

NO. 30769-7-III  
STATE OF WASHINGTON  
COURT OF APPEALS - DIVISION III

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Mar 05, 2013  
Court of Appeals  
Division III  
State of Washington

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STATE OF WASHINGTON,

Respondent,

vs.

JORGE LUIS QUINTANILLA

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR  
FRANKLIN COUNTY

BRIEF OF RESPONDENT

SHAWN P. SANT  
Prosecuting Attorney

by: Frank W. Jenny, #11591  
Deputy Prosecuting Attorney

1016 North Fourth Avenue  
Pasco, WA 99301  
Phone: (509) 545-3543

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A. COUNTER STATEMENT OF ISSUES

1. IS THE EVIDENCE SUFFICIENT TO SHOW A DEFENDANT ENGAGED IN EXTORTIONATE MEANS TO COLLECT AN EXTENSION OF CREDIT WHERE THE DEFENDANT MADE A PERSONAL LOAN TO THE VICTIM IN THE AMOUNT OF \$1,000 AND THEN COERCIVELY DEMANDED REPAYMENT FROM THE VICTIM OF AN UNSPECIFIED SUM OF MONEY?
2. IS A DEFENDANT DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHERE ANY ADDITIONAL EVIDENCE OR ARGUMENT HIS LAWYER COULD HAVE PRESENTED RELATED TO MATTERS THAT WERE UNDISPUTED AND ALREADY ESTABLISHED BY THE EVIDENCE?
3. IS THE TRIAL COURT'S FAILURE TO ADD UP THE TOTAL LEGAL FINANCIAL OBLIGATIONS PREJUDICIAL ERROR WHERE THE JUDGMENT AND SENTENCE INDIVIDUALLY SETS FORTH EACH OBLIGATION?

B. COUNTER STATEMENT OF THE CASE

Jorge Luis Quintanilla (hereafter defendant) is appealing his conviction for Use of Extortionate Means to Collect Extensions of Credit. (CP 7-8). Defendant's Statement of the Case is substantially correct as far as it goes. However, the State would make the following additions, corrections, and amplifications.

Prior to trial, defendant moved for a bill of particulars. (CP 182-83). In its bill of particulars, the State responded as follows:

The State's theory of the case as to count 2 "Use of extortionate means to collect extensions of credit" is as follows: That on or about July 29, 2010 the Defendant acted as a principal or an accomplice, knowingly participated in any way in the use of any extortionate means to collect or attempt to collect an extension of credit to the victim Enrique Salas, or tried to punish the victim for the non-repayment of the credit.

The State intends to prove that the Defendant loaned the victim or the victim's company money on some previous date. On or about July 29, 2010 the defendant appeared at the victim's place of business with two unidentified males. That the Defendant and/or the unidentified males demanded repayment of the monies loaned to the victim. The victim refused to repay. The Defendant and/or the unidentified males physically threatened the victim by trying to gain in proximity to the victim. The victim was then assaulted by the Defendant and/or the two unidentified males.

(CP 172-73).

At trial, the victim, Enrique Salas, identified the defendant, Mr. Quintanilla, in the courtroom and testified that defendant had invested several thousand dollars in Mr. Salas's company and had also loaned to Mr. Salas personally the amount of one thousand dollars (\$1,000):

Q.: (by Mr. Chow, deputy prosecutor) I would like the record to reflect the victim has identified the defendant. How did you know Mr. Quintanilla?

A.: Through one of my customers.

Q.: And how long had you known Mr. Quintanilla prior to July 2010?

A.: Around eight months, eight ten months.

Q.: Now, Mr. Salas, do you - - you had a business, correct?

A.: Yes.

Q.: And what is the name of that business?

A.: Tri-Cities Imports.

Q.: Where was [it] located?

A.: 409 South 4<sup>th</sup> Avenue - - 209 South 4<sup>th</sup> Avenue.

Q.: Is that in Pasco, Washington?

A.: Yes.

Q.: And Mr. Quintanilla did you know if he had a business?

A.: Yes.

Q.: And what was the name of that business?

A.: Happy Fish, Pescado Feliz.

Q.: Was Mr. Quintanilla a customer of yours?

A.: He became a customer at first, yes.

Q.: Then what happened?

A.: Well, after he was there a few times and he asked me if I ever need a partnership with anybody to ask him and eventually it happened.

Q.: How was your business doing at the time that Mr. Quintanilla suggested that?

A.: It was going pretty well.

Q.: And as a result, did Mr. Quintanilla ever loan you any money?

A.: He invested money on the company and, yes, I borrowed \$1000 from him.

Q.: And are you the owner of Tri-City Imports?

A.: Yes.

Q.: So you were the person responsible for that company?

A.: Yes.

Q.: I'm going to hand up what's been marked as State's Exhibit 1. Can you identify what that is?

A.: This is a deposit slip from Chase Bank.

Q.: Is that your bank?

A.: Yes.

Q.: And in what amount?

A.: \$3,000.

Q.: That is \$3,000 to your account?

A.: Or to Tri-Cities Imports, yes.

Q.: I will hand you what's been marked as State's No. 2. Can you identify what that?

A.: This is El Pescado Feliz or Happy Fish check for \$3,000.

Q.: And who is it written out to?

A.: Tri-Cities Imports LLC for investment on the company.

Q.: And what is the name of the bank its drawn on?

A.: Plaza Bank.

Q.: I will hand you what's been marked as State's Exhibit No. 3. Can you identify what that is?

A.: This is another deposit slip from Chase Bank, Tri-Cities Imports.

Q.: How much money into your account?

A.: \$1700.

Q.: I will hand you what has been marked as State's Identification No. 4. Can you tell us what that is?

A.: That is another check from Happy Fish from US Bank.

Q.: And is that written out to Tri-Cities Imports?

A.: It written to Enrique Salas.

Q.: And you deposited to?

A.: Tri-Cities Imports.

(RP 108-10) (Emphasis added). The aforementioned checks and deposit slips were admitted into evidence. (RP 110-11). On cross-examination, the following exchange took place:

Q.: (by Mr. Jensen, defense counsel) Mr. Salas, how long did you know Mr. Quintanilla before he invested in your business?

A.: Before he invested, probably six months, six to eight months something in there.

Q.: And how long between the time he invested and the assault occurred?

A.: About four months, four and a half months.

(RP 119-20).

Under direct examination by defense counsel, defendant repeatedly stated he had invested money in Mr. Salas's business.

(RP 192, 193, 194, 195).

In his initial closing argument, the deputy prosecutor argued:

[The defendant] said it was an investment. Anybody knows the word investment means you can lose that money. The person that you gave that money to is not required to give you anything back. If I invest in stocks and the stock market goes down and the business goes under I don't get to collect from that company. It's an investment . . . but yet Mr. Quintanilla came to Mr. Salas on July 29<sup>th</sup> 2010 and asked for his money back. That's what you know. It's a loan because he came back.

(RP 243).

The jury returned verdicts finding defendant guilty of Use of Extortionate Means to Collect Extensions of Credit but not guilty of Assault in the First Degree. (CP 87-88). The jury was obviously

satisfied that defendant enlisted the assistance of two “muscle men” in attempting to collect a debt from Mr. Salas. However, the jury apparently believed the two men may have exceeded the scope of the pre-planned illegality by seriously assaulting Mr. Salas rather than just intimidating him; thus, defendant was not an accomplice to the first degree assault.

Following conviction, defense counsel filed a combined motion to arrest verdict, arguing there was insufficient evidence to support the guilty verdict, and motion for new trial, contending in part that he may have rendered ineffective assistance. (CP 42-50). In his affidavit, defense counsel stated: “I did not realize that the character of the funds was a material element until hearing the Prosecutor arguing that the funds were a loan in his rebuttal closing.” (CP 85) (Emphasis added). Defense counsel acknowledged having filed a motion for bill of particulars. (CP 85). Defense counsel further stated:

Mr. Quintanilla had informed me that there were documents filed with the State that would show him as part owner. Discovery was provided that showed that Mr. Quintanilla was a member of the Tri-Cities Imports LLC. There was an annual report from the State of Washington that listed Mr. Quintanilla as a member of the LLC. Additionally, there were two checks that stated “Investment on Company” written from Mr. Quintanilla to Tri-Cities Imports LLC.

On October 25, 2011, I interview[ed] Mr. [Salas] in the Franklin County Prosecutor's Office. During that interview Mr. [Salas] clearly indicated on a couple of occasions that Mr. Quintanilla had invested in his business and the money was not a loan. Appendix A. There was no specific amount of repayment because Mr. Quintanilla has received a percentage of the business. Appendix A.

Defense counsel attached as "Appendix A" a transcript of his interview with Mr. Salas. (CP 52-78). (The transcriber mistakenly spelled his name "Solis".) During the interview, the following exchanges occurred:

Q.: Okay through your time with Jorge [Quintanilla] does he lend you some money?

A.: He invests money.

Q.: Okay, does he also lend you money for any other reasons, personal reasons?

A.: Yes.

Q.: What did he lend you on personal reasons?

A.: Well actually he . . . the reason he let me borrow money, not really borrow money but I came . . . I was supposed to . . . I had a negligent driving thing, you're supposed to have a probation visit or . . . INAUDIBLE  
...

Q.: You were supposed to go to probation . . .

A.: Yeah, and I went to pay my ticket when they . . . and they . . . I didn't know how I was supposed to

check on probation and I was supposed to miss one of the appointments . . .

Q.: So they did a warrant?

A.: They did a warrant so they wouldn't let me go out of the office and I was helping him move some stuff from a warehouse that he was supposed to buy and...

Q.: How long had you know each other at this point before this incident took place?

A.: About six months.

Q.: So this was right before the assault?

A.: I think it was . . .

Q.: Six months prior to the assault?

A.: What was the question you asked me at first? How long did I know him to that day or . . .

Q.: Prior to the assault I asked you how long had you known him, and you said six to eight months.

A.: Okay, probably about 10 months before this happened on I think . . . I can't remember what day, but I had like known him about three to four months.

Q.: Okay, so you had known him for about there to four months. So he lends you money for bail?

A.: Yeah.

Q.: How much was the bail?

A.: \$1,000.

Q.: Okay, \$1,000, did you guys sign a contract with regards to the bail?

A.: No.

Q.: Okay, did you pay him back?

A.: No.

Q.: Okay, so that was part of the money he you too . .  
.that you owed him?

A.: That is the only money I owe him.

Q.: So no other money was a personal loan?

A.: No.

Q. Okay, at some point did he invest in your  
business?

A.: Yes.

Q.: What amount did he invest in your business?

A.: \$3,000, \$1,000, and I think it was another \$1,000  
and I'm not 100% but I think it was around \$700 . . . it  
was another . . . it was around . . . he leant me about  
\$6,000.

Q.: It was \$6,000 or less?

A.: Over a period of time, it wasn't just one time; it  
was like a three month period.

(CP 53-54) (Emphasis added). The trial court denied defendant's  
post-trial motion. (CP 40). This appeal followed. (CP 7-8).

### C. ARGUMENT

1. **THE CONVICTION IS SUPPORTED BY SUFFICIENT EVIDENCE. THE EVIDENCE CLEARLY SHOWS THAT IN ADDITION TO INVESTING SEVERAL THOUSAND DOLLARS IN MR. SALAS'S BUSINESS, DEFENDANT MADE A PERSONAL LOAN TO MR. SALAS IN THE AMOUNT OF \$1,000.**

The conviction for Use of Extortionate Means to Collect Extensions of Credit is clearly supported by sufficient evidence. Defendant does not dispute that a reasonable jury could find that extortionate means were used in an attempt to collect money from Mr. Salas. He argues only there was insufficient evidence that the money in question was an extension of credit.

The parties appear to be in agreement on the applicable law. On a challenge to the sufficiency of the evidence, the appellate court will review the evidence in a light most favorable to the State. State v. Trout, 125 Wn. App. 403, 409, 105 P.3d 69 (2005); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficient evidence admits the truth of the State's evidence. Trout, 125 Wn. App. at 409; State v. Pacheco, 70 Wn. App. 27, 38-39, 851 P.2d 734 (1993), *rev'd on other grounds*, 125 Wn.2d 150, 882 P.2d 183 (1994). All reasonable inferences from the evidence must be drawn in favor of the State. Trout, 125 Wn. App. at 409;

Salinas, 119 Wn.2d at 201. The appellate court will defer to the trier of fact's resolution of conflicting testimony, evaluation of witness credibility, and generally its view of the persuasiveness of the evidence. Trout, 125 Wn. App. at 409; State v. Lubers, 81 Wn. App. 614, 619, 915 P.2d 1157 (1996). The appellate court will affirm if any rational trier of fact could have found the essential elements of the crime. Trout, 125 Wn. App. at 409; Salinas, 119 Wn.2d at 201. A jury can infer the specific criminal intent of a criminal defendant where it is a matter of logical probability. Trout, 125 Wn. App. at 409; State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The evidence supporting a criminal conviction may be either direct or circumstantial, and one type of evidence is no more or less trustworthy than the other. State v. Rangel-Reyes, 119 Wn. App. 494, 499, 81 P.3d 157 (2003). Circumstantial evidence need not be inconsistent with every hypothesis suggesting innocence in order to support a criminal conviction. Id. at 499 n. 1. Isolated statements in the testimony may provide sufficient evidence to sustain a criminal conviction. See Trout, 125 Wn. App. 403 (affirming criminal conviction despite dissent's complaint that State's theory of the case was supported by only isolated statements in the testimony).

Defendant bases his argument on the fact that it was undisputed that defendant had invested several thousand dollars in Mr. Salas's business. However, this argument ignores the testimony from Mr. Salas that defendant also made a personal loan to Mr. Salas in the amount of \$1,000. (RP 109). This loan was clearly an extension of credit under unchallenged Instruction No. 19, which provided:

“To extend credit” means to make or renew a loan or enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(CP 111). The instruction was drawn verbatim from RCW 9A.82.010(18). As defendant himself acknowledges at page 11 of his brief, a “loan” is defined at common law as:

an advancement of money or other personal property to a person, under a contract or stipulation, express or implied, whereby the person to whom the advancement is made binds himself to repay it at some future time, together with such other sum as may be agreed upon for the use of the money or thing advanced.

Baxter v. Stevens, 54 Wn. App. 456, 459, 773 P.2d 890 (1989).

The \$1,000 that Mr. Salas borrowed from defendant was unquestionably a loan.

Defendant just said to Mr. Salas, "Where is the money?" and did not ask for any specific amount of money. (RP 126-27). As the prosecutor argued at trial, the fact that defendant believed he was entitled to repayment is circumstantial evidence that the money being sought had been an extension of credit. (RP 243). There was, for example, no evidence that defendant was due to receive a stock dividend or a share of profits on July 29, 2010. Especially when the evidence is viewed in a light most favorable to the State and all reasonable inferences are drawn in the State's favor, the conviction is supported by sufficient evidence.

**2. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL. ANY ADDITIONAL EVIDENCE OR ARGUMENT HIS LAWYER COULD HAVE PRESENTED WOULD HAVE MERELY BEEN CUMULATIVE OF MATTERS THAT WERE NEVER IN DISPUTE.**

Defendant next argues he received ineffective assistance of counsel at trial. Once again, the applicable law is well settled. In order to establish ineffective assistance of counsel, a defendant must show that counsel's performance (1) was deficient, and (2) prejudiced the defense. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). It is unnecessary to address both prongs of the Strickland test if the defendant makes

an inadequate showing as to either prong. State v. Standifer, 48 Wn. App. 121, 126, 737 P.2d 1308 (1987). “The object of an ineffectiveness claim is not to grade counsel’s performance. If it is easier to dispose of an ineffectiveness claim on the ground of a lack of sufficient prejudice, that course should be followed.” Strickland, 466 U.S. at 697.

Prejudice occurs where there is a reasonable probability that, but for the deficient performance, the outcome of the proceeding would have been different. State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). The defendant bears the burden of showing prejudice based on the record developed in the trial court. McFarland, 127 Wn.2d at 337. Speculative or conclusory arguments are not sufficient to demonstrate that the outcome of the proceedings would have been different. State v. Goldberg, 123 Wn. App. 848, 853, 99 P.3d 924 (2004).

Defendant’s trial counsel was overly self-critical. In part, he simply misremembered what occurred during trial. While he believed he had first learned the prosecutor was arguing that defendant had loaned money to Mr. Salas during the rebuttal closing argument (CP 85), the record clearly shows the argument was made during the prosecutor’s initial closing argument (RP

243). The prosecutor in fact conceded that an investment is not an extension of credit. (RP 243). Defense counsel had taken the step of making a motion for bill of particulars. (CP 182-83). This resulted in the State filing a bill of particulars in which it indicated it would prove at trial that defendant loaned money to Mr. Salas. (CP 172-73). Defense's counsel's actions committed the State to its theory of the case. There was no deficiency here.

Defense counsel was also unduly self-critical (or simply misremembered) in suggesting he did not present evidence that defendant had invested in Mr. Salas's business. In fact, defense counsel emphasized that point in both his cross-examination of Mr. Salas (RP 119-20) and direct examination of his own client (RP 192, 193, 194, 195). Defense counsel also made reference in his affidavit to two checks which defendant had given to Mr. Salas as investments in his company. (CP 84). In fact, those checks were admitted by the State during its case in chief. (RP 109-10). Other documents showing defendant's ownership interest in the business would have merely been cumulative of Mr. Salas's own testimony.

Defense counsel attached to his affidavit a transcript of his interview with Mr. Salas, which he characterized as "the victim's previous statements indicating it was an investment." (CP 85).

However, the prior statements of Mr. Salas would not have been admissible unless they were inconsistent with his testimony at trial, and then only for impeachment. See ER 613(b). The testimony of Mr. Salas at trial was completely consistent with his earlier statement to defense counsel: That defendant had invested several thousand dollars in Mr. Salas's business, but had also made a personal loan to Mr. Salas in the amount of \$1,000. (Compare RP 108-10 with CP 53-54). Mr. Salas further explained in his statement that the \$1,000 personal loan was for bail money, that he had not paid defendant back, and that it was the only money he owed defendant. (CP 54). Moreover, a criminal defense attorney's failure to take a particular action does not violate the defendant's constitutional right to counsel if the action would not have benefited the defendant. State v. Gonzalez, 51 Wn. App. 242, 246-47, 752 P.2d 939 (1988). Even if Mr. Salas's earlier statement could have been admitted under some theory, it would have only reiterated his testimony at trial.

Finally, even if defense counsel's actions were deficient, defendant could not meet the second prong of the test by showing prejudice. It was never disputed that defendant had invested several thousand dollars in Mr. Salas's business. (RP 108-10).

The State acknowledged in closing argument that an investment in a business is not an extension of credit. (RP 243). Under the evidence, the unchallenged instructions, and the State's argument, the jury could find defendant guilty only upon finding he used extortionate means to attempt to collect money he had loaned to Mr. Salas and that Mr. Salas was required to pay back. Any further evidence or argument presented by defense counsel would have only been cumulative of matters that were never in dispute. There is no reasonable probability that the outcome of the trial was affected.

**3. THE TRIAL COURT'S FAILURE TO ADD UP THE LEGAL FINANCIAL OBLIGATIONS CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.**

Defendant finally argues that the trial court failed to total his legal financial objections in the judgment and sentence, which he claims is required by RCW 9.94A.760(1). However, this issue was not raised in any way at the time the judgment and sentence was entered. (04/12/12 RP). "With the exception of jurisdictional and constitutional issues, appellate courts will only review issues which the record shows have been argued and decided at the trial court." State v. Barton, 28 Wn. App. 690, 693, 626 P.2d 509 (1981) (citing

RAP 2.5(a) and State v. Wicke, 91 Wn.2d 638, 642, 591 P.2d 452 (1979). See also State v. Turpin, 94 Wn.2d 820, 823, 620 P.2d 990 (1980) (noting that criminal defendant cannot raise violation of a statutory right for the first time on appeal). Here, the only alleged error is the violation of a statute, RCW 9.94A.760(1). If defendant desired the trial court to do simple arithmetic for him, the time to make that request would have been when any error could have been averted.

Even if the issue was of constitutional magnitude, it would not be considered. Not all constitutional issues may be raised for the first time on appeal, but only manifest errors affecting a constitutional right. State v. Kirkman, 159 Wn.2d 918, 926-27, 155 P.3d 125 (2007); State v. King, 167 Wn.2d 324, 329, 219 P.3d 642 (2009). “The defendant must show the constitutional error actually affected her rights at trial, thereby demonstrating the actual prejudice that makes an error ‘manifest’ and allows review.” King, 167 Wn.2d at 329 (citing Kirkman, 159 Wn.2d at 926-27). “If a court determines the claim raises a manifest constitutional error, it may still be subject to harmless error analysis.” King, 167 Wn.2d at 329 (quoting Kirkman, 159 Wn.2d at 927).

Here, each of the individual financial obligations is separately set forth on the face of the judgment and sentence. (CP 13). Accordingly, there is no prejudice from the failure to add them together. Any error here is not manifest and is harmless beyond a reasonable doubt.

#### D. CONCLUSION

On the basis of the arguments set forth above, it is respectfully requested that the judgment herein of the Superior Court for Franklin County be affirmed.

Dated this 5th day of March, 2013.

Respectfully submitted,

SHAWN P. SANT  
Prosecuting Attorney

By:   
Frank W. Jenny  
WSBA #11591  
Deputy Prosecuting Attorney

