Supreme Court No: 91987-9
Court of Appeals No: 71620-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

HUGH WILCOX,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE

STATE OF WASHINGTON FOR KING COUNTY

PETITION FOR REVIEW

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A. INTRODUCTION

Hugh Wilcox is a married man who will spend years imprisoned due to an unexpectedly tragic result from what would otherwise have been an unremarkable conflict. After a roommate tussle involving a mysteriously severe head injury, Mr. Wilcox was convicted of one count of assault in the second degree with the aggravating circumstance that the victim's injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the offense.

This Court should grant review and remand Mr. Wilcox's case for sentencing in the standard range. Imprisoning a man for four times the maximum expected duration, based on a vague statute and with no evidence of ill intent or grievous conduct, represents unconstitutional confinement and thus must not stand.

B. IDENTITY OF PETITIONER AND THE DECISION BELOW

Hugh Edwin Wilcox, the appellant below, requests this Court grant review pursuant to RAP 13.4(b)(2), and (3), of the decision of the Court of Appeals, Division One, in *State v. Wilcox*, No. 71620-4-I, filed June 22, 2015. A copy of the opinion is attached as an appendix.

C. ISSUE PRESENTED FOR REVIEW

Is a prison term of more than four times the maximum expected sentence, based on a vague statute and absent ill intent or egregious conduct of defendant, a violation of the United States Constitution and the very purpose of the Washington Criminal Code?

D. STATEMENT OF THE CASE

Hugh Wilcox and Stephen Jennings were roommates in a house in Lake City Way they shared with Michael Munoz, Kara Anderson, and Cheryl Wilcox, Hugh's wife. RP 690.[1] Mr. Wilcox and Mr. Jennings had known each other for several years before they started living together. Mr. Jennings, who is gay, was attracted to Mr. Wilcox, and this caused tension in Mr. Wilcox's relationship with his wife. RP 691-92. Mr. Jennings was also a methamphetamine addict, which affected his mood and emotional stability. RP 490.

On November 7, 2012, Mr. Jennings was coming down off a methamphetamine high. He had woken up on the couch and was irritable. RP 499. He and Mrs. Wilcox argued. RP 502, 692-93. Mr. Wilcox intervened. What happened next is not clear.

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[1] Pretrial and trial transcripts are contained in consecutively paginated volumes, and are referenced in this brief as "RP" followed by page number. The sentencing hearing is referenced in this brief as "RP (Sentencing)" followed by page number.

According to Mrs. Wilcox, when the argument started, Mr. Jennings was on the couch. She left the room to go to the bathroom. RP 693. She was gone no more than a "few seconds"; when she returned Mr. Jennings was sitting on the floor holding his head. RP 695-96.

Ms. Anderson witnessed part of the altercation between Mr. Wilcox and Mr. Jennings. RP 626. She saw Mr. Wilcox yell at Mr. Jennings and push him on his forehead with the palm of his hand. RP 625. She then left the room. While she was gone, she did not hear any loud noises, but when she came back into the room, she saw Mr. Jennings on the floor with his arms around Mr. Wilcox, obviously injured. RP 628-29, 632.

Due to the apparent severity of Mr. Jennings's injuries, Mr. Munoz and Mr. Wilcox carried Mr. Jennings to Mr. Munoz's truck and rushed him to the emergency room at Northwest Hospital, at which they waited 45-60 minutes to ensure that Mr. Jennings received proper care. RP 610-13. At the hospital, it was determined that Mr. Jennings had suffered a severe compressed skull fracture in the left temporal bone and significant hemorrhaging, and that it would be necessary to transfer him to a level one medical center for immediate surgery. RP 299, 330. Mr. Jennings was taken to Harborview Medical Center, where he remained until February 26, 2013. RP 545, 573. The brain injury that Mr. Jennings suffered left

him with lasting severe deficits, including partial paralysis, significant speech impairments, and an impaired ability to swallow. RP 575-76.

Mr. Wilcox was tried on charges of assault in the first degree and assault in the second degree with an allegation that the level of injury suffered substantially exceeded the level of necessary to satisfy the elements of the crime, pursuant to RCW 9.94A.535(3)(y). CP 8-9. The jury acquitted him of assault in the first degree, but convicted him of assault in the second degree and by special verdict unanimously found that the aggravating circumstance had been proven. CP 61-62. The trial court relied on the jury's special verdict to impose an exceptional sentence of 73 months incarceration. RP (Sentencing) 15. Mr. Wilcox appealed. CP 78-79.

The Court of Appeals, Division One, affirmed. Slip. Op. at 1. Contrary to Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 403 (2004), the Court of Appeals held that aggravating circumstances are not subject to due process vagueness challenges. Slip. Op. at 6. The Court of Appeals also held that the State was not required to prove Mr. Wilcox's conduct or intent in order to establish the aggravating circumstance. Slip. Op. at 8. Mr. Wilcox petitions for review.

E. ARGUMENT

This Court should grant review because the issue of whether a sentencing statute can be reviewed for vagueness is a significant question of constitutional law, and the Court of Appeals decision to uphold an enhanced sentence without any evidence of egregious conduct of the defendant conflicts with other Court of Appeals decisions.

1. The United States Supreme Court has made clear that sentencing statutes can be reviewed for vagueness and that sentencing based on a vague statute is a violation of the due process clause.

Laws which impart an uncommon degree of subjectivity to the jury's consideration of a fact are subject to invalidation on due process vagueness grounds. As the Supreme Court has stated, a criminal statute that "leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case," violates due process. Giacco v. Pennsylvania, 382 U.S. 399, 402-03, 86 S.Ct. 518, 15 L.Ed.2d 447 (1966).

The Washington Supreme Court agrees that legislative vagueness causes constitutionally unacceptable problems, and the Court sets out standards for analyzing and establishing vagueness. The Fourteenth Amendment's due process vagueness doctrine has a twofold purpose: (1) to provide the public with adequate notice of what conduct is proscribed and (2) to protect the public from arbitrary or ad hoc enforcement. City of Bellevue v. Lorang, 140 Wn.2d 19, 30, 992 P.2d 496 (2000); State v.

Williams, 144 Wn.2d 197, 203, 26 P.3d 890 (2001). A law violates due process vagueness prohibitions if either requirement is satisfied. Spokane v. Douglass, 115 Wn.2d 171, 177, 795 P.2d 693 (1990) (internal citation omitted). The party challenging the prohibition has the burden of overcoming the presumption of constitutionality. Id.

As a special subset of statutes, sentencing guidelines were once considered immune from vagueness challenges:

> Sentencing guidelines do not inform the public of the penalties attached to criminal conduct nor do they vary the statutory maximum and minimum penalties assigned to illegal conduct by the legislature. A citizen reading the guideline statutes will not be forced to guess at the potential consequences that might befall one who engages in prohibited conduct because the guidelines do not set penalties. Thus, the due process considerations that underlie the void-for-vagueness doctrine have no application in the context of sentencing guidelines.

State v. Baldwin, 150 Wn.2d 448, 459, 78 P.3d 1005 (2003).

The landscape has changed, however. In 2004, the United States Supreme Court clarified that sentencing guideline statutes *do* notify the public of statutory maximum and minimum penalties and thus they *are* subject to constitutional analysis and protections. Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004). The Washington Supreme Court has adopted Blakely's reasoning regarding the status of sentencing guidelines:

> In Blakely, the Supreme Court clarified that the "statutory maximum" did not refer to the maximum sentence authorized by the legislature for the crime (as almost every court considering the issue had concluded). Instead "statutory maximum" meant the maximum sentence a trial judge was authorized to give without finding additional facts, in the case of the Sentencing Reform Act of 1981(SRA), chapter 9.94A RCW, the top of the standard sentencing range.

State v. Evans, 154 Wash.2d 438, 441–42, 114 P.3d 627 (2005) (citing Blakely v. Washington, 542 U.S. at 304).

Although some courts may claim that Blakely applies only in the context of Sixth Amendment protections, the United States Supreme Court recently ruled that sentence enhancements are subject to Fourteenth Amendment due process protections, specifically including analysis for vagueness. Johnson v. United States, __ U.S. __, 135 S. Ct. 2551, 2015 WL 247345083 (2015). Furthermore, even if a statute has *some* clear interpretations,

> ". . . our *holdings* squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp. For instance, we have deemed a law prohibiting grocers from charging an "unjust or unreasonable rate" void for vagueness—even though charging someone a thousand dollars for a pound of sugar would surely be unjust and unreasonable."

Id. at 2561 (emphasis in original).

Thus, the fact that the statute involved in this case, RCW 9.94A.535(3)(y), may have *some* clear examples that injuries

"substantially exceeded" the level necessary to establish the offense, do not shield the statute from its vague underpinnings. One man's "substantial" is another man's "somewhat." Subjecting defendants to a standard this loose is a violation of their due process rights, requiring reversal and resentencing.

2. The exceptional sentence must be vacated because the State did not prove that the conduct giving rise to the harm exceeded the level necessary to satisfy the elements of the offense.

a. *Because the statutory aggravating circumstances were designed to codify existing common law aggravating factors, the State had to prove that the conduct, and not merely the injury, substantially exceeded the level necessary to satisfy the elements of the offense.*

In enacting statutory aggravating circumstances following the United States Supreme Court's decision in Blakely, the Legislature's intent was to codify existing common law factors. Laws of 2005, Ch. 68, § 1. At common law, the aggravating factor contained in RCW 9.94A.535(3)(y) was known as the "conduct more egregious than typical" aggravating factor. State v. Wilson, 96 Wn. App. 382, 388, 980 P.2d 244 (1999) (citing Jacobsen, 92 Wn. App. at 970-71), rev. denied, 994 P.2d 846 (2000); see also State v. Flake, 76 Wn. App. 174, 183, 883 P.2d 341 (1994) ("According to case law, the seriousness of a victim's injuries is a valid aggravating factor if 'the conduct producing the harm, and the harm

produced, were significantly more serious than what is typically involved in the crime.") (citations omitted).

Below, the trial court rejected Wilcox's contention that codification of the common law aggravating circumstance required the State to prove the conduct that produced Jennings's injuries substantially exceeded the level necessary to satisfy the elements of the offense. RP 735. The court reasoned that instructing the jury consistent with the defense request "would ... make the aggravator for Assault II a nullity" by essentially defining Assault in the Second Degree plus the aggravating circumstance identically to Assault in the First Degree. Id.

Criminal law, both via statutes and the related common law, focuses on conduct. Tort law may emphasize compensation and allow for the "eggshell plaintiff," but criminal punishment is rooted in the idea that there must be a rational connection between the defendant's behavior and the outcome produced. The trial court's summary rejection of Wilcox's argument that codification of the aggravating circumstance as it existed at common law required the State to prove conduct more egregious than typical was incorrect in light of previous Court of Appeals decisions such as Flake. Further, it was in conflict with the very purpose of the Washington Criminal Code; according to RCW 9A.04.020:

(1) The general purposes of the provisions governing the definition of offenses are:
(a) To forbid and prevent conduct that inflicts or threatens substantial harm to individual or public interests;
(b) To safeguard conduct that is without culpability from condemnation as criminal;
(c) To give fair warning of the nature of the conduct declared to constitute an offense;
(d) To differentiate on reasonable grounds between serious and minor offenses, and to prescribe proportionate penalties for each.

This Court should conclude that the codification of this aggravating circumstance imposed on the State the burden of proving not only that the injury substantially exceeded the level necessary to satisfy the elements of the offense, but also that the conduct producing this injury exceeded this level.[2]

b. *The State did not prove Wilcox's conduct substantially exceeded the level necessary to satisfy the elements of the offense.*

Assuming the Legislature meant what it said when it indicated that the aggravating circumstances in RCW 9.94A.535 were intended to codify aggravating factors as they existed at common law, this Court must conclude that the State had to present proof of egregious conduct by Mr. Wilcox. But the etiology of Mr. Jennings's injuries was a mystery.

[2] If the statute indeed imposed this burden on the State, then it was error for the court to fail to issue a jury instruction regarding the conduct question.

Forensic pathologist John Lacy testified that Mr. Jennings's fractures almost certainly would have had to result from a blunt force injury with an object. RP 651. He believed it was highly improbable that the injury could have been caused by a blow with fists. Id. In fact, despite having attended or conducted thousands of autopsies, Lacy had only once seen fractures so severe caused by a fist blow – and in that case, the individual who suffered the injuries had previously undergone brain surgery, and there was a metal plate in his head that contributed to causation. RP 652. Here, there was no evidence of similar previous trauma.

Although no witnesses observed Mr. Jennings sustain the injury at issue, there was no plausible way that Mr. Wilcox could have struck Mr. Jennings with sufficient force to inflict such a grievous injury. Cheryl Wilcox testified that she was gone from the room for "a few seconds." RP 698. Ms. Anderson had merely stepped into the kitchen. RP 628. Both were in proximity and reentered the living room immediately after Mr. Jennings was hurt. Neither of these individuals described hearing a noise consistent with Mr. Jennings's injury or seeing an object that could have been used to inflict blunt force trauma.

Under interrogation, Mr. Wilcox told law enforcement that he held Mr. Jennings on the couch and heard his head "crunch," but photographs

of the living room do not show any hard edges that Mr. Jennings's head could have been pushed against to sustain the injuries described. Ex. 8. Testimony also stated that Mr. Wilcox accompanied Mr. Jennings to the emergency room and remained there for 45-60 minutes in order to ensure his friend received care. RP 610-13. In consideration of this evidence, the jury concluded that the State failed to prove Mr. Wilcox intended to inflict great bodily harm and instead acted recklessly, acquitting Mr. Wilcox of assault in the first degree. CP 60, 68; RP (Sentencing) 15.

Given the absence of any evidence of how Mr. Jennings's injury was caused, the State failed to prove that the conduct giving rise to the harm substantially exceeded the level necessary to satisfy the elements of the offense of assault in the second degree as it was charged and prosecuted here.

3. The appropriate remedy is remanding for resentencing according to the standard range in the sentencing guidelines.

Where an exceptional sentence is improperly imposed, the remedy is remand for resentencing within the standard range. State v. Stubbs, 170 Wn.2d 117, 130, 240 P.3d 143 (2010). Accordingly, Wilcox's sentence should be vacated, and this matter remanded for imposition of a standard-range sentence.

F. CONCLUSION

This Court should accept review of the question whether a prison term of more than four times the maximum expected sentence, based on a vague statute and absent ill intent or egregious conduct of defendant, is a violation of the United States Constitution and the very purpose of the Washington Criminal Code.

DATED this 22nd day of July, 2015.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	DIVISION ONE
	)	
Respondent,	)	No. 71620-4-I
	)	
v.	)	UNPUBLISHED OPINION
	)	
HUGH EDWIN WILCOX,	)	
	)	
Appellant.	)	FILED: June 22, 2015
	)	

DWYER, J. — Hugh Wilcox was charged with one count of assault in the first degree and one count of assault in the second degree with the aggravating circumstance that the victim's injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the offense. By jury verdict, Wilcox was acquitted of assault in the first degree but convicted of assault in the second degree. The jury also found the aggravating circumstance proved. On appeal, Wilcox contends that the aggravating circumstance, in particular the requirement that the jury determine whether the victim's injuries *substantially exceeded* the harm necessary to satisfy the elements of the offense, was unconstitutionally vague. He also contends that the State was required to prove that not only the victim's injuries, but also the defendant's conduct, exceeded the statutory requirement. Finding no error, we affirm.

I

Wilcox and Stephen Jennings were roommates in a house that they also shared with Michael Munoz, Kara Anderson, and Wilcox's wife, Cheryl.

APPENDIX

On November 6, 2012, Wilcox assaulted Jennings, causing him permanent, life-threatening brain injury. Prior to the assault, Jennings got into a verbal argument with Wilcox and Cheryl. Jennings testified that he remembered Wilcox hitting him twice on the head, and a third time somewhere else. Although Jennings' memory of the assault was limited, he remembered falling from the couch on which he was seated to the floor and experiencing his right side being paralyzed.

According to Cheryl, when the argument started, Jennings was on the couch. She left the room to go to the bathroom. When she returned after a "few seconds," Jennings was sitting on the floor. He was holding his head and "acting funny." Cheryl did not see how Jennings ended up on the floor, nor did she see Wilcox hit Jennings.

Anderson witnessed part of the altercation between Wilcox and Jennings. She saw Wilcox yell at Jennings and push him on his forehead with the palm of his hand. Anderson then left the room. While she was gone, she did not hear any loud noises, but when she came back into the room, she saw Jennings on the floor with his arms around Wilcox, obviously injured.

Munoz arrived home after the assault and found Jennings on the floor, holding his head and looking dazed. He and Wilcox picked up Jennings, who could no longer stand on his own, and carried him to Munoz's truck. Although they "flew down" to Northwest Hospital, Jennings could not walk or speak by the time they arrived. An emergency healthcare provider found Jennings slumped

over in a wheelchair in the hospital lobby without a wallet, identification, or anyone to explain what had happened.

Wilcox later admitted to police that he had intervened in an argument between Cheryl and Jennings and that he had cracked Jennings' skull in the process. Wilcox acknowledged that he had held Jennings down by his head and that he heard it "crunch." Additionally, Wilcox told a friend that he put Jennings' head "down with force" and that "it sounded like a chicken bone crunching."

Northwest Hospital staff transferred Jennings to Harborview Medical Center for emergency brain surgery upon determining that he had suffered a massive brain bleed and a severe compressed skull fracture. Jennings' skull had been indented and shattered into multiple "jagged little pieces," causing a large and potentially fatal amount of bleeding in his brain. Additionally, the midline of Jennings' brain had shifted 11 millimeters, a significant amount.

At Harborview, doctors removed part of Jennings' skull and a blood clot in an effort to relieve the pressure on his brain. Following the surgery, Jennings required a nearly four-month stay at Harborview in the intensive care and in-patient rehabilitation units. Jennings was discharged to a nursing facility.

By the time of trial, Jennings was still living in the nursing facility, paralyzed on the right side of his body, forced to use a wheelchair, and unable to communicate easily. Jennings' treating physician testified that he is not expected to make a full recovery.

The State charged Wilcox with one count of assault in the first degree - domestic violence and, in the alternative, one count of assault in the second

degree - domestic violence. The second degree assault charge included the aggravating circumstance that the victim's injuries substantially exceeded the level of bodily injury necessary to satisfy the elements of the offense.

Prior to closing arguments, Wilcox proposed that the court amend the aggravating circumstance instruction to state that the prosecutor was required to prove that he intended to cause Jennings great bodily harm. Wilcox argued that the proposed intent element was required under case law, even though it was not included in the pattern instruction. The State opposed the amendment, contending that neither the statute nor case law required a jury finding of intent. The trial court declined to do so.

The jury acquitted Wilcox of first degree assault but found him guilty of second degree assault and found both the domestic violence allegation and the aggravating circumstance proved. The trial court imposed an exceptional sentence of 73 months of incarceration.

II

Wilcox argues that the trial court erred by imposing an exceptional sentence based on the "substantially exceeds" aggravating circumstance. This is so, he asserts, because the charged circumstance is unconstitutionally vague under the due process clause. Because void for vagueness challenges do not apply to sentencing aggravators, we disagree.

Under the due process clause, a statute is void for vagueness if it either (1) fails to define the offense with sufficient precision that a person of ordinary intelligence can understand it, or (2) it does not provide standards sufficiently

specific to prevent arbitrary enforcement. State v. Eckblad, 152 Wn.2d 515, 518, 98 P.3d 1184 (2004). Both prongs of the vagueness doctrine focus on laws that proscribe or mandate conduct. State v. Baldwin, 150 Wn.2d 448, 458, 78 P.3d 1005 (2003).

Our Supreme Court has held that aggravating circumstances are not subject to vagueness challenges under the due process clause. Baldwin, 150 Wn.2d at 459.

> The sentencing guideline statutes challenged in this case do not define conduct nor do they allow for arbitrary arrest and criminal prosecution by the State. [United States v.]Wivell, 893 F.2d [156,] 160 [(8th Cir. 1990)]. Sentencing guidelines do not inform the public of the penalties attached to criminal conduct nor do they vary the statutory maximum and minimum penalties assigned to illegal conduct by the legislature. A citizen reading the guideline statutes will not be forced to guess at the potential consequences that might befall one who engages in prohibited conduct because the guidelines do not set penalties. Thus, the due process considerations that underlie the void-for-vagueness doctrine have no application in the context of sentencing guidelines.

Baldwin, 150 Wn.2d at 459. Further, the guidelines do not create a "constitutionally protectable liberty interest" because they do not require that a specific sentence be imposed. Baldwin, 150 Wn.2d at 461.

Wilcox does not acknowledge Baldwin, much less argue that it does not constitute controlling authority. Instead, he argues that a due process vagueness challenge is possible in light of Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

Blakely provides for no such thing. Blakely concerns itself with the Sixth Amendment jury trial right. As applied to sentencing facts, Blakely discusses

who decides the factual contest (the judge or the jury). It does not concern itself with *what* is decided.

Wilcox has not provided any cogent legal argument suggesting how Blakely, a decision firmly anchored in the Sixth Amendment right to a jury trial, has modified the Fourteenth Amendment due process vagueness analysis articulated in Baldwin. Baldwin controls. Wilcox's vagueness challenge is unavailing.[1]

III

Wilcox next contends that insufficient evidence supports the jury's finding regarding the "substantially exceeds" aggravating circumstance. This is so, he asserts, because the State was required to prove not only that Jennings' injury—but also his own conduct—exceeded the level necessary to establish assault in the second degree. Because the State was not required to prove excessive conduct, we disagree.

Wilcox's contention that the State was required to prove that the conduct giving rise to the harm exceeded the level necessary to satisfy the elements of the offense is contrary to the plain language of the aggravating circumstance statute. RCW 9.94A.535(3)(y) provides that the trial court may impose an exceptional sentence if the jury finds beyond a reasonable doubt that "*[t]he*

[1] Wilcox also relies on Eighth Amendment death penalty cases to support his vagueness challenge. However, he fails to cite any authority holding that a vagueness challenge under the Eighth Amendment applies outside the death penalty context. Several courts, including this court, have held that it does not. See State v. E.A.J., 116 Wn. App. 777, 792, 67 P.3d 518 (2003) (rejecting Eighth Amendment vagueness challenge to juvenile manifest injustice); Holman v. Page, 95 F.3d 481, 487 (7th Cir. 1996) (holding that Eighth Amendment vagueness inquiry does not apply to non-capital cases), overruled on other grounds, Owens v. United States, 387 F.3d 607 (7th Cir. 2004).

victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense." (Emphasis added.) As written, the statute focuses solely on the seriousness of the victim's injuries and makes no reference to the defendant's intent or conduct.

The Washington Supreme Court has interpreted this provision in accordance with its plain language. In State v. Stubbs, 170 Wn.2d 117, 130-31, 240 P.3d 143 (2010), our Supreme Court recognized that the "substantially exceeds" aggravating circumstance set forth in RCW 9.94A.535(3)(y) codified the "serious injury" aggravating circumstance at common law. The court noted that the aggravating circumstance arose out of case law that had established that "'*particularly severe injuries* may be used to justify an exceptional sentence,' but only if they are 'greater than that contemplated by the Legislature in setting the standard range.'" Stubbs, 170 Wn.2d at 124 (emphasis added) (quoting State v. Cardenas, 129 Wn.2d 1, 6, 914 P.2d 57 (1996)). The court acknowledged that, by directing the trier of fact to measure the victim's actual injuries against the minimum injury that would satisfy the elements of the offense, the statute created a "somewhat different test" than previously articulated in the case law. Stubbs, 170 Wn.2d at 128-29. Nevertheless, the court applied the statute consistent with its plain language, focusing on the seriousness of the victim's injuries and not on the defendant's conduct.

Subsequent decisions of the Supreme Court analyzing the "substantially exceeds" aggravating circumstance have also evaluated the seriousness of the victim's injuries without consideration of the defendant's conduct causing them.

See State v. Duncalf, 177 Wn.2d 289, 297, 300 P.3d 352 (2013) (holding that the victim's likely permanent impairment of his lower jaw substantially exceeded the level of harm required to prove second degree assault); State v. Pappas, 176 Wn.2d 188, 193, 289 P.3d 634 (2012) (holding that the victim's permanent and severe brain injury substantially exceeded the level of harm required to prove vehicular assault).

The State was not required to offer proof regarding Wilcox's conduct or intent in order to establish the "substantially exceeds" aggravating circumstance. Moreover, there is no dispute that sufficient evidence was presented regarding Jennings' devastating injuries. Therefore, sufficient evidence supports the jury's finding that the aggravating circumstance was proved.[2]

Affirmed.

Dwyer, J.

We concur:

Spearman, C.J.

Leach, J.

[2] In a brief statement of additional grounds, Wilcox raises three additional issues—(1) that "[t]he jurors were made aware . . . that [he] was incarcerated," (2) that "[he] was not read [his] Miranda rights properly," and (3) that he had "asked for an attorney several times." Wilcox does not provide any citations to the record or cite any authority in support of these claims. Therefore, he has not established an entitlement to relief. See RAP 10.10(c).

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 71620-4-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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