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SUPREME COURT
STATE OF WASHINGTON
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NO. 95971-4

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

THERESA SCANLAN,

Petitioner.

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

PETITIONER'S SUPPLEMENTAL BRIEF

NANCY P. COLLINS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

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A. ISSUES FOR WHICH REVIEW HAS BEEN GRANTED.

1. After the State filed charges against Theresa Scanlan, the police repeatedly sought and received the accuser's permission to obtain all of his statements to medical staff about the incident. At trial, instead of having the complainant testify, a nurse, social worker, medical assistant, and three doctors told the jury what the complainant told them about the incident.

Does it violate the right of confrontation to rely on an accuser's out of court statements to medical personnel made after the police explicitly told the accuser that the prosecution could use these statements in its case? And does it render a trial fundamentally unfair where the accusations relayed by medical personnel are inaccurate or incomplete, so the jury receives a false version of events?

2. A person cannot be convicted of unlawful imprisonment when the alleged victim has available means of escape that are not dangerous or difficult to access. Roy Bagnell was in his own home with many doors, windows, and a multicar garage where the State contended he was unlawfully and substantially restrained. Did the prosecution fail to establish the essential requirement of substantial unlawful restraint?

B. STATEMENT OF THE CASE.

When widower Roy Bagnell befriended Theresa Scanlan, he was 80 years old and healthy but he took medications that made him bruise easily and impaired his blood from clotting; his age made his skin prone to tearing. 7RP 935, 942, 943; 8RP 1054-56.

On October 16, 2014, police officers went to Mr. Bagnell's home after a hang up 911 call. 6RP 726. Because he looked bruised and Ms. Scanlan did not, the police arrested her. 6RP 728-29. The police got his written permission to collect his medical records as part of the State's "investigation and any resulting prosecution" in a police form:

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

I LEROY BAGNELL, the victim of a reported crime being investigated by the Federal Way Police Department, in furtherance of the investigation and any resulting prosecution, do hereby request and grant permission to ST. FRANCIS HOSPITAL, and any attending physicians, assistants, nurses, or other staff, to release to officers of the Federal Way Police Department, and/or the offices of the King County Prosecutor and/or the Federal Way City Attorney, a complete copy of all records, charts, notes, reports, memoranda, correspondence, comments, test data, photos, treatment and opinions acquired and developed in the course of treating me for my injuries and/or illness suffered on or about 11/6/2014 - 11/6/2014. This authorization includes also information obtained on 11/6/2014 at the scene or during transport to/from a medical facility by EMTs, medics, or other responding aid providers that may not be directly associated with the above named medical facility. In addition, my care providers may discuss my medical condition and any treatment with the assigned detective, his/her designee, and the prosecuting attorney. I understand that this authorization will extend to all aspects of treatment, including HIV/AIDS testing/treatment, sexually transmitted diseases, drug/alcohol abuse treatment, and/or mental illness/mental health treatment. I release the records providers from all legal responsibility or liability that may arise from the requested release of this information. This consent is subject to my revocation at any time, except to the extent action has been taken in reliance thereon. I understand that I do not have to sign this authorization in order to obtain health care benefits (treatment, payment, or enrollment). Once disclosed, the recipient may not be required to maintain the confidentiality of the health care information. However, I understand that certain health care information may be protected under State and Federal Law (42 CFR Part 2 and RCW 70.24). A reproduction of this form by photocopy, fax, or similar process shall be for all intents and purposes as valid as the original. This written authorization expires one (1) year from the below date.

[Signature] 11/7/14
Signature of Victim/Patient Date Signature of Parent/Guardian Date

As expressly set forth in writing, Mr. Bagnell specified that the “Federal Way Police Department, and/or the offices of the King County Prosecutor and/or the Federal Way City Attorney” could access his medical records for one year.¹ (copy of form attached as App. A).

Mr. Bagnell went to Ms. Scanlan’s arraignment after her October 16th arrest and kept track of her court dates. 6RP 638. The court imposed a no-contact order despite Mr. Bagnell’s objection. *Id.*

On November 6, 2014, police came to Mr. Bagnell’s home after his children found him sitting in a living room chair with bruises on his face. 7RP 976. Police arrested Ms. Scanlan, who was in the garage. 6RP 766. Police interviewed Mr. Bagnell and took pictures of bruises and cuts on his skin. 6RP 640, 653. Medics then drove Mr. Bagnell to the hospital, where a nurse, doctor, and social worker asked him to describe what happened during the incident, including whether police were involved. 6RP 642-43. Detectives came to the hospital and had Mr. Bagnell sign another police department waiver form for this incident. App. A.

On November 12, 2014, two detectives met with Mr. Bagnell and photographed his wounds. 8RP 1147. They knew from the emergency

¹ Two of the police department waiver forms Mr. Bagnell signed were admitted as Pretrial Exhibits 8 and 9. Third form from October 16 was not

room doctor that Mr. Bagnell had an appointment at Virginia Mason the next day. 6RP 644-46. They obtained a third identical “waiver form” authorizing the police and prosecution full access to any medical records from Virginia Mason prior to his appointment. PreT. Ex. 9.

The day after this additional meeting with detectives, Mr. Bagnell saw Dr. Endow, and had appointments in the following weeks with Dr. Pierce and physician’s assistant Stacy Friel at Virginia Mason. 7RP 814, 906; 8RP 1175. Each asked him to explain what happened on November 6 and made records of his statements. *Id.*

Mr. Bagnell refused to testify against Ms. Scanlan at trial but he came to her sentencing hearing. 6RP 689; 14RP 1679. At trial, the State extensively relied on Mr. Bagnell’s description of events to numerous medical personnel made over several weeks to demonstrate how he was injured and purportedly restrained during the incident. Ms. Scanlan was convicted of second degree assault, unlawful imprisonment, and felony violation of a no-contact order. CP 160-64. The latter conviction was reduced to a misdemeanor on appeal. *State v. Scanlan*, 2 Wn.App.2d 715, 735, 413 P.3d 82, *rev. granted*, 191 Wn.2d 1026 (2018).

admitted, but it was identical to the others. 6RP 637-38.

At sentencing, Mr. Bagnell revealed his statements to others “were not right” and also admitted he took a walk, casting doubt on whether he had been “unlawfully imprisoned” in his home. 14RP 1679.

The Court of Appeals ruled that the medical personnel’s primary purpose was not to elicit statements for trial and therefore, the State did not violate the right to confrontation by relying on these statements instead of Mr. Bagnell’s sworn testimony in court. 2 Wn.App.2d at 729.

C. ARGUMENT.

1. When the police repeatedly tell the complainant that the State will use his statements to medical staff in its criminal case, the prosecution’s reliance on those statements instead of having the complainant testify violates the right of confrontation.

a. The state and federal constitutions demand criminal prosecutions rest on accusations from witnesses who testify in person before the jury.

An accused person’s constitutional right to confront witnesses against her at trial prohibits the prosecution from using out-of-court accusations as a substitute for live testimony. *Crawford v. Washington*, 541 U.S. 36, 68, 124 S. Ct. 1354, 158 L.Ed.2d 177 (2004); U.S. Const. amend. 6; Const. art. I, § 22.

The right to confrontation has long required that criminal accusations are leveled in “a public and solemn trial,” where cross-examination can

occur and the jury has “an opportunity of observing the quality, age, education, understanding, behavior, and inclinations of the witness.” 3 William Blackstone, Commentaries on the Laws of England 373-74 (1768); Matthew Hale, The History of the Common Law of England 164 (Charles M. Gray ed. 1713) (confrontation right requires “personal appearance and Testimony of Witnesses”). Because “cross-examination is the most powerful instrument known to the law in eliciting truth or in discovering error in statements made in chief,” using an absent witness’s out of court allegation for its truth works “an injustice to the defendant.” *State v. Eddon*, 8 Wash. 292, 301-02, 36 P. 139 (1894).

The prosecution bears the burden of proving a statement does not violate the confrontation clause. *State v. Koslowski*, 166 Wn.2d 409, 417 n.3, 209 P.3d 479 (2009). This Court reviews a confrontation clause violation de novo. *Id.* at 418.

The Sixth Amendment’s confrontation clause prohibits the prosecution from using a “testimonial” out-of-court statement at trial, unless the accused already had the opportunity to confront that person and the speaker is unavailable to testify. *Crawford*, 541 U.S. at 68. Merely satisfying the admissibility test for a hearsay rule does not fulfill the requirements of the confrontation clause. *Crawford*, 541 U.S. at 61.

No definitive rule governs whether a statement is testimonial under the confrontation clause. *See Crawford*, 541 U.S. at 68; *Davis v. Washington*, 547 U.S. 813, 823, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006). As a general rule, the prosecution must show, objectively, that a reasonable person in the declarant's shoes would not understand the statement would be memorialized and available for use by prosecuting authorities, considering the totality of the circumstances. *Michigan v. Bryant*, 562 U.S. 344, 360, 131 S.Ct. 1143, 179 L.Ed.2d 93 (2011); *Crawford*, 541 U.S. at 52.

The confrontation clause does not rest on the questioner's purpose. *Bryant*, 562 U.S. at 360 ("the subjective intentions of the interviewers are not proper considerations"). Instead, courts look to "the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred." *Id.*

The narrowest definition of "testimonial" includes questions asked by police officers who are investigating a reported crime. *Davis*, 547 U.S. at 881-32; *see also State v. McDaniel*, 155 Wn. App. 829, 849, 230 P.3d 245 (2010). But statements do not need to be made to directly to police officers to be testimonial. A person's statements to a domestic violence

victim advocate are testimonial, even if made in the context of seeking help. *State v. Mason*, 160 Wn.2d 910, 923, 162 P.3d 393 (2007).

Statements to a 911 operator are testimonial absent a present emergency. *Davis*, 547 U.S. at 828-29 (after perpetrator left and 911 operator posed “battery of questions,” accuser’s statements became testimonial).

Casual remarks to a friend are not testimonial when no reasonable person would believe they had any bearing on prosecutorial proceedings against the accused. *Crawford*, 541 U.S. at 51. But a statement elicited by a family friend with law enforcement affiliation may be testimonial. *State v. Shafer*, 156 Wn.2d 381, 390-91, 128 P.3d 87 (2006).

An accuser’s statements to a medical provider may be testimonial when a person would understand the information would be shared with and acted upon by governmental authorities who are investigating a potential crime. *State v. Hurtado*, 173 Wn. App. 592, 604-06, 294 P.3d 838, *rev. denied*, 177 Wn.2d 1021 (2013); *see also State v. Sandoval*, 137 Wn. App. 532, 154 P.3d 271 (2007); *State v. Moses*, 129 Wn. App. 718, 729-30, 119 P.3d 906 (2006).

In *Hurtado*, a police officer was present in the hospital room when a nurse spoke to J.V. as she described being assaulted by her boyfriend. *Id.* at 596. The police had questioned J.V. before medics took her to the

hospital and police arrested the defendant near the scene. *Id.* In the hospital room, the officer did not ask J.V. questions but collected evidence. *Id.* The prosecution used J.V.'s allegations to the hospital nurse instead of calling J.V. to testify. *Id.* at 598. The court ruled a person in J.V.'s shoes would understand the police were investigating a crime and her statements to medical personnel could be available for use in the police investigation, rendering them testimonial. *Id.* at 604. Therefore, using the nurse's testimony instead of J.V.'s violated the confrontation clause.

Hurtado set forth a test based on decisions from this Court and all divisions of the Court of Appeals. *Id.* at 599-600. The prosecution must show three things to prove allegations about a completed crime to medical providers are non-testimonial: (1) the statements are "made for diagnosis and treatment purposes"; (2) there is "no indication that the witness expected the statements to be used at trial" or available for such use; *and* (3) the medical professional is not employed by the State. *Id.*

b. Statements collected for medical and investigatory purposes may be testimonial under the confrontation clause.

In *Ohio v. Clark*, _ U.S. _, 135 S. Ct. 2173, 192 L. Ed. 2d 306 (2015), the Supreme Court held that a three-year old's statement to his daycare provider about who injured him was not testimonial under the totality of the circumstances. The Court emphasized the statement was

from a “very young child,” made in an “informal and spontaneous conversation” that was “primarily aimed at identifying and ending the threat” posed to the child, and there was no indication of potential police involvement when the child spoke to his teacher. 135 S. Ct. at 2181. No one told the child, or even “hinted,” that the information would be conveyed to the police. *Id.* The conversation “was nothing” like the formal police interview in *Crawford* or on-the-scene questioning in *Davis*. *Id.*

Clark also examined historical evidence to determine whether the testimony violated the confrontation clause. *Id.* at 2182. It found similar statements of a young child to his teachers about abuse were regularly admitted at trial under the common law roots of the Sixth Amendment’s confrontation clause, because children were not considered capable of understanding the oath and were not competent to testify. *Id.*

Clark focused on a child-teacher relationship and noted that mandatory reporting laws requiring teachers to tell authorities about a crime against a child do not turn all conversations between child and teacher into a police mission to gather evidence for the State. *Id.* at 2183. The *Clark* Court did not address statements to medical personnel or look at the historical roots of a statement to a health care professional under the confrontation clause. *See, e.g., State v. Florczak*, 76 Wn. App. 55, 68-70,

882 P.2d 199 (1994) (young child's statement to a health care professional not admissible for reasons of diagnosis but admissible if sufficiently trustworthy under former Sixth Amendment analysis).

Clark further refused to limit testimonial statements to those made governmental officials. *Id.* at 2181. While statements to law enforcement are more likely to be testimonial, statements to others may violate the confrontation clause. *Id.*

Like *Hurtado* and similar Washington cases, other states assess whether statements are testimonial, when made to medical personnel in the course of a pending criminal investigation, by examining criteria such as the extent an accuser may understand potential governmental involvement. *See, e.g., People v. Spangler*, 774 N.W.2d 702, 709-13 (Mich. App. 2009) (collecting cases and listing criteria for testimonial nature of statement to nurse performing forensic examination); *State v. Miller*, 264 P.3d 461, 487 (Kan. 2011) (same); *State v. Ward*, 50 N.E.3d 752, 763-64 (Ind. 2016) (applying fact-specific test to hospital's own informed consent form).

Consistent with *Clark*'s focus on the relationship between the conversation at issue and a law enforcement mission, and consideration of the Sixth Amendment's historical roots, statements to medical staff made with an understanding of their connection to a criminal case are a

mechanism for gathering evidence. 135 S.Ct. at 2181, 2183. They may be formal and may be conveyed to police. *Id.* Consequently, they may amount to a substitute for testimony that violates the confrontation clause.

c. The prosecution relied on an accuser's testimonial statements when the accuser refused to testify at trial.

The prosecution relied on testimonial statements of an absent declarant in violation of the Sixth Amendment and article I, section 22.

Even the trial court recognized Mr. Bagnell “clearly knows about criminal procedure and about the investigation” when speaking to the medical personnel. 6RP 652. Mr. Bagnell may have had a diagnostic or treatment purpose in speaking with medical staff, but any reasonable person in his shoes was made fully aware the police were collecting and using his statements about the incident. *See Hurtado*, 173 Wn. App. at 600 (State must prove “no indication . . . witness expected the statements to be used at trial”); *see also Bryant*, 562 U.S. at 360.

In writing, the police formally told Mr. Bagnell before he went to St. Francis Hospital and Virginia Mason that the “assigned detective” and “prosecuting attorney” could obtain “a complete copy of all records, charts, notes, reports, memoranda, correspondence, comments” and any other materials kept by medical staff. App. A.

Each “Federal Way Police Department Waiver Form” reinforced Mr. Bagnell’s status as “the victim of a reported crime” and emphasized this crime was “being investigated by the Federal Way Police Department.” *Id.* Each form gave the State access to materials “in furtherance of the investigation and any resulting prosecution.” *Id.*

Before he spoke to a doctor, nurse, and social worker on November 6, Mr. Bagnell was fully aware of the case pending against Ms. Scanlan and he knew she violated a court order barring contact simply by being at his home. 6RP 638. He knew the police arrested Ms. Scanlan twice. 6RP 640, 653. Each police department waiver form reiterated the prosecution’s intention and ability to obtain his statements to medical providers for purposes of its case against Ms. Scanlan. PreTrial Exs. 8, 9.

At the very least, by the time Mr. Bagnell signed the third waiver form, he would be fully cognizant of the potential prosecutorial use of his statements to medical personnel. . He was separately interviewed by medical assistant Friel and doctors Endow and Pierce at Virginia Mason long after the incident. At this point in time, a reasonable person’s medical concern would be the healing process and not the specifics of the incident leading to the injury, even if a curious doctor would want to know about it.

The State knew from the outset that Mr. Bagnell did not want to pursue the allegations against Ms. Scanlan. 6RP 638, 689. It made no further efforts to bring him to court after he declined to come. 9RP 1259.

The State explicitly and repeatedly cemented its access to Mr. Bagnell's allegations against Ms. Scanlan and then proceeded to trial without him. By relying on these claims about the incident, generated in the course of a pending prosecution, made with knowledge they would be transmitted to the police and prosecution, and formally gathered by medical staff long after any immediate medical emergency, the State violated Ms. Scanlan's fundamental right to confront her accuser.

d. The prosecution's reliance on unsworn, out of court allegations resulted in a fundamentally unfair trial.

A confrontation clause violation is presumptively prejudicial and requires reversal unless the prosecution proves "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *State v. Jasper*, 174 Wn.2d 96, 117, 271 P.3d 876 (2012), citing *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). The court must "assum[e] that the damaging potential of the cross-examination were fully realized" and view the non-testifying witness' importance to the State's case. *Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

Principles of due process further require reversal when unreliable hearsay evidence renders the proceedings fundamentally unfair. *Bryant*, 562 U.S. at 370 n.13; U.S. Const. amend. 14; Const. art. I, § 3. In the Court of Appeals, the prosecution mustered no argument that the confrontation clause error could be considered harmless.

Without bringing Mr. Bagnell to court, the prosecution relied on people who did not witness the incident who said what they thought Mr. Bagnell told them. As a result, the prosecution presented an unreliable accounting of the incident and left Ms. Scanlan unable to effectively challenge the claims leveled against her.

Mr. Bagnell's statements made longest after the incident, to the Virginia Mason providers Friel and Pierce, offered the most exaggerated version of events, by claiming Mr. Bagnell said he was locked in a room and beaten with a candlestick. 7RP 909, 8RP 1181. These allegations were likely untrue, because there no room had a reverse lock to keep him locked in and his house had an open floor plan described as a circuitous circle. 8RP 1007. He was in his living room and had no injury consistent with being beaten with a candlestick. 11RP 1384, 1474, 1486. Similarly unreliable was Nurse Catherine Gay's testimony that Mr. Bagnell was

strangled by his girlfriend, which she admitted she exaggerated; he never told her he was strangled or couldn't breathe. 8RP 1109, 1118.

Mr. Bagnell came to the sentencing hearing. Regarding the allegation he was unable to leave his home, he told the court, "we did go outside, you know, and walk – walked around for awhile," implying he was not restrained. 14RP 1679. Reports corroborate he left the home, she separately left, and he had a phone available to use, but the jury did not hear this information. Ex. 40 at 15; Ex. 41 at 187, 189.

The sentencing judge stopped Mr. Bagnell as he started talking about the incident, but he cast doubt on his prior statements. 14RP 1678. He told the court "a lot of statements I made under duress," "probably a lot of it was not right," "there was a lot of things I said I don't remember saying them exactly like what it was." 14RP 1679.

Facing only ex parte descriptions of events from Mr. Bagnell, Ms. Scanlan could not challenge the medical providers' claims about what caused his injuries. *See Eddon*, 8 Wash. at 302 (because testimony repeating a person's statement increases "chances of misunderstanding just what was said, or intended to be said, or meant" by speaker, dying declaration should not be substitute for live testimony).

For example, Dr. Britt, Dr. Pierce, and Ms. Friel said Mr. Bagnell told them he was hit with a broom and hammer. 7RP 909, 926; 8RP 1181. But in a deposition not given to the jury, Mr. Bagnell denied she hit him with a broom, instead saying broom bristles touched his face. Ex. 41 at 94. And in a police report not admitted substantively, he said Ms. Scanlan never hit him with a hammer. Ex. 40 at 11.

Because Ms. Scanlan was charged with assault premised on causing substantial bodily harm, the cause and extent of his injuries was crucial. CP 13-14. The forensic evidence undermines the accusations conveyed through medical providers that he was beaten by objects or unable to eat. 11RP 1365, 1399. Despite bruises, doctors agreed his injuries were superficial and did not cause him substantial pain. 11RP 1392, 1400, 1452-54. His wounds may have been caused by his own acts, as photographs indicated Ms. Scanlan suffered injuries from him, including on her intimate body parts. 11RP 1412, 1414-20.

Finally, the State elicited testimonial statements from police officers who repeated Mr. Bagnell's claim he was assaulted by Ms. Scanlan. 8RP 1146, 1169. These statements fit within the core class of testimonial allegations. *See Bryant*, 562 U.S. at 373. The officers' bolstering of Mr. Bagnell's accusations further prejudiced Ms. Scanlan.

The confrontation clause prohibits verdicts resting on ex parte allegations made with an eye toward investigation and prosecution. *Crawford*, 541 U.S. at 49-50. If the prosecution had brought Mr. Bagnell to court, where he could be questioned about his conflicting claims, it is unlikely Ms. Scanlan would have been convicted of all charges. The State's reliance on unsworn descriptions of a crime generated in the course of a pending prosecution denied Ms. Scanlan her rights to confront her accuser and to a fundamentally fair trial, and these errors cannot be deemed harmless. The remedy is reversal and remand for a new trial.

2. Ms. Scanlan did not unlawfully restrain Mr. Bagnell; he was in his own home with an available means of exit.

To prove unlawful imprisonment, the prosecution was required to establish Ms. Scanlan knowingly restrained Mr. Bagnell by substantially interfering with his liberty. RCW 9A.40.040; CP 14. Restraint requires: (1) the accused "restrict a person's movements without consent and without legal authority," and (2) she does so "in a manner which interferes substantially with that person's liberty." *State v. Warfield*, 103 Wn. App. 152, 157, 5 P.3d 1280 (2000); RCW 9A.40.010(1). These essential elements must be proved beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970); U.S. Const. amend. 14; Const. art. I, §§ 3, 21, 22. A "modicum of evidence" on an essential

element is “simply inadequate.” *Jackson v. Virginia*, 443 U.S. 307, 320, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

Substantially interfering with a person’s liberty requires “real or material interference.” It is not enough that it is inconvenient or annoying for a person to leave. *State v. Robinson*, 20 Wn. App. 882, 884, 582 P.2d 580 (1978), *aff’d*, 92 Wn.2d 357, 597 P.2d 857 (1979). Substantial interference with a person’s freedom of movement may not be consensual or incidental to the commission of another crime. *State v. Green*, 94 Wn.2d 216, 227, 616 P.2d 628 (1980).

The presence of a means of escape defeats a prosecution for unlawful imprisonment if leaving is not dangerous and does not require significant effort. *State v. Kinchen*, 92 Wn. App. 442, 452 n.16, 963 P.2d 928 (1998). In *Kinchen*, children were locked in their home by a parent but they could have climbed through a window or sliding glass door. 92 Wn. App. at 445, 452. The potential to escape undermined the unlawful imprisonment allegation. *Id.*

Here, Mr. Bagnell was at his home, with multiple entrances and windows, including a three-car garage. RP 765; 7RP 970; 10RP 1307-08. The main level of his home had an open floor plan and was “one continuous circuit.” 8RP 1007. His front door was glass and “you can see

through it.” 6RP 744. Despite appearing bruised, Mr. Bagnell was able to walk, alert and oriented, and did not complain of pain. 9RP 1268-69. He purportedly said he had not eaten food but lab tests showed no nutritional deficits. 11RP 1399. While it may have been inconvenient or annoying for him to leave, he had means of escape that was not a danger or substantial obstacle. *See Kinchen*, 92 Wn. App. at 452 n.16. His vague allegations to others do not meet the more than modicum of evidence needed to show he could not have left his home if he tried. The prosecution failed to prove the essential elements of unlawful imprisonment.

D. CONCLUSION.

Ms. Scanlan respectfully requests this Court order a new trial due to the confrontation clause violation and reverse the conviction for unlawful imprisonment due to legally insufficient evidence.

DATED this 9th day of January 2019.

Respectfully submitted,



NANCY P. COLLINS (28806)
Washington Appellate Project (91052)
Attorneys for Petitioner

APPENDIX A

FEDERAL WAY POLICE DEPARTMENT Waiver Form

Purpose of Form <input type="checkbox"/> Runaway / Missing Person <input type="checkbox"/> Stolen Vehicle <input checked="" type="checkbox"/> Medical Release						CASE NUMBER 14-14638						
Location Where Form Completed ST. FRANCIS HOSPITAL						Date 11/7/14		Time 1255 AM				
INVOLVED PERSON <input checked="" type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Complainant <input type="checkbox"/> Registered Owner <input type="checkbox"/> Runaway <input type="checkbox"/> RSO <input type="checkbox"/> Other <input type="checkbox"/> PDA												
No.	Name (Last, first, middle)				Date of Birth / Age		Race	Sex	Height	Weight	Eyes	Hair
1	BAGNELL, LEROY K.				7/21/32		W	M				
Home Address				City		State	Zip Code		Home Area Code / Phone			
338 S. 361 PL				FEDERAL WAY		WA	98003					

MISSING PERSON / RUNAWAY INFORMATION / WAIVER									
Mental Condition		Suspicious Circumstances		City/State of Birth		Relation to Compl.		Photo Attached <input type="checkbox"/> Yes <input type="checkbox"/> No	
Medical Problems		Possible Destination		Clothing		Skin Tone		Blood Type	
Dentist Name		Dentist Address		Dentist Area Code and Phone					
Authorization to Release Dental Information: I am a family member or next of kin of the above named missing person, and I hereby authorize the release of all dental records to assist law enforcement agencies in locating the missing person.									
Signature:					Date:				

AUTHORIZATION FOR RELEASE OF MEDICAL RECORDS

I, LEROY BAGNELL, the victim of a reported crime being investigated by the Federal Way Police Department, in furtherance of the investigation and any resulting prosecution, do hereby request and grant permission to ST. FRANCIS HOSPITAL and any attending physicians, assistants, nurses, or other staff, to release to officers of the Federal Way Police Department, and/or the offices of the King County Prosecutor and/or the Federal Way City Attorney, a complete copy of all records, charts, notes, reports, memoranda, correspondence, comments, test data, photos, treatment and opinions acquired and developed in the course of treating me for my injuries and/or illness suffered on or about 11/6/2014 - 11/6/2014. This authorization includes also information obtained on 11/6/2014 at the scene or during transport to/from a medical facility by EMTs, medics, or other responding aid providers that may not be directly associated with the above named medical facility. In addition, my care providers may discuss my medical condition and any treatment with the assigned detective, his/her designee, and the prosecuting attorney. I understand that this authorization will extend to all aspects of treatment, including HIV/AIDS testing/treatment, sexually transmitted diseases, drug/alcohol abuse treatment, and/or mental illness/mental health treatment. I release the records providers from all legal responsibility or liability that may arise from the requested release of this information. This consent is subject to my revocation at any time, except to the extent action has been taken in reliance thereon. I understand that I do not have to sign this authorization in order to obtain health care benefits (treatment, payment, or enrollment). Once disclosed, the recipient may not be required to maintain the confidentiality of the health care information. However, I understand that certain health care information may be protected under State and Federal Law (42 CFR Part 2 and RCW 70.24). A reproduction of this form by photocopy, fax, or similar process shall be for all intents and purposes as valid as the original. This written authorization expires one (1) year from the below date.

Signature of Victim/Patient: L. Bagnell Date: 11/7/14

Signature of Parent/Guardian: _____ Date: _____

VEHICLE INFORMATION <input type="checkbox"/> License Plates Only										
License Number		State	Veh Yr	Make		Model	Type	Color	VIN	
Registered Owner Name				Address				City / State		Zip Code
Value		THEFT FACTORS <input type="checkbox"/> Payments are overdue <input type="checkbox"/> Ignition was locked <input type="checkbox"/> Vehicle was running <input type="checkbox"/> Keys were in vehicle <input type="checkbox"/> Vehicle was locked <input type="checkbox"/> Anti-Theft device was active Device: _____								

FALSE REPORTING - WARNING

I, the undersigned, hereby declare this to be a true and correct report. I did not give anyone permission to take or use the described vehicle. I am the owner or person who was legally in possession of the described vehicle. I understand that I may be charged with violation of FWCC 6-268 (Obstructing Public Officer) by filing a false report. If I regain possession of this vehicle, I understand that I must notify the Police Department immediately of the recovery, and that I may be charged with a crime for failure to notify the Police Department. I understand that I am liable for all towing and storage costs incurred during the recovery of this vehicle.

SIGNATURE: _____ **DATE:** _____

CONSENT TO SEARCH WAIVER

I voluntarily give consent to any commissioned law enforcement officer to: 1) search any and all compartments, locked or unlocked, of my reported stolen vehicle at the time of its recovery; 2) conduct the search in my absence; and 3) I understand this consent is withdrawn at the time my vehicle is returned to me. I acknowledge that I have the right to limit the scope of the search, to be present for the search, or withdraw consent at anytime by notifying the Federal Way Police Department.

SIGNATURE: _____ **DATE:** _____

I CERTIFY, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON, THAT THE FOREGOING IS TRUE AND CORRECT.

Investigating Officer / ID #		Date		Supervisor		Date Approved	
PURCELLA 0170		11/7/14					

RECORDS USE:			Records Specialist / ID #		Date / Time	
Vehicle entered as: <input type="checkbox"/> Stolen <input type="checkbox"/> Impounded <input type="checkbox"/> Recovered Person Has Been: <input type="checkbox"/> Entered <input type="checkbox"/> Located <input type="checkbox"/> Cleared <input type="checkbox"/> Canceled						

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 95971-4
v.)	
)	
THERESA SCANLAN,)	
)	
Petitioner.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 9TH DAY OF JANUARY, 2019, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE WASHINGTON STATE SUPREME COURT AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> ANN SUMMERS, DPA	()	U.S. MAIL
[paoappellateunitmail@kingcounty.gov]	()	HAND DELIVERY
[ann.summers@kingcounty.gov]	(X)	E-SERVICE VIA PORTAL
KING COUNTY PROSECUTING ATTORNEY		
APPELLATE UNIT		
KING COUNTY COURTHOUSE		
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		
<input checked="" type="checkbox"/> THERESA SCANLAN	(X)	U.S. MAIL
PO BOX 26053	()	HAND DELIVERY
FEDERAL WAY, WA 98093	()	_____

SIGNED IN SEATTLE, WASHINGTON THIS 9TH DAY OF JANUARY, 2019.



X _____

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

January 09, 2019 - 4:23 PM

Transmittal Information

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Appellate Court Case Number: 95971-4
Appellate Court Case Title: State of Washington v. Theresa Gail Scanlan
Superior Court Case Number: 14-1-06460-4

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