

No. 68418-3-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

RANDY CHAPARRO,

Appellant.

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

REPLY BRIEF OF APPELLANT

2012 OCT 25 11:19:55

COURT OF APPEALS
STATE OF WASHINGTON

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TABLE OF AUTHORITIES

Washington Supreme Court
State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980)..... 1

Washington Court of Appeals
State v. Korum, 120 Wn. App. 686, 86 P.3d 166 (2004)..... 1

Statutes
RCW 9.94A.589 2
RCW 9A.40.110 1

A. ARGUMENT

The State presented insufficient evidence to support Mr. Chaparro's conviction of unlawful imprisonment.

A conviction of unlawful imprisonment cannot rest upon restraint which is merely incidental to another crime of which the defendant was charged and convicted. *State v. Korum*, 120 Wn. App. 686, 707, 86 P.3d 166 (2004), *reversed on other grounds*, 157 Wn.2d 614 (citing *State v. Green*, 94 Wn.2d 216, 227, 616 P.2d 628 (1980)). Instead, the State must offer proof that the restraint serves a purpose other than simply facilitating the other offense. *Korum*, 120 Wn. App. 705-07

Mr. Chaparro has argued that the very act of suffocation is restraint. "Block[ing] or impair[ing] a person's intact of air" is a "interferes substantially with his or her liberty." *Compare* RCW 9A.40.110(6) and (27). Under the facts of this case, it is clear the restraint was incidental to the attempted assault.

In its closing argument at trial, the State specifically elected an act on which it asked the jury to rely for purposes of the unlawful imprisonment charge; the restraint occurring while Mr. Chaparro allegedly placed a pillow over Ms. Stevenson's

face. 12/13/11 RP 216. The deputy prosecutor then stated that charge:

It overlaps somewhat with the Assault in the Second Degree charge. Not only was he holding the pillow over her face at some point, but he also was pinning her down on the ground as she struggled to get free. That's within the definition of Unlawful Imprisonment.

Id. at 217.

But the evidence more than “overlap[ped].” The State at trial understood the restraint was for the sole purpose of facilitating the assault. The restraint did not pose any risk of harm independent of the assault.

The trial court also recognized the incidental nature of the restraint by concluding both charges arose from the same criminal conduct. 3/7/12 RP 2. That conclusion recognizes the acts involved the same victim, occurred at the same time and place, and, most importantly, shared a single criminal intent. RCW 9.94A.589(1)(a). The restraint was merely incidental to the assault.

In its response, the State does not acknowledge its own argument below or the legal conclusions of the trial court. Instead, the State asks the Court to suspend reality and simply

the State's accept its conclusion that it is possible to suffocate a person without also restraining them. Brief of Respondent at 9. Not surprisingly the State offers no citation to support its wild claim.

The State's claim rests upon its premise that restraint was only momentary because the suffocation lasted only a few seconds. Brief of Respondent at 9. But momentary restraint is still restraint, just as momentary suffocation is still suffocation. Restraint is a necessary component of every assault by suffocation. Thus, it cannot support a separate conviction of unlawful imprisonment.

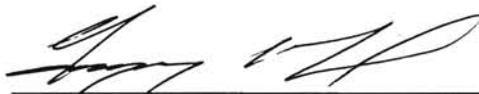
It does not matter that, Mr. Chaparro was convicted of attempted assault rather than the completed assault. Here the substantial step in the assault was the restraint, an act which is incidental to the completed crime. It is illogical, to conclude that while a person could not be convicted of both second degree assault and unlawful imprisonment they could be convicted of attempted second degree assault and unlawful imprisonment for precisely the same act. If the failure to complete the crime leads to a greater punishment there is a perverse incentive to cause greater harm and complete the offense and thereby receive a lighter sentence. That is illogical.

The State did not present sufficient evidence to support the conviction for unlawful imprisonment.

B. CONCLUSION

In the absence of any evidence of restraint which was independent of the assault, the State did not present sufficient evidence to support Mr. Chaparro's conviction of unlawful imprisonment. Further, the erroneous admission of propensity evidence requires a new trial on the remaining charge of attempted second degree assault.

Respectfully submitted this 26th day of October, 2012.



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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,)
) NO. 68418-3-I
)
 RANDY CHAPARRO,)
)
 Appellant.)

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 26TH DAY OF OCTOBER, 2012, I CAUSED THE ORIGINAL **REPLY 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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2012 OCT 26 PM 4:55
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SIGNED IN SEATTLE, WASHINGTON, THIS 26TH DAY OF OCTOBER, 2012.

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