

NO. 42312-0-II

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

STATE OF WASHINGTON, Respondent

v.

KRYSTAL MARIE TURNER, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.11-1-00408-2

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

ANNE M. CRUSER, WSBA #27944
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

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A. RESPONSE TO ASSIGNMENT OF ERROR

- I. DETECTIVE SOFIANOS DID NOT OFFER AN IMPROPER OPINION ON TURNER'S VERACITY AND TURNER WAIVED HER OBJECTION TO THE TESTIMONY.
- II. ANY ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT.

B. STATEMENT OF THE CASE

1. Substantive Facts

On February 2, 2011 Detective Bill Sofianos of the Clark County Sheriff's Department went to a trailer park on Highway 99 in Vancouver, Washington to investigate a possibly stolen Geo Storm. RP 139-40. Detective Sofianos went to space 35 in Callahan's Trailer Park based on information he received, and ran the license plates on the car he found at that space. RP 140. He found that the car he was investigating was registered to Krystal Turner, and the plates on the car came back to a turquoise '91 Geo Storm owned by Krystal Turner. RP 140. 144. He noticed that the car had been painted over, with several spots of yellow paint visible under the blue paint of the car. RP 141. While waiting for a back-up unit to arrive the car left the trailer park. RP 141. Detective Sofianos then pulled the car over on Highway 99. RP 141. There were two

women in the car. RP 142. The driver was Krystal Turner, the defendant. RP 142.

Turner said the car was hers and she had owned it for three years. RP 143. She told Detective Sofianos her brother gave her the car three years ago. RP 143. Turner said the car had been painted several times. RP 144. Detective Sofianos told her he suspected the car was stolen. RP 144. He also told her that although he was aware that she at one time owned a '91 Geo Storm, he suspected this car was not that car. RP 144. At that point, tears formed in Turner's eyes. RP 144. At that point, Detective Sofianos asked her to be honest with him, and she replied that she actually purchased the car a year ago from a friend, and that she switched the license plates and knew that the VIN plate on the dashboard had been removed and replaced with the VIN plate from her '91 Geo Storm. RP 145.

Turner gave Detective Sofianos permission to search her car. RP 146. The VIN on the dashboard matched the license plates that had been placed on the car. RP 146. Thus, the registration, VIN, and license plates all came back to the '91 Geo Storm. RP 147. Searching the car further, Detective Sofianos found that the VIN numbers on the plate located on the driver's side door had been sanded down and the plate had been painted over with blue paint. RP 147. Sofianos then opened the hood of the car to

look for the VIN on the “firewall” (the area right above the engine), and found that it also had been painted over in blue. RP 148. However, he was still able to see the numbers and found that the VIN numbers came back to a car that was reported as stolen. RP 148-49. Sofianos confronted Turner with the fact that the car had been reported stolen and she told him that she assisted in the repainting of the car, painting it blue. RP 149. Regarding her original Geo Storm, she said it was broken down and she needed a functioning car. RP 150. She admitted that she suspected the car could be stolen. RP 156.

The car Krystal Turner was driving belonged to Garry Decaire. RP 280-82. It was stolen in 2009. RP 280. He did not give Krystal Turner permission to possess or take his car. RP 284.

2. The trial

The State charged Turner with Taking a Motor Vehicle in the First Degree Without Permission. CP 7. Prior to trial, Turner moved in limine that the State be prohibited from asking Detective Sofianos about his discussion with Turner in which he’d told Turner to “be honest with him.” and prohibited from eliciting that Turner began to cry during the conversation. RP 124. The trial court denied the motion, holding that “[t]hese are descriptive comments... They’re simply part of the interrogation in question here that we’ve already discussed in the 3.5

hearing.” RP 129. Detective Sofianos ultimately testified about the exchange in the manner outlined in the preceding section.

During cross-examination of Detective Sofianos, Mr. Kurtz, Ms. Turner’s attorney, asked Sofianos about his interview of Turner. Kurtz asked “[D]idn’t you ask her to tell you who they bought the vehicle from?” Sofianos replied that he had. RP 195. Kurtz, apparently believing he was impeaching Detective Sofianos, asked whether it was true that Turner was “reluctant to give you that information and you pushed for it?” RP 195. Detective Sofianos agreed that was true. Kurtz persisted: “But why did you want the name? You pushed for it. What’s the importance of [the name]?” Detective Sofianos answered:

Again, there’s no specific importance to that individual. It was—I had already deemed that some information she was giving me was not the truth, so I was trying to help to confirm what was and what wasn’t the truth.

RP 195-96.

Kurtz went on to ask “You never asked her if she had a bill of sale or anything like that?” Sofianos answered “no.” RP 196. Kurtz asked “Did she ever volunteer it?” Sofianos answered “no.” RP 196. Also during cross-examination, Mr. Kurtz elicited that Turner had, in fact, switched the license plates on the car herself. RP 198-99.

The jury returned a verdict of guilty. CP 82. Ms. Turner was given a standard range sentence at the bottom of the standard range. CP 85-86. This timely appeal followed. CP 95.

C. ARGUMENT

I. DETECTIVE SOFIANOS DID NOT OFFER AN IMPROPER OPINION ON TURNER'S VERACITY AND TURNER WAIVED HER OBJECTION TO THE TESTIMONY.

The sole assignment of error in this appeal is whether Ms. Turner's right to a trial by jury was violated when the trial court permitted Detective Sofianos to testify that when he interviewed Ms. Turner, and told her he suspected the car was stolen, that she then began to tear up, and that he then said "be honest with me," at which time she admitted that she purchased the car a year prior from a friend and had switched the license plates and knew that the VIN on the dashboard was actually the VIN from her legitimate Geo Storm. See RP 144-45.

A trial court's decision to admit or exclude a law enforcement officer's statements during an interrogation is reviewed for an abuse of discretion. *State v. Demery*, 144 Wn.2d 753, 758, 30 P.3d 1278 (2001); *State v. Darden*, 145 Wn.2d 612, 619, 41 P.3d 1189 (2002); *State v. Notaro*, 161 Wn.App. 654, 661, 255 P.3d 774 (2011). A witness is not permitted to render an opinion on the veracity of another witness. *State v.*

Dolan, 118 Wn.App. 323, 329, 73 P.3d 1011 (2003); *State v. Kirkman*, 159 Wn.2d 918, 927, 155 P.3d 125 (2007).

Turner argues this testimony constituted an opinion by Detective Sofianos that Turner was not credible. When viewed in context, this statement was not a comment on Turner's credibility. Rather, Detective Sofianos merely asked Turner to tell him the truth during the course of the interrogation. When confronted with the possibility that Detective Sofianos found her story implausible, she changed her story. This is in stark contrast to the case relied on by Turner, *State v. Jones*, 117 Wn.App. 89, 68 P.3d 1153 (2003). In *Jones*, the defendant, a convicted felon, was a passenger in a car and a handgun was found under the passenger seat. The defendant contended that he didn't know the gun was there. The officer testified extensively about his interrogation of the defendant in which he repeatedly insisted that the defendant must have known about the gun. Then, the officer told the jury "[Y]ou know, I just didn't believe him." *Jones* at 91. In *Jones* the officer offered a direct opinion to the jury that he didn't believe the defendant. In this case, the officer offered no such direct opinion about Turner's veracity. He asked her to be honest, at which point she gave a different story than the one she initially gave.

Although discussed under the rubric of “manifest constitutional error” under RAP 2.5(a), the Supreme Court observed in *State v. Kirkman*, 159 Wn.2d 918, 155 P.3d 125 (2007):

“Manifest error” requires a nearly explicit statement by the witness that the witness believed the accusing victim. Requiring an explicit or almost explicit witness statement on an ultimate issue of fact is consistent with our precedent holding the manifest error exception is narrow.

Requiring an explicit or almost explicit statement by a witness is also consistent with this court's precedent that it is improper for any witness to express a personal opinion on the defendant's guilt. *State v. Garrison*, 71 Wn.2d 312, 315, 427 P.2d 1012 (1967); *State v. Trombley*, 132 Wash. 514, 518, 232 P. 326 (1925).

Kirkman at 936-37 (some internal citations omitted). Sofianos’ testimony did not amount to an explicit or almost explicit statement that Turner was not credible.

In *State v. Hager*, 171 Wn.2d 151, 159, 248 P.3d 512 (2011) the Supreme Court found that an officer’s testimony that the defendant was “evasive” during questioning constituted an impermissible opinion on the defendant’s credibility. Such testimony, again, is distinguishable from what occurred in this case because Detective Sofianos did not offer an opinion about Ms. Turner. Sofianos merely relayed a directive he made to her during questioning, namely that he wanted her answers to be honest. As a result of his use of this interrogation technique, Turner changed her

story. Ms. Turner gave two opposing stories to Sofianos: The first was that her brother had given her the car three years ago and the second was that she purchased the car one year ago from a friend, and that she personally switched the license plates on the car and knew the VIN plate had been replaced with the VIN plate from her prior Geo Storm.

Turner claims that Detective Sofianos was permitted to testify that he didn't believe what she was telling him but that is not accurate. He was permitted to tell the jury that he asked her to "be honest" during the course of his interrogation, and that following his request she changed her story. He didn't testify that he told her he didn't believe her, nor did he tell the jury that he actually didn't believe her (as the officer did in *Jones*, supra).

Turner cites to *State v. Notaro*, 161 Wn.App. 654, 255 P.3d 774 (2011) in support of her claim. The State agrees that *Notaro* controls this case, but not for the reasons proffered by Turner.

In *Notaro*, a murder case, the defendant had been questioned extensively by detectives in a pre-trial interrogation. A detective was permitted to testify that after the defendant gave him a first version of events, he (the detective) told him "I didn't believe him." After the defendant's objection was overruled, the detective again testified:

I told him I didn't believe him. I said, I don't believe your mother was able to put [Tarricone's] body in a freezer by herself if he had such a difficult time pulling it out and

taking it upstairs to bury it...I told him I didn't believe that that's what mothers did when they have a problem such as the problems [sic] they were having...

Notaro at 665. At that point the defendant began nodding his head up and down and the detective testified "I told him to tell me the truth. Tell me the story of what happened." *Id.* At that point the defendant changed his story. *Notaro* at 666-67.

This Court held:

Here, Detective Wood's trial testimony described the police interrogation strategy and helped explain to the jury why Notaro changed some parts of his story—but not others—halfway through the interview. Wood's statements during the interrogation were designed to see whether Notaro would change his story. Such trial testimony is an account of tactical interrogation statements designed to challenge the defendant's initial story and elicit responses that are capable of being refuted or corroborated by other evidence or accounts of the event discussed...[S]tatements made during a pretrial interview are not the types of statements that carry a special aura of reliability usurping the province of the jury at trial.

Notaro at 669. Stated another way, Detective Wood's statements to the defendant were "functionally equivalent" to telling the defendant that his story did not make sense. *Notaro*, at 669-70. Applying the reasoning of *Notaro* to the facts in this case, it is clear that Detective Sofianos was not commenting on the credibility of Turner but was describing what it was he said to her, in the course of his interrogation that precipitated the change in her story. Confronting her with his belief that the car was stolen was an

interrogation technique designed to get her to confirm or deny that the car was stolen (or that she knew that it was stolen). When he told her he suspected the car was stolen she began to tear up. Upon seeing her tear up, Sofianos explained that he felt he “was probably more on point” and told her to be honest with him. This was an interrogation tactic. He applied pressure to Turner and under that pressure, she changed her story. Turner makes much of Sofianos’ comment “I suspected that I was probably more on point,” but this was merely Sofianos’ explanation as to why he continued to apply pressure to Turner. This is analogous to the testimony of Detective Wood in the *Notaro* case, in which he explained why he told the defendant he didn’t believe him:

I told him I didn’t believe him. I said, I don’t believe your mother was able to put [Tarricone’s] body in a freezer by herself if he had such a difficult time pulling it out and taking it upstairs to bury it...I told him I didn’t believe that that’s what mothers did when they have a problem such as the problems [sic] they were having...

Notaro at 665. Although couched in the terms of “I told him,” and “I said,” Detective Wood clearly conveyed to the jury that the defendant’s story, in his view, made no sense. This was a somewhat inescapable side effect of telling the story of the interrogation.

This case is factually analogous to *Notaro*. Detective Sofianos told the jury about his interrogation of Turner. When he applied pressure to her

by telling her he believed the car was stolen and asking her to be honest. she did, in fact, change her story. This is markedly different than what occurred in *Jones*, supra, in which the officer told the jury that he personally didn't believe the defendant. The trial court did not err in admitting this testimony.

To the extent that Turner's complaint centers largely on Sofianos' statement "I suspected that I was probably more on point," this testimony was not specifically objected to by Turner. Prior to trial, Turner sought to prohibit Sofianos from testifying that Turner teared up when he told her that he suspected the car was stolen and that he asked her to be honest with him. When Sofianos testified "I suspected that I was probably more on point," that testimony was extemporaneous and went beyond Turner's motion in limine. Turner objected, but did not inform the court that her objection was to that particular piece of testimony. Defense counsel said "Objection, Your Honor. Voir dire in aid of objection." RP 145. The court interpreted counsel's objection as a renewal of his previous objection during the motion in limine, saying "Overruled. Again, we have taken it up previously." *Id.* Counsel did not correct the court. Counsel didn't expand his objection to include testimony beyond that which he had previously objected to. Counsel didn't say "Your Honor, I have a different objection than the one I raised pre-trial." The court was in no position to

rule on this particular testimony where no specific objection was made to it. Thus, Turner's objection to this testimony is raised for the first time in this appeal.

“The general rule in Washington is that a party's failure to raise an issue at trial waives the issue on appeal unless the party can show the presence of a ‘manifest error affecting a constitutional right.’ *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d 292 (2011), quoting *State v. Kirwin*, 165 Wn.2d 818, 823, 203 P.3d 1044 (2009) and *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). The rule requiring issue preservation at trial encourages the efficient use of judicial resources and ensures that the trial court has the opportunity to correct any errors, thereby avoiding an unnecessary appeal a “consequent new trial”, and the appellate court should not “sanction a party's failure to raise error at trial” that could have been repaired. *State v. Grimes*, 165 Wn.App. 172, 179, __P.3d__, 2011 Wash.App. LEXIS 2717 (2011); see also *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988). “[P]ermitting appeal of all unraised constitutional issues undermines the trial process and results in unnecessary appeals, undesirable retrials, and wasteful use of resources” *Robinson*, *supra*, at 305.

As explained in *McFarland*, *supra* 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.” *McFarland* at 333. In order to obtain review under RAP 2.5, the error must be “manifest.”—i.e. it must be “truly of constitutional magnitude.”” *Id.*; *State v. Scott* at 688. To be deemed manifest constitutional error, a defendant must identify the error and show how, in the context of the trial, the alleged error actually affected the defendant’s rights. *McFarland* at 333. “It is not enough that the Defendant allege prejudice—actual prejudice must appear in the record.” *Id.* at 334.

Generally, an appellate court may refuse to entertain a claim of error not raised before the trial court. [RAP 2.5(a).] In order to benefit from this exception, “the defendant must identify a constitutional error and show how the alleged error actually affected the [defendant]’s rights at trial.” A constitutional error is manifest if the appellant can show actual prejudice, i.e., there must be a “plausible showing by the [defendant] that the asserted error had practical and identifiable consequences in the trial of the case.” If an error of constitutional magnitude is manifest, it may nevertheless be harmless.

Grimes at 180, quoting *State v. Gordon*, 172 Wn.2d 671, 676, 260 P.3d 884 (2011); *State v. O’Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009).

Two cases decided by this Court recently have discussed the question of manifest error affecting a constitutional right. In *State v. Grimes*, *supra*, this Court held that the appellant could not complain about the special verdict form used in her case, which failed to explain to the jury that they needn’t be unanimous in order to answer “no.” for the first

time on appeal. This Court reiterated that a reviewing court must first determine whether the error is of constitutional dimension and, second, whether the error was manifest. If both conditions are satisfied, the Court reviews the merits of the claim. Because the Court must necessarily have found manifest constitutional error in order to review the merits of the claim, the Court applies the harmless error test for constitutional error, namely whether the error was harmless beyond a reasonable doubt. The State bears the burden of making this showing. *Grimes* at 185-86.

In order to find that constitutional error is “manifest,” the reviewing court must determine that it had “practical and identifiable consequences at trial. In *Grimes*, this Court lamented in footnotes 16 and 20 the unfortunate conflation of the actual prejudice analysis (in other words, practical and identifiable consequences) of RAP 2.5(a) and harmless error analysis.

We acknowledge that it is somewhat counterintuitive that an error might cause “actual prejudice” yet ultimately be declared “harmless.” It is our hope that having accepted *Ryan* and *Nunez* for review, the Supreme Court will resolve this somewhat circular reasoning and provide a more straightforward definition of “manifest” error in the context of RAP 2.5(a)’s exception to the preservation of error rule. In the meantime, however, we have removed “actual prejudice” from our manifest error analysis and substituted “practical and identifiable” consequences in its place.

Grimes at 187, n. 16. Some days after issuing the opinion in *Grimes*, this Court issued its opinion in *State v. Bertrand*, 165 Wn.App. 393, ___P.3d___, 2011 Wash.App. LEXIS 2773 (2011), holding again that the appellant could not complain about a special verdict form for the first time on appeal that failed to advise the jury that it need not be unanimous to answer “no.” The majority in a lengthy and illuminating footnote again discussed the term “actual prejudice” in the context of RAP 2.5(a)(3):

This “actual prejudice” language has frustrated and confused lawyers, clerks, and judges for years because the term of art, “actual prejudice,” involves a different balance than does a harmless error analysis, which determines whether reversal is warranted.

...

We also note that the reasoning in *Powell* and *Kirkpatrick* appears to conflict with the reasoning in *O’Hara*, a case in which our Supreme Court admonished, “The determination of whether there is actual prejudice,” and, therefore, whether an error is “manifest,” is a different question and involves a different analysis as compared to the determination of whether the error warrants reversal. In order to ensure the actual prejudice and harmless error analyses are separate, the focus of the actual prejudice must be on whether the error is so obvious on the record that the error warrants appellate review.

O’Hara, 167 Wn.2d at 99-100.

...

Bertrand at 11-12¹, n.8.

Turning to the application of manifest error affecting a constitutional right to this case, Turner cannot establish either constitutional error or that it was “manifest.” Under *Kirkman*, supra, Turner cannot demonstrate manifest constitutional error by this testimony unless she can demonstrate that the remark by Detective Sofianos was an explicit or near explicit statement on her veracity. “Requiring an explicit or almost explicit witness statement on an ultimate issue of fact is consistent with our precedent holding the manifest error exception is narrow.” *Kirkman* at 936-37. As noted above, Detective Sofianos did not say that he disbelieved Turner. Rather, like the detective in *Notaro*, he explained the sequence of the interrogation and why he told her to “be honest” with him. Moreover, Turner has not specified what “practical and identifiable” consequence this testimony had on the trial. She argues that the error, assuming it was error, was constitutional and that it was not harmless, but, as noted above, harmless error analysis is distinct from “actual prejudice” analysis under RAP 2.5(a)(3). *O’Hara*, supra, at 99-100. Although the State bears the burden of establishing that a constitutional error was harmless beyond a reasonable doubt, the

¹ Although *Bertrand* has been given a Washington Appellate citation, the pagination in Lexis does not yet comport with the citation. Respondent has cited to the pagination as it appears in Lexis.

defendant bears the initial burden of establishing that the error was manifest constitutional error. She bears this burden here because the testimony she complains of (“I suspected I was probably more on point”) was not specifically objected to at trial.

Critical to the question of whether opinion testimony causes actual prejudice under RAP 2.5(a)(3) is whether the trial court properly instructs the jury that they are the sole judges of credibility. *State v. Elmore*, 154 Wn.App. 885, 898, 228 P.3d 760 (2010), citing *State v. Montgomery*, 163 Wn.2d 577, 595, 183 P.3d 267 (2008). Here, the jury was instructed:

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness’s testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness’s memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness’s statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

Instruction No. 1, CP 55. The jury was also instructed that it was not bound by expert witness opinions. Instruction No. 5, CP 60. Further, the jury is presumed to follow the trial court’s instructions absent evidence to the contrary. *Montgomery*, supra, at 595; *Kirkman*, supra, at 928.

Here, Turner has offered no evidence to suggest that the jury disregarded this instruction, and she makes no suggestion that the State made improper use of this testimony during closing argument. She has not established that this testimony was error, nor has she established that the error is manifest constitutional error.

The State submits, moreover, that Turner waived any objection to the testimony she complains of when she elicited similar testimony from Detective Sofianos during cross-examination. During cross-examination, defense counsel apparently thought that Detective Sofianos' attempt to investigate the crime by finding out from whom Turner purchased the vehicle was irrelevant, improper and bully-ish. Defense counsel asked a series of questions spanning two pages of the verbatim report of proceedings demanding to know why Detective Sofianos cared who else was involved in the theft of this vehicle, RP 195-97. The exchange culminated with these questions: "And didn't you indicate in your police report that she was reluctant to give you that information and you pushed for it?" Sofianos replied "Yeah." Defense counsel then asked "But why did you want the name? You pushed for it. What's the importance of [the name]?" Sofianos replied:

Again, there's no specific importance to that individual. It was -I had already deemed that some information she was

giving me was not the truth. so I was trying to help to confirm what was and what wasn't the truth.

RP 195-96. Although this testimony also is not an explicit or near explicit statement by Sofianos on Turner's credibility, it comes much closer to being one than the testimony complained of by Turner in this appeal. Courtesy of Turner, the jury heard that she gave information to Sofianos that he deemed "not the truth," and that she was "reluctant" to give him information. This Court should not countenance Turner's complaint about one aspect of Sofianos' testimony, *and award her a new trial*, when she elicited similar testimony from Sofianos on cross-examination. It's not as though Turner elicited this testimony in an effort to answer or blunt the previous testimony given by Sofianos. This testimony stood alone, and related to a different area of the interrogation entirely. Turner has waived her objection to Sofianos' testimony that he asked her to "be honest" with him.

II. ANY ERROR WAS HARMLESS BEYOND A REASONABLE DOUBT.

Even assuming error, it was harmless beyond a reasonable doubt. "A constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error." *State v. Thach*, 126 Wn.App. 297, 313, 106 P.3d 782 (2005); *State v. Carlin*, 40 Wn.App. 698, 703, 700

P.2d 323 (1985). Moreover, the remedy of a new trial is one that should be exercised only in the case of enduring and incurable prejudice. "In a criminal proceeding, a new trial is necessary only when the defendant 'has been so prejudiced that nothing short of a new trial can insure that the defendant will be treated fairly'." *Hager*, supra, at 156. *State v. Bourgeois*, 133 Wn.2d 389, 406, 945 P.2d 1120 (1997). The reviewing court employs the "overwhelming untainted evidence test" and determines whether the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt. *Thach*, supra at 313. Such is the case here.

The jury heard evidence that the car Turner was driving was stolen. They heard that Turner, by her own admission, had personally switched the license plates on the Geo Storm, leading to an inference she knew the car was stolen. In case there was any ambiguity about Turner's involvement in switching the plates, Turner cleared that up during her cross-examination of Sofianos in which she made certain the jury knew that she, personally, switched the plates:

Q: Did she tell you that she actually switched the plates, the license plates?

A: She said that she switched the plates on the car.

Q: She personally switched the plates?

A: Again, she said that she switched the plates. I don't know if she used a screwdriver, but she told me that, yes, that she had switched the plates on the car.

RP 198-99.

The jury heard that Turner assisted in painting the car, leading to an inference that she and her cohorts intended to disguise it. RP 199. The jury heard that Turner knew the VIN on the car had been switched from her prior Geo Storm, leading to an inference that she knew the car was stolen. Courtesy of Turner's cross-examination of Sofianos, the jury heard that Turner had no proof that she had purchased the vehicle and never volunteered a bill of sale for the car. RP 196. Turner did not suffer incurable prejudice in this case. Even assuming there was prejudice, it was largely a product of Turner's cross-examination of Detective Sofianos in which she made the tactical decision to portray him as a bully. In any case, such prejudice was not incurable.

The untainted evidence in this case was overwhelming and Turner's conviction should be affirmed.

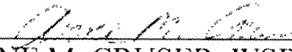
D. CONCLUSION

Turner's conviction should be affirmed.

DATED this 17th day of February, 2011.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: 
ANNE M. CRUSER, WSBA #27944
Deputy Prosecuting Attorney

CLARK COUNTY PROSECUTOR

February 10, 2012 - 2:51 PM

Transmittal Letter

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Case Name: State v. Krystal Turner

Court of Appeals Case Number: 42312-0

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