UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

C.A. # 21-10230

UNITED STATES OF AMERICA, Plaintiff vs. **LAWRENCE BLACKSHIRE,** Defendant	**U.S.D.C# 2:19-cr-01033-SMB-1**

ON APPEAL FROM JUDGMENT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, PHOENIX DIVISION, HONORABLE SUSAN M. BRNOVICH , PRESIDING

APPELLANT'S REPLY BRIEF

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May, 2023

REPLY BRIEF TABLE OF CONTENTS

TABLE OF AUTHORITIES……...…..iii

REPLY ARGUMENT

I. The District Court Wrongly Applied The Forfeiture By Wrongdoing Doctrine To Admit C.S.'s Recorded Interviews With Law Enforcement Officers, And The Error Was Not Harmless. ……...……1

A. Introduction……1

B. The Government's overbroad reading of the Forfeiture By Wrongdoing Doctrine risks violating a defendant's fundamental Confrontation rights in benign situations, regardless of the duration and severity of his action or whether the conduct actually caused a witness's unavailability; and lenient application will disincentivize the Government's efforts to secure a material witness's cooperation…….……2

C. Blackshire's conduct does not rise to the level warranted to forfeit a critical Constitutional right……..…….6

D. C.S.'s "unavailability" was not due to "wrongdoing" by Blackshire; and even if she was afraid of him, assertions that a witness possesses a generalized fear of retaliation are insufficient to apply the Forfeiture By Wrongdoing exception. …….…….13

E. There was otherwise insufficient evidence that Blackshire actually caused C.S.'s unavailability……15

F. The Government has not met its burden to show that the improperly admitted evidence was harmless beyond a reasonable doubt. ……18

II. Over Hearsay and Crawford Objections, the District Court Wrongly Admitted C.S.'s Statements to Nurse Rable……...……22

A. Objective evidence negated any inference that C.S. understood that her statements to Forensic Nurse Rable were to be made for the purpose of receiving necessary medical treatment under Fed. R. Evid. 803(4)…….……..…22

B. C.S.'s statements to Nurse Rable were testimonial since they were not made for the primary purpose of medical diagnosis or treatment, and a reasonable person would have expected them to be used against Blackshire at trial…….…….26

C. The erroneous admission was not harmless……...31

CONCLUSION…….33

CERTIFICATE OF COMPLIANCE……34

CERTIFICATE OF FILING AND SERVICE…….35

INDEX TO REPLY ADDENDUM…….36

REPLY ADDENDUM …… RAD 37-49

TABLE OF AUTHORITIES

CASES

Arnsberg v. United States, 757 F.2d 971 (9th Cir. 1985)……...……5

Barnett v. Norman, 782 F.3d 417 (9th Cir. 2015)……..….4, 5

Brown v. State, 618 S.W.3d 352 (Tex. Crim. App. 2021)……..14, 17

Carlson v. Attorney General of California,
791 F.3d 1003 (9th Cir. 2015)……12, 13

Cody v. Commonwealth, 68 Va. App. 638 (2018)……...12

Commonwealth. v. Edwards, 444 Mass. 526 (2005)……...15

Crawford v. Washington, 541 U.S. 36,
124 S.Ct. 1354 (2004) …….……..…1, 15, 22, 30

Davis v. Washington 547 U.S. 813 (2006)……...2, 14

Dorsey v. Cook, 677 F. App'x. 265 (6th Cir. 2017)…….28

Giles v. California, 554 U.S. 353 (2008)……..2, 11, 14, 15

Illinois v. Allen, 397 U.S. 337, 90 S.Ct. 1057 (1970)……1

Lee v. Venetian Casino Resort, LLC, 747 F. App'x 607 (9th Cir. 2019)……1

Medina v. Williams, 565 F. App'x 644 (9th Cir. 2014)……...31

People v. Bernazard, 188 A.D.3d 1239 (N.Y. App. Div. 2020)……....16

People v. Burns, 494 Mich. 104, 832 N.W.2d 738 (2013)……...16

People v. Geraci, 85 N.Y.2d 359, 649 N.E.2d 817 (1995)……11

People v. Merchant, 40 Cal.App.5th 1179, 253 Cal.Rptr.3d 766 (2019)…..12

People v. Smart, 23 N.Y.3d 213 (2014)……..……..16

Pham v. Kirkpatrick, 711 F. App'x 67 (2d Cir. 2018) (Unpublished)….27, 28

State v. Franklin, 232 Ariz. 556 (Ct. App. 2013)……...……16, 17

State v. Hallum 606 N.W.2d 351 (Iowa 2000)……..13

State v. Henderson, 35 Kan. App. 2d 241 (2006),
aff'd, 284 Kan. 267 (2007)……....17

State v. Jako, 245 W. Va. 625 (2021)……...16

State v. Jarzbek, 539 A.2d 1245 (Conn. 1987)…….17

State v. Lehr, 227 Ariz. 140, 254 P.3d 379 (2011)……6

State v. Maestas, 412 P.3d 79 (N.M. 2018)……..2, 15

State v. Mechling 219 W.Va. 366, 633 S.E.2d 311 (2006)……...11

State v. Rinker, 446 N.J. Super. 347 (App. Div. 2016)……16

State v. Shaka, 927 N.W.2d 762 (Minn. App. 2019)……...12

State v. Smith, 2023-Ohio-603, 2023 WL 2323040……...6

Steele v. Taylor, 684 F.2d 1193 (6th Cir. 1982)……...12

United States v. Boekelman, 594 F.2d 1238 (9th Cir.1979)……...20, 21

United States v. Bordeaux, 400 F.3d 548 (8th Cir. 2005)……30

United States v. Carlson, 547 F.2d 1346 (8th Cir. 1976)……..11

United States v. Carter, 907 F.3d 1199 (9th Cir. 2018)……...18

United States v. Cazares, 788 F.3d 956 (9th Cir. 2015)……..1, 11, 17

United States v. Cherry, 217 F.3d 811(10th Cir. 2000)……11

United States v. Dhinsa, 243 F.3d 635 (2d. Cir. 2001)……11

United States v. Emery 186 F.3d 921 (8th Cir. 1999)……...11

United States v. Gray, 405 F.3d 227 (4th Cir. 2005) ……2

United States v. Houlihan, 92 F.3d 1271 (1st Cir. 1996)……..11

United States v. Jackson, 706 F.3d 264 (4th Cir. 2013)……3, 11

United States v. Johnson, 767 F.3d 815 (9th Cir. 2014)…….2, 11, 17

United States v. Kootswatewa, 893 F.3d 1127 (9th Cir. 2018)……22, 24, 29

United States v. Lane, No. 19-10317, 2021 WL 2029193
(9th Cir. May 21, 2021) (Unpublished)……..28, 29

United States v. Latu, 46 F.4th 1175 (9th Cir. 2022) …….25, 26

United States v. Montague 421 F.3d 1099 (10th Cir. 2005)… .11, 12, 17, 18

United States v. Scott, 284 F.3d 758 (7th Cir. 2002)……..3

United States v. White,116 F.3d 903 (D.C. Cir. 1997)…….11

United States v. Yazzie, 59 F.3d 807 (9th Cir. 1995)…….22, 25

STATUTES AND CONSTITUTIONAL PROVISIONS

Fed. R. Evid. 804(b)(6)……..……1, 2, 3, 15, 31

Fed. R. Evid. 803(4)……..…..22, 25

18 U.S.C. § 3144…….……5

United States Constitution, Amendment VI……1, 2, 3, 4, 6, 14, 18

OTHER AUTHORITIES

Rachel J. Wechsler, Victims as Instruments, 97 Wash. L. Rev. 507, pp. 533-541 (2022) (“Weschsler”)
Available at: https://digitalcommons.law.uw.edu/wlr/vol97/iss2/7
Last accessed May 1, 2023
…….4, 5

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last accessed May 7, 2023
……...23

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……24

I. The District Court Wrongly Applied The Forfeiture-By-Wrongdoing Doctrine To Admit C.S.'s Recorded Interviews With Law Enforcement Officers, And The Error Was Not Harmless.

A. Introduction

The right of the accused to confront witnesses against them is a "bedrock procedural guarantee" and should not be lightly disregarded Crawford v. Washington, 541 U.S. 36, 42, 62, 124 S.Ct. 1354 (2004) (accepting Forfeiture By Wrongdoing as an equitable doctrine, but reaffirming the importance of a defendant's Confrontation right by severely limiting circumstances under which that right could be circumvented).[1] "[C]ourts must indulge every reasonable presumption against the loss of constitutional rights." United States v. Cazares, 788 F.3d 956, 971 (9th Cir. 2015), *quoting* Illinois v. Allen, 397 U.S. 337, 343, 90 S.Ct. 1057 (1970).

Whether Blackshire's nonthreatening conversations constituted "wrongdoing" and "causation" sufficient to justify forfeiting his fundamental Confrontation right, particularly where the Government exercised no coercive action to secure C.S.'s cooperation, is an issue that merits *de novo* review. Cazares, supra at 972 (reviewing Confrontation Clause claims and the District

[1] Courts typically extend equitable relief "only sparingly." Lee v. Venetian Casino Resort, LLC, 747 F. App'x 607, 608 (9th Cir. 2019).

Court's construction of hearsay rules *de novo*, and reviewing Court's determination to admit hearsay evidence for abuse of discretion).

B. The Government's overbroad reading of the Forfeiture By Wrongdoing Doctrine risks violating a defendant's fundamental Confrontation rights in benign situations, regardless of the duration and severity of a defendant's action, or whether the conduct actually caused a witness's unavailability; and will disincentivize the Government's efforts to secure a material witness's cooperation.

The common-law forfeiture rule was fashioned to remove the otherwise powerful incentive for defendants to intimidate, bribe, and kill the witnesses against them, and is grounded in "the ability of courts to protect the integrity of their proceedings." Giles v. California, 554 U.S. 353, 374 (2008), *quoting* Davis v. Washington 547 U.S. 813, 834 (2006). Although the doctrine's elements have been construed broadly to effectuate that purpose. (United States v. Gray, 405 F.3d 227, 242 (4th Cir. 2005)), courts have not abandoned its essential elements of intent, causation, and wrongful conduct. *See e.g.,* Giles, *supra* at 377 (refusing to dispense with proof of intent); State v. Maestas, 412 P.3d 79, 88 (N.M. 2018) (indirect and attenuated consequences insufficient to satisfy the causation element for purposes of forfeiture). Rather, courts have employed other mechanisms to effectuate the equitable doctrine. *See e.g.,* United States v. Johnson, 767 F.3d 815, 821 (9th Cir. 2014) ("broad reading" effectuated by employing preponderance of evidence standard);

United States v. Jackson, 706 F.3d 264, 269 (4th Cir. 2013) (declining to require that intent to silence a witness be the *sole* reason for defendant's misconduct).

The terms "wrongdoing" and "misconduct," although read more broadly than "criminal activity" *per se,* must be given meaning. "[C]causing a person not to testify at trial cannot be considered the 'wrongdoing' itself, otherwise the word would be redundant. So we must focus on the actions procuring the unavailability." United States v. Scott, 284 F.3d 758, 763; 764 (7th Cir. 2002) (applying pressure, including threats of harm or future retribution, is considered "wrongdoing").

Although the Government acknowledges that "wrongful" conduct is not defined under Fed. R. Evid. 804(b)(6) [RAD 38],it intimates that that any *actus reus*, however innocuous, ineffective, or untimely, is sufficient to forfeit a defendant's constitutional Confrontation rights when a witness refuses to cooperate with the Government. (Ans.Br.25). Presumably, every defendant in a criminal case desires that witnesses against him would be unlocatable or uncooperative. Under such lenient interpretation, if a defendant merely *mentions* that possibility to anyone -- his "intent" to procure a witness's unavailability would be imputed.

Appellee also implies that the Forfeiture doctrine's "causation" element is satisfied if a defendant merely has "the means motive, and opportunity" to "procure" a witness's silence, whether or not his conduct *actually caused* her unavailability. (Ans.Br.28-29). Regardless of an unavailable witness's legitimate motivations [2] or the Government's inadequate efforts to render a witness "available," the Government's ability to circumvent the Confrontation Clause would strip defendants of their right to confront the only witness to their crimes in many benign situations, regardless of the duration and severity of a defendant's conduct.

Additionally, the Government's proposed overbroad reading would disincentivize the Government's efforts to secure a material witness's cooperation. As this Court has observed:

> Few witnesses want to testify, and if given the choice, almost none would. Answering embarrassing questions or reliving a traumatic event is a miserable experience . . . But much like jury service, witness testimony is not optional in our justice system—it is essential.

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[2] See Rachel J. Wechsler, Victims as Instruments, 97 Wash. L. Rev. 507, pp. 533-541 (2022) ("Weschsler") (Listing the myriad logical reasons *not prompted by fear of a defendant's retribution* which routinely inform many victims' conclusions that the harms they would experience from participating in the criminal legal process outweigh any benefits they would gain from the censure and temporary incapacitation of the offender).

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Last accessed May 1, 2023

Barnett v. Norman, 782 F.3d 417, 424–25 (9th Cir. 2015). For that reason, the Government is afforded numerous coercive mechanisms to secure a witness's presence: A material witness arrest warrant may be sought when there is probable cause for believing that it would be impracticable to secure the witness's presence by subpoena. Arnsberg v. United States, 757 F.2d 971, 976 (9th Cir. 1985). Witnesses in a federal criminal case may find themselves arrested, held for bail, and in some cases imprisoned until they are called upon to testify. *See* 18 U.S.C. § 3144 [RAD37]. [3]

Here, despite Det. Ochoa's longstanding unsuccessful attempts to locate C.S. (2-ER-347-349), and the Government's continuing expectation that C.S. would not appear to testify (1-ER-116-117), the Government apparently availed itself of no coercive mechanisms to secure C.S.'s attendance, although she was a key, material witness and Blackshire faced up to life in prison if convicted. Nor, apparently, did the Government investigate "Natia" or Lucinda Wilson regarding their knowledge of C.S.'s whereabouts, or call them as witnesses to determine whether they *actually contacted* C.S. Yet, the Government and Court readily relied on Blackshire's jail

[3] See Wechsler, *supra* n. 2, pp. 515-530 (discussing procedures and strategies available to the Government to secure a material witness's cooperation).

conversations with them as "proof" that he "indirectly" caused C.S.'s non-appearance. 3-ER-363.

Although domestic violence complainants routinely refuse to cooperate, and despite that C.S.'s eventual non-cooperation was statistically foreseeable in September, 2018, no attempt was made to record her initial statements under oath when she *was* available. *C.f.* State v. Lehr, 227 Ariz. 140, 148 ¶ 29, 254 P.3d 379, 387 (2011) (*en banc*) (Previous testimony under oath admissible only when witnessed refused to testify after state had done "everything in its power to compel" the witnesses' testimony, including issuing a court order to testify and exercising other coercive efforts); State v. Smith, 2023-Ohio-603, ¶ 96 2023 WL 2323040 (criticizing "victimless" prosecutions and holding that erroneous admission of police bodycam evidence was not harmless error, where state had not requested bench warrant to compel victim's appearance as a material witness or exercised its "other options" to secure participation of uncooperative witness).

C. Blackshire's conduct does not rise to the level warranted to forfeit a critical Constitutional right.

Despite no evidence that C.S. was available or willing to cooperate with the Government during the 16 months prior to trial, the District Court relied on three brief excerpts of Blackshire's jail conversations two months before trial - to third parties - to prove that Blackshire "procured" C.S's

unavailability. The Government (2-ER-356-57) and Court (3-ER-363) contended that the strongest evidence of Blackshire's "direct" action was his December 23, 2019 conversation with his girlfriend Lucinda Wilson, who had just learned that Blackshire risked life imprisonment.

Blackshire observed:

> They still need victims. There are no victims. They can't find shit. . They're not ever gonna find – If anything, I would be worried about one individual . . .and [he] can't even be found, not even by me. I don't even know where he's at. 1-ER-16-127; USB #1.

Blackshire reassured Wilson:

> "Everything's gonna be all right. . .I already made peace with everybody. Everything's . . cool. And we already discussed this whole. . . not showing up to court thing."
>
> Id.

As a preliminary matter, Appellee relies on the Prosecutor's misquotation of the conversation, writing: "Defendant had engaged in 'affirmative action' to silence C.S. [*quoting Prosecutor's statement during the forfeiture hearing*]:

> "[H]e's acknowledging that he already has made that action in the first call [where] he's actually saying, I already have done this. . . She's not coming to court."
>
> (Ans.Br.19, *quoting* 2-ER-357).

But Blackshire did not make such a conclusive, inculpatory admission. The Government unfairly ignores this conversation's timing and context:

Blackshire obviously knew that several Tribal charges involving some of the same conduct and witnesses had been dismissed six months earlier. By December 23, after meeting with his attorney, Blackshire was surely aware of the Government's unsuccessful efforts to locate C.S., and thus assuaged his girlfriend. The statement that he "made peace" and had "taken care of it," is most fairly read as his opinion that since the Tribal charges were dismissed, the Federal charges would likewise fail.[4]

As Appellee acknowledges, the Judge's task was to "measure C.S.'s failure to appear at the time of trial." (Ans.Br. 30, *citation omitted*). However, the Government offered no evidence about *when* the "peacemaking" conversation occurred.[5] Inferably, the conversation occurred *before* Blackshire's Tribal arrest on January 24, 2019, considering that the Tribal charges were dismissed on June 29, 2019, and Blackshire had been in tribal custody for 160 days prior. This is confirmed by information within

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[4] The offense occurred on September 11-12, 2018. Blackshire was subsequently arrested and remained in Tribal custody from January 24, 2019 until July 2, 2019. Tribal charges on three counts, including conduct relating to the instant case and that which involved C.S. and other witnesses, were dismissed on June 29, 2019. (PSR ¶12). The Federal indictment issued on August 27, 2019 (PSR ¶13). Blackshire was arrested on Federal charges on December 1, 2019 (PSR ¶14). He remained in Federal custody afterward.

[5] Considering the Government's comprehensive access to Blackshire's communications during his Tribal and Federal incarcerations, the "peacemaking" conversation presumably did not occur then.

Defendants' Motion for Variance (ASER-2-11) which described a non-coercive, non-threatening conversation between Blackshire and C.S. that occurred *after* the incident, but *before* his Tribal arrest on January 24, 2019. Then, the couple discussed the incident from their perspectives and "made peace." ASER-3-4. [6] At that point, there were no Federal charges to "interfere" with, even if such a benign conversation could be "broadly construed" as "wrongful." [7]

As additional "wrongdoing," the Government relies on Blackshire's two, brief conversations with "Natia" and Lucinda Wilson that occurred two months or more before trial. (Ans.Br.26-27) Thus, the Government inferentially leaps to the unwarranted conclusion that Blackshire "had the means and opportunity to silence [C.S]. . . " (Ans.Br.29). "He know where

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[6] On September 11, 2018, Blackshire was distraught after believing that C.S. was intentionally choking his beloved rescue dog, who was recovering from surgery after being retrieved from the animal shelter earlier that evening. ASER-3-4. When C.S. ignored Blackshire's pleas to stop pulling the dog's leash, he struck C.S. in the nose and side of her head to force her to release it. The couple later talked about the situation and apologized to each for the incident, then parted ways. ASER-4-5. Blackshire's account was reiterated during Sentencing. 4-ER-547; 563; 567-568; 570-571 (by counsel); 572-73 (allocution by defendant).

[7] During its Forfeiture argument, the Prosecutor asserted that "Detective Owens was looking for [C.S] as early as August of 2019 . . . But prior to that time, there hadn't been efforts to try to locate Crystal because she wasn't - - - needed up until that time." 2-ER-356.

C.S. lived and knew people with whom she associated." Id. To the contrary, the evidence actually showed that Blackshire *did not kno*w where C.S. (or another potential witnesses) could be located: During the December 23 conversation with Lucinda Wilson, while referring to potential witnesses, Blackshire stated, "Even I can't find him." 1-ER-126-127. On December 29, Blackshire mistakenly called a phone number and a woman answered: "Natia's house." 1-ER-128. Blackshire assumed that C.S. could not be reached, stating: "Is there any way to get a hold of her: No, huh?" 1-ER-129. In January, 2020, Blackshire unsuccessfully asked Wilson if she knew how to "find her" and convey a message. 1-ER-130-131. The Government neglected to call Wilson or "Natia" as a witnesses to establish whether C.S. was locatable, or determine whether either woman had *actually conveyed* a message to C.S., although the Government imputed this knowledge and culpability to Blackshire because of his mere association with them.

Nonetheless, Blackshire's two brief conversations do not rise to the level of misconduct sufficient to warrant forfeiture of a fundamental Constitutional right. No evidence suggests that these conversations were in violation of a court order, or employed threats, coercion, bribery, intimidation, or undue pressure. Nor was there evidence that this conduct *actuall*y influenced C.S. Unlike here, in the typical Forfeiture by Wrongdoing case, the

defendant prevents a witness from testifying or cooperating with law enforcement by killing the witness before trial. *See, e.g.*, Giles v. California 554 U.S. 353, 356, 128 S.Ct. 2678 (2008); United States v. Cazares, 788 F.3d 956, 975 (9th Cir. 2015); United States v. Jackson 706 F.3d 264, 265 (4th Cir. 2013); United States v. Dhinsa, 243 F.3d 635, 652 (2d. Cir. 2001); United States v. Cherry, 217 F.3d 811, 814-815 (10th Cir. 2000); United States v. Emery 186 F.3d 921, 926 (8th Cir. 1999); United States v. Houlihan, 92 F.3d 1271, 1279 (1st Cir. 1996); United States v. White,116 F.3d 903, 911 (D.C. Cir. 1997).

Occasionally, the definition of "wrongful" conduct has been expanded to include threats, intimidation, and bribery. *See, e.g.*, United States. v. Johnson, 767 F.3d 815, 818 (9th Cir. 2014) (death threats); United States. v. Jackson, *supra* at. 267, *citing* United States v. Carlson, 547 F.2d 1346, 1358-1359 (8th Cir. 1976) (intimidation); State v. Mechling 219 W.Va. 366, 633 S.E.2d 311, 326 (2006) (physical violence); People v. Geraci, 85 N.Y.2d 359, 649 N.E.2d 817 (1995) (bribery).

Where there is a history of domestic violence, repeated violations of court orders during jail visits and phone calls may also constitute "wrongful "conduct. *See* United States v. Montague 421 F.3d 1099, 1102-1104 (10th Cir. 2005) (repeated violations of post-arrest no contact order caused witness

to change her story); People v. Merchant, 40 Cal.App.5th 1179, 253 Cal.Rptr.3d 766 (2019) (defendant violated a post-arrest no contact order by calling 167 times in the five months following his arrest, asked his friends to keep the witness away for six months, and reminded witness that his friends were watching her, to make sure she did not testify); Cody v. Commonwealth, 68 Va. App. 638 (2018) (five separate violations of a protective order during which defendant slowly wore down witness with persistent, emotionally manipulative behavior which he convinced her not to cooperate further in his prosecution); State v. Shaka, 927 N.W.2d 762, 769-70 (Minn. App. 2019) (in violation of no-contact order, defendant's repeated calls to his family members caused his wife not to appear to testify at trial).

Furthermore, "wrongful" conduct which is not criminal *per se*, but evinces persuasion and control by a defendant, has been far more extreme than the conduct here. *See* Steele v. Taylor, 684 F.2d 1193, 1201 (6th Cir. 1982) (*further citation omitted*) (defendant lived with and impregnated witness while awaiting trial, secured and paid for her attorney, installed his own attorney as her counsel, and made numerous manipulative pretrial maneuvers over many months to ensure she did not testify); Carlson v. Attorney General of California 791 F.3d 1003, 1012 (9th Cir. 2015) (after service of process, defendant secreted the victim/witness and mother, stayed with them at hiding

place, and told other children not to call their mother); State v. Hallum 606 N.W.2d 351, 353, 356-357 (Iowa 2000) (defendant encouraged and influenced his minor brother, who was *already incarcerated* for refusing to testify, to remain firm in his refusal, by repeatedly writing letters to him).

D. C.S.'s "unavailability" was not due to "wrongdoing" by Blackshire; but even if she was afraid, assertions that a witness possesses a generalized fear of retaliation are insufficient to apply the Forfeiture By Wrongdoing exception.

Unable to articulate the actual "wrongdoing" in Blackshire's jail conversations, the Government repeatedly relies on C.S.'s unconfronted, unsworn allegations of *previous* "threats" and "violence" which, it contends, gave C.S. "good reason to fear future harm or retaliation." (*See* Ans.Br. 27; 1; 2, 5, 9, 20, 26-27, 29, 30, 31). The Government fails to address the glaring fact that C.S. *actually contacted* the police on September 12 and 13, 2018, which refutes any suggestion that she was intimidated or fearful of doing so.

Nonetheless, Appellee suggests that Blackshire's *past history* with C.S. transformed Blackshire's two brief conversations with Natia and Wilson into "jailhouse commands [ ] calculated to coerce, pressure, or manipulate C.S. into silence." (Ans.Br.26-27). Appellee also implies that a speaker's known "propensity" for threats and violence automatically renders any subsequent communication to a witness, or anyone else, *inherently coercive*, "wrongful"

conduct which warrants forfeiting a defendant's fundamental Confrontation rights. (Ans.Br.27). However, the Supreme Court has emphasized that the standards for finding Forfeiture By Wrongdoing *do not change* because a case involves domestic violence. In Davis v. Washington, 547 U.S. 813, 832–33 (2006), the Supreme Court rejected the suggestion that the crime of domestic violence "requires greater flexibility in the use of testimonial evidence." Id. It recognized that domestic violence

> is notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial. When this occurs, the Confrontation Clause gives the criminal a windfall. *We may not, however, vitiate constitutional guarantees when they have the effect of allowing the guilty to go free*.

Id. (*emphasis supplied*)

Consistently, in Giles v. California, 554 U.S. 353 (2008), the Supreme Court reiterated that there is not a "special, improvised, Confrontation Clause for those crimes that are frequently directed against women." Brown v. State, 618 S.W.3d 352, 355 (Tex. Crim. App. 2021), *quoting* Giles v. California, 554 U.S. 353, 359, 128 S.Ct. 2678 (2008). While the Sixth Amendment seeks fairness, it does so through very specific means (one of which is confrontation) and "'does not suggest any open-ended exceptions from the confrontation requirement to be developed by the courts.'" Giles, *supra* at 375–76, *quoting* Crawford v. Washington, *supra* at 54. In sum, domestic

violence is inherently coercive. Assertions that a witness possesses a generalized fear of retaliation are insufficient to apply the Forfeiture By Wrongdoing exception. If courts were to presume tampering in every domestic violence case, the forfeiture exception would swallow the rule of confrontation.

E. There was otherwise insufficient evidence that Blackshire actually caused C.S.'s unavailability.

Fed. R. Evid. 804(b)(6) requires that the defendant's "wrongdoing" actually caused the witness's absence. Id. *C.f.* Commonwealth. v. Edwards, 444 Mass. 526, 541 (2005) (requiring a significant/meaningful causal link between a defendant's actions and a witness's unavailability). "[I]ndirect and attenuated consequences will not satisfy the causation condition for purposes of forfeiture." State v. Maestas, 412 P.3d 79, 88 (N.M. 2018) (*quotations and citations omitted*) (noting other courts' requirements that conduct be "precipitating and substantial" cause of witness's absence along with a determination that the wrongful conduct was "the real reason" for a witness's unavailability).

Unlike cases where a witness *agreed* to testify, then changed her mind because of a defendant's actions, there is no evidence that C.S. was *ever* willing to cooperate with the Government after September 13, 2018. *See*

People v. Burns, 494 Mich. 104, 116, 832 N.W.2d 738, 745 (2013) (timing of the wrongdoing is relevant to consideration of actual causation); People v. Smart, 23 N.Y.3d 213, 220-221 (2014) (insufficient that defendant expressed hope that the witness would not testify against him; actions taken by the witness in direct response to or within a close temporal proximity to defendant's misconduct must show that misconduct was a significant cause of the witness's decision not to testify); State v. Rinker, 446 N.J. Super. 347, 365 (App. Div. 2016) (state failed to prove by a preponderance of evidence that witness was "made unavailable by ... defendant's wrongdoing" considering that months earlier, witness had reluctantly testified at defendant's trial and indicated that he had no intention to "bury his son."); State v. Jako, 245 W. Va. 625, 636 (2021) (*further citation omitted*) (defendant's multiple phone calls in violation of protective order, actually caused witnesses unavailability for trial after witness initially planned to testify against defendant, then refused to do so after taking his phone calls.); People v. Bernazard, 188 A.D.3d 1239, 1241 (N.Y. App. Div. 2020) (where adult complainant was fully cooperative with the prosecution for months until defendant called her from prison 67 times in violation of protective order and urged non-cooperation with prosecutor, his conduct rendered witness unavailable); State v. Franklin, 232 Ariz. 556, 561 (Ct. App. 2013) (because victim's unwillingness to

cooperate began at approximately the same time that defendant began to make telephonic contact with victim, trial court could properly infer that defendant's tampering procured witness's eventual absence from trial); United States v. Cazares, 788 F.3d 956, 974–975 (9th Cir. 2015) (defendants arranged murder of victim eight days after he reported robbery to police); United States v. Johnson, 767 F.3d 815, 823 (9th Cir. 2014) (witness began receiving threats one day after defense attorneys disclosed witness lists to their clients).

The Government also relies on alleged threats made *prior to and during* the assault for which Blackshire was on trial as the "wrongdoing" which triggered forfeiture of his Confrontation rights. In forfeiture cases involving threats or coercion, the threats or coercion occurred *after* the events giving rise to the criminal charges. State v. Henderson, 35 Kan. App. 2d 241, 254 (2006), *aff'd*, 284 Kan. 267 (2007) ("Other than the murder of the declarant, the causative factor has consistently been some act i*ndependent* of the crime charged); State v. Jarzbek, 539 A.2d 1245, 1253 (Conn. 1987) (ruling that *threats* "made during the commission of the very crimes of which [the defendant was] charged" were not acceptable as a basis for forfeiture of the right to confrontation); United States v. Montague, 421 F.3d 1099, 1104 (10th Cir. 2005) (evidence of defendant's pre-prosecution pattern of spousal abuse insufficient to warrant application of the forfeiture exception; court evaluated

whether post-incarceration communication with wife, in violation of no contact order, actually procured her unavailability as a witness); Brown v. State, 618 S.W.3d 352, 358 (Tex. Crim. App. 2021) (past commission of family-violence assault offenses does not, standing alone, show that a defendant caused the victim to be absent from trial).

F. The Government has not met its burden to show that the improperly admitted evidence was harmless beyond a reasonable doubt.

The Government bears the burden of proving that the error was harmless beyond a reasonable doubt, which this Court assesses by considering the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, and the overall strength of the prosecution's case. United States v. Carter, 907 F.3d 1199, 1210 (9th Cir. 2018) (*quotation and citation omitted*) (Government failed to meet burden where absent witness's testimony was central to several charges and could not be established by documentary evidence). Even when the Government's case is strong, a Confrontation Clause violation is not harmless where the erroneously admitted evidence could have significantly altered the evidentiary picture. Carter, *supra* at 1211 (*citations and quotations omitted*).

Here, neither the identity of the perpetrator, nor the fact that a basic assault occurred, were contested; however, C.S.'s unconfronted allegations

during police interviews described repeated violence, fear, and other conduct needed to support charges of: Kidnapping/Unlawful Restraint; Strangulation; the ”serious” and “substantial” bodily injuries that heightened the assault charges; plus the sentence enhancements for Strangulation and Obstruction of Justice (*see* Ans. 56; 58, *arguing that court could consider speaker's history of violent conduct*). Because there were no witnesses, C.S.'s statements were the strongest, if not the sole evidence against Blackshire on the heightened charges, particularly those involving allegations that Blackshire had threatened, detained, and strangled C.S. during the assault.

Otherwise, without C.S.'s statements, the evidence consisted of testimony by medical personnel and a forensic nurse working closely with the police, and photographs of C.S.'s injuries. Significantly, neither Dr. Seroy nor Nurse Rable had an independent memory of C.S. 1-ER-59; 3-ER-436-437. Nurse Rable characterized C.S.'s injuries as “minor to moderate” by examination. 1-ER-68.

The physical evidence, particularly the photographs, did not sufficiently corroborate C.S.'s descriptions of the events' severity and duration. Photographs depicted bruising to C.S.'s face, but nowhere else, save a possible bruise on her outer back arm and a scratch on her right knee. 3-ER-443-444. (USB # 14-34). Even Nurse Rable admitted that several photos she

took barely depicted a visible injury. 1-ER-76-77; 80. Although a CT scan showed that that C.S. had a "minimally displaced" nasal fracture, C.S. was given Tylenol and nothing stronger for pain. 3-ER-447. C.S. experienced no bleeding, and no injury required stitches, a cast, brace, or emergency surgery. 1-ER-33-34; 90-91. Nurse Rable observed injuries that were measured in centimeters and described as bruises, abrasions, and red pinpoints. 1-ER-76-82. C.S. allowed only a "limited visualization" exam and complained of no injuries beyond those documented. She never returned for follow-up care.1-ER-90-93.

The Government's evidence on any charge *beyond* assault was not overwhelming or uncontested, as more fully discussed in Appellant's Opening Brief at pp. 12-13; 16-17. Appellee heavily relies on Blackshire's jail conversations to demonstrate his consciousness of guilt (Ans.Br.32; 43-44). Likewise, at trial, the Prosecutor devoted the vast majority of her primary closing argument to Blackshire's jail conversations. 3-ER-488-491; 496-99. However, consciousness of guilt was only relevant to the assailant's identity. As the Prosecutor argued during the pre-trial Motion in Limine hearing, the phone calls were relevant for "consciousness of guilt, as well as to show . . . we've got the right guy." 1-ER-112-113. This weak circumstantial evidence was irrelevant to the enhanced charges. *C.f.* United States v. Boekelman, 594

F.2d 1238, 1240 (9th Cir.1979) (false exculpatory statements may be used only as circumstantial evidence of consciousness of guilt, rather than as evidence of guilt). Additionally, Delwin Ocha's testimony refuted any suggestion of continuing struggle or restraint: Although he lived only 20 feet from C.S.'s trailer, he didn't hear a fracas after the initial argument on September 11, 2018. 2-ER-274-77. Also important, defense counsel's closing argument highlighted multiple inconsistencies between C.S.'s depiction of events, depending on to whom she was speaking. 3-ER-499-508.

Ultimately, however, the jury heard highly prejudicial, inflammatory descriptions of unreported, uncorroborated, and uncharged instances of prior domestic abuse, i.e., a broken rib, (1-ER-20-22; SER-32; 47-48), and ostensibly threatening statements (1-ER-20-22; SER-30; 2-ER-306). This court cannot say that C.S.'s unconfronted statements had no effect on the verdict under the circumstances.

II. Over Hearsay and Crawford Objections, the District Court Wrongly Admitted C.S.'s Statements to Nurse Rable.

A. Objective evidence negated any inference that C.S. understood that her statements to Forensic Nurse Rable were to be made for the purpose of receiving necessary medical treatment under Fed. R. Evid. 803(4).

In United States v. Kootswatewa, 893 F.3d 1127, 1133 (9th Cir. 2018), this Court affirmed that "it is the declarant's understanding of the purposes for which the statements were made that matters under Rule 803(4)." Id., *citations omitted*). [RAD40]. "The declarant herself must understand that she is providing information for purposes of diagnosis or treatment because that understanding is what provides assurance that the statements are particularly likely to be truthful. Kootswatewa, *supra, citing* United States v. Yazzie, 59 F.3d 807, 813 (9th Cir. 1995). While "the declarant herself need not testify about her subjective thought process at the time she made the statements in question . . [or] testify at all," the Government must lay adequate foundation under Rule 803(4) by introducing objective evidence *of the context* in which the statements were made. Id. Although such evidence *may* include testimony provided by the medical professional who conducted the examination, and a description of the setting, that evidence is not dispositive where, as here, other objective record evidence *negates* the inference that a witness understood the medical purpose of her answers to questions. Kootswatewa, *supra* at 1133.

Contrary to the Government's assertion (Ans.Br.38), as discussed in Appellant's Opening Brief at pp. 46-48, ample *objective evidence* suggests that C.S. had every reason to understand that the purpose of the "forensic exam" was to collect evidence to assist law enforcement, rather than for medical purposes, in contrast with her previous day's medical encounters with Dr. Seroy and Dr. Low. On September 13, C.S.'s every move was choreographed by law enforcement to facilitate its investigation. That morning, Detective Owen transported C.S. *not to the hospital*, but to the Scottsdale Family Advocacy Center [RAD40-44], [8] which is itself an appendage of local law enforcement [RAD45-47]. [9] Once there, Owens

[8] "The Scottsdale Family Advocacy Center was designed to greatly increase the effectiveness and efficiency of Crimes Against Persons investigations . . . by co-locating multiple disciplines involved in the investigation and care of the victim in one building in one building that is intelligently designed to address the special needs of these types of crimes." Located at the Center, *inter alia,* are "*Police Crisis Intervention Specialists and Investigators from the Special Victims and Domestic Violence Units. . . "*
https://www.scottsdaleaz.gov/human-services/advocacy-center
last accessed May 7, 2023 [RAD40-44].

9 See Article, Terrance Thornton, Scottsdale City Council approves funds for victim services, technology ("Thornton"), Arizonadigitalfreepress.com (noting that "[Scottsdale **Police**] **Chief Walther** explains the Family Advocacy Center provides one place **for all aspects of the police investigation to unfold**.").
https://arizonadigitalfreepress.com/scottsdale-police-victim-services-aid/
Last accessed May 7, 2023 (*emphasis supplied*) [RAD45-47].

briefed HonorHealth Forensic Nurse Rable [RAD48-49] [10] and then remained and interviewed C.S. when Rable concluded. I-ER-58; 60; 87. *Contrast* United States v. Kootswatewa, *supra* at 1133 (9th Cir. 2018) (finding that interview's occurrence at Flagstaff Medical Center weighed in favor of admissibility).

Before any "examination" was rendered, C.S. signed a consent form indicating that the purpose of the "forensic exam" was to collect evidence, photograph her injuries, and acknowledging that the completed report (including C.S.'s statements) would be provided to law enforcement for purposes of continuing an investigation. 1-ER-60-61. Immediately after the "exam" concluded, Owens conducted a video interview of C.S. and then transported C.S. to the "scene" where they did a walk-through, which Owens also videotaped, evidenced by a consent form C.S. signed at about 12:00 p.m.

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[10] HonorHealth advertises its "forensic nurse examiners" as a critical part of a multidisciplinary team . . . [**that] include[s] law enforcement agencies**, victim advocates, crisis intervention specialists, and Child and Adult Protective Services." HonorHealth forensic nurses perform "[m]edical forensic exams [that] address health and safety issues **and include the collection of any potential evidence from an assault." "Nurses may provide expert witness testimony in court when necessary**."
https://www.honorhealth.com/community/forensic-nurse-examiner-program Last accessed May 7, 2023. [RAD48-49] (*emphasis supplied*).

The Government selectively relies on objective evidence that Rable was a (forensic) "nurse" who conducted a "physical exam," rendered a "diagnosis," and developed a care plan, all in the setting of a "medical examination room." (Ans.Br.37). It ignores that the "examination room" was housed in a facility primarily utilized to investigate crimes. Although Rable described her office as "much *like* a doctor's office" with the accoutrements of medical equipment, Nurse Rable utilized none of those. 1-ER-51-98. Despite Rable's "customary" practice of doing a "specialized head to toe examination" 1-ER-55, C.S.'s "exam" was limited to Rable documenting her injuries, and C.S. never fully disrobed or changed into an exam gown. 1-ER-90. Nor did nurse Rable take any forensic samples, blood, or urine tests, or "medically treat" her. 1-ER-68-69. Although Rable purported to offer "aftercare" instruction, Rable wanted to make "really sure that the patient understands the legality that's involved with strangulation." I-ER-66-67. As this Court cautioned in Yazzie, *supra* at 813–14, not all statements made to a doctor are made for medical purposes, even if they are made in a clinical setting, since a declarant can be motivated by purposes *other than* obtaining proper medical treatment Id. (noting that a declarant's statements may be motivated by personal objectives other than receiving medical care). The Government further ignores that the "forensic exam" occurred the day *after*

C.S. reported the incident and had *already* received medical treatment and domestic violence advocate services. *Compare* United States v. Latu, 46 F.4th 1175, 1179 (9th Cir. 2022) (declarant's statements made to medical providers during their clinical assessment of his traumatic injuries *within hours* of receiving those injuries were "made for—and [were] reasonably pertinent to—medical diagnosis or treatment." Fed. R. Evid. 803(4)(A)").

B. C.S.'s statements to Nurse Rable were testimonial since they were not made for the primary purpose of medical diagnosis or treatment and a reasonable person would have expected them to be used against Blackshire at trial.

Contrary to the Government's assertion (Ans.Br.40), C.S.'s prior authorization and consent imparted the "formality that often accompanies testimonial statements." Latu. *supra* at 1182. By virtue of the express language in the consent form that C.S. signed, C.S. was *well aware* that she was providing information that would be used by law-enforcement against Blackshire. And obviously, her statements actually *were in fact* used in lieu of her "live in-court testimony" to establish certain crucial facts at trial. Id. *at* 1180-83 (*citations omitted*).

Also contrary to the Government's assertion (Ans.Br.41), Appellant does not argue that such a consent form is *necessarily always* dispositive. But under these circumstances, the form was irrefutable objective evidence that

both C.S. and Nurse Rable realized the primary purpose of the "forensic" visit was to provide evidence for later use at trial against Blackshire, particularly since C.S. had *already* received medical treatment and domestic violence services the day before, she needed no further urgent medical care, and her attendance at the "forensic" interview - located within a law-enforcement investigatory outpost - was facilitated by Det. Owens.

The Government's unpublished cases regarding the significance of consent forms are inapposite and distinguishable. In Pham v. Kirkpatrick, 711 F. App'x 67, 69 (2d Cir. 2018) (*Unpublished)*, a state habeas case, the Second Circuit ruled only that a state court's conclusion that the doctor interacted with the victim for the "primary purpose" of providing medical treatment was neither contrary to nor an unreasonable application of clearly established federal law. Id. The "primary purpose" of an interrogation must be determined through an objective analysis of all the circumstances bearing on the interaction, including the statements and actions of the individuals involved. Id. In Pham, unlike here, the totality of the circumstances strongly suggested that the primary purpose of the interaction between the doctor and the victim was to obtain medical treatment, considering that the relevant conversation took place *in a hospital emergency room, on the night of* the alleged rape*, no law enforcement officers were present there*, nor had any officers attempted

to take a formal statement from the victim earlier that evening. Id. Most significantly, the victim *in fact required immediate* medical attention, including emergency contraception and preventative treatment for sexually transmitted diseases. Id. Under those *unique* circumstances, a consent form did not *in itself* determine the correct objective characterization of the interview. Id.

In another habeas case. Dorsey v. Cook, 677 Fed.Appx. 265, 267 (6th Cir. 2017) (*per curiam*) (*Unpublished*), a sexual assault forensic nurse had testified that an evaluation was for both medical and legal purposes. Id. She recounted, *inter alia*, that the victim signed a consent form similar to that signed by C.S.. Id. The Sixth Circuit *did not specifically address the issue of the consent form*, nor did it elucidate the "totality of the circumstances" justifying the state court's conclusion. That Court merely observed: "The Supreme Court has not addressed whether a statement is testimonial when it is made for the dual purpose of obtaining medical care and providing evidence for later criminal prosecution," and thus declined habeas relief because there could be "fair-minded disagreement about whether such statements are testimonial." Id at 267.

Finally, in United States v. Lane, No. 19-10317, 2021 WL 2029193 (9th Cir. May 21, 2021) (*Unpublished*), a child sexual abuse case, this Court

noted that, *unlike here*, the "objective circumstances of both examinations and the statements made therein were substantially similar to the circumstances of the hearsay statements this court approved in United States v. Kootswatewa, 893 F.3d 1127 (9th Cir. 2018) [also a child sexual abuse case], and fully support the inference that the statements were made for the purposes of medical diagnosis and treatment." Id. Thus, u*nder those circumstances*, "mere knowledge that the persons performing the examinations may also be looking for 'evidence' or 'DNA' does not negate the diagnosis/treatment aspect of the victims' statements." Id.

The Government unpersuasively urges this Court to ignore the cases supporting Appellant's argument that the primary purpose of Rable's exam was to gather evidence to assist the Government, even if the encounter may have had an ostensible, secondary medical purpose. (Ans.Br.41,*citing* Op Br. 44-47). But similar to Appellant's cited cases, the objective evidence indicates that Rable was i*ndeed* acting in cooperation with or for the police, and did so in a facility that, "**provides one place** for all aspects of **the police investigation** to unfold." [11]

The Government also seems to suggest that the purported existence of any "medical" purpose necessarily renders the statements non-testimonial.

[11] See Thornton, *supra* n. 9.

(Ans.Br.40-42). But even if some of C.S.'s statements may have *also* had a medical purpose, this "does not change the fact that they were testimonial, because Crawford does not indicate, and logic does not dictate, that multi-purpose statements cannot be testimonial." United States v. Bordeaux, 400 F.3d 548, 556 (8th Cir. 2005).

The Government also implies that incriminating "past-tense" statements may have somehow "informed further action" in the form of a "plan of care and protection from . . threats." (Ans.Br.41) But merely using the medical buzzwords "treatment" or "care plan" doesn't render C.S.'s statements non-testimonial. Nor does the generic "aftercare advice," which Rable stated was "similar to when . . a child bonks their head . . ." (1-ER-83-84), suffice to transform the otherwise testimonial nature of the incriminating statements she elicited throughout the entire encounter. Regarding "protection from . . threats," C.S. and others knew that the previous day, she had identified her assailant and secured alternative housing via Salt River Domestic Violence Advocate Lynda Rivers. 3-ER-410-414. Furthermore, Rable did not provide a "protective plan": After the forensic exam, C.S. was transferred back to the Salt River Advocate, who was also present at the Scottsdale Center. 1-ER-67.

While there is no rule, *per se,* that limits patients to seeing only one "treater" (Ans.Br. 41), the fact that C.S. had been examined and treated *the previous day* and was in no further need of urgent medical treatment (nor did she receive any), is relevant to what C.S. and the relevant parties understood the purpose that the subsequent "forensic exam" was to serve. Tellingly, the previous day, C.S. had been examined by Dr. Seroy and received X-Rays and a CT scan which were reviewed by Dr. Seroy and Radiologist Dr. Low. The fact that Nurse Rable never viewed, nor even seemed interested in these records, despite purporting to consider C.S.'s "medical history" (1-ER-56-58; 86) reinforces that the primary purpose of the "forensic exam" was to document and elicit evidence to be used against Blackshire at trial.

C. The erroneous admission was not harmless.

To illustrate that the error was harmless, the Government relies on an unpublished habeas case, Medina v. Williams, 565 F. App'x 644, 645–46 (9th Cir. 2014). But there, *unlike* here, the challenged testimony was cumulative of testimony which had *been properly* admitted under Nevada's hearsay exception for excited utterances. Appellant does not contest that he committed a basic assault. As the Government acknowledges, certain testimony concerning threats, strangulation, and restraint, which supported the enhanced charges beyond assault, were cumulative of the video-recorded statements

that C.S. gave to Officer Daniels and Detective Owens (Ans.Br. 43). But as previously discussed in Issue I, the Officers' unquestionably testimonial evidence against Blackshire was wrongly admitted through misapplication of the Forfeiture by Wrongdoing Doctrine.

Furthermore, the evidence elicited by Nurse Rable against Blackshire was not harmless for many of the same reasons that the Officers' video-taped evidence was not harmless. Rable elicited C.S.'s unconfronted allegations which depicted repeated violence, threats, and other conduct needed to support charges of: Kidnapping/Unlawful Restraint; Strangulation; the "serious" and "substantial" bodily injuries that enhanced the Assault charges. Even though Blackshire was acquitted of Kidnapping, he was found guilty of Unlawful Restraint and sentenced accordingly. And although the jury acquitted Blackshire of Strangulation in Count 3, Blackshire nonetheless received a sentence enhancement for Strangulation. Finally, the "threat" allegations contributed to the sentencing enhancement for Obstruction of Justice.

Because there were no witnesses, C.S.'s statements were the strongest, if not the sole evidence against Blackshire on the heightened charges. The weak, circumstantial evidence ostensibly showing Blackshire's "consciousness of guilt" was irrelevant to anything beyond the uncontested

issue of the assailant's identity. Significantly, defense counsel's closing argument highlighted multiple inconsistencies between C.S.'s depiction of events, which varied depending on who she spoke to. 3-ER-499-508. The error was not harmless.

CONCLUSION

As to remaining issues, Appellant rests on the arguments presented in its Opening Brief. For all of the foregoing reasons, this Court should reverse the convictions against Mr. Blackshire, or alternatively, remand for resentencing.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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CERTIFICATION OF FILING AND SERVICE

I, Michele R. Moretti, Esq., certify that on this day, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

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Dated: May 10, 2023

Index to Reply Addendum RAD (Page No.)

18 U.S.C. § 3144 RAD 37

Fed. R. Evid. 804 RAD 38

Fed. R. Evid 803(4) RAD 40

https://www.scottsdaleaz.gov/human-services/advocacy-center
last accessed May 7, 2023 RAD 41-44

Article, Terrance Thornton, Scottsdale City Council approves funds for victim services, technology Arizonadigitalfreepress.com
https://arizonadigitalfreepress.com/scottsdale-police-victim-services-aid/
RAD 45-47

https://www.honorhealth.com/community/forensic-nurse-examiner-program
Last accessed May 7, 2023.
RAD 48-49

REPLY ADDENDUM

18 U.S.C. § 3144

Release or detention of a material witness

If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

Fed. R. Evid. 804

Exceptions to the Rule Against Hearsay--When the Declarant Is Unavailable as a Witness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
(2) refuses to testify about the subject matter despite a court order to do so;
(3) testifies to not remembering the subject matter;
(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony that:
(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
(B) is now offered against a party who had--or, in a civil case, whose predecessor in interest had--an opportunity and similar motive to develop it by direct, cross-, or redirect examination.
(2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.
(3) Statement Against Interest. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) Statement of Personal or Family History. A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) [Other Exceptions.] [Transferred to Rule 807.]

(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused--or acquiesced in wrongfully causing--the declarant's unavailability as a witness, and did so intending that result.

Fed. R. Evid 803(4) (Excerpt).

Exceptions to the Rule Against Hearsay--Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

> (1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
>
> (2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
>
> (3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
>
> (4) Statement Made for Medical Diagnosis or Treatment. A statement that:
>
> > (A) is made for--and is reasonably pertinent to--medical diagnosis or treatment; and
> >
> > (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

WEBPAGE - scottsdaleaz.gov

City of Scottsdale - Family Advocacy Center

The Scottsdale Family Advocacy Center was designed to greatly increase the effectiveness and efficiency of Crimes Against Persons investigations while reducing the stress and trauma to the victim. This is done by co-locating multiple disciplines involved in the investigation and care of the victim in one building that is intelligently designed to address the special needs of these types of crimes.

The Scottsdale Family Advocacy Center has been operating since November of 2002 and has been successfully improving the effectiveness and efficiency of its objectives in as much as other cities have used Scottsdale's center as a blueprint for their own advocacy centers. Each discipline represented in the center is an integral part of the process and provides excellent customer service.

Currently, the Scottsdale Family Advocacy Center provides office space to Forensic Nurse Examiners from Scottsdale Healthcare, Investigators from the Department of Child Safety, personnel from the Police Crisis Intervention Section, and investigative units from the Crimes Against Persons Section.

Department of Child Safety
What they provide – Department of Child Safety (DCS) staff work with Scottsdale Police Investigators and Scottsdale Police Crisis Intervention Specialists to evaluate cases involving the abuse of children. DCS workers monitor the interviews with the victims, interview the parents/suspects, and make decisions concerning temporary custody. DCS staff also work with the courts and issue temporary custody orders when appropriate. DCS involvement is required in certain cases and their presence at the center facilitates effective communication between Scottsdale Police Investigators and increases the integrity of the investigation, as DCS can now be involved in cases from the beginning.

City of Scottsdale Prosecutors
What they provide – They work with Investigators to staff cases involving misdemeanors. They also attend semi-monthly Domestic

Violence Action Team meetings. Their presence improves communication between the Police Department and the City Prosecutor's Office.

Police Crisis Intervention Specialists
What they provide – There are three Police Crisis Intervention Specialists (PCIS) staffed at the advocacy center on a full-time basis. They provide valuable support to the victims of violent crimes. They work closely with Investigators, nurses, DCS, and the victims to provide critical support. Their responsibilities include victim advocacy and crisis intervention, transportation, resource guidance and referral. They are involved with many investigations from the beginning and also handle follow up on cases involving special victims and people in need of mental health services.

Crimes Against Persons Section
What they provide - Police investigative services in the areas of homicide, robbery, assaults, sex crimes, domestic violence, missing persons, and Internet Crimes Against Children.

Other Resources Provided at the Scottsdale Family Advocacy Center

Children's Play Room
Three Quiet Rooms (comfortable area for victims)
Lobby with Two Restrooms and Reception
Resource Room for Investigators (computer access to various databases)
Evidence Processing Room with Forensic Drying Cabinet
Two Interview Rooms
Kitchen
Conference Room
Training Room
Video Processing Area for Detectives
Forensic Artist Office
Case Storage Room
The Scottsdale Family Advocacy Center (FAC) serves Scottsdale, Fountain Hills, Paradise Valley, Cave Creek, Carefree, Tempe, and county jurisdictions in the northeast Valley.

Helpful FACTS concerning Sex-Related Crimes and Child Abuse:

Sexual assault affects 1 out of 6 American women. That means

17.7 million American women have been victims of attempted or completed sexual assault. Although women are the main victims of this crime, about 3% of American men have experienced an attempted or completed sexual assault. That's 2.78 million men who have been victims of sexual assault or rape (Based on crimes reported.)
It is estimated that nearly 60% of rapes/sexual assaults are not reported to the police.
Two out of every three rapes were committed by someone known to the victim. 50% of the rape/sexual assault incidents were reported to have occurred within one mile of the victim's home or at their home. 43% were reported to have occurred between 6:00 p.m. and midnight.

What you should know:
Men and women can be victims of rape
Alcohol affects your judgment
Silence does not equal yes
Passed out does not equal yes
If convicted of sexual assault, you could face a minimum of 7 years in prison, lifetime probation & register as a sex offender
City of Scottsdale - Family Advocacy Center
about:reader?url=https%3A%2F%2Fwww.scottsdaleaz.gov%2Fhuman-...
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Scottsdale Police Department aggressively investigates all reports of sexual violence

What should you do?

Watch your drink
Watch how much you drink
Watch out for your friends – SPEAK UP
Demand respect for yourself and others
Report all sexual violence to the police
Above all: Act responsibly & treat others respectfully
Children are suffering from a hidden epidemic of child abuse and neglect. Over 3 million reports of child abuse are made every year in the United States; however, those reports can include multiple children. In 2007, approximately 5.8 million children were involved in an estimated 3.2 million child abuse reports and allegations.
A report of child abuse is made every ten seconds.
Almost five children die every day as a result of child abuse. More

than three out of four are under the age of 4.
It is estimated that between 60-85% of child fatalities due to maltreatment are not recorded as such on death certificates.
90% of child sexual abuse victims know the perpetrator in some way; 68% are abused by family members.
Child abuse occurs at every socioeconomic level, across ethnic and cultural lines, within all religions and at all levels of education.

Police Crisis Intervention Specialists and Investigators from the Special Victims and Domestic Violence Units always welcome questions and can be reached at 480-312-6300.

Article, Terrance Thornton, Scottsdale City Council approves funds for victim services, technology Arizonadigitalfreepress com

(*Emphasis Supplied*)

Scottsdale Police Department moves forward with two efforts to improve local victim services - Arizona Digital Free Press

Terrance Thornton

Scottsdale City Council Feb. 14 approved the acceptance of a grant from the Office of the Arizona Attorney General in the amount of $26,266 for training and purchasing of equipment specifically for the Family Advocacy Center, records show.

Scottsdale City Council approves funds for victim services, technology

By Terrance Thornton | Digital Free Press

Scottsdale City Council has approved two measures at the request of Police Chief Jeff Walther who believes the recent actions at City Hall will provide vital improvements to the care of victims of crime within city limits.

The two measures — resolution No. 12743 and resolution No. 12736 — were approved unanimously by Scottsdale City Council Tuesday, Feb. 14, at City Hall, 3939 N. Drinkwater Blvd.

The first approval is focused on providing additional funding for victim services at the Scottsdale Family Advocacy Center while the other is a technology solution meant to help notify both victims and reporting parties of police action and community services.

Scottsdale City Council Feb. 14 approved the acceptance of a grant from the Office of the Arizona Attorney General in the amount of $26,266 for training and purchasing of equipment specifically for the Family Advocacy Center, records show.

“The Scottsdale Family Advocacy Center was designed to increase the effectiveness and efficiency of crimes against persons investigations while reducing the stress and trauma to the victim,” Police Chief Jeff Walther said in his report to City Council. “This is done by co-locating multiple disciplines involved in the investigation and care of the victim in one building that is intelligently designed to address the unique needs of these types of crimes.”

Chief Walther explains the Family Advocacy Center serves the unique needs of families in distress. Those facilities include:

- A child’ s playroom;

- Several quiet rooms;
- Two restrooms;
- A resource room for investigators;
- An evidence processing room with forensic drying cabinet;
- Two interview rooms;
- A kitchen;
- Conference room;
- Training room;
- Video processing areas for detectives, a forensic artist office; and
- A case storage room.

Chief Walther explains the Family Advocacy Center provides one place for all aspects of the police investigation to unfold. *(emphasis supplied*)

"… The center provides a safe environment where all parts of the investigation can take place, instead of the victim traveling to different locations and being required to re-tell the situation over and over," he said. "In December 2018, a multi-state judgment was reached by the Office of Arizona Attorney General Mark Brnovich. During the 2018 and 2019 legislative sessions, the Arizona Attorney General' s Office worked with the Arizona Legislature to re-appropriate monies from civil settlements for the purpose of establishing a fund to provide grant support to Child and Family Advocacy Centers."

Chief Walther explains the grant dollars will go toward training of personnel at the Family Advocacy Center. Scottsdale City Council approved the measure on consent Feb. 14 allowing for reimbursement for the first year of costs associated with the SPIDR Technologies contract for victim notification technology.

Scottsdale police victim notification

Under state law, Chief Walther explains, the Arizona Treasurer's Office provides a reimbursement program for technology funding to create automated crime notification software.

"A technology solution provided by SPIDR Technologies, Inc. has been identified by [the] SPD technology services division and the prosecutor's office that will enhance the victim notification process in providing timely, thorough, and accessible case notifications," he said in his report to City Council. "The statute requires that the victim notification systems must include, among other items, the date, case number, name of detective(s) assigned to their case, when arrests are made, and when the case is sent to the prosecuting agency."

Chief Walther explains the new technology is also mobile friendly as the majority of Arizona residents encounter the digital world through a smart phone.

"The technology will also allow customers to receive mobile-friendly surveys comprised of questions chosen by SPD that can be utilized to measure community trust and satisfaction in responses for calls for service," he said. "This solution is primarily Software-as-a-Service or (SaaS).

SPD TSD has worked with internal City stakeholders in the process to assure Information Technology concurrence, sole source verification with Purchasing, and reimbursement availability.

Scottsdale City Council approved the measure on consent Feb. 14 allowing for reimbursement for the first year of costs associated with the SPIDR Technologies contract for victim notification technology.

Webpage
https://www.honorhealth.com/community/forensic-nurse-examiner-program

honorhealth.com

HonorHealth Forensic Nurse Examiner Program

Forensic nursing services
Medical forensic exams

Medical forensic exams address health and safety issues and include the collection of any potential evidence from an assault.

Nurses will:

- Obtain a medical history
- Perform a physical exam
- Collect potential evidence
- Provide education about potential health risks and concerns related to an assault
- Offer referrals for follow-up
- Maintain the legal chain of custody for samples collected

Nurses may also:

- Provide expert witness testimony in court when necessary
- Respond to requests for court-ordered collection of samples that may link or exonerate someone from a crime

Victim advocacy

With funding from the Victims of Crime Act, HonorHealth's Forensic Nurse Examiner program has two victim services advocates who can help victims of crime understand their rights and connect them with needed resources after they are seen by the forensic nurse. Advocates may assist with:

- Filing victim's compensation claims

Obtaining orders of protection
Developing a safety plan
Enrolling in the address confidentiality program
Court accompaniment
Follow-up for healthcare and counseling
Referrals to other community resources
Victim services advocates are also available to assist with:
Victims and their families during mass casualty situations
Unaccompanied victims without a source of support, especially
victims who have no other advocacy support
Victims who choose not to report to police
Inmates who have been assaulted (exams can occur in the hospital emergency department)
Inpatients who have been a victim of any crime