

65735-6

65735-6

NO. 65735-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JAMES MASTER O'CAIN,

Appellant.

2011 JUN 20 11:58
COURT OF APPEALS
DIVISION I

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JIM ROGERS

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED.

1. The crime of felony harassment requires a communicated threat. Because the victim did not testify at trial, no evidence was presented that the defendant communicated a threat to her. Should the conviction for felony harassment be vacated?

2. Out-of-court statements do not violate the right to confrontation under either the federal or state constitutions if the statements are not testimonial, i.e., the declarant was not acting as a "witness" at the time of the statements. The victim was not acting as a "witness" when she made statements to medical professionals about her injuries for the purposes of diagnosis and treatment of those injuries. Did the trial court properly admit those statements, particularly since the defendant did not object to the statements as violating his right to confrontation?

B. STATEMENT OF THE CASE.

1. PROCEDURAL FACTS.

James Master O'Cain was charged by amended information with two counts of assault in the second degree (Counts I and II), one count of felony harassment (Count III) and one count of tampering with a witness (Count IV). CP 19-21. Count I charged

assault in the second degree by strangulation. CP 19. Count II charged assault in the second degree by reckless infliction of substantial bodily harm. CP 20. The jury found O'Cain guilty only of the lesser degree offense of assault in the fourth degree as to Count I, and guilty as charged as to Counts II, III and IV. CP 102-07. The court imposed a standard range sentence of 70 months of total confinement. CP 118.

2. FACTS OF THE CRIME.

On December 13, 2009, at approximately 11:00 p.m., King County Sheriff deputies responded to a 911 call made from apartment number 105 in the Beverly Park apartments in White Center. RP 6/29/10 28-31.¹ They contacted Sheila Robinson, who had made the 911 call, outside apartment 105. RP 6/29/10 32. The back of her right shoulder was badly cut, she was crying and very upset and she appeared fearful. RP 6/29/10 33, 89. Inside, the deputies saw that the apartment was in disarray and there was

¹ The State is referencing the Verbatim Report of Proceedings in the same manner as the Brief of Appellant. For clarification, the page numbers cited for the transcripts from June 29, June 30, and July 1, 2010 are the numbers in the upper right hand corner of the page.

broken glass in the kitchen and living room, as well as blood throughout the apartment. RP 6/29/10 35-43.

The jury listened to a recording of the 911 call made by Robinson. RP 6/29/10 59. In the 911 call, Robinson identified herself and stated that she was in a fight with her boyfriend, whom she identified as "Master James O'Cain." Supp CP ___ (sub 79).² Robinson stated, "he tried to kill me," and reported that she had cuts on her back and other unspecified injuries. Supp CP ___ (sub 79). She said that she had glass stuck in her back from a "little decorative thing on the table." Supp CP ___ (sub 79). She reported that O'Cain was outside the apartment trying to force open the locked door. Supp CP ___ (sub 79). Eventually, he left. Supp CP ___ (sub 79). She gave a description of O'Cain and informed the operator that he was leaving on foot. Supp CP ___ (sub 79).

Deputies responding to the call found O'Cain walking along the road just 200 feet from the apartment complex. RP 6/29/10 94. He had minor scratches on his face and neck. RP 6/29/10 78-79,

² A transcript of the 911 tape was submitted with the State's Trial Memorandum and has been designated by the State on appeal for this Court's convenience. It should be noted that only the initial call to 911, on pages 1-9, and not the exchange that occurred when the 911 operator called the victim back, was admitted by the court. RP 6/23/10 51.

81. He also had a tattoo that read "Sheila." RP 6/29/10 77. He was taken into custody. RP 6/29/10 75.

Robinson was transported to the hospital by ambulance. RP 6/29/10 96. Three medical personnel who treated Robinson testified at trial: Nicholas Sutherland, an emergency medical technician; David Island, a physician's assistant; and Aliana Maris, a nurse. RP 6/30/10 168-70, 218-19, 224-25.

Sutherland transported Robinson to Highline Medical Center. RP 6/30/10 221. He testified that Robinson had multiple lacerations on the back of her right shoulder and was complaining of pain in her neck area and upper body. RP 6/30/10 220. She reported that she was struck multiple times in the face and upper body with a closed fist, was choked, and was struck with a glass object. RP 6/30/10 221. She reported that she lost consciousness during the assault more than once. RP 6/30/10 221. Sutherland relayed to the emergency room staff what Robinson had told him about her injuries. RP 6/30/10 222.

Island, the physician's assistant, assessed Robinson's injuries when she arrived at the emergency room. RP 6/30/10 169-71. Robinson had a laceration on the back of her right shoulder that was more than three inches long and fairly deep.

RP 6/30/10 172. Island found a large glass fragment inside the wound and removed it. RP 6/30/10 176. He treated the wound with five subcutaneous stitches and eight surface stitches.

RP 6/30/10 177. In addition to the laceration, Island observed swelling and tenderness in Robinson's jaw, and tenderness in her face. RP 6/30/10 172. Robinson reported that she had been hit in the face, choked, kicked and thrown down onto a glass table.

RP 6/30/10 172, 175, 180. Island observed dried blood in her nasal passage, indicating some blunt force trauma. RP 6/30/10 194. He observed no physical symptoms of strangulation, but testified that strangulation can occur without the manifestation of physical symptoms. RP 6/30/10 191. Island ordered a head CT scan and a shoulder X-ray based on Robinson's reported symptoms.

RP 6/30/10 178. He diagnosed her as having a closed head injury.

RP 6/30/10 179.

Maris, the nurse, also conducted an assessment of Robinson at the emergency room. RP 6/30/10 224-25. She observed the lacerations on Robinson's back right shoulder, as well as a small laceration on her face. RP 6/30/10 226. Robinson reported to Maris that she had been assaulted by her boyfriend, and that she had been pushed, kicked, and choked. RP 6/30/10

221. She reported that she was also struck with a glass object.

RP 6/30/10 226. She reported pain in her head, jaw and back.

RP 6/30/10 226.

Several letters addressed to Robinson's address, dated early January 2010, were given to the police by an unknown woman. RP 6/29/10 125-30. The letters were submitted for fingerprint analysis, and prints matching O'Cain's were found on two of the letters. RP 6/29/10 131; RP 7/1/10 243-52. In the letters, the writer professes his love to the addressee, who is alternately referred to as "ShiShi" and "RoRo," and talks of their future together. RP 6/29/10 136-37, 141, 145, 148, 151. The writer refers to himself as "M" and "Master." RP 6/29/10 144, 147, 151. The writer instructs the addressee that "At trial, if no one shows up, I get to go home." RP 6/29/10 138. He explains further, "My public defender says no one can show up to that court date at trial, period. I mean, absolutely they cannot show at all. No show." RP 6/29/10 138. The writer also informs the addressee that "the person cannot get in any real trouble behind not showing. Trust me." RP 6/29/10 142.

Although the State apparently held out hope that Robinson would come to court to testify, she did not. RP 6/23/10 6.³ The defense presented no witnesses. RP 7/1/10 299.

C. ARGUMENT.

1. DUE TO THE ABSENCE OF ANY TESTIMONY THAT O'CAIN COMMUNICATED A THREAT, THE FELONY HARASSMENT CONVICTION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

O'Cain contends that the evidence presented at trial was insufficient to support his conviction for felony harassment. The State agrees. Viewing the evidence in the light most favorable to the State, there was no evidence presented at trial that O'Cain communicated a threat to Robinson.

In reviewing a challenge to the sufficiency of the evidence, the appellate court must view the evidence in the light most favorable to the State, and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's

³ The State obtained a material witness warrant for Robinson, but she was not located. Supp CP __ (subs 82, 85).

evidence, and all reasonable inferences must be drawn in favor of the State. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The crime of felony harassment as charged in Count III occurs when a person knowingly threatens to kill another and places the other person in reasonable fear that the threat will be carried out. CP 20; RCW 9A.46.020(1)(a)(i), (1)(b) and (2)(b). "Threat" is statutorily defined as follows: "to communicate, directly or indirectly the intent to cause bodily injury in the future to the person threatened or any other person." RCW 9A.04.110(27)(a).

In addition, any statute that criminalizes a form of speech "must be interpreted with the commands of the First Amendment clearly in mind." State v. Tellez, 141 Wn. App. 479, 482, 170 P.3d 75 (2007) (quoting State v. Williams, 144 Wn.2d 197, 207, 26 P.3d 890 (2001)). Only "true threats" may be prohibited. State v. J.M., 144 Wn.2d 472, 477, 28 P.3d 720 (2001). A "true threat" is "a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted . . . as a serious expression of intention to inflict bodily harm upon or to take the life of another person." State v. Kilburn, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004). The harassment statute

has been defined as prohibiting only true threats. J.M., 144 Wn.2d at 478.

In the present case, the Certification for Determination of Probable Cause reflects that Robinson told the police that O'Cain stated, "Bitch, get ready, you're getting ready to die tonight" as he began assaulting her. CP 4. However, Robinson did not testify at trial, and evidence of this threat was not offered through any other witness. There was no evidence presented to the jury of any threat communicated to Robinson, only evidence of the assaultive acts.

The State agrees that State v. Hanson, 126 Wn. App. 276, 108 P.3d 177 (2005), is distinguishable. In that case, the victim initially told the police that the defendant threatened her not to call the police, and that if her husband found her at the police station he would kill her. Id. at 277. Thus, in that case there was evidence of a threat communicated to the victim.

Because there is no substantial evidence to support Count III, the conviction for felony harassment must be vacated. Based on this concession, there is no need to address O'Cain's alternative claims of double jeopardy and same criminal conduct.

2. O'CAIN FAILED TO PRESERVE AN OBJECTION TO THE TESTIMONY OF MEDICAL PROVIDERS AS VIOLATING HIS RIGHT TO CONFRONTATION.

For the first time on appeal, O'Cain contends that admission of the victim's statements for purposes of medical treatment violated his right to confront witnesses under the federal and state constitutions. Because there was no manifest constitutional error in this case, O'Cain's claim was not preserved below.

In general, an appellate court will not consider contentions made for the first time on appeal. State v. Guloy, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985). The supreme court recently adhered to this rule in State v. Powell, 166 Wn.2d 73, 81-82, 206 P.3d 321 (2009), explaining that "[w]e will not reverse the trial court's decision to admit evidence where the trial court rejected the specific ground upon which the defendant objected to evidence and then, on appeal, the defendant argues for reversal based on an evidentiary rule not raised at trial."

In the present case, O'Cain did not object to the hearsay statements that were admitted as violating his right to confrontation. The objection at trial was that the evidence was not relevant because the defendant was not identified as the victim's assailant in those statements. RP 6/23/10 24-25. That objection did not give

notice to the trial court of any Confrontation Clause claim. O'Cain failed to preserve his objection to the out-of-court statements as violating his right to confrontation.

Nonetheless, a Confrontation Clause claim may be raised for the first time on appeal if the defendant establishes a manifest error affecting a constitutional right pursuant to RAP 2.5(a). State v. Kronich, 160 Wn.2d 893, 900, 161 P.3d 982 (2007). The defendant must establish both that a constitutional error occurred and that the error had practical and identifiable consequences. Id. at 901. O'Cain cannot meet this burden in the present case. For the reasons stated below, the evidence was not testimonial and there was no constitutional violation. O'Cain has failed to establish a manifest error affecting a constitutional right.

3. ADMISSON OF THE STATEMENTS OF THE VICTIM TO MEDICAL PROVIDERS DID NOT VIOLATE THE FEDERAL RIGHT TO CONFRONTATION.

O'Cain argues that admission of the victim's statements to the medical providers made for purposes of medical treatment violated his Sixth Amendment right to confrontation. O'Cain's claim should be rejected. State and federal courts that have addressed

the issue have concluded that statements to medical providers for purposes of diagnosis and treatment are not testimonial statements and do not violate the right to confrontation contained in the Sixth Amendment.

The United States Supreme Court has not yet been called upon to squarely decide whether statements made for the purpose of medical diagnosis are testimonial. However, in recent decisions, the Court has strongly indicated that it does not view such statements as being testimonial. In Giles v. California, 554 U.S. 353, 376, 128 S. Ct. 2678, 2693, 171 L. Ed. 2d 488 (2008), the Court stated, "Statements to friends and neighbors about abuse and intimidation and statements to physicians in the course of receiving treatment would be excluded, if at all, only by hearsay rules" because such statements are not testimonial. In Melendez-Diaz v. Massachusetts, ___ U.S. ___, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009), in a footnote distinguishing cases that had been cited by the dissent, the majority of the Court stated, "Others are simply irrelevant, since they involved medical reports created for treatment purposes, which would not be testimonial under our decision today." More recently, in Michigan v. Bryant, ___ U.S. ___, 131 S. Ct. 1143, 1157 n.9, 179 L. Ed. 2d 93 (2011), the Court listed

statements for purposes of medical diagnosis and treatment as an example of statements that are "by their nature, made for a purpose other than use in a prosecution."

Washington cases that have addressed this issue have concluded that statements made for purposes of medical diagnosis and treatment are not testimonial. In State v. Fisher, 130 Wn. App. 1, 13, 108 P.3d 1262 (2005), review denied, 156 Wn.2d 1013 (2006), the court held that the child victim's statements to a treating physician that the defendant struck him were not testimonial where it was clear that the doctor's questions were part of her efforts to provide proper treatment. In State v. Moses, 129 Wn. App. 718, 730, 119 P.3d 906 (2005), review denied, 157 Wn.2d 1006 (2006), this Court held that the victim's statements to a treating doctor at the emergency room that the defendant had hit and kicked her in the face were not testimonial because the purpose of the examination was for medical treatment of the victim's significant injuries. In State v. Sandoval, 137 Wn. App. 532, 538, 154 P.3d 271 (2007), the court held that the victim's statements to emergency room staff that the defendant assaulted her were not testimonial. The court explained that statements made for the purpose of medical diagnosis are not testimonial where they are

made for diagnosis and treatment purposes, where there is no indication that the witness expected the statements to be used at trial, and where the doctor is not employed by the State. Id. at 537.

Significantly, the Ninth Circuit upheld this Court's conclusion in Moses that statements for purposes of medical diagnosis are not testimonial. Moses v. Payne, 555 F.3d 742 (9th Cir. 2009). On habeas review, the Ninth Circuit held that the state appellate court's conclusion—that statements made by the victim to her doctor following an incident of domestic violence were not testimonial—was a reasonable application of established federal law. Id. at 755. Other federal courts that have addressed this issue are in agreement that statements made for the purpose of medical diagnosis are not testimonial. United States v. Santos, 589 F.3d 759, 763 (5th Cir. 2009); United States v. Peneaux, 432 F.3d 882 (8th Cir. 2005).⁴

O'Cain argues that the "Davis factors" demonstrate that the victim's statements to medical personnel were testimonial. However, the test set forth in Davis v. Washington, is a test that

⁴ See also T. Harbinson, Crawford v. Washington and Davis v. Washington's Originalism: Historical Arguments Showing Child Abuse Victims' Statements to Physicians Are Nontestimonial and Admissible as an Exception to the Confrontation Clause, 58 Mercer L. Rev. 569, 632 (2007).

applies to statements made in response to interrogations by *police agents*. 547 U.S. 813, 826, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006). The medical personnel in this case were not police agents. The test set forth in Davis for police interrogations is inapplicable.

Moreover, even if the test applied to private medical providers, the statements here were made under circumstances objectively indicating that the primary purpose of the interview was to enable the medical personnel to assist in responding to a medical emergency. State v. Pugh, 167 Wn.2d 825, 832, 225 P.3d 892 (2009). At the time of the statements, Robinson was in need of immediate medical assistance. She was immediately treated by an aid crew at the scene and then transported to the hospital via ambulance. Her intent, objectively viewed, was to obtain medical treatment. The medical staff's intent, objectively viewed, was to properly diagnosis her injuries in order to provide her with appropriate treatment. Her statements as to the injuries that she received were necessary for the medical staff to determine what diagnostic tests to perform. Her statements made to medical personnel in order to obtain medical treatment were not testimonial. O'Cain's challenge to admission of this evidence is not a

constitutional error under the federal constitution that may be raised for the first time on appeal.

4. ADMISSION OF THE STATEMENTS OF THE VICTIM TO MEDICAL PROVIDERS DID NOT VIOLATE THE STATE CONSTITUTION.

O'Cain argues that admission of the victim's statements to the medical providers made for purposes of medical treatment violated article I, section 22 of the Washington state constitution. O'Cain's claim should be rejected. Analysis of the Gunwall⁵ factors does not support an independent state constitutional analysis. Moreover, any error in the admission of this evidence was harmless where there was overwhelming untainted evidence that supports the jury's verdicts.

O'Cain's argument that the state constitution must be interpreted differently than the federal constitution does not withstand scrutiny. Two state supreme court cases have suggested that the state constitution's right to confrontation could be interpreted independently, but both cases held that the state constitution was, under the facts of those cases, no broader. In

⁵ 106 Wn.2d 54, 720 P.2d 808 (1986).

State v. Shafer, 156 Wn.2d 381, 392, 128 P.3d 87 (2006), the court held that the child victim's statements to her mother and a family friend were not testimonial, and that their admission did not violate the state constitution. In State v Pugh, 167 Wn.2d at 845, the court held that the victim's statements to the 911 operator were not testimonial and that their admission did not violate the state constitution. Thus, while both of these cases suggested that an independent analysis of the state constitution *may* be warranted, neither of them actually interpreted the state constitution to provide broader protection under the facts at issue than the federal constitution. As the state supreme court recently explained in State v. Martin, ___ Wn.2d ___, 2011 WL 1896784 (May 19, 2011), a court addressing a claim that the state constitution is broader than the federal constitution must analyze the state constitutional provision in the context of the case before it.

Even where an independent analysis of the state constitution has previously been employed, consideration of the Gunwall factors helps guide the court's inquiry under the facts presented in a particular case. Madison v. State, 161 Wn.2d 85, 93 n.5, 163 P.3d 757 (2007). The Gunwall factors are (1) the textual language, (2) differences in the texts, (3) constitutional and common law

history, (4) preexisting state law, (5) structural differences and (6) matters of particular state and local concern. State v. Foster, 135 Wn.2d 441, 458, 957 P.2d 712 (1998).

Turning to the first two factors, which focus on the text of the federal and state constitutions, independent state constitutional analysis is not warranted because the critical term is the same in both constitutions. Article I, section 22 of the state constitution provides that "[i]n criminal prosecutions, the accused shall have the right . . . to meet the witnesses against him face to face." It is similar, but not identical, to the Confrontation Clause of the Sixth Amendment, which reads, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. While the state provision guarantees the accused the right to "meet face to face" and the federal provision guarantees the accused the right to "confront," both constitutional provisions apply to "witnesses" against the accused. Because the drafters of the state constitution adopted the term "witnesses" from the federal constitution, it should be presumed that the drafters intended the term to have the same meaning.

As the United States Supreme Court has reasoned, only testimonial statements cause the declarant to be a "witness" within the meaning of the Confrontation Clause. Davis, 547 U.S. at 821. If a statement is not testimonial, it is not subject to the Confrontation Clause. Id. The result should be the same under the state constitution, because the critical term, "witness" is the same. The fact that the state constitution requires a "face to face" meeting with "witnesses" does not alter the definition of "witness" itself. The victim's statements to the medical providers would not violate either the federal or state constitution because the statements were not testimonial and admission of the statements did not make the victim a "witness against [the accused]." Factors one and two do not favor a broader interpretation of the state constitution in this case.

Turning to the third factor, a plurality of the state supreme court has previously noted that constitutional history is not helpful in determining whether the drafters intended the state constitution to be broader than the federal Confrontation Clause. Foster, 135 Wn.2d at 460. In his concurrence and dissent in State v. Foster, Justice Alexander looked to Massachusetts, after determining that the "face to face" language in the Washington constitution was derived from that state's 1780 constitution, which was one of the

original state declarations of rights. Foster, 135 Wn.2d at 490 (Alexander, J., concurring in part and dissenting in part). The Massachusetts high court held that the state's constitution is not broader than the federal right to confrontation in cases involving the hearsay rules and its exceptions. Commonwealth v. Edwards, 444 Mass. 526, 830 N.E.2d 158 (2005). Constitutional history does not favor a broader interpretation of the state constitution in this case.

The fourth factor is preexisting state law. O'Cain argues that the question of whether out of court statements violate the state constitution must be determined by examining Washington law at the time that the state constitution was adopted. The state constitution was adopted in 1889. As of that time, there were only nine years of reported decisions by the Supreme Court of the Washington Territory. Obviously, the court did not address all possible constitutional issues in those nine years. O'Cain has cited to no pre-1889 Washington case in which statements for the purpose of medical treatment were held to violate the right to confront witnesses. However, in State v. Glass, 5 Or. 73, 79 (1873), the Oregon Supreme Court recognized that statements made by a sick person to a medical attendant as to the nature of

her malady were admissible.⁶ Also, in White v. Illinois, the United States Supreme Court referred to the hearsay exception for statements made for the purpose of medical treatment as a "firmly-rooted" exception. 502 U.S. 346, 355 n.8, 112 S. Ct. 736, 116 L. Ed. 2d 848 (1992). Moreover, in State v. Ortega, 22 Wn.2d 552, 563, 157 P.3d 320 (1945), the state supreme court noted that the law can evolve, stating that "the privilege of confrontation has at all times had its recognized exceptions, and these exceptions are not static, but may be enlarged from time to time if there is no material departure from the reason underlying the constitutional mandate guaranteeing to the accused the right to confront the witnesses against him."

The fifth factor supports an independent constitutional analysis in every case. Foster, 135 Wn.2d at 458. In regard to the sixth factor, the concerns underlying the right to confrontation are not unique to Washington. Id. at 465.

In sum, only the fifth Gunwall factor supports an independent analysis of the state constitution in regard to the question presented

⁶ In his opinion in Foster, Justice Alexander noted that Washington's confrontation clause is identical to Oregon's. 135 Wn.2d at 474.

here. Where statements for the purpose of medical treatment are at issue, the state constitution does not provide broader protection than the federal Confrontation Clause. Because the victim's statements to the medical providers were not testimonial, their admission did not violate either the federal or the state right to confrontation of witnesses. O'Cain's challenge to admission of this evidence is not a constitutional error under the state constitution that may be raised for the first time on appeal.

Even if admission of the victim's statements to medical providers violated O'Cain's right to confrontation under either the federal or state constitution, the error was harmless beyond a reasonable doubt. A constitutional error is harmless if the reviewing court is convinced beyond a reasonable doubt that any reasonable jury would reach the same result absent the error, and where the untainted evidence is so overwhelming it necessarily leads to a finding of guilt. State v. Easter, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996).

Robinson's statements to the 911 operator established that O'Cain had assaulted her. The visible injuries that the law

enforcement and medical personnel observed—the large laceration with a piece of glass still embedded in it, the swelling in her jaw, the blood in her nasal passage—corroborated the statements made in the 911 call that she had been assaulted. There is no reasonable question that the injuries to her face and jaw were caused by an offensive touching sufficient to support the conviction for assault in the fourth degree as to Count I. Likewise, there is no reasonable question that the large laceration constituted substantial bodily harm sufficient to support the conviction for assault in the second degree as to Count II. The statements to medical personnel had no bearing on Count IV, witness tampering. This Court can conclude beyond a reasonable doubt that any constitutional error in admitting Robinson's statements to the medical providers was harmless beyond a reasonable doubt in light of the overwhelming untainted evidence that O'Cain committed assault in the fourth degree, assault in the second degree and witness tampering.

D. CONCLUSION.

O'Cain's convictions for Counts I, II and IV should be affirmed. The matter should be remanded for vacation of Count III and resentencing.

DATED this 20th day of June, 2011.

Respectfully submitted,

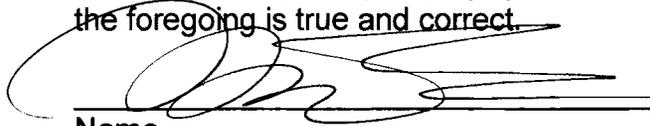
DANIEL T. SATTERBERG
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. O'CAIN, Cause No. 65735-6-I, in the Court of Appeals, Division I, for the State of Washington.

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



Name
Done in Seattle, Washington

06/20/2011
Date

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