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Court of Appeals
Division III
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NO. 35547-1-III

**COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

NORMAN JAMES BESSETT, APPELLANT

BRIEF OF RESPONDENT
Grant County Superior Court
Cause No. 17-1-00099-2

GARTH DANO
GRANT COUNTY PROSECUTING ATTORNEY

Katharine W. Mathews, WSBA# 20805
Deputy Prosecuting Attorney
Attorneys for Respondent

P.O. Box 37
Ephrata, Washington 98823
PH: (509) 794-2011

Table of Contents

I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.....1

A. Whether substantial evidence established Bessett formed the intent to commit a crime during the time in which he unlawfully remained inside McClure's home. (Assignment of Error No. 1).....1

B. Whether substantial evidence supported finding of fact number eight, that Bessett unlawfully remained in McClure's home with the intent of restraining her by force. (Assignment of Error No. 2).1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT.....12

A. STANDARD OF REVIEW.12

B. BESSETT SNEAKED INTO MCCLURE’S RESIDENCE WHEN HE KNEW SHE WOULD NOT BE HOME, APPARENTLY TO FORCE A CONFRONTATION OVER THEIR RELATIONSHIP. SUBSTANTIAL EVIDENCE DEMONSTRATED HE FORMED THE INTENT TO RESTRAIN MCCLURE’S MOVEMENTS BY FORCE NO LATER THAN WHEN HE ACTUALLY DID SO, AT WHICH TIME HE KNEW HE WAS UNLAWFULLY REMAINING IN HER HOME.13

1. *Bessett may not have intended to restrain McClure for two and a half hours when he first sneaked into her neighborhood and her house on the morning of February 8, 2017, but he formed that intent at some point while unlawfully remaining in the home.*.....13

2. *Bessett held McClure immobile for two and a half hours, over her protest, as he tried to persuade her she was the love of his life.*

Substantial evidence demonstrates Bessett's intent to restrain McClure's movement against her will, regardless of whether he subjectively thought he was committing the crime of unlawful imprisonment.18

IV. CONCLUSION.20

Table of Authorities

State Cases

<i>Schmidt v. Cornerstone Invs., Inc.</i> , 115 Wash.2d 148, 795 P.2d 1143 (1990).....	12
<i>State v. Bergeron</i> , 105 Wn.2d 1, 4, 711 P.2d 1000 (1985).....	13
<i>State v. Drum</i> , 168 Wash.2d 23, 225 P.3d 237 (2010).....	12
<i>State v. Engel</i> , 166 Wash.2d 572, 210 P.3d 1007 (2009).....	12
<i>State v. Ferreira</i> , 69 Wn. App. 465, 850 P.2d 541 (1993).....	13
<i>State v. Homan</i> , 181 Wn.2d 102, 330 P.3d 182 (2014).....	11, 12
<i>State v. Salinas</i> , 1 119 Wash.2d 192, 829 P.2d 1068 (1992).....	12
<i>State v. Stevenson</i> , 128 Wash.App. 179, 114 P.3d 699 (2005).....	12

Statutes

RCW 9A.52.020.....	13
RCW 9A.40.041.....	19

Other Authorities

11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 10.01 (4 th Ed.) (2016)	19
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I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

- A. Whether substantial evidence established Bessett formed the intent to commit a crime during the time in which he unlawfully remained inside McClure's home. (Assignment of Error No. 1).
- B. Whether substantial evidence supported finding of fact number eight, that Bessett unlawfully remained in McClure's home with the intent of restraining her by force. (Assignment of Error No. 1)

II. STATEMENT OF THE CASE¹

Cindy McClure and Norman James Bessett started a romantic relationship March, 2016. RP 99. Bessett began moving his considerable personal property into McClure's house in April, 2017 and finished in July. RP 99-100. At some point during that time, Bessett proposed marriage and McClure accepted. RP 100.

McClure had a housekeeper who came by every other week on a set schedule. RP 119. McClure worked for the Public Utility District (PUD), usually at the Wanapum Dam. RP 122. Bessett, unemployed, had just obtained a commercial driver's license (CDL) and intended to get work in order to repay McClure money he borrowed after he got himself moved into her house. RP 101-02. Bessett was still unemployed in

¹The State cites to the 2-volume, sequentially-paginated report of trial proceedings as TP ____ and to the Clerk's Papers as CP at _____. The State does not cite to any other portion of the record.

September, 2016. RP 103. McClure thought the September harvest time would provide an opportunity for Bessett to use his CDL. RP 103. Instead, Bessett occupied his time building shelves in McClure's garage to hold all his property. RP 103.

By November, 2016, McClure had decided to end the relationship and asked Bessett on December 1 to move out of her house. RP 108-09. Bessett refused to move. RP 109-10. McClure did not think he had a house key but he did have a garage door opener. RP 110. There was a lock on the door from the garage to house. RP 112-13. McClure told Bessett before he moved he was not welcome inside her house, emphasizing her resolve by locking the door to between the house and garage whenever Bessett left the inside of the house. RP 116. "He had to knock to come [back] in." RP 115. Only one door went from the garage into the house. RP 119.

Bessett finally moved out January 1, 2017. RP 114. He took such intimate personal items as clothing and toiletries, but left a few pieces of furniture inside the house, RP 114, and all of the property he stored in McClure's garage and under two tarps outside the garage. RP 115. McClure told Bessett she wanted his property removed as soon as possible. RP 115. Bessett did not commit to a removal date. RP 115. McClure gave Bessett funds to rent a storage unit, but Bessett did not rent a unit and McClure got her money back. RP 152.

McClure changed the locks on her house within a couple of days after Bessett moved out. RP 117. She did not give him a key. RP 117. Between January 1 and the date of the incident, February 8, 2017, McClure saw Bessett removing property from her garage and they discussed its removal. RP 118. Bessett still refused to commit to a completion date. RP 118. McClure spoke with Bessett only in her garage and did not invite him to come inside the house. RP 118. Whenever they spoke, McClure re-entered her house and locked the door at the end of the conversation. RP 118. After Bessett moved out, McClure either hid a key for the housekeeper or left the door unlocked. RP 119.

McClure left for work on February 8 at 6:20 a.m. RP 120. The housekeeper was expected around 8:50 a.m. RP 120. Bessett had told McClure the starter had “gone out” on his truck, so McClure thought Bessett’s truck was inoperable and left her front door unlocked for the housekeeper. RP 120. She would have locked the door had she known Bessett had transportation. RP 121.

The weather on February 8 was severe, snowing and drifting. RP 121. McClure usually worked at the Wanapum Dam, but returned to the Ephrata PUD office that day due to the weather. RP 121-22. She went home for lunch. RP 123. The housekeeper had been there, but was gone by the time McClure came home for lunch. RP 123. Before returning to work,

McClure locked the door between the garage and the house. RP 124. That afternoon, McClure's employer allowed people to leave work early because of the weather. RP 122. McClure went to an appointment at 3:30 p.m., then went home and parked in her garage. RP 122-23. McClure entered her house from the garage. RP 124. She went to her bedroom closet to change out of her work clothes. RP 124. Bessett "busted out of the [master bedroom] closet and grabbed [her]." RP 124. Trial evidence, plaintiff's exhibit 6, included photographs of boxes knocked on the floor and clothing disturbed when Bessett exited the closet. RP 125, CP at 10.

McClure said: "What in the hell are you doing in here and how did you get in?" RP 125. Bessett said: "I just want to hold you and get a hug and a kiss." RP 126. McClure responded with "[s]omething more colorful than 'Hell, no.'" RP 126. She was terrified. RP 126. Bessett held McClure from behind with his hands locked so she had no room to move. RP 126. Bessett is a foot taller than McClure. RP 127. He told her he just wanted to work things out. RP 127. She replied they were done and there was nothing to work out. RP 127. She could see from a bedroom clock it was 4:02 in the afternoon. RP 127. The last time she looked at the clock it was 6:28 p.m. RP 129. Bessett held McClure the entire time. RP 129. He wore gloves. RP 136. The room was dark, with only a bit of light coming from an aquarium in the living room. RP 134-35.

During the two and a half hours Bessett held McClure, she talked to him to “create some calm” but all Bessett wanted to discuss was going to counseling. RP 129. Bessett tightened his grip on McClure every time she tried to maneuver. RP 129. From the pressure of his arms on her forearms, McClure thought she was being bruised and told Bessett so. RP 158. McClure tried many times to wriggle out of Bessett’s hold but did not believe there was any way she could overcome him. RP 159. She did not say: “Stop.” RP 158. Her goal was to get out alive. RP 160. To that end, she lied to Bessett, telling him her nurse was coming and would call law enforcement. RP 130. Bessett wondered why the nurse would call the cops and McClure said: “Why wouldn’t she? She knows you don’t belong here anymore.” RP 130. Bessett did not respond. RP 130. When McClure asked why he refused to let her go, Bessett answered that he just wanted to talk with her. RP 144.

Bessett eventually told McClure he entered her unlocked house around 8:30 that morning then went to the garage. RP 132. McClure did not remember how she responded, but Bessett later told her she said she was calling the cops. RP 132. At that point, Bessett flipped McClure around to face him and threw her, face up, onto the bed. RP 133. He pushed down sideways on her cheek, forcing her face into the bed, then pushed her face the other direction into the bed. RP 133. It hurt terribly

and McClure was scared. RP 134. McClure asked why he had just tried to break her neck, and Bessett responded: "Because you made me mad." RP 135. He said she made him mad when she threatened to call law enforcement. RP 135. He told her he had nothing to lose at that point. RP 136. He accused her of not understanding about him having no money and being out of work with no place to live. RP 136.

At that point, Bessett stepped away from McClure, wiped his face, and allowed her to get up and walk out of the room. RP 137-38. He followed her, and when she picked up her cell phone he accused her of calling law enforcement. RP 138. He continued talking but McClure could not understand what he was saying. RP 139. She asked him to repeat himself and still could not make out his words. RP 139. Bessett went into the garage, and McClure, wanting to know what he was saying, talked to him from the doorway between the garage and the laundry room, with only her head in the garage. RP 139. Bessett said something to the effect that it didn't matter anymore. RP 139-40. McClure went back inside her house, grabbed her purse and keys, and went to a neighbor's house. RP 140. McClure testified she did not remember walking across the street because she was trying to get through something "so scary and horrific." RP 141. She told her neighbor Bessett was in her garage, trying to commit suicide. RP 142. Her neighbor called law enforcement. RP 142.

The neighbor, Megan Hagy, described McClure as “[s]tunned, mostly” when she first appeared at Hagy’s door. RP 168. Hagy said McClure was “quiet, shaky.” RP 169. Hagy would have recognized Bessett’s truck and had not seen it at McClure’s house at any time that day. RP 168.

Bessett’s version of the events differed significantly from McClure’s. Bessett testified he was heartbroken when McClure ended their relationship and told him to move. RP 191. He thought they were “really good together” and could not understand why McClure was willing to “throw that away.” RP 191. He said he had both a garage door opener and a key to McClure’s house he claimed she gave him before he moved in so he could house-sit while she attended a conference out of state. RP 194-95. He said he entered her house on February 8 to retrieve a packet of resumes because he could not find his thumb drive with the resume on it. RP 198. He said he arrived at McClure’s around 8:30 in the morning, and, because his garage door opener did not work, he pulled out his key but found the front door unlocked. RP 200-01.

Bessett knew the housekeeper was scheduled to come that day. RP 201. He said he did not initially plan to spend the day inside McClure’s house, but once inside the house, decided to box up more of his belongings in the garage. RP 202. He denied originally intending to stay

the day at McClure's. RP 201. He said he parked his truck at Tiger Paws and walked the 2.31² miles through the snow to McClure's house as part of his new exercise program. RP 201.

He claimed to have re-entered the house late in the day only to retrieve clothing he left in several closets. RP 202. He said he just happened to be in the master bedroom walk-in closet when McClure got home. RP 203. He did not expect McClure until 5:00 p.m. RP 209. Bessett claimed it was mere coincidence that he walked out of McClure's closet at the precise moment she walked past her bed. RP 210. He took her question "What are you doing here?" as one of "pleasant surprise." RP 211. He said he hugged her, with permission, and that they eventually sat on the bed and talked. RP 212. He later hugged her from behind and she "seemed very receptive to the hug and everything." RP 212. He said he kissed her on the top of her head and on her neck, telling her how much he loved her. RP 213. He said he spoke calmly and sweetly the whole time. RP 212. He did not deny the two ended up on her bed, with him on top of her, but attributed that to McClure somehow falling forward as he held her and "when she did that her right foot went to the left and it knocked my left foot out from under me on the carpeting and we fell face-first onto the

² Officer Powell testified the distance between Tiger Paws and McClure's residence was just under a mile "as the crow flies," RP 48, but because of railroad tracks, the distance by car or on foot was 2.31 miles. RP 55.

bed.” RP 214. He said he immediately got off of McClure and the two of them continued talking for another 10 to 15 minutes. RP 214.

McClure, according to Bessett, eventually went into the kitchen area and he followed. RP 215. Bessett said he was devastated when McClure told him she was going to call his mother and then the police and claim he assaulted her. RP 215. He testified this entire situation overwhelmed him, so he tried to kill himself by slitting his wrists and cutting his throat in McClure’s master bathroom. RP 217-18. He denied threatening McClure. RP 218.

Bessett also asserted he was in the garage when McClure came home for lunch earlier in the day, but said he did not know she was there at the time. RP 220. He said he did not let the housekeeper know he was in the garage, RP 222, because his habit was to avoid the housekeeper so she could not allege “improprieties.” RP 227. He said he did not re-enter the house from the garage that day until right before McClure came home. RP 222. He denied that McClure parked in the garage when she came home for lunch. RP 235. He also denied it was “almost a blizzard” that day, but admitted it was cold and there were snowdrifts. RP 223.

Bessett denied McClure had told him not to be at her home unless she was there. RP 226. He denied McClure had ever made it clear she did not want him in her home. RP 228. He admitted he did not tell McClure he

was stopping by her house to pick up his resume while she was gone. RP 226. He admitted he did not call out to her from the closet once he knew she was home. RP 229. He denied being upset. RP 230-31.

Bessett also admitted he and McClure had been sleeping in separate bedrooms during the month between when she asked him to move out on December 1 and when he moved January 1. RP 238-39.

During her rebuttal testimony, McClure said she parked in her garage February 8 when she came home for lunch, remarking on the snowdrifts and cold weather outside. RP 244. She did not see Bessett in her garage. RP 244. Ephrata Police Officer Damon Powell had testified “[i]t was extremely cold, blowing and snowdrifts across the roads.” RP 44. He almost got stuck twice when responding to Hagy’s 9-1-1 call. RP 44. McClure also said that at no time did she feel Bessett was “hugging” when he held her from behind. RP 250.

The court orally found Bessett’s attempted suicide immediately after the incident belied his testimony characterizing his behavior as appropriate and his demeanor as calm. RP 291. The court also questioned the accuracy of Bessett’s memory, considering his heightened emotional state and loss of consciousness following the suicide attempt. RP 291. The court found McClure was a credible and believable witness, based on all the facts presented at trial. RP 290.

The court found there may have been some gray areas concerning the scope of Bessett's permission to be in McClure's garage, or how and when he was welcome there, but that Bessett surpassed any possible gray area when he entered the house. RP 291-92. Even had there been an issue about whether Bessett's initial entry into McClure's house was permitted—an issue the trial court did not believe existed—McClure made it clear she did not want him inside, yet he refused to leave. RP 292. The court found there was no question Bessett remained in her house without permission. RP 292. The court's written finding of fact number seven stated: "Even if there was a question about the house, [Bessett] clearly surpassed his welcome when Ms. McClure discovered him and he didn't leave, as Ms. McClure made clear that she didn't want him in the house." CP at 42. Finding of fact number eight stated: "Thus, the remaining in the house was done with the intent to commit an offense, which was the restraining of Ms. McClure by force." CP at 42.

III. ARGUMENT

A. STANDARD OF REVIEW

Whether sufficient evidence supports a conviction depends on whether, when viewed in the light most favorable to the prosecution, any rational fact finder could have found the elements of the crime beyond a reasonable doubt. *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182

(2014) (citing *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009)). “[F]ollowing 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.” *Id.* at 105-06 (citing *State v. Stevenson*, 128 Wash.App. 179, 193, 114 P.3d 699 (2005)). “‘Substantial evidence’ is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise.” *Id.* at 106. Reviewing courts treat unchallenged findings of fact and findings of fact supported by substantial evidence as verities on appeal. *Id.* (citing *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 169, 795 P.2d 1143 (1990)).

A defendant claiming insufficient evidence necessarily admits the truth of the State’s evidence and all reasonable inferences that can be drawn from it, inferences “‘drawn in favor of the State and interpreted most strongly against the defendant.’” *Homan*, 181 Wn.2d at 106 (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); citing *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010)). Courts defer to the trial court’s resolution of credibility issues, conflicting versions of the facts, and persuasiveness of evidence. *Id.*

- B. BESSETT SNEAKED INTO MCCLURE’S RESIDENCE WHEN HE KNEW SHE WOULD NOT BE HOME, APPARENTLY TO FORCE A CONFRONTATION OVER THEIR RELATIONSHIP. SUBSTANTIAL EVIDENCE DEMONSTRATED HE FORMED THE INTENT TO RESTRAIN MCCLURE’S MOVEMENTS BY FORCE NO LATER

THAN WHEN HE ACTUALLY DID SO, AT WHICH TIME HE KNEW HE WAS UNLAWFULLY REMAINING IN HER HOME.

1. *Bessett may not have intended to restrain McClure for two and a half hours when he first sneaked into her neighborhood and her house on the morning of February 8, 2017, but he formed that intent at some point while unlawfully remaining in the home.*

“A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building . . . the actor . . . assaults any person.” RCW 9A.52.020. Bessett argues his first degree burglary conviction is not supported by evidence he entered or remained in McClure’s house with an intent to “knowingly restrain McClure’s movements without her consent.” Br. of Appellant at 10. Citing *State v. Bergeron*, 105 Wn.2d 1, 4, 711 P.2d 1000 (1985), Bessett concedes his burglary conviction did not require the State to prove he intended to commit a specific crime in McClure’s house, only that he intended to commit any crime. Br. of Appellant at 10. He also concedes “Evidence of intent . . . is to be gathered from all the circumstances of the case.” Br. of Appellant at 10 (quoting *State v. Ferreira*, 69 Wn. App. 465, 468-69, 850 P.2d 541 (1993) (internal citation omitted here).

Viewed in the light most favorable to the prosecution, overwhelming evidence supports the trial court’s finding that Bessett

unlawfully remained hidden in McClure's house for almost eight hours in order engage in a confrontation with McClure by use of force. He may not have formed a clear idea of exactly how he intended to accomplish this, but his behavior throughout the day, from when he first drove to Ephrata and hid his truck over two miles walking distance from McClure's house, to his failed suicide attempt, demonstrates his desperation and willingness to engage in a terrifying display of extreme separation protest. It may be he did not decide to restrain McClure until the late afternoon when she got home, but when he did form that intent, he knew he was unlawfully remaining inside her residence.

a. Bessett knew his entry was unlawful.

Bessett lived in McClure's house for nine months, from April, 2017 through December, 2017. RP 99-100; RP 114. During month of December, after McClure told Bessett to move out, he and McClure slept in separate bedrooms. RP 238-39. During that month, McClure locked the door between the house and the garage every time Bessett left the house, emphasizing he was not welcome. RP 116. Bessett had to knock each time he wanted to enter. RP 115. It is reasonable to infer he was aware he had lost the privileges of a resident.

After Bessett moved out, the two discussed removal of Bessett's property on more than one occasion. RP 118. During these conversations,

McClure spoke with Bessett in her garage, did not invite him inside the house, and re-locked the door between the house and garage when they were done talking. RP 118. Bessett had to have understood McClure no longer viewed him with affection.

Bessett told McClure the starter had gone out on his truck. RP 120. Nevertheless, he was able to drive his truck to Ephrata on a bitter-cold, snowy morning when he is presumed to have known McClure would be at work, and he may have expected her to believe he was without transportation. RP 201.

McClure's housekeeper came every other week on a set schedule. RP 110. Bessett admitted he knew the housekeeper was coming on February 8. RP 201. He is presumed to know McClure would leave her front door open for the housekeeper. He did not let the housekeeper know he was in the house, testifying to his "habit" of avoiding her so she could not allege "improprieties." RP 227. It is reasonable to infer Bessett counted on an unlocked house and did not want the housekeeper reporting his presence to McClure or anyone else.

McClure's neighbor, Hagy, said she would have recognized Bessett's truck if it had been parked at McClure's that day. RP 168. Presumably, the housekeeper would have recognized his truck, as well. Bessett said he parked at Tiger Paws and walked the 2.31 miles to

McClure's house for the exercise. RP 201. A more reasonable inference is that Bessett did not want McClure, the housekeeper, or any of the neighbors to know he was inside the house. That is, he knew his entry was unlawful and did not want to get caught. It is also reasonable to infer he did not want to give McClure advance notice of his presence.

This inference is further supported by Bessett's improbable claim that he initially intended only to pick up his resume, then trudge the 2.31 frigid miles back to his truck. RP 198, 202.

Bessett told McClure he got to her house around 8:30 that morning. RP 132. Bessett's claim that he stayed in the garage all day and re-entered the residence only shortly before McClure got home from work that afternoon, RP 220, and then only to search for clothing he may have left behind, RP 202, cannot withstand a whiff of scrutiny. He claimed he was in the garage when McClure got home from lunch, RP 220, apparently without considering she would have driven her car into the garage to avoid snowdrifts and cold weather outside. McClure usually worked at Wanapum Dam and was in Ephrata that day only because of the weather. RP 121-22. It is reasonable to infer Bessett had no idea McClure was coming home for lunch. The inescapable conclusion is that Bessett was not ready to confront McClure when she came home for lunch or, perhaps, wanted more than an hour of "alone time," so hid himself inside

her house until she went back to work. Had there been an innocent purpose to his unannounced visit, he would have let McClure know he was there.

The trial court correctly concluded Bessett remained in McClure's home unlawfully.

b. Bessett formed the intent to perform an act constituting the crime of unlawful imprisonment while unlawfully remaining in McClure's house.

Regardless of what Bessett's initial motives were, he formed the intent to restrain McClure no later than when she entered her bedroom and expressed her extreme displeasure at finding him there. He was, at that moment, unlawfully remaining in McClure's home. His intention was strong enough that he maintained his locked grip on a terrified McClure for two and a half hours, releasing and assaulting her only after he finally understood she was not interested in resuming their relationship and intended to have him arrested.

This Court should find sufficient evidence established Bessett intended to commit a crime against McClure no later than when he made the decision to restrain her against her will after she challenged his presence in her bedroom and he chose to unlawfully remain.

2. *Bessett held McClure immobile for two and a half hours, over her protest, as he tried to persuade her*

she was the love of his life. Substantial evidence demonstrates Bessett's intent to restrain McClure's movement against her will, regardless of whether he subjectively thought he was committing the crime of unlawful imprisonment.

Bessett argues he did not intend a crime and that he was merely seeking “physical affection” from McClure. Br. of Appellant at 10, citing RP 212. Bessett may well have been seeking “affection”—along with regaining a comfortable place to live—by holding McClure immobile and terrified for two and a half hours. Viewing the evidence in a light most favorable to the prosecution, Bessett demonstrated an understanding of “affection” as evolved as that of a Neanderthal wooing the future mother of his offspring by whacking her over the head with a club and dragging her into the bushes for a bit of a cuddle.

It is reasonable to infer instead that Bessett intended a serious confrontation once McClure was home for the evening. He hid out in her house for almost eight hours without accomplishing much, if anything, in the way of boxing up his possessions. It is reasonable to infer from the sneaky way in which he gained entry and from his failure notify McClure and the housekeeper of his presence that he had no legitimate excuse for being inside the house.

At the very least, Bessett unlawfully remained in McClure's house from the time she challenged his right to be hiding in her bedroom.

Holding her immobile for the next two and a half hours may not have been his original intent, but he held her, over her protests and her struggles and her pleas, as he demanded they “work things out.” RP 126-27. Physically a foot taller than McClure, Bessett held her hard enough to hurt her. RP 127. It is reasonable to infer he was well aware McClure did not welcome his display of deep emotion.

“A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.” 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 10.01 (4th Ed.) (2016). That Bessett may have considered his behavior a benign or manly display of affection is irrelevant. “A person is guilty of unlawful imprisonment if he or she knowingly restrains another person.” RCW 9A.40.040(1). Bessett may not have intended to commit the crime of unlawful imprisonment when he sneaked into McClure’s walk-in closet, or even when he exploded out of it. But he incontrovertibly intended to force a confrontation with McClure over their relationship and knowingly restrained her for two and a half hours as he sought to wear down her objections. Bessett used physical force to prevent McClure from resisting him or leaving the room. That result constitutes a crime.

This Court should find sufficient evidence supports the trial court’s finding of fact number eight, that “the remaining in the house was done

with the intent to commit an offense, which was the restraining of Ms. McClure by force.” CP at 42.

IV. CONCLUSION

This Court should affirm Bessett’s conviction for burglary in the first degree predicated on his unlawful remaining in McClure’s home with the intent to restrain her movement by force.

DATED this 20th day of August, 2018.

Respectfully submitted,

GARTH DANO
Grant County Prosecuting Attorney



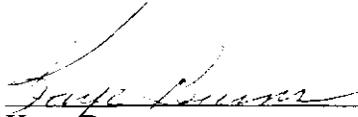
Katharine W. Mathews, WSBA# 20805
Deputy Prosecuting Attorney
Attorneys for Respondent

CERTIFICATE OF SERVICE

On this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Andrea Burkhart
Andrea@2arrows.net

Dated: August 20, 2018.



Kaye Burns

GRANT COUNTY PROSECUTOR'S OFFICE

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