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No. ~~69640-8-I~~

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

V.

TAMARA TRYON,

Appellant.

STATE'S RESPONSE

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I. INTRODUCTION

State v. Saunders, 177 Wn. App. 259, 311 P.3d 601 (2013), as Tryon concedes, mandates denial of her assignment of error about the to-convict instruction for kidnapping. Because Tryon fails to show why the Saunders decision should be abandoned, the court should apply Saunders and hold that the definitions for abduct do not need to be included in a kidnapping to-convict instruction.

Tryon also fails to demonstrate that the trial court erred when it denied her request for a "citizen's arrest" instruction. No evidence was presented at trial that – at the time she chased, assaulted, and seized Osburn – Tryon had a reasonable suspicion that Osburn was involved in a robbery or a misdemeanor theft and breach of the peace, elements required for a citizen's arrest. Instead of showing that Osburn had committed a crime, the evidence is uncontradicted that he was being held as unwilling collateral for the money Jefferson and Tryon advanced to a third person to buy drugs for them and did not breach the peace. If any breach of the peace took place it took place when Jefferson and Tryon ran Osburn down and dragged him back to their car.

II. ISSUES PRESENTED FOR REVIEW

1. Did the to-convict instruction for kidnapping contain all of the elements of the crime and serve as a "yardstick" by which the jury could measure the evidence to determine Tryon's guilt or innocence?

2. Where the standards for a citizen's arrest differ for felonies and misdemeanors, does Tryon's appellate argument that a misdemeanor theft occurred negate her assignment of error that the trial court erroneously denied Tryon's request for an instruction that set out the elements for a citizen's arrest for a felony?

3. When read as a whole, did the instructions require the jury to find that Tryon knowingly abducted Osburn without lawful authority?

III. STATEMENT OF THE CASE

On July 17, 2012, Scott Osburn ran out of gas for his car, RP 2 at 11, and walked to the Shell station with his half-brother, Jake Mogan, to try to get money from passer-bys. RP 2 at 11, 12. Mogan told him that they were going to get a ride with a guy and a girl, Jefferson and Tyron (RP 2 at 28, 164) to Sedro-Woolley. RP2 at 14-15. Jefferson, who was driving, asked Mogan if he could get any drugs. RP 2 at 16. Osburn "never actually had any conversations with [Jefferson and Tryon]." RP 2 at 48. The car stopped on Murdock Street. RP 2 at 17. Jefferson gave Mogan some money. RP 2 at 18, 19. Osburn saw at least $100. RP 2 at 57.

Jefferson said that Osburn could not go with Mogan "because he's collateral." RP 2 at 19. Osburn "was scared because [he] was collateral." RP 2 at 56. Osburn did not leave the car because he was locked in. RP 2 at 19.

Crabtree testified that Mogan came to his place and told him that he "had just got done jacking two people for their money." RP 3 at 122. Crabtree admitted to being housed with Jefferson for three weeks in the Skagit County jail after the prosecution interview but before a defense interview, where he told Jefferson he was "willing to help him out." RP 3 at 136.

After 20 or 30 minutes Jefferson and Tyron "started getting really antsy and concerned that they were – that they were going to get ripped off and that [Mogan] wasn't coming back." RP 2 at 20. Osburn unlocked the car door and ran. RP 2 at 22. He heard Jefferson yelling behind him and eventually ran – or tried to run –into a house. RP 2 at 22, 24, 90, 119, 129. Osburn cried, "help, help, help." RP 2 at 63, 137. Kyle Deerkop saw a person matching Osburn's description run by yelling for help. RP 2 at 77. Jefferson ran after Osburn, grabbed him, and pulled him back to the car. Tryon helped Jefferson "throw him in the car." RP 2 at 26, 60, 82, 139. Tyron slapped and yelled at Osburn. RP 2 at 140. RP 2 at 167. Tyron told

Jefferson, "hurry up and go." RP 2 at 159. Jefferson and Tryon then sped off. RP 2 at 80.

Tyron sat on Osburn in the back seat. RP 2 at 27. "They" said, "You fucked up. You fucked with the wrong people. We are Lumi Indians. We don't fuck around. We straight do away with you." RP 2 at 27. Osburn told them, "I have no involvement in this." Jefferson and Tyron each asked Osburn if he would help them locate Mogan. RP 2 at 21-22, 61. Tyron continued to sit on Osburn. RP 2 at 29 ("Physically at that point in time I was trying to get my head – trying to get out from under.")

An officer responded to a 911 call and observed thrashing in the back seat of the car before it pulled over. RP 2 at 176. Jefferson offered Osburn "100 bucks or more" if he would keep cool and act normal. RP 2 at 30. When the car stopped, Osburn exploded out. RP 2 at 177. Osburn suffered a cut lip and some marks on his body, RP 2 at 31, including the beginning of a black eye and scratches. RP 2 at 168-69. Osburn was still emotional and his shirt was torn and misshapen, as if it had been pulled. RP 2 at 168.

Osburn does not know what Mogan did with the money he got from Jefferson and Tyron. RP 2 at 71. Crabtree admitted that "Mogan

never told [him] anything that as far as Osburn knowing in advance that something was going to happen." RP 3 at 147.

The defense hoped to argue that Tyron made a citizen's arrest of Osburn because she and Jefferson had been robbed. RP 3 at 120. After the parties had rested, the court declined to give a citizen's arrest instruction. The defense objected. RP 4 at 9. With respect to the to-convict instruction for kidnapping, the defense only objected to the inclusion of "to facilitate the commission of Delivery or Possession of a Controlled Substance or flight thereafter" in the to-convict instruction. RP 4 at 10.

IV. ANALYSIS

A. Definitions of essential elements of a crime do not need to be included in a to-convict instruction.

In a footnote on page 1 of her appellant's brief, Tyron concedes that State v. Saunders, 177 Wn. App. 259, 311 P.3d 601 (2013), is controlling and states that this appeal is filed "in anticipation the Washington Supreme Court will grant review and reverse Saunders."

The Saunders court distinguished the essential elements rule as it is applied to charging documents and to-convict instructions and held that definitions for abduct did not need to be included in a kidnapping to-convict instruction:

> The purpose of the "essential elements" rule in the context of a to-convict instruction is to ensure that

> the jury is not left guessing at the meaning of an element of the crime and that the State is not relieved of its burden of proving each element of the crime. By contrast, the goal of the "essential elements" rule in the context of a charging document is to give a defendant notice of the nature of the crime charged so the defendant can prepare a defense. In applying the rule we are guided by the purpose to be served. As such, we reject Jeffrey Saunders' argument that his conviction for second degree kidnapping must be reversed under State v. Johnson, 172 Wn. App. 112, 297 P.3d 710 (2012), *review granted*, 178 Wn.2d 1001 (2013), where we held that the definition of "restrain" was an "essential element" of unlawful imprisonment that must be included in the charging document. Holding that *Johnson* does not control in this challenge to the to-convict instruction, that the jury was not left guessing at the meaning of an element of the crime, and that the State was not relieved of its burden of proof, we affirm.

State v. Saunders, 177 Wn. App. at 260-261.

The facts before the Saunders court are nearly identical to the relevant facts presented here. In Saunders, two erstwhile bounty hunters stopped and seized a Ford Explorer and two passengers, Valdez and Valdez, Jr.. Saunders testified that he "decided to arrest Valdez for attempted vehicular assault because Valdez "accelerated, nearly running over his son Chet." State v. Saunders, 177 Wn. App. at 263.[1] The passengers were placed, at gunpoint, in "custody," in each of two cars,

[1] That Saunders had real time knowledge of the alleged felony that he "arrested" Valdez for is, as is discussed below, a significant distinction between Saunders and this case.

before the bounty hunters drove them and the Explorer away. State v. Saunders, 177 Wn. App. at 262. Saunders was charged with kidnapping. The court instructed the jury:

> To convict the defendant, Jeffrey Saunders, of the crime of kidnapping in the second degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about the 10th day of September, 2010, the defendant intentionally abducted Salvador Valdez; and
>
> (2) That this act occurred in the State of Washington.
>
> If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.
>
> On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

State v. Saunders, 177 Wn. App. at 263-264.

Following his conviction, Saunders appealed, arguing that the to-convict instruction was flawed because:

> . . . (1) the word "abduct" is defined in RCW 9A.40.010(1) as "to restrain" a person by threatening to use deadly force; (2) "restrain" is further defined in RCW 9A.40.010(6) as (a) restricting a person's movements (b) without consent, (c) without legal authority, and (d) in a manner that interferes substantially with his or her liberty; (3) each portion of the definition of "restrain" requires the mens rea of knowledge; and

> (4) because the definitions of "abduct" and "restrain" were not included in the to-convict instruction, but were instead set out in a separate instruction, the State was relieved of its burden of proving Saunders knew he did not have legal authority to restrict the victims' movements.

State v. Saunders, 177 Wn. App. at 264 (footnotes omitted). In denying Saunders' appeal, the Saunders court affirmed that Washington courts have long held that the statutory definition of an element of a crime does not need to be included in the to-convict instruction. State v. Saunders, 177 Wn. App. at 267.

Tyron re-presents the Saunders argument here:

> The "to convict" instruction for the kidnapping charge unfairly relieved the State of proving every essential element of the kidnapping charge beyond a reasonable doubt by failing to include as essential elements that Tryon (1) *knowingly* acted without consent; (2) *knowingly* acted without lawful authority; and (3) *knowingly* acted in a manner that substantially interfered with Osburn's liberty.

Appellant's Brief at 8.

Except for the fact that Tryon was charged with kidnapping in the first degree, the kidnapping to-convict instruction used in Tryon's case mirrors the essential elements of kidnapping presented in the Saunders to-convict instruction:

> To convict the defendant of the crime of kidnapping in the first degree, as charged in Count

> 2, each of the following three elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about July 17, 2012, the defendant intentionally abducted Scott Osburn,
>
> (2) That the defendant abducted that person with intent (a) to hold the person for ransom or reward, or . . .
>
> (3) That any of these acts occurred in the State of Washington.
>
> . . .

CP 71, Instruction 21.

Like the to-convict instruction in Saunders, Tryon's to-convict instruction mirrored the statute defining kidnapping in the first degree, and both "abduct" and "restrain" were defined in a separate instruction.

Tryon's brief argues that the court should find Saunders was wrongly decided. Appellant's brief at 15-17. However, Tryon's argument is not supported by the precedent she cites.

Tryon attempts to distinguish State v. Lorenz, 152 Wn.2d 22, 93 P.3d 133 (2004) on grounds that the definition under scrutiny in that case was "sexual gratification" and not "abduct." Lorenz like Saunders was a challenge to a to-convict instruction and held that the statutory definition of an element of a crime need not necessarily be included in a to-convict instruction. See State v. Lorenz, 152 Wn.2d at 36 ("We hold that "sexual gratification" is not an essential element to the crime of first degree child molestation but a definitional term that clarifies the meaning of the

essential element, "sexual contact.") State v. Stevens, 158 Wn.2d 304, 308, 143 P.3d 817 (2006), also cited by Tryon, does not change the essential elements rule for instructions. It also affirms that definitions need not be included in a to-convict instruction.

State v. Warfield, 103 Wn. App. 152, 154, 5 P.3d 1280 (2000), also cited by Tryon, was a stipulated facts trial and did not discuss the essential elements rule as it applies to instructions.

In citing State v. Fisher, 165 Wn.2d 727, 754-755, 202 P.3d 937 (2009), Tryon ignores the Fisher court's confirmation that "[a] proper 'to convict' instruction need not contain all pertinent law such as "*definitions of terms*, duties of the jury to disregard statements that are not evidence, and so forth.") (italics in original.)

Contrary to Tryon's argument, these cases all support the conclusion that Tryon's to-convict instruction included the essential elements for kidnapping. *See* State v. Saunders, 177 Wn. App. at 270 ("Jury instructions are sufficient if they are supported by substantial evidence, allow the parties to argue their theories of the case, and when read as a whole properly inform the jury of the applicable law.") *citing* State v. Clausing, 147 Wn.2d 620, 626, 56 P.3d 550 (2002).

B. Tyron was not entitled to a "citizen's arrest" instruction because it was not supported by any evidence in the record.

Tryon argues that the court should have given the jury her "citizen's arrest" instruction, which provided:

> A citizen's arrest requires reasonable and probable cause to believe the arrested party guilty of a felony before the arrest will support a search and seizure of evidence of a crime.

CP 43.[2]

A defendant is entitled to jury instructions if they are supported by the evidence. State v. Staley, 123 Wn.2d 794, 803, 872 P.2d 502 (1994). The corollary to this rule is that a defendant is not entitled to a jury instruction that is not supported by the evidence. *See* State v. Ager, 128 Wn.2d 85, 93, 904 P.2d 715 (1995) ("However, a defendant is not entitled to an instruction which inaccurately represents the law or for which there is no evidentiary support.")

1. The trial court correctly perceived that the evidence did not support Tryon's proposed citizen's arrest instruction.

First, Tryon asked the trial court to give a citizen's arrest instruction that was based on her theory that Osburn had committed a felony, a robbery.

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[2] Tryon did not propose an instruction providing definitions for "probable cause" or "search and seizure of evidence of a crime." Nor did she propose an instruction for a citizen's arrest for a misdemeanor.

A private citizen may properly arrest another without a warrant when the citizen has reasonable and probable cause to believe that the other was guilty of a felony. State v. Harp, 13 Wn. App. 239, 242, 534 P.2d 842 (1975) citing State v. Jack, 63 Wn.2d 632, 388 P.2d 566 (1964); Jack v. Rhay, 366 F.2d 191 (9th Cir. 1966). thus, Tryon proposed an instruction that read:

> A citizen's arrest requires reasonable and probable cause to believe the arrested party guilty of a felony before the arrest will support a search and seizure of evidence of a crime.

CP 43.

However, as a matter of law, no robbery could have been committed under the facts presented to the trial court.

Robbery requires that the perpetrator "unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone." RCW 9A.56.190. The only evidence presented at trial is that she and Jefferson entered into an amicable agreement with Mogan and willingly gave Mogan the money to buy drugs for them. Thus, Tryon's issue number three now frames Osburn's crime as theft and not as a robbery. Appellant's Brief at 2 ("the complaining witness and an accomplice stole her money").

Tryon did not seek to establish that Osburn had committed any other felony and because the elements necessary to effect a citizen's arrest for a misdemeanor are different from those for a felony, the trial court properly denied Tryon's proposed citizen's arrest instruction.

Second, the totality of the evidence does not support a finding that probable cause existed to find that Osburn committed any crime.

Probable cause exists when the arresting officer is aware of facts and circumstances, based on reasonably trustworthy information, sufficient to cause a reasonable officer to believe that a suspect has committed or is committing a crime. State v. Afana, 169 Wn.2d 169, 182, 233 P.3d 879 (2010). This standard applies to citizen's arrests. *See* State v. Darst, 65 Wn.2d 808, 811-12, 399 P.2d 618 (1965); State v. Jack, 63 Wn.2d at 637 (The probable cause standard for felonies applicable to police officers has been applied when the arrest is made by a citizen.)

Thus, Tryon had to have in her possession – at the time of any alleged citizen's arrest – knowledge that Osburn had committed a crime. She did not possess such information.

The record shows that at the time she held Osburn, Tryon only knew that (1) Tryon and Jefferson had entered into an agreement with Mogan to buy drugs for her and Jefferson, (2) Mogan had Osburn ride along, (3) Jefferson gave Mogan at least $100 to buy the drugs, (4) Tryon

and Jefferson told Osburn that he was being held as collateral for the money they had advanced to Mogan, (5) Osburn did not participate in the deal between Tryon, Jefferson, and Mogan, (6) Mogan did not return with the money, (4) Tryon and Jefferson exhibited concern about Mogan's failure to return, and (5) Osburn escaped from the car.

Tryon cannot rely on a hearsay statement that Mogan told Crabtree that he had "jacked" two people for their money as the keystone for her claim that probable cause existed. When Mogan went to Crabtree's house, Tryon was in the car, chasing Osburn, or being arrested. She certainly was not present at Crabtree's home. Therefore, Tryon did not learn of what Mogan told Crabtree until after she was arrested. Because Tryon did not learn of Crabtree's statements until after her arrest, she could not use this later-acquired information to establish probable cause for a citizen's arrest of her escaping collateral.

At best, the evidence known to Tryon at the time she held, chased, assaulted, and further detained Osburn establishes that Osburn was a witness to a crime. It does not establish probable cause to believe that Osburn committed a crime or that he was an accomplice[3] to any theft.

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[3] Contrary to Tryon's summary of the evidence, in which she argues an "accomplice theory," Jefferson and Tryon did not contact Mogan **and** Osburn in an effort to obtain drugs. See Appellant's Brief at 26. Osburn, the only person to provide evidence of the encounter, testified that

Third, Tryon never intended to turn Osburn over to the police.

The intent to deliver a person to the police following a citizen's arrest is a logical requirement for a citizen's arrest. Yet, Tryon identifies no evidence in the record that she ever intended to deliver Osburn to civil authorities. Instead, the evidence shows – and as she argues – Tryon coerced Osburn through threats into agreeing to help her and Jefferson locate Mogan. See Appellant's Brief at 22 ("it would be reasonable for someone who had been ripped off as Tryon had to believe she had a legal right to detain the thief and/or his accomplice (i.e., make a "citizen's arrest") in an effort to recover the money.") The evidence also shows that when Tryon and Jefferson observed the police car following them, instead of seeking to deliver Osburn to the police, they offered Osburn "100 bucks or more" if he would keep cool and act normal.

Thus, Tryon was concerned only about preserving her collateral and about being charged with a violation of the Uniform Controlled Substances Act. No evidence suggests that Tryon thought about making a citizen's arrest.

Jefferson and Tryon contacted Mogan and that he was not a party to the arrangement that Mogan would buy drugs for Jefferson and Tryon.

2. Tryon's appellate argument does not show that the trial court erred when it denied her proposed citizen's arrest instruction.

Tryon now argues, on appeal, that Osburn committed a theft. She no longer argues that Tryon committed a robbery or any other felony.

If a theft were committed, it would have been a misdemeanor. The only evidence before the trial court was that Tryon and Jefferson willingly gave Mogan about $100 to buy drugs for them. The theft of property or services which does not exceed seven hundred fifty dollars in value is a misdemeanor. See RCW 9A.56.050. There is no evidence that Jefferson or Tryon gave Mogan more than $750.

To be allowed to make a citizen's arrest for a misdemeanor, the crime had to occur in her presence and Osburn would have had to breach the peace. State v. Garcia, 146 Wn. App. 821, 829, 193 P.3d 181 (2008) (A private person may only arrest another for a misdemeanor if it (1) constitutes a breach of the peace and (2) is committed in that person's presence) *citing* State v. Gonzales, 24 Wn. App. 437, 439, 604 P.2d 168 (1979) *review denied,* 93 Wn.2d 1028 (1980). A breach of peace is "a public offense done by violence, or one causing or likely to cause an immediate disturbance of public order." Stone Machinery Co. v. Kessler, 1 Wn. App. 750, 754, 463 P.2d 651 (1970) (quoting Restatement of Torts 2d sec. 116 (1965)). "[N]o Washington case says that theft constitutes a

'breach of the peace.' " State v. Garcia, 146 Wn. App. at 829 *citing* City of Seattle v. Camby, 104 Wn.2d 49, 53, 701 P.2d 499 (1985) (words of degrading character addressed to another may breach the peace); Stone Machinery Co. v. Kessler, 1 Wn. App. at 754-57 (force, constructive force, or intimidation used to repossess property when the defaulting party offers physical resistance constitutes breach of the peace).[4]

The facts do not show that Osburn breached the peace. Instead, the record shows that Osburn's role in Tryon's drug deal was to be an unwilling and naïve hostage. He was simply "collateral" held by Tryon and Jefferson for Mogan's return with drugs or the money Tryon and Jefferson willingly advanced to Mogan. Neither Mogan nor Osburn took any physical action against Jefferson, Tyron, or anyone else. Osburn simply sat – accepting his role as a hostage – in the back of Tryon's car until he became scared of their agitation and escaped by unlocking the car door and running away.

If a breach of peace was committed, it was committed by Jefferson and Tryon when they chased, assaulted, and threatened Osburn.

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[4] The one statutory exception to the common law requirement for a breach of the peace, RCW 9A.16.080, does not apply here. The shopkeepers statute allows "the owner of a mercantile establishment or his employee [to] make a warrantless arrest of a thief whom he has observed shoplifting, even though no breach of the peace has occurred." State v. Gonzales, 24 Wn. App. at 439, 604 P.2d 168 (1979) *review denied,* 93 Wn.2d 1028 (1980).

C. The "knowledge" instruction did not relieve the state of its burden of proof.

Tryon's alternative argument that the jury was not instructed that it needed to find that she "knew the restraint of Osburn was unlawful" is unfounded See Appellant's Brief at 19.[5]

"Jury instructions must be considered in their entirety to determine if there is reversible error in a specific instruction." State v. Schulze, 116 Wn.2d 154, 167, 804 P.2d 566 (1991). There is no error if the instructions, when viewed as a whole, adequately explain the law and enable the parties to argue their theories of the case. *Id.* at 168.

The jury was instructed that

> A person commits the crime of kidnapping in the first degree when he or she intentionally abducts with intent to hold another person for ransom or reward or to facilitate the commission of Delivery or Possession of a Controlled Substance or flight thereafter or to inflict bodily injury on the person or to inflict extreme mental distress on that person or a third person.

CP 68 (Instruction 18). Tryon's jury was also instructed that to convict her of kidnapping, it had to find that she intentionally abducted Osburn with the intent to hold him for ransom or reward, to facilitate the delivery or

[5] Tryon did not object to the knowledge or restraint instructions at trial.

possession of a controlled substance, to inflict bodily injury on the person, or to inflict extreme mental distress on the person. CP 71 (Instruction 21).

The jury was further instructed that "[r]estraint or restrain means to restrict another person's movement without consent and without legal authority in a manner that interferes substantially with that person's liberty," CP 60 (Instruction 19), and that "[a] person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime. CP 64 (Instruction 14).

When read as a whole, these instructions required the jury to find that Tryon intentionally restrained Osburn – not just knowingly – without legal authority and with the intent to commit one of four crimes.

Even if the definition of restraint should have contained "knowledge" or "knowingly" or if the "knowledge" instruction, CP 74 (Instruction 23), should have addressed "restraint," such an error would have been harmless under the facts presented to the jury because overwhelming evidence establishes that Tryon had no lawful excuse for restraining Osburn and that she intentionally restrained Osburn without lawful authority.

Overwhelming and uncontradicted evidence establishes that Tryon (1) was a voluntary party to an attempt to secure the delivery and/or possession of controlled substances and that Osburn was simply collateral

for that unlawful purpose, (2) assaulted Osburn while dragging him back to the car, (3) was an accomplice to threats against Osburn's life and to promises of payment for his cooperation while she was sitting on him, and (4) as addressed above, had no intent or basis to effect a citizen's arrest.

The court's decision in In re Pers. Restraint of Glasmann, 175 Wn.2d 696, 286 P.3d 673, 685 (2012) is instructive in that the Glasmann court recently found no fault with an identical "restraint" instruction for a charge of first degree kidnapping:

> A person commits the crime of kidnapping in the first degree when he or she intentionally abducts another person with intent to hold the person as a shield or hostage." Jury Instruction 30. "Abduct means to restrain a person by using or threatening to use deadly force." Jury Instruction 31. "Restraint or restrain means to restrict another person's movements without consent and without legal authority in a manner which interferes substantially with that person's liberty. Restraint is without consent if it is accomplished by physical force, intimidation or deception." Jury Instruction 32.

The Glasmann court also found "that the evidence that Glasmann intended to use Benson as a shield was overwhelming" and affirmed the conviction. In re Pers. Restraint of Glasmann, 175 Wn.2d at 721.

Tryon's jury was properly instructed as to the elements of first degree kidnapping. They were also provided with the definitions of "abduct" and "restrain" in the context of intentionally acting to commit a

crime, without legal authority. In other words, the jury instructions required the jury to find that Tryon intentionally restrained Osburn while "acting with the objective or purpose to accomplish a result that constitutes a crime," CP 64 (Instruction 14), and the evidence before the jury overwhelmingly supported that finding.

Because the instructions properly informed the jury of the applicable law, they were sufficient to instruct the jury on the State's burden of proof. Tryon was not deprived of a fair trial.

V. CONCLUSION

The kidnapping to-convict instruction provided the essential elements of the crime, the definitions for the elements of the crime of kidnapping were properly included in other instructions, and the trial court properly denied Tryon's motion for an instruction on citizen's arrest.

For the reasons addressed above, the court should deny Tryon's appeal

RESPECTFULLY SUBMITTED this 16th day of April, 2014.

RICHARD A. WEYRICH
Skagit County Prosecuting Attorney

By: _____
A. O. DENNY, WSBA #14021
Deputy Prosecuting Attorney

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by; [X]United States Postal Service; [ ]ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Christopher H. Gibson, addressed as Nielsen, Broman, & Koch, PLLC, 1908 E Madison Street, Seattle, WA 98122. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 16th day of April, 2014.

Karen R Wallace

KAREN R. WALLACE, DECLARANT