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Division III
State of Washington
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IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION III
No. 35940-9-III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

LAURENCE JAMAL MAYO,

Defendant/Appellant

Respondent's Supplemental Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. With regard to the claim of insufficiency of the evidence as to count seven the State stipulates to the argument made by Mr. Mayo and further stipulates to remand the matter for resentencing on the other counts.
- b. Because Mr. Mayo did not contest the search of the vehicle based on lack of consent at or prior to trial, the issue is waived and may not be raised on appeal. However, this issue fails on the merits of the argument due to the fact that the search was an inventory search and does not require consent.
- c. Because Mr. Mayo did not contest the search of the vehicle based on lack of a warrant at or prior to trial, the issue is waived and may not be raised on appeal. However, this issue fails on the merits of the argument due to the fact that the search was an inventory search and does not require a warrant.

B. STATEMENT OF THE CASE

The State agrees with and stipulates to the Statement of the Case set forth by Mr. May in his opening brief.

C. ARGUMENT

- a. The State concedes the issue raised by Mr. May regarding whether or not there was sufficient evidence to convict him of Count 7.

The State is stipulating that there is no indication in the record that the jury was provided with sufficient evidence to convict the defendant of Unlawful Possession of Fictitious Identification under RCW 9A.56.320(4). As such that count must be dismissed with prejudice.

- b. Mr. Mayo did not contest the search of his vehicle at or prior to the time of trial based on his lack of consent and therefore has waived that challenge. The issue further fails due to the fact that the search was an inventory search not requiring consent.

For purposes of brevity the State will address both issues raised by Mr. Mayo in his Statement of Additional Grounds for Review in one argument. This contraction of the argument is based on the fact that the only difference between Mr. Mayo's two issues is the lack of the consent in Additional Ground 1 and

the lack of a search warrant in Additional Ground 2. The State's response to both of those issues relies on the same facts and law.

An appellate court will not consider issues raised for the first time on appeal. RAP 2.5(a); *State v. McFarland*, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995). An exception exists, however, for manifest errors affecting a defendant's constitutional rights. RAP 2.5(a)(3); *State v. Walsh*, 143 Wn.2d 1, 7, 17 P.3d 591 (2001). There is a two-step analysis to determine whether to examine alleged constitutional errors for the first time on appeal. *State v. Kronich*, 160 Wn.2d 893, 899, 161 P.3d 982 (2007). First, the court must determine whether the alleged error involves a constitutional issue. *State v. Lynn*, 67 Wn. App. 339, 345, 835 P.2d 251 (1992). Second, the court must determine whether the error was manifest. *Id.* An error is manifest if it has "practical and identifiable consequences in the trial of the case." *State v. Stein*, 144 Wn.2d 236, 240, 27 P.3d 184 (2001). Put another way, a "manifest error" is an error that is "unmistakable, evident or indisputable." *State v. Burke*, 163 Wn.2d 204, 224, 181 P.3d 1 (2008) (quoting *Lynn*, 67 Wn. App. at 345). Purely formalistic errors are not manifest. *Kronich*, 160 Wn.2d at 899. Even where a constitutional error is manifest, it can still be waived if the

issue is deliberately not litigated during trial. *State v. Walton*, 76 Wn. App. 364, 370 (1994).

However, should this Court determine that Mr. Mayo may bring this issue for the first time on appeal it does not result in any change to the result of the case. Mr. Mayo does not indicate in his Statement of Additional Grounds for Review what injury his case suffered as a result of the search of his vehicle or what remedy he is seeking. Based on all of the facts in the record the State will proceed under the assumption that Mr. Mayo is asking this Court to suppress the firearm that was located in the vehicle and either remand the matter for retrial for his conviction of Unlawful Possession of a Firearm in the Second degree or dismissal of the charge completely.

Mr. Mayo claims that he did not provide consent for the search of the vehicle he was located in and that law enforcement did not obtain a search warrant. The State concedes that both of those claims are true. However, they are irrelevant and have no bearing on Mr. Mayo's case.

It is uncontested that the vehicle that Mr. Mayo was driving was a rental car. (RP 146) It is also uncontested that after it was determined that Mr. Mayo could not legally drive the vehicle he

was given the opportunity to find someone who could assist in moving it but was unable to do so. As a result a tow truck was called and the vehicle was impounded. (RP 149-152) It is further acknowledged by all parties that law enforcement conducted an inventory search of the vehicle after the impound, which lead to the firearm being located. (RP 157-158) Finally, it is uncontested witnesses at the trial testified to all of these facts. (RP 129-142) In fact, all of this information was cited in Mr. Mayo's Opening Brief in this appellate matter.

One of the narrow exceptions to the warrant requirement is a valid inventory search. *State v. Tyler*, 177 Wn.2d 690, 302 P.3d 165 (2013); *State v. White*, 135 Wn.2d 761, 958 P.2d 982 (1998). An inventory search may also be performed without the consent of the person who owns the property or who is currently in control of the property. *Tyler*, 177 Wn.2d at 706-708.

Inventory searches serve many important non-investigatory purposes. Warrantless inventory searches are permissible because they (1) protect the vehicle owner's or occupant's property, (2) protect law enforcement agencies and officers and temporary storage bailees from false claims of theft, and (3)

protect police officers and the public from potential danger.

Tyler, 177 Wn.2d at 701; *White*, 135 Wn.2d at 769-770.

When a vehicle is impounded, an inventory search pursuant to department policy may be conducted. Evidence seized may be used in a criminal prosecution. Probable cause is not needed for this exception. The search must be reasonable and the impound must not be a pretext for an evidentiary search. *Accord State v. Green*, 177 Wn.App. 332, 312 P.3d 669 (2013). An inventory may even be conducted over the defendant's objections once alternatives to impound have been explored without success. *Tyler*, 177 Wn.2d at 703.

Washington cases generally limit impounds and impound searches to those occasions when there is no reasonable alternative to an impound. *State v. Williams*, 102 Wn.2d 733, 689 P.2d 1065 (1984). As part of the police function of enforcing traffic regulations, if the driver has committed a traffic offense for which the Legislature has authorized impoundment, then it may occur. If the statute indicates that an officer "may" impound the vehicle, an officer must exercise discretion when deciding to impound the vehicle. *State v. Cross*, 87 Wn.App. 891, 943 P.2d 1126 (1997), *review denied*, 134 Wn.2d 1028

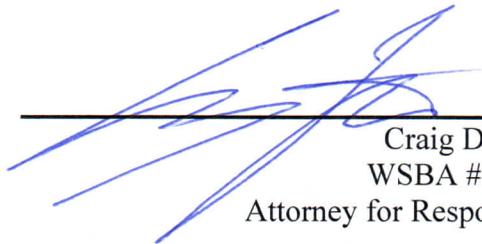
(1998). That means that if passengers are present, the officer must first inquire whether the person who steps forward is validly licensed. A police officer may, nonetheless, impound a vehicle if that appears the best method of preventing a reoccurrence of the illegal conduct. *State v. Peterson*, 92 Wn.App. 899, 964 P.2d 1231 (1998). One of the situations in which an officer “may” impound a vehicle is if the driver is operating the vehicle without a valid license. RCW 46.55.113.

In the current case the uncontested record shows that Mr. Mayo was driving without a valid license which would allow law enforcement to impound the vehicle if no reasonable alternatives are available. It is clear from the record that Mr. Mayo was traveling alone and that no one could be reached to move the vehicle to a safe location on his behalf. Therefore, law enforcement had no reasonable alternative but to impound the vehicle. Once the impound was determined law enforcement that the right and the duty to conduct and inventory of the vehicle. The firearm was located in the glovebox and was admissible at trial.

D. CONCLUSION

For the reasons stated, Count 7 should be dismissed with prejudice and the matter remanded to the Superior Court for resentencing on the other charges. Mr. Mayo's Statement of Additional Grounds for Review should be denied.

Dated this 28th day of August, 2019,



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PROOF OF SERVICE

I, Craig D. Juris, do hereby certify under penalty of perjury that on 28th day of August, 2019, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Respondent's Brief:

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