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

STATE OF WASHINGTON,	)	No. 62676-1-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
T'ZHIONNE WATSON,	)	UNPUBLISHED OPINION
dob 2/14/92,	)	
	)	
Appellant.	)	FILED: November 9, 2009
	)	

Ellington, J. — T'Zhionne Watson was convicted of fourth degree assault for his participation in an attack on Marcus Saddler. Saddler did not testify at trial. Watson appeals, arguing his Sixth Amendment right to confrontation was violated when the judge admitted Saddler's out of court statement that Watson was one of his aggressors. Because the State did not establish Saddler's unavailability and the defense had no opportunity to cross-examine him, admitting Saddler's statement violated Watson's right to confrontation. However, the evidence was cumulative, and other testimony overwhelmingly established Watson as one of Saddler's aggressors. The error was therefore harmless beyond a reasonable doubt. We affirm.

BACKGROUND

On November 1, 2007, while at school, D'vonte Ashford was approached by

T'Zhionne Watson, his brother Dazhinar, and several other students at Todd Beamer High School in Federal Way. They wanted to know where they could find Marcus Saddler, Watson's stepbrother. Ashford did not know where Saddler was. The group walked away when someone yelled Saddler's first name.

Student Justin Lee saw the group approaching Saddler and then saw Watson push him against a window and hit him. Saddler attempted to run away, but the group caught him. Hearing the sound of feet running, Ashford decided to see what was happening. Both Lee and Ashford saw Saddler lying curled in a ball in the hallway about 50 feet from the student store. Watson, Dazhinar, and others in their group were kicking Saddler in his stomach, back and head.

Alerted by the commotion, teacher Greg Phillips ran over and stopped the attack. Other staff arrived moments later, among them Rex Tucker. Despite Phillips' and Tucker's efforts to detain them, Watson and his group managed to run away.

Saddler was lying on the ground in a fetal position and his eyes were rolled back in his head. Ashford and another student helped carry Saddler into an office and sat him on a chair. Saddler was crying and disoriented, and had red marks on his arms, chest, back, and face.

School nurse Constance Spangler evaluated Saddler's injuries, gave him an ice pack, and asked him what happened. Saddler told her "TT" attacked him from behind. TT is Watson's nickname.

School resource officer Mike Chi asked Saddler to tell him what had happened. Saddler responded that his stepbrothers TT and Dazhinar had attacked him.

Watson was charged in juvenile court with fourth degree assault. At trial,

Watson denied he was involved in the attack and claimed that he was not aware any

attack was occurring. Students Ashford and Lee, nurse Spangler, teachers Phillips and

Tucker, and resource officer Chi also testified. Saddler, who had since moved to

Florida, did not testify. Over Watson's hearsay objection, which the court overruled

under the excited utterance exception, Chi recounted Saddler's statement.

The judge found Watson guilty as charged. Watson appeals.

<div align="center">ANALYSIS</div>

Watson argues the admission of Saddler's statement to Chi violated his Sixth

Amendment right to confrontation under Crawford v. Washington.[1] Watson did not

raise this issue below. As a general rule, appellate courts do not consider issues

raised for the first time on appeal. But a defendant may raise for the first time on

appeal alleged manifest errors affecting constitutional rights.[2]

In Crawford, the Supreme Court held that the admission of out of court

testimonial statements violates a defendant's right under the confrontation clause

unless the declarant is unavailable and the defendant had a prior opportunity to cross-

examine the declarant.[3]

Here, the State concedes, and we agree, that the admission of Saddler's

hearsay statements to Chi violated the confrontation clause. The only question is

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[1] 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

[2] RAP 2.5(a)(3); State v. Kronich, 160 Wn.2d 893, 900–01, 161 P.3d 982 (2007) (confrontation clause challenges may be raised for the first time on appeal).

[3] Crawford, 541 U.S. at 68.

whether the error requires reversal.

Confrontation violations are subject to a harmless error analysis.[4] Constitutional

error is presumed to be prejudicial and the State bears the burden of proving it

harmless.[5] However, constitutional error does not require reversal when it is clear

beyond a reasonable doubt that the error had no effect on the outcome.[6] Factors

bearing on this inquiry include "'the importance of the witness' testimony in the

prosecution's case, whether the testimony was cumulative, the presence or absence of

evidence corroborating or contradicting the testimony of the witness on material points,

the extent of cross-examination otherwise permitted, and . . . the overall strength of the

prosecution's case."[7]

Watson argues the admission of Saddler's statement to Chi was not harmless

because without it, the evidence against him was not overwhelming, as indicated by the

court's reference to the evidence in its findings. He contends the officer's testimony

served to greatly enhance the credibility of the State's claim.

Given the court's overruling of Watson's hearsay objection, however, it is hardly

surprising the court included mention of Chi's testimony it in its findings, and nothing

indicates this testimony carried special credibility. Rather, the untainted evidence

overwhelmingly establishes that Watson assaulted Saddler. Both Ashford and Lee

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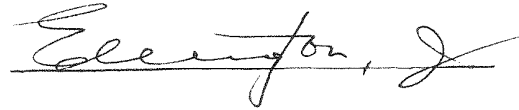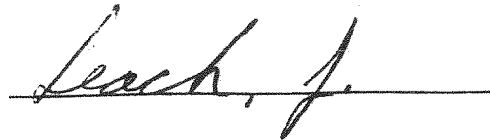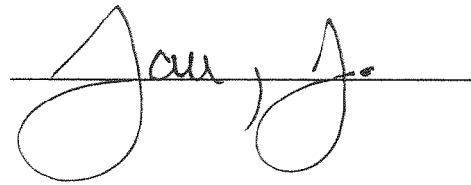[4] State v. Watt, 160 Wn.2d 626, 635, 160 P.3d 640 (2007).

[5] Id.

[6] Id.

[7] State v. Saunders, 132 Wn. App. 592, 604, 132 P.3d 743 (2006) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 686–87, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)), review denied, 159 Wn.2d 1017 (2007).

witnessed the assault, and Saddler told Spangler that Watson attacked him from

behind. Chi's testimony was merely cumulative, and its admission was harmless

beyond a reasonable doubt.

    Affirmed.

Ellington, J.

WE CONCUR:

Leach, J.   _Dwyer, J._