IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. DONTRAE GRAY, Defendant and Appellant.	No. S269237 Court of Appeal No. B302236 Los Angeles No. MA065662

On Appeal from a Judgment of
the Superior Court of the State of California
in and for the County of Los Angeles

The Honorable Sam Ohta
Judge Presiding

APPELLANT'S REPLY BRIEF ON THE MERITS

William J. Capriola
Attorney at Law
Post Office Box 1536
Sebastopol, California 95473
(707) 829-9490
huckle@sonic.net
State Bar No. 135889

Counsel for Appellant by Appointment of
the Supreme Court.

TOPICAL INDEX

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)
)
Plaintiff and Respondent,)
)
v.)
)
DONTRAE GRAY,)
)
Defendant and Appellant.)
)

ARGUMENT

THE TRIAL COURT AND THE COURT OF APPEAL ERRED IN HOLDING THAT A HEARSAY STATEMENT THAT QUALIFIES FOR ADMISSION AS AN EXCITED UTTERANCE UNDER EVIDENCE CODE SECTION 1240, AUTOMATICALLY SATISFIES A DEFENDANT'S DUE PROCESS RIGHT OF CONFRONTATION AND IS ADMISSIBLE AT A PROBATION REVOCATION PROCEEDING WITHOUT THE NEED FOR ANY SHOWING OF GOOD CAUSE OR ANY BALANCING OF INTERESTS UNDER *ARREOLA*.

Respondent urges this Court to adopt a blanket rule of admissibility at probation and parole violation hearings for evidence that meets the hearsay exception for spontaneous statements under Evidence Code section 1240. Respondent's argument is essentially that spontaneous statements are

so reliable that the prosecution may safely "deny the accused his usual right to force the declarant 'to submit to cross-examination, "the greatest legal engine ever invented for the discovery of truth."'" (*Lilly v. Virginia* (1999) 527 U.S. 116, 124 [quoting *California v. Green* (1970) 399 U.S. 149, 158].) Respondent's approach, which effectively "treat[s] Evidence Code section 1240 as an automatically applicable proxy for compliance with due process minima" (*People v. Liggins* (2020) 53 Cal.App.5th 55, 66-67), is sharply at odds with the United States Supreme Court's seminal decisions in *Morrissey v. Brewer* (1972) 408 U.S. 471 and *Gagnon v. Scarpelli* (1973) 411 U.S. 778, as well as this Court's decisions in *People v. Arreola* (1994) 7 Cal.4th 1144 and *People v. Winson* (1981) 29 Cal.3d 711.

According to respondent, the due process right to confrontation applicable to revocation hearings, and the Sixth Amendment right to confrontation applicable to criminal trials, are "fundamentally different." (Answering Brief on Merits [ABM] 22.) The former, according to respondent, "derives from the due process right to reliable fact-finding," and is more flexible and less demanding than the Sixth Amendment, and serves a different purpose. (ABM 6, 22.) Respondent maintains that the "ultimate purpose" of the due process right to confrontation is "to promote the accuracy and reliability of the factfinding on which revocation decisions are made" (ABM 21), whereas the Sixth Amendment "creates a right to confrontation as an end in itself, not merely as a tool for achieving reliable verdicts." (ABM 22-23.) Respondent also asserts that although "[r]eliability was once regarded as the touchstone of the confrontation clause . . . that view as now been abandoned with respect to the Sixth Amendment," but that reliability "remain[s] the touchstone of the due process confrontation rule." (ABM 23.)

It is well-established that constitutional rights of probationers and parolees is limited in relation to the rights of criminal defendants, and that the right to confrontation at revocation proceedings arises from the Due Process Clause of the Fourteenth Amendment and not the Confrontation Clause of the Sixth Amendment. (*Morrissey v. Brewer*, *supra*, 408 U.S. at pp. 488-489; *Gagnon v. Scarpelli*, *supra*, 411 U.S. at p. 786.) Nevertheless, the two rights are not "fundamentally different." The process due probationers and parolees at their final revocation hearings is not, as respondent suggests, the mere right to reliable fact-finding, but rather "'*the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)*.'" (*People v. Arreola*, *supra*, 7 Cal.4th at pp. 1152-1153, emphasis in *Arreola* [quoting *Morrissey v. Brewer*, *supra*, 408 U.S. at p. 489].) Even before *Crawford*[1], the United States Supreme Court recognized that the main purpose of the right to confront witnesses is to secure the opportunity to test witnesses' testimony through cross-examination. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 678 ["'[t]he main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination'"].) Thus, whatever its source under the Constitution, it is clear that the right to confrontation refers specifically to the right to confront and cross-examine adverse witnesses.

Nor is it correct to say that the right to confrontation under the Due Process Clause "serves a different purpose" than the right to confrontation under the Sixth Amendment. (ABM 22.) Ensuring the reliability of evidence is just as important to the Sixth Amendment as it is to the due

---

[1] *Crawford v. Washington* (2004) 541 U.S. 36.

process confrontation right. In fact, as the high court noted in *Crawford*, reliability is still the "ultimate goal" of the Sixth Amendment: "To be sure, the [Confrontation] Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. The Clause thus reflects a judgment, not only about the desirability of reliable evidence (a point on which there could be little dissent), but about how reliability can best be determined." (*Crawford v. Washington*, *supra*, 541 U.S. 36, 61.) *Crawford* did not change the goal of the Confrontation Clause; rather, it simply clarified that the constitutionally prescribed method of achieving that goal is through face-to-face cross-examination.

Respondent argues that spontaneous statements within the meaning of Evidence Code section 1240 "inherently" establish good cause for denying confrontation. (ABM 27.) In respondent's estimation, spontaneous statements are such an inherently reliable and unique form of evidence that it makes little "sense to require good cause to be established case-by-case for each particular spontaneous statement *in addition to* demonstrating that the statement meets the requirements of Evidence Code section 1240." (ABM 28-29, emphasis in original.)

Respondent's argument assumes that the reliability of evidence can establish good cause. However, in *Arreola*, this Court strongly suggested that good cause could only be met when the declarant is either legally unavailable, can be brought to the hearing only through great difficulty or expense, or if testifying at the proceeding would pose a risk of harm to the declarant. (*People v. Arreola*, *supra*, 7 Cal.4th at pp. 1159-1160; see also *People v. Winson*, *supra*, 29 Cal.3d at p. 719.) Similarly, a blanket rule of

admissibility for spontaneous statements is inconsistent with the case-by-case balancing of interests and assessment of good cause which this Court established in *Arreola* and *Winson*. (*People v. Arreola*, *supra*, 7 Cal.4th at pp. 1159-1160; *People v. Winson* (1981) 29 Cal.3d 711, 717.)

Crawford, of course, is a Confrontation Clause case. However, as appellant has already explained, the due process right at issue here is "the right to confront and cross-examine adverse witnesses," and not simply the right to reliable evidence and factfinding. It is therefore worth noting that in *Crawford*, the Supreme Court bluntly observed that "[a]dmitting statements deemed reliable by a judge [pursuant to statutory or judicially created exceptions] is fundamentally at odds with the right of confrontation." (*Crawford v. Washington*, *supra*, 541 U.S. at p. 61; see also *Hemphill v. New York* (2022) __ U.S. __ [142 S.Ct. 681, 691] ["If *Crawford* stands for anything, it is that the history, text, and purpose of the Confrontation Clause bar judges from substituting their own determinations of reliability for the method the Constitution guarantees"].)

Respondent also argues that the admission of spontaneous statements at revocation hearings is consistent with the flexibility of the due process right to confrontation. (ABM 29.) However, a blanket rule of admissibility for spontaneous statements is clearly far less flexible than determining admissibility by first making an individualized finding of good cause and case-by-case balancing of interests under *Arreola*.

The blanket rule proposed by respondent and the Court of Appeal below would be tantamount to abandonment of the *Areolla* balancing test, and would effectively hold that the weight of the defendant's right to confrontation is irrelevant in revocations involving spontaneous statements. It should be rejected.

CONCLUSION

For all the foregoing reasons, appellant respectfully requests this Court find the trial court violated appellant's due process right to confrontation by admitting the body camera video without first making a finding of good cause and determining whether a balancing of the interests under *Arreola* favored admission, and reverse the judgment.

Respectfully submitted,

William J. Capriola
Counsel for Appellant

WORD COUNT CERTIFICATE

Pursuant to rule 8.520(c) of the California Rule of Court, and in reliance on the word count of the computer program used to prepare this document, I hereby certify that this document contains 2,003 words, excluding the tables, cover information, signature block(s), quotation of issues, and this certificate. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Sebastopol, California, on May 26, 2022.

_____
William J. Capriola

DECLARATION OF SERVICE

Re: *People v. Gray*, S269237

I, William J. Capriola, declare that I am over eighteen years of age, and not a party to the within cause; my employment address is Post Office Box 1536, Sebastopol, California 95473. I served a true copy of the attached APPELLANT'S OPENING BRIEF ON THE MERITS on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Los Angeles County Superior Court
210 West Temple Street, Room M-6
Los Angeles, CA 90012

Los Angeles County District Attorney
210 West Temple Street, Room 18-709
Los Angeles, CA 90012

Dontrae Gray, BK-9347
P.O. Box 5006
Calipatria, CA 92233

Each envelope was then, on May 26, 2022, sealed and deposited with the United States Postal Service at Sebastopol, California, in the county in which I am employed, with the first class postage thereon fully prepaid.

I also electronically served true copies of the attached document on May 26, 2021, upon the following:

Attorney General's Office
docketingLAAWT@doj.ca.gov

California Appellate Project
capdocs@lacap.com

Second District Court of Appeal, Div. Two
via TrueFiling

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sebastopol, California, on May 26, 2022.

William J. Capriola

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. GRAY**
Case Number: **S269237**
Lower Court Case Number: **B302236**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **huckle@sonic.net**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY TO ANSWER TO PETITION FOR REVIEW	S269237_Reply Brief_Gray

Service Recipients:

Person Served	Email Address	Type	Date / Time
Dylan Ford Los Angeles County Public Defender's Office 228699	dford@pubdef.lacounty.gov	e-Serve	5/27/2022 12:00:52 AM
Scott Taryle Office of the Attorney General 156158	scott.taryle@doj.ca.gov	e-Serve	5/27/2022 12:00:52 AM
William Capriola William J. Capriola, Attorney at Law 135889	huckle@sonic.net	e-Serve	5/27/2022 12:00:52 AM
Michael Katz Office of the Attorney General 129887	michael.katz@doj.ca.gov	e-Serve	5/27/2022 12:00:52 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/27/2022
Date

/s/William Capriola
Signature

Capriola, William (135889)
Last Name, First Name (PNum)

William J. Capriola, Attorney at Law
Law Firm