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STATE OF WASHINGTON
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COURT OF APPEALS, DIVISION II
FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

vs.

Jose Morales

Respondent.

On Appeal from the Lewis County Superior Court

RESPONDENT'S BRIEF

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STATEMENT OF THE CASE

Appellant's statement of the case is adequate for purposes of responding to this appeal.

ARGUMENT

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT FOUND THE EVIDENCE INSIDE MORALES' CAR WAS ADMISSIBLE UNDER THE INEVITABLE DISCOVERY DOCTRINE.

Morales argues that the trial court erred when it admitted evidence showing that there were beer cans and bottles inside Morales' car. Morales is incorrect.

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. State v. Wittenbarger, 124 Wn.2d 467, 490, 880 P.2d 517 (1994)(holding trial court abused its discretion in suppressing evidence). A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds. State v. C.J., 148 Wn.2d 672, 686, 63 P.3d 765 (2008)(citing State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997)). Put differently, a trial court abuses its discretion if it can be said no reasonable person would have adopted the trial court's ruling. State v. Atsbeha, 142 Wn.2d 904, 913-14, 16 P.3d 626 (2001). If the trial court entered findings

under CrR 3.6(b), the reviewing court considers whether substantial evidence supports any challenged findings of fact and whether the findings support the trial court's conclusions of law. See, State v. Hill, 123 Wn.2d 641, 644-47, 870 P.2d 313 (1994).

"Evidence obtained through a source independent of a police error or constitutional violation is not subject to the exclusionary rule." State v. Smith, 113 Wn.App. 846, 856, 55 P.3d 686 (2002), citing State v. Hall, 53 Wn.App. 296, 304-05, 766 P.2d 512 (1989)(citing Murray v. United States, 487 U.S. 533, 108 S.Ct. 2529, 2533, 101 L.Ed.2d 472 (1988)). "The inevitable discovery doctrine applies when there is a reasonable probability that the evidence in question would have been discovered other than from the tainted source." State v. Winterstein, 140 Wn.App. 676, 692-693, 166 P.3d 1242 (2007), citing State v. Warner, 125 Wn.2d 876, 889, 889 P.2d 479 (1995). Put another way, under the inevitable discovery rule, the State must prove by a preponderance of the evidence that the evidence ultimately or inevitably would have been discovered using lawful procedures. State v. O'Neill, 148 Wn.2d 564, 591-592, 62 P.3d 489 (2003). One such lawful procedure is an inventory search. See State v. Richman, 85 Wn.App. 568, 933 P.2d 1088 (1997)(unlawfully obtained evidence admissible when

State proves by preponderance of the evidence that it inevitably would have been discovered under proper and predictable investigatory procedures); State v. Houser, 95 Wn.2d 143, 622 P.2d 1218(1980)(police may conduct a warrantless inventory search when a car is lawfully impounded unless the impoundment is a mere pretext for an investigatory search). The inevitable discovery doctrine does not require absolute inevitability, but simply a reasonable probability that the evidence in question would have been discovered other than from the tainted source. State v. Warner, 125 Wn.2d at 889.

Another Court has set out a three-pronged test to determine whether the discovery of the evidence is inevitable: (1) the police did not act unreasonably or to accelerate the discovery of the evidence in question; (2) proper and predictable investigatory procedures would have been utilized; and (3) those procedures would have inevitably resulted in the discovery of the evidence in question. State v. Reyes, 98 Wn.app. 923, 927, 993 P.2d 921 (2000); State v. Richman, 85 Wn.App. 568, 577, 933 P.2d 1088 (1997)(adopting rule set out in State v. Broadnax, 98 Wn.2d 289,309,650 P.2d 96 (1982)(Dolliver, J., dissenting)). The inevitable discovery of the evidence may not be tainted by a prior

illegality. See State v. Armenta, 134 Wn.2d. 1, 17, 948 P.2d 1280 (1997)(factors to determine whether consent to search is tainted by a prior illegality). Finally, the inevitable discovery doctrine does not offend the protections of article I, section 7 of the Washington Constitution. State v. Smith, 113 Wn.App. 846, 856, 55 P.3d 686 (2002), *citing* State v. Richman, 85 Wn.App. at 576-577; State v. Ludvik, 40 Wn.App. 257, 263, 698 P.2d 1064 (1985). Thus, "[e]vidence will not be suppressed if it would have been acquired even without the unlawful activity, or if the causal connection between its acquisition and the unlawful activity is attenuated." State v. Storhoff, 84 Wn.App. 80, 83, 925 P.2d 640 (1996)(footnotes omitted), *aff'd*, 133 Wn.2d 523, 946 P.2d 783 (1997).

Here, Morales' vehicle was impounded. 9/10/07 RP 70. The Trooper impounding the vehicle also stated that he does perform inventory searches, and that he inventoried the items found in Morales' vehicle. Id. 70, 71. In its oral ruling, the trial court made the following findings regarding the search of Morales' vehicle:

The beer cans, two on the right front seat seen from outside looking in are admissible. The remaining beer cans and the fact that the keys fit the ignition were the search that was done after the arrest but after the defendant had left the area. So it wasn't incident to

arrest. It was done after the fact. However, there was also testimony that the car was impounded and inventoried. And the case law says that the means of obtaining the evidence must be truly independent and discovery of those means would have been truly inevitable. And I believe that even though --well, I'm finding that the exclusionary rule's applicable unless the state establishes that they would have been inevitably discovered. Under the circumstances they would have been. The beer cans and the fact the key fit the ignition are admissible and won't be suppressed as well. So the only thing that has been suppressed pursuant to the 3.5 and 3.6 is the DUI interview by Trooper Brunstad at the hospital.

9/11/07 RP 100.

Thus the trial court's oral ruling shows "by a preponderance of the evidence that the evidence ultimately or inevitably would have been discovered using lawful procedures." State v. O'Neill, supra at 591, citing Nix v. Williams, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984); State v. Warner, supra. And, according to its oral ruling, the trial court did not err when it found that the evidence inside Morales' car was admissible pursuant to the inevitable discovery doctrine. The trial court properly considered the facts surrounding the inventory process, together with the factors to be considered when deciding whether the search is truly independent and the discovery truly inevitable, and by its oral ruling implicitly found (1) the police did not act unreasonably or

to accelerate the discovery of the evidence in question and (2) proper and predictable investigatory procedures would have been utilized because the police legally arrested Morales and then properly impounded Morales' vehicle, and pursuant to that impoundment police performed a routine inventory of the vehicle's contents pursuant to regular impoundment procedures; and (3) those procedures would have inevitably resulted in the discovery of the evidence in question because the beer bottles and cans were in easily-seen areas of the vehicle to be inventoried. State v. Reyes, supra, 98 Wn.app. 923, 927, 993 P.2d 921 (2000). Contrary to Morales' claim, there is no evidence here that the warrantless inventory search was a pretext for an investigatory search. Houser, supra. Accordingly, the trial court did not abuse its discretion in finding the items inside Morales' vehicle would have been inevitably discovered. The trial court's ruling on this evidence should be upheld.

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ADMITTED THE BLOOD TEST BECAUSE THE RECORD SHOWS THAT THE TROOPER READ THE SPECIAL EVIDENCE WARNING TO MORALES THROUGH AN INTERPRETER AT THE HOSPITAL, BUT EVEN IF THE BLOOD TEST WAS NOT ADMISSIBLE UNDER *TURPIN*, ANY ERROR WAS HARMLESS.

Morales claims that the trial court erred when it admitted the blood test taken in this case because "the special evidence warning was not read" to Morales. But this is not what the record shows. This argument completely ignores the testimony given regarding the reading of the special evidence ruling. 9/11/07 RP 207. While Morales did argue below that the State could not "prove" that the special evidence warning was read to Morales because the Trooper did not speak or understand Spanish and thus did not know for sure what was read to Morales, the trial court did *not* make any ruling that the evidence warning had *not* been read. Instead, the trial court found that the blood test was "compulsory" and that "[n]o warnings need be given under subsection three" of RCW 46.20.308; 9/11/07 RP 252-43. Because the record does not show that the special evidence warning was never read to Morales and in fact the record does show that Trooper Brunstad had a Spanish interpreter at the hospital read what Trooper Brunstad

thought was the special evidence warning to Morales, in this regard Morales argument is misleading. 9/11/07 RP 207.

However, it does appear that the trial court's ruling that the special evidence warnings were not required because the blood test was compulsory was in violation of Turpin and its progeny. State v. Turpin, 94 Wn.2d 820, 620 P.2d 990 (1980); State v. Anderson, 80 Wn.App. 384, 909 P.2d 945 (1996). Nonetheless, any error in admitting the blood test should be seen as harmless error because even without the blood test there was ample evidence to support all of Morales convictions.

First off, to hold that because a police officer does not understand the foreign language the rights are being read in means the rights were not read would turn our interpreter system upside down. Obviously, the overwhelming majority of the time an interpreter is involved in our court system, the police officers do not understand what the interpreter is saying. But just because the officers do not understand the language does not mean that the rights or warnings were not read to any given defendant. This argument by Morales is nonsensical and defies common sense-- and furthermore is not supported by the record in this case because the record shows that Trooper Brunstad *did* read the special

evidence warnings to Morales at the hospital with the assistance of the hospital's Spanish interpreter. 9/11/07 RP 203, 207, 220. Nonetheless, the trial court in this case held that the special evidence warnings were not needed here (even though all indications were that the warnings were read in Spanish to Morales) because the blood test was mandatory. 9/11/07 RP 252-53. It appears that this ruling by the trial court was in violation of the Washington Supreme Court's ruling in State v. Turpin, 94 Wn.2d 820, 620 P.2d 990 (1980). However, as argued below, this error should be deemed harmless.

A reviewing court reviews a trial court's ruling on the admission of a blood alcohol test result for abuse of discretion. State v. Hultenschmidt, 125 Wash.App. 259, 264, 102 P.3d 192 (2004); City of Seattle v. Clark-Munoz, 152 Wash.2d 39, 44, 93 P.3d 141 (2004). A court abuses its discretion when such discretion is exercised on untenable grounds or for untenable reasons. Hultenschmidt, 125 Wash.App. at 264, 102 P.3d 192. Additionally, "[i]f the judgment of a trial court can be sustained on any grounds, whether those stated by the trial court or not, it is [the reviewing court's] duty to do so." State v. Williams 104 Wash.App. 516, 524, 17 P.3d 648 (2001), citing State v. Armstead, 40 Wash.App. 448,

449-50, 698 P.2d 1102 (1985) (quoting State v. Ellis, 21 Wash.App. 123, 124, 584 P.2d 428 (1978)).

On appeal, Morales claims that the "special evidence warning" was not read to him. Brief of Appellant 16. However, that does not appear to be what the court ruled or what the testimony shows.

Specifically, Morales states, "[in ruling on the admissibility of the blood tests, the court seemingly acknowledged that, similar to the 3.5 statements made to the interpreter at the hospital, the State could not establish, without calling the interpreter to testify, what was actually read to Mr. Morales." Brief of Appellant 16. But the trial testimony shows that Trooper Brunstad contacted Morales at the hospital. 9/10/07 RP 74. Trooper Brunstad used the services of the hospital emergency room's Spanish interpreter to read Morales' constitutional rights. Id. Trooper Brunstad specifically said that the rights the interpreter read Morales included the special evidence warnings. Id. 74, 207, 209. Morales indicated to Brunstad that he understood the rights read to him. Id. Morales did not indicate to Trooper Brunstad that he did not understand any of the warnings read to him through the interpreter. Id. 75, 209. However, because he does not understand Spanish, Trooper

Brunstad admitted that he could not be sure that the interpreter read all of the constitutional warnings to Morales. *Id.* 76. Thus, in the first place, this evidence does not show, as urged by Morales, that the "special evidence warning was not read to him." Brief of Appellant 16. Indeed, the State has no idea *where* in the *record* Morales is finding his "facts" because there is not a single citation to the record in this section of Morales' argument. Brief of Appellant 16-18. Morales also claims that the trial court "concluded that the Washington State Patrol must have invented the special evidence warning out of thin air and put it on the implied consent form needlessly." Brief of Appellant 17. Again, there is no citation to the record as to this supposed remark made by the trial court and the State cannot find where the trial court said the State Patrol invented something "out of thin air." As such, this remark by Morales should be stricken.

On the other hand, the record *does* show that the Trooper testified clearly that he read the special evidence warning to Morales, through a Spanish interpreter who was at the hospital. 9/10/07 RP at 74, 75, 208, 209. In addition, Trooper Thornburg stated that when he was asking Morales general questions, that Morales did appear to have no difficulty understanding the

Trooper. 9/10/07 RP 55. In any event, Morales' argument that "there is no evidence Mr. Morales was advised of his right to additional testing" is completely contradicted by the testimony of the Trooper that he did read the special evidence warnings to Morales with the help of the interpreter. Id. 74, 207-209. Moreover, the trial court, in an oral ruling, specifically found that:

The trooper communicated with defendant fairly easily. Defendant gave no indication to the trooper that he did not understand their interactions. The trooper asked the defendant four questions at that point. "Were you involved in a collision?" The defendant answered yes. "Were you driving?" The defendant answered yes. "Were you the only one in the car?" The defendant answered yes. "And have you been drinking?" The defendant answered one beer.

* * *

The defendant was then contacted at the hospital by Trooper Brunstad. That trooper advised the defendant of Miranda rights and special evidence warnings with assistance of a hospital emergency room interpreter.

9/11/07 RP at 96, 97 (emphasis added). Thus, the trial court specifically found that Morales had no trouble understanding the initial questions from the Trooper and furthermore that the Trooper read the special evidence warnings to Morales with the aid of the hospital's interpreter. Id.

At trial and implicitly on appeal, Morales argues that because the Trooper did not understand Spanish that there was no way the

Trooper could know for sure what was being read to Morales. 9/11/07 220. Were this the case, this same argument could be used every time any interpreter is used in court since nearly always police officers, judges, and lawyers are not fluent in the language being spoken. In other words, unless all of us are fluent in the Spanish language, we can never know "for sure" what is read to any given person in another language in court or otherwise. Still, our system functions every day using various interpreters to help defendants navigate the criminal justice system--regardless of whether the rest of us "understand" what is being translated. Here, the Trooper clearly did his best to have the special evidence warnings read to Morales through the interpreter available at the hospital and Morales did not indicate that he did not understand what was being read to him. 9/11/07 RP 207. Because Morales argument that the special evidence warnings were never read to him is not supported by the record, that portion of his argument should be disregarded.

However, it does appear that Morales is correct that the trial court erred when it held that the special evidence warnings did not apply here because given the circumstances of the vehicular assault, the blood test was compulsory. 9/11/07 RP 252-253.

State v. Turpin, 94 Wn.2d 820, 620 P.2d 990 (1980); State v. Anderson, 80 Wn.App. 384, 909 P.2d 945 (1996). Nonetheless, any error should be deemed harmless because even without the blood test evidence, there was sufficient evidence presented to support the jury verdicts of driving under the influence under the "affected by" prong of the statute, and of vehicular assault by driving in a reckless manner causing bodily injury to another. RCW 46.61.502(4); RCW 46.61.522(1)(a).

An error in admitting evidence that does not result in prejudice to the defendant is not grounds for reversal. State v. Bourgeois 133 Wash.2d 389, 403-405, 945 P.2d 1120, 1127 - 1128 (1997), citing, Brown v. Spokane County Fire Protection Dist. No. 1, 100 Wash.2d 188, 196, 668 P.2d 571 (1983). If the error results from violation of an evidentiary rule and not a constitutional mandate, the more stringent "harmless error beyond a reasonable doubt" standard is *not* applied. Bourgeois, supra, citing State v. Cunningham, 93 Wash.2d 823, 831, 613 P.2d 1139 (1980); State v. Tharp, 96 Wash.2d 591, 599, 637 P.2d 961 (1981). Instead, the reviewing court will apply "the rule that error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred."

Bourgeois, supra, citing Tharp, 96 Wash.2d at 599, 637 P.2d 961; accord State v. Halstien, 122 Wash.2d 109, 127, 857 P.2d 270 (1993). The improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole. Nghiem v. State, 73 Wash.App. 405, 413, 869 P.2d 1086 (1994).

In the present case, the admission of the blood test was "of minor significance in reference to the overall, overwhelming evidence as a whole--and should be considered harmless error. Id. In the first place, the effect of the blood test itself was "diluted" because the test was taken more than two hours after driving. 9/11/07 RP 116 (accident occurred about 1:35 p.m.); 9/11/07 RP 209 (blood drawn at 3:35 p.m.) But even without the blood test the evidence was overwhelming that Morales committed these offenses. The evidence shows that on November 3, 2004, Jose Morales ran through a stop sign and collided with Ms. Robertson's vehicle. 9/11/07 RP 118. Nancy Gunn, Ms. Robertson's mother, was a passenger in Ms. Robertson's vehicle. 9/11/07 RP 123. Ms. Gunn saw Morales' vehicle run through the stop sign and fail to stop. Id. 134. As a result of Morales' vehicle colliding with the Robertson car, Ms. Gunn sustained a broken ankle from the

resulting crash. Id. 124, 129, 130, 134, 190. Because of her injuries, Ms. Gunn wore a cast for about six months. Id. 136. Officers at the scene noted the odor of intoxicants coming from Morales and that his eyes were bloodshot and watery. 9/11/07 RP 168, 169, 201. Additionally, Morales vehicle had beer bottles or beer cans inside of it, as well as a box of beer on the floor in the back seat. 9/11/07 RP 173, 174. All of these facts show that Morales was driving his vehicle while affected by alcohol and that his driving was affected to such a degree that Morales drove through a stop sign and rammed into the Robertson vehicle, causing substantial bodily injury in the form of a broken ankle to the passenger in the Robertson vehicle, Nancy Gunn. Morales' driving his vehicle while affected by alcohol and running through a stop sign and crashing into the other vehicle and then leaving the scene proves that Morales was operating his vehicle in a rash and heedless manner which showed indifference to the consequences. State v. Roggenkamp 153 Wash.2d 614, 106 P.3d (2005). Thus even without the blood test results, there was sufficient evidence presented to support Morales' convictions and any error in admitting the test was harmless.

C. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT MORALES' CONVICTIONS FOR DRIVING UNDER THE INFLUENCE AND VEHICULAR ASSAULT BY DRIVING IN A RECKLESS MANNER AND CAUSING BODILY INJURY TO ANOTHER.

Morales claims there was insufficient evidence presented to sustain his convictions for driving under the influence and for the jury finding that Morales caused bodily injury to another by driving in a reckless manner. Brief of Appellant 19-22. These arguments are without merit.

The standard for determining sufficiency of the evidence on appeal is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Hermann, 138 Wn.App. 596, 602, 158 P.3d 96 (2007), citing State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In challenges to sufficiency of the evidence, "the appellant admits the truth of the State's evidence and all inferences that can reasonably be drawn from it." Id., citing State v. McNeal, 145 Wn.2d 352, 360, 37 P.3d 280 (2002). Direct evidence and circumstantial evidence are given equal weight. Id., citing State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). Credibility determinations are for the trier of fact and are not subject to review. State v. Thomas, 150 Wn.2d 821, 874, 83 P.3d 970

(2004)(citing State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)). The reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Thomas, 150 Wn.2d at 874-75, 83 P.3d 970 (citing State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)). "The State bears the burden of proving all of the elements of the crime charged beyond a reasonable doubt." Hermann, 138 Wn.App. at 602, citing State v. Teal, 152 Wn.2d 333, 337, 96 P.3d 974 (2004); State v. McCullum, 98 Wn.2d 484, 489, 656 P.2d 1064 (1983).

Morales is claiming there was insufficient evidence presented to sustain his conviction for driving under the influence and for the jury's finding that Morales caused bodily injury to another by driving in a reckless manner. In making this meritless argument, Morales states, "[f]or purposes of this argument, Mr. Morales assumes . . . [the Court of Appeals] agrees that the blood test and the evidence of beer found in the car (other than the two cans seen on the front seat from a lawful vantage point) was erroneously admitted into evidence." Brief of Appellant 20.¹ This is

¹ Once again Morales fails to cite to the record in this section of his argument pertaining to the driving under the influence prong of the statute. Therefore, the State has no idea where Morales has found the various "facts" he references in this section of his brief.

not the correct legal standard. In picking and choosing which evidence he will rely upon in his sufficiency argument, Morales completely ignores the rule that when reviewing the sufficiency of the evidence, "the appellant admits the truth of the State's evidence and all inferences that can reasonably be drawn from it." State v. Hermann, 138 Wn.App. 596, 602, 158 P.3d 96 (2007) (emphasis added), citing State v. McNeal, 145 Wn.2d 352, 360, 37 P.3d 280 (2002). Thus, far from being able to pick which evidence this court will consider when reviewing the sufficiency of the evidence, Morales must view the evidence presented in the light most favorable to the State, taking said evidence as true, together with all inferences that can be drawn from it in favor of the State. Herman, supra. But Morales has thrown out this well-settled principal of law when he decided to pick and choose what evidence will be considered in his sufficiency argument. Accordingly, his argument is meritless.

The driving under the influence statute states, in pertinent part as follows:

- (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:
 - (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown

by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug;. . .

* * *

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

RCW 46.61.502 (emphasis added).

A person is guilty of vehicular assault if he operates or drives any vehicle:

(a) In a reckless manner and causes substantial bodily harm to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and causes substantial bodily harm to another; or

(c) With disregard for the safety of others and causes substantial bodily harm to another. . . . (3) As used in this section, "substantial bodily harm" has the same meaning as in RCW 9A.04.110.

RCW 46.61.522.

The facts presented in this case amply support Morales' convictions for vehicular assault and for driving under the influence under the "affected by" prong of the statute. On the day in

question, witness William Oberg's attention was drawn to a heavily-damaged vehicle going northbound on State Route 507. 9/11/07 RP 154. Oberg saw that the damaged vehicle's hood was sticking up in front of the windshield and steam was coming from the engine compartment. Id. Oberg identified Morales's vehicle as the damaged vehicle he saw on the date in question. Id. 155. Oberg then came upon another damaged vehicle that was parked with persons standing around outside the vehicle. Id. Oberg stopped and asked the occupants if they'd been a victim of hit and run and they said yes. Id. Oberg turned around and went after the other damaged vehicle he'd seen earlier. Id. Oberg found the vehicle and noted a lone person, later identified as Morales, exiting the driver's side of the vehicle. Id. 156. Oberg also identified Morales in court as being the person he saw exiting the damaged, steaming car that day. Id. Oberg approached Morales and ordered him to get down on the ground. Id. 157. Oberg, a retired former police officer, "basically sat on" Morales until the police arrived. Id. 157. When Oberg told Morales that he should have stayed at the scene of the accident, Morales said, "I don't care about what happened to them." Id. 158.

The driver of the other vehicle, seventy-one-year-old Marilyn Robertson testified that on November 3, 2004, she was involved in a car accident. 9/11/07 RP 115. It was a clear, nice day and the roadway was bare and dry. 9/11/07 RP 165, 196. Robertson's mother, Ms. Gunn, was riding in the passenger seat of her vehicle. Id. 117. Robertson guessed that she was driving between 35 and 40 miles per hour. Id. Robertson said she saw a vehicle approaching the stop sign on Big Hanaford Road. The car, later identified as being driving by Appellant Morales, failed to stop at the stop sign. Id. 118. The right side of Robertson's vehicle was damaged when Morales drove through the stop sign and hit her vehicle. Id. After the collision, Morales drove off, leaving the scene of the accident and he did not return to the scene, to Ms. Robertson's knowledge. Id. 120, 127. Ms. Robertson sustained bumps and bruises to her shoulders, neck and forehead. Id. 122. She also had severe pain in her knees. Id. 121, 122. Robertson's mother, Ms. Gunn, was the passenger in the vehicle. Ms. Gunn also sustained injury to her leg or ankle and was crying out in pain. Id. 124. It was later determined that Gunn's ankle was broken in the crash. . Id. 134, 190. As to the driver of the offending vehicle, Robertson said that it was a man and he was alone in the vehicle.

Id. 126. From a photograph admitted at trial, Robertson identified the vehicle that hit her. Id. (Identifying Morales' vehicle, Pl. Ex. 2). Eighty-two-year-old Nancy Gunn was the passenger in the car with her daughter, Ms. Robertson. 9/11/07 RP 134, 190. Ms. Gunn saw the other vehicle run through the stop sign and fail to stop. Id. 134. Ms. Gunn sustained a broken ankle from the resulting crash of the two vehicles. Id. 134, 190. Ms. Gunn wore a cast for about six months. Id. 136.

Trooper Thornburg said he arrived at the location of Morales' car and saw that another subject had Morales on the ground. 9/11/07 167. Upon contacting Morales, Trooper Thornburg noticed an obvious odor of intoxicants coming from Morales and that Morales' eyes were watery and bloodshot. Id. 201. Morales admitted to Trooper Thornburg that he was the driver of the vehicle that was in the accident, and that he was alone in the vehicle. 9/11/07 RP 169. Morales admitted only that he'd had "one" beer. Id. 170. Upon searching Morales' person incident to arrest, Thornburg found identification in Morales' pockets identifying Morales as Jose Morales. 9/11/07 RP 173. Trooper Thornburg also found two keys on Morales' person. Id. One of these keys fit the ignition of the vehicle Morales had been driving when he was in

the accident. 9/11/07 RP 173. While looking through the window of Morales' vehicle, Trooper Thornburg also saw two beer bottles and one beer can which were full, and saw two empty cans.

9/11/07 RP 173. At trial, Trooper Thornburg identified pictures of the bottles and cans seen in Morales' vehicle. 9/11/07 RP 174.

One of the pictures identified by Trooper Thornburg as being of the inside of Morales' vehicle showed a box of Budweiser located on the floor behind the driver's seat. 9/11/07 RP 174. Trooper Thornburg identified Morales and his vehicle in court. 9/11/07 RP 167, 170. Blood was drawn from Morales at the hospital and the blood vials were sent to the laboratory for testing. 9/11/07 RP 209, 210-215, 226-232, 233-242. The results of Morales' blood test was that "the blood ethanol was at 0.12 grams per one hundred mils of blood. Point one two." 9/11/07 RP 255. Morales' blood was drawn more than two hours after driving. 9/11/07 RP 255. Steven Orr, also a witness to the accident, saw a vehicle pull out in front of the Robertson vehicle. 9/11/07 RP 258. Orr thought that Morales (identified as "some guy" by Orr) did not stop at the stop sign--that he "rolled the stop sign"-- although he was not "a hundred percent sure." 9/11/07 RP 259, 261. Orr saw the vehicle drive off after hitting the other vehicle. Id. 260.

Morales did not present any evidence at trial. 9/11/07 RP 263. Thus, what the above-set-out evidence shows is that Morales' vehicle ran through a stop sign and hit Ms. Robertson's vehicle, causing injuries to Robertson and substantial bodily injury to her mother, the passenger, who suffered a fractured ankle. This evidence also shows that in addition to running a stop sign before hitting Robertson, that Morales was driving under the influence, as evidenced by the .12 blood alcohol level (drawn more than two hours after driving) and because the evidence (including the beer bottles and cans in his car and his bad driving), the odor of intoxicants about Morales and because the evidence showed Morales' driving was "affected by" the alcohol when he ran through the stop sign. These facts show that Morales committed the crimes of driving under the influence because he was affected by intoxicants and for vehicular assault by driving in a rash or heedless and careless manner by driving while affected by intoxicants and thereby running the stop sign and crashing into Ms. Robertson's vehicle, causing substantial bodily injury to Ms. Gunn (the crash caused Ms. Gunn's broken ankle). Accordingly, the evidence presented in this case, when viewed in the light most favorable to the State and admitting the truth of the state's evidence and all

inferences therefrom, is more than sufficient to sustain Morales' convictions for driving under the influence and vehicular assault. Morales' convictions should be affirmed.

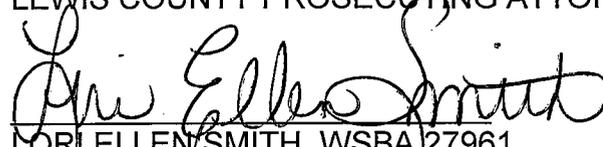
CONCLUSION

The trial court did not abuse its discretion when it ruled that the evidence inside Morales' car was admissible under the inevitable discovery doctrine. Although the facts show that the Trooper read the special evidence warnings to Morales with the assistance of the hospital's interpreter, the ruling by the trial court stating that the blood test was admissible because no warning was necessary because the test was mandatory was in error. However, any error in admitting the blood test was harmless because even without the blood test the evidence of guilt was overwhelming. Finally, when viewed in the light most favorable to the State, there was sufficient evidence presented to support Morales' convictions for driving under the influence and for vehicular assault by driving in a reckless manner and causing bodily injury to the passenger in the vehicle that Morales hit. Accordingly, Morales' convictions should be affirmed in all respects.

RESPECTFULLY SUBMITTED this 3rd day of December, 2008.

L. MICHAEL GOLDEN
LEWIS COUNTY PROSECUTING ATTORNEY

by:

A handwritten signature in cursive script, appearing to read "Lori Ellen Smith". The signature is written in black ink and is positioned above the printed name of the signatory.

LORI ELLEN SMITH, WSBA 27961
DEPUTY PROSECUTING ATTORNEY

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

08 DEC -4 PM 12:41

STATE OF WASHINGTON
BY _____

STATE OF WASHINGTON,)
Respondent,)
vs.)
JOSE MORALES,)
Appellant.)
_____)

NO.36941-9-II

DECLARATION OF MAILING

DEPUTY

LORI SMITH, Deputy Prosecutor for Lewis County, Washington, on behalf of Respondent State of Washington, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On 12/3, 2008, I served a copy of the RESPONSE BRIEF upon the Appellant by depositing the same in the United States Mail, postage pre-paid, addressed to the attorney for the Appellant as follows:

Anne M. Cruser
Attorney at Law
P.O. Box 1670
Kalama, WA 98625

Dated this 3 day of December, 2008, at Chehalis, Washington.



Lori Smith, Deputy Prosecutor
WSBA No. 27961
Attorney for the Respondent
Lewis County Prosecuting Attorney's Office