

FILED
Court of Appeals
Division II
State of Washington
1/18/2018 3:06 PM
NO. 50006-0-II

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

STATE OF WASHINGTON, Respondent

v.

LUIS JOHN HORAL, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-01719-3

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney

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

TABLE OF CONTENTS

RESPONSE TO ASSIGNMENTS OF ERROR.....	1
I. The trial court did not abuse its discretion when it announced provisional time limits for the examination of the jury venire..	1
II. The prosecutor’s closing argument did not amount to flagrant and ill-intentioned misconduct because the prosecutor did not express his personal opinion.....	1
III. Mr. Horal’s passing treatment of the ineffective assistance of counsel issue and lack of reasoned argument concerning the same is insufficient to merit judicial consideration.....	1
STATEMENT OF THE CASE.....	1
A. Procedural History.....	1
B. Statement of Facts	2
ARGUMENT.....	7
I. The trial court did not abuse its discretion when it announced provisional time limits for the examination of the jury venire..	7
II. The prosecutor’s closing argument did not amount to flagrant and ill-intentioned misconduct because the prosecutor did not express his personal opinion.....	11
III. Mr. Horal’s passing treatment of the ineffective assistance of counsel issue and lack of reasoned argument concerning the same is insufficient to merit judicial consideration.....	16
CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases

<i>State v. Armstrong</i> , 37 Wn. 51, 79 P. 490 (1905).....	12
<i>State v. Brady</i> , 116 Wn.App. 143, 64 P.3d 1258 (2003)	8
<i>State v. Brown</i> , 132 Wn.2d 529, 940 P.2d 546 (1997)	11
<i>State v. Collins</i> , 50 Wn.2d 740, 744, 314 P.2d 660 (1957)	9
<i>State v. Contreras</i> , 57 Wn.App. 471, 788 P.2d 1114 (1990).....	13
<i>State v. Davenport</i> , 100 Wn.2d 757, 675 P.2d 1213 (1984).....	11
<i>State v. Davis</i> , 141 Wn.2d 798, 10 P.3d 977 (2000).....	8
<i>State v. Dhaliwal</i> , 150 Wn.2d 559, 79 P.2d 432 (2003)	11
<i>State v. Eggers</i> , 55 Wn.2d 711, 349 P.2d 734 (1960).....	9
<i>State v. Emery</i> , 174 Wn.2d 741, 278 P.3d 653 (2012).....	13, 14
<i>State v. Frederiksen</i> , 40 Wn.App. 749, 700 P.2d 369 (1985).....	8
<i>State v. Glasmann</i> , 175 Wn.2d 696, 286 P.3d 673 (2012).....	14
<i>State v. Grisby</i> , 97 Wn.2d 493, 647 P.2d 6 (1982)	9
<i>State v. Jahns</i> , 61 Wn. 636, 112 P. 747 (1911).....	9
<i>State v. Kirkman</i> , 159 Wn.2d 918, 155 P.3d 125 (2007).....	11
<i>State v. Laureano</i> , 101 Wn.2d 745, 682 P.2d 889 (1984).....	8
<i>State v. Lewis</i> , 156 Wn.App. 230, 233 P.3d 891 (2010).....	11, 15
<i>State v. Mason</i> , 170 Wn.App. 375, 285 P.3d 154 (2012)	16
<i>State v. McKenzie</i> , 157 Wn.2d 44, 134 P.3d 221 (2006)	12, 13, 15
<i>State v. Moe</i> , 56 Wn.2d 111, 351 P.2d 120 (1960).....	9
<i>State v. Papadopoulos</i> , 34 Wn.App. 397, 662 P.2d 59 (1983)	13
<i>State v. Persinger</i> , 62 Wn.2d 362, 382 P.2d 497 (1963)	9
<i>State v. Reid</i> , 40 Wn.App. 319, 698 P.2d 588 (1985).....	9
<i>State v. Robinson</i> , 189 Wn.App. 877, 359 P.3d 874 (2015).....	12, 15
<i>State v. Robinson</i> , 75 Wn.2d 230, 450 P.2d 180 (1969).....	9
<i>State v. Smith</i> , 104 Wn.2d 497, 707 P.2d 1306 (1985).....	11
<i>State v. Swan</i> , 114 Wn.2d 613, 790 P.2d 610 (1990)	14
<i>State v. Vassar</i> , --- Wn.App. ---, --- P.3d ---, 2015 WL 3603748, 4.....	13
<i>West v. Thurston County</i> , 168 Wn.App. 162, 275 P.3d 1200 (2012)	16

Rules

CrR 6.4(b)	8
RAP 10.3(a)(6).....	16

RESPONSE TO ASSIGNMENTS OF ERROR

- I. The trial court did not abuse its discretion when it announced provisional time limits for the examination of the jury venire.**
- II. The prosecutor's closing argument did not amount to flagrant and ill-intentioned misconduct because the prosecutor did not express his personal opinion.**
- III. Mr. Horal's passing treatment of the ineffective assistance of counsel issue and lack of reasoned argument concerning the same is insufficient to merit judicial consideration.**

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Luis John Horal¹ was charged by information with one count of Assault in the Second Degree against Patrick Veysey for an incident occurring on or about August 15, 2016. CP 1. The case proceeded to a jury trial before the Honorable David Gregerson on January 23, 2017 and concluded on January 24, 2017 with the jury's verdict convicting Luis as charged. RP 1-335; CP 20. The trial court sentenced Luis to a standard range sentence of 3 months confinement. RP 365-66; CP 40-49. Luis filed a timely notice of appeal. CP 51-52.

¹ Because Luis Horal's father, Lloyd Horal, is mentioned frequently in this brief I intend to refer to each by their first name to avoid confusion. No disrespect is intended.

B. STATEMENT OF FACTS

On the evening of August 14, 2016, Patrick Veysey was at his home in Ridgefield, Washington with his girlfriend Lisa Power. RP 102, 169. Mr. Veysey had consumed two or three beers when he received a text message from his neighbor, and good friend, from across the street, Lloyd Horal. RP 102-105, 113-14, 170. Lloyd invited Mr. Veysey to come over to his home to hangout. RP 104. Mr. Veysey headed across the street to Lloyd's while Ms. Power remained at home. RP 105, 170.

When Mr. Veysey arrived at Lloyd's it was just him and Lloyd at the home. Lloyd's adult son, Luis Horal, also lived at the home. RP 103-04, 127. That Luis had lived with his father for the last three years was the source of some tension between the two. RP 105-106, 126-27. Mr. Veysey and Lloyd were talking and drinking whiskey cocktail drinks. RP 105, 114, 128-29, 152. At some point Luis came home with his girlfriend Sara Baker, but the two remained outside as Luis was working on something in the driveway. RP 106.

Mr. Veysey and Lloyd began discussing Luis and the Lloyd's living situation when Mr. Veysey began exclaiming that Luis needed move out, get a job, and let Lloyd have his life and house back. RP 105-06, 114, 129. While Lloyd was in agreement, he did not appreciate the

loudness with which Mr. Veysey was expressing his opinion especially since the front door was open and Luis would be able overhear Mr. Veysey's statements. RP 106, 129-131. Mr. Veysey, however, was not that concerned about whether Luis could hear him. RP 106, 115.

Luis did hear what Mr. Veysey was saying and came into the house to confront Mr. Veysey. RP 107, 131, 157. Luis ran right up to Mr. Veysey who was seated on a barstool next to a countertop and asked Mr. Veysey if he had a problem with him (Luis). RP 107, 117-18, 131. Mr. Veysey responded that yes he did and repeated that Luis needed to move out and let his dad have his life back. RP 107, 131, 154. Luis then "lost it," grabbed a hold of Mr. Veysey and the barstool on which he was seated, and threw them both across the room and onto the ground while yelling for Mr. Veysey to get out of his house. RP 107, 112, 118, 135-36, 150-151, 157, 162, 164-65. As Mr. Veysey turned and began to leave the house Luis grabbed him from behind and then slammed or smashed him onto the floor right in front of the front door. RP 107-08, 112, 118, 135-36, 150-51, 153, 163.

Mr. Veysey, in great pain, then got up and pushed through the screen door and, with one arm hanging down to his side, ran to his house and yelled out for his girlfriend to call 911. RP 108-09, 118, 123, 170. Ms.

Power heard Mr. Veysey's call for help and came outside and called the police. RP 108-09, 170. She would later drive Mr. Veysey to the hospital where he would be diagnosed with a displaced, spiral fracture of the humerus. RP 109-110, 170, 179-180. The next day he was put into a cast that went up to his shoulder and wrapped around his body, and which he had to wear for 3 months. RP 110. Due to the injury, he would also remain off of work for 5 months. RP 110-11.

Ridgefield Police Sergeant Cathy Doriot arrived at the scene. RP 186-87. She interviewed Mr. Veysey, Ms. Power, and Lloyd. RP 188, 191-92. She also provided both men with written statement forms, which they would both fill out and submit to the Ridgefield Police Department. RP 192-94, 197-98. While Sgt. Doriot was at the scene speaking with whom remained, other officers stopped Luis and Ms. Baker as they drove away. RP 187-88, 196-97. Those officers detained Luis and Ms. Baker until Sgt. Doriot could arrive and speak with them. RP 193. Ms. Baker claimed that she saw nothing as she had remained outside during the incident and only heard yelling. Luis told Sgt. Doriot that he never touched Mr. Veysey and specifically denied pushing or grabbing him. RP 252-53, 256-58. Instead, he told Sgt. Doriot that Mr. Veysey "chest bumped" him as he was leaving and that Mr. Veysey tripped and fell on his accord as he exited the home

on account of his high-level of intoxication.² RP 252, 254. After speaking with Luis, Sgt. Doriot arrested him. RP 194.

At trial, Luis and Ms. Baker gave an account of the incident that substantially differed from the account they relayed to Sgt. Doriot. Ms. Baker now claimed to have seen everything³ even though she was outside during the altercation and alleged that Mr. Veysey moved towards Luis, “got in his face,” was pointing at him (Luis) with his finger, and that both men were yelling at each other. RP 204, 208, 211. She testified that Luis kept telling Mr. Veysey to leave and opened the door for him at which point Mr. Veysey fell through the front doorway on his own, got up, and remarked that he had broken his arm. RP 204-06. Ms. Baker acknowledged that she told Sgt. Doriot that she had not seen the incident and only heard yelling and testified that she was untruthful to Sgt. Doriot because in the past she had given statements to the police that got “twisted.” RP 210-11.

² Most of the other witnesses opined on Mr. Veysey’s level of intoxication, including Mr. Veysey, and while an odor of alcohol was noted, and nobody observed slurring, coordination issues, or problems walking. RP 111, 137, 172-73, 181, 191, 259.

³ “Q: Could you see all of it? A: Yeah.” RP 203-05; “[State]: So you saw everything that occurred; is that right? A: Yes.” RP 208.

Luis testified similarly to Ms. Baker and further alleged, though this was different than what he told Sgt. Doriot,⁴ that he overheard Mr. Veysey talking about “kick[ing] his ass,” that he felt threatened by Mr. Veysey, that Mr. Veysey poked him in his chest two or three times, and that Mr. Veysey was spitting in his face as Mr. Veysey was yelling at him. RP 226-233, 244-45, 247-48.⁵ Luis also added that he “showed [Mr. Veysey] the door,” which he described as putting his hand on Mr. Veysey’s shoulder and “guid[ing] him out the door.” RP 232, 237, 241-244. Next, Luis testified that Mr. Veysey, as result of his intoxication and not because of the guiding, got his legs crossed up and fell through the doorway and outside the house onto some concrete. RP 232-34, 238, 243, 250-51. Luis believed he was cool, calm, and collected during the incident. RP 241, 248. Sgt. Doriot testified in rebuttal. RP 252-259.

⁴ Luis vacillated between claiming that he told Sgt. Doriot “exactly what I just said, what had happened” and agreeing that he may not have told her some things. RP 236, 244-48, 250.

⁵ Additionally, Lloyd testified that he did not see Mr. Veysey jab or poke Luis in the chest, nor did he see Mr. Veysey push, lunge towards, or chest bump Luis. RP 151.

ARGUMENT

I. The trial court did not abuse its discretion when it announced provisional time limits for the examination of the jury venire.

Prior to voir dire the trial court informed the parties:

Generally I'll give counsel 20 minutes per side for opening round of voir dire with ten minutes of rebuttal. Those are guidelines, so if we're getting into the weeds on something, those can be expanded, if needed, on request.

RP 6. No objection to was lodged to this process and jury selection began.

RP 6, 20. Both parties then used their initial 20 minutes. RP 45, 51, 60, 64.

The State then asked to for additional time to continue a line of questioning that it had not completed in the initial 20 minutes. RP 64. The trial court granted the State's request and additional questioning of the venire commenced. RP 64-68. After the State finished, the court enquired of defense counsel as to whether he had "any rebuttal questions." RP 68. Defense declined to use the 10 minutes of rebuttal questioning allotted to it or seek additional time for other questioning. RP 68. Following that declination, the State remembered that it had forgotten one short topic and, once again, the court allowed it to ask the venire an additional question and conduct follow up with one juror. RP 68-69. Finally, the court gave defense one last opportunity for additional questioning, though defense indicated it did not need to ask any questions in response. RP 69.

The court then excused one juror for cause and the parties took up peremptory challenges. RP 70-74. The State used all 6 of its peremptories while defense used only 5. RP 73.

Luis now claims that the trial court placed a “time limitation of voir dire to twenty minutes per side” and that this “limitation” violated his right to a fair trial. Brief of Appellant at 3-5. He further contends that he did not have sufficient time to question jurors about their qualifications to serve or to “ferret out bias and partiality.” Br. of App. at 5.

A trial court has broad discretion in determining the scope and extent of voir dire. *State v. Brady*, 116 Wn.App. 143, 146, 64 P.3d 1258 (2003) (citing CrR 6.4(b)); *State v. Laureano*, 101 Wn.2d 745, 757-58, 682 P.2d 889 (1984). This discretion allows the trial court “(1) to see that the voir dire is effective in obtaining an impartial jury and (2) to see that this result is obtained with reasonable expedition.” *State v. Frederiksen*, 40 Wn.App. 749, 753, 700 P.2d 369 (1985). In other words, “trial courts have discretion in determining how best to conduct voir dire.” *State v. Davis*, 141 Wn.2d 798, 825, 10 P.3d 977 (2000). Further, a trial court’s ruling on the scope of voir dire is reviewed for an abuse of discretion and can only be reversed “if the defendant shows the abuse [of discretion] substantially prejudiced him.” *Brady*, 116 Wn.App. at 147 (citing *Davis*, 141 Wn.2d at 825-26).

Moreover, as our Supreme Court in *State v. Collins* stated:

It is to be noted that the defendant accepted the jury while having available four peremptory challenges; nor did he challenge the panel. It would seem that he did not believe that the jury was prejudiced by the voir dire examination until it found him guilty.

50 Wn.2d 740, 744, 314 P.2d 660 (1957). Accordingly, it is well-settled that a defendant who does not use off all of his perempory challenges cannot later complain about a particular juror's inclusion on the jury. *State v. Robinson*, 75 Wn.2d 230, 231-32, 450 P.2d 180 (1969) (citations omitted); *State v. Reid*, 40 Wn.App. 319, 322, 698 P.2d 588 (1985); see also *State v. Jahns*, 61 Wn. 636, 112 P. 747 (1911). Similarly, "[t]he law presumes that each juror sworn in a case is impartial and above legal exception; otherwise, he or she would have been challenged for cause." *State v. Persinger*, 62 Wn.2d 362, 366, 382 P.2d 497 (1963) (citation omitted). Furthermore, once seated "[t]here is a presumption that [the juror] will be faithful to his oath and follow the court's instructions." *State v. Moe*, 56 Wn.2d 111, 115, 351 P.2d 120 (1960); *State v. Eggers*, 55 Wn.2d 711, 713, 349 P.2d 734 (1960) (noting that jurors are "assumed to be fair and reasonable"); *State v. Grisby*, 97 Wn.2d 493, 499, 647 P.2d 6 (1982).

Here, Luis misconstrues what happened at the trial level. The trial court did not set a 20 minute time limit on voir dire as Luis claims; rather

it provided an initial 20 minute session for each side, an additional 10 minutes of questioning it called “rebuttal,” and still allowed for the possibility of more time for questioning upon request. RP 6. Moreover, the trial court specifically stated these were just “guidelines,” which showed the court remained flexible as to the duration of voir dire. RP 6.

Importantly, Luis did not even make use of all the time allotted as he declined to use his 10 minute rebuttal time—the State did use its additional time—and declined the court’s second invitation for additional questioning of the venire after the State engaged in additional questioning following the expiration of its rebuttal time. Furthermore, Luis did not object at any point to procedures the trial court employed in conducting voir dire, did not object to or challenge the panel, and did not use all of his peremptory challenges. Thus, Luis cannot now be heard to complain about how the trial court conducted voir dire let alone show that trial court abused its discretion in so doing. Finally, Luis fails to make an argument that he was prejudiced by the trial court’s voir decisions and cannot show how said decisions substantially prejudiced him. By not using all of his time and preemptory challenges Luis evinced that he did not believe that the jury that was seated was impartial or biased against him.

To the extent that any error occurred during voir dire the error was harmless under any standard. The evidence that Luis intentionally

assaulted Mr. Veysey and thereby recklessly caused substantial bodily harm to him was overwhelming.

II. The prosecutor’s closing argument did not amount to flagrant and ill-intentioned misconduct because the prosecutor did not express his personal opinion.

At trial, “[c]ounsel are permitted latitude to argue the facts in evidence and reasonable inferences” in their closing arguments. *State v. Smith*, 104 Wn.2d 497, 510, 707 P.2d 1306 (1985). This latitude is wide and allows a prosecutor to “freely comment on witness credibility based on the evidence.” *State v. Lewis*, 156 Wn.App. 230, 240, 233 P.3d 891 (2010). Any allegedly improper statements by the State in closing argument “should be viewed within the context of the prosecutor’s entire argument, the issues in the case, the evidence discussed in the argument, and the jury instructions.” *State v. Dhaliwal*, 150 Wn.2d 559, 578, 79 P.2d 432 (2003) (citing *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997)). Juries are presumed to follow jury instructions absent evidence to contrary. *State v. Kirkman*, 159 Wn.2d 918, 928, 155 P.3d 125 (2007) (citing *State v. Davenport*, 100 Wn.2d 757, 763, 675 P.2d 1213 (1984)).

A prosecutor “may not properly express an independent, personal opinion as to the defendant’s guilt.” *State v. McKenzie*, 157 Wn.2d 44,

53, 134 P.3d 221 (2006). Our Supreme Court has held, however, that the prosecutor may:

nevertheless argue from the testimony that the accused is guilty, and that the testimony convinces him [or her] of that fact.

...

...

In other words, there is a distinction between *the individual opinion of the prosecuting attorney, as an independent fact, and an opinion based upon or deduced from the testimony in the case.*

Id. at 54 (emphasis in original) (quoting *State v. Armstrong*, 37 Wn. 51, 54-55, 79 P. 490 (1905)). Thus, for example, a prosecutor who uses the phrase “we know” does not commit misconduct when he or she uses the phrase to “marshal the evidence.” *State v. Robinson*, 189 Wn.App. 877, 894-95, 359 P.3d 874 (2015). Furthermore, the context of the purported personal opinion is important as:

[i]t is not uncommon for statements to be made in final arguments which, standing alone, sound like an expression of personal opinion. However, when judged in the light of the total argument, the issues in the case, the evidence discussed during the argument, and the court's instructions, it is usually apparent that counsel is trying to convince the jury of certain ultimate facts and conclusions to be drawn from the evidence. Prejudicial error does not occur until such time as it is *clear and unmistakable that counsel is not arguing an inference from the evidence, but is expressing a personal opinion.*

(emphasis in original) *McKenzie*, 157 Wn.2d at 54-55 (quoting *State v. Papadopoulos*, 34 Wn.App. 397, 400, 662 P.2d 59 (1983)).

Relatedly, while defendants:

are not obligated to produce any evidence, a prosecutor is allowed to comment on a defendant's failure to support her own factual theories: 'When a defendant advances a theory exculpating [her], the theory is not immunized from attack. On the contrary, the evidence supporting a defendant's theory of the case is subject to the same searching examination as the State's evidence.'

State v. Vassar, 188 Wn.App. 251,260, 352 P.3d 856 (alteration in original) (quoting *State v. Contreras*, 57 Wn.App. 471, 476, 788 P.2d 1114 (1990)).

If the defendant can establish that misconduct occurred, the determination of whether the defendant was prejudiced is subject to one of the two standards of review: "[i]f the defendant objected at trial, the defendant must show that the prosecutor's misconduct resulted in prejudice that had a substantial likelihood of affecting the jury's verdict. If the defendant did not object at trial, the defendant is deemed to have waived any error, unless the prosecutor's misconduct was so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice." *State v. Emery*, 174 Wn.2d 741, 760, 278 P.3d 653 (2012) (citations omitted).

Simply put, a defendant must first establish a prosecutor engaged in misconduct and then, when failing to object at trial, that “(1) no curative instruction would have obviated any prejudicial effect on the jury and (2) the misconduct resulted in prejudice that had a substantial likelihood of affecting the jury verdict.” *Id.* at 760-61 (citation omitted); *State v. Glasmann*, 175 Wn.2d 696, 704, 286 P.3d 673 (2012). Under the heightened standard, “[r]eviewing courts should focus less on whether the prosecutor’s misconduct was flagrant or ill-intentioned and more on whether the resulting prejudice could have been cured.” *Id.* at 762; *State v. Russell*, 125 Wn.2d 24, 85, 882 P.2d 747 (1994) (“Reversal is not required if the error could have been obviated by a curative instruction which the defense did not request.”). Importantly, “[t]he absence of a motion for mistrial at the time of the argument strongly suggests to a court that the argument or event in question did not appear critically prejudicial to an appellant in the context of the trial.” *State v. Swan*, 114 Wn.2d 613, 661, 790 P.2d 610 (1990) (citations omitted).

Here, Luis did not object to a single one of the statements he has divorced from the context of the State’s closing argument and labeled misconduct. RP 282-304, 322-330; Br. of App. at 6-7. Thus, he must show that the statements were flagrant or ill-intentioned *and* that the resulting prejudice could not have been cured. Luis, however, again fails

to argue prejudice save for the *ipse dixit* that the “prosecution’s closing arguments were prejudicial. . . .” Br. of App. at 7. This is insufficient. Luis also fails to argue how the statements, assuming misconduct, could not have been cured by an instruction. Regardless, if misconduct occurred any prejudice could have been cured by a contemporaneous objection and a limiting instruction by the court or a reminder, as the jury was properly instructed, that they were the sole judges of the witnesses’ credibility. CP 4. Furthermore, the evidence was overwhelming that Luis was guilty of the crime as even Luis’s father—after initially minimizing—testified consistently with what Mr. Veysey explained happened. The testimony of Lloyd and Mr. Veysey, supported by the evidence, made sense, and the two were substantially more credible than Luis and Ms. Baker whose stories changed considerably and which necessarily put their credibility up against Sgt. Doriot as well.

More importantly, though is that excerpted statements from the State’s closing argument do not amount to misconduct. Instead, the statements are permissible arguments “from the testimony that the accused is guilty,” permissible “comment[s] on witness credibility based on the evidence,” permissible “marshal[ing] [of] the evidence,” and reasonable inferences from the evidence. *McKenzie*, 157 Wn.2d at 54; *Lewis*, 156 Wn.App. at 240; *Robinson*, 189 Wn.App. 877, 894-95.

III. Mr. Horal's passing treatment of the ineffective assistance of counsel issue and lack of reasoned argument concerning the same is insufficient to merit judicial consideration.

Luis argues that he received the ineffective assistance of counsel because his trial counsel did not object to the voir dire process employed by the trial court and because his trial counsel did not object to the prosecutor's statements in closing argument that he now argues were misconduct. Br. of App. at 8-9. But while Luis says this and cites some boilerplate case law, he makes no argument regarding deficient performance or the absence of trial strategy or tactics, nor does he argue prejudice. Br. of App. at 7-9.

RAP 10.3(a)(6) directs each party to supply in its brief, "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." Appellate courts "not consider conclusory arguments unsupported by citation to authority." *State v. Mason*, 170 Wn.App. 375, 384, 285 P.3d 154 (2012). "[P]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." *Mason*, 170 Wn.App. at 384 (quoting *West v. Thurston County*, 168 Wn.App. 162, 187, 275 P.3d 1200 (2012)).

Here, Luis's passing treatment to the ineffective assistance of counsel issue and lack of reasoned argument on the same does not warrant judicial consideration.

CONCLUSION

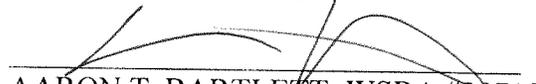
For the reasons argued above, this Court should affirm Luis's conviction for Assault in the Second Degree.

DATED this 18 day of Jan, 2018.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney
OID# 91127

CLARK COUNTY PROSECUTING ATTORNEY

January 18, 2018 - 3:06 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50006-0
Appellate Court Case Title: State of Washington, Respondent v. Luis John Horal, Appellant
Superior Court Case Number: 16-1-01719-3

The following documents have been uploaded:

- 500060_Briefs_20180118150305D2536997_1248.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Brief - Respondent.pdf

A copy of the uploaded files will be sent to:

- jterry@mbavancouverlaw.com

Comments:

Sender Name: Deidre Smith - Email: deidre.smith@clark.wa.gov

Filing on Behalf of: Aaron Bartlett - Email: aaron.bartlett@clark.wa.gov (Alternate Email: CntyPA.GeneralDelivery@clark.wa.gov)

Address:

PO Box 5000

Vancouver, WA, 98666-5000

Phone: (360) 397-2261 EXT 4476

Note: The Filing Id is 20180118150305D2536997