69918-1 REC'D
OCT 29 2013
King County Prosecutor
Appellate Unit

69918-1

NO. 69918-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

NEGATU FENTAHUN,

Appellant.

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

The Honorable Douglass North, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court violated appellant's constitutional right to confront the witnesses against him by admitting out-of-court statements from a non-testifying witness.

2. The trial court erred when it admitted those statements under ER 801(a)(4).

3. The trial court erred when it admitted the tape of the 911 call.

Issues Pertaining to Assignments of Error

1. Where the declarant was not the patient but a third party, and the record shows the patient was an adult and capable of communicating, were statements the declarant made to the hospital's social worker admissible under ER 803(a)(4)? Where the declarant was not subject to cross examination did the admission of his hearsay statements violate appellant's right to confrontation?

2. Where the statements made in the 911 call were testimonial and the caller was not subject to cross examination did admission of the 911 call violate appellant's right to confrontation?

B. STATEMENT OF THE CASE [1]

1. Procedural Facts

The King County Prosecutor charged Nagatu Fentahun with second degree assault. CP 1-4. It was alleged he assaulted Wosenyelesh Fentahun, and the assault was a crime of domestic violence. Id. at 1.[2]

A jury found Nagatu guilty as charged. CP 10. Nagatu was sentenced to 4.5 months in jail. RP 33-39.

2. Substantive Facts

On July 13, 2010, Seattle Fire Department personnel, an American Medical Response EMT, and police were dispatched to a house in Seattle in response to a 911 call. 3RP 4-6, 26-27, 66, 72. The caller identified himself as "Amanuel", told the dispatcher his brother, Nagatu Fentahun, beat their sister knocking out her teeth, and then left the house. Ex. 13.[3] The caller requested police and medical personnel. Ex. 13.

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[1] The citations to verbatim report of proceedings are as follows: 1RP January 19, 2011; 2RP January 20, 2011; 3RP January 24, 2011; 4RP January 25, 2011; 5RP February 18, 2011.

[2] This case involves family members who share the name---Fentahun. For the purpose of clarity Wosenyelesh Fentahun is referred to as W.F., Nagatu Fentahun and Amanuel Fentahun are each referred to by their first name.

[3] The 911 call was admitted as Exhibit 13. A transcript of the 911 call was marked as Exhibit 14 but was not admitted. A copy of that transcript is attached as an appendix. The 911 call will be discussed at length and in that discussion citations to the call will refer to Exhibit 14.

When he arrived at the house, Seattle Fire Department Lieutenant Mathew Talbot saw Wosenyelesh Fentahun (W.F.) sitting on a couch. Her face was covered and she had a swollen eye. 3RP 76. W.F. told Talbot she had been stuck with a closed fist. 1RP 82. Talbot gave her an ice pack. 3RP 80.

EMT Allen McGaughey arrived at the house a short time later. W.F. was walked over to his ambulance with the ice pack to her face. 3RP 27. When McGaughey asked W.F. what happened she said she was struck in the face with a closed fist. 3RP 27, 29, 34. W.F. was bleeding around her mouth, two of her front teeth were loose, and another tooth was missing. McGaughey took W.F. to the hospital before police arrived. 3RP 37.

Seattle Police officers David Bauer and Brandon Eggers finally arrived at the house, spoke with W.F.'s parents and one of W.F.'s brothers, and then went to the hospital were W.F was taken. 3RP 11-12, 22, 44-46. At the hospital, W.F. was with another brother, Amanuel. 3RP 23, 47. Amanuel told Bauer and Eggers his version of what happened. 4RP 50.

Annie Drummond, the hospital's emergency room social worker, spoke with W.F. and Amanuel at the hospital. 4RP 29. Amanuel told Drummond that at a family gathering his brother, Nagatu, and his sister,

W.F., argued about a boy W.F. was talking to on the phone. Amanuel said Nagatu hit W.F. on the head, W.F. fell down, and Nagatu got on her back and repeatedly hit her with his fists. 4RP 41. Amanuel told Drummond he intervened and stopped Nagatu. 4RP 41, 43.

Dr. Steve Haung, a dentist, examined W.F at the hospital and a few days later. 4RP 5-9, 11-12. W.F. told Dr. Haung her brother hit her with a closed fist. 4RP 10-11. Dr. Haung described W.F.'s injuries as facial swelling, a cut on the corner of her left eye, a missing tooth, and a fracture to two other teeth. 4RP 17-19. Dr. Haung recommended that W.F. have the fractured teeth extracted. 4RP 20. He also testified that W.F.'s injuries were caused by substantial force, and it was unlikely the injuries were caused by an accident because the injuries suggested force was applied twice. 4RP 24-26.

On July 19, 2010 Nagatu came to the police precinct. 3RP 19,54. Ironically Bauer and Eggers were there but they did not recognize Nagatu as the man suspected of assaulting W.F. 3RP 55. Nagatu told Bauer he believed police looking for him. Id. When Bauer asked Nagatu why he thought the police were looking for him, Nagatu said he was arguing with his mother when his sister came up behind him. He said when he turned, his head collided his sister's head and she fell and hit her mouth on a chair. 3RP 56. Nagatu was so upset that he then left the house. 3RP 58.

After listening to Nagatu's story Bauer believed Nagatu was describing the incident involving W.F. 3RP 57. Bauer asked Nagatu for his identification. After looking at the identification, Bauer directed Eggers to arrest Nagatu. 3RP 20, 60.

W.F. did not testify at the trial nor did anyone who witnessed the incident. To prove its case the State primarily relied on what Amanuel said to Drummond and the 911 call, purportedly made by Amanuel. Nagatu did not have an opportunity to cross examine Amanuel because he did not testify either.

C. ARGUMENTS

1. DRUMMOND'S HEARSAY TESTIMONY WAS IMPROPERLY ADMITTED

Nagatu moved to exclude the statements Amanuel made to Drummond at the hospital. 2RP 35-36. Nagatu argued that the statements were not admissible under ER 803(a)(4) because Amanuel, and not W.F., is the declarant. Id. The court ruled the statements admissible redacting that part of the statement where Amanuel says, "I ran over and tried to get him off but he had her hair. I grabbed a knife and said I'm going to cut your hand if you don't let go and then he ran." 2RP 37-40.

The Sixth Amendment to the United States Constitution and article 1, section 22 of the Washington Constitution guarantee criminal

defendants the right to confront and cross examine witnesses. The confrontation clause provides that the state can present testimonial statements of an absent witness only if the witness is unavailable and the defendant has had a prior opportunity for cross-examination. Crawford v. Washington, 541 U.S. 36, 59, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). But the state can present nontestimonial out-of-court statements that accord with the hearsay rule and its exceptions, irrespective of the Sixth Amendment. Davis v. Washington, 547 U.S. 813, 821, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006). This Court reviews alleged confrontation clause violations de novo. State v. Kronich, 160 Wn.2d 893, 901, 161 P.3d 982 (2007).

a. Amanuel's Statements To Drummond Do Not Fall Under The ER 803(a)(4) Hearsay Exception.

An out-of-court statement offered to prove the truth of the matter asserted is hearsay. ER 801(c). Hearsay is not admissible unless it falls within an exception to the rules. ER 802. One such exception allows the admission of hearsay if the declarant made the statement for the purpose of a medical diagnosis or treatment. ER 803(a)(4) provides statements "made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof

insofar as reasonably pertinent to diagnosis or treatment" although hearsay are admissible.

The medical treatment exception applies to statements only if they were "reasonably pertinent to diagnosis or treatment." ER 803(a)(4); State v. Woods, 143 Wn.2d 561, 602, 23 P.3d 1046 cert. denied, 534 U.S. 964 (2001); State v. Williams, 137 Wn. App. 736, 154 P.3d 322 (2007); State v. Butler, 53 Wn. App. 214, 766 P. 2d 505 (1989). "To be admissible, the declarant's apparent motive must be consistent with receiving treatment, and the statements must be information on which the medical provider reasonably relies to make a diagnosis." State v. Fisher, 130 Wn.App. 1, 14, 108 P.3d 1262 (2005). The rationale for admitting statements under ER 802((a)(4) is the presumption a medical patient has a strong motive to be truthful and accurate. "This provides a significant guarantee of trustworthiness." State v. Perez, 137 Wn. App. 97, 106, 151 P.3d 249 (2007).

Drummond was allowed to testify that Amanuel told her Nagatu assaulted W.F. over a phone call while at a family gathering, and that he tried to stop the assault. Amanuel's statement to Drummond was admitted under ER 803(a)(4). Amanuel, however, was not the patient making a statement for the purpose of his medical diagnosis or treatment, and W.F.

was able to communicate her own medical concerns. Amanuel's hearsay statements were inadmissible. ER 802.

It is anticipated the State will argue that State v. Justiniano, 48 Wn. App. 572, 740 P.2d 872 (1987) and Woods, support the court's ruling admitting Amanuel's statement under ER 803(a)(4). Those cases, however, are different.

In Justiniano, Division Two ruled that the statements made by a child patient to her mother, and then repeated to the doctor by the mother were admissible through the doctor's testimony under RCW 9A.44.120. The Justiniano court also concluded that the statements made by the child victim to her mother who in turn relayed those statements to the doctor are the equivalent of statements made by the child to the doctor and are admissible under ER 803(a)(4) "because children of tender years are incapable of expressing their medical concerns to physicians." Id.

In Woods, two victims of a brutal assault were taken to a hospital where one of the victims was able to speak to the doctor and she told the doctor the other victim was bound and then she heard a bat swing and hit the other victim on the heard. Woods, 143 Wn.2d at 561. The Court ruled the statement reasonably pertinent to the other victim's treatment because it apprised medical providers with the physical position that victim was in at the time when her attack occurred. Id. That victim, however, was

unconscious at the time the statements were made and later died without regaining consciousness. Id. at 571.

Assuming statements made to a treatment provider by a third person are admissible under ER 803(a)(4), in both Justiniano and Woods the rationale supporting that proposition is that the patient is unable to express their medical concerns. That rationale does not apply in this case. Here, W.F., unlike the child in Justiniano, was capable of expressing her medical concerns. W.F. was not a child but a 28 year old woman. 3RP 32. W.F. was able to express her medical concerns to the EMT, McGaughey, Talbot, and Dr. Haung, and communicate to them the nature of injuries and how she injured. 3RP 31-32, 82. Although Drummond testified that she noted W.F.'s voice was "soft and meek" and W.F. was unable to say more than a couple of words because of her loose teeth, Drummond merely assumed that W.F was in too much pain because of her loose teeth to carry on a conversation. 4RP 40, 46. When Drummond saw W.F., she was "alert", "conscious" and was "not sedated." 4RP 42.

The State has the burden of demonstrating a hearsay exception applies. United States v. Marrowbone, 211 F.3d 452, 455 (8th Cir. 2000). Amanuel's hearsay statement was not made for the purpose of medical diagnosis or treatment because he was not the one being diagnosed or treated. Furthermore, even if a third party's statements to a medical

professional are admissible under ER 803(a)(4) where the patient is incapable of expressing their own medical concerns, the State failed to show W.F. incapable of expressing her concerns to Drummond. Moreover, Amanuel did not seek medical treatment, so his remark lacked the s "guarantee of trustworthiness" rationale that supports the medical diagnosis and treatment exception to the hearsay rule. Perez, 137 Wn. App. at 106. The court erroneously admitted Amanuel's hearsay statement to Drummond under ER 803(a)(4).

b. Admission Of The Statements Violated Nagatu's Right To Confrontation.

Even if ER 803(a)(4) encompasses hearsay statements made to medical providers by a third person, if the statements are testimonial the admission of those statements may violate the right to confrontation. It is the State's burden to show a statement is not testimonial. State v. Koslowski, 166 Wn.2d 409, 417 n. 3, 209 P.3d 479 (2009).

Courts apply the declarant-centric test for determining whether an out-of-court statement made to a nongovernmental witness is testimonial. State v. Beadle, 173 Wn.2d 97, 107–08, 265 P.3d 863 (2011). Under that test a statement is testimonial if a reasonable person in the declarant's position would anticipate his or her statement being used against the accused in investigating and prosecuting the alleged crime. Id., (citing,

State v. Shafer, 156 Wn. 2d 381, 390 n. 8, 128 P.3d 87 (2006)). "This inquiry focuses on the declarant's intent by evaluating the specific circumstances in which the out-of-court statement was made." State v. Shafer, 156 Wn. 2d 381, 390 n. 8. In State v. Hurtado, 173 Wn. App. 592, 600, 294 P.3d 838, this Court held statements made to medical personnel are generally nontestimonial: "(1) where they are made for diagnosis and treatment purposes, (2) where there is no indication that the witness expected the statements to be used at trial, and (3) where the doctor is not employed by or working with the State." (citations omitted).

Here, Amanuel's statement to Drummond was not made for the purpose of his diagnosis or treatment. Likewise it was not made for the purpose of the diagnosing and treating W.F. It was to relate what happened between W.F. and Nagatu, and his own role in the incident. 4RP 41, 43. A reasonable person in Amanuel's position would anticipate that telling a hospital social worker that his brother assaulted his sister, that he tried to stop the assault, and that he called police, that his statement would be used to either investigate or prosecute the alleged assault. Nagatu did not have the opportunity to cross-examine Amanuel because he did not testify at the trial. The admission of Amanuel's statement to Drummond violated Nagatu's right to confrontation.

Evidentiary error is prejudicial if, within reasonable probabilities, the error materially affected the outcome of the trial. State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001) (An evidentiary error requires reversal if, within reasonable probabilities, the outcome of the trial would have been different had the error not occurred). Confrontation Clause errors are subject to the constitutional harmless-error analysis. State v. Coristine, 177 Wn. 2d 370, 380, 300 P.3d 400 (2013); State v. Jasper, 174 Wn.2d 96, 117, 271 P.3d 876 (2013) (citing, Chapman v. California, 386 U.S. 18, 21 22, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)). Under this standard, the State must show beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. Chapman, 386 U.S. at 24, 87 S.Ct. 824. Constitutional error is presumed prejudicial and the state bears the burden of proving the error was harmless. State v. Stephens, 93 Wn.2d 186, 190-91, 607 P.2d 304 (1980).

Under either standard, the error was not harmless. Amanuel was the State's primary witness. His testimony, presented through Drummond, identified Nagatu as the assailant and it described the assault. The State relied on Amanuel's statements to Drummond in its closing argument. 4RP 80. The improper admission of the hearsay statements directly contributed to jury's verdict, and it is probable the outcome of the trial

would have been different had the statements been excluded. Nagatu's conviction should be reversed.

2. THE ADMISSON OF THE 911 TAPE VIOLATED NAGATU'S RIGHT TO CONFRONTATION

Prior to trial Nagatu moved to exclude the 911 tape, in part, on the grounds the statements on the tape were testimonial, and because the caller, self-identified as Amanuel, was not going to be a witness. Nagatu argued admission of the tape was a violation of his confrontation right. 1RP 38, 40. The motion was denied. 1RP 45.

Where the police are involved in procuring an unconfronted statement, whether the statement is testimonial depends on the " 'primary purpose' " for the interrogation during which the statement was made. State v. Pugh, 167 Wn.2d 825, 831-32, 255 P.2d 892 (2009); State v. Mason, 160 Wn.2d 910, 918–19, 162 P.3d 396 (2007) (quoting, Davis v. Washington, 547 U.S. 813, 822, 126 S. Ct. 2266, 165 L.Ed.2d 224 (2006)), cert. denied, 553 U.S. 1035 (2008); State v. Reed, 168 Wn. App. 553, 562, 278 P.3d 203, review denied, 290 P.3d 995 (2012).

Statements are testimonial when the circumstances objectively indicate the primary purpose of the interrogation is to establish or prove the facts of a past crime, in order to identify (or provide evidence to convict) the perpetrator. Davis, 547 U.S. at 826. In contrast, statements

are nontestimonial when made the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." Id. at 822. "[T]he existence of an 'ongoing emergency' at the time of an encounter between an individual and the police is among the most important circumstances informing the 'primary purpose' of an interrogation." Reed, 168 Wn. App. at 563 (quoting Michigan v. Bryant, 131 S.Ct. 1143, 1157, 179 L.Ed.2d 93 (2011)).

Washington courts apply a four-factor analysis. Reed, 168 Wn. App. at 563 (citing Koslowski, 166 Wn.2d 409 at 418–19); State v. Ohlson, 162 Wn.2d 1, 11–12, 168 P.3d 1273 (2007)). Those factors are: (1) the timing of the statements relative to when the described events occurred; (2) whether the elicited statements were necessary to resolve a present emergency or merely to determine what happened in the past; (3) the threat of harm posed by the situation as judged by a reasonable listener; and (4) the level of formality of the interrogation. Reed, 168 Wn. App. at 563-64.

Under the first factor, a speaker's description of events as they are occurring is indicative of an ongoing emergency; while a speaker's description of past events is indicative of a present need for assistance. Reed, 168 Wn. App. at 563. Here, in the 911 call the caller is describing a past event. Ex. 14 at 2.

Second, the caller was only asked a couple questions regarding W.F.'s medical condition. He was asked if she needed a medic (Ex. 14 at 2) and whether she was conscious. Ex. 14 at 4. The rest of the questions were related to the incident and identity of the assailant. Ex. 14. The questions and the answers that were elicited were not necessary to resolve a present emergency.

Third, the caller clearly indicated the assailant had left. Ex. 14 at 2. Where the threat posed by the perpetrator has been neutralized it indicates that no ongoing emergency exists. Reed, 168 Wn. App. at 564 (citations omitted). Domestic violence cases have a narrower zone of potential victims than cases involving threats to public safety. Bryant, 131 S.Ct. at 1158. Furthermore, an emergency is more limited in scope when the assailant is "armed only with his fists." Bryant, 131 S.Ct. at 1159. The caller stated his brother, Nagatu, beat up his sister and did not have any "weapons at all." Ex. 14 at 3. A reasonable listener would believe there was no real ongoing threat.

Fourth, because the statements were made during a 911 call the questioning was less formal than a face-to-face interrogation with police, the questions were pointed and direct. Few of the caller's statements were spontaneous, and the caller was speaking from a place of safety. This was

not "disorganized questioning in an exposed, public area that is neither calm nor safe." Reed, 168 Wn. App. at 564.

A conversation that begins as an interrogation to determine the need for emergency assistance can evolve into testimonial statements. Davis, 547 U.S. at 827. The conversation here began to determine the need for emergency assistance but quickly evolved into testimonial statements divorced from getting medical help for the caller's sister. At that point the circumstances objectively indicate the primary purpose was is to establish or prove the facts of a past crime, in order to identify the perpetrator. Because the caller, self-identified as Amanuel, was not present at trial Nagatu could not cross examine him. Admission of the entirety of the 911 call violated Nagatu's right to confrontation.

The improper admission of the 911 call was not harmless for the same reasons as the improper admission of Amanuel's statement to Drumnond. Although he did not testify and was not subject to cross examination, Amanuel was the State's main witness. His testimony, presented in part through the 911 call, identifies Nagatu as W.F.'s assailant, and provides facts that support an assault---that Nagatu beat her knocking out her teeth. Ex. 14 at 2, 5. Admission of the 911 call violated Nagatu's right to confrontation. Nagatu conviction should be reversed.

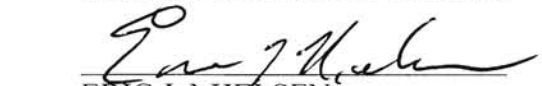
D. CONCLUSION

The court erred in admitting Amanuel's hearsay statements under ER 803(a)(4), and in admitting the 911 recording. The admission of that evidence denied Nagatu his right to a fair trial and to confront the State's primary witness against him. His conviction should be reversed and the case remanded for a new trial.

DATED this 29 day October 2013.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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State Exhibit

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff,	)	No. 10-1-06322-2 SEA
vs.	)	TRANSCRIPT OF 911 CALL
NEGATU ABEBE FENTAHUN, Defendant.	)	

OPERATOR: Hello. This is 911.

UNKNOWN: Hey…how you doing?

OPERATOR: You need police or medics?

UNKNOWN: Yeah I need a police and medic. The same thing.

OPERATOR: You need both of them?

UNKNOWN: Yeah.

OPERATOR: Okay. Where?

UNKNOWN: Uh, 6425 24th Avenue South.

OPERATOR: Okay. 6425 24th Avenue South?

UNKNOWN: 6425 24th Avenue South.

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1 OPERATOR: Okay. What's going on?

2 UNKNOWN: See my brother beat up my sister so bad, her two teeth went out,

3 and she got like a big eye uh a eye swollen and—

4 OPERATOR: Okay. Where's your brother now?

5 UNKNOWN: He run away actually.

6 OPERATOR: Okay. How long ago did it happen?

7 UNKNOWN: Like three, four minute ago.

8 OPERATOR: Okay what—

9 UNKNOWN: He just run out right now.

10 OPERATOR: Alright which direction did he go? Do you know?

11 UNKNOWN: Uh, he went to like Morgan Street, behind Morgan—I mean Beacon

12 and Morgan. He's wearin' a—a—a—a—a—orange jacket thing.

13 OPERATOR: An orange jacket thing.

14 UNKNOWN: Orange. Yeah. Kind—kinda orange.

15 OPERATOR: Okay. (Unintelligible)

16 UNKNOWN: He's African. Light-skinned African.

17 OPERATOR: Light-skinned. How old is he?

18 UNKNOWN: He's like about thirty. In his thirties.

19 OPERATOR: Thirties. Orange jacket. What else did he have on?

20 UNKNOWN: Uh, he had jeans and—

21 OPERATOR: Jeans. Okay and your sister needs a medic?

22 UNKNOWN: Yeah she needs a medic right away because her two teeth went out.

23 OPERATOR: Okay, and did he have any weap—weapons at all?

24

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1	UNKNOWN:	Uh, not really.
2	OPERATOR:	No. Okay. What do you—what do you man not really?
3	UNKNOWN:	He doesn't.
4	OPERATOR:	No. Okay.
5	UNKNOWN:	Yes.
6	OPERATOR:	Alright. Let me get the dispatcher. Stay on the line.
7	UNKNOWN:	Alright. Thank you. Please hurry up okay.
8	OPERATOR:	Yeah. We're gonna get him on the line. Stay with me.
9	RADIO:	Radio.
10	OPERATOR:	Okay. Radio, it's a dual response with fire. 6425 24th Avenue
11		South.
12	UNKNOWN:	You're gonna be all right. You're gonna be all right.
13		(Unintelligible) medics—
14	OPERATOR:	The caller's brother assaulted the sister. Suspect has left on foot.
15	UNKNOWN:	You're gonna be all right.
16	RADIO:	(Unintelligible) any weapons?
17	UNKNOWN:	No. He don't have no weapons at all.
18	RADIO:	Hold on. Operator I couldn't hear you?
19	OPERATOR:	No weapons.
20	RADIO:	Okay.
21	OPERATOR:	Okay. I'm gonna get the fire. Stay on the line.
22	UNKNOWN:	Okay.
23	MEDIC:	Seattle Fire and Medic One. The address of the problem please.
24		

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OPERATOR:	(Unintelligible) a dual response.
UNKNOWN:	6425 24th Avenue South.
MEDIC:	6425 24th Avenue South.
UNKNOWN:	Yes sir.
MEDIC:	And what's the problem there?
UNKNOWN:	Well my brother beat up my sister so bad so she need a paramedic right now.
MEDIC:	How old is your sister about?
UNKNOWN:	She's about like twenty-five, twenty-six.
MEDIC:	Is she conscious right now? Is she awake?
UNKNOWN:	She's awake, but she like blacked out. You could (Unintelligible) she needs help right now please.
MEDIC:	Yeah. My partner's gettin' some help started. I'm just tryin' to get the big picture here sir, and where is the brother that beat her up right now?
UNKNOWN:	He just left. I don't know where. He just left.
MEDIC:	Is he on foot or a car or?
UNKNOWN:	He's on foot. Like he went by Morgan Street.
MEDIC:	Okay. Radio are you there?
RADIO:	Yeah. I'm still here.
MEDIC:	We'll see you there.
RADIO:	Okay. Alright, and sir. Sir? Hello.
UNKNOWN:	I think he—he (Unintelligible) you talkin' to me?

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RADIO:	Yeah. Yeah. Yeah. I'm talkin' to you. Sorry. What's your brother's name?
UNKNOWN:	Uh Negatu N-E-G-A-T-U.
RADIO:	MEGAU. What's his last name?
UNKNOWN:	Uh, F-E-N-T-A-H-U-N. Fentahun.
RADIO:	Okay. What's your name?
UNKNOWN:	Uh, A-M-A-N-U-E-L.
RADIO:	Okay. Tell your sister. We've got people on the way okay.
UNKNOWN:	Okay. I'm gonna tell her that.
RADIO:	Okay thank—

[end of 911 call]

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 69918-1-I
	)	
NEGATU FENTAHUN,	)	
	)	
Appellant.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 29TH DAY OF OCTOBER 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] NEGATU FENTAHUN
940 26TH AVENUE SOUTH
SEATTLE, WA 98144

SIGNED IN SEATTLE WASHINGTON, THIS 29TH DAY OF OCTOBER 2013.

x Patrick Mayovsky