

NO. 34954-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER VEAL

Appellant.

FILED
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CLERK OF COURT
JAMES E. WARME
JUDGE

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

The Honorable James E. Warme, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court violated appellant's Sixth Amendment right of confrontation by ruling that un-cross-examined testimonial statements of an unavailable witness would be admissible to impeach appellant's testimony.

Issue pertaining to assignment of error

Appellant was charged with taking a motor vehicle without permission and presented a defense of good faith claim of title. Appellant indicated prior to trial that he would testify that the witness who reported the crime said she owned the truck and sold it to him, because those statements were relevant to his state of mind when he took the truck. The witness was unavailable, however, and appellant therefore objected to the state's proposed use of statements she later made to the police during the investigation. Where the defense had no prior opportunity to cross examine the unavailable witness, did the court's ruling that her testimonial statements would be admissible in rebuttal violate appellant's Sixth Amendment right of confrontation?

B. STATEMENT OF THE CASE

1. Procedural History

On December 29, 2005, the Cowlitz County Prosecuting Attorney charged appellant Christopher Veal with second degree theft, or in the alternative, taking a motor vehicle without permission. CP 1-2; RCW 9A.56.020(1)(a); RCW 9A.56.040; RCW 9A.56.075. The case proceeded to a jury trial before the Honorable James E. Warne, and the jury found Veal guilty of taking a motor vehicle without permission. CP 31. The court imposed a standard range sentence of 73 days, and Veal filed this timely appeal. CP 36, 41.

2. Substantive Facts

Daniel Silkwood owned a 1979 Chevrolet pickup truck, which he kept at his property in Castle Rock, Washington. 1RP¹ 149, 153. In December 2005, Silkwood left town for five days, returning the evening of December 26. 1RP 164-65. His friend Virginia Weaver stayed at his house while he was gone. 1RP 151. Although Weaver stayed there often and stored some of her vehicles there, she did not have permission to use or sell Silkwood's truck. 1RP 152, 155-56. Silkwood did not know

¹ The Verbatim Report of Proceedings is contained in two consecutively paginated volumes designated as follows: 1RP—3/30/06 and 5/24/06; 2RP—5/25/06.

Christopher Veal and did not give him permission to drive or ride in the truck. 1RP 156.

Early in the morning on December 26, 2005, Tim Falbo was splitting wood outside his house when he heard a noise like some tools being moved around in a tool box. 1RP 128-29, 145. He then heard a woman screaming. He walked to the front of his house, where he saw Virginia Weaver standing in the street, yelling for help. 1RP 129-30. She said there was a man taking her truck. 1RP 134. Falbo looked to where Weaver was pointing and saw a man's legs sticking out the driver's side of the truck. The man, Christopher Veal, then got out of the truck and walked to the street where Falbo and Weaver were standing. 1RP 139. Veal said the truck was his, he had a bill of sale for it, and he was going to take it. 1RP 139. He seemed frustrated with Weaver. 1RP 146. Veal then walked back to the truck, and Falbo went inside to call 911. 1RP 140. While he was on the phone, Falbo watched Veal back the truck out of the yard and drive away. 1RP 141. Weaver stayed in the street yelling. 1RP 141.

Deputy Nathan Hockett responded to scene. 2RP 185. Weaver flagged him down and said "Chris stole my truck." 2RP 185, 188. Hockett followed up on this statement, asking for details, and Weaver provided further information. 2RP 188. Hockett received a dispatch that

the truck had been found, and after taking Weaver's statement, he went to that location. 2RP 188.

Deputy Brent Harris also responded to the 911 call. As he was driving to the scene headed north, he passed truck and driver heading south, who matched dispatched description. 2RP 213-14. He turned his patrol car around to follow the truck. About ten seconds later he came across the truck which had also turned around and was stopped in northbound lane. 2RP 215. Harris stopped to investigate. Because he was not sure if the truck had been involved in an accident, he first made sure the driver was alright. 2RP 215, 217. Veal identified himself and said he had spun out but he was okay. 2RP 216-17. Harris read Veal his rights and explained he was investigating a stolen vehicle report. 2RP 217-19. Veal told Harris the truck was his and said he had the title and a bill of sale in the truck. 2RP 220, 222. Veal was allowed to look through the truck, where he found the title to a 1970 Chevrolet pickup. He was unable to find the bill of sale, however. 2RP 222-23.

Hockett inspected the truck, which was identified as the 1979 pickup belonging to Silkwood. 1RP 149; 2RP 190. He noticed that the steering column and ignition block were damaged. 2RP 190. The truck had not been damaged when Silkwood left town five days earlier. 1RP 154. Hockett found several tools in the truck, including a broken hammer.

2RP 193, 196. Silkwood later identified the hammer as his, although it had not been broken the last time he saw it. 2RP 208-09.

Veal was arrested and charged with second degree theft or, in the alternative, taking a motor vehicle without permission. CP 1-2.

On the day of trial, the parties informed the court that Weaver would not be testifying as a witness, because neither party had been able to locate her. 1RP 11, 18. The state moved to present Weaver's statements to Falbo and Hockett as excited utterances. 1RP 10. Defense counsel agreed that Weaver's statement to Falbo was admissible as a call for help. 1RP 12. Her statement to Falbo that someone was stealing her truck was also probably admissible as a present sense impression. 1RP 15. Defense counsel objected to admission of further statements she made to Falbo, however, as they were relating past events and designed to get him to call 911 to report a crime. 1RP 13.

The defense also objected to Weaver's statements to Hockett. Hockett's report indicated that Weaver flagged him down, crying and upset, and said Chris took her truck. She reported that she had just met the man, and only knew him as Chris. A tire on her van needed to be fixed, and she drove Chris to the house to fix it. Weaver said she was awakened that morning by a loud pounding outside, and when she looked outside she saw Chris hitting the steering column of the truck with a hammer. 1RP

21-22. Counsel argued that since the defense had had no opportunity to cross examine Weaver, admission of these statements would violate Veal's right to confrontation. 1RP 22.

The court asked why these statements were relevant if Silkwood was going to testify that Veal did not have permission to drive the truck. Counsel explained that Veal would testify that Weaver told him the truck was hers and sold it to him, and he drove it away under a good faith claim of ownership. 1RP 17. Both parties agreed that Weaver did not have the right to sell the truck, and her statements to Veal were not being offered for the truth of the matter asserted. Rather, they were being offered to show their effect on Veal's state of mind, which was relevant to the defense of good faith claim of title. 1RP 17-19.

The court responded that Weaver's initial statements to Falbo would be admitted as a call for help and present sense impression. Her statement to Hockett that Veal stole her truck would be admitted as an excited utterance. 1RP 22. The remaining statements would not be admissible in the state's case in chief. But if Veal took the stand and claimed to have had a conversation with her, and there is testimony that has some sense of reliability about it that is inconsistent with Veal's position on the stand, those statements would be admissible as rebuttal. 1RP 20, 22.

When defense counsel pointed out that Weaver had not been subject to cross examination and she had had time to fabricate the statements to Hockett, the court asked how that differed from Veal's proposed testimony about what she said: "He's had time to think about it. Now he's relating to the police or to the jury his version of what she said. Why should he be allowed to do that? ... Why is it any different than the State offering what she said to the police?" 1RP 23.

Defense counsel argued that the difference was that Veal has a right to confront his accuser, and he had had no opportunity to cross examine Weaver. Moreover, Veal would only testify to Weaver's statements to show their effect on his state of mind. Since he would not be offering Weaver's statements for the truth of the matter asserted, the statements were not hearsay. Counsel suggested it would be appropriate to instruct the jury on the limited use of that evidence. 1RP 23.

The court said it would take the matter under advisement. It repeated its belief that, if Veal planned to testify about what Weaver said, then other statements by Weaver which were inconsistent and which had some reliability because they were spontaneous and made under the influence of the event ought to be admissible as well. 1RP 24.

The defense also provided to the state and planned to offer a handwritten bill of sale for the truck in question. Veal would testify that

Weaver had written the document and provided it to him. 1RP 33. He had originally thought he put it in the truck but later found it on his person. 1RP 37. He had it in his pocket when he was taken into custody a few weeks before trial for violation of his release conditions, and it was still in his pocket when his pants were returned to him the morning of trial. 1RP 34. The defense also wanted to present portions of the handwritten statement Weaver gave to the police, so that the jury could compare the handwriting on the two documents. 1RP 33-34, 36. The state objected to admission of both the bill of sale and the written statement. 1RP 32, 38. The court ruled that it would not permit the handwriting comparison, but it reserved ruling on the admissibility of the bill of sale. 1RP 41, 43.

The state then again raised the issue of introducing Weaver's statements that Veal stole the truck to rebut Veal's testimony, saying it wanted the opportunity to disprove Veal's state of mind. 1RP 62. Defense counsel argued that Weaver's statements to Veal are relevant to his state of mind, but her statements to the police are not, because Veal was not even present when they were made. 1RP 62-63. The state responded that it wanted to ask Veal on cross examination whether he would be surprised to learn Weaver had made contradictory statements to Falbo, Silkwood, and the police. 1RP 63.

The court then issued a ruling that Weaver's statement to Falbo that Veal is stealing the truck was admissible in the state's case in chief because it is a present sense impression, a call for help, and not testimonial. 1RP 64-65. If Veal then took the stand and introduced testimony about what Weaver said to him, however, that would be hearsay. The state would then be entitled to present evidence of statements Weaver made to Falbo and the deputy to rebut Veal's claim about what Weaver said to him. 1RP 65-67. The reason the court believed those statements should be admitted in rebuttal was that they tended to prove Weaver never said what Veal testified she said. The court believed the statements to Falbo and the police had some reliability because they were spontaneous. 1RP 67.

The defense took issue with the court's reliability determination, arguing that Weaver's statements to the police were testimonial. They were made after Veal left the scene, there was no emergency, and the statements were not a call for help but made to accuse Veal of a crime. Under the circumstances, admission of the statements would violate Veal's right of confrontation, whether the statements were admitted in the state's case in chief or in rebuttal. 1RP 69-70.

The Court responded that

Both sides have the right to confront and cross examine witnesses. Your client is going to introduce the subject of what Ms. Weaver said without her being here. Your client's going to do that. That is, essentially, a violation of the State's right to cross-examine Ms. Weaver. Your client's going to testify about what she said when she's not here, and ordinarily your client would not be allowed to do that.

1RP 70-71. When defense counsel asked whether the court was saying the State has a Sixth Amendment right, the court responded, "I'm saying the rule, is both sides have a right to cross-examination. It's your client who's going to break the rule by testifying about what someone said who is not here." 1RP 71.

Defense counsel disagreed that Veal's testimony about what Weaver said to him would break any rules, since the testimony was admissible to show his state of mind. Those statements were not hearsay. Their admission did not make Weaver a witness, because their relevance did not depend on what Weaver said being true. What the state was offering, on the other hand, were statements she later made to the police, for the purpose of proving the truth of those statements. Bringing those statements into evidence for that purpose would make Weaver a witness against Veal and violate his Sixth Amendment right to confront her. 1RP 72. The fact that the statements were offered in rebuttal did not change that. 1RP 72-73.

Again, the court said it believed once the defendant started introducing hearsay about what Weaver said, the state was entitled to respond with relevant testimony addressing the probability that what Veal said is true.

It's a prior inconsistent statement, hearsay statement that is inconsistent with what your client says she said. Your client is the one who is introducing hearsay and my ruling is the State has an opportunity to respond if they have any reliable testimony, they're entitled to respond to what your client says.

1RP 73.

Defense counsel reiterated that these contradictory statements by Weaver had never been subject to cross examination, which is the threshold requirement for admissibility of testimony. The state should not be able to sidestep that requirement simply because the testimony is offered in rebuttal. 1RP 74-75.

Defense counsel raised the issue again the next day. He pointed out that in Crawford², the objectionable testimony was admitted in rebuttal. Crawford held that the Sixth Amendment bars introduction of hearsay testimony to contradict the defendant's assertions, absent the presence of the declarant. Thus, the distinction the court was drawing was not valid. 2RP 177-78. The state argued that the crucial distinction was that Veal would be introducing the statements of the absent declarant. By doing so,

² Crawford v. Washington, 541 U.S. 36, 24 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

the state argued, Veal would waive his Sixth Amendment right of confrontation. 2RP 182. The court indicated it did not think Crawford applied because it is the defendant introducing the statements of the missing witness. It declined to change its ruling. 2RP 183.

When the state rested, defense counsel informed the court that Veal would not be testifying because of the court's ruling on the Crawford issue. 2RP 238.

C. ARGUMENT

THE COURT'S RULING THAT WEAVER'S TESTIMONIAL STATEMENTS WERE ADMISSIBLE IN REBUTTAL VIOLATED VEAL'S SIXTH AMENDMENT RIGHT OF CONFRONTATION.

1. **This issue is preserved for appeal.**

Generally, to preserve a question of whether evidence can be used to impeach, a defendant must testify at trial. Luce v. United States, 469 U.S. 38, 43, 105 S. Ct. 460, 83 L. Ed. 2d 443 (1984). In Luce, the Supreme Court held that by choosing not to testify, the defendant failed to preserve his challenge to the court's preliminary ruling that the defendant could be impeached with his prior convictions. 469 U.S. at 43. But the Court recognized that its holding would apply only to preliminary rulings "not reaching constitutional dimensions." Id.

Following this distinction, Washington courts have held that if the impeaching evidence flows from a constitutional violation, the defendant need not testify to preserve the argument for appeal. State v. Greve, 67 Wn. App. 166, 169-70, 834 P.2d 656 (1992) (even though defendant did not testify, he was allowed to challenge on appeal the trial court's ruling that evidence suppressed as a result of a Fourth Amendment violation would be admissible for impeachment), review denied, 121 Wn.2d 1005 (1993); see also State v. Mezquia, 129 Wn. App. 118, 118 P.3d 378 (2005). The use of rebuttal evidence in violation of the Sixth Amendment right of confrontation raises constitutional concerns. Thus, Veal's failure to testify does not preclude this Court from reaching the merits of his claim.

2. Weaver's testimonial statements to deputy Hockett are inadmissible because she was unavailable and the defense had no prior opportunity to cross examine her.

The Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." U.S. Const. amend, 6; see also Const. art. 1, § 22. Confrontation is a fundamental bedrock protection in a criminal case and requires evidence to be tested by the adversarial process. Crawford v. Washington, 541 U.S. 36, 42, 124 S.Ct. 1354, 158

L. Ed. 2d 177 (2004). The Confrontation Clause “commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.” Crawford, 541 U.S. at 61. Thus, testimonial statements of witnesses who are unavailable to testify at trial may only be admitted if the defendant has had the prior opportunity to cross-examine the declarant. Id. at 59. Admission does not depend on whether the statements fall within a hearsay exception. The only method for satisfying the Confrontation Clause is cross-examination. Id. at 59.

Here, there is no question that Weaver was unavailable. Both parties agreed that all attempts to locate her had failed and she would not be testifying at trial. 1RP 11, 18. It is also undisputed that the defense had no previous opportunity to cross examine Weaver. 1RP 22. The question then is whether her statements to Deputy Hockett were testimonial.

Statements made in the course of a police interrogation are testimonial when there is no ongoing emergency and the primary purpose of the interrogation is to establish past events potentially relevant to a later criminal prosecution. Davis v. Washington, 547 U.S. ___, 126 S. Ct. 2266, 2273-74, 165 L. Ed. 2d 224 (2006).

The Supreme Court considered two consolidated cases in Davis. In one of them, police responded to a report of a domestic disturbance. When they arrived, the wife seemed frightened but told them nothing was wrong. One officer spoke to the husband, while another spoke to the wife. The wife then reported that during an argument the husband had shoved her to the ground, pushed her head into broken glass, and punched her in the chest. The husband was charged with domestic battery. Although the wife was subpoenaed, she did not appear at trial. Over defense objection, the wife's statements were admitted as excited utterances. 126 S. Ct. at 2272-73.

The Supreme Court held that the wife's statements were testimonial. 126 S. Ct. at 2278. It noted that there was no emergency in progress when the challenged statements were made. The officer was not trying to determine what was happening but rather what had happened. And the primary, if not sole, purpose of the interrogation was to investigate possible criminal past conduct. 126 S. Ct. at 2278. Moreover, this interrogation was formal enough to render the wife's statements testimonial, because it was conducted in a separate room from the husband and the officer received her statements for use in his investigation. Id. The wife's statements were presented in court as "an obvious substitute for live testimony" and they were "inherently testimonial." Id.

Here, Hockett responded to a report of a stolen vehicle, and when he arrived, Weaver flagged him down and said Veal had taken her truck. Hockett then asked her questions about what had happened, and Weaver told him that she had met Veal the night before and brought him home to fix her van, she was awakened by pounding, and she looked outside to see Veal hitting the steering column of the truck with a hammer. 1RP 21-22; 2RP 188. As in Davis, the statements in response to Hockett's interrogation are testimonial. There was no emergency in progress at the time of the interrogation. Veal had already left the area in the truck, and there was no indication Weaver was in any ongoing danger. Instead, the sole purpose for Hockett's questions and Weaver's statements was to establish past conduct which would potentially be relevant to a criminal prosecution. Weaver's statements were received for use in Hockett's investigation, and they are inherently testimonial.

Even if Weaver's initial statement when she flagged Hockett down, that Veal stole her truck, was properly admitted as a call for help, her remaining statements are testimonial. A conversation which begins as a call for help can evolve into testimonial statement, once the original purpose is achieved. For example, in Davis, a 911 operator obtained information to address an ongoing emergency. The emergency ended, however, when the assailant left the premises, and the caller's answers to

further questions after that point were testimonial. Davis, 126 S. Ct. at 2277. In this case, there was no emergency once Hockett arrived at the scene, and no evidence that Weaver had ever been in any danger. In any event, Weaver's initial call for help was made for the purpose of getting Hockett to stop and investigate. That purpose was achieved, and Hockett asked for more details in the course of his investigation. All Weaver's further responses were testimonial.

Because Weaver was unavailable as a witness and the defense had never had the opportunity to cross examine her, the testimonial statements she made to Hockett could not be admitted without violating Veal's Sixth Amendment right of confrontation. See Crawford, 541 U.S. at 68 (Where testimonial evidence is at issue, Sixth Amendment demands unavailability and a prior opportunity for cross examination).

3. There is no legally supportable basis for the court's ruling that Weaver's testimonial statements were admissible in rebuttal.

The court's ruling that Weaver's testimonial statements were admissible to rebut Veal's testimony reflects a misunderstanding of the nature of Veal's proposed testimony and the defendant's right of confrontation. The court stated several times that if Veal was permitted to introduce hearsay from Weaver, and the state was not able to cross

examine Weaver, then in fairness the state would be allowed to present additional hearsay from Weaver to rebut Veal's testimony.

First, Veal was not proposing to offer hearsay. Not all out of court statements are hearsay. Rather, hearsay is an out of court statement offered to prove the truth of the matter asserted. ER 801(c). A statement is not hearsay if it is offered only to prove its effect on the listener, without regard to the truth of the statement. State v. Roberts, 80 Wn. App. 342, 352-53, 908 P.2d 892 (1996) (content of alleged threat was not hearsay as it was offered not for truth of statement but only to show its effect on listener); State v. Jessup, 31 Wn. App. 304, 314-15, 641 P.2d 1185 (1982) (statement that witness had been told defendant struck someone not offered to prove defendant in fact struck someone but to show why witness would comply with defendant's request to commit prostitution).

Veal was not offering Weaver's statement that she owned the truck and her offer to sell it to him for the truth of those statements. It was undisputed that she did not own the truck and had no right to sell it. Rather, the statements were offered to show why Veal took the truck. They were relevant, not for their truth, but for their effect on Veal. Thus, the statements were not hearsay, a fact which the court did not seem to understand.

Next, the court was concerned that admission of Veal's testimony about what Weaver told him would be unfair to the state because it had no opportunity to cross examine Weaver. Certainly the state has the right to cross examine witnesses presented by the defense. But because Weaver's statements to Veal were not offered for their truth, admission of the statements did not make Weaver a witness. See Crawford, 541 U.S. at 59 n.9 (statements offered for purpose other than establishing the truth of the matter asserted do not require cross examination). The jury would not be asked to believe Weaver's statements; it would be asked to believe Veal's testimony that Weaver made the statements. If Veal testified, he would be subject to cross examination by the state.

It was the court's ruling admitting Weaver's testimonial statements, not Veal's proposed testimony, which would make Weaver a witness. Her statements to Hockett describing Veal's conduct were offered for the truth of the statements to prove that Veal was lying when he said Weaver sold him the truck. Veal has a constitutional right to confront and cross examine the witnesses against him. Because Weaver had never been subject to cross examination by the defense, her testimonial hearsay statements were inadmissible. See Crawford, 541 U.S. at 59.

The court demonstrated that it did not understand this distinction, asking, “Now he’s relating to ... the jury his version of what she said. Why should he be allowed to do that? ... Why is it any different than the State offering what she said to the police?” IRP 23. The difference is that the defendant has not only the right to testify in his defense but also the right to confront witnesses against him. Crawford, 541 U.S. at 59; Rock v. Arkansas, 483 U.S. 44, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987); State v. Thomas, 128 Wn.2d 553, 558, 910 P.2d 475 (1996). Veal can testify to the effect Weaver’s statements had on him, and he is subject to cross examination by the state when he does. But he is constitutionally protected against admission of testimony by an accuser he has had no opportunity to confront and cross examine. By ruling that testimonial hearsay would be admissible to rebut Veal’s non-hearsay testimony, the court forced him to choose between these constitutional rights.

The court, still struggling to understand the nature of the statements being offered, suggested that Weaver’s statements to Hockett were admissible because, “It’s a prior inconsistent statement, hearsay statement that is inconsistent with what your client says she said.” IRP 73. Because the court found the statements reliable, it believed admission was appropriate rebuttal. Id.

Under ER 801, a prior statement of a witness is excluded from the definition of hearsay if the declarant testifies at trial and is subject to cross examination about the statement and the statement is (i) inconsistent with the declarant's testimony and given under oath or (ii) consistent with the declarant's testimony and offered to rebut a charge of recent fabrication. ER 801(d)(1). Since Weaver did not testify at trial and was never subject to cross examination regarding her statements, this rule provides no support for the court's ruling that her statements were admissible.

Neither does the court's determination that the statements were reliable. As Crawford recognized, "Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to the vagaries of the rules of evidence, much less to amorphous notions of 'reliability.'" Crawford, 541 U.S. at 61. "Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation." Id. Although the aim of the confrontation clause is to ensure the reliability of evidence, the clause commands "that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." Id. "Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." Id. at 68-69.

Contrary to the court's perception, Veal's proposed testimony would not make Weaver a witness, and no hearsay exception or judicial determination of reliability could compensate for the denial of Veal's right of confrontation. Thus, there was no supportable basis for the court's ruling that Weaver's testimonial hearsay was admissible in rebuttal.

4. The court's erroneous ruling is not harmless.

A violation of the confrontation clause is subject to harmless error analysis and requires reversal unless the error was harmless beyond a reasonable doubt. State v. Davis, 154 Wn.2d 291, 304, 111 P.3d 844 (2005), aff'd by Davis v. Washington, 126 S. Ct. 2266 (2006). In this case, the court ruled that if Veal testified as proposed, the court would admit Weaver's testimonial statements. Thus, the court's ruling forced Veal to choose between his constitutional right to testify in his defense, and his constitutional right to confront his accuser. While no evidence was ultimately admitted which violated Veal's right of confrontation, the court's erroneous ruling precluded Veal from testifying. 2RP 238. The court's decision therefore cannot be considered harmless beyond a reasonable doubt.

D. CONCLUSION

Because Weaver was unavailable and had not been subject to prior cross examination by the defense, her testimonial statements were

inadmissible. The court's ruling that the statements would be admitted to rebut Veal's testimony violated his Sixth Amendment right of confrontation. His conviction should be reversed.

DATED this 21st day of November, 2006.

Respectfully submitted,



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Certification of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid,
properly stamped and addressed envelopes containing copies of the Brief of Appellant in

State v. Christopher Veal, Cause No. 34954-0-II, directed to:

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



Catherine E. Glinski
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November 21, 2006

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