.

The supreme court should have considered the trial court's decision in its entirety. The trial court clearly held that Colvin intended to commit, and did commit, a burglary that was predicated upon his OFP violation. A common sense and accurate reading of the trial court decision was unfairly sacrificed in this case.

B. Misapplying the Law

1. State v. Larson

After interpreting the trial court's holding, the supreme court relied immensely on *State v. Larson*,¹⁴² which held that a defendant who only trespasses on another's property without intent to commit an independent crime could not be found guilty of burglary.¹⁴³ In other words, a "mere trespasser" cannot be subject to a burglary charge.¹⁴⁴ *Larson* can be distinguished on several levels and should not have controlled the outcome of *Colvin*.¹⁴⁵

Primarily, Mr. Colvin was prohibited via a valid OFP from entering his ex-wife's home and having any contact with her.¹⁴⁶ The defendant in *Larson* was not subject to OFP restrictions.¹⁴⁷ Thus, the defendant in *Larson* did not commit the independent crime of an OFP violation when he entered his ex-wife's residence because he was never specifically mandated to stay away from her.¹⁴⁸

Furthermore, the defendant in *Larson* was not seen as a serious

dissenting) (correcting the majority by asserting that "the district court stated that the *specific violation* was simply violation of the OFP, not the no-entry part of the order.") (emphasis in original).

142. 358 N.W.2d 668 (Minn. 1984).

143. *Id.* at 670 (arguing that "to allow an intent to commit a trespass to satisfy the requirement of intent to commit a crime would mean that a mere trespasser who had no intent other than to enter or remain in a building" could be successfully prosecuted for burglary).

144. *Id.*

145. In *Colvin* the court expressly rejected a portion of the analysis in *Larson*, which took into account the relationship between the victim and the intruder to determine intent. *Colvin*, 645 N.W.2d at 455. The court, in *Colvin*, discarded this notion and expressed that an ex-husband generally does not have any greater right to be on his ex-wife's property than a stranger. *Id.*

146. *Id.* at 450-51. See also Respondent's Brief at 9.

147. *Larson*, 358 N.W.2d 668 (Minn. 1984); Respondent's Brief at 9.

148. See *Larson*, 358 N.W.2d at 670.

threat to his ex-wife or her property because “in a number of prior unconsented entries, he apparently had done nothing criminal once inside.”¹⁴⁹ This contrasts the *Colvin* case because Mr. Colvin had previously stolen both money and personal belongings from his ex-wife’s residence and, as a result, was ordered to pay \$900 in restitution to Michelle Colvin for his illegal conduct.¹⁵⁰

In addition, Peter Colvin had not only broken into Michelle Colvin’s house previously,¹⁵¹ but had placed her in a state of imminent fear of physical abuse.¹⁵² Peter Colvin had threatened violence against both Michelle Colvin and her children on prior occasions.¹⁵³ Michelle Colvin then sought and obtained legal protection from her ex-husband.¹⁵⁴ She successfully asserted that she was in immediate danger of physical abuse from Peter Colvin, evinced by his threatening behavior.¹⁵⁵ It is inappropriate to characterize Mr. Colvin as a “mere trespasser” because, unlike the defendant in *Larson*, Colvin’s persistent aggressive behavior has warranted specific government protection.¹⁵⁶ The court’s characterization of the defendant in *Larson* as a “mere trespasser” may or may not have been accurate, but the depiction of Mr. Colvin as a “mere trespasser” in light of his past threatening and illegal conduct could not be farther from the truth.¹⁵⁷

Justice Russell A. Anderson, writing for the dissent, astutely notes that “the effect of the majority’s ruling is to erase any distinction between a court-prohibited entry into a home by a person with a court-identified propensity to harm . . . and a mere trespass into a building by a stranger.”¹⁵⁸ Overall, the court wrongly extended the holding in *Larson*, and, in turn, makes an inadvertent trespasser indistinguishable from an aggressive ex-spouse who intentionally violates a binding court order.¹⁵⁹

149. *Id.*

150. *Colvin*, 645 N.W.2d at 456 n.1 (Russell A. Anderson, J., dissenting).

151. *Id.* at 457.

152. *See id.*

153. *Id.*

154. *Colvin v. Colvin*, No. F6-98-3106 (3d Dist. Ct. Minn. Oct. 14, 1999) (Emergency (Ex Parte) Order For Protection).

155. *Id.*

156. *Colvin*, 645 N.W.2d at 450-51.

157. Mr. Colvin had previously brought alcohol and drugs into Michelle’s home. *Id.* at 457 (Russell A. Anderson, J., dissenting). Colvin had also invited friends of his into the home, which subsequently resulted in an allegation of inappropriate conduct with the children. *Id.*

158. *Id.* at 458.

159. *See id.* at 456-58.

2. *Let the Domestic Abuse Act Stand on Its Own Two Feet*

When reviewing a criminal conviction, Minnesota appellate courts construe and interpret the applicable criminal statute by its plain language.¹⁶⁰ The appellate courts are guided by the “natural and most obvious meaning” of the statutory language.¹⁶¹ As a result, “the plain meaning and language of a statute will normally end” the statutory inquiry.¹⁶²

In *Colvin*, the majority concluded that Peter Colvin’s OFP violation did not fall within the parameters of the burglary statute because his violation only involved mere entry.¹⁶³ However, a common sense analysis of the burglary statute offers a different conclusion. The plain language of the first-degree burglary statute reads, in part: “[w]hoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building . . . commits burglary in the first degree”¹⁶⁴

First, it is undisputed that Colvin entered his ex-wife’s residence without consent, as evidenced by his break-in through a window when she was at work.¹⁶⁵ Second, it is equally evident that Colvin intended to commit, and indeed did commit, a crime at Michelle Colvin’s residence—namely the violation of an OFP. Mr. Colvin was properly served with the OFP, had previously been convicted for violating it, and promptly left the residence on February 19, 1999, when A.M.E requested he do so.¹⁶⁶ These facts undeniably demonstrate that Colvin knew at the moment of entry that he was in direct violation of a legally binding court order.¹⁶⁷

160. *Colvin*, 645 N.W.2d at 452.

161. *See* *State v. Richardson*, 633 N.W.2d 879, 884 (Minn. Ct. App. 2001).

162. *State v. Larson*, 605 N.W.2d 706, 714 (Minn. 2000). However, a statute should not be interpreted to create criminal offenses that the legislature did not contemplate. *State v. Soto*, 378 N.W.2d 625, 628 (Minn. 1985). But it is clear that the legislature, when enacting the Minnesota Domestic Abuse Act, intended to treat domestic abuse and OFP violations seriously and with stiff penalties. *See* MINN. STAT. § 518B.01, subd. 14 (2002). Quite indicative of legislative intent, the Domestic Abuse Act does not contain an exclusive remedy provision, and in fact, the Domestic Abuse Act specifically states “[a]ny proceeding under this section shall be in addition to other civil or criminal remedies.” MINN. STAT. § 518B.01, subd. 16. This demonstrates the legislative intent to encourage battered women and prosecutors to find relief from domestic violence in a number of ways, not necessarily exclusive to the Act itself.

163. *Colvin*, 645 N.W.2d at 455.

164. MINN. STAT. § 609.582, subd. 1 (2002).

165. *Colvin*, 645 N.W.2d at 451.

166. *State v. Colvin*, 629 N.W.2d 135, 138-39 (Minn. Ct. App. 2001).

167. *See id.*

In addition, the knowing violation of an OFP is a *crime* by itself.¹⁶⁸ The predicate crime required for a first-degree burglary conviction includes misdemeanor crimes¹⁶⁹ such as an OFP violation. And further, the breach of *any* OFP restriction comprises a full violation of the order calling for complete criminal consequences associated with that violation.¹⁷⁰ Simply, in accordance with a fair reading of the plain language of the burglary statute, Colvin's illegal actions constituted a burglary. Colvin entered a dwelling without consent and purposely committed a crime at that dwelling.

To combat this sound reading of the statute, the Minnesota Supreme Court stated, "the same entry is insufficient to satisfy both the illegal entry element of the burglary statute and the independent-crime requirement."¹⁷¹ Unfortunately, the court dictates that the violation of a "no-entry" OFP, and in reality other forms of OFP violations, is wholly consumed by a trespass. By holding that a burglary cannot be predicated on an OFP violation, the court diminishes the strength and purpose of the Minnesota Domestic Abuse Act by trivializing OFP violations, even if those violations were only infringements of "no-entry" provisions.

An OFP violation and a trespass are crimes enacted for different reasons and meant to address different social concerns. The Minnesota Domestic Abuse Act¹⁷² specifically targets domestic violence by criminalizing OFP violations.¹⁷³ The statute prescribes enhanced punishments for violating an OFP, which are penalties not present in the trespass statute.¹⁷⁴

Trespass and an OFP violation are fundamentally different crimes and "the two, one an offense against a person and the other against property . . . should not be merged indiscriminately . . ."¹⁷⁵ Moreover, trespass does not wholly encompass an OFP violation.¹⁷⁶ Because the violation of an OFP is an independent crime that has been separately enacted by the legislature, its direct violation should unquestionably

168. See MINN. STAT. § 518B.01, subd. 14(a)-(d) (2002).

169. *Colvin*, 629 N.W.2d at 138 (citing *State v. Olson*, 382 N.W.2d 279, 282 (Minn. Ct. App. 1986)).

170. MINN. STAT. § 518B.01, subd. 14 (2002).

171. *State v. Colvin*, 645 N.W.2d 449, 454 (Minn. 2002).

172. MINN. STAT. § 518B.01 (2002).

173. *Id.*

174. See MINN. STAT. § 609.605 (2002).

175. *Colvin*, 645 N.W.2d at 458 (Russell A. Anderson, J., dissenting).

176. See *State v. Roberson*, No. C7-98-211, 1998 WL 690846, at *2 (Minn. Ct. App. Oct. 6, 1998).

qualify as the predicate crime for burglary.¹⁷⁷ The plain and reasonable interpretation of the burglary statute should have been followed in this case.

3. *Circumstantial Evidence*

The Minnesota Supreme Court's function, when reviewing the evidence from a trial court, is not to try the facts anew, but to "determine from the record as a whole whether the evidence permits the inference required to justify a conviction."¹⁷⁸ The Minnesota case law, including *State v. Larson*,¹⁷⁹ permits the reviewing court to consider circumstantial evidence to determine whether the fact finder's inference of intent was justified.¹⁸⁰ The court in this case mistakenly failed to entertain circumstantial evidence (which was included in the trial court record) that Mr. Colvin intended to not only enter Michelle Colvin's residence, but also to contact and harm her.¹⁸¹

Peter Colvin has a prolonged history of allegations involving threatening behavior and alcohol abuse.¹⁸² Colvin illegally entered his ex-wife's home while she was at work, drank a 40-ounce beer and waited there for several hours until after 6:00 p.m.¹⁸³ The court blatantly

177. See BLACK'S LAW DICTIONARY 191 (7th ed. 1999) (defining *burglary* as the "modern statutory offense of breaking and entering any building with the intent" to commit a crime).

178. *State v. Crosby*, 277 Minn. 22, 24, 151 N.W.2d 297, 299 (1967) (citing *State v. Kline*, 266 Minn. 372, 373, 124 N.W.2d 416, 418 (1963)).

179. 358 N.W.2d 668 (Minn. 1984).

180. See *Colvin*, 645 N.W.2d at 457 (Russell A. Anderson, J., dissenting) (stating that consideration of circumstantial evidence to determine if one is a "mere trespasser" is part of the court's normal review); *Larson*, 358 N.W.2d at 670-71; *Crosby*, 277 Minn. at 25, 151 N.W.2d at 300 (noting that "proof of intent to commit a crime in connection with proof of burglary is always one that must rest on a permissible inference from the facts proved" at the trial court); *State v. Ring*, 554 N.W.2d 758, 760 (Minn. Ct. App. 1996) (observing that "intent must generally be proved from the circumstances surrounding the defendant's acts").

181. See, e.g., *State v. Mills*, 289 Minn. 528, 529, 185 N.W.2d 276, 277 (1971) (court looks at the surrounding circumstances to ascertain the defendant's intent upon entry); see also *Crosby*, 277 Minn. at 25, 151 N.W.2d at 299 (holding that circumstantial evidence is entitled to the same weight as other evidence, although reviewed with more scrutiny).

182. Colvin has had two convictions for DWI, a conviction for escape from custody, and several arrests for criminal damage to property, trespass, disorderly conduct, and child neglect. Minnesota Bureau of Criminal Apprehension Database Record of Peter Allen Colvin; Records and Investigation Information Report of Peter Allen Colvin included in the stipulated fact trial. Michelle Colvin had also alleged that Mr. Colvin threatened to kill her and the children. OFP Aff. at 3.

183. Respondent's Brief at 3.

disregarded both Colvin's past behavior and the circumstances that surrounded his entry because of its reliance on a mistaken interpretation of the trial court's findings of fact. Colvin's past aggressive behavior in addition to his illegal actions that day suggest he intended to contact and possibly injure his ex-wife.

These circumstances, which were privy to the trial court and its decision,¹⁸⁴ should not have been brushed aside by the Minnesota Supreme Court. By doing so, it ignores both Colvin's true intent and the actual ruling of the trial court.

4. *An Absurd Result*

When interpreting statutes, the courts are required "to consider objects which the legislature seeks to accomplish by the statute and the mischief sought to be remedied, and to avoid a result which would be absurd or would do violence to the language of the statute."¹⁸⁵ The court's construction of the burglary statute in this case has indeed led to an absurd result.¹⁸⁶

In reality, the court's analysis prescribes a harsher result for a man who enters a residence in a drunken stupor without any connection to it than for a man with a history of intimidation and abuse allegations who enters contrary to a court order.¹⁸⁷ Surely by enacting the Domestic Abuse Act to protect victims from domestic violence, the legislature did not intend to provide extended protection to abusers at the expense of the victims.¹⁸⁸

C. *The Correct Decision—Colorado Leads the Way*

Violation of the OFP should have constituted the predicate crime for Mr. Colvin's burglary conviction. Colorado has taken the lead in this area of law. In *People v. Rhorer*,¹⁸⁹ the Colorado Supreme Court upheld the defendant's second-degree burglary¹⁹⁰ conviction for entering his

184. This information was included in the evidence before the court in the stipulated fact trial.

185. *Peterson v. Haule*, 230 N.W.2d 51, 57 (Minn. 1975).

186. *See* Respondent's Brief at 12.

187. *See State v. Mills*, 289 Minn. 528, 529, 185 N.W.2d 276, 277 (1971) (inferring intent to commit an additional independent crime when defendant was found drunk in a building to which he had no known connection).

188. Respondent's Brief at 13.

189. 967 P.2d 147 (Colo. 1998).

190. In Colorado a defendant commits second-degree burglary when he/she "breaks an entrance into, enters unlawfully in, or remains unlawfully after a lawful or unlawful

former girlfriend's house in violation of a valid restraining order.¹⁹¹ The court noted that violation of a restraining order could in fact serve as the predicate crime for the purposes of the defendant's burglary conviction.¹⁹² The court stated that the Colorado General Assembly had enacted a specific statute that made the violation of a restraining order a crime separate from trespass.¹⁹³ Thus, it was found to satisfy the independent crime element of burglary.¹⁹⁴ Because the jury found that the defendant possessed the requisite intent to violate the restraining order¹⁹⁵ and because the violation of a restraining order under Colorado law is a crime, the conviction was unanimously upheld.¹⁹⁶

Subsequently, the Colorado Court of Appeals in *People v. Widhalm*¹⁹⁷ held that a first-degree burglary conviction could be predicated upon a restraining order violation¹⁹⁸ because such a violation clearly fulfills the independent crime element of burglary.¹⁹⁹ Colorado's common sense approach to the interpretation of their burglary statutes, the language of which is equivalent to Minnesota statutes, should have been employed by the Minnesota Supreme Court in *Colvin*.

V. CONCLUSION

The Minnesota Supreme Court's decision in *Colvin* has not only reversed Mr. Colvin's burglary conviction, but has also diminished the autonomy and strength of the Minnesota Domestic Abuse Act. *Colvin* has categorically undermined the protections and goals of the Act.²⁰⁰ Furthermore, the court rested its decision on an inappropriate reading of both the trial court record and relevant case law. The enhanced protections that the Minnesota legislature sought to bestow upon battered

entry in a building or occupied structure with intent to commit therein a crime against another person or property." COLO. REV. STAT. § 18-4-203 (2003).

191. *Rhorer*, 967 P.2d at 150.

192. *Id.*

193. *See* COLO. REV. STAT. § 18-6-803.5 (2003).

194. *Rhorer*, 967 P.2d at 151 n.6.

195. *Id.*

196. *Id.* at 150-51.

197. 991 P.2d 291 (Colo. Ct. App. 1999).

198. *Id.* at 294.

199. *Compare* State v. Marquez, 649 A.2d 114, 117-18 (N.J. Super. Ct. App. Div. 1994) (holding that burglary conviction could not be based solely on defendant's entry into apartment in violation of protective order) *with* People v. Smith, 943 P.2d 31, 33 (Colo. Ct. App. 1996) (ruling that entry in violation of a restraining order is sufficient to support burglary conviction).

200. *See* Schouvieller, *supra* note 125, at 637-42.

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partners²⁰¹ have been partially stripped away by this decision.

And, in reality, this decision will absolutely bar all OFP violations, no matter how blatant, from ever being prosecuted as burglaries. The court's misguided decision undercuts the very purpose of the Minnesota Domestic Abuse Act.²⁰² Sadly, Michelle Colvin has once again been left without any genuine protection from her ex-husband.

201. *See generally* MINN. STAT. § 518B.01 (2002).

202. Schouvieller, *supra* note 125, at 637-42.