

NO. 47593-6-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JESUS SOLIS-VAZQUEZ,

Appellant.

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

	PAGE
I. STATE’S RESPONSE TO ASSIGNMENT OF ERROR.....	1
II. ISSUES PERTAINING TO THE STATE’S RESPONSE TO ASSIGNMENT OF ERROR.....	1
III. STATEMENT OF THE CASE.....	1
A. SOLIS-VAZQUEZ DID NOT SUFFER MANIFEST ERROR AFFECTING A CONSTITUTIONAL RIGHT WHEN HIS ATTORNEY DID NOT OBJECT ON THE BASIS HE NOW ARGUES, AND HIS ATTORNEY OPENED THE DOOR TO DEPUTY SPAULDING’S OPINION DURING CROSS-EXAMINATION.	12
1. BECAUSE SOLIS-VAZQUEZ DID NOT OBJECT TO IMPROPER OPINION EVIDENCE AT TRIAL AND THE ADMISSION OF THIS EVIDENCE DID NOT CREATE A MANIFEST ERROR AFFECTING A CONSTITUTIONAL RIGHT, THE ISSUE WAS WAIVED.	18
2. SOLIS-VAZQUEZ OPENED THE DOOR TO FURTHER EXPLORATION OF DEPUTY SPAULDING’S OPINION WHEN, DURING CROSS-EXAMINATION, HIS ATTORNEY ATTEMPTED TO MAKE IT APPEAR THAT DEPUTY SPAULDING’S OPINION WAS THAT SLAPE POSSESSED THE DRUGS RATHER THAN HIM.	22
B. THERE WAS SUFFICIENT EVIDENCE FOR THE JURY TO FIND THAT SOLIS-VAZQUEZ OR HIS	

	ACCOMPLICES WERE ARMED WITH THE FIREARMS FOUND IN THE CAR.	27
1.	THERE WAS SUFFICIENT EVIDENCE THAT SOLIS-VAZQUEZ OR HIS ACCOMPLICE WAS ARMED WITH THE FIREARMS FOUND IN THE REAR OF THE CAR.	32
2.	BECAUSE THERE WAS SUFFICIENT EVIDENCE THAT EITHER OR BOTH OF THE FRONT OCCUPANTS WERE ACCOMPLICES OF SOLIS-VAZQUEZ, THE COURT ERRED BY OVERTURNING THE JURY'S VERDICTS WITH REGARD TO THE TWO FIREARMS FOUND IN THE FRONT OF THE CAR.	38
IV.	CONCLUSION	44

TABLE OF AUTHORITIES

	Page
Cases	
<i>State v. Bauer</i> , 180 Wn.2d 929, 329 P.3d 67 (2014)	30
<i>Herberg v. Swartz</i> , 89 Wn.2d 916, 578 P.2d 17 (1978).....	13
<i>Iannelli v. United States</i> , 420 U.S. 770, 95 S.Ct. 1284, 1289-90 n.10, 43 L.Ed.2d 616 (1975).....	31
<i>In re Winship</i> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)	28
<i>State v. Allen</i> , 182 Wn.2d 364, 341 P.3d 268 (2015).....	30, 37
<i>State v. Berg</i> , 147 Wn.App. 923, 198 P.3d 529 (2008)	24
<i>State v. Boast</i> , 87 Wn.2d 447, 53 P.2d 1322 (1976).....	30
<i>State v. Carothers</i> , 84 Wn.2d 256, 525 P.2d 731 (1974).....	31
<i>State v. Davenport</i> , 100 Wn.2d 757, 675 P.2d 1213 (1984)	31
<i>State v. Davis</i> , 101 Wn.2d 654, 682 P.2d 883 (1984).....	31
<i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980)	28
<i>State v. Dugger</i> , 75 Wn.2d 689, 453 P.2d 655 (1969).....	40
<i>State v. Emanuel</i> , 42 Wn.2d 799, 259 P.2d 845 (1953).....	32
<i>State v. Fagalde</i> , 85 Wn.2d 730, 539 P.2d 86 (1975).....	14
<i>State v. Gefeller</i> , 76 Wn.2d 449, 458 P.2d 17 (1969).....	22, 24
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980)	27
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994).....	22

<i>State v. Hoffman</i> , 116 Wn.2d 51, 804 P.2d 577 (1991).....	28, 30, 37
<i>State v. Jackson</i> , 137 Wn.2d 712, 976 P.2d 1229 (1999).....	29
<i>State v. Jamison</i> , 25 Wn.App. 68, 604 P.2d 1017 (1979).....	13
<i>State v. Jones</i> , 63 Wn.App. 703, 821 P.2d 543, <i>review denied</i> , 118 Wn.2d 1028, 828 P.2d 563 (1992)	28
<i>State v. Jones</i> , 111 Wn.2d 239, 759 P.2d 1183 (1988).....	24, 28
<i>State v. Joy</i> , 121 Wn.2d 333, 851 P.2d 654 (1993).....	28
<i>State v. Kirkman</i> , 159 Wn.2d 918, 155 P.3d 125 (2007).....	18, 19, 20, 26
<i>State v. Kirwin</i> , 165 Wn.2d 818, 203 P.3d 1044 (2009).....	13
<i>State v. Long</i> , 44 Wn.2d 255, 266 P.2d 797 (1954).....	40
<i>State v. Lynn</i> , 67 Wn.App. 339, 835 P.2d 251 (1992).....	15
<i>State v. Markham</i> , 40 Wn.App. 75, 697 P.2d 263 (1985).....	31
<i>State v. Mathes</i> , 47 Wn.App. 863, 737 P.2d 700 (1987)	15
<i>State v. Montgomery</i> , 163 Wn.2d 577, 183 P.3d 267 (2008).....	18, 20
<i>State v. Nyegaard</i> , 154 Wn.App. 641, 226 P.3d 783 (2010) (<i>remanded on other grounds</i> , 172 Wn.2d 1006, 260 P.3d 208 (2011)	33, 35, 36, 43
<i>State v. Pappas</i> , 195 Wn. 197, 80 P.2d 770 (1938).....	12
<i>State v. Partin</i> , 88 Wn.2d 899, 567 P.2d 1136 (1977).....	27
<i>State v. Peterson</i> , 54 Wn.App. 75, 772 P.2d 513 (1989).....	29
<i>State v. Price</i> , 126 Wn.App. 617, 109 P.3d 27 (2005).....	12
<i>State v. Randecker</i> , 79 Wn.2d 512, 487 P.2d 1295 (1971).....	39

<i>State v. Randle</i> , 47 Wn.App. 232, 734 P.2d 51 (1987), <i>review denied</i> , 110 Wn.2d 1008 (1988).....	28
<i>State v. Rice</i> , 102 Wn.2d 120, 683 P.2d 199 (1984).....	31
<i>State v. Robinson</i> , 171 Wn.2d 292, 253 P.3d 84 (2011).....	13
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992).....	27, 33
<i>State v. Saunders</i> , 132 Wn.App. 592, 132 P.3d 743 (2006).....	14
<i>State v. Silvers</i> , 70 Wn.2d 430, 423 P.2d 539 (1967).....	14
<i>State v. Sims</i> , 77 Wn.App 236, 890 P.2d 521 (1995).....	14
<i>State v. Stein</i> , 144 Wn.2d 236, 245 27 P.3d 184 (2001).....	30
<i>State v. Stevens</i> , 69 Wn.2d 906, 412 P.2d 360 (1966).....	23, 24, 26
<i>State v. Teal</i> , 152 Wn.2d 333, 96 P.3d 974 (2004).....	31
<i>State v. Theroff</i> , 25 Wn.App. 590, 608 P.2d 1254, <i>aff'd</i> , 95 Wn.2d 385, 622 P.2d 1240 (1980).....	27
<i>State v. Toomey</i> , 38 Wn.App. 831, 690 P.2d 1175 (1984).....	29
<i>State v. Truong</i> , 168 Wn.App. 529, 277 P.3d 74 (2012), <i>review denied</i> , 175 Wn.2d 1020, 290 P.3d 994 (2012).....	30
<i>State v. Walton</i> , 64 Wn.App. 410, 824 P.2d 533, <i>review denied</i> , 119 Wn.2d 1011 (1992).....	28
<i>State v. Ward</i> , 144 Wn. 337, 258 P. 22 (1927).....	24
<i>State v. Whitaker</i> , 133 Wn.App. 199, 135 P.3d 923 (2006), <i>review denied</i> , 159 Wn.2d 1017, 157 P.3d 404 (2007), <i>cert. denied</i> , 128 S.Ct. 375, 552 U.S. 948, 169 L.Ed.2d 260 (2007).....	30

Statutes

RCW 9.94A.533(3)..... 32

RCW 9A.08.020(1)..... 29

RCW 9A.08.020(2)(c) 29

RCW 9A.08.020(3)(a) 29

Rules

RAP 2.5(a) 13,14, 15, 16, 17, 19

I. STATE'S RESPONSE TO ASSIGNMENT OF ERROR

The jury's verdicts should be affirmed or reinstated because:

- (1) Solis-Vazquez did not suffer manifest error affecting a constitutional right when his attorney did not object on the basis he now argues, and his attorney's cross-examination elicited testimony from the sheriff's deputy as to his reason for arresting the occupant of the driver's seat, opening the door to further clarification during the prosecutor's redirect examination; and
- (2) There was sufficient evidence for the jury to find that Solis-Vazquez or his accomplices were armed with the firearms located in the vehicle.

II. ISSUES PERTAINING TO THE STATE'S RESPONSE TO ASSIGNMENT OF ERROR

- A. **Has Solis-Vazquez shown manifest error affecting a constitutional right when his attorney did not object on the basis he now argues, and when Deputy Spaulding clarified his opinion on redirect examination only after Solis-Vazquez's attorney opened the door to his opinion by eliciting from Deputy Spaulding his reason for arresting the occupant of the driver's seat on cross-examination?**
- B. **Was there sufficient evidence to support the jury's verdicts that Solis-Vazquez or his accomplices were armed with the firearms located in the vehicle?**

III. STATEMENT OF THE CASE

On December 12, 2014 at 9:44 p.m., Deputy Brady Spaulding of the Cowlitz County Sheriff's Office was in his patrol vehicle when he observed a small, two-door Toyota Celica with its front headlight out being driven down Tennant Way in Longview. RP at 323-24, 151, 176,

211. Deputy Spaulding pulled the car over. RP at 325. There were four people in the car. RP at 325. After the car was stopped, Deputy Spaulding observed the driver, Evan Hadlock, and the front seat passenger, Vanessa Slape, switch seats. RP at 325. Jesus Solis-Vazquez was seated in the backseat directly behind the driver's seat. RP at 328. Another man, referred to by Solis-Vazquez as "Delo," was seated in the backseat behind the front passenger. RP at 494. Deputy Spaulding observed Solis-Vazquez and Delo making movements in the back of the vehicle. RP at 326.

Deputy Spaulding contacted the occupants of the car and obtained identification from Slape and Hadlock, because he considered them both to have been drivers of the vehicle. RP at 327-28. Because Deputy Spaulding observed that Solis-Vazquez was not wearing his seatbelt, he also requested identification from him. RP at 328. Solis-Vazquez provided Deputy Spaulding a Mexican passport bearing the name Genero Padraza-Martinez. RP at 328-29. After obtaining these identifications, Deputy Spaulding returned to his vehicle to "[r]un the names" and discovered that Hadlock had a suspended driver's license. RP at 330. Additional police officers arrived. RP at 330. Deputy Spaulding returned to the passenger side of the car to arrest Hadlock for driving while suspended. RP at 330-31.

Deputy Spaulding opened the passenger door and observed Hadlock put something by the dash and then move his right hand toward his leg. RP at 331. Deputy Spaulding then observed a black, sawed-off, pistol grip shotgun in the area where Hadlock's hand went toward. RP at 331. The shotgun was between the passenger front seat and the passenger door. RP at 344. Upon seeing the shotgun, Deputy Spaulding "stomped" Hadlock's arm with his foot pinning his arm against his leg, while drawing his firearm. RP at 332. The shotgun and Hadlock were removed from the car. RP at 332. The shotgun was loaded. RP at 346. The other officers on scene took cover positions holding the remaining three occupants in the vehicle at gunpoint. RP at 73, 196, 216. Despite being held at gunpoint and ordered to keep their hands up, the occupants of the car continually dropped their hands and reached toward the floor. RP at 210, 217.

Reserve Officer Rudy Podhora of the Woodland Police Department went to the driver's side of the car. RP at 119. He instructed Slape to turn the engine off and remove her seatbelt. RP at 120. Slape put her hand underneath a handbag in her lap. RP at 120. Slape could not reach beyond her knee because she was still wearing her seatbelt and was restrained by the shoulder harness. RP at 132, 137. After she removed her seatbelt, she did not want to exit the car because she was trying to handle a cat that she had with her. RP at 121. However, eventually she

was removed from the vehicle and handcuffed near a chain link fence. RP at 123.

With his firearm drawn, Officer Jeff Gann of the Castle Rock Police Department covered Solis-Vazquez in the backseat on the driver's side. RP at 71, 73-74, 99, 153. Officer Gann observed Solis-Vazquez bring his hands down to his lap. RP at 75. Officer Gann ordered Solis-Vasquez to "get his hands up." RP at 75. Despite the fact that he was ordered by armed officers to keep his hands up, Solis-Vazquez twice more put his hands down while being covered. RP at 75. Officer Gann observed Solis-Vasquez reach toward the floor of the vehicle. RP at 75. At this point, Officer Gann told Solis-Vasquez to get his hands up or he would shoot him. RP at 75.

Officer Cody Traub of the Kalama Police Department removed Delo from the rear passenger side seat. RP at 75, 161, 213. After Delo was removed from the car, Solis-Vasquez placed his hands down in "the middle of the seat area" and then "lunged out the open passenger side door." RP at 76, 161. Solis-Vasquez took off running and nearly collided with Officer Cody Traub who was in the process of handcuffing Delo. RP at 76. Deputy Spaulding attempted to stop Solis-Vasquez. RP at 77. Solis-Vasquez swung at Deputy Spaulding with closed fists. RP at 77, 163. After breaking free of Deputy Spaulding, Solis-Vasquez ran onto

12th Avenue. RP at 78. Deputy Spaulding was able to catch up to Solis-Vazquez and grab hold of him. RP at 78. Officer Gann was able to catch up to them. RP at 78. Solis-Vazquez swung his fists at Deputy Spaulding and Officer Gann. RP at 78-79. Solis-Vazquez struck Officer Gann in the face with a closed fist, knocking his glasses off. RP at 79.

Officer Geary Enbody of the Woodland Police Department arrived to assist. RP at 79, 147. Officer Enbody deployed a taser into Solis-Vazquez shoulder blade, however the taser was ineffective. RP at 79-80. Solis-Vazquez continued to swing his arms at the officers. RP at 80. Officer Gann attempted to apply a vascular neck restraint to Solis-Vazquez in an effort to render him unconscious. RP at 80. When Officer Gann attempted to apply this hold, Solis-Vazquez kicked Officer Gann in the right knee and caused him to fall to the ground. RP at 81-82. From the ground, Officer Gann grabbed for Solis-Vazquez foot. RP at 82. Solis-Vazquez then stomped on Officer Gann's hand. RP at 82.

Despite the effort of Deputy Spaulding, Officer Gann, and Officer Enbody, Solis-Vazquez again broke free and took off running. RP at 83. Deputy Spaulding again caught up with Solis-Vazquez and applied a taser to him. RP at 83. Solis-Vazquez was able to break free of the wires and render the taser ineffective. RP at 83. He then attempted to take the taser away from Deputy Spaulding. RP at 83. Deputy Spaulding recovered the

taser and discarded it to get it away from Solis-Vazquez. RP at 84. Officer Gann removed the cartridge from his taser and applied it to Solis-Vazquez in “drive stun mode.”¹ RP at 84. Solis-Vazquez continued to swing his arms and elbows at the officers. RP at 85.

At this point, Officer Enbody used an expandable baton to strike Solis-Vazquez in the back of his thigh. RP at 85. Even after being struck and verbally instructed to get on the ground, Solis-Vazquez refused to comply. RP at 86. Officer Enbody struck Solis-Vazquez four more times. RP at 86. After the fifth strike, Solis-Vazquez’s knee buckled, and he went to the ground. RP at 86. On the ground, Solis-Vazquez continued to throw punches at the officers. RP at 87. Officer Enbody employed a vascular neck restraint to Solis-Vazquez. RP at 87. Solis-Vazquez started to lose consciousness. RP at 87. Finally, Deputy Spaulding and Officer Gann were able to get him handcuffed. RP at 87. After Solis-Vazquez was taken into custody, he was searched incident to arrest. RP at 95. \$1,933 in cash was found on his person in denominations of fives, tens, and twenties. RP at 95.

After Officer Traub removed Delo from the car, he ordered him over to the fence adjacent to the passenger side of the vehicle to secure him in handcuffs. RP at 218. When Solis-Vazquez exited the car it

¹ Drive stun mode causes pain, rather than neuromuscular interruption, to achieve compliance. RP at 84.

distracted Officer Traub. RP at 218, 219. This allowed Delo to escape from his custody. RP at 220. As Delo ran, Officer Traub chased after him. RP at 221. Officer Podhora also pursued Delo. RP at 222. Near the rear corner of a Superior Tire building, police lost sight of Delo. RP at 222. Several tractor trailers were located at this location that were large enough to hide underneath. RP at 223.

Deputy Brent Harris of the Cowlitz County Sheriff's Office arrived to assist Officer Traub in searching for Delo. RP at 224, 234. Deputy Harris searched the area around Superior Tire. RP at 236. Underneath the rear end of a tractor trailer, Deputy Harris located two baggies containing methamphetamine. RP at 236, 260. The baggies were wrapped in white plastic bags. RP at 238. Without packaging the methamphetamine in each of these bags weighed 25.4 grams.

Slape gave the police permission to search the vehicle. RP at 126, 342. Under the front passenger seat, Deputy Spaulding located a loaded Kel-Tec .32 caliber semiautomatic pistol. RP at 342. The Kel-Tec was positioned so the front seat passenger could easily access it with the grip to the front of the car and barrel pointed toward the rear. RP at 342, 343. Behind the front passenger seat, where Delo had been sitting, Deputy Spaulding located a box containing a Springfield XD .40 caliber semiautomatic pistol with a bullet loaded in the chamber. RP at 172-73,

344-45. The case also contained three magazines, two of which were loaded. RP at 173, 345. Inside a paper bag that was between the two back seats with the opening toward where Solis-Vazquez had been sitting, Deputy Spaulding located a "Ruger five shot revolver LCR .38 caliber Special." RP at 174, 345-46. Although empty, this gun was made to hold five rounds. RP at 454. Exactly five .38 caliber bullets were found scattered on the back seat. RP at 346. Because this was a revolver, it could easily be emptied of ammunition by allowing the bullets to fall out of the cylinder. RP at 356.

Underneath the rear of the driver's seat, directly in front of where Solis-Vazquez had been sitting, Deputy Spaulding located two black plastic bags. RP at 347. Including the packaging, these two bags weighed 61.4 grams. RP at 348. The larger of these bags without packaging materials contained 41.2 grams of a white, crystal substance containing methamphetamine. RP at 265. The smaller bag also contained a crystal substance consistent with methamphetamine. RP at 266, 309. Later, after obtaining a search warrant, Deputy Spaulding located two baggies with a crystal residue consistent with methamphetamine in the ashtray connected to the dashboard. RP at 363.

An ounce, which is slightly more than 28 grams of methamphetamine, normally sells for between \$600 and \$1,000. RP at

290. A typical user amount of methamphetamine is half a gram to a gram per day. RP at 292. An ounce of methamphetamine supplies a user of methamphetamine for about a month. RP at 293. Street drug deals typically involve smaller denominations of bills such as fives, tens, and twenties. RP at 295. The most common method for transporting drugs in the Cowlitz County is in cars. RP at 297. Guns are also commonly brought to drug transactions for protection. RP at 300.

Because he had provided a false identification, police booked Solis-Vazquez under the name of Genero Padraza-Martinez. RP at 189. At the jail, Corrections Officer Jacob Bitton recognized Solis-Vazquez from being in the jail before. RP at 320. However, the jail had no record of having ever booked a person named Genero Padraza-Martinez. RP at 320. Corrections Officer Bitton looked through pictures in the booking system. RP at 320-21. Eventually he found a picture of Solis-Vazquez and discovered his true name. RP at 321.

Solis-Vazquez was charged with Possession with Intent to Deliver Methamphetamine with four firearm enhancements, Unlawful Possession of a Firearm in the First Degree, two counts of Assault in the Third Degree, Disarming a Law Enforcement Officer, and Criminal Impersonation in the First Degree. CP at 6-8. The case proceeded to jury trial. During his cross examination of Deputy Spaulding, Solis-Vazquez's

attorney elicited from Deputy Spaulding that his reason for arresting Slape, who was sitting in front Solis-Vazquez, was “for the drugs under the seat.” RP at 447. On redirect examination, the prosecutor asked Deputy Spaulding if he believed the people in the car were accomplices. RP at 457. Solis-Vazquez’s attorney objected on the grounds that the question called for a legal conclusion and lack of foundation, moving to strike the response. RP at 457. The court sustained the objection. RP at 457. The prosecutor then asked Deputy Spaulding what he believed about the three people in the car. RP at 457. Solis-Vazquez’s attorney objected, stating: “Foundation. Calls for a narrative.” RP at 457. The Court overruled this objection. RP at 457. Deputy Spaulding answered that he believed they had knowledge of the drugs. RP at 457.

When the parties discussed jury instructions, Solis-Vazquez’s attorney objected to the court giving an accomplice instruction. RP at 386. The court noted that the quantity of drugs far exceeded a normal user amount, suggesting possession with intent to deliver. RP at 390. The court ruled that there was sufficient evidence for the accomplice instruction. RP at 392. In addition to the large amount of drugs, there were multiple guns with ammunition for them, a large amount of cash, and the people were in the car together with these items. RP at 392. The court noted that the facts were sufficient for the jury to find the “individuals in

the front seat were accomplices” of Solis-Vazquez. RP at 392. Because there was circumstantial evidence of aid being provided, the court ruled direct evidence of an agreement to aid was unnecessary to giving the accomplice instruction. RP at 392.

After the State rested, Solis-Vazquez moved to dismiss the charge of Disarming an Officer. RP at 463. The court granted this motion. RP at 474. The jury found Solis-Vazquez guilty of Possession with Intent to Deliver Methamphetamine with four firearm enhancements, two counts of Assault in the Third Degree, and Criminal Impersonation in the First Degree. RP at 634-36. The jury could not come to an agreement on the remaining count of Unlawful Possession of a Firearm in the First Degree. RP at 633

After the trial, Solis-Vazquez brought a motion for arrest of the judgment to set aside the verdicts as to the firearm enhancements. RP at 645. The court ruled that there was sufficient evidence to support the firearm enhancements with regard to the two firearms located in the back of the car. RP at 663. With regard to the guns in the front of the car, the court stated it “was not sure there was a sufficient connection.” RP at 664. The court then set aside the two firearm enhancements that involved the firearms found in the front of the car. RP at 664. Solis-Vazquez appealed. The State filed a cross-appeal of the court’s decision to set aside the two

jury verdicts involving the firearm enhancements for the firearms found in the front of the car.

A. Solis-Vazquez did not suffer manifest error affecting a constitutional right when his attorney did not object on the basis he now argues, and his attorney opened the door to Deputy Spaulding’s opinion during cross-examination.

Solis-Vazquez did not suffer a manifest error affecting a constitutional right when his attorney did not object on the basis of improper opinion evidence at trial, and his attorney opened the door to this testimony during cross-examination. Long ago, the Washington Supreme Court stated: “If an objection naming a specific, but untenable, ground be overruled, it cannot upon appeal be made to rest upon another ground which, although tenable, was not called to the attention of the court during the trial.” *State v. Pappas*, 195 Wn. 197, 200, 80 P.2d 770 (1938). More recently, this fundamental rule has been restated as follows: “A party who objects to the admission of evidence on one ground at trial may not on appeal assert a different ground for excluding that evidence. And a theory not presented to the trial court may not be considered on appeal.” *State v. Price*, 126 Wn.App. 617, 637, 109 P.3d 27 (2005). Solis-Vazquez complains that Deputy Spaulding testified that he believed the occupants of the car were accomplices and that they had knowledge of the drugs. However, at trial the court sustained a defense objection to the accomplice

question and answer; therefore this testimony was not considered by the jury. RP at 457. When Deputy Spaulding was asked what he believed about the occupants of the car, Solis-Vazquez did not object on the basis of improper opinion. RP at 457. Thus, to bring this issue for the first time on appeal Solis-Vazquez must show a manifest error affecting a constitutional right.

“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 84 (2011) (quoting *State v. Kirwin*, 165 Wn.2d 818, 823, 203 P.3d 1044 (2009)); *See also* RAP 2.5(a). An error may be raised for the first time on appeal only for (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, or (3) manifest error affecting a constitutional right. RAP 2.5(a). “[A]n issue, theory, or argument not presented at trial will not be considered on appeal.” *State v. Jamison*, 25 Wn.App. 68, 75, 604 P.2d 1017 (1979) (quoting *Herberg v. Swartz*, 89 Wn.2d 916, 578 P.2d 17 (1978)). The Supreme Court has explained: “This court has consistently held that, to preserve an alleged trial error for appellate review, a defendant must timely object to the introduction of the evidence or move to suppress it prior to or during the trial. Failure to challenge the

admissibility of proffered evidence constitutes a waiver of any legal objection to its being considered as proper evidence by the trier of the facts.” *State v. Silvers*, 70 Wn.2d 430, 432, 423 P.2d 539 (1967). Under RAP 2.5(a), an appellate court “may refuse to review any claim of error which was not raised in the trial court.” This rule requires parties to bring purported errors to the trial court’s attention, thus allowing the trial court to correct them.² *See State v. Fagalde*, 85 Wn.2d 730, 731, 539 P.2d 86 (1975).

Appellate courts have regularly refused to consider new arguments that were not raised at trial. In *State v. Sims*, 77 Wn.App 236, 238, 890 P.2d 521 (1995), the court refused to hear the appellant’s argument that hearsay statements were improperly admitted as excited utterances because the declarant had made inconsistent statements that indicated fabrication, when the argument had not been presented to the trial court, was not preserved for appeal. In *State v. Saunders*, 132 Wn.App. 592, 607, 132 P.3d 743 (2006), trial counsel had objected at trial to admission of the victim’s statements as hearsay, but on appeal the defendant argued that the statements included an identification of the perpetrator and thus fell outside the medical diagnosis exception; because this was a new argument against the statements, the court refused to consider it. In *State*

² Requiring parties to raise their objections in the trial court also allows for the development of a complete record regarding the alleged error.

v. Mathes, 47 Wn.App. 863, 868, 737 P.2d 700 (1987), trial counsel had objected to the admission of a document as a recorded recollection, arguing the document was not authenticated because the witness had no independent recollection of the events, however on appeal, the argument shifted to a claim the document was not authenticated as the witness had not signed it. Though the objection remained the same, authentication, the appellate court steadfastly refused to consider the new claim. *Id.*

Although an argument must be raised at trial to be preserved for review, in certain limited circumstances, appellate courts will consider arguments raised for the first time on appeal, but only where the legal standard for consideration has been satisfied. In *State v. Lynn*, 67 Wn.App. 339, 342, 835 P.2d 251 (1992), the Court of Appeals explained that the parameters of a “manifest error affecting a constitutional right” are not unlimited stating:

RAP 2.5(a)(3) does not provide that all asserted constitutional claims may be raised for the first time on appeal. Criminal law is so largely constitutionalized that most claimed errors can be phrased in constitutional terms.

An appellate court must first satisfy itself that the alleged error is of constitutional magnitude before considering claims raised for the first time on appeal. *Id.* at 343. But this does not mean that any claim of constitutional error is appropriate for review. For a reviewing court to

consider such a claim, it must be “manifest”, otherwise the word “manifest” could be removed from the rule. *Id.* The court explained: “[P]ermitting *every possible* constitutional error to be raised for the first time on appeal undermines the trial process, generates unnecessary appeals, creates undesirable re-trials and is wasteful of the limited resources of prosecutors, public defenders, and courts.” *Id.* at 344.

The court then provided the proper approach for analyzing whether an alleged constitutional error may be reviewed on appeal under RAP 2.5(a). *Id.* at 345. First, the reviewing court must make a cursory determination as to whether the alleged error in fact suggests a constitutional issue. *Id.* Second, the court must determine whether the alleged error is “manifest”; an essential part of this determination requires a plausible showing that the alleged error had practical and identifiable consequences in the trial. *Id.* The term “manifest” means “unmistakable, evident or indisputable as distinct from obscure, hidden or concealed.” *Id.* An error that is abstract and theoretical, does meet this definition. *Id.* at 346. Third, if the court finds the alleged error is manifest, then the court must address the merits of the constitutional issue. *Id.* at 345. Fourth, if the court determines an error was of constitutional import, it must then undertake a harmless error analysis. *Id.*

Here, with regard to evidence that was admitted, Solis-Vazquez did not object on the basis of improper opinion as he now argues for the first time in his appeal. To raise the issue for the first time on appeal, under RAP 2.5(a), he must show that he suffered a manifest error affecting a constitutional right. Solis-Vazquez fails to show manifest error affecting a constitutional right for two reasons: First, even if the jury heard improper opinion evidence, because the court properly instructed the jury, and the jury was presumed to follow these instructions, the impact of this evidence did not cause such practical and identifiable consequences as to rise to the level of manifest error affecting a constitutional right. Second, during cross-examination of Deputy Spaulding, Solis-Vazquez's attorney attempted to create the impression that it had been the deputy's opinion that Slape alone was in possession of the drugs. This opened the door to further exploration of Deputy Spaulding's opinion during redirect examination to correct this false impression.

- 1. Because Solis-Vazquez did not object to improper opinion evidence at trial and the admission of this evidence did not create a manifest error affecting a constitutional right, the issue was waived.**

Because Solis-Vazquez did not raise the objection to the evidence admitted that he now raises on appeal, the issue was waived. “No case of this court has held that a manifest error infringing a constitutional right *necessarily* exists where a witness expresses an opinion on an ultimate issue of fact that is not objected to at trial.” *State v. Kirkman*, 159 Wn.2d 918, 935, 155 P.3d 125 (2007) (emphasis in original). At trial, Deputy Spaulding expressed his opinion that the people in the car had knowledge of the drugs.³ Prior to giving this answer, Solis-Vazquez’s attorney objected to the question, on grounds other than improper opinion.⁴ The Court overruled this objection. Even if this was an improper opinion, it did not create a manifest error affecting a constitutional right, allowing Solis-Vazquez to raise the issue for the first time on appeal.

The manifest error analysis has been applied to opinion evidence in circumstances similar to those presented here. In *State v. Montgomery*, 163 Wn.2d 577, 595, 183 P.3d 267 (2008), witnesses for the State on

³ Although this testimony was opinion evidence, it was not improper because it occurred after Solis-Vazquez’s attorney opened the door to Deputy Spaulding’s opinion during cross-examination in an attempt to make it appear as though the deputy believed Slape alone had possessed the drugs in the car. *See infra* Part A-2.

⁴ Specifically, the objection was: “Foundation. Calls for a narrative.” RP at 457.

multiple occasions provided their opinion as to the ultimate fact at issue in the case—whether the defendant had possessed methamphetamine with intent to manufacture. *Id.* at 588. After finding the opinion testimony given there was improper, the Court analyzed whether Montgomery could challenge the improper opinion testimony for the first time on appeal as a manifest error affecting a constitutional right under RAP 2.5(a). *Id.* at 595. The Court explained: “This exception is a narrow one, and we have found constitutional error to be manifest only when the error caused actual prejudice or practical and identifiable consequences.” *Id.*

The Court then stated: “Important to the determination of whether opinion testimony prejudices a defendant is whether the jury was properly instructed.” *Id.* at 595. The Court noted that in the prior case of *Kirkman*, it had dealt with alleged improper testimony as to witness credibility. *Id.* (citing *Kirkman*, 150 Wn.2d at 937). Because the jury instructions stated that the jurors were the sole judges of witness credibility, were not bound by expert opinions, and there was no indication that the jury had been unfairly influenced, it was presumed that the jurors had followed the court’s instructions. *Id.* 595-96. Because virtually identical instructions were given in Montgomery’s case, the Court presumed the jury followed the court’s instructions as it had in *Kirkman*. *Id.* at 596. The Court also noted that on one occasion Montgomery had objected to a question that

went to the ultimate legal question and this objection was sustained, indicating that had Montgomery raised objections to the other instances of improper opinion testimony, they would have been sustained and curative instructions given if requested. *Id.* Because the record did not provide any indication that Montgomery suffered actual prejudice he did not suffer a manifest error affecting a constitutional right.

Here, as in *Montgomery* and *Kirkman*, the jurors were instructed they were “the sole judges of the credibility of each witness” and if a witness had “special training, education, or experience,” they were “not...required to accept his or her opinion.” CP at 28, 33. The jurors were also instructed that if any evidence was ruled inadmissible not to “discuss that evidence during your deliberations or consider it in reaching your verdict.” CP at 27. There is no evidence the jury failed to follow these instructions. Even if Deputy Spaulding expressed an improper opinion, a point the State does not concede,⁵ it was not of a magnitude to establish manifest error affecting a constitutional right. This is because, as in *Montgomery*, there is no evidence of actual prejudice. By properly instructing the jury, the court avoided the risk of the jury believing it was required to accept Deputy Spaulding’s opinion.

⁵ See *infra*, Part A-2.

Solis-Vazquez maintains that the opinion evidence was of constitutional error, primarily because this testimony came from a police officer. While there is always a concern that jurors will give the testimony of an officer undue weight, to show a manifest error requires more than speculation as to how jurors received testimony. Rather it requires a showing of actual prejudice. None was shown here. Further, there was overwhelming evidence that Solis-Vazquez possessed methamphetamine with intent to deliver. A large quantity of methamphetamine was located where he was reaching toward even when told to keep his hands up at gunpoint. Delo, who was seated next to him in the back of the car, escaped, and another large quantity of methamphetamine was found under the tractor trailer where Delo hid. Three loaded guns were located in the car. Another, a five-round, .38 caliber revolver was found in a bag opened toward where Solis-Vazquez was sitting. Five .38 caliber rounds were found emptied directly to the side of where he was sitting. Solis-Vazquez took extreme measures to avoid being caught. He provided false identification, and once out of the car, he fought with great persistence against three officers in an attempt to escape. Finally, after he was apprehended, the police located \$1,933 in cash on him. Thus, the circumstances, the evidence found, and the actions of the occupants of the car made it quite obvious that Solis-Vazquez and the others had

knowledge of the drugs. Thus, there is no reason to believe Deputy Spaulding's opinion impacted the result at trial, making any potential error harmless. Accordingly, Solis-Vazquez did not suffer manifest error affecting a constitutional right.

2. **Solis-Vazquez opened the door to further exploration of Deputy Spaulding's opinion when, during cross-examination, his attorney attempted to make it appear that Deputy Spaulding's opinion was that Slape possessed the drugs rather than him.**

Because Solis-Vazquez's attorney put Deputy Spaulding's opinion at issue during cross-examination, he opened the door to correcting the false impression given during redirect examination. It is well-established that "when a party opens up the subject of inquiry on direct or cross-examination, he contemplates that the rules will permit cross-examination or redirect examination, as the case may be, within the scope of the examination in which the subject matter was first introduced." *State v. Gefeller*, 76 Wn.2d 449, 455, 458 P.2d 17 (1969), *overruled on other grounds* by *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994). Thus, when one party introduces subject matter that may otherwise be inadmissible, the other party is permitted to explore with the witness the subject matter introduced. When Solis-Vazquez's attorney elicited from Deputy Spaulding the reason for Slape's arrest, this introduced his opinion

into evidence and created the impression that Deputy Spaulding believed Slape to be solely responsible for possessing the drugs. After the defense elicited a portion of the deputy's opinion, the State was entitled to correct this false impression.

In *State v. Stevens*, 69 Wn.2d 906, 907, 412 P.2d 360 (1966), the defendant's attorney cross-examined the State's chief witness regarding "mug shots," in a matter that created the appearance that the witness had been unable to pick out a picture of the defendant. On redirect, the prosecutor had the witness testify that she had picked out a photograph resembling the defendant. *Id.* The prosecutor then successfully moved to have the photograph, which was a photograph of the defendant taken by the sheriff's department in Sacramento, California, admitted. *Id.* On appeal, the defendant argued the court had erred by entering his "mug shot" into evidence. *Id.*

The Supreme Court disagreed explaining, "If the state was not permitted to clarify the testimony of its own witness, as elicited on cross-examination, it would leave the state's case in an untenable position." *Id.* Without allowing the State to respond to the evidence elicited by the defense, the jury would have been left to believe that the witness had been unable to pick out the defendant in a photograph, thus the first time she had seen him after the robbery was at the preliminary hearing. *Id.* This

would have been untrue, as the witness had selected the defendant's picture out of hundreds of photographs. *Id.* The Court noted: "The purpose of redirect examination is to clarify matters that may tend to be confused by cross-examination and to rehabilitate the witness before the trier of facts[.]" *Id.* (citing *State v. Ward*, 144 Wn. 337, 258 P. 22 (1927)). Because the defendant's attorney "opened the door for the admission of the 'mug shot' by his cross-examination," he could not argue against its use to rehabilitate the witness. *Id.*

Relying on *Stevens*, the *Gefeller* Court stated:

It would be a curious rule of evidence which allowed one party to bring up a subject, drop it at a point where it might appear advantageous to him, and then bar the other party from further inquiries about it. Rules of evidence are designed to aid in establishing the truth. To close the door after receiving only a part of the evidence not only leaves the matter suspended in air at a point markedly advantageous to the party who opened the door, but might well limit the proof to half-truths.

76 Wn.2d at 455. To avoid this result, a trial court has discretion to admit otherwise inadmissible evidence when a party raises a material issue and the evidence in question bears directly on that issue. *State v. Berg*, 147 Wn.App. 923, 939, 198 P.3d 529 (2008). Our Supreme Court has held that a prosecutor may elicit testimony that would otherwise be inadmissible when the defense opens the door to such testimony. *State v. Jones*, 111 Wn.2d 239, 248-49, 759 P.2d 1183 (1988). The doctrine of opening the

door also allows a party to introduce evidence on the same issue to rebut a false impression created by the other party. *Berg*, 147 Wn.App. at 939.

Here, Solis-Vazquez's attorney opened the door to Deputy Spaulding's opinion, when he elicited from the deputy that he arrested Slape "for the drugs located under her seat." RP at 447. Rather than simply eliciting the fact of arrest or the crime arrested for, here the defense attorney chose to specifically elicit from the deputy the evidence that caused him to make the arrest. As such, this introduced Deputy Spaulding's opinion into evidence. The strategy behind this was obvious: Because the drugs were found in a location between where Slape and Solis-Vazquez were seated, the defense attorney sought to create the impression that Deputy Spaulding believed the drugs were in Slape's possession rather than Solis-Vazquez's possession. Thus, he elicited that the deputy had arrested Slape for the evidence that was found, but did not elicit the fact that Solis-Vazquez was also arrested on this same basis.

Because of the false impression created by the defense attorney in introducing Deputy Spaulding's opinion, it was permissible on redirect examination for the State to respond by clarifying the deputy's opinion. In the first attempt to do so, the prosecutor asked if Deputy Spaulding believed the parties to be accomplices. RP at 457. However, an objection to this question and answer was sustained. Because the jury was

instructed not to consider evidence that was not admitted or stricken from the record in reaching its verdict, and courts presume that the jury follows the court's instructions,⁶ this question and answer were not part of the evidence the jury considered. The prosecutor then asked Deputy Spaulding what he believed about the three people in the car. At this point, Solis-Vazquez's attorney objected. However, the basis of his objection was not improper opinion. The court overruled the objection and permitted Deputy Spaulding to answer. Deputy Spaulding then gave his opinion that all three people in the car had knowledge of the drugs.

Presiding over the trial, the trial court was best positioned to consider this question in proper context. Because Solis-Vazquez's attorney had introduced Deputy Spaulding's opinion to create the impression that possession of the drugs was limited to Slape, the court permitted Deputy Spaulding to fully explain his opinion on redirect examination. Consistent with *Stevens*, once Solis-Vazquez's attorney opened the door by introducing Deputy Spaulding's opinion, creating a false impression, the State was entitled to introduce evidence within the scope of this line of questioning to rebut this false impression. Therefore, even if Solis-Vazquez's attorney had objected on the basis of improper opinion, the trial court would not have abused its discretion in permitting

⁶ Juries are presumed to follow jury instructions absent evidence to contrary. *State v. Kirkman*, 159 Wn.2d 918, 928, 155 P.3d 125 (2007).

the jury to hear this evidence. Moreover, as there was no error, Solis-Vazquez fails to show a manifest error affecting a constitutional right.

B. There was sufficient evidence for the jury to find that Solis-Vazquez or his accomplices were armed with the firearms found in the car.

When all reasonable inferences from the case are drawn in favor of the State and interpreted most strongly against Solis-Vazquez, there was sufficient evidence to support the jury's verdicts that Solis Vazquez or an accomplice was armed with the firearms found in the car. The Washington Supreme Court has stated:

When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that can be drawn therefrom.

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977); *State v. Theroff*, 25 Wn.App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)). When the proper standard for sufficiency of the evidence is considered, there was sufficient evidence for the jury to find that the occupants of the car were Solis-Vazquez's accomplices.

When determining the sufficiency of evidence the standard of review is "whether, after viewing the evidence in the light most favorable

to the prosecution, any rational trier of fact could have found the necessary facts to be proven beyond a reasonable doubt.” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). At trial, the State has the burden of proving each element of the offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). However, a reviewing court need not itself be convinced beyond a reasonable doubt, *State v. Jones*, 63 Wn.App. 703, 708, 821 P.2d 543, review denied, 118 Wn.2d 1028, 828 P.2d 563 (1992), and 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, review denied, 119 Wn.2d 1011 (1992). For purposes of a challenge to the sufficiency of the evidence, the appellant admits the truth of the State’s evidence. *Jones*, 63 Wn.App. at 707-08. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). All reasonable inferences must be drawn in the State’s favor and interpreted most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993).

“Accomplice liability represents a legislative decision that one who participates in a crime is guilty as a principal, regardless of the degree of the participation.” *State v. Hoffman*, 116 Wn.2d 51, 804 P.2d 577 (1991)

(citing *State v. Randle*, 47 Wn.App. 232, 237, 734 P.2d 51 (1987), *review denied*, 110 Wn.2d 1008 (1988)). The legislature defines accomplice liability in RCW 9A.08.020. “A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.” RCW 9A.08.020(1). The statute explains that “[a] person is legally accountable for the conduct of another person when...[h]e or she is an accomplice of such other person in the commission of the crime.” RCW 9A.08.020(2)(c). The statute then defines accomplice: “A person is an accomplice of another person in the commission of a crime if: (a) [w]ith knowledge that it will promote or facilitate the commission of the crime, he or she: (i) [s]olicits, commands, encourages, or requests such other person to commit it; or (ii) [a]ids or agrees to aid such other person in planning or committing it[.]” RCW 9A.08.020(3)(a).

As a plain reading of the statute reveals, complicity is broadly defined and represents a legislative attempt to deter any person from participating in a crime. “Accomplice liability is not a separate crime—it is predicated on aid to another ‘in the commission of a crime’ and is in essence liability for that crime.” *State v. Peterson*, 54 Wn.App. 75, 78, 772 P.2d 513 (1989) (citing RCW 9A.08.020(3); *State v. Toomey*, 38 Wn.App. 831, 840, 690 P.2d 1175 (1984)). “[A]n accomplice ‘need not be physically present at the commission of the crime...if the accomplice

did something in association with the principal to accomplish the crime.”
State v. Jackson, 137 Wn.2d 712, 731, 976 P.2d 1229 (1999) (quoting
State v. Boast, 87 Wn.2d 447, 455-56, 53 P.2d 1322 (1976)). A
participant in a crime may be held responsible for another’s conduct, “so
long as both participated in the crime.” *See Hoffman*, 116 Wn.2d at 105.
Jurors need not be “unanimous as to the accomplice’s and the principal’s
participation as long as all agree that they did participate in the crime.” *Id.*
at 104.

Accomplice liability attaches when the defendant has knowledge
that his or her actions will promote or facilitate the commission of the
particular crime at issue. *State v. Bauer*, 180 Wn.2d 929, 943, 329 P.3d 67
(2014) (citing *State v. Stein*, 144 Wn.2d 236, 245 27 P.3d 184 (2001)).
“While the State must prove actual knowledge, it may do so through
circumstantial evidence.” *State v. Allen*, 182 Wn.2d 364, 374, 341 P.3d
268 (2015). An accomplice is not required to share the same mental state
as the principal. *State v. Whitaker*, 133 Wn.App. 199, 230, 135 P.3d 923
(2006), *review denied*, 159 Wn.2d 1017, 157 P.3d 404 (2007), *cert.*
denied, 128 S.Ct. 375, 552 U.S. 948, 169 L.Ed.2d 260 (2007). “Where
criminal liability is predicated on accomplice liability, the State must
prove only that the accomplice had general knowledge of his
coparticipant’s substantive crime, not that the accomplice had specific

knowledge of the elements of the coparticipant's crime.” *State v. Truong*, 168 Wn.App. 529, 540, 277 P.3d 74 (2012), *review denied*, 175 Wn.2d 1020, 290 P.3d 994 (2012) (citing *State v. Rice*, 102 Wn.2d 120, 125, 683 P.2d 199 (1984)). Unlike conspiracy, which requires an agreement between the participants in a crime, accomplice liability does not. *State v. Markham*, 40 Wn.App. 75, 88, 697 P.2d 263 (1985) (citing *Iannelli v. United States*, 420 U.S. 770, 95 S.Ct. 1284, 1289-90 n.10, 43 L.Ed.2d 616 (1975)). However, while no prior agreement between the parties is necessary for complicity, “an accomplice, having agreed to participate in the criminal act, runs the risk of having the primary actor exceed the scope of the preplanned illegality.” *State v. Davis*, 101 Wn.2d 654, 658, 682 P.2d 883 (1984) (citing *State v. Carothers*, 84 Wn.2d 256, 525 P.2d 731 (1974)).

“Complicity is neither an element of a crime, nor an alternative method for committing a crime.” *State v. Teal*, 152 Wn.2d 333, 338-39, 96 P.3d 974 (2004) (citing *Carothers*, 84 Wn.2d at 261). The State need not charge the defendant as an accomplice to pursue liability on this basis, so long as the court instructs the jury on accomplice liability. *State v. Davenport*, 100 Wn.2d 757, 764-65, 675 P.2d 1213 (1984). Because complicity is not an element of a crime, it need not be included in the “to convict” instruction, as “[t]he rule requiring all elements of a crime be

listed in a single instruction is not violated when accomplice liability is described in a separate instruction.” *Teal* 152 Wn.2d at 339 (citing *State v. Emanuel*, 42 Wn.2d 799, 819, 259 P.2d 845 (1953)).

The presence of loaded firearms when large quantities of drugs are being trafficked presents a real danger to those involved, investigating, or standing by. As with other felonies, when a person drug traffics or knowingly assists one who is doing so, there is an additional penalty for being armed with a firearm. *See* RCW 9.94A.533(3). When the jury considered the evidence, it found that either Solis-Vazquez or an accomplice was armed with each of the firearms in the car. Taken in the light most favorable to the State, there was sufficient evidence to find that the occupants of the car were Solis-Vazquez’s accomplices. Consequently, (1) the verdicts with regard to the two firearms found in the rear of the car should be affirmed, and (2) the verdicts with regard to the two firearms found in the front passenger side of the car should be reinstated.

- 1. There was sufficient evidence that Solis-Vazquez or his accomplice was armed with the firearms found in the rear of the car.**

Because there was sufficient evidence to find that Solis-Vazquez and Delo were accomplices, and that either or both were armed with the firearms found in the rear of the car, the jury’s determination that Solis-

Vazquez or his accomplice were armed with these firearms should remain undisturbed. “A claim of insufficiency admits the truth of the State’s evidence and all inferences that can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. There was sufficient evidence for the jury to find that Solis-Vazquez was possessing methamphetamine with intent to deliver, that Delo was an accomplice to this crime, and that either or both Solis-Vazquez and Delo were armed with the firearms found where they were sitting in the car. Thus, the jury’s verdicts finding that Solis-Vazquez or his accomplice was armed with the firearms located in the rear of vehicle should remain undisturbed.

In *State v. Nyegaard*, 154 Wn.App. 641, 644, 226 P.3d 783 (2010) (*remanded on other grounds*, 172 Wn.2d 1006, 260 P.3d 208 (2011)). Nyegaard challenged the sufficiency of his conviction for unlawful possession of methamphetamine with intent to deliver with a firearm enhancement. *Id.* Nyegaard was sitting in the front passenger seat of a vehicle that was stopped for a traffic infraction. *Id.* In addition to the driver and Nyegaard, another man was seated in the back of the vehicle. *See id.* Nyegaard and the backseat passenger were both moving their hands. *Id.* The police told Nyegaard frequently to stop moving his hands to his side, and then asked him to exit the car. *Id.* As Nyegaard exited his left hand dropped to the side of the passenger seat and the officer heard a

clanging noise. *Id.* After the officer secured Nyegaard he observe a glass methamphetamine pipe containing residue on the floorboard by where Nyegaard's feet had been. *Id.* The police arrested all three men. *Id.* at 645. On the other two men, police located approximately \$3,000 in cash. *Id.* Upon searching the vehicle the police located wedged between the floorboard and the front passenger seat a firearm, a brown paper bag containing two baggies of methamphetamine, three large rocks and one small rock of crack cocaine, three one-ounce plastic bags of powder cocaine, several cellular phones, and a pipe. *Id.*

On appeal, Nyegaard argued that there was insufficient evidence to prove he constructively possessed the firearm or the contraband, that he intended to deliver methamphetamine, or that he acted as an accomplice. *Id.* at 646. The Court of Appeals reasoned that by having the firearm and brown paper bag within his reach, dropping a pipe in this vicinity, and moving his hands out of sight when being instructed not to do so, there was sufficient evidence for the jury to reasonably conclude he was reaching to manipulate the evidence and thereby exercised dominion and control over the firearm and the contraband. *Id.* at 648. The Court also held that the large amount of drugs, bundles of cash, cell phones, and firearm, along with testimony from the State that drug dealers often arm themselves with firearms to protect themselves and carry phones to

communicate with buyers, was sufficient evidence for the jury to conclude Nyegaard intended to deliver the drugs to a third party. *Id.* Finally, with respect to accomplice liability the Court found that because Nyegaard was traveling with two others in a vehicle late at night, possessed the firearm and contraband, and one of the other men had a large bundle of cash on his person, it was reasonable for the jury to find that Nyegaard either aided or agreed to aid another in the possession of methamphetamine with intent to deliver. *Id.* at 649.

Here, there are several facts from which the jury could find that Delo was an accomplice to Solis-Vazquez possession of methamphetamine with intent to deliver. Both men were riding in the back of the car while in possession of close to four ounces of methamphetamine, far beyond a daily user amount. This quantity of methamphetamine represented roughly a four-month supply, and exceeded what a person would normally transport for personal use.⁷ Similar to *Nyegaard*, because they were being transported together at night with this large amount of drugs, possessed multiple firearms with ammunition, and a large amount of cash, it was reasonable to conclude that their intention was to deliver these drugs.

⁷ As Corporal Watson testified, at most a user would use a gram to a half a gram per day. RP at 292.

After Deputy Spaulding stopped the car, despite being held at gunpoint by the police, Delo and Solis-Vazquez continually reached down. As in *Nyegaard*, the jury could have found they were reaching to manipulate or access evidence, specifically the methamphetamine or the firearms. This further indicated shared knowledge. Roughly half of the methamphetamine was found under the tractor trailer where Delo hid. Slightly more was found under the back of the driver's seat where Solis-Vazquez reached toward and had the most direct access to in the car. The splitting of these large amounts between them provided further evidence they were working in concert. When they both attempted to escape at the same moment, it was evidence from which the jury could have found they planned to do so together after being pulled over. Of course, with the drugs and guns present, the reason for a joint escape effort was also obvious—the jury could have made the common sense determination that they were drug trafficking together and sought to avoid being apprehended by the police.

The Springfield XD firearm found on the floor by Delo's feet had at least two loaded magazines and also had a round chambered. The chambered round indicated a magazine had been inside it previously. The location of this firearm connected it to Delo. The Ruger .38 Special revolver, found in the bag, held a maximum of five rounds. Exactly five

.38 caliber bullets were found emptied in the back seat area. Under these circumstances, it was most reasonable to conclude that the gun was fully loaded immediately before the stop and emptied when Deputy Spaulding pulled the car over. The location of the gun was in a bag between where Solis-Vazquez and Delo sat with the opening toward Solis-Vazquez's side. The fact that the jury could not agree on a verdict as to whether or not Solis-Vazquez possessed this gun has no bearing on the question of whether he or his accomplice did. With regard to accomplice liability, jurors are not required to be "unanimous as to the accomplice's and the principal's participation as long as all agree that they did participate in the crime." *Hoffman*, 116 Wn.2d at 104. There was sufficient evidence to find Solis-Vazquez was in possession of this firearm and there was sufficient evidence to find Delo was. If the jury reasoned that either he or Delo was armed with the firearm, this was sufficient.

Knowledge may be proved through circumstantial evidence. *See Allen*, 182 Wn.2d at 374. In short, the large amount of methamphetamine in the back of a moving car at night in a location where they were both sitting, the movements of both men after the stop, the evidence that possession of the methamphetamine was split between Delo and Solis-Vazquez, the cash found on Solis-Vazquez, the firearms found with ammunition, and the joint effort to escape, provided evidence sufficient to

find Solis-Vazquez and Delo were both knowing participants in the possession of methamphetamine with intent to deliver. Also, by riding together, reaching to manipulate items in the backseat together, splitting the methamphetamine between them, possessing two loaded firearms, and making a joint escape effort, there was sufficient evidence for the jury to find they were aiding each other. While the jury was not required to make this determination, taken in the light most favorable to the State the evidence was sufficient to allow it to do so. Because there was sufficient evidence they were accomplices, the jury's verdicts that Solis-Vazquez or his accomplice was armed with the firearms found in the back of the car should remain.

2. Because there was sufficient evidence that either or both of the front occupants were accomplices of Solis-Vazquez, the court erred by overturning the jury's verdicts with regard to the two firearms found in the front of the car.

Because there was sufficient evidence for the jury to find that either or both of the front occupants of the car were accomplices of Solis-Vazquez and that either or both were armed with the loaded firearms found in the front of the car, the court erred in overturning the jury's verdicts as to these two firearms. After a jury verdict has been rendered, and the court considers a motion for arrest of judgment:

motion for arrest of judgment. *See id.* at 515-18. A motion for arrest of judgment challenges the sufficiency of evidence. *Id.* at 515. “The court’s only function is to determine whether the evidence was *legally sufficient* to support such a finding—that is, whether there is *substantial evidence* tending to establish circumstances on which such a finding could be predicated. In short, if there is *substantial evidence* the issue must be resolved by the jury and not by the court.” *Id.* (quoting *State v. Long*, 44 Wn.2d 255, 259, 266 P.2d 797 (1954)) (emphasis added by *Radnecker*).

The Court then explained the difference between evidence and proof: “‘Evidence’ (both direct and circumstantial) is a narrower term than ‘proof.’ It is only a medium by which ‘proof’ may be established.” *Id.* at 516 (internal citations omitted). Quoting an earlier case the Court stated: “[t]he scope of review of the sufficiency of circumstantial evidence is limited to a determination of whether the state has produced [s]ubstantial evidence tending to establish from which the jury could reasonably [i]nfer the fact to be proved.” *Id.* at 516-17 (quoting *State v. Dugger*, 75 Wn.2d 689, 690, 453 P.2d 655 (1969)).

With this understanding in mind, the Court clarified that a trial court may not weigh evidence to determine whether there is proof of the element of a crime, but must only consider the sufficiency of the evidence. *Id.* at 517. “The jury is the sole and exclusive judge of the weight of the

evidence, and of the credibility of the witnesses.” *Id.* The Court explained that the trial court’s concern must be limited to the presence or absence of a required quantum of evidence. *Id.* Finally, the Court precisely stated the legal standard for the trial court to employ:

In determining whether the necessary quantum exists the trial court must assume the truth of the state’s evidence and view it most strongly against the defendant and in a light most favorable to the state. It must draw all inferences that reasonably can be drawn therefrom in favor of the state’s position.

Id. Because there was some proof of the elements of the crimes charged, the motion for arrest of judgement was reversed. *Id.* at 523.

Here, the trial court’s original determination during the argument over jury instructions was the correct analysis. At this point, the trial court properly considered the evidence in the light most favorable to the State and determined that while it was possible for the jury to find the occupants of the front of the car were not accomplices of Solis-Vazquez, the circumstantial evidence was sufficient for the jury to find that they were. RP at 392. On this basis the court permitted the jury to be instructed on accomplice liability. As a consequence, the jury was properly permitted to consider the firearm enhancements that applied to the firearms found both in the front and the back of the car.

Later, when ruling on the motion for arrest of judgment, the court initially considered the evidence in the light most favorable to the State and correctly upheld the firearm enhancements. RP at 663. However, when pressed further by Solis-Vazquez's attorney, the court seemed to contradict its earlier correct analysis. At this point, rather than consider the evidence, the court became concerned with proof. The court stated: "I think, at least in my mind, the guns up in the front I'm not really sure if there's a sufficient connection. The ones in the back I think there's a sufficient connection at least for two." RP at 664. Then later the court stated: "I'm comfortable with the two-gun enhancement." RP at 664. Thus, the court's ruling, "striking" two of the jury's unanimous verdicts manifested the judge's personal opinion as to what had been proved. When making this ruling, the court applied the wrong legal standard and failed to consider the evidence in the light most favorable to the State as it had during the trial.

Taken in the light most favorable to the State, there was sufficient evidence for the jury to find that either or both Slape and Hadlock were accomplices of Solis-Vazquez, and that they were armed with the loaded firearms found in the front of the car. By driving Solis-Vazquez and Delo at night with the large amount of methamphetamine in their possession, the jury could have found they were providing transportation. By having

two loaded guns, the Kel-Tec pistol under the passenger seat, positioned so the front passenger could immediately access it, and the other, the sawed-off shotgun at the Hadlock's side, either or both were prepared to provide protection.⁸ Moreover, when Deputy Spaulding approached, Hadlock reached for the loaded shotgun. Attempting to pull a gun on an officer strongly suggested Hadlock's involvement—both knowledge and participation—in a criminal enterprise that went far beyond driving while suspended. The evidence of their knowledge that their passengers were in possession of methamphetamine was further strengthened by the user amount of what appeared to be methamphetamine in the ashtray. And, as in *Nyegaard*, the movements and reaching down were consistent with attempting to manipulate the evidence. From this the jury could have found that when Hadlock and Slape provided armed transport to two men who were possessing methamphetamine with intent to deliver, they were knowingly providing assistance to this crime.

The jury considered the evidence, and found that Hadlock, Slape, or both were accomplices of Solis-Vazquez and were armed with the two loaded firearms found in the front passenger area. Because it was a jury

⁸ Because they switched seats, both Hadlock and Slape would have had access to the guns within the reach of the front passenger while they were transporting Solis-Vazquez and Delo.

trial, and there was substantial evidence that of their complicity, the issue was required to be decided by the jury. *See Radnecker*, 79 Wn.2d at 515. While the jury was not required to find Slape or Hadlock were armed accomplices, there was sufficient evidence “from which the jury could reasonably [i]nfer the fact to be proved.” *Id.* at 516. Taken in the light most favorable to the State, when all reasonable inferences are drawn most strongly against Solis-Vazquez, there was sufficient evidence for the jury to reach the unanimous verdicts that it did. Because the evidence was sufficient, the court’s partial grant of the motion for arrest of judgment should be reversed, and the firearm enhancements should be reinstated.

IV. CONCLUSION

For the above stated reasons, the jury’s verdicts should be affirmed or reinstated as applicable.

Respectfully submitted this 8th day of April, 2016.

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By:



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CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on April 8th, 2016.

Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTOR

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Transmittal Letter

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