

69122-8

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No. 69122-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

OSCAR ARMANDO QUINTANILLA, JR.,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Jay V. White

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence produced by the State to support the jury verdict finding Mr. Quintanilla guilty of second degree assault by strangulation.

2. The trial court violated Mr. Quintanilla's fundamental right to parent in imposing a 10 year no-contact order barring contact with his daughter, A.J.Q.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Due process requires the State prove each element of the charged offense beyond a reasonable doubt. When the State charges a defendant with assault by strangulation, the State must prove either the defendant compressed the person's neck and actually obstructed either their blood flow or ability to breathe, or that he compressed the victim's neck with the intent to obstruct the blood flow or their ability to breathe. Here, although there was testimony Mr. Quintanilla grabbed A.J.Q. near the neck, there was a lack of evidence he restricted her ability to breathe or that he intended to do so. Is Mr. Quintanilla entitled to reversal of the second degree assault conviction with instructions to dismiss?

2. The trial court's power at sentencing is statutory. By statute, the court may impose "crime-related" prohibitions as a condition of the sentence. Sentencing prohibitions that inhibit or infringe on a fundamental constitutional right, such as the right to parent, may be imposed but only where the prohibition is reasonably necessary to accomplish the essential needs of the State and public order. Less restrictive alternatives must be considered. Here, the trial court imposed a 10-year prohibition on contact between A.J.Q. and Mr. Quintanilla without making any finding the prohibition was reasonably necessary and without considering less restrictive alternatives. In light of the trial court's failures, is this Court required to strike the prohibition as impermissibly infringing on Mr. Quintanilla's fundamental constitutional right?

### C. STATEMENT OF THE CASE

Tara Sanchez and Oscar Quintanilla ran away together as teenagers. The two subsequently had a child, a daughter, A.J.Q. Ms. Sanchez and Mr. Quintanilla returned to Washington but when A.J.Q. was approximately four years of age, they drifted apart. 5/16/2012RP 67-68.

When A.J.Q. was approximately 13 years old, Ms. Sanchez and Mr. Quintanilla were fortuitously reunited. 5/16/2012RP 68. A.J.Q. had repeatedly asked Ms. Sanchez about Mr. Quintanilla during the years apart and was excited to have her father back in her life. 5/21/2012RP 15. Despite the misgivings of his parents, Mr. Quintanilla moved in with Ms. Sanchez, A.J.Q., and Ms. Sanchez's other three minor children from another relationship. 5/16/2012RP 81, 5/24/2012RP 26-30.

When he moved in with Ms. Sanchez and her children, Mr. Quintanilla developed a number of rules he expected the children to obey. 5/23/2012RP 21. It was understood that if the children violated the rules, Mr. Quintanilla would discipline them. *Id.* at 23. A.J.Q. and Mr. Quintanilla frequently argued over his rules. *Id.* at 30. These arguments sometimes became physical on those occasions where Mr. Quintanilla thought A.J.Q. had lied to him. *Id.* at 31. Mr. Quintanilla and A.J.Q. were approximately the same height. 5/23/2012RP 33. On occasion, Mr. Quintanilla would grab A.J.Q.'s shirt to make a point during these arguments. *Id.* at 34.

In July 2011, A.J.Q. attended a pool party. 5/23/2012RP 55. Mr. Quintanilla worried about A.J.Q. getting too much attention from

young men, so he forbade her from wearing a two-piece bathing suit. 5/23/2012RP 55-57. Ultimately, Mr. Quintanilla relented and allowed A.J.Q. to wear a bikini, but demanded she keep her shorts and shirt on over the bathing suit. *Id.* at 57-58. Mr. Quintanilla did not attend the party. A.J.Q. went into the pool with just her bikini, disobeying her father. 5/23/2012RP 59.

When A.J.Q. returned home, Mr. Quintanilla, who had discovered A.J.Q. had disobeyed him, confronted her. *Id.* Mr. Quintanilla became very angry when A.J.Q. denied wearing the bikini in the pool and grabbed A.J.Q.'s sweatshirt at the nape of her neck, tearing the sweatshirt and causing redness on her neck. 5/23/2012RP 62-63. A.J.Q. later claimed Mr. Quintanilla grabbed her throat as well making it hard for her to breathe. 5/21/2012RP 165-66.

On July 24, 2011, Mr. Quintanilla and Ms. Sanchez became embroiled in an argument. 5/16/2012RP 146; 5/29/2012RP 128. Mr. Quintanilla claimed Ms. Sanchez tried to strike him and he grabbed her hand throwing her off-balance. 5/29/2012RP 130. Ms. Sanchez hit her knee and elbow when she landed on the floor. 5/29/2012RP 130-31. Ms. Sanchez claimed Mr. Quintanilla grabbed her and threw her

against the wall and she landed on her elbow when she hit the floor.

5/16/2012RP 146.

On August 27, 2011, Ms. Sanchez called the police after Mr. Quintanilla killed one of the family cats. 5/16/2012RP 163-71. Mr. Quintanilla was arrested for animal cruelty. 5/15/2012RP 61. Based upon subsequent discussions between the police, Ms. Sanchez and A.J.Q., Mr. Quintanilla was ultimately charged with first degree animal cruelty, second degree assault, fourth degree assault, second degree rape, three counts of second degree rape of a child, one count of attempted second degree rape of a child, one count of second degree child molestation, one count of third degree child molestation, and a count of harassment. CP 58-63. Following a jury trial, Mr. Quintanilla was convicted of second degree assault, fourth degree assault, first degree animal cruelty, and harassment. CP 133, 135-36, 138; 6/1/2012RP 3-5. He was acquitted of all other charges. CP 127-32, 134.

At sentencing, the court imposed a no-contact order for the statutory maximum for second degree assault of 10 years, barring Mr. Quintanilla from having any contact with his daughter, A.J.Q.

7/27/2012RP 33 (“No contact with Tara Sanchez and A.J.Q.”). *See also* CP 285, 290, 293.

D. ARGUMENT

1. THE SECOND DEGREE ASSAULT  
CONVICTION MUST BE REVERSED AS  
THERE IS INSUFFICIENT EVIDENCE OF  
STRANGULATION

a. The State bears the burden of proving each of the essential elements of the charged offense beyond a reasonable doubt.

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is “[w]hether, 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, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

b. Strangulation requires proof of restriction of the airflow or the intent to restrict. The State charged Mr. Quintanilla with only a single alternative of second degree assault: assault by strangulation. CP 60-61. Mr. Quintanilla submits the State failed to prove he strangled A.J.Q., thus the conviction must be reversed.

A person is guilty of the crime of assault in the second degree by strangulation where he intentionally “[a]ssaults another by strangulation.” RCW 9A.36.021(1)(g). “‘Strangulation’ means to compress a person’s neck, thereby obstructing the person’s blood flow or ability to breathe, or doing so with the intent to obstruct the person’s blood flow or ability to breathe. . . .” RCW 9A.04.110(26). Thus, a person is guilty of second degree assault by strangulation in two circumstances: first, if he intentionally assaults another by compressing that person’s neck and actually obstructing either the person’s blood flow or ability to breath; and second, if he intentionally assaults another by compressing that person’s neck with the intent to obstruct the person’s blood flow or ability to breathe. Therefore, intent is necessary when the defendant does not actually obstruct either the victim’s blood flow or ability to breath.

Here, Mr. Quintanilla disputed the claim that he grabbed A.J.Q. around the neck and compressed it so that her breathing became impaired. 5/29/2102RP 112. Mr. Quintanilla was clearly angry about A.J.Q. lying to him and overreacted in his attempt at discipline due to his lack of parenting skills. 5/29/2012RP 107-09. Mr. Quintanilla admitted he grabbed A.J.Q.'s sweatshirt, and in so doing, he also admitted grabbing the nape of her neck. 5/29/2012RP 112. Mr. Quintanilla acknowledged his mistake, but denied trying to choke A.J.Q. 5/29/2012RP 109-12.

A.J.Q. claimed that Mr. Quintanilla put his hand around her neck and compressed it, so that she was having trouble breathing. 5/21/2012RP 165-66. She acknowledged though that she was still able to breathe. 5/21/2012RP 167. Further, A.J.Q.'s overall testimony was substantially discredited when the jury rejected her claims on all of the sex offense allegations.

The evidence presented at trial failed to establish that Mr. Quintanilla obstructed A.J.Q.'s ability to breathe, or that he intended to restrict her ability to breathe. The State failed to prove Mr. Quintanilla assaulted A.J.Q. by strangling her, thus his conviction for second degree assault must be reversed.

c. Mr. Quintanilla is entitled to reversal of his second degree assault conviction with instructions to dismiss. Since there was insufficient evidence to support the conviction for second degree assault, this Court must reverse the conviction with instructions to dismiss. To do otherwise would violate double jeopardy. *State v. Crediford*, 130 Wn.2d 747, 760-61, 927 P.2d 1129 (1996) (the Double Jeopardy Clause of the United States Constitution “forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.”), quoting *Burks v. United States*, 437 U.S. 1, 9, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

2. THE IMPOSITION OF THE NO-CONTACT ORDER WITH A.J.Q. VIOLATED MR. QUINTANILLA’S FUNDAMENTAL RIGHT TO PARENT

The Sentencing Reform Act of 1981, chapter 9.94A RCW, authorizes the trial court to impose “crime-related prohibitions” as a condition of a sentence. RCW 9.94A.505(8). A “crime-related prohibition” prohibits “conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.030(10). “[B]ecause the imposition of crime-related prohibitions is necessarily fact-specific and based upon the sentencing

judge's in-person appraisal of the trial and the offender, the appropriate standard of review [is] abuse of discretion." *In re Personal Restraint of Rainey*, 168 Wn.2d 367, 374-75, 229 P.3d 686 (2010).

If the sentencing condition infringes a constitutional right (such as the right to the care, custody, and companionship of one's children), that condition can only be upheld if the condition is reasonably necessary to accomplish the essential needs of the State and public order. *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008), *cert. denied*, 129 S.Ct. 2007 (2009) ("More careful review of sentencing conditions is required where those conditions interfere with a fundamental constitutional right.").

The right to the care, custody, and companionship of one's children constitutes such a fundamental constitutional right. *Rainey*, 168 Wn.2d at 374. Thus, sentencing conditions burdening this right "must be 'sensitively imposed' so that they are 'reasonably necessary to accomplish the essential needs of the State and public order.'" *Rainey*, 168 Wn.2d at 373, *quoting Warren*, 165 Wn.2d at 32.

This Court has held that a no-contact order prohibiting a defendant from all contact with his children was "extreme and unreasonable given the fundamental rights involved," where less

stringent limitations on contact would successfully realize the State's interest in protecting the children. *State v. Ancira*, 107 Wn.App. 650, 655, 27 P.3d 1246 (2001). In *Ancira*, the trial court imposed the no-contact order prohibiting Mr. Ancira from all contact with his wife and children as a condition of his sentence for felony violation of a domestic no-contact order. *Id.* at 652-53. Although this Court recognized the State's interest in preventing the children from having to witness instances of domestic violence, this Court determined that the State had "failed to demonstrate that this severe condition was reasonably necessary" to prevent that harm. *Id.* at 654. Rather, this Court concluded indirect contact, such as mail, or supervised contact without the mother's presence might successfully satisfy the State's interest in protecting the children. *Ancira*, 107 Wn.App. at 655.

Similarly, in *Rainey*, the Supreme Court struck a lifetime no-contact order prohibiting Mr. Rainey from all contact with his child, because the sentencing court did not articulate any reasonable necessity for the lifetime duration of that order. 168 Wn.2d at 381-82. In reaching its decision, the Court noted that the fact that the child was a victim of Mr. Rainey's crime was not in itself determinative as to whether the no-contact order was proper: "It would be inappropriate to

conclude that, simply because [the child] was a victim of Rainey's crime, prohibiting all contact with her was reasonably necessary to serve the State's interest in her safety." *Rainey*, 168 Wn.2d at 378. Recognizing the "fact-specific nature of the inquiry," the Court remanded to the trial court for resentencing so that the court could "address the parameters of the no-contact order under the 'reasonably necessary' standard." *Id.* at 382.

The decision in *Rainey* did not set forth a bright-line rule requiring trial courts to expressly justify the conditions and duration of no-contact orders under the reasonably necessary standard. Rather, the decision required reviewing courts to analyze the scope and duration of no-contact orders independently in light of the facts in the record. Remand is required when a reviewing court fails to determine whether a specific provision or term is reasonably necessary. In *Rainey*, the Court was unable to determine whether, in the absence of any express justification by the trial court, a lifetime no-contact order was reasonably necessary to achieve the State's interest in protecting a child from her father. *Rainey*, 168 Wn.2d at 381-82. In addition, the Court concluded that the trial court should have addressed Mr. Rainey's argument that a no-contact order would be detrimental to his daughter's

interests before pronouncing sentence. *Id.* at 382. Thus, the Court remanded for resentencing.

Here, the trial court ordered that Mr. Quintanilla have no contact with A.J.Q. for 10 years. CP 285, 290, 293. Because the no-contact order implicated Mr. Quintanilla's fundamental right to the care, custody, and companionship of his child, for the sentencing condition to be constitutionally valid, "[t]here must be no reasonable alternative way to achieve the State's interest." *Rainey*, 168 Wn.2d at 379; *Warren*, 165 Wn.2d at 34-35.

In imposing the challenged sentencing condition, the trial court failed to address whether the no-contact order was reasonably necessary to realize a compelling state interest. Moreover, although the State has a compelling interest in protecting children from harm, the State failed to demonstrate how prohibiting all contact between Mr. Quintanilla and his daughter for 10 years was reasonably necessary to effectuate that interest. Because the sentencing condition implicated Mr. Quintanilla's fundamental constitutional right to parent A.J.Q., the State was required to show that no less restrictive alternative would prevent harm to A.J.Q. Further, the fact A.J.Q. was a victim of an

offense committed by Mr. Quintanilla is not determinative; the Court must still make the necessary finding.

Because whether a particular crime-related prohibition satisfies the “reasonably necessary” standard is a fact-specific inquiry, this Court must strike the sentencing condition prohibiting Mr. Quintanilla’s contact with A.J.Q. and remand for further proceedings.

E. CONCLUSION

For the reasons stated, Mr. Quintanilla requests this Court reverse his conviction for second degree assault and order it dismissed. Alternatively, Mr. Quintanilla asks this Court to strike the no-contact order barring contact with his daughter, A.J.Q.

DATED this 12<sup>th</sup> day of April 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tom Kummerow', is written over a horizontal line. The signature is stylized and cursive.

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DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 69122-8-I
v.	)	
	)	
OSCAR QUINTANILLA, JR.,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 12<sup>TH</sup> DAY OF APRIL, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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