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ORIGINAL

NO. 69122-8-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

OSCAR ARMANDO QUINTANILLA, JR.,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAY V. WHITE

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. Evidence is sufficient to support a conviction if, viewing it in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Here, during an argument, Quintanilla grabbed A.J.Q. by the neck and squeezed, making it hard for her to breathe. When A.J.Q. tried to push Quintanilla away, he tightened his grip, making it more difficult for her to breathe. This lasted for approximately five minutes. Immediately after the incident, A.J.Q. told her friend that Quintanilla had choked her, and her friend saw that A.J.Q.'s neck was red. Was there sufficient evidence to support the jury's guilty verdict of assault in the second degree?

2. Trial courts have the authority to impose crime-related prohibitions, such as no contact orders, for a term of the maximum sentence to a crime. A trial court's decision to impose a sentencing condition is generally reviewed for abuse of discretion. However, in situations involving fundamental constitutional rights, such as the right to care and custody of one's child, sentencing conditions must be "sensitively imposed" so that they are "reasonably necessary to accomplish the essential needs of the State and public order." The State has a compelling interest in preventing future harm to the

victims of the crime. Here, the trial court imposed a 10-year no contact order after Quintanilla was convicted of assault in the second degree and harassment against his 14-year old daughter A.J.Q. Quintanilla was also convicted of animal cruelty in the first degree for violently beating A.J.Q.'s cat to death in front of her. Quintanilla did not object to the imposition of the no contact order, and he did not request a less restrictive alternative. Did the trial court act within its discretion by imposing the no contact order?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

Oscar Quintanilla was charged in King County Superior Court with the following crimes for trial: Count I – child molestation in the second degree; Count II – rape of a child in the second degree; Count III – attempted rape of a child in the second degree; Count IV – rape of a child in the second degree; Count V – rape of a child in the second degree; Count VI – child molestation in the third degree; Count VII – assault in the second degree domestic violence; Count VIII – rape in the second degree domestic violence; Count IX – assault in the fourth degree domestic violence; Count X

– animal cruelty in the first degree; and Count XI – harassment domestic violence. CP 58-63.

Quintanilla's teenaged daughter (A.J.Q.) was the named victim in Counts I through VII and Count XI. Tara Sanchez (Quintanilla's girlfriend and mother of A.J.Q.) was the named victim in Count VIII and Count IX. Id.

A jury found Quintanilla guilty of Count VII – assault in the second degree domestic violence against A.J.Q.; Count IX – assault in the fourth degree domestic violence against Tara Sanchez; Count X – animal cruelty in the first degree; and Count XI – harassment domestic violence against A.J.Q. CP 127-38.

At sentencing, the court imposed a standard range sentence of 14 months in prison and imposed a 10-year no contact order between Quintanilla and A.J.Q. CP 291-93.

## **2. SUBSTANTIVE FACTS<sup>1</sup>**

Tara Sanchez and Oscar Quintanilla dated for a short period of time when they were teenagers. 5/16/12 RP 57-58. In 1996,

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<sup>1</sup> At trial, A.J.Q. testified to repeated and ongoing sexual abuse by Quintanilla that began a short time after their reunion in August 2010 and continued into 2011. 5/21/12 RP 39-154. Since the jury found A.J.Q. not guilty of the child molestation and rape of a child charges, the State is not including testimony relating to this subject matter in the facts section.

Sanchez and Quintanilla tried to run away together, but they only made it as far as California. 5/16/12 RP 59. After returning home to Washington, Sanchez discovered she was pregnant with Quintanilla's child. Id. Their parents did not want Sanchez and Quintanilla to see each other anymore. Id.

On December 23, 1996, Sanchez gave birth to their daughter A.J.Q. 5/16/12 RP 60. After about a month, Quintanilla stopped visiting Sanchez, and he disappeared from their lives. 5/16/12 RP 60-61. Sanchez started a dating relationship with another man, married in 1998, and they had three children together. 5/16/12 RP 61-63. The relationship lasted approximately nine years. 5/16/12 RP 62.

In August 2010, Quintanilla's sister contacted Sanchez and arranged a reunion at his parents' house. 5/16/12 RP 69-70. Sanchez and A.J.Q. (now 13 years old) were nervous and excited about seeing Quintanilla. 5/16/12 RP 72-73; 5/21/12 RP 19-20. The reunion went very well. 5/16/12 RP 73-76; 5/21/12 RP 21-27. Approximately two months later, in October 2010, Quintanilla moved in with Sanchez, A.J.Q., and Sanchez's other three children from her previous marriage. 5/16/12 RP 81-84; 5/21/12 RP 66.

At first, Sanchez and A.J.Q. got along well with Quintanilla. 5/16/12 RP 92-93. However, in the months that followed, Quintanilla became mean and controlling toward them. 5/16/12 RP 101-02. On multiple occasions, Quintanilla threatened to kill Sanchez and her children if she ever left him, and Sanchez began to live in fear of him. 5/16/12 RP 104.

In July 2011, A.J.Q. went to a birthday party at a pool with her mother Sanchez and her siblings. 5/16/12 RP 140; 5/21/12 RP 154-55. When A.J.Q. got home, Quintanilla became upset and accused her of lying to him about what she had worn at the pool party. 5/21/12 RP 158-63. Quintanilla was angry, and his voice was starting to get loud. 5/16/12 RP 160.

Quintanilla directed A.J.Q. into his bedroom, where he continued to yell at her and demand to know why she had lied about her outfit. 5/21/12 RP 162. Quintanilla told A.J.Q. to leave, so she went to her bedroom, put on a sweatshirt, and then returned to the living room to sit down with her friend Luna Nguyen. 5/21/12 RP 162-63.

A short time later, Quintanilla came back into the living room and said he wanted to talk with A.J.Q. 5/21/12 RP 164. When A.J.Q. refused, Quintanilla grabbed her by the front of the

sweatshirt, pulled her up, and pushed her back into his bedroom. 5/16/12 RP 164-65. Sanchez tried to follow, but the bedroom door was slammed in her face. 5/16/12 RP 142. Sanchez was afraid to go into the room because she had "tried that before and had been thrown out of the room." 5/16/12 RP 142-43.

Once inside the bedroom, Quintanilla got really close to A.J.Q.'s face and yelled at her about what she had worn. 5/21/12 RP 165. He then pushed A.J.Q. in the chest, and she fell back into the wall. 5/21/12 RP 165-66. Quintanilla continued to yell at A.J.Q., and he put one hand around her throat. Id. He pushed her head back closer to the wall and was "squeezing" her neck. 5/21/12 RP 166. At this point, Quintanilla had A.J.Q. forced up against the wall, and he was still "very upset." 5/21/12 RP 166. A.J.Q. testified about the incident as follows:

PROSECUTOR: Okay. So, he had you against the wall and was squeezing your neck. Are we just talking about a little bit of pressure, or how much pressure was he putting on your neck?

A.J.Q.: It was quite a lot of pressure.

PROSECUTOR: A lot? Were you having a hard time breathing?

A.J.Q.: Kind of. I had put both hands, like, on his wrist, and I had tried to, like, push it away, and when I did that, his grip got tighter.

PROSECUTOR: Okay. So his grip got tighter when you tried to push him away?

A.J.Q.: Yes.

PROSECUTOR: And did it become more difficult to breathe at that point?

A.J.Q.: Yes.

Quintanilla continued to hold A.J.Q. against the wall with his hand on her throat while yelling at her for approximately five minutes.

5/21/12 RP 167-68.

Quintanilla eventually let go of A.J.Q. and told her to "get out of his face," so A.J.Q. left the bedroom. 5/21/12 RP 168. A.J.Q. went to her friend Luna Nguyen and immediately told her that Quintanilla had choked her. Id. A.J.Q.'s neck was still hurting, and there were red marks where Quintanilla had been choking her. Id.

When A.J.Q. left the bedroom, her friend Nguyen saw that A.J.Q. was "upset and she was starting to cry." 5/17/12 RP 211.

Nguyen testified:

PROSECUTOR: Did she tell you what he had done to her?

NGUYEN: Yes.

PROSECUTOR: What did she say?

NGUYEN: She said that she – I can't really remember, but I remember her saying that she –

I mean, he shoved her into, like a wall or something, and that he had kind of, like, choked her.

PROSECUTOR: And that he had choked her?

NGUYEN: Yes.

5/17/12 RP 212-13. Nguyen noticed that the skin on A.J.Q.'s upper chest and neck was red. 5/17/12 RP 212.

A couple weeks later, on July 27, 2011, Quintanilla beat the family cat ("Piper") to death in front of A.J.Q. 5/16/12 RP 153-70; 5/22/12 RP 5-40. Quintanilla was upset because Piper had "pooped on the floor." 5/22/12 RP 7-8. Quintanilla threw Piper into a wall, kicked him, and beat him with a wooden stick. 5/22/12 RP 9-17. When A.J.Q. pleaded with Quintanilla to stop, he threatened her and told her to "shut the fuck up or [she] was next." 5/22/12 RP 17. Quintanilla then held Piper's head against the edge of the bathtub and repeatedly punched the injured and defenseless cat in the head with a closed fist. 5/22/12 RP 23-26. Blood and cat feces were in several parts the bathroom, so Quintanilla told A.J.Q. to "clean that shit up." 5/22/12 RP 26.

A short time later, Quintanilla went into A.J.Q.'s bedroom and told her, "Sorry if your cat dies, but I really don't give a fuck." 5/22/12 RP 31. Quintanilla left for work, and Piper died a few hours

later. 5/22/12 RP 34-37. Sanchez reported the incident to the police, and Quintanilla was arrested later that day when he returned home from work. 5/16/12 RP 171-73; 5/22/12 RP 51.

The jury subsequently convicted Quintanilla of:

- Count VII – assault in the second degree domestic violence against A.J.Q.;
- Count IX – assault in the fourth degree domestic violence against Tara Sanchez;
- Animal cruelty in the first degree; and
- Count XI – harassment domestic violence against A.J.Q.

CP 127-38.

At sentencing, the State recommended the high-end of the sentence range noting that the defendant had been found guilty of “strangling his daughter, assaulting his adult girlfriend, and beating the cat to death in front of his family.” 7/27/12 RP 24. The animal cruelty charge was a “vicious, terrible assault” and “is really going to have a long-lasting effect on [the children].” 7/27/12 RP 26. The State requested a no contact order with A.J.Q. for the statutory maximum of 10 years. 7/27/12 RP 24. Quintanilla did not object to the State’s request for the no contact order, and he did not propose a less restrictive alternative. 7/27/12 RP 2-40. The trial court

followed the State's recommendation and imposed a high-end sentence of 14 months in prison and a no contact order with A.J.Q. for the statutory maximum of 10 years. 7/27/12 RP 33.

**C. ARGUMENT**

- 1. VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE AND DRAWING ALL INFERENCES IN THE STATE'S FAVOR, THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S GUILTY VERDICT OF ASSAULT IN THE SECOND DEGREE.**

In a prosecution for assault in the second degree under the strangulation prong, the State must prove beyond a reasonable doubt that the defendant assaulted another by strangulation. RCW 9A.36.021(1)(g); CP 161. Strangulation is statutorily defined as "to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe." RCW 9A.04.110(26); CP 163.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003);

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). By claiming insufficiency of the evidence, a defendant admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Salinas, 119 Wn.2d at 201. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Id.

Furthermore, when evidence is conflicting, or is of such a character that reasonable minds may differ, it is the function and province of the jury to weigh the evidence, to determine the credibility of the witnesses, and to decide the disputed questions of fact. State v. Gerber, 28 Wn. App. 214, 216, 622 P.2d 888 (1981). Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Deference must be given to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, rev. denied, 119 Wn.2d 1011 (1992).

Here, Quintanilla argues the "evidence presented at trial failed to establish that Mr. Quintanilla obstructed A.J.Q.'s ability to

breathe, or that he intended to restrict her ability to breathe.”<sup>2</sup> This argument fails. The State already proved that Quintanilla committed assault in the second degree against the victim when the jury returned the guilty verdict. Now, on appeal, all reasonable inferences must be drawn in favor of the State and interpreted most strongly against Quintanilla.

The evidence supporting the conviction includes A.J.Q.’s testimony that (1) she was having a hard time breathing when Quintanilla was squeezing her neck, and (2) Quintanilla’s grip got tighter and it became more difficult to breathe after she tried to push him away. In addition, Luna Nguyen, testified that A.J.Q.’s neck was red, and that A.J.Q. told her Quintanilla had “choked” her. “Choke” means “to check or block normal breathing by compressing or obstructing the trachea.” Merriam-Webster Unabridged Dictionary (2012).

The fact that Quintanilla grabbed A.J.Q. by the neck with sufficient force to cause redness strongly supports the inference that he obstructed A.J.Q.’s ability to breathe. With all inferences drawn in favor of the State and interpreted most strongly against

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<sup>2</sup> Brief of Appellant, page 8.

Quintanilla, this evidence alone is sufficient to support the conviction on appeal.

Moreover, the evidence supports the inference that Quintanilla grabbed A.J.Q.'s neck with the intent to obstruct her ability to breathe. Again, interpreting the evidence most strongly against Quintanilla, he had no reason to grab and squeeze A.J.Q.'s throat other than to intend to obstruct her ability to breathe.

Deference must be given to the jury regarding persuasiveness of the evidence. Here, the jury heard the evidence against Quintanilla and determined that he had committed assault in the second degree by strangulation. The court should not invade the province of the jury and disregard the deliberated verdict simply because Quintanilla disagrees with it.

**2. THE SENTENCING COURT DID NOT ABUSE ITS DISCRETION BY IMPOSING THE 10-YEAR NO CONTACT ORDER BECAUSE IT WAS REASONABLY NECESSARY TO PROTECT A.J.Q. FROM FUTURE HARM.**

The Sentencing Reform Act of 1981 authorizes trial courts to impose crime-related prohibitions for a term of the maximum sentence to a crime. State v. Warren, 165 Wn.2d 17, 32, 195 P.3d 940 (2008). "Crime-related prohibitions" are orders directly related

to “the circumstances of the crime.” Id. The State has a compelling interest in preventing future harm to the victims of the crime.

Id. at 33.

Courts generally review sentencing conditions for abuse of discretion. In re Pers. Restraint of Rainey, 168 Wn.2d 367, 374, 229 P.3d 686 (2010). However, courts more carefully review conditions that interfere with a fundamental constitutional right, such as the right to the care, custody and companionship of one’s children. Id. In these situations involving fundamental constitutional rights, such conditions must be “sensitively imposed” so that they are “reasonably necessary to accomplish the essential needs of the State and public order.” Id. Under the “reasonably necessary” standard, the interplay of sentencing conditions and fundamental rights is delicate and fact-specific and based on the sentencing judge’s in-person appraisal of the trial and the offender, and not lending itself to broad statements and bright line rules. Id. at 375-77.

For example, in Rainey, the defendant was convicted of telephone harassment of his wife and of first degree kidnapping of their three-year old daughter. Id. at 371. The basis for the kidnapping charge was that Rainey intentionally abducted their

daughter to inflict extreme emotional distress upon his wife.

Id. at 372. At sentencing, defense counsel strongly objected to the no contact order with the daughter and pointed out that Rainey did not physically harm her during the incident. Id. at 373. The trial court imposed a lifetime no contact order. Id.

On appeal, the Supreme Court of Washington held, “[c]onsidering the facts of the case in light of the State’s interest in protecting both [the daughter] and her mother, it was not an abuse of discretion for the sentencing court to conclude that a no contact order of some duration was appropriate.” Id. at 380. However, the Court struck the no contact order and remanded for resentencing because the sentencing court did not consider whether the lifetime duration of the order was reasonably necessary to serve the State’s interest. Id. at 371.

In its analysis, the Court focused on two primary issues. Id. at 381-82. First, the no contact order imposed against Rainey was for a lifetime duration. Id. Second, there was “no indication” that the sentencing court had considered Rainey’s timely argument against the no contact order. Id.

Notably, these two issues are not present in Quintanilla’s case. First, the court in Quintanilla, imposed a limited duration

10-year no contact order (not a lifetime order). Second, Quintanilla did not oppose the no contact order or make any argument for a less restrictive alternative. Therefore, there was no additional information for the court to consider before imposing the order.

Here, the sentencing judge had presided over Quintanilla's trial and was very familiar with the facts of the case and why Quintanilla's explosive violence and anger posed a threat to A.J.Q. The court heard testimony about how Quintanilla was completely absent for the first 13 years of A.J.Q.'s life. Then, less than a year after being welcomed back into their lives, Quintanilla strangled A.J.Q., assaulted Sanchez, viciously beat the family cat to death in front of A.J.Q. and the other children, and even threatened A.J.Q. when she pleaded with him to stop bludgeoning the cat. These facts are in stark contrast to Rainey, where the defendant did not harm or threaten his daughter in any way, and the court still imposed a lifetime no contact order over Rainey's objection.

The State has a compelling interest in preventing future harm to A.J.Q. Given the facts of this case, it was reasonably necessary for the court to impose the 10-year no contact order to protect A.J.Q. from Quintanilla. A.J.Q. was, and still is, a teenager,

and for now, she needs to be protected from him. Accordingly, the court did not abuse its discretion by imposing the no contact order.

**D. CONCLUSION**

Viewed in the light most favorable to the State, the evidence establishing that Quintanilla strangled victim A.J.Q. is sufficient to support the conviction for assault in the second degree. In addition, the 10-year no contact order was reasonably necessary to protect A.J.Q., and the trial court acted within its discretion by imposing the order.

DATED this 23<sup>rd</sup> day of July, 2013.

Respectfully submitted,

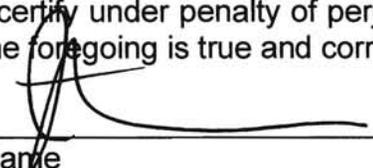
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas Kummerow, 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. OSCAR ARMANDO QUINTANILLA, JR., Cause No. 69122-8-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.

  
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