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Court of Appeals  
Division III  
State of Washington  
6/12/2020 12:04 PM

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 37217-1-III

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STATE OF WASHINGTON, Respondent,

v.

KEENAN T. SEYMOUR, Appellant.

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**APPELLANT'S BRIEF**

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Andrea Burkhart, WSBA #38519  
Two Arrows, PLLC  
8220 W. Gage Blvd #789  
Kennewick, WA 99336  
Phone: (509) 572-2409  
Andrea@2arrows.net  
Attorney for Appellant

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## **I. INTRODUCTION**

Because Keenan Seymour did not employ any threat of deadly force against L.L. or secrete him where his mother would be unable to find him when L.L. had been placed in a carseat by his mother and was merely present in the car when Seymour took control of it, the evidence is insufficient to support his conviction for second degree kidnapping as to L.L. Further, because Seymour was convicted of second degree kidnapping as to L.L.'s mother by using threats to restrain her, separately convicting him for felony harassment violates double jeopardy. Finally, a pretrial order denying Seymour a redacted copy of his discovery materials violates his rights to due process and access the courts as well as CrR 4.7(h) when less restrictive alternatives existed to address the State's safety concerns and deprivation of the materials undermines Seymour's ability to pursue post-conviction relief.

## **II. ASSIGNMENTS OF ERROR**

**ASSIGNMENT OF ERROR NO. 1:** Insufficient evidence supports each of the alternative means of second degree kidnapping as to L.L.

**ASSIGNMENT OF ERROR NO. 2:** Multiple convictions for felony harassment and second degree kidnapping violate double jeopardy.

ASSIGNMENT OF ERROR NO. 3: The denial of Seymour’s motion for a redacted copy of his discovery materials when less restrictive alternatives exist to protect the security of victims violates the due process clause of the U.S. Constitution.

ASSIGNMENT OF ERROR NO. 4: The denial of Seymour’s motion for a redacted copy of his discovery materials when less restrictive alternatives exist to protect the security of victims violates his right to access the courts under article I, section 10 of the Washington Constitution.

ASSIGNMENT OF ERROR NO. 5: The denial of Seymour’s motion redacted copy of his discovery materials when less restrictive alternatives exist to protect the security of victims violates CrR 4.7(h).

### **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

ISSUE NO. 1: Whether the evidence is sufficient to prove that Seymour intentionally abducted L.L. when Seymour took no intentional action towards L.L. and L.L. remained at all times in the presence of his mother.

ISSUE NO. 2: Whether the “same evidence” necessary to prove the intentional abduction of Hailey Forney consisted of the same threats to kill the supported the conviction for felony harassment.

ISSUE NO. 3: Whether the pretrial order refusing Seymour a redacted copy of his discovery materials continues to have effect post-conviction.

ISSUE NO. 4: Whether the pretrial order refusing Seymour a redacted copy of his discovery materials was overbroad and punitive in light of the asserted security interests of the State.

ISSUE NO. 5: Whether the pretrial order refusing Seymour a redacted copy of his discovery materials deprives him of due process and access to the courts by effectively eliminating his ability to investigate and assert potential claims for post-conviction relief.

#### **IV. STATEMENT OF THE CASE**

On September 2, 2018, Keenan Seymour showed up drunk at Hailey Forney's house. II RP (Devoir) 438, 448-50. Although Seymour was friends with the father of Forney's child, they met for the first time only a week before. II RP (Devoir) 440. After conversing for a couple of days through Facebook, they met, spent the day together, and began a sexual relationship. II RP (Devoir) 441-44. The relationship was brief as Forney thought that he became aggressive and mean to her when she confronted him over his drinking, which he was not supposed to do due to being on parole. II RP (Devoir) 445-46. However, they agreed to remain friends and continued to see each other. II RP (Devoir) 446.

September 2, 2018 was Labor Day, and Forney worked a late shift until 7:00 a.m. that day. II RP (Devoir) 441, 447. After taking a short nap and playing with her two-year-old son, L.L., she contacted Seymour to see if he wanted to hang out. II RP (Devoir) 439, 447-48. When Seymour told her he had been drinking, she changed her mind and told him not to come. II RP (Devoir) 448. However, he went to her house that morning, bringing a friend with him. II RP (Devoir) 449.

For a while, even though Seymour appeared to Forney to be drunk, everything was fine. II RP (Devoir) 450, 499. They hung out together and Forney put on a movie for Seymour to watch with L.L. while she tried to take a nap. II RP (Devoir) 495, 499. But Seymour kept coming into the room with L.L. to get toys, so eventually she got up and they went outside. III RP (Devoir) 509. At some point during the morning, Seymour showed her a picture of him holding a firearm but she did not think he was trying to threaten her. II RP (Devoir) 454-55, III RP (Devoir) 513. They painted pumpkins for a little bit, but Seymour and his friend resumed drinking and eventually Seymour vomited in the yard. III RP (Devoir) 510. At that point, Forney decided she did not want to be involved and told them she would drive them home. II RP (Devoir) 450, III RP (Devoir) 510.

After washing off L.L., she took him outside to her car and buckled him into his carseat. II RP (Devoir) 450-51. She got into the driver's seat and started the car and Seymour's friend also got into the car, but Seymour did not. II RP (Devoir) 451, 453. Forney told Seymour that if he was going to be rude he could walk home. II RP (Devoir) 452. According to Forney, Seymour got angry and asked her if she was going to take his friend home but not him. II RP (Devoir) 452. Seymour then approached her open door, grabbed the keys out of the ignition, and threw them at the rear window, shattering it. II RP (Devoir) 452. The broken glass fell on L.L., who began to cry. II RP (Devoir) 457-58.

Forney then described Seymour grabbing her by the hair to drag her out of the car and attack her. II RP (Devoir) 458. After he threw her over a brick retaining wall and struck her, he ordered her inside the house where he continued to strike her. II RP (Devoir) 458-60. Seymour also took her cell phone and threw it down the hallway. II RP (Devoir) 462. Thinking she could escape into her room and lock the door, Forney promised not to tell anybody what happened and offered to retrieve her tip money to fix the car window. II RP (Devoir) 462-63, 466. But Seymour followed her into the room and then ordered her into the passenger seat of the car. II RP (Devoir) 463.

With Seymour driving, they went first to Les Schwab but discovered it was closed for the holiday. II RP (Devoir) 465-66. Forney suggested that they go to the auto center at Walmart, but there, they were told that Walmart did not repair windows. II RP (Devoir) 467, 469. Forney attempted to silently mouth a request for help to the attendant, but he did not respond to her. II RP (Devoir) 468. They stopped in a Taco Bell parking lot so Seymour could smoke and then went to a gas station to get gas. II RP (Devoir) 471-72. Throughout this series of trips, Forney said that Seymour was threatening to drive her out into the woods and put her in a body bag. II RP (Devoir) 465-67. She described his driving as reckless and she was afraid that if the police tried to stop them he would flee and end up killing them all. II RP (Devoir) 469. Although she looked for opportunities to escape or get help, she was afraid that he would take off with her son in the car. II RP (Devoir) 472-73. When she asked him to let her go and to take her son, he would not let her. II RP (Devoir) 487-88. However, Seymour told her not to worry about her son, and he did not touch L.L. or threaten him with any harm at any time. II RP (Devoir) 474, III RP (Devoir) 531.

After getting gas, Seymour drove them back to the house he was staying at. II RP (Devoir) 474. When they arrived, Seymour's friend got out, leaving Seymour, Forney, and L.L. alone in the car together. II RP

(Devoir) 475. Seymour expressed concern that Forney was going to snitch on him and she assured him she would not. II RP (Devoir) 475-76. She tried to persuade him to get out of the car and give her a hug. II RP (Devoir) 476. Eventually he did, and when they finished hugging, he walked away. II RP (Devoir) 477.

Forney immediately jumped in the car and drove off, calling her stepfather and 911 to report what had happened. II RP (Devoir) 478-79. Police officers met her at Round Table Pizza and took several statements. I RP (Devoir) 216-18, 222, 244, 248. She was very upset and emotional, and they observed some bruising on her cheek, blood on her ear, and leaves in her hair. I RP (Devoir) 219, 246-48. After hearing her account, police obtained a search warrant for the house Seymour was staying in and executed it later that afternoon. I RP (Devoir) 228-29. The homeowner directed them to a locked safe in the bedroom and provided them the key, where they located a handgun. I RP (Devoir) 230. Although Seymour was not present when they first arrived, he returned to the house while police were still there and surrendered without incident. I RP (Devoir) 229, 235, 241, II RP (Devoir) 282.

The State charged Seymour with first degree kidnapping of Forney, second degree kidnapping of L.L., felony harassment of Forney,

and fourth degree assault of Forney.<sup>1</sup> CP 33-37. The charges carried multiple aggravating circumstance allegations including aggravated domestic violence, rapid recidivism,<sup>2</sup> and that multiple current offenses resulted in a high offender score that allowed some of the crimes to go unpunished. *Id.*

Before trial, Seymour requested a redacted copy of his discovery materials consistent with CrR 4.7(h)(3). RP (Munoz) 3; CP 19. The copy that would be provided to him was redacted to omit all names, addresses, contact information, and other personal information. RP (Munoz) 3-4. Defense counsel represented that Seymour was willing to comply with any restrictions the court put on his handling of the materials. RP (Munoz) 4.

The State flatly objected to providing Seymour a copy of discovery even with these redactions, citing “substantial risk of physical harm, intimidation, bribery, witness tampering, retaliation, and unnecessary annoyance.” CP 23; RP (Munoz) 5. Citing Seymour’s prior convictions and the fact that the friend who had been present during the Labor Day incident was at large, the State argued there was a risk that information

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<sup>1</sup> A separate charge of witness tampering was dismissed midtrial and will not be further discussed. II RP (Devoir) 343.

<sup>2</sup> Likewise, the State dismissed the rapid recidivism allegation after the jury returned its verdict. III RP (Devoir) 682.

relayed by Seymour would put Forney or other witnesses at risk. RP (Munoz) 5-6. The State did not explain at any point why depriving Seymour of a copy of discovery would protect these interests when Seymour would be able to read the unredacted materials in his attorney's possession; did not describe how redacting contact and personal information would be insufficient to prevent misuse of the materials to harass or annoy the individuals named in them; and did not address why a protective order prohibiting Seymour from further disseminating the materials would be inadequate. RP (Munoz) 5-7.

Nevertheless, the trial court denied Seymour's motion for a redacted copy of his discovery. RP (Munoz) 8. Without elaboration, it found that "redaction alone cannot provide for security for the victim, and there's concerns for threats to community safety and the administration of justice." RP (Munoz) 8.

After trial, during which Forney testified to the events described above, the jury convicted Seymour of the lesser degree offense of second degree kidnapping as to Forney and convicted him of all of the remaining charges. III RP (Devoir) 675-78; CP 145-55. It also found that the crimes were aggravated domestic violence offenses based on being committed within sight or sound of the victim's minor child. III RP (Devoir) 677-78;

CP 132-33, 149, 154. Relying upon the aggravators, the sentencing court imposed an exceptional sentence of 168 months in prison. CP 179, 187-91.

Seymour now timely appeals and has been found indigent for that purpose. CP 205, 209.

## **V. ARGUMENT**

**A. Insufficient evidence supports the conviction for second degree kidnapping of L.L. because the State did not present evidence that Seymour intentionally abducted L.L.**

There was no dispute at trial that Seymour did not put L.L. in the car, did not threaten him with any harm, and did not touch him at any point. Consequently, the evidence was insufficient to establish that he intentionally abducted L.L.

Sufficient evidence supports a conviction if, after viewing the evidence and drawing all reasonable inferences from it in favor of the State, a rational trier of fact could find each element of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). However, a mere scintilla of evidence is insufficient; rather, the evidence must be of a quantum necessary to establish circumstances from

which the jury could reasonably infer the fact proven. *State v. Fateley*, 18 Wn. App. 99, 102, 566 P.2d 959 (1977). If insufficient evidence was presented at trial to support a conviction, retrial is prohibited by the double jeopardy clause of the Fifth Amendment. *State v. Hardesty*, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996).

Furthermore, in Washington, a criminal defendant's constitutional right to a fair trial requires a unanimous verdict. Wash. Const. art. I, § 21; *State v. Woodlyn*, 188 Wn.2d 157, 162-63, 392 P.3d 1062 (2017). Consequently, express jury unanimity is required when the jury is presented with alternative means of committing a single offense and one or more of the means is unsupported by sufficient evidence. *Woodlyn*, 188 Wn.2d at 164; *State v. Garcia*, 179 Wn.2d 825, 835-36, 318 P.3d 266 (2014). No express unanimity was required here; accordingly, the conviction can only be sustained if sufficient evidence supports the alternative means of committing second degree kidnapping.

The State charged Seymour with second degree kidnapping of L.L., which required it to prove that he intentionally abducted L.L. RCW 9A.40.030(1); CP 112. The statute defines "abduct" as "to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly

force.” RCW 9A.40.010(1). “Restraint” is defined as restricting a person’s movement without his or her consent or legal authority, in a manner that substantially interferes with that person’s liberty. RCW 9A.40.010(6). Consequently, abduction amounts to restraint either by secretion or by use or threat of deadly force. *State v. Berg*, 181 Wn.2d 857, 337 P.3d 310 (2014); *Green*, 94 Wn.2d at 225.

In the present case, the evidence is insufficient to establish either alternative means of abducting L.L. There was no dispute at trial that Seymour did not threaten L.L. verbally or physically. To the contrary, Seymour expressly told Forney not to worry about L.L. II RP (Devoir) 474. L.L.’s presence in the car was incidental to the events that occurred that day, and none of Seymour’s conduct was directed toward him to achieve his restraint.

Furthermore, the evidence shows that rather than concealing or secreting L.L., Seymour intended for L.L. to remain with his mother. A child is abducted “when held in areas or under circumstances where it is unlikely those persons directly affected by the victim’s disappearance will find the child,” such as the child’s parents or legal custodian. *State v. Stubsjoen*, 48 Wn. App. 139, 145, 738 P.2d 309, *review denied*, 108 Wn.2d 1033 (1987). In *Stubsjoen*, the Court of Appeals rejected an

argument that the child was not abducted when the defendant took the child from her mother because the child was kept in public areas where she could easily be seen. *Id.* at 144-45. In that case, the child was concealed from her parents by the defendant's conduct in acting as though the child was her own. *Id.* at 145-46.

Here, by contrast, Seymour did not conceal or separate L.L. from Forney at any point. Forney was L.L.'s mother and had sole custody of him. II RP (Devoir) 474. Consequently, driving L.L. around to public places with his mother a few feet away does not establish a concealment or secretion as those terms were described in *Stubsjoen*.

Accordingly, the State's evidence was insufficient to establish an intentional abduction of L.L. Thus, the conviction for second degree kidnapping as to L.L. should be reversed.

B. The separate conviction for felony harassment violates double jeopardy when it consists of the same threats that supported the "abduction" element of the kidnapping charge as to Forney.

The crime of felony harassment against Forney is encompassed within the conviction for second degree kidnapping, which required a threat of deadly force to elevate the crime from unlawful imprisonment to

second degree kidnapping. Consequently, the felony harassment charge cannot stand as a separate conviction without violating double jeopardy, and must be vacated.

Both the U.S. Constitution and the Washington constitutions prohibit placing a person twice in jeopardy for the same offense. U.S. Const. Amend. V; Wash. Const. art. I, § 9. This court reviews violations of double jeopardy protections *de novo*. *State v. Villanueva-Gonzalez*, 180 Wn.2d 975, 979-80, 329 P.3d 78 (2014). If the convictions are found to constitute a double jeopardy violation, the remedy is to vacate one of the convictions. *State v. Womac*, 160 Wn.2d 643, 660, 160 P.3d 40 (2007).

Unless the applicable statutes expressly permit multiple punishments for the same act, the reviewing court evaluates whether the legislature intended multiple punishments by determining whether the charged crimes are the same in law and fact. *State v. Hughes*, 166 Wn.2d 675, 681, 212 P.3d 558 (2009); *State v. Adel*, 136 Wn.2d 629, 632, 965 P.2d 1072 (1988). Under this standard, if each crime requires proof of an additional fact that the other does not, the crimes are not the same and the legislature may have intended to allow separate punishments.

*Blockburger v. U.S.*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932); *In re Orange*, 152 Wn.2d 795, 820, 100 P.3d 291 (2004).

However, even if offenses have different elements, multiple convictions may be prohibited under the merger doctrine when proof of one offense elevates the degree of the other. *State v. Freeman*, 153 Wn.2d 765, 772-73, 108 P.3d 753 (2005). In these circumstances, the legislature is presumed to have incorporated the punishment for the lesser offense into the increased penalty for the more serious offense. *Id.*

For purposes of the merger doctrine, unlawful imprisonment is considered a lesser-included offense of second degree kidnapping. *State v. Davis*, 177 Wn. App. 454, 461, 311 P.3d 1278 (2013), *review denied*, 179 Wn.2d 1025 (2014). In *Davis*, the Court of Appeals considered whether separate convictions for second degree kidnapping and second degree assault merged. In that case, in the course of repossessing two cars, the defendant forced the driver and a passenger at gunpoint to get out of one of the cars and into the second. *Id.* at 456. Concluding that merger applied, the *Davis* court noted that “the lesser crime of unlawful imprisonment can be raised to the greater crime of kidnapping in the second degree by conduct criminalized separately under the second degree assault statute.” *Id.* at 461. Restraint unaccompanied by the threat or use of deadly force is merely unlawful imprisonment. *Id.* at 462. Consequently, but for the commission of the second degree assault, the defendant would only have been guilty of unlawful imprisonment. *Id.*

*Davis* recognized that whether the crimes merge depends upon how they were charged and proved. *Id.* at 464. Where the same act constituting the second degree assault also constituted the threatened use of deadly force, the assaults merged. *Id.* at 464-65.

The same principle applies here, where the harassment constituted the threat of deadly force that elevated the crime from unlawful imprisonment to second degree kidnapping. As discussed above, restraint becomes abduction, and therefore supports a kidnapping charge, when it is accomplished by using or threatening to use deadly force. RCW 9A.40.010(1). Similarly, felony harassment is committed when a person knowingly threatens to kill another, and by words or conduct places the person threatened in reasonable fear that the threat will be carried out. RCW 9A.46.020.

Here, although Seymour did not use a weapon to abduct Forney as the defendant in *Davis* did, he threatened repeatedly to take her into the woods and kill her. II RP (Devoir) 465-67, 487. But for threatening to use deadly force against her, which constituted the crime of harassment, Seymour's restraint of Forney would have constituted only unlawful imprisonment. Because the harassment elevated the crime to second degree kidnapping, the punishment for the threat is presumed to be

included within the greater penalty for the kidnapping conviction. *Davis*, 177 Wn. App. at 461.

Accordingly, under the facts pleaded and proven in this case, the felony harassment conviction merges into the conviction for second degree kidnapping of Forney. Thus, the lesser harassment conviction should be vacated and Seymour should be resentenced. *See Davis*, 177 Wn. App. at 465.

C. Refusing to allow Seymour a redacted copy of his discovery or to limit its secondary use with a protective order was an abuse of the trial court's discretion when the refusal deprives Seymour of his right to access the courts for post-conviction relief and his right to due process.

In general, discovery materials provided to a defense attorney in a criminal case are required to remain in the attorney's custody. However, a defense attorney "shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting attorney or order of the court." CrR 4.7(h)(3). Superior courts may also enter protective orders as deemed appropriate, provided all material is disclosed in time to make beneficial use of it. CrR 4.7(h)(4).

The use of mandatory language (“shall”) in the rule establishes a presumption that a defendant should be allowed to receive a redacted copy of discovery for his own use. The provision allowing the defendant to receive a copy of the discovery materials was adopted in 1986 in recognition that otherwise, defense counsel would be required to wait while an in-custody defendant read the materials in jail, rendering the rule cumbersome and ineffectual. CrR 4.7, *Comment – 1986*. The drafting committee recognized that, because the defendant was able to read all of the reports anyway, more effective avenues existed to protect sensitive information, such as a protective order. *Id.*

The rules governing a defendant’s access to discovery are intimately associated with his rights to a fair trial and to access the courts. *See State v. Boyd*, 160 Wn.2d 424, 433-34, 158 P.3d 54 (2007) (acknowledging trial courts should apply discovery rules to ensure a fair trial and to meet requirements of due process); *State v. Mannhalt*, 68 Wn. App. 757, 764-65, 845 P.2d 1023 (1992) (recognizing relationship between disclosing background information on State witnesses and defendant’s right to confront adverse witnesses); *State v. Padgett*, 4 Wn. App. 2d 851, 855-56, 424 P.3d 1235 (2018) (recognizing that client file and discovery materials are a critical resource for completing a viable personal restraint petition).

The Due Process clause of the Fourteenth Amendment requires the prosecution and trial to comport “with prevailing notions of fundamental fairness” to ensure the defendant has a meaningful opportunity to present a full defense. U.S. Const. Amend. XIV; *State v. Greiff*, 141 Wn.2d 910, 920, 10 P.3d 390 (2000). Consequently, discovery violations implicate due process considerations, such the prosecutor’s duty to disclose certain evidence to the defendant in order to ensure a fair trial. *See id.*; *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

Similarly, discovery “is an integral part of the right to access the courts embedded in our constitution.” *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686, 695, 295 P.3d 239 (2013); Wash. Const. art. 1, § 10. The right of access includes the right to a remedy for a wrong suffered. *King v. King*, 162 Wn.2d 378, 388, 174 P.3d 659 (2007). It is a right to justice “without unnecessary delay.” *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 362, 16 P.3d 45 (2000).

As recognized in *Padgett*, the defendant will typically need a copy of his discovery materials to pursue a viable personal restraint petition. 4 Wn. App. 2d at 855-56. The personal restraint petition is the defendant’s only mechanism to show prejudice based upon facts outside of the record established below. *State v. McFarland*, 127 Wn.2d 322, 355, 899 P.2d

1251 (1995). Except in limited circumstances, he has a limited time to investigate and file it. RCW 10.73.090. It is only by reviewing the State's case as presented to his attorney that the defendant is in a position to evaluate his attorney's investigation and use of that evidence, and to demonstrate to the appellate court the impacts of his attorney's decisions. Without a copy of the discovery, the defendant will be foreclosed from pursuing a remedy that the law otherwise provides to him.

Furthermore, if a defendant should generally receive discovery materials at the conclusion of representation for use in a personal restraint petition, there is no obvious reason why he should not receive them pretrial. Indeed, providing the defendant with a redacted copy of the discovery is not only consistent with the rule drafters' intention, it is likely to reduce the need for post-conviction arguments by facilitating the defendant's ability to make meaningful and informed decisions about testifying, pleading, and appealing and to confer with his attorney about selecting witnesses, conducting cross-examination, making trial motions, and so forth. *See State v. Grier*, 171 Wn.2d 17, 30-31, 246 P.3d 1260 (2011) (describing ABA standards concerning allocation of decision-making between defense attorney and client). By empowering the defendant to review and evaluate the basis of the State's case at his own leisure, rather than in the limited time the defense attorney can afford him

for that purpose, the attorney-client relationship is fostered and strengthened by allowing them to function as a team, rather than placing the defendant in a position of dependence upon his attorney.

These principles are embedded in CrR 4.7(h)(3). Of course, there may be countervailing interests that warrant more restrictive limitations on the dissemination of discovery materials. *See Boyd*, 160 Wn.2d at 437-38 (“[T]he rule also provides for recognition of other interests involved in the proceeding” by providing for protective orders.). The personal safety of witnesses may warrant limitations on disclosing and disseminating information. *See Mannhalt*, 68 Wn. App. at 765-66. Further, privacy interests of victims can justify restrictions on dissemination. *Boyd*, 160 Wn.2d at 438. Courts are justified in considering these interests, but must also consider the defendant’s interest in receiving his own copy of redacted discovery and the reasons behind the rule’s presumption in its favor.

In general, trial courts’ orders concerning discovery are reviewed for abuse of discretion. *State v. Grenning*, 169 Wn.2d 47, 57, 234 P.3d 169 (2010). Discretion is abused when the decision is based upon untenable grounds or reasons. *Id.* A proper exercise of judicial discretion entails “sound judgment exercised with regard to what is right under the

circumstances and without doing to arbitrarily or capriciously.” *State v. Batten*, 16 Wn. App. 313, 314, 556 P.2d 551 (1976).

The decision in this case to entirely preclude Seymour from receiving a redacted copy of his discovery was arbitrary and unreasonable in light of the asserted justifications. The court may, naturally, consider the risks to victims and their fear of retaliation in making rulings governing discovery. *Mannhalt*, 68 Wn. App. at 765-66. But neither the State nor the trial court offered any justification why the redaction of all names and contact information for witnesses from Seymour’s copy would be insufficient to alleviate these risks, as he would not know whom to blame for any statements nor where to locate them. Further, the State’s concern that Seymour could communicate information to a witness who remained at large is not related to Seymour’s possession of a copy of discovery materials, since the State did not dispute that Seymour was entitled to review the discovery in his attorney’s possession and the State did not request a protective order prohibiting Seymour from discussing the case with third-parties. Instead, the order appears to be punitive in light of the nature of the allegations and Seymour’s criminal history, as well as the court’s failure to support its finding that “redaction alone cannot provide for security for the victim.” RP (Munoz) 6-8.

In sum, in denying Seymour a redacted copy of his discovery materials, the trial court's order disregarded the language of the rule establishing a presumption that he "shall" be entitled to a copy, served to deprive Seymour of a critical resource for seeking a remedy through a personal restraint petition, and effectively limited his ability to participate fully and intelligently in crafting his defense in partnership with his attorney. Because the denial of a copy of discovery did not reasonably relate to the proffered concern for Seymour's dangerousness, the trial court abused its discretion by denying his motion for a redacted copy of his discovery materials. This court should reverse the ruling and direct that Seymour may obtain a redacted copy of the discovery in his case.

## **VI. CONCLUSION**

For the foregoing reasons, Seymour respectfully requests that the court (1) VACATE and DISMISS the conviction for second degree kidnapping of L.L., (2) VACATE and DISMISS the conviction for felony harassment of Forney, (3) REMAND the case for resentencing, and (4) ORDER that Seymour should be provided a redacted copy of his discovery materials.

RESPECTFULLY SUBMITTED this 12 day of June, 2020.

TWO ARROWS, PLLC

A handwritten signature in black ink, appearing to read "Andrea Burkhart". The signature is written in a cursive style with a long horizontal stroke extending to the right.

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ANDREA BURKHART, WSBA #38519  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Brief upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Keenan T. Seymour, DOC #420570  
Airway Heights Corrections Center  
PO Box 2049  
Airway Heights, WA 99001

Andrew Kelvin Miller  
Benton County Prosecutor's Office  
7122 W. Okanogan Pl Bldg. A  
Kennewick, WA 99336

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

Signed and sworn this 12 day of June, 2020 in Kennewick, Washington.

  
\_\_\_\_\_  
Andrea Burkhart

**BURKHART & BURKHART, PLLC**

**June 12, 2020 - 12:04 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 37217-1  
**Appellate Court Case Title:** State of Washington v. Keenan T. Seymour  
**Superior Court Case Number:** 19-1-01102-9

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Sender Name: Andrea Burkhart - Email: Andrea@2arrows.net  
Address:  
8220 W. GAGE BLVD #789  
KENNEWICK, WA, 99336  
Phone: 509-572-2409

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