

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY 

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

EDWARD M. MATOS,

Appellant.

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

The Honorable Richard A. Strophy, Judge
Cause No. 07-1-011512-8

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether Matos's claim that the trial court should have suppressed the evidence obtained in the warrantless inventory search of the car he was driving constitutes a manifest error that can be raised for the first time on appeal.

2. Whether Matos's counsel was ineffective for not bringing a motion to suppress evidence found during the inventory search of the trunk of the car Matos was driving.

3. Whether sufficient evidence was produced to support the conviction for possession of marijuana less than forty grams.

4. Whether Deputy Ditrich's testimony that Matos intentionally ran into him constituted an opinion about the defendant's guilt.

5. Whether Matos's counsel was ineffective for failing to move for a mistrial or a curative instruction regarding Deputy Ditrich's testimony that Matos intentionally ran into him.

6. Whether the trial court imposed a sentence that exceeded the statutory maximum for third degree assault.

B. STATEMENT OF THE CASE.

The State accepts Matos's statement of the case.

C. ARGUMENT.

1. While a claim of error may be raised for the first time on appeal if it is a "manifest error affecting a constitutional right," Matos has failed to carry his burden of establishing that a manifest error occurred.

It is undisputed that Matos did not bring a suppression motion pursuant to CrR 3.6 before trial, nor did he challenge the search during trial. Now, on appeal, he claims that the warrantless

inventory search of the vehicle he was driving at the time the crimes were committed and he was arrested was unconstitutional and the marijuana found during the search should be suppressed.

As a rule, a reviewing court will not consider issues raised for the first time on appeal. An exception is made for a “manifest error affecting a constitutional right”. RAP 2.5(a).

As an exception to the general rule, therefore, RAP 2.5(a)(3) is not intended to afford criminal defendants a means for obtaining new trials whenever they can identify some constitutional issue not raised before the trial court. Rather, the asserted error must be “manifest”—i.e., it must be “truly of constitutional magnitude”. . . The defendant must identify a constitutional error and show how, in the context of the trial, the alleged error actually affected the defendant’s right; it is this showing of actual prejudice that makes the error “manifest”, allowing appellate review. . . If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest. . .

State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995), (internal cites omitted). In order to show actual prejudice, Matos must show that the trial court would likely have granted a suppression motion if one were made. Id., at 333-34. As in McFarland, Matos did not bring the motion to suppress, the record does not indicate whether it would have been granted, and without

the “affirmative showing of actual prejudice”, the error is not manifest and therefore not reviewable. Id., at 334.

If an adequate record does exist, this court may review a claim of manifest error raised for the first time on appeal. State v. Contreras, 92 Wn. App. 307, 313, 966 P.2d 915 (1998). Matos asserts that there is sufficient evidence in the trial record to allow this court to find that the search of the trunk was unconstitutional. Appellant’s Brief at page 6. He cites to the testimony of Deputy McIver, RP 40, and the closing argument of defense counsel, RP 142. Although defense counsel did refer to a “locked trunk”, there is nothing in the record indicating that the trunk was locked. Deputy McIver did not testify that it was locked, nor was there any other testimony that it was. What the deputy said was, “I did an inventory search of the trunk.” RP 40. The car was damaged, having been abandoned while it was still moving so that it crashed into a tractor-trailer in the parking lot of Great Floors, RP 28, and the extent of the damage was never detailed in the record. Counsel’s argument is not evidence. Jury instruction 1, CP 30. Regardless of the condition of the trunk, the deputy would not have searched the trunk during his earlier search incident to arrest, since it was not within the immediate control of the person he arrested, State v.

Valdez, 137 Wn. App. 280, 285, 152 P.3d 1048 (2007), *rev. granted, decision without published opinion*, 180 P.3d 785 (2008), and thus this fact does not clarify the condition of the trunk.

The State does not dispute that appellate courts will review a warrantless inventory search as measured against art. I, § 7 of the Washington Constitution. State v. Mireles, 73 Wn. App. 605, 871 P.2d 162 (1994), *rev. denied*, 124 Wn.2d 1029 (1994). As a general rule, warrantless searches are per se unreasonable and violate both the Fourth Amendment and article I, § 7 of the Washington Constitution. There is, however, a short list of exceptions, one of which is the inventory search. The State bears the burden of showing that a particular search or seizure falls within an exception. State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). “Police officers may conduct a good faith inventory search following a lawful impoundment without first obtaining a search warrant” and may lawfully impound a vehicle if authorized to do so by statute. State v. Bales, 15 Wn. App. 834, 835, 552 P.2d 688 (1976). An inventory search may not be used as a pretext for making a general exploratory search without a warrant. State v. White, 135 Wn.2d 761, 770, 958 P.2d 982 (1998). In this case, the

deputy had both statutory authority and practical reasons to impound the car Matos bailed out of.

RCW 46.55.113. Removal by police officer.

. . . .

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

. . . .

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer.

In Matos's case, not only was he under arrest, but the car had been the instrument of the crime of attempting to elude a police officer, and the deputy knew the car wasn't registered to him. RP 41. Impoundment is reasonable if the car was used in the commission of a felony. State v. Houser, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980). The car was damaged and may not have been driveable, not to mention that it had crashed into a truck in the parking lot of a business and would presumably be obstructing business the following day as well as inspection and repair of the truck. There were multiple reasons for the deputy to impound the car.

The central inquiry in an inventory search is whether it is reasonable under all the facts and circumstances of the particular case. . . . Using this analysis, inventory searches conducted according to standardized police procedures have been upheld as reasonable where there is no showing of excessive discretion or investigatory motive.

Mireles, *supra*, at 612, (cites omitted). Here, Deputy McIver was obviously following a departmental procedure and filling out a Washington State Tow Form requiring an inventory search. RP 40. Nothing indicates that he was attempting an end run around the warrant requirement, since an impounded vehicle is going to be available for a substantial amount of time. There was no need to search quickly for evidence lest it get away from him.

In State v. Greenway, 15 Wn. App. 216, 547 P.2d 1231 (1976), Division One addressed a challenge to the appropriateness of the impound itself, and the court merely held that “following a lawful impound the police may conduct a good faith warrantless inventory search.” Id., at 218. See also, State v. Malbeck, 15 Wn. App. 871, 552 P.2d 1092 (1976). Matos has not challenged the lawfulness of the impound, only the scope of the search. In Houser, *supra*, the court held that searching a locked trunk did not serve the purposes of an inventory search, which are to secure the property of the defendant, protect the police and storage bailees from false claims of theft, and protect the police from potential danger. Houser, *supra*, at 154-55. “We therefore hold that an officer may not examine the locked trunk of an impounded vehicle in the course

of an inventory search absent a manifest necessity for conducting such a search.” Houser, *supra*, at 156. In the same way that the record does not show whether or not the trunk was locked, the record does not show if the deputy could show a “manifest necessity” for searching the trunk, even if it was locked. The issue was simply never addressed, and under McFarland, Matos has failed to carry his burden of showing a manifest error. While the State bears the burden of proving a lawful search, if the defendant fails to challenge the search at a time the State can do so, the defendant has effectively waived his challenge.

Matos is asking this court to make a factual determination, which is not the function of an appellate court. The record in this case is not sufficient for this court to decide the constitutionality of the inventory search, and therefore this court should decline to review that issue.

2. Matos has failed to establish ineffectiveness of counsel for failing to bring a suppression motion.

A defendant has the burden of showing deficient representation based upon the record in the court below. McFarland, *supra*, at 335.

To demonstrate ineffective assistance of counsel, a defendant must make two showings: (1) defense

counsel's representation was deficient, *i.e.*, it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, *i.e.*, there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. . . . Competency of counsel is determined based upon the entire record below.

McFarland, *supra*, at 334-35. There exists a strong presumption that trial counsel's representation was effective. When the claim is first raised on appeal, a reviewing court will not consider matters outside the record. *Id.*, at 335. The reviewing court will not presume a CrR 3.6 hearing is required in every case where there is a search and seizure; a failure to bring a suppression motion is not per se deficient representation. "The presumption of effective representation can be overcome only by a showing of deficient representation based on the record established in the proceedings below." *Id.*, at 336.

Matos asserts that the record does not reveal any tactical or strategic reason why trial counsel would have failed to move to suppress the marijuana. Appellant's Brief at page 12. There is some evidence that he deliberately chose not to. In a pretrial hearing held on November 13, 2007, the prosecutor told the court:

With regard to motions, Your Honor, I wanted to mention that Mr. Shackleton did come up with a suppression motion, or rather an issue; however, at the pretrial hearing, after discussing it with him, he convinced me that he would prevail, and I agreed to the suppression of the evidence so it will not come in. I see no reason to have a hearing for which I know suppression would be granted. So these issues have clearly been examined by Mr. Shackleton.

11/13/07 RP 17. The record thus supports the inference that the defense attorney gave time and thought to suppression issues, and if he failed to bring a motion to suppress the evidence found as a result of the inventory search, it is likely because he concluded there was no issue to bring. There is no showing of deficient performance.

Nor is there a showing that Matos was prejudiced. Because of the sparseness of the record below, a reviewing court cannot say that the trial court would have granted a suppression motion if it had been brought. "The defendant also bears the burden of showing, based on the record developed in the trial court, that the result of the proceeding would have been different but for counsel's deficient representation." McFarland, *supra*, at 337, cite omitted. The McFarland court further held that remand for a reference hearing is not an appropriate remedy, but rather when a defendant wishes the court to review matters outside the record, "a personal

restraint petition is the appropriate vehicle for bringing these matters before the court.” Id., at 338. This court should require Matos to bring a personal restraint petition rather than speculate on what was not in the record.

3. There was sufficient evidence produced at trial to support Matos's conviction for possession of marijuana.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Cite omitted.) This inquiry does not require a reviewing court to determine whether *it* believes the evidence at trial established guilt beyond a reasonable doubt. “Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found the essential elements of the crime *beyond a reasonable doubt*. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Salinas, *supra*, at 201. Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). It is the function of the fact finder, not the appellate court, to discount theories which are determined to be unreasonable in light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

Matos argues that the mere fact that marijuana was found in the trunk of the car he was driving was insufficient to prove that he was in constructive possession of the marijuana. He makes the baffling assertion that because he was not the registered owner of the car he was not responsible for what was in it. He gives no

reason why the driver of a car cannot be responsible for the contents of a car which he is driving, even though it may not belong to him. Of all the people who could have been responsible, he is certainly the most likely.

[C]lose proximity alone is not enough to establish constructive possession; other facts must enable the trier of fact to infer dominion and control. . . . But the ability to reduce an object to actual possession is an aspect of dominion and control. . . . No single factor, however, is dispositive in determining dominion and control The totality of the circumstances must be considered.

State v. Turner, 103 Wn. App. 515, 521, 13 P.3d 234 (2000) (cites omitted). Matos had the keys to the vehicle, and as driver, easy access to the trunk. The jury heard evidence that Matos was extremely anxious to avoid apprehension by the police, and could reasonably have concluded that his possession of the marijuana played at least a part in his flight. It also heard that in his pocket Matos had eight Oxycontin tablets and \$1000 cash, allowing the conclusion that he was not averse to possessing illegal substances. Although it acquitted him of possession of marijuana with intent to deliver, CP 23, the circumstances certainly allow a rational trier of fact to find that Matos did indeed have constructive possession of the marijuana. The jury decides what testimony to believe and what

weight to give the evidence, and there was sufficient evidence for it to find Matos guilty of possession of marijuana.

4. Deputy Ditrich did not impermissibly express an opinion as to the defendant's guilt.

Matos argues that Deputy Ditrich impermissibly expressed his opinion that Matos was guilty when he testified that Matos “intentionally ran right into me”, RP 77-78, and “intentionally lowered his shoulder and his head—”, RP 79. Defense counsel objected after the first remark, and the court implicitly sustained the objection when it instructed the prosecutor to rephrase the question. RP 78. Following the second comment, defense counsel again objected, and before the court could respond the prosecutor instructed the witness to “just describe what he did, rather than what he intended to do.” RP 79. Defense counsel did not request the court to make a specific ruling on his objection.

The admission of lay opinion evidence lies within the trial court's sound discretion. State v. Brett, 126 Wn.2d 136, 161, 892 P.2d 29 (1995). Here it is arguable that the court did not exactly admit it. Although the court did not specifically rule, by instructing the prosecutor to rephrase the question, it conveyed to the jury that the objection was sustained. On the second occasion, when the

prosecutor specifically instructed the witness to describe actions rather than intent, the jury would have understood that the deputy was not to testify regarding intent, which would be the result of a sustained objection. This is one reason why, if the court determines that the remark was error, it should be deemed harmless error, as will be discussed below.

Evidence is not necessarily inadmissible merely because it includes the witness's opinion, even about an ultimate issue of fact.

ER 704 permits a witness to give an opinion on an ultimate issue of fact: "Testimony in the form of an opinion or inferences otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." However, "[n]o witness, lay or expert, may testify to his opinion as to the guilt of the defendant, whether by direct statement of inference.

State v. Wilber, 55 Wn. App. 294, 297, 777 P.2d 36 (1989).

Testimony which "invades the exclusive province of the finder of fact" is unfairly prejudicial. State v. Black, 109 Wn.2d 336, 348, 745 P.2d 12 (1987). "However, testimony that is not a direct comment on the defendant's guilt or on the veracity of a witness, is otherwise helpful to the jury, and is based on inferences from the evidence is not improper opinion testimony." Seattle v. Heatley, 70 Wn. App. 573, 578, 854 P.2d 658 (1993). "An opinion which lacks proper

foundation or is not helpful to the trier of fact is not admissible under ER 701 or 702. An otherwise admissible opinion may be excluded under ER 403 if it is confusing, misleading, or if the danger of unfair prejudice outweighs its probative value.” Id., at 579. The court should be cautious about finding testimony an improper opinion about guilt.

Whether testimony constitutes an impermissible opinion on guilt or a permissible opinion embracing an “ultimate issue” will generally depend on the specific circumstances of each case, including the type of witness involved, the specific nature of the testimony, the nature of the charges, the type of defense, and the other evidence before the trier of fact. . . The trial court must be accorded broad discretion to determine the admissibility of ultimate issue testimony . . . and this court has expressly declined to take an expansive view of claims that testimony constitutes an opinion on guilt.

Id., at 579, (cites omitted).

The circumstances of the case were the deciding factor in the Supreme Court’s reversal of an attempting to elude conviction in State v. Farr-Lenzini, 93 Wn. App. 453, 970 P.2d 313 (1999). A state trooper had followed the defendant at high speed for about four and a half miles, lights and siren activated, before the driver stopped the vehicle. She had blown through a stop sign and made a turn at 30-40 mph. Her defense was that she was just inattentive,

didn't think she was reaching speeds of 100 miles per hour, and hadn't heard the siren or seen the trooper. At trial, the trooper testified that, based upon his training and experience, the defendant's driving pattern indicated a person who knew she was being followed, refused to stop, and was attempting to get away. The Supreme Court found that the trooper was not qualified to testify as to the driver's state of mind, the opinion was not helpful to the jury, and there was not an adequate factual basis. Farr-Lenzini had produced evidence that she eventually reduced her speed, stopped for a stop sign, and pulled over, and that the noise in her car covered the sound of the siren. The court said:

[W]hen analyzing the admissibility of lay opinion testimony, we first determine whether the opinion relates to a core element or to a peripheral issue. Where the opinion relates to a core element that the State must prove, there must be a substantial factual basis supporting the opinion. Courts also consider whether there is a rational alternative answer to the question addressed by the witness's opinion. In that circumstance, a lay opinion poses an even greater potential for prejudice.

Farr-Lenzini, *supra*, at 462-63.

In Matos's case, his intent is a core element. The prosecutor's questions didn't call for an opinion by the deputy; the deputy apparently didn't quite understand what was being asked,

which was “What happened next?” and “. . . describe exactly how the defendant postured himself?”. RP 77, 79. However, the prosecutor moved on quickly and the issue was not referred to again. Further, there was more than a substantial basis for the deputy’s opinion. He had tried unsuccessfully to taser Matos, who had bailed out of a moving vehicle and ignored the orders of Deputy Mclver to get on the ground. RP 76-77. Matos ran away from Deputy Mclver toward Deputy Ditrich, saw Ditrich, lowered his head and shoulder, and ran directly into Ditrich, hitting him with full force. RP 79-80. If he were trying to just run away, he could have run in nearly any other direction. RP 79-80. After being tackled by Deputy Mclver, Matos tried to hit the deputy and refused to show his hands and stop struggling as the officers ordered him to do. He was shouting, calling the deputies names, and threatening them. RP 81. It was most certainly overkill for the deputy to testify that Matos intentionally ran into him. The jury could have reached no different interpretation of the evidence.

In Seattle v. Heatley, *supra*, a police officer was allowed to testify during a DUI trial that, in his opinion, the defendant was intoxicated, affected by alcohol, and could not safely drive a vehicle. Id., at 576. There the court said:

The fact that an opinion encompassing ultimate factual issues *supports* the conclusion that the defendant is guilty does not make the testimony an improper opinion on guilt. "It is the very fact that such opinions imply that the defendant is guilty which makes the evidence relevant and material." . . . More important, [the officer's] opinion was based solely on his experience and his observation of Heatley's physical appearance and performance on the field sobriety tests. The evidentiary foundation "directly and logically" supported the officer's conclusion. . . . Under these circumstances, the testimony did not constitute an opinion on guilt.

Id., at 579-80, (emphasis in original, internal cites omitted). The court further went on to say that, based upon the foundation evidence, the jury was able to independently assess whether that opinion was correct. The officer was available for cross examination, and the jury was instructed that it was the sole judge of credibility as well as what weight to give the testimony of the witnesses. "[N]othing in the record suggests that the testimony was unfairly prejudicial, *i.e.*, that it persuaded the jury to abdicate its responsibility and decide the case on a basis other than the evidence and the pertinent law." Id., at 582.

Likewise, the jury in Matos's case could assess the facts on which Deputy Ditrich based his opinion, the deputy was cross examined, RP 90-99, and re-cross examined, RP 101-02. The jury was instructed that it was the sole judge of credibility and the

weight to give the testimony. Jury Instruction I, CP 30. There is no chance that the remark by the deputy that Matos intentionally ran into him, “persuaded the jury to abdicate its responsibility and decide the case on a basis other than the evidence and the pertinent law.”

Deputy Ditrich’s testimony was not error. Even if it were, it would be harmless. An error in admitting evidence that does not result in prejudice to the defendant is not grounds for reversal. “Because the error resulted from violation of an evidentiary rule, not a constitutional mandate, we do not apply the more stringent ‘harmless error beyond a reasonable doubt’ standard. Instead, we apply ‘the rule that error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred’.” “The improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole.” State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997).

We find a constitutional error harmless only if convinced beyond a reasonable doubt any reasonable jury would reach the same result absent the error.” State v. Easter, 130 Wn.2d 228,

242, 922 P.2d 1285 (1996); see also State v. Aumick, 126 Wn.2d 422, 430, 894 P.2d 1325 (1995). The State bears the burden of showing a constitutional error was harmless. Easter, 130 Wn.2d at 242. "An error of constitutional magnitude in a criminal prosecution is harmless if the reviewing court is convinced beyond a reasonable doubt that the evidence not tainted by the error is, by itself, so overwhelming that it necessarily leads to a finding of guilt." State v. St. Pierre, 111 Wn.2d 105, 119, 759 P.2d 383 (1988).

Here, there was overwhelming evidence of Matos's guilt on the charge of third degree assault, and any error was harmless.

5. Defense counsel was not ineffective for failing to move for a mistrial or curative instruction following Deputy Ditrich's testimony that Matos intentionally ran into him.

The standard for ineffective assistance of counsel is discussed above. Here, counsel cannot be found ineffective for failing to move for a mistrial that the court would certainly not have granted. A trial court should grant a mistrial only when the defendant is so prejudiced that only a new trial will provide him with a fair trial. State v. Rodriguez, 146 Wn.2d 260, 270, 45 P.3d 541 (2002). That did not happen in this case. Nor is counsel ineffective for failing to seek a curative instruction. Given the overwhelming evidence of his guilt, it would simply have reinforced that fact in the

minds of the jurors, and it was a good tactical move not to bring it up again. In any event, as discussed above, the jury surely understood that the deputy's opinion was something the State was not intending to put before it, and a curative instruction would have been superfluous.

Defense counsel vigorously defended Matos during the evidence portion of the trial and argued strenuously in closing that he was not guilty of the possession of marijuana with intent to deliver charge, and was successful to the point that the jury convicted only of the lesser included charge of possession. He similarly argued, although less persuasively, that Matos did not intentionally assault Deputy Ditrich. RP 139-145. His assistance was not ineffective.

6. The sentence imposed for third degree assault could conceivably exceed the statutory maximum, and this matter should be remanded for clarification of the judgment and sentence.

Matos was sentenced, for the conviction of third degree assault, to 57 months of incarceration and 9 to 18 months of community custody. CP 85. The combination of the two could possibly exceed 60 months, the maximum for a class C felony, depending on how much good time, if any, he earns. The State concedes that this matter should be remanded so that the court

can, following the holdings in State v. Sloan, 121 Wn. App. 220, 87 P.3d 1214 (2004) and State v. Vant, ___ Wn. App. ___, 186 P.3d 1149 (2008), clarify that in no event will the combined incarceration and term of community custody exceed 60 months.

D. CONCLUSION.

Matos has failed to carry his burden of showing that the admission of the marijuana evidence against him constitutes a manifest error which can be raised for the first time on appeal. There was sufficient evidence produced to support his conviction for possession of marijuana. The testimony of Deputy Ditrich that Matos intentionally ran into him was not impermissible opinion testimony, but even if it was it would be harmless error. Matos has also failed to carry his burden of showing that he was provided with ineffective assistance of counsel. The State concedes that this matter should be remanded for clarification of the judgment and sentence, and respectfully asks this court to affirm all of the convictions.

Respectfully submitted this 4th day of September, 2008.



Carol La Verne, WSBA# 19229
Attorney for Respondent

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CERTIFICATE OF SERVICE

I certify that I served a copy of the Respondent's Brief, No. 37188-0-II, on
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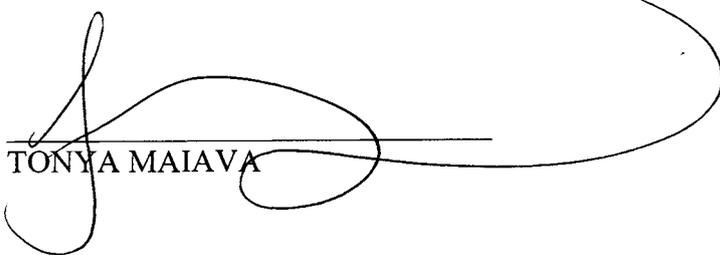
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THOMAS E. DOYLE
ATTORNEY AT LAW
PO BOX 510
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I certify under penalty of perjury under laws of the State of
Washington that the foregoing is true and correct.

Dated this 4th day of September, 2008, at Olympia, Washington.



TONYA MAIAVA