

No. 69816-8-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JAKE SIGURDSON,

Appellant.

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

BRIEF OF APPELLANT

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SNOHOMISH COUNTY
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A. ASSIGNMENT OF ERROR

The Court denied Jake Sigurdson his Sixth Amendment right to confront witnesses.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The Confrontation Clause of the Sixth Amendment bars the admission of testimonial statements unless the declaring witness is subject to cross-examination under oath. In short, this protection prevents the State from offering the testimony of helpful witnesses without first subjecting those witnesses to cross-examination. Did the admission of court documents offered to prove Mr. Sigurdson failed to appear on a prior occasion without requiring testimony of the person who prepared the documents deny Mr. Sigurdson his right to confrontation?

C. STATEMENT OF THE CASE

The State charged Mr. Sigurdson with one count of bail jumping. CP 41. To prove its case, the State sought to admit a number of documents without calling the person who prepared them for purposes of proving Mr. Sigurdson had failed to appear. RP 4-5. For example the State offered a clerk's minute entry from the hearing Mr.

Sigurdson allegedly failed to appear for, but did not wish to call the clerk who prepared it. Ex 7.

Mr. Sigurdson objected to that procedure, arguing it violated his Sixth Amendment right to confront witnesses. RP 5-7. Mr. Sigurdson pointed out that the cases on which the State relied predated and were inconsistent with *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). RP 5-7.

The trial court nonetheless admitted the evidence. RP 15.

After the court concluded the documents were admissible without the need for witness testimony, Mr. Sigurdson waived his right to a jury trial. RP 21-22.

The court relying on the challenged exhibits and found Mr. Sigurdson guilty of bail jumping. RP 24-25.

D. ARGUMENT

The admission of certified records in lieu of live testimony violated Mr. Sigurdson's Sixth Amendment right to confrontation.

1. The Confrontation Clause bars admission of testimonial statements unless the declarant is subject to cross-examination.

The Sixth Amendment's Confrontation Clause dictates the procedure by which the prosecution must prove its case and it is rooted

in long-standing common law tradition. *Crawford*, 541 U.S. at 43-50; U.S. Const. amend. VI; Const. Art. I, § 22. The requirements of confrontation are live testimony, by the declaring witness, under oath, with the opportunity for cross-examination. If an out-of-court statement is testimonial in nature, it may not be introduced against the accused at trial unless the witness who made the statement is unavailable and the accused has had a prior opportunity to confront that witness.

Bullcoming v. New Mexico, _ U.S. _, 131 S. Ct. 2705, 2713, 180 L. Ed. 2d 610 (2011). This is so regardless of whether a document falls within a firmly rooted hearsay exception. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009) (noting business records have historically been admissible not because they fall within a hearsay exception, but because they are not testimonial).

The “principal evil” at which the Confrontation Clause is directed is the use of an *ex parte* statement, such as an affidavit or letter, made for the purpose of establishing or proving some fact. *Crawford*, 541 U.S. at 50-51. Affidavits or other statements “that declarants would reasonably expect to be used prosecutorially” fall within the “core class” of testimonial statements that are inadmissible absent confrontation. *Id.* So too, statements the purpose of which “is to

establish or prove past events potentially relevant to later criminal prosecution.” *Davis v. Washington*, 547 U.S. 813, 822, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006). The Court has recognized:

The text of the [Sixth] Amendment contemplates two classes of witnesses—those against the defendant and those in his favor. The prosecution *must* produce the former the defendant *may* call the latter. Contrary to respondent's assertion, there is not a third category of witnesses, helpful to the prosecution, but somehow immune from confrontation.

Melendez-Diaz, 557 U.S. at 313-14.

The records offered here fall within this nonexistent third class.

2. Because they are testimonial, the exhibits offered to prove Mr. Sigurdson failed to appear deprived him of his right to confront witnesses.

In this case, the clerk who prepared the minutes of the prior hearing testified to past facts against Mr. Sigurdson, by virtue of the statements made in the minute entry. That clerk offered testimony that Mr. Sigurdson did not appear as required. So too, the prosecutor herself testified, by virtue of a motion for a bench warrant that Mr. Sigurdson had not appeared as required. Finally, the trial judge himself testified by virtue of the signed bench warrant. Each of these witnesses was permitted to testify to past facts. Yet none of those witnesses was subject to cross-examination as required by the Sixth Amendment. Indeed, the last two

could not be. Mr. Sigurdson was denied his right to confront the witnesses against him.

Rather than employ the constitutional analysis developed in cases such as *Crawford* and *Melendez-Diaz*, the court relied on the decision in *State v. James*, 104 Wn. App. 25, 15 P.3d 1041 (2000). *James* predates *Crawford* and relied upon the very analysis which *Crawford* rejected. *James* concluded court documents were admissible because “a hearsay statement does not violate the confrontation clause if the declarant is unavailable and the statement bears adequate indicia of reliability.” *James*, 104 Wn. App. at 31. The “indicia of reliability” analysis comes from *Ohio v. Roberts*, 448 U.S. 56, 64, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980). *Crawford* expressly rejected that standard as inconsistent with the plain text of the Confrontation Clause.

Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes

Crawford, 541 U.S. at 62. Thus, it does not matter whether a document falls within a hearsay exception or whether it has “indicia of reliability,” the Sixth Amendment requires confrontation. The trial court’s ruling denied Mr. Sigurdson his right to confront witnesses.

3. The Court must reverse Mr. Sigurdson's conviction.

An error resulting in the denial of a constitutional right, such as a fair trial, requires reversal unless the State proves beyond a reasonable doubt the misconduct did not contribute to the verdict obtained. *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967). Following a confrontation violation, this analysis requires a court to assess whether it is possible the factfinder relied on the testimonial statement when reaching a verdict. *United States v. Alvarado-Valdez*, 521 F.3d 337, 342 (5th Cir. 2008); *see also, Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986) (“The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt”). The State cannot meet the standard here.

The documentary evidence was the entirety of the State's case. Thus, it is not only possible that the court relied on the evidence to convict Mr. Sigurdson, it is a certainty. The error requires reversal of Mr. Sigurdson's conviction.

E. CONCLUSION

For the reasons above, this Court should reverse Mr. Sigurdson's conviction.

Respectfully submitted this 24th day of May, 2013.



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DIVISION I**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 69816-8-I
)	
JAKE SIGURDSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 24TH DAY OF MAY, 2013, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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