THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

Michael P. Frazer,
Petitioner, pro se.

COA No. 55928-5-II

101617-4

PETITION FOR DISCRETIONARY REVIEW

I. IDENTITY OF PETITIONER

Petitioner, Michael P. Frazer, pro se respectfully requests the Supreme Court of Washington accept review of the Court of Appeals Division Two decision.

II. COURT OF APPEALS DECISION

Petitioner is seeking review of the Court of Appeals unpublished opinion in State v. Frazer, No.55928-5-II filed October 11,2022. See Opinion in Attachment D.

On October 11,2022 Division Two filed an unpublished opinion affirming Mr. Frazers convictions of second degree assault, felony harassment, and nine counts of a no-contact order holding that (1) Frazer cannot establish ineffective assistance of counsel based on defense counsel's failure to object to the testimony of two officers and the victim advocate regarding Conrady's out-of-court statements or to the prosecutor's aggressive examination of Conrady; (2) there was sufficient evidence to prove Frazer had knowledge of the no-contact order and therefore he ~~was~~ willfully violated the no-contact order; (3) Frazer's challenges to his convictions and his sentence in his statement of additional grounds (SAG) cannot be considered because they rely on allegations outside the record, were addressed in appellate counsel's brief, or have no merit.

III. ISSUES PRESENTED FOR REVIEW

ISSUE 1
Should this court remand for a new trial due to ineffective assistance of counsel, when defense counsel failed to object to inadmissible hearsay statements by Keri Conrady, without which there would have been little to no evidence of the crimes.

ISSUE 2
Did the trial court err, when the trial court based its finding of guilt of the no-contact order violations on a finding not supported by any evidence that support a finding of guilt beyond a reasonable doubt.

IV. STATEMENT OF THE CASE

Frazer was charged on September 29,2020 with Kidnaping in the First Degree, Assault in the Second Degree, Felony Harassment, and Theft of a Motor Vehicle. CP1-5. Later that day, a Domestic Violence No-Contact Order was entered, prohibiting Frazer from having any contact with Conrady. CP 8. Frazer did not sign the order. CP 8. In place of Frazer's signature the order stated, "Defendant unable to sign: covid 19". CP 8. At the bench trial, the State did not present any evidence regarding entry of the order, service of the order on Frazer, or the meaning of the notation on the order. n.1

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1. The verbatim reports will be referenced the same manner as stated on page 5 of briefs of appellant No. 55928-5-II. And all exhibits and attachements will be referenced from the brief or statement of additional grounds SAG.

While in jail, Frazer spoke on the phone with Conrady no fewer than nine times. 4RP 332-35.

Shortly before trial, the State amended the information to add nine counts of violation of a no-contact order and one count of witness tampering. CP44-55. At the conclusion of the trial, the trial court found Frazer guilty of assault, felony harassment, and the nine counts of violating the no-contact order but found him not guilty of kidnapping, motor vehicle theft, and witness tampering. CP 129-39

The trial court sentenced Frazer to 70 months on the assault charge 60 months on the felony harrasment charge. Frazer's (disputed) offender score for two felonies was greatly increased by the nine invalid convictions for violating the no-contact order CP 89-90. The trial court imposed a sentence of 364 days with credit for 200 days served for the no-contact violations.

V. ARGUMENT

Frazer received ineffective assistance of counsel, which greatly prejudiced his defense. most strikingly counsel failed to object to inadmissible hearsay from multiple witnesses, without which there would have been no evidence that a crime occurred. This court should accept review and reverse the assault and felony harrasment convictions and remand for a new trial.

Additionally, there was insufficient evidence to find beyond a reasonable doubt that Frazer had the required knowledge of the no-contact order. This court should accept review and reverse and vacate the convictions for violation of the no-contact order. Because these convictions impacted the offender score calculation for felony counts, if those counts are not reversed, the Court should remand for resentencing with a corrected offender score.

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Frazer's Brief of Appellant summarized the legal standard for a claim of ineffective assistance of counsel. Br. of App. 17-19. In addition to the two prongs of the Strickland test, Strickland v. Washington, 466 U.S. 668,687 (1984), a defendant basing a claim of ineffective assistance on counsel's failure to object must also demonstrate that an objection would likely have succeded. See Br. of App. 18 (citing State v. Vazquez, 198 Wn.2d 239,248, 494 P.3d 424 (2021)).

According to Vazquez, "if defense counsel fails to object to inadmissible evidence, then they have performed deficiently..." Vazquez, 198 Wn.2d at 248. If evidence central to the state's case was inadmissible, an objection would likely have succeeded, and there could be no legitimate strategic or tactical reason for failing to object. See Id. With deficient performance prong established, "reversal is requiredf if the defendant can show that the result would likely have been different without inadmissible evidence." Id. at 248-49.

Because Conrady's hearsay statements, central to the state's case against Frazer, were inadmissble for thier substance, there was no legitimate strategic reason for counsel not to object. Her performance was deficient. Had she successfully objected, the remaining evidence of the crimes would have been insufficient to support conviction beyond a reasonable doubt. This Court should accept review and reverse the convictions and remand for a new trial.

I. Counsel was ineffective in failing to object to the hearsay testimony of Katie Daugherty.

Defense counsel was ineffective in failing to object to the hearsay testimony of Katie Daugherty. 4RP 271-79. The state called victim advocate, Katie Daughtery, with the specific purpose of relating hearsay statements made by Conrady. Because no hearsay exceptions applied to any of this testimony, it was all inadmissible, yet defense counsel allowed it all to come in without objection, severely undermining Frazer's defense. Even if Daugherty's testimony was admissible for purposes of impeachment, it could not be used as substantive evidence to support conviction. See State v. Clinkenbeard, 130 Wn.App. 552, 569-70 (2005). Because the testimony went to the heart of the state's case against Frazer and was inadmissible for its substance, defense counsel was deficient in failing to object and ensure the testimony was only used for impeachment.

The state argued that the testimony was admissible as impeachment, but this does not excuse defense counsel's failure to object. To the contrary, it makes failure to object even worse. Because these statements were admissible as impeachment, it was clear that Conrady's testimony on the stand was going to be worthless. Her credibility would be destroyed by impeachment evidence. The defense theory that Conrady had fabricated and exaggerated her prior statements due to being high on meth or "hysterical" would be completely undermined by the fact that she corroborated those prior statements to counsel as truth just minutes before taking the stand. Without being able to rely on Conrady's testimony, the only reasonable strategy for defense counsel was to exclude as much substantive evidence of the crimes as possible. Counsel needed to object to Daugherty's testimony being admited or used for its substance. Counsel failed Frazer.

The state claimed that Daugherty's testimony was not admited or used for its substance, but this claim is not supported by the record. The prosecutor's closing argument did not distinguish between impeachment and substantive valuse. 4RP 378-79. The prosecutor related, in detail, the hearsay statements as relayed by Daugherty, as the state's version of what happened that night. 4RP 379. The prosecutor never said that this testimony was only for impeachment purposes.

The trial judge also did not exclude the substantive value of Daugherty's hearsay testimony. In assessing Conrady's credibility, the judge made no mention of using Daugherty's testimony as impeachment. 5RP 417-18. But the judge did refer to "Ms. Conrady's version of what occurred" -- likely a reference to Daugherty's testimony (such as Daugherty's false statement that Conrady had scratches and road rash on her body 4RP at 278), which contained the most complete description of events -- being corroborated by the 911 calls, the jail calls, her interview with Holznagel, and her statements to Anderson. 5RP 418-19. If all of these other things are corroborating "Ms. Conrady's version of what occured," then the only thing left that the judge could have been referring to as "Ms. Conrady's version" was her statements to counsel overheard by Daugherty. The trial court used Daugherty's testimony for substance -- "Ms. Conrady's version of what occurred" -- not as impeachment.

It was essential for defense counsel to limit the use of Daugherty's testimony to impeachment only. If defense counsel would have objected, Daugherty's, testimony could have been excluded entirely or at least limited to impeachment only. With such a ruling in mind, the trial court would have limited its use of the testimony. The trial court still would have found Conrady's testimony on the stand not credible, but it would not have relied on the Daugherty testimony for its substance. The substantive evidence of the crimes would have had to come from elsewhere. This Court should find that defense counsel was ineffective and should reverse the assault and felony harassment convictions.

2. Counsel was ineffective for failing to object to the hearsay testimony related by Deputy Holznagel.

Defense counsel was ineffective for failing to object to hearsay testimony related by Deputy Holznagel. 4RP 289-339. Conrady's statements to Holznagel did not meet the "excited utterance" exception to the hearsay rule and the state failed to lay a sufficient foundation for such a finding. It's not an excited utterance if the statement could have been the result of fabrication, intervening events, or the exercise of choice or judgment. State v. Hochhalter, 131 Wn.App. 506,514(2006). By the time Conrady spoke to Holznagel, it had already been more than two hours since Conrady had exited the vehicle Frazer was driving. 3RP 192-93, 4RP 296. The two hours between Conrady exciting the vehicle and her interview with Holznagel had given her ample time to collect her thoughts and tell a story based on "reflection or self-interest" rather than "a spontaneous and sincere response" to shocking events. State v. Brown 127 Wn.2d 749,758 (1995). Even though Conrady was "upset, quiet," and cried twice, she was able to tell a detailed and complete story, indicating she was no longer under the startling influence of events and therefore not making an "excited utterence" as contenolated by the hearsay exception.

The only foundation laid by the state for an excited utterance was that Conrady "was upset, quiet," and that she cried on two occasions while speaking with Holsnagel. Both occasions were highly emotional moments of Conrady's story, in which she asserted that she "wasn't supposed to make it out that car alive," 4RP 318, and that the person in the other car saved her life, 4RP 319-20. Her tears could have just as easily been fabricated as the rest of her meth induced story. In fact, Conrady testified that what she told law enforcement that morning was all a fabrication. E.g., 3RP 218,219.

The detail with which Conrady was able to tell her story of the night's events reflects the fact that she was no longer under the startling influence of the incident. "A declarant who is able to give a detailed and complete description of an event is giving a narrative of a past completed affair. This suggests he has had time to collect his thoughts and fabricate, if that suits his purpose." State v. Sellers, 39 Wn.App. 799,804 (1985).

The crux of the test for excited utterance, was not established here, "whether the statement was made while the declarant was under the influence of the event, so that her statement could not be the result of fabrication, intervening actions, or other manifestation of judgment." Fleming 27 Wn.App. at 856 ("it must be made at such time and under such circumstances as will exclude the presumption that it is the result of deliberation"). This standard places the burden on the state to provide sufficient foundation to exclude the possibility that the statement was the result of deliberation or fabrication. It was not Frazer's burden to prove fabrication; it was the state's burden to prove that the statements could not have been the result of fabrication or deliberation. The state failed to do so.

The state may argue that defense counsel made a strategic choice to allow the statements in but seek to undermine them through Conrady's testimony that she had been high on meth that night, was not in her right mind, and had fabricated facts due to her drug fueled paranoia. But where the state was unable to prove a sufficient foundation for an excited utterence exception, the statements were inadmissible. There was no legitimate strategic reason not to object. The statements were so damaging to Frazer's defense that to allow them in practically guaranteed a conviction. To the extent defense counsel may have been making a strategic choice, it was not a reasonable one.

In the context of an ineffective assistance claim, the question is not whether the trial court abused its discretion; rather, it is whether it is likely that an objection could have succeeded. The state's failure to lay a sufficient foundation to overcome the presumption of fabrication or deliberation made it likely that a timely objection to Holznagel's hearsay testimony could have succeeded. Defense counsel was deficient for not objecting and greatly prejudiced Frazer. This court should find that counsel was ineffective and should reverse the assault and harrassment convictions.

3. Counsel was ineffective for failing to object to the hearsay testimony of Deputy Brandt.

Defense counsel was ineffective for failing to object to hearsay testimony of Deputy Brandt 3RP 189-206. It was reasonably likely that an objection could have succeeded.

Although the state's foundation for an excited utterance was stronger for Brandt's testimony than it was Holznagel's, it still did not exclude the possibility that Conrady's statements were the result of fabrication or deliberation. Conrady's story of what happened evolved as time went on. She told Anderson that her boyfriend had a knife and threatened to kill her. Then she told the 911 that Frazer put a knife to her throat and would punch her and pull her hair. She told the same story to Brandt, adding that Frazer was taking her to a special place to dump her body after she was killed. 3RP 199-200.

Brandt's testimony established only that Conrady was upset, which alone is not enough to trigger the excited utterance hearsay exception. By the time Conrady spoke with Brandt, she had reflected sufficiently to concoct the basic elements of her story: a knife to the throat, punching, threats to kill. This was enough to explain her panicked exit from the vehicle that Frazer was driving.

Had defense counsel objected, there was a reasonable probability that Brandt's hearsay testimony would have been excluded. The state would have been left without evidence of the alleged assualt and felony harassment. But for counsel's deficient failure to object, there is a reasonable probability that the outcome would have been different.

Even if Brandt's hearsay testimony was admissible as an excited utterance, the cumulative effect of all of counsel's deficient failures was sufficient to undermine confidence in the outcome of the trial. State v. Vazquez, 198 Wn.2d 239,267-68 (2021); see also Strickland 466 U.S. at 696. Without the inadmissible testimony of Holznagel and Daugherty, the state would have been left with only Brandt's bare-bones version against Conrady's denials on the stand. With such a sea-change in the admitted evidence, there is at least a reasonable probability that the outcome would have been different. There would have been reasonable dount that the alleged crimes were committed.

4. Defense counsel was ineffective for failing to object to the prosecutor's ill treatment of Conrady on the stand.

The argument is simple, under Strickland, 466 U.S. 668 (1984), defense counsel's failure to object to the prosecutor's ill treatment of Conrady was deficient because counsel failed to make any effort at all to mitigate the damage that Conrady was doing to her own credibility by her manner of responding to the prosecutor. The problem was not that the prosecutor was violating any rules. In this situtation, the success of an objection would not have been measured by whether it was sustained but the effect it could have had on the tone of the proceedings.

By interjecting some objections at appropriate times, counsel could have broken up the arguments between Conrady and the prosecutor, creating space for both Conrady and the prosecutor to calm themselves, and made Conrady feel more safe and able to answer questions calmly, in a way that would be more likely to maintain her credibility. In this way, some timely objections to the prosecutor's harsh treatment of Conrady while questioning her would likely had a successful impact on Frazer's defense by helping Conrady's credibility was central to counsel's defense strategy, yet counsel allowed Conrady to undermine her own credibility as she fought with the prosecutor. Counsel's failure to even attempt to rescue the chosen defense strategy as it went down in flames was deficient performance that, in combination with with counsel's other deficiencies, greatly prjudiced Frazer's defense. This Court should accept review and reverse the assualt and felony harrasment convictions and remand for a new trial.

5. Counsel was ineffective for issues raised by Frazer in pre-trial hearings from the start of his case.

The Court of Appeals declined to address or rejected the numerous assertions Frazer made in his SAG.See 10/11/22 ruling at 17.

Appellate counsel raised ineffective assistance of counsel claims quoting extensively from the trial record. Frazer believes that because he filed letters and motions and other supporting documents, the matters he raised in his SAG are inside the record not outside.

On page 1 of Frazer's Motion for Reconsideration COA No. 55928-5-II, he asked the court of appeals to dismiss without prejudice the issues that the court determied rely on matters outside the record. The court of appeals did not dismiss them. However Frazer believes his claims are part of the record and this Court can waive the rules under RAP 1.2 to do justice and facilitate resolution of the issue on the merits and if need be order a evidentiary hearing to expand the record and evidence that Frazer presented to the trial court. See Attachments A and B and transcripts in Attachment C.

Frazer is giving NOTICE that if this Court won't consider this issue from the record and evidence Frazer presented to the trial court then he will raise it again in a PRP in the interest of justice, because Frazer did everything he could do to bring to the trial court's attention his counsel's deficient performance.

Counsel was ineffective by failing to call witnesses, present motions and letters of complaints of defense counsel's failure to represent Frazer and the conflict of interests that were raised and sent to the presiding judge and court clerk's office of Pierce county superior court before the start of his trial.

Effective assistance of counsel includes many things, but not in the very least "Certain basic duties, such as duty to loyalty, a duty to avoid conflict of interests ... the overeaching duty to advocate the defendant's cause and the more particular duties to consult with defendant on important decisions and to consult with defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring and bear such skill and knowledge and will render the trial a reliable adversarial testing process. In re PRP of Yung-Chen TSAI, 183 Wn.2d 91, 99-100 (2015) (quoting Strickland v. Washington, 466 U.S. at 688-690).

Strickland v. Washington is not a perfect safeguard against fundamental micarriage of justice. The undending search for symetry in the law can cause judges to forget about justice. Sawyer v. White, 505 U.S 333(1992).

This Court is asked to determine whether Frazer was denied effective assistance of counsel, and in order for this Court to consider this issue, it must consider evidence that was admitted and evidence that would have been admitted had trial counsel's performance been within the constitutional standard of Strickland. Rompilla v. Beard, 545 U.S. 374 (2005); Williams v. Taylor, 529 U.S. 362 (2000). Thus FRazer's summary of the evidence in this case should provide the proper framwrok for the Court's analysis. See Attachment A and B and Transcripts in Attachment C.

Trial counsel failed to call witnesses who would have discredited the state's case. A defendant is entitled to have trial counsel interview and call available witnesses for the defense. See 2/2/2021 Motion to Interview Witnesses in Attachment A.

Had Frazer's attorney made objections call witnesses so he could have a timely trial, also present motions and advocate for Frazer the outcome would have been different and this Court should accept review and reverse Frazer's convictions and remand for a new trial.

B. The trial court erred, when the trial court based its finding of guilt of the the no-contact order violations on a finding not supported by any evidence that support a finding of guilt beyond a reasonable doubt.

There was insufficient evidence to support the trial court's finding that Frazer had knowledge of the no-contact order.

The trial court's finding of knowledge was based on insufficient evidence because the state failed to present any competent evidence that Frazer was present at the hearing at which the no-contact order was entered or that Frazer was served with the order. CP 136.

The face of the no-contact order included boilerplate language that the order was entered "in Open Court in the presence of the Defendant: September 29,2020." CP 8. But Frazer did not sign the order. The space for his signature stated, "Defendant unable to sign: covid19". CP 8. The state did not present any witnesses to testify that Frazer was present for entry of the order, that he was served with the order, or to expalain the notation in the defendant's signature block. 4RP 402. The order itself is hearsay as to the fact of Frazer's presence in court. It is insufficient to support a finding that Frazer was present or that he was served with the order.

In closing arguments, the state attempted to cover for its oversight by arguing that the court could take judicial notice of the "processes and procedures" and meaning of the "covid19" notation. 4RP 408-09. The trial court found, "Because of COVID-19 concerns over cross-contamination, the stylus that had been previously used in the arrainment court was removed and the practice was for the defense attorney to type in the defendant's name and that the defendant was unable to sign due to COVID-19." CP 136; 5RP 426. None of these facts exist in the record.

The trial court could not properly take judicial notice of these facts, either. Certainly a jury would not have been able to take notice of facts that were never presented in the trial. There is no reason the state's burden should be any less just because a judge is the trier of fact.

"A judge may not dispense with the requirement of formal proof simply because he or she already 'knows' that something is true." Tegland, at §201:4. A judge's knowledge or memory is not a proper subject of judicial notice and cannot be relied on without making the judge a witness, in violation of ER 605. Vandercook v. Reece, 120 Wn.App. 647, 651 (2004).

"A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." ER 201(b). Neither the trial court's Covid-19 procedures at arraignment nor Frazer's presence at the arraignment were generally known within Pierce County. And the state did not, during its presentation of evidence, provide the fact fidnder with an unquestionable source for such facts.

The trial court could not use thet fact of standard Covid-19 procedures as proof that Frazer was actually prent at the signing and aware of the entry of the no-contact order. The standard procedure is not proof of what happened in Frazer's specific case.

The state argued that Frazer failed preserve this issue for appeal, but he did, in fact, raise this issue in the trial court. In closing argument, defense counsel pointed out that the state had failed to present any evidence that Frazer was actually present in court and acknowledged the enrty of the no-contact order. 4RP 402. In rebuttal argument, the state raised for the first time the argument that the trial court could take judicial notice to establish Frazer's presence 4RP 408-09. Defense counsel objected. 4RP 409. The trial court allowed the argument. 4RP 409. Frazer properly gave the trial court the opportunity to consider the issue and not commit the error that it did. Where the issue was raised for the first time in rebuttal in order to cover for the state's own oversight in failing to present evidence, defense cousel did all that could be expected to preserve the issue for appeal.

The problem here was not that Frazer failed to preserve the issue, but that the state failed to present the necessary evidence in its case in chief. Because it relates to evidence of a necessary element of the charged crime, the state needed to raise the judicial notice issue prior to resting its case. The state's late request -- and the trial court's acceptance of it -- violated Frazer's right to due process guaranteed in Art 1, §3 Wash. Const. and the 14th amendment of the Federal Constituion by relieving the state of its burden proving every essential element beyond a reasonable doubt. State v. K.N., 124 Wn.App. 875, 880-81 (2004); In re Winship, 397 U.S. 358,364-65 (1967).

The Constituional test for sufficiency of evidence is whether after viewing the evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979).

The state argued that there was other circumstantial evidence to establish Frazer's knowledge of the no-contact order, but the state overplays its hand. For example, the content of the jail calls does not establish any knowledge on Frazer's part. There was only one call in which the no-contact order was mentioned, and in that call Frazer denied the order. 4RP 332-25. His denial cannot be evidence that he knew of its existence.

This Court should accept review and reverse the convictions for violating the no-contact order, dismiss those charges, and remand for resentencing on all other counts with corrected offender score (or for a new trial if those counsts are reversed for ineffective assistance of counsel).

VI. CONCLUSION

Frazer's defense counsel was ineffective for failing to object to inadmissible evidence that went to the heart of the state's case was deficient. There was no reasonable strategic or tactical reason not to object.

Defense counsel also failed to argue or present to the trial court defense witnesses who would have discredited the state's case and for failing to interview other witnesses prior to trial despite Frazer's request to do so.

Defense cousel was further deficient for failing to present certain documents that were filed with the court but not heard due to defense counsel's inaction. Counsel also failed to present other documents that were filed with the court in support of Frazer's defense. See Attachment A and B.

Counsel's failure cumulatively caused great prejudice to Frazer's defense and denied him his right to a fair trial.

Had counsel objected, presented defense witnesses and interviewed withnesses, presented documents and motions on behalf of Frazer there is a reasonable probaility that the outcome would have been different. This Court should reverse the assault and felony harrasment convictions due to ineffective assistance and remand for a new trial and a evidentiary hearing to expand the record for the ineffective assistance of counsel claims.

The trial court's finding that Frazer had knowledge of the no-contact order was not supported by evidence in the record. This Court should reverse the nine convictions and dismiss the charges. The Court should also remand for resentencing on the assualt and felony harrasment counts.

I Michael P. Frazer, declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED and SIGNED this _____ day of January, 2023 in the City of Aberdeen, County of Grays Harbor, State of Washington.

Michael P. Frazer #408632, petitioner, pro se
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

ATTACHMENT A

1. 10/28/2020 Letter to Chief Judge
   RE: Speedy Trial Rights

2. 12/29/2020 Motion to Dismiss

3. 1/8/2021 Motion to Have victim and
   all witnesses interviewed

4. 1/22/2021 Letter to Presiding Judge
   RE: Speedy Trial Rights

5. 1/8/2021 Motion to Dismiss

[ATTACHMENT A]

FILED
IN COUNTY CLERK'S OFFICE

OCT 28 2020

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Attn: Chief Judge
of the Superior Court for the
State of Washington for the
County of Pierce

RE: Michael Patrick Frazer
Case No: 20-1-02406-8

Issue on Hand: Speedy Trial Rights Violations under,
U.S. vs. Marc G. Doggett, 906. F.2d 573.

Dear Chief Judge:

My name is Michael Patrick Frazer, my case number is 20-1-02406-8. Your Honor, I am writing to you in Custody with-in the Pierce County Jail. I am humbly asking you for your help.
Your Honor, I would like to submit to you on the record and to the Court that my key witnesses who will be giving testimony for me will not after 80 days be able to give testimony on my behalf for business and personal reasons.

Your Honor, I do not wish to waive my 6th Amendment right

Therefore at this time, Your Honor, to prevent prejudice to my right to a fair trial, I am submitting this letter on the record under, U.S. vs. Marc G Doggett, 906 F.2d 573. That I will be taken to trial 60 days from this day of October the 6th, 2020 with a 28 day Cure period. Based on my witness availability that after 79 days from today I will be forced to move the Court for dismissal of my case based on prejudice to the defendant.

Your Honor, I would like to thank you at this time, for taking time in reading my letter and your Consideration on this matter.

Sincerely,

* Michael Frazer

October 6, 2020

Micheel Patrick Frazer

5 west C 22 (main Jail)

(Clerks Papers) CP 11

Michael Patrick Frazer

Booking #: 20202772015

Pierce County Sheriff's Department
910 Tacoma Ave South
Tacoma, Wa 98402-2168

TACOMA WA 983
OLYMPIA WA
23 OCT 2020 PM 4

Chief Judge or Presiding Judge

of the Superior Court for the State

of Washington For the County of Pierce

930 Tacoma Ave. South

Tacoma, WA 98402

10/28/2020 4216 0119

December 29, 2020

FILED
IN COUNTY CLERK'S OFFICE

JAN 8 2021

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

State of Washington
Plaintiff

vs.

Michael Patrick Frazer
Defendant.

Cause no. 20-1-02406-8

Motion To DISmiSS

under,

Crawford vs. State of Washington,
124 S. Ct. 1354 (2004)

TO:
The Clerk of Pierce County and all other parties.

Issue of Facts:

A. In 2004 Supreme Court ruling made it clear that all the state witnesses, including the victim or/ victims must come to Court to testify and take the stand. (SEE: 124 S. Ct. 1354.)

B. In 2004 the Supreme Court also made it clear that police statements cannot be used in Court without the victim otherwise it would violate the defendants right to confrontation. (SEE: 124 S. Ct. 1354 (2004).)

Motion For Dismissal under Crawford vs. The State of Washington, 124 S. Ct. 1354 (2004).)

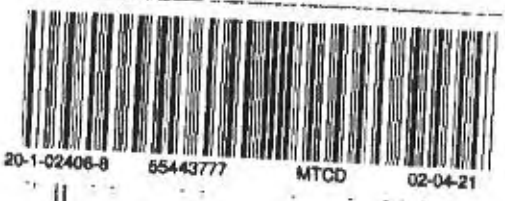
X Michael Frazer 12/24/2020 Michael Frazer
Michael Frazer

0097

5209

2/8/2021

January 8, 2021



FILED
IN COUNTY CLERK'S OFFICE

FEB - 2 2021

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. Michael Patrick Frazer, Defendant.	No. 20-1-02406-8 MOTION TO have victim and all States witnesses interviewed before trial starts under Brady VS. Maryland, 373 US, 83 S.C.T.(1963)

Comes NOW: The defendant respectfully moves this Court for an order under the the U.S. Supreme Court in Brady vs. The State of Maryland, 373, U.S. 83, 10 Led2d 215, 83 S.CT 1194 (1963) to have victim and all States witnesses interviewed before trial.

That I am the defendant and that I have 5th Amendment right of due process to interview the victim and all States witnesses in this case.

Dated this 8th day of January, 2021

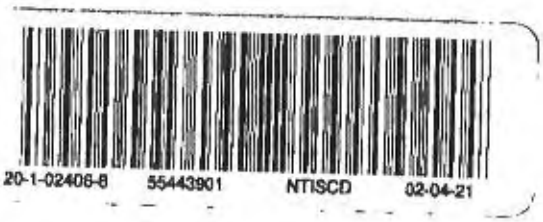
DEFENDANT'S MOTION

x Michael Frazer

CP

0102

2/8/2021 5209



FILED
IN COUNTY CLERK'S OFFICE

FEB - 2 2021

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. Michael Patrick Frazer, Defendant.	No. 20-1-02406-8 Clerk's Action Required Set Motion to Docket

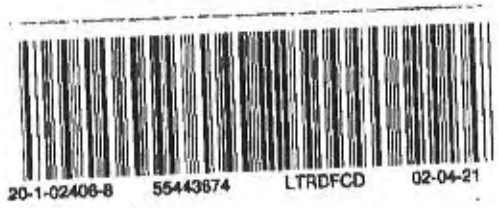
TO THE CLERK OF PIERCE COUNTY; AND
THE PROSECUTING ATTORNEY OF PIERCE COUNTY
PLEASE TAKE NOTICE that the Litigant, Michael Frazer, The Defendant, moves the above entitled court on the 27th day of January, 2021, at 8, o'clock, AM (or the earliest date available) for a hearing [X] With oral Argument [ ] without oral Argument, and that the undersigned will bring on for hearing a motion, or motions for:

Dated this 8th day of January, 2021

x Michael Frazer
Michael Frazer

Clerk's action Required to Set Motion to Docket

(Attachment A)



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2/8/2021

ATTN: Presiding Judge
of the Superior Court for
the State Washington for
the County of Pierce

FILED
IN COUNTY CLERK'S OFFICE
FEB - 4 2021
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

RE: Michael Patrick Frazer
Case NO: 20-1-02406-8

Issue on Hand: Speedy Trial Rights Violations
under U.S. vs Marc G. Doggett, 906 F.2d 573

Dear Presiding Judge,

My name is Michael Frazer. My Case NO. is 20-1-02406-8. Your honor, on the 6th, of October 2020 I Submitted a letter to the Chief Judge and to the Court pertaining to my witnesses availability that were due to testify on my behalf and the assertion of my sixth Amendment right. That if the Courts could not take me to trial within 90 days from my arraignment that I would be forced to move the Court for dismissal of my case based on prejudice to the defense and my right to a fair trial under U.S. vs Marc G. Doggett, 906 F.2d 573 and

This letter is in support and notice of that assertion of my sixth Amendment right due to my witness availability to testify in Court on my behalf who are no longer available due to personal reasons. Your honor, I am asking for your sincere Consideration and assistance in justice on this matte. Thank you.

Respectfull Submitted,
Michael Frazer
Michael P. Frazer
1-22-2021
2D #78 (New Jail)

COPY

Name: Michael Frazer
Booking #: 20102717015
Pierce County Sheriff's Department
910 Tacoma Ave South
Tacoma, Wa 98402-2166

2/8/2021 5209
TACOMA WA 983
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★ USA ★ FOREVER ★

Pierce County Superior Court

Clerk's Office

JAN 28 2021

County-City Building

930 Tacoma Ave S.

Tacoma, WA 98402

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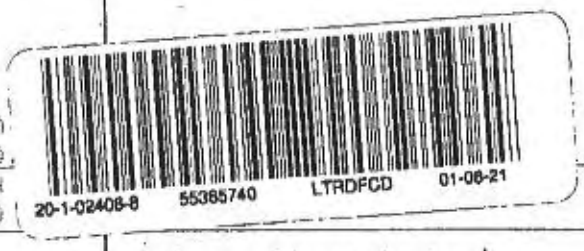
(Attachment A)



0105

4935

1/12/2021

Attn: Cheif Judge
of the Superior Court for
the State of Washington for
the County of Pierce

FILED
IN COUNTY CLERK'S OFFICE
JAN 8 2021
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

RE: Michael Patrick Frazer
Case no: 20-1-02406-8

Issue on Hand: Motion To Dismiss RCW 4.56.120 under Crawford vs. State of Washington, 124 S. Ct. 1354 (2004), U.S. vs. Marc G. Doggett, 906 F.2d 573

Chief Judge:

Your honor, my name is Michael Frazer. My case no. is 20-1-02406-8. I am filing for a motion to dismiss of this case under Crawford vs. the State of Washington, 124 S. Ct. 1354. (2004) and U.S. vs. Marc G. Doggett, 906 F.2d 573. I would like to submit to you on the record and to the Court this motion. As of December 30th 2020 my next Scheduled omnibus I will have been held in custody for 90 days since my arraignment without any evidence, State witnesses, victim or victim Statement in this case.

pg. 1 of 2

0106 4935 1/12/2021

Your honor, the State has had more than enough time to prepare for this case and call its witnesses or the alleged victim. It would be unreasonable, unconstitutional and prejudice to the defense if the Court were to continue this case any further than it already has. Your honor, it even States very clearly in the police statement, the Declaration of Probable Cause that "The victim did not want to make a statement" Your honor, if the State has no proof of contact with any of it's witnesses or the alleged victim, I am requesting a removal of this case and to be dismissed under Crawford vs. the State of Washington, 124 S.Ct. 1354 (2004) U.S. vs. Marc G. Doggett, 906 F.2d 573. Thank you, your honor in advance for your help and your consideration on this matter. God Bless

Sincerely,

x Michael Frazer

Michael Patrick Frazer

12-24-2020

New Jail 2B #30

ATTACHMENT B

1. 1/12/2021 Letter to Chief Judge
   RE: Conflict With Counsel

2. 1/8/2021 Letter to Chief Judge
   RE: Conflict With Counsel

(Attachment B)

FILED
IN COUNTY CLERK'S OFFICE
FEB 03 2021
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Attn: Chief Judge
of the Superior Court for
the State of Washington for
the County of Pierce

RE: Michael Patrick Frazer
Case No: 20-1-02406-8

Issue on Hand: Conflict with my Counsel
under Cuyler vs. Sullivan, 446 U.S. 335

Dear Chief Judge,

My name is Michael Frazer. My case number is 20-1-02406-8. I am writing to you in hopes for your assistance on my case. Your honor, I have been in jail here in Pierce County since the 28th of September and my attorney Ms. Kelly Seago has not done anything in assistance of my case and has refused to file any pre-trial motions as I have requested before the start of trial.

I have tried to communicate with my attorney Ms. Seago about my case and she has not answered or returned any of my phone calls.

pg. 1 of 3

0409 5209 2/8/2021

Your honor, my attorney MS. Seago has not allowed me to review my discovery or the letter that the victim in my case has apparently written to the Court. Again Ms. Seago refuses to effectively assist with my case your honor.

Although I had objected to any new trial settings because the prosecution has failed to introduce any sufficient evidence in my case in support of the allegations and that I was ready for trial, my attorney MS. Kelly Seago requested for a continuance of my case - despite my objections.

Your honor, this is a major conflict and are serious concern with my case. I fear that my assertion of my Constitutional rights and my pleas for justice are going to be violated and fall upon deaf years.

I know that under Supreme Court ruling in Strickland vs the State of Washington that all defendants have a Constitutional right to have the assistance of effective counsel. (SEE: U.S. Supreme Court ruling at 466 U.S. 668, 80 LEd2d 674 104 Sct 2054

Also SEE: Glasser vs U.S. 315 U.S. 60 Also SEE: U.S. vs Padilla-Martinez, 762 F.2d 942 (11th Cir.))

Your honor, I appreciate your time in reading my letter and for your consideration of justice in my case. Thank you much and God Bless

Respectfully Submitted,

Michael P. Frazer

1-12-2021

2D #78 (new Jail)

[Attachments B]

1-8-2021

Attn: Chief Judge
of the Superior Court for
the State of Washington for
the County of Pierce

RE: Michael Patrick Frazer
Case # 20-1-02406-8

Issue on Hand: Conflict with my Counsel
under Cuyler vs Sullivan, 446 U.S. 335

Dear Chief Judge,

My name is Michael Frazer. My case no: is 20-1-02406-8. Your honor; I have been in jail since September 28, 2020. As of today my attorney has done nothing in support of my case. Your honor, I am writing to you in hopes for your assistance.

Through due diligence and reading in the law library here in jail, I know under Supreme Court ruling in Strickland vs the State of Washington that all defendants on trial have a Constitutional right to have the assistance of effective Counsel. (SEE: U.S. Supreme ruling at 466 U.S. 668, 80 LEd2d...

674 104 S. CT. 2052. Also SEE: Glasser vs U.S. 315 U.S. 60 Also SEE: U.S. vs Padilla - Martinez, 762 F.2d 942 (11th Cir.))

Your honor, I am aware of my Constitutional rights and to have all states witnesses and the victim in my case to attend a pre-trial interview with due process before my trial starts under Brady V. Maryland, 373 U.S. 83, 10 LEd 215, 83 S.CT 1194.

Your honor, my attorney Ms. Kelly Seago has not been willing to help me with my case. I have asked Ms. Seago for her to file certain pre-trial motions that I know would help the defense but she has refused to do so. This is a very serious concern for me and a conflict with my counsel.

Your honor, I would like to ask you for your Consideration on this matter as to please let my assigned Counsel Kelly Seago know that she is bound and required to effectively assist me with my case. Thank you.

Respectfully Submitted,

x Michael Frazer 1-8-21

Michael Frazer New Jail 2D #78

ATTACHMENT C

1. Trial Transcript
   2RP 144-147

2. Trial Transcript
   3RP 214-217
   3RP 220-229
   3RP 236-239

3. 1/12/2021 Pretrial Hearing
   Pg. 8,9

Q. (By Ms. Hauger) Ms. Conrady, whose voice is that saying, "I drove to my house and pulled into the driveway and he put a knife to my throat?"

A. Sounds like me.

(Second 911 call played but not transcribed as per direction of the Court.)

Q. (By Ms. Hauger) Whose voice is saying that he told you if you didn't back out of the driveway he is going to sink the knife into your throat?

A. It sounds like me under a whole lot of stress and not in my right mind.

(Second 911 call played but not transcribed as per direction of the Court.)

Q. (By Ms. Hauger) Whose voice is that saying that "he punched me the face"?

A. A hysterical me.

(Second 911 call played but not transcribed as per direction of the Court.)

Q. (By Ms. Hauger) Now that you've listened to that 911 call, why don't we start from the beginning and tell the Court what happened that night.

A. I'm not going to. You can ask me questions, and I'll answer them, but I'm not going to tell any story.

Q. I did ask you a question. I asked you to tell the Court what happened that night that resulted in a call to

911.

A. An argument.

Q. I'm sorry?

A. An argument. I was being a bitch.

Q. What happened during that argument?

A. Arguing.

Q. What happened during that argument is the facts that you told the 911 operator, correct?

A. I don't know exactly. My head was cloudy. I was hysterical. I may have made some mistakes on things that were said. I probably overreacted because, you know, that's what women do.

Q. Ms. Conrady, you were hysterical because, just like you told the 911 operator, when you pulled into the driveway, the defendant pulled out a knife and told you to back out, correct?

A. I may have been hysterical because I was under the influence of drugs.

Q. You were hysterical because the defendant pulled out a knife when you pulled into the driveway and told you to back out, correct?

A. I wasn't hysterical because of anything like that.

Q. Ms. Conrady, you told the 911 operator that he had hit you, correct?

A. I don't remember. I don't remember.

Q. You just listened to the 911 call, correct?
A. Did I say that he hit me?
Q. Yes.
A. I said that I thought I may have had a broken -- I think the word may have been "arm." It was cut off.
Q. I will play it for you again.
A. Okay.
(Second 911 call played but not transcribed as per direction of the Court.)
Q. (By Ms. Hauger) Ms. Conrady, whose voice was that telling the 911 operator that you had driven up and down those roads?
A. We've already been through that. It's my voice.
Q. Did you hear yourself, your voice telling the 911 operator that he punched you in the face?
A. I heard.
Q. Your face was swollen as a result, correct?
A. I don't know that. I was hysterical, and I'm going to go ahead and say that, especially listening to that call, that I was not in my right mind, obviously, and I may have made some errors in judgment of what I have said.
Q. Ms. Conrady, I'm going to back up again and ask you again. This incident started in Puyallup. You clearly indicated that to the 911 operator. Tell the Court what happened when you pulled into the driveway.

A. The incident didn't start in Puyallup like I told the 911 operator. Costco is in Bonney Lake. It's not in Puyallup.

Q. Tell the Court what happened when you pulled into the driveway of your residence.

A. We argued, and I drove my car out the driveway.

Q. During that argument and before you drove the car out of the driveway, the defendant produced a knife and held it to your throat, correct?

A. I don't know that he -- no, he did not. No, he did not.

Q. You told the 911 operator that, didn't you?

MS. SEAGO: Objection, asked and answered many times.

THE COURT: We've gone over this, Ms. Hauger.

Q. (By Ms. Hauger) What time did the defendant pick you up at the 76 Gas Station?

A. I don't know.

Q. You were in the car with him for hours, weren't you?

A. Throughout the day. We were in the car most of the day.

Q. From the time you left Danny King's house in Puyallup to the time you jumped out of your vehicle, while it was still in motion, how long were you in the car?

of a stranger at 4:30 in morning on September 28th.

A. I answered questions as to that already.

MS. HAUGER: Your Honor, at this time, I am going to indicate no further questions, although we will deal with that when we get there.

THE COURT: Ms. Seago?

CROSS-EXAMINATION

BY MS. SEAGO:

Q. Ms. Conrady, let me know if you can't hear me. Okay?

A. All right.

Q. Michael Frazer didn't steal your vehicle, did he?

MS. HAUGER: I'm sorry. It's extremely hard hearing with a mask on.

MS. SEAGO: Can you hear me now? Is that better? I'm not comfortable with having my mask off for an extended period of time even in the courtroom, so I will try to speak --

THE COURT: If you want to step further back, you can do that as well, but I'll leave it up to you. Just keep your voice up.

MS. SEAGO: All right. That's not usually something people have to tell me. Tell me if you can't hear me.

MS. HAUGER: Okay.

Q. (By Ms. Seago) Michael Frazer didn't steal your vehicle, did he?

A. Mike's my boyfriend. He was able to use my vehicle any time he wanted.

Q. That was an arrangement that you had prior to September 28th, 29th?

A. Yes.

Q. And you just looked at a motor vehicle theft report, correct?

A. Yes.

Q. That's in front of you now?

A. Yes.

Q. Did you ask to fill out that report?

A. I didn't fill it out. I just signed it, apparently.

Q. And that was at the hospital?

A. I guess. I don't remember signing it.

Q. Is the information listed in that report that indicates that vehicle was stolen by Michael Frazer, is that accurate information?

A. No, it's not.

Q. Okay.

A. It's an assumption is what I can see.

Q. Now, you did have an argument with Michael Frazer

when you were driving around in the car, correct?

A. Yeah.

Q. You said when you testified last week a little bit something about him talking about trying to break up with you; that you were upset?

A. We hadn't been getting along on and off for a minute.

Q. Is it fair to say that you two when you were arguing, driving around in the car, you were arguing about lots of things, correct?

A. Yes.

Q. You were asked what things you were arguing about, and you said, "I was being a bitch." Is there anything more specific that you could tell the Court?

A. No, I was just being a bitch that day.

Q. Not a good day?

A. Not a good day.

Q. Okay. Now, Michael Frazer did not abduct you in your vehicle, did he?

A. No.

Q. And you both had engaged in the use of methamphetamines during that time period?

A. Yes.

Q. And you've used methamphetamines at some point in the past, correct?

A. Yes.
Q. What effect does that normally have on you?
A. Had paranoia. I was just not in my right mind.
Q. Does it make you suspicious of people's motives and what they're doing?
A. Sure, yeah. I think that's one of the top side effects of that.
Q. When you look back on it now, do you believe that you were suffering the effects of the methamphetamine that night?
A. I was going through a really rough time, and I still am.
Q. Did you believe that Mike was also under the influence of methamphetamine?
A. I believe so.
Q. Was he acting somewhat irrationally as well?
A. Yeah, he had been.
Q. Did that escalate the argument that the two of you were having?
A. Yes.
Q. Now, you could have gotten out of your car at some point when Mike was driving; is that correct?
A. I could have.
Q. In fact, you did get out of the car to pee at one point, correct?

vehicle, that you now were told it was a Jeep, the vehicle of this stranger on the road after you jumped out of your car, he didn't let you in the vehicle immediately, correct?

A. No.

Q. And you realized up were going to have to say something more to get into that vehicle?

A. I don't know that I necessarily tried to get into the vehicle. I was just crying and whatnot, and he automatically hopped on the phone.

Q. You did get into the vehicle eventually?

A. Eventually.

Q. You didn't really have any kind of plan when you jumped out of your vehicle that Mike was driving, correct?

A. No.

Q. You just kind of acted on instinct?

A. Impulse.

Q. Do you feel like that was a rational decision at the time?

A. Probably not.

Q. Do you feel one of the reasons you jumped out the vehicle was because of the paranoia you were feeling from the effects of the methamphetamine?

A. Sure.

Q. Once you got into that vehicle, the driver of the Jeep kind of took charge of things, correct?

A. Yes.
Q. He called 911?
A. Yeah.
Q. And you also spoke to 911 while he was talking to the various 911 dispatch people?
A. I think at one point I said Mike's name. He was on the phone a long time. I'm not sure when I spoke or who I spoke to.
Q. Do you feel like you were being overly dramatic when you jumped out of the car and then got into this other vehicle?
A. Looking back now, yes.
Q. Were you -- even back then when you jumped out of the car, were you afraid that Mike was going to kill you?
A. I was just afraid of the whole night everything that was going on, him leaving and the argument that we had. I didn't know where I was at. I'm afraid of the dark.
Q. It was pretty dark out that night?
A. Yes.
Q. You don't really know exactly what you said to people during that time, correct?
A. I already said that, yeah.
Q. You drew a picture of what was supposed to be a knife for one of the officers. I believe that Ms. Hauger showed that to you.

A. Yes.
Q. Do you remember doing that?
A. No.
Q. Did Michael Frazer hold something of that shape up to your neck?
A. It was dark. I wouldn't know.
Q. You don't have any memory of him holding any knife up to your neck?
A. No.
Q. Michael Frazer didn't punch you while you were in the car, did he?
A. Not that I'm aware of.
Q. You were shown photographs of yourself at the hospital last week, correct?
A. Uh-huh.
Q. I'm going to show you those photographs again, and if you can tell me if there is any injuries that you can see that happened that night, if you could point those out.
A. Like I told her, my face was puffy from crying. Didn't see anything that she was trying to say was there.
Q. So you didn't see a black eye?
A. I don't know. I would have to look again, but I don't remember. I have dark circles under my eyes right now from crying.
MS. SEAGO: Judge, can I approach the witness?

THE COURT: Yes.

Q. (By Ms. Seago) I'm showing you what has already been marked State's Exhibit No. 12 through 16. I'm just going to let you look through those.

A. I just see dark circles under my eyes. That's what I see. The lighting isn't even really good enough that if I did have a black eye, I would not be able to tell.

Q. So you don't see any black eye, what you recognize to be a black eye on yourself in those?

A. No, I don't.

Q. As you already said, you had puffiness. You've been crying?

A. Yes.

Q. You've been very upset all evening?

A. Yes.

Q. There was a picture of your arm in here as well. Did you see any injury on that arm?

A. No.

Q. So you definitely did not have a broken arm, correct?

A. I did not.

Q. Do you remember telling anybody that you thought your arm might have been broken or that it hurt?

A. I don't remember saying that. I remember saying my arm hurts.

Q. And your arm that was in those, it was your right arm?

A. Yes.

Q. Do you know even today what happened to your arm that evening or that morning?

A. No, I don't.

Q. Did you have to seek any further medical treatment for it?

A. No.

Q. Did they give you a sling or any kind of treatment?

A. No.

Q. Now, once they took you to the hospital, everyone treated you like a domestic violence victim, correct?

A. Yeah.

Q. And you're not a domestic violence victim, correct?

A. No, I'm not.

Q. And the doctors started looking you over, and at that point, were you still under the influence of methamphetamine?

A. Yes.

Q. Did you start to worry that there were going to be issues if you didn't go along with what the doctor and the deputy were saying?

A. I wasn't speaking to the deputy, and I didn't want to go to the hospital in the first place. They made me.

Q. But once you got there, they presented you with a domestic violence form. Do you remember that?

A. I don't remember.

Q. Did you want to fill out a domestic violence report?

A. No.

MS. SEAGO: Has that already been marked? Has the domestic violence report been marked?

MS. HAUGER: It's in the exhibit binder. I don't know that it's been given an exhibit tag, but it's in the exhibit binder.

MS. SEAGO: Hold on.

Q. (By Ms. Seago) I'm not easily seeing that, but do you even remember filling out a domestic violence report?

A. No, I haven't even seen any of the paperwork in the file.

Q. Is it fair to say that if there is such a thing that's not something that's a true and accurate representation of what was happening that evening?

A. No, it wouldn't be.

Q. Even if you signed it?

A. Even if I signed it just like this, the theft report.

Q. Mike didn't confine you in the car, correct?

A. No.

Q. You two did drive around for a really long time, right?

A. We did that often.

Q. He didn't threaten you with any kind of bodily injury while you were together?

A. No.

Q. And any conversation you may have had with Mike over the phone, he didn't threaten you with any bodily injury at that time?

A. No.

Q. And he didn't use some sort of code word to make you believe that he was going to -- he was threatening you in the future?

A. No, no code word.

Q. There is specific phrases that were brought up from the telephone conversations that were supposed to be between you and Mike while he was in the jail. One of the things that you said was it wasn't supposed to -- "I wasn't supposed to make it out of there alive." Do you remember what you meant when you said that?

A. I don't know what you're referring to.

Q. Well, "he has friends that will come after me."

A. I never said that, did I?

Q. If you did say something like that, did you -- at any point since Michael Frazer has been arrested for this,

did you feel like he was telling you to not come to court?

A. I don't think he was telling me that.

Q. Did you think that he was threatening that something might happen to you if you didn't refuse to come to court?

A. No, he wasn't threatening me.

Q. And you certainly haven't talked to him since this trial started, correct?

A. I have not.

Q. And you explained yourself already as to why you don't want to be here?

A. Right.

Q. Michael Frazer hasn't threatened you on that night or any night since then, correct?

A. He doesn't threaten me.

MS. HAUGER: Objection, Your Honor. Asked and answered. Beyond the scope.

THE COURT: Sustained to the form of the question.

Q. (By Ms. Seago) Have you ever been a victim of domestic violence?

A. Yes.

Q. So you know what that is?

A. Yes.

Q. That's not what was happening between you and Michael Frazer?

A. No.

MS. HAUGER: Objection, Your Honor.

A. No, it wasn't.

THE COURT: Overruled.

Q. (By Ms. Seago) When you showed up here to testify last week, were you worried that if you didn't say the same thing that night that you would get in trouble with the prosecutor or with the Court?

A. No, I don't want to be here, and whatever repercussions I get from that, so be it.

Q. You testified for a brief period in the morning. You remember?

A. Yes.

Q. And then you came back in the afternoon after you sat outside for an hour plus, correct?

A. Yes.

Q. Is your testimony today truthful?

A. Yes.

Q. You're not under the influence of any drugs at this time, correct?

A. No.

Q. But you were under the influence of drugs that night?

A. Yeah.

Q. Why is it important that the judge believe you

right now?

A. That's a good question. I don't -- I don't know if it is. I don't think my testimony or what I say is going to sway any decision either way, if that makes any sense. People write what they want to on the reports, and I have no control over what anyone else has to say about the situation from their point of view.

Q. From your point of view, you were not a victim?

A. I was not a victim.

MS. HAUGER: Objection, Your Honor.

THE COURT: Sustained.

MS. HAUGER: Asked and answered multiple times.

A. From my point of view, I was not a victim.

THE COURT: Sustained to the objection.

MS. SEAGO: I have no other questions.

THE COURT: Thank you.

Redirect.

REDIRECT EXAMINATION

BY MS. HAUGER:

Q. Ms. Conrady, we started to establish last week that between October 30th and February 1st, October 30th of 2020 and February 1st of 2021, you spoke to the defendant on the phone while he was in custody, correct?

A. Correct.

THE COURT: Okay. Thank you.

Ms. Seago, recross?

RECROSS-EXAMINATION

BY MS. SEAGO:

Q. Ms. Conrady, I think you were trying to say this, but you've never been afraid of Mike Frazer, have you?

A. I've never been afraid of Mike Frazer.

Q. That statement that's attributed to him, "I have friends that care about me" is what he actually said in that, correct?

A. We were talking more about relationship, like, the rumors that go around when people are locked up and then the rumors that are out there and whatnot.

Q. And that was rumors about maybe you being with somebody else?

A. Exactly.

Q. You didn't take that to be a threat, correct?

A. No.

Q. You talked to him after that?

A. Yes.

Q. And the prosecutor played you part of your conversation where you said, "I'm afraid to be around you, but that's all I want." Do you want to explain what you meant by that?

A. We haven't been doing good in our relationship, but, you know, I love him, and I want to be with him. I just -- we both have trust issues.

Q. So that didn't mean that you were literally afraid that he would do something physically or mentally to you?

A. No, I don't want to get my heart hurt.

Q. So this was a conversation about your relationship?

A. Yes.

Q. And I think you said repeatedly things to the effect of anything they got that evening didn't come from me. Is that what you've been testifying to today?

A. Yes.

Q. Did you feel like this was -- once the police and the doctor and the domestic violence people got involved that you didn't get a say anymore?

A. I didn't have a say from when the ambulance took me away.

Q. You're trying to have your say today, correct?

A. Yes.

Q. Even though you do not want to testify?

A. I don't want to testify. I don't want to be here. The prosecution has done more harm to me in my life than anything ever, and I told them that.

Q. So do you feel like the only threats you received about testifying came from the prosecution?

A. Sure. I mean, if you want to call it a threat. It's just, nobody is listening to me.

Q. What else would you like to say?

A. That I'm not a victim. That this is all ridiculous. That the prosecution has taken something that's small and made it something huge, and it's damaging my life as well as his, and it should have stopped a long time ago.

Q. Is there anything else that you think is important?

A. No.

MS. SEAGO: I have no other questions for you.

THE COURT: Okay. Thank you.

MS. HAUGER: No more questions, Your Honor.

THE COURT: All right. You can step down.

Do you have another quash, Ms. Hauger?

MS. HAUGER: Yes, Your Honor.

THE COURT: We will take a short recess. Do you have any other witnesses ready?

MS. HAUGER: Yes, Your Honor.

(Recess taken from 2:38 p.m. to 2:53 p.m.)

THE COURT: Please be seated. Call your next witness.

MS. HAUGER: Your Honor, the State would call Officer Steve Pigman to the stand.

THE COURT: Go ahead and have a seat. Can you hand me that exhibit?

STEVEN PIGMAN,

having been called as a witness by the Plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HAUGER:

Q. Good afternoon, sir.

A. Good afternoon, ma'am.

Q. State your name for the record and spell your last name, please.

A. Steven James Pigman, P-i-g-m-a-n.

Q. Officer Pigman, how are you employed?

A. I'm a police officer with the Puyallup Police Department.

Q. How long have you worked for the Puyallup Police Department?

A. 36 years. It will be 37.

Q. 36 years. Prior to coming to the Puyallup Police Department, did you have any other law enforcement experience?

A. I spent five and a half years in Sumner.

Q. I'm sorry. Five and a half years with who?

A. Sumner.

THE COURT: You can take your mask off. We're all

IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,	**SUP. CT. NO. 20-1-02406-8**
Plaintiff,	**COA#: 55928-5-II**
v.	
MICHAEL FRAZER,	
Defendant.	

VERBATIM REPORT OF PROCEEDINGS FOR:
JANUARY 12, 2021
FEBRUARY 19, 2021

APPEARANCES:

For the Plaintiff: PIERCE COUNTY PROSECUTING ATTORNEY'S OFFICE
By: DIONE HAUGER, Deputy Prosecuting Attorney

For the Defendant: KELLY L. SEAGO, Attorney at Law

Transcription Service: THREE RIVERS TRANSCRIPTS
By: Melissa J. Firth, CET# 1070
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service

(pre-trial transcript)

recorded.

THE DEFENDANT: I understand that, Your Honor.

THE COURT: Anything you speak here in this courtroom could be used against you in future proceedings. Do you understand that?

THE DEFENDANT: I am aware of that, sir.

THE COURT: Okay. With your Counsel's permission, you can address the Court briefly.

THE DEFENDANT: Yes, sir. I appreciate that. Thank you very much.

Your Honor, I would just like to make a note that my -- unfortunately, my -- my attorney, Ms. Seago, has been ineffectively representing me as my attorney. She has failed to call me, Your Honor. I know that my people have been -- witness character statements on my behalf, Your Honor, and Ms. Seago has not returned their phone calls, or accepted my character witness statements.

Also, Your Honor, you know, the -- the prosecution's case is speculation and suspicion at best, Your Honor. The pros -- unless they have any sufficient evidence that they can introduce that they have contact with the alleged victim in my case, or the witnesses, then I have no objection to -- to -- but I would like to ask for dismissal of this case, Your Honor, for this Honorable Court to dismiss my case based on prejudice.

And I'd like to make note that I did -- I went to -- because I don't trust my attorney, unfortunately, Your Honor, but I have stuff that I'd like to file with the court for today on the record. Basically, well, my conflict with Counsel, Your Honor, and my speedy trial rights that I asserted back on October 6th, basically that I have witnesses on my behalf, on this case, but Ms. Seago would not know that and tell the Court that because she hasn't done -- like I said, refusing to test -- or work with me on my case.

So -- but, yeah, I sent this, and I have proof that this has been sent, Your Honor, that I have witnesses on my behalf that would give testimony for me on my behalf --

THE COURT: All right.

THE DEFENDANT: -- and not -- they're not [indiscernible] because they are out of state --

THE COURT: Okay.

THE DEFENDANT: -- so, I mean, basically, Your Honor, I've been having to do this case on my own, unfortunately. And I just appreciate your consideration on this matter and the -- I would ask for dismissal of this case based on prejudice, again.

THE COURT: At this time the motion to dismiss is denied. That doesn't mean that it couldn't be brought at some later point, but at this point it is not on the docket

ATTACHMENT D

10/11/2022 Unpublished Opinion for
State v. Frazer COA No. 55928-5-II

Filed
Washington State
Court of Appeals
Division Two

October 11, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MICHAEL PATRICK FRAZER, AKA JUSTIN EUGENE FRAZER MICHAEL FRAZER, MICHAEL P. FRAZER, Appellant.	No. 55928-5-II UNPUBLISHED OPINION

MAXA, J. – Michael Frazer appeals his convictions of second degree assault, felony harassment, and nine counts of a no-contact order violation. The convictions arose from an incident in which Frazer's girlfriend, Keri Conrady, jumped out of a vehicle that Frazer was driving and ran to a stranger's vehicle. Conrady made statements to various people that Frazer had held a knife to her throat and had threatened to kill her. At trial, Conrady recanted her previous statements. The trial court allowed two law enforcement officers and a victim advocate to testify about out-of-court statements Conrady made to them.

At arraignment, the trial court had issued a no-contact order preventing Frazer from contacting Conrady. Frazer made multiple telephone calls to Conrady from jail.

We hold that (1) Frazer cannot establish ineffective assistance of counsel based on defense counsel's failure to object to the testimony of the two officers and the victim advocate

regarding Conrady's out-of-court statements or to the prosecutor's aggressive examination of Conrady; (2) there was sufficient evidence to prove that Frazer had knowledge of the no-contact order and therefore that he willfully violated the no-contact order; and (3) Frazer's challenges to his convictions and his sentence in his statement of additional grounds (SAG) cannot be considered because they rely on allegations outside the record, were addressed in appellate counsel's brief, or have no merit.

Accordingly, we affirm Frazer's convictions of second degree assault, felony harassment, and nine counts of a no-contact order violation and his sentence.

FACTS

Background

Frazer was Conrady's boyfriend. At approximately 4:00 AM on September 28, 2020, Frazer was driving and Conrady was in the passenger seat of her car. They were southbound on State Route 7 in Elbe. Douglas Anderson was approaching from the opposite direction when the car Frazer was driving swerved into Anderson's lane of travel and hit the curb. Conrady jumped out of the car, screaming and hysterical, and ran to Anderson's vehicle. Conrady told Anderson that her boyfriend was taking her to the hills to kill her and that he had a knife. Conrady was visibly upset, crying and shaking.

While Anderson was trying to call 911, he let Conrady into his vehicle as Frazer drove away. Conrady became hysterical again when she saw Frazer driving back toward them. Anderson drove away at a high rate of speed and Frazer chased them down the highway. After a mile or two, Anderson hit the brakes on his car and Frazer drove past him. Conrady was hysterical and crying during the chase.

During this time, Anderson had ongoing discussions with the 911 operator and Conrady spoke to the operator as well. Anderson and Conrady drove to a nearby fire station to wait for the police and an ambulance to arrive. Conrady remained extremely nervous as they waited and tensed up every time she saw a car approaching.

Pierce County Sheriff's Deputy Alexander Brandt received a call regarding the incident at approximately 4:17 AM and drove to the fire station. Brandt spoke with Conrady, who was very upset and was sobbing, shaking, and fearful. After Brandt finished speaking with Conrady, she was taken to Good Samaritan Hospital.

Deputy Emily Holznagel arrived at Good Samaritan Hospital around 6:00 AM. She talked to Conrady in the emergency room about the events that had occurred earlier that morning. Conrady was upset and withdrawn, and broke down crying twice when telling her story. Conrady's face was swollen and bruised and Holznagel photographed Conrady's injuries.

Frazer was arrested later that day. The State charged him with first degree kidnapping, second degree assault, felony harassment, and theft of a motor vehicle.

No-Contact Order

At arraignment, the trial court issued a domestic violence no-contact order under chapter 10.99 RCW that prohibited Frazer from having any contact with Conrady, including by phone, for five years beginning on September 29, 2020. The order included the typed sentence, "Done in Open Court in the presence of the Defendant: September 29, 2020." Clerk's Papers (CP) at 8. The trial court electronically signed the order, and Frazer's signature line included the following: "Defendant unable to sign: covid19." CP at 8. The no-contact order was filed in open court.

While Frazer was in jail pending the start of trial, he called Conrady several times, once through his own inmate pin number and the rest through other inmates' pin numbers. In one

phone call, Conrady and Frazer discussed whether Conrady could put money into Frazer's account at jail. The following exchange occurred:

> Frazer: Yeah, why could – why wouldn't you?
> Conrady: Okay – I don't know, 'cause there's a no-contact order?
> Frazer: No.
> Conrady: I probably shouldn't have said that.

Ex. 2 (Jan. 24, 2021 recording at 3:45). Conrady also said in another phone call that she had jumped out of a moving vehicle as a result of what Frazer had done to her and confronted him about what had occurred.

In February 2021, the State filed an amended information to include nine counts of violation of a no-contact order and one count of tampering with a witness.

Bench Trial

Several witnesses testified at the bench trial, including Conrady, Anderson, Brandt and Katie Daugherty, a victim advocate with the prosecutor's office. Frazer did not testify. The trial court admitted as exhibits two 911 phone calls from September 28, 13 jail phone calls Frazer made to Conrady, and the no-contact order.

Conrady's Testimony

Conrady failed to appear for trial and the trial court issued a material witness warrant. The following day, Holznagel located Conrady and brought her to court.

Two hours before her in-court testimony, Conrady spoke with the prosecutor and defense counsel outside of the courtroom about the events that occurred on September 28. Victim advocate Daugherty was present during the interview. Conrady said that she remembered the incident very clearly and proceeded to describe what had happened to her.

On direct-examination, Conrady generally testified that she had been in the car with Frazer off and on the evening before the incident and into the early morning hours, that she

jumped out of the car Frazer was driving and into Anderson's vehicle, and that she ended up at Good Samaritan Hospital. However, she denied or claimed she did not remember Frazer holding her at knifepoint and threatening to take her to the woods to kill her. Conrady also stated that she did not remember if Frazer said that he would slice her from her vagina to her face, even though she acknowledged that she might have told counsel that a few hours earlier. Because of Conrady's refusal to answer several questions, the trial court gave some latitude to the State to treat her as a hostile witness.

During Conrady's testimony, the State played recordings of the two 911 calls. In the first 911 call, Anderson told the operator that a car swerved in front of him and that a women jumped out of the car. He stated that the woman told him that her ex-boyfriend had threatened her and punched her and that the woman was now in his car.

In the second 911 phone call, Conrady told the operator that she was in the driveway of her house when Frazer put a knife to her throat. She said that Frazer told her to back out of the driveway or else he would stab her in the throat. She stated that they drove around for a while and he punched her in the face and grabbed her by her hair. Conrady acknowledged that she made these statements.

On cross-examination, Conrady testified that she was on methamphetamine during the incident and that it made her paranoid. As a result, she testified that she exaggerated what had happened to her.

Anderson's Testimony

Anderson testified to the facts of the incident stated above, including how obviously upset and hysterical Conrady was while they were together.

Deputy Brandt's Testimony

Brandt testified that when he arrived at the fire station, Conrady appeared very upset and was sobbing and shaking. She was fearful and distraught. Brandt stated that he had to calm Conrady down a few times because of how worked up and upset she was.

Brandt testified that Conrady told him that Frazer had forced her into her car while armed with a knife and that he was driving her deep into the woods to a special place where he would dump her body after she was killed. Conrady immediately began crying again after she told him that Frazer had held the knife to her throat. Brandt testified that Conrady's behavior was consistent with someone who had just been through a traumatic experience.

Deputy Holznagel's Testimony

Holznagel testified that Conrady was upset, quiet and withdrawn when she spoke with her at Good Samaritan Hospital. Conrady was extremely exhausted, crying, and fearful. Holznagel stated that Conrady broke down into tears twice as she talked about the incident. Specifically, Conrady began crying at one point as she said she was not supposed to make it out of the car alive and that Anderson had saved her life. And Conrady said that she was afraid of Frazer's associates, stating that they would hurt her if Frazer ended up in jail or if she gave a written statement. Based on her observations, Holznagel believed that Conrady was still affected by what had happened to her.

Holznagel recounted the events of the night as told to her by Conrady. Conrady told her that while sitting in her car in her driveway, Frazer held a knife to her neck and to her temple. Conrady drew a picture of the knife, which was admitted as an exhibit. Conrady stated that Frazer said he would sink the knife into her throat unless she backed out of the driveway.

Holznagel testified that Conrady told her that eventually Frazer began driving them around and said he was taking her to a place in the woods. Frazer continued to hold a knife to Conrady and punch her in the face. Frazer told her that in the woods he was going to tie her up and kill her. Conrady also said that Frazer stated five times that he would slice her from her vagina to her throat.

Daugherty's Testimony

Daugherty testified that she was present when Conrady talked to defense counsel before her in-court testimony. Daugherty recounted how Conrady described driving around with Frazer and then jumping out of the car and running to another vehicle. Daugherty testified that Conrady said that Frazer had a knife and told her he was going to cut her from her vagina to her face.

Closing Argument

During closing argument, Frazer emphasized that Conrady's inconsistent statements were due to the fact that she had been under the influence of methamphetamine during the incident. Frazer also argued that the prosecutor was not able to control Conrady on the stand and make her say what the prosecutor wanted her to say. And Frazer argued that there was no way to prove that he physically was present when the trial court had entered the no-contact order.

The State argued in rebuttal that the trial court could take judicial notice of the COVID-19 processes and procedures during arraignment and in issuing no-contact orders.

Trial Court Ruling

The trial court found Frazer guilty of second degree assault, felony harassment, and nine counts of a no-contact order violation. The court found Frazer not guilty of first degree kidnapping, theft of a motor vehicle, and witness tampering. The court entered detailed findings of fact, which were substantially the same as its oral ruling.

The trial court found that the no-contact order specifically prohibited any contact by any means between Frazer and Conrady. The court found,

> Because of COVID-19 concerns over cross-contamination, the stylus that had been previously used in the arraignment court was removed and the practice was for the defense attorney to type in the defendant's name and that the defendant was unable to sign due to COVID-19. The order specifically says that it was done in open court in the presence of the defendant on September 29, 2020.

CP at 136. As a result, the court entered a finding of fact that Frazer had knowledge of the existence of the no-contact order.

Frazer appeals his convictions of second degree assault, felony harassment, and nine counts of violation of a no-contact order and his sentence.

ANALYSIS

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Frazer argues that defense counsel was ineffective for failing to object to (1) Brandt's, Holznagel's and Daugherty's testimony recounting Conrady's out-of-court statements and (2) the prosecutor's aggressive examination of Conrady at trial. We disagree.

1. Legal Principles

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee criminal defendants the right to effective assistance of counsel. *State v. Estes*, 188 Wn.2d 450, 457, 395 P.3d 1045 (2017). We review de novo ineffective assistance of counsel claims. *Id.*

To prevail on an ineffective assistance of counsel claim, a defendant must show that defense counsel's performance was deficient, and the deficient performance prejudiced the defendant. *Id.* at 457-58. Representation is deficient if, after considering all the circumstances, it falls below an objective standard of reasonableness. *Id.* at 458. Prejudice exists if there is a

reasonable probability that, except for defense counsel's error, the result of the proceeding would have been different. *Id.* A failure to show either deficient performance or prejudice defeats an ineffective assistance claim. *State v. Davis*, 17 Wn. App. 2d 264, 274, 486 P.3d 136, *review denied,* 198 Wn.2d 1008 (2021).

Counsel's decision whether and when to object to trial testimony generally falls within the scope of trial tactics. *State v. Bass*, 18 Wn. App. 2d 760, 793, 491 P.3d 988 (2021), *review denied,* 198 Wn.2d 1034 (2022). And trial counsel's conduct is not deficient if it can be characterized as legitimate trial strategy or tactics. *Estes*, 188 Wn.2d at 458. " 'Only in egregious circumstances, on testimony central to the State's case, will the failure to object constitute incompetence of counsel justifying reversal.' " *State v. Johnston*, 143 Wn. App. 1, 19, 177 P.3d 1127 (2007) (quoting *State v. Madison*, 53 Wn. App. 754, 763, 770 P.2d 662 (1989)). Further, if a challenge to the admissibility of evidence would have failed, then an ineffective assistance of counsel claim cannot succeed. *State v. Nichols*, 161 Wn.2d 1, 14-15, 162 P.3d 1122 (2007).

2. Statements made to Brandt and Holznagel

Frazer argues that the trial court would have sustained defense counsel's objections to Brandt's and Holznagel's testimony regarding Conrady's statements to them. We disagree because the ER 803(a)(2) excited utterance hearsay exception applied to this testimony.

a. Excited Utterance Hearsay Exception

"Hearsay" is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." ER 801(c). Hearsay evidence generally is not admissible unless it falls within a recognized exception to the hearsay rule. ER 802.

ER 803(a)(2) provides a hearsay exception for statements "relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." The exception is based on the assumption that statements made while a person is under the stress of an exciting event will be spontaneous rather than based on reflection or self-interest, and therefore are more likely to be true. *See State v. Chapin*, 118 Wn.2d 681, 686, 826 P.2d 194 (1992). "[T]he key determination is whether the statement was made while the declarant was still under the influence of the event to the extent that the statement could not be the result of fabrication, intervening actions, or the exercise of choice or judgment." *State v. Woods*, 143 Wn.2d 561, 597, 23 P.3d 1046 (2001).

For the excited utterance exception to apply, the declarant's statement must meet three requirements: "(1) a startling event or condition occurred, (2) the declarant made the statement while under the stress of excitement of the startling event or condition, and (3) the statement related to the startling event or condition." *State v. Ohlson*, 162 Wn.2d 1, 8, 168 P.3d 1273 (2007). The first two elements may be established by evidence extrinsic to the declarant's plain words "such as the declarant's behavior, appearance, and condition; appraisals of the declarant by others; and the circumstances under which the statement is made." *State v. Young*, 160 Wn.2d 799, 809-10, 161 P.3d 967 (2007).

When assessing whether a statement qualifies as an excited utterance, we may refer to relevant factors such as the statement's spontaneity, the passage of time, the declarant's emotional state, and the declarant's opportunity to reflect or fabricate a story. *State v. Williamson*, 100 Wn. App. 248, 258, 996 P.2d 1097 (2000). However, the passage of time alone does not control. *Id.* In addition, the declarant's later recantation of an earlier statement does not disqualify the statement as an excited utterance. *Id.*

b. Statements to Brandt

Conrady experienced a startling event. Frazer held a knife to her throat and said that he was going to kill her. Frazer was driving to a place where he told Conrady he was going to kill her and dump her body. Conrady jumped out of the vehicle and ran screaming toward Anderson's vehicle, and then became hysterical again as Frazer chased Anderson down the highway.

In addition, Conrady still was under the stress of excitement from the incident when she talked to Brandt. Brandt received a report regarding the incident less than 20 minutes after Anderson first called 911 and talked to Conrady shortly thereafter. Conrady was very upset and distraught, and she was sobbing, shaking, and fearful. Brandt testified that Conrady began crying after she told him that Frazer held a knife against or next to her throat.

Based on these facts, Conrady's statements to Brandt constituted excited utterances under ER 803(a)(2). Therefore, defense counsel's failure to object to Brandt's testimony was not deficient performance because her objection would have been overruled. Frazer's ineffective assistance of counsel claim on this basis fails.

c. Statements to Holznagel

Holznagel did not speak with Conrady until approximately two hours after the incident. Therefore, the question is whether Conrady still was under the stress of excitement from the incident when she made the statements to Holznagel.

Conrady was upset when Holznagel talked with her. She was extremely exhausted, crying, and fearful. Conrady broke down into tears twice as she described the incident, and she told Holznagel that she was not supposed to make it out of the car alive and that Anderson had saved her life. Further, Conrady remained fearful of what Frazer's associates would do to her if

she provided a written statement. Based on her observations, Holznagel believed that Conrady still was affected by what had happened to her when they talked. Therefore, we conclude that the two hour passage of time did not dampen the effects of Frazer's threats and actions on Conrady.

Frazer relies on *State v. Brown*, 127 Wn.2d 749, 758, 903 P.2d 459 (1995); *State v. Hochhalter*, 131 Wn. App. 506, 514, 128 P.3d 104 (2006); *State v. Sellers*, 39 Wn. App. 799, 804, 695 P.2d 1014 (1985); and *State v. Dixon*, 37 Wn. App. 867, 873-74, 684 P.2d 725 (1984) to argue that Conrady's demeanor was insufficient to support the argument that her statements to Holznagel were excited utterances, especially in light of all the details she provided. But *Brown* and *Hochhalter* are distinguishable because the declarants there contemplated what they should say about the incident at issue and decided to fabricate or omit certain details. *Brown*, 127 Wn.2d at 757-58; *Hochhalter*, 131 Wn. App. at 510. And *Sellers* and *Dixon* are distinguishable because the declarants there added specific details that were not included in earlier statements. *Sellers*, 39 Wn. App. at 804-05; *Dixon*, 37 Wn. App. at 873-74. Similar facts are not present here.

Accordingly, we conclude that the two hour passage of time did not render the ER 803(a)(2) excited utterance exception inapplicable to Conrady's statements to Holznagel. Therefore, defense counsel's failure to object to Brandt's testimony was not deficient performance because her objection would have been overruled. Frazer's ineffective assistance of counsel claim on this basis fails.[1]

[1] Even if the trial court would have sustained an objection from defense counsel for inadmissible hearsay under the excited utterance hearsay exception, Frazer cannot establish prejudice in light of all the other evidence in the record about what occurred.

3. Daugherty's Testimony

Frazer claims that defense counsel was ineffective for not objecting to Daugherty's testimony about Conrady's out-of-court statements. We disagree.

Under ER 613(b), a party may introduce extrinsic evidence of a witness's prior inconsistent statement if the witness is given an opportunity to explain or deny the statement and the opposite party is given an opportunity to interrogate the witness about the statement, or the interests of justice otherwise require. Such evidence is not probative of the substantive facts, but it is impeachment evidence affecting the witness's credibility. *State v. Clinkenbeard*, 130 Wn. App. 552, 569, 123 P.3d 872 (2005).

Here, Conrady was asked about the prior statements that Frazer had a knife and that he told Conrady that he would slit her from her vagina to her face. She either denied or stated that she did not remember making those statements. Therefore, the State was allowed under ER 613(b) to introduce the testimony of Daugherty about Conrady's prior inconsistent statements regarding those matters for impeachment purposes.

Frazer acknowledges that Daugherty's testimony may have been admissible for impeachment purposes under ER 613(b), but he claims that defense counsel still should have objected to emphasize to the trial court that Conrady's statements should not be admitted as substantive evidence. But in a bench trial, the trial court certainly was able to distinguish between impeachment evidence and substantive evidence without being reminded by defense counsel.

Frazer suggests that Daugherty's testimony was not used only for impeachment purposes. But the record does not show that the State or trial court relied on Daugherty's testimony as substantive evidence. During closing argument, the prosecutor repeatedly highlighted the

differences between the statements Conrady made in court compared to the statements she made in front of Daugherty and others, presumably to attack Conrady's credibility. In addition, the trial court made no reference to Daugherty's testimony in its oral or written findings. Therefore, it would be speculative to assume that Daugherty's testimony was used for anything but impeachment purposes.

Accordingly, we hold that defense counsel was not ineffective for failing to object to Daugherty's testimony about Conrady's out-of-court statements. Frazer's ineffective assistance of counsel claim on this basis fails.

4. Prosecutor's Examination of Conrady

Frazer argues that defense counsel provided ineffective assistance by failing to object during the prosecutor's somewhat hostile and aggressive examination of Conrady, which ultimately undermined her credibility. He claims that defense counsel had a duty to protect Conrady from the prosecutor's style of questioning and to keep her calm and composed as part of his defense. We disagree.

Defense counsel's failure to object during Conrady's testimony may have been strategic. Defense counsel's theory throughout trial was that Conrady was high on methamphetamine and was paranoid when she initially told Anderson, Brandt and Holznagel an exaggerated story about Frazer assaulting her and threatening to kill her. Defense counsel's legal strategy appeared to rest on the argument that the trial court should believe Conrady's in-court testimony recanting her previous statements because she only made those statements under the influence of drugs. Defense counsel highlighted the fact that Conrady had to be forced to testify against her will and that when she did testify, she adamantly denied being a domestic violence victim despite the prosecutor's attempts to elicit favorable, consistent testimony.

During closing argument, defense counsel framed the prosecutor's examination of Conrady as a hostile attempt to manipulate her into repeating a false narrative of the incident and her alleged fear of Frazer after exiting his car. Therefore, it was not unreasonable for defense counsel to refrain from objecting during the prosecutor's examination of Conrady to allow the tension between the prosecutor and Conrady to speak for itself and bolster the defense theory that Conrady's methamphetamine use and paranoia caused her to give false statements to Anderson, Brandt, and Holznagel.

Accordingly, we hold that defense counsel was not ineffective for failing to object during the prosecutor's examination of Conrady. Frazer's ineffective assistance of counsel claim on this basis fails.

B. SUFFICIENCY OF THE EVIDENCE – VIOLATIONS OF NO-CONTACT ORDER

Frazer argues that there is insufficient evidence to support the trial court's finding of fact that he had knowledge of the no-contact order prohibiting contact with Conrady when he made phone calls to her from jail. We disagree.

1. Standard of Review

The test for determining sufficiency of evidence is whether any rational trier of fact could find all the elements of the charged crime beyond a reasonable doubt after viewing the evidence in a light most favorable to the State. *State v. Dreewes*, 192 Wn.2d 812, 821, 432 P.3d 795 (2019). For a bench trial, "appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law." *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). We resolve all reasonable inferences based on the evidence in favor of the State and interpret inferences most strongly against the defendant. *Dreewes*, 192 Wn.2d at 821-22. And we defer to the fact finder's

resolution of conflicting testimony and evaluation of the evidence's persuasiveness. *Homan*, 181 Wn.2d at 106.

2. Analysis

The trial court entered the no-contact order against Frazer under chapter 10.99 RCW. Former RCW 10.99.040(3)(a) (2019) authorizes the trial court to issue a domestic violence no-contact order at the arraignment of a person charged with a crime involving domestic violence. Former RCW 10.99.040(4)(a) provides that a "[w]illful violation" of a no-contact order issued under subsection (3) of this section is punishable as a crime. An essential element of the crime of willful violation of a no-contact order is the defendant's knowledge of the no-contact order. *State v. Briggs*, 18 Wn. App. 2d 544, 550, 492 P.3d 218 (2021). A person acts knowingly if "[h]e or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense." RCW 9A.08.010(1)(b)(i).

Here, the no-contact order states, "Done in Open Court in the presence of the Defendant." CP at 8. The no-contact order was entered as an exhibit at trial. The evidence that the no-contact order was entered in Frazer's presence is sufficient to establish that he had knowledge of the no-contact order.

Frazer claims that the no-contact order was inadmissible hearsay and could not be offered as proof that Frazer physically appeared in court or had knowledge of the no-contact order. However, Frazer did not object to the admission of the no-contact order on hearsay grounds. In addition, RCW 5.44.010 provides that "[t]he records and proceedings of any court of the United States . . . *are admissible in evidence* in all cases in this state when duly certified by the attestation of the clerk." (Emphasis added); *see State v. Hubbard*, 169 Wn. App. 182, 187, 279 P.3d 521 (2012). The no-contact order entered into evidence was attested by the court clerk.

Further, the record supports the trial court's finding based on the 13 phone calls made to Conrady while Frazer was in jail. Each of those phone calls, with the exception of one, was made from an inmate account other than Frazer's. Holznagel also testified that she recognized Frazer's and Conrady's voices on 12 of the phone calls, and that one phone call was made from a third party calling Conrady on Frazer's behalf. And Conrady referenced the no-contact order when Frazer called her on January 24, 2021. When viewed in the light most favorable to the State, the 13 phone calls show that Frazer attempted to conceal his conversations with Conrady because he knew he was prohibited from calling Conrady because of the no-contact order.[2]

We hold that sufficient evidence supports the trial court's finding of fact that Frazer had knowledge of the domestic violence no-contact order.

C. SAG CLAIMS

Frazer makes a number of assertions in his SAG. We decline to address or reject these assertions.

1. Ineffective Assistance of Counsel

First, Frazer asserts that defense counsel was ineffective for (1) creating a total loss of communication with him, (2) having several conflict of interest issues that undermined her duty of loyalty to him, (3) advising him to not testify despite his desire to testify, and (4) not calling a particular witness at trial. He requests that we remand for an evidentiary hearing to create a new record to address his assertions. However, because these claims rely on matters outside the

[2] Frazer also argues that the trial court erred in taking judicial notice of COVID-19 protocols in Pierce County Superior Court regarding defendants' signatures on court orders. However, trial courts may take judicial notice of adjudicative facts. ER 201(a); *State v. N.B.*, 7 Wn. App. 2d 831, 835, 436 P.3d 358 (2019). The trial court here could take judicial notice that courts in Pierce County had adopted policies to reduce the risk of infection for individuals who were still appearing in-person, such as eliminating communally used pens.

record, we cannot consider them in this direct appeal. *State v. Alvarado*, 164 Wn.2d 556, 569, 192 P.3d 345 (2008). Instead, they must be raised in a personal restraint petition. *Id.*

Second, Frazer asserts that defense counsel was ineffective for failing to (1) file several of his motions and letters and (2) call a witness. However, Frazer does not identify the motions that were not filed or describe the witnesses' expected testimony. Therefore, we do not consider this assertion because it does not inform us of the nature of the alleged errors. RAP 10.10(c).

Third, Frazer asserts that defense counsel was ineffective for failing to object to inadmissible hearsay evidence regarding Brandt's, Holznagel's, and Daugherty's testimony. These arguments were raised in appellate counsel's brief and are addressed above. Accordingly, we need not consider them further.

Fourth, Frazer asserts that defense counsel was ineffective for failing to object to the no-contact order for lack of notice and vagueness. But the no-contact order clearly stated that Frazer was prohibited from contacting Conrady through any means beginning on September 29, 2020 for a period of five years. Therefore, we reject this assertion.

2. Sentence

Frazer asserts that he received an exceptional sentence that was excessive. However, the record shows that Frazer received a standard range sentence. Generally, standard range sentences are not appealable. RCW 9.94A.585(1). Nor does Frazer argue that the process by which the trial court imposed his sentence was erroneous. Therefore, we reject this assertion.

Frazer also makes a reference to double jeopardy. But we do not consider this assertion because it does not inform us of the nature of the alleged error. RAP 10.10(c).

3. Conrady's Testimony

Frazer asserts that there is insufficient evidence to support his convictions because Conrady recanted the prior statements she made to the police and Daugherty at trial. But we do not reweigh testimony or credibility on appeal. *See Homan*, 181 Wn.2d at 106. Therefore, we reject this assertion.

CONCLUSION

We affirm Frazer's convictions of second degree assault, felony harassment, and nine counts of a no-contact order violation and his sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

CRUSER, A.C.J.

VELJACIC, J.

INMATE

January 10, 2023 - 11:00 AM

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