

NO. 90073-6

WASHINGTON STATE SUPREME COURT

STATE OF WASHINGTON,

Plaintiff,

vs.

JOSE VALENCIA HERNANDEZ,

AKA JAIME JOSE LLAMAS,

JAIME LLAMAS HERNANDEZ,

Defendant.

Received
Washington State Supreme Court

E MAY 12 2014 CRF
Ronald R. Carpenter
Clerk

motion for discretionary review

RAP 13.1 (a); 13.3; 13.4(b)(1)(2)(
RAP 2.3 (b)(d) (1-4)

ON APPEAL FROM COURT OF APPEALS

DIVISION TWO
No. 42897-1-II

DISCRETIONARY REVIEW BRIEF OF

JOSE VALENCIA HERNANDEZ, pro se
Jose Valencia Hernandez. MAY 8, 2014
STAFFORD CREEK CORRECTION CENTER
191 Constantine Way
Aberdeen, WA 98520-9504

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1. Trial Court failed to allow newly obtained counsel time to interview, investigate, confront culprit witnesses.

2. Trial Counsel failed to interview, investigate **"ALIBI"** witnesses for proper defense for Valencia-Hernandez.

3. Counsel fails to show gross prejudice from the **"JOINDER"** of the **"TAMPHERED-TAINTED-PLANNED"** Evidence in a locked bedroom.

4. Counsel failed to emphasize the facts that **"PRIOR TO"** obtaining the legal search warrant to breaking the locked bedroom door the OFFICERS WERE ALLOWED TO TAMPHER, TAINT THE EVIDENCE.

5. Counsel failed to investigate the three **"CULPRIT"** occupants, who were in possession of the drugs and weapons.

6. Trial counsel failed to compel the prosecutors and officers to produce statements or declared confessions of the three occupants of Meadow Wood apartment, who were in possession of the drugs and weapons.

7. Counsel failed to inquire why the three culprits were deported to Mexico before they held a trial for Valencia-Hernandez.

8. Counsel failed to present relevant evidence that Valencia-Hernandez was NOT the occupant of Meadow wood apartment, out that he resided over ten (10) miles away.

9. Counsel failed to present relevant evidence of Valencia-Hernandez being at his wife's residence March 4 and 5, 2010 until 9:00 am.

10. Counsel failed to compel the officers to explain the **"DEAL"** made with the three **"CULPRITS"** who were deported to MEXICO, so that they could NOT be confronted.

11. Appellant counsel failed to argue that the three occupants in possession of Meadow wood apartment **"PLANTED-TAMPHERED"** the evidence before the officers obtained a legal search warrant, violating Mr. Hernandez's Constitutional Rights to a fair trial.

12. Appellant counsel failed to brief the too many trial court errors as a gross abuse of discretion in denying Motions of severance and mistrial.

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I. IDENTITY OF APPELLANT

A. Appellant, Jose Valencia-Hernandez, pro se, and unequal to the highly skilled prosecution attorney, MOTIONS this Court to consider mitigating facts of trial court abuse of discretion.

II. CITATION TO COURT OF APPEALS DECISION

A. The Appellant appeals his sentence and jury convictions for first degree arson, possession of methamphetamine with intent to deliver while armed with a firearm, and first degree unlawful possession of a firearm.

1. Appellant argues that the trial court ERRED in denying his motion to sever counts("of three others who were in actual possession of Meadow Wood apartment")because none of the charges shared a single element of proof.(COA Opinion p10) Because the evidence for various counts was cross admissible ("to three others who were in actual possession of Meadow Wood Apartment and the methamphetamine and firearms"^{Ex No 1-5}) and Valencia-Herandez fails to show prejudice from their*joinder*, we hold that the trial court did not abuse its discretion in denying his motion for severance.

a. Jose Valencia-Hernandez's Due Process and "like treatment" rights of the Fifth, Sixth, and Fourteenth Amendment of USC and WSC Article I, sections 3,9,10,22¹² have been violated as a miscarriage of justice. In re PRP D'allesandro, No. 37217-7-II(2013)emphasis n1-28; State v. Arquette, No.42546-7-II(2013) Petitions granted and convictions reversed.

b. Appellant's counsel failed to investigate, to interview other (*ALIBI*) witnesses. Counsel failed to inquire^{ad} to the Appellant's residence being about 10 miles away from the scene of drugs and weapons. (1) there was NO strength of the State's evidence on each count,(2) the jury's ability to compartmentalize the evidence, and (3) the ability to instruct the jury to consider each count separately, and (4) the cross admissibility of evidence among various counts.

The January 28,2014 Court of Appeals II Opinion is an error to justice.

c. The Appellant has shown that either (1) constitutional error that caused actual and substantial prejudice to his receiving a fair trial or (2) also has shown non-constitutional error that caused a fundamental defect resulting in a complete miscarriage of justice. State v. Arquette, No. 42546-7-II n17(2013); In re PRP Finstad, No. 86018-1(2013) Prejudice has resulted from the Court allowing officials (detectives) to testify about evidence of drugs and weapons that were in possession of Jaun Jose Guzman-Sanchez, Alfredo Bargarro and Armando Montel (lessors ^{Ex No. 1-5} and occupants of Meadow Wood Apartment of drugs and weapons) (See appendix exhibits No. 1-4) State v. Arquette No. 42546-7-II(2013) The evidence and testimony clearly *points to verified occupants of Meadow Wood apartment and not to Jose Valencia-Hernandez's at 11119 N.E. 43 Road Circle, which was about 10 miles away.)See appendix exhibit No. 1-4(

d. There was no corroborating evidence presented by the state to clearly show that the appellant was connected to drugs and weapons. State v. Brown, No. 42752-4-II(2013) The three *culprits* of Meadow Wood Apartment, framed the Appellant (16 months before Appellant's trial) with a *DEAL* to be sent back to Mexico. This error amounts to a manifest of injustice for Valencia-Hernandez and needs to be reversed, based on facts that the Appellant was in California to June 9, 2010. Counsel failed to produce evidence of that "ALIBI" fact. Brown v. Myers, 137 F. 3d 1154(9th Cir 1998) Counsel's failure to investigate Appellant's relevant "ALIBI" defense or to present any alibi witnesses to corroborate the Appellant's testimony undermined confidence in the outcome of the farce of a "COMBINED EVIDENCE TRIAL"; the Court of Appeals-II, 1/28/14 Opinion, page 10 is a substantial manifest error ! U.S.v. Dawson, 857 F.2d 923(3rd Cir.1988) Counsel's failure to interview and call alibi witnesses (as Valancia-Hernandez Counsel should have done) WHO WOULD HAVE shown that the Appellant was in another city at the time of alleged crimes, constituted performance below an objective standard of reasonableness. Strickland v. Washington, 466 U.S.668,691(1984); Alcala v. Woodford

334 F.3d 862(9thCir2003) Counsel(Appellant's) failed to secure testimony of alibi witnesses that Valencia-Herandez was in another city at the time of alleged offenses, and was NOT in possession of drugs NOR weapons. ENCL-5

2. Court of Appeals II 1/28/14 Opinion is a manifest error(page 11) because the evidence was NOT "cross admissible to establish Valencia-Hernandez's identity and mens rea for multiple counts; (W)hen the evidence was clearly "PLANTED" TAMPED before the legal search warrant was obtained March 5, 2010.) Appendix transcript RP1-2222 Carriger v. Stewart, 132 F.3d 463(9thCir1997)n2; Brady v. Maryland, 373 U.S.83,87-88(1963) And Court error of allowing the Jury's reliance on false information. State v. Herzog, 112 Wn 2d 419,431,432(1989); State v. Hunley, No. 86135-8(2012)n27-29.

a. It is very clear from the pages of the verbatim report that the Detectives at Meadow Wood Apartment on March 5,2010, *PRIOR to obtaining*a legal search warrant, mauled, sifted, PLANTED* evidence to implicate Mr.Hernandez, beings he was not an occupant of that building and resided about 10 miles away. State v. Clark, 308 P.3d 590, No. 87376-3(2013) This is a manifest of injustice of illegally planted obtained evidence by official misconduct

b. The trial Court erred by not granting defendant's motion to suppress the evidence that had been planted and mauled. Bosteder v. City of Renton, 155 Wn. 2d 18,29,117 P.3d 316(2005) Generally , a search conducted *PRIOR TO* obtaining legal authorization of a search warrant violates the Fourth Amendment of the U.S.XConstitution, and the Washington State Constitution Article 1, Sections 3 and 9,10,7*¹⁷/₁₂

c. State v. Garcia-Salgado, 170 Wn2d 176,184,240 P.3d 153(2010) The remedy for a Fourth Amendments violation is the EXCLUSION of the illegally obtained or PLANTED TAMPED EVIDENCE at Meadow Wood Apartment. That was NOT in the possession of Mr. Hernandez. State v. Eserjose, 171 Wn.2d 907,913 n5,259 P.3d 172(2011)

d. The Appellant contends that the State did NOT make a prima facie showing of evidence, based upon fact that the Detective's testimony was "hearsay" about the three other occupants in actual possession of the drugs and weapons at Meadow Wood Apartment. *Ex. No. 1-5*

Accordingly, Valencia-Hernandez conviction must be reversed as in State v. Olson, 50 Wn2d 640, 314 P.2d 465(1957) Based upon a fatal variance between the allegations of the information and the proof offered; and that the evidence and proof offered under the information was THAT TO SUPPORT a conviction of actual occupants of Guzman-Sanchez, Bargaro and Montel . State v. Emmanuel, 49 Wn.2d 109, 298 P.2d 510, 517(1957) The Appellant has now made a substantial material showing of a fatal variance of Mr. Valencia-Hernandez residing about 10 miles *Ex. No. 1* away and NOT in possession of the drugs and weapons. And that the malice "planting" and flawed evidence doesn't establish the points in question in a Court of law. State v. Gray, 151 Wn.App.762, 215 P.3d 968(2009)fn9 "WE cannot DISREGARD the possibility of fatally flawed evidence in this case of Valencia-Hernandez. The Appellant contends that this third party testimony hearsay testimony IS THE CAUSE misleading and prejudices the Jury into a wrongful conviction. State v. Jones, 175 Wn.App.87, 303 P.3d 1084, 1094(2013) reversed unreliability of eyewitness or camera identification of Hernandez. Allen, 161 Wn.App. at 734, 255 P.3d 784 (2011) The Appellant was not afforded a "cautionary Jury instruction" on fatal variance, wrongful conviction, questionable identifications, official third-party hearsay, the right to confront *THREE informants sent back to Mexico so that they could not be confronted. Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004) Affirmed 176 Wn.2d. 611, 294 P.3d 679, at 682 (quoting U.S.v. Wade, 388 U.S. 218, 228, 87 S.Ct. 1926(1967) *Ex. No. 6*

e. Appellant has shown that trying "three disparate cases" together was SO MANIFESTLY PREJUDICIAL as to outweigh the concern for judicial economy. COA-II 1/28/14 Opinion page 11 Sixth Amendment guarantees a compulsory process, confront-

f. "COA-II,1/28/14/Opinion page 11" has erred by opining that trying "three disparate cases" of Sanchez, Bargaro, Montel. (*the occupants of the Meadow Wood Apartment, (*W)ho* were in possession of the drugs and weapons! EX No 1-5 U.S.v. Roberts,Doe, Wonson,Holland,Mills,726 F.Supp.1359,1366,1367(D.C.D.of C. (1989) There was no singled-out elements of evidence of culpability, as being similarly situated or equal to the "disparities" of proof beyond a reasonable doubt.

NOW THEN, Appellant, Valencia-Hernandez has clearly shown by Appendix exhibits No.1-~~5~~ that he was NOT an occupant of Meadow Wood Apartment, AND THAT he was either 10 miles away residing at 11119 N.E. 43 Road Circle,Exhibit No.3* Apartment Lease June 1,2009 through 2010, corroborated by Declarations.

SECOND genuine material fact of "three disparate cases" is befor the legal search warrant was obtained ^{/by} the Detectives and THREE OCCUPANTS of Meadow Wood Apartment, (*TAINTED THE EVIDENCE*) by planting evidence of identification of Hernandez. State v. Ibarra-Cisneros, EX No 6

THIRD, March 5,2010, before the legal search warrant was obtained, according to the verbatim report, Detectives "TAINTED the evidence") and allowed Sanchez, Bargaro, Tannabia to plant the Hernandez identification in exchange that they benefit by being deported back to Mexico, *SO that they could NOT be CONFRONTED as to the defense of Hernandez.

FOURTH, on March 5, 2010, was Valancia-Hernandez in Oregon or California? PRIOR TO obtaining the legal search warrant, the detectives and three known occupants were allowed to "tamper"-"taint" the evidnece of drugs and weapons that was presented at trial eighteen months later, after the *THREE CULPRITS* were deported back to Mexico, so that Mr.Hernadez could NOT confront them as a defense that they should have been tried as possessors of the EVIDENCE, and "*three disparate cases*" is a miscarriage of justice for the Appellant. State v. Sweany, 162 Wn.App.223(2011);In RE PRP Crace,236P.3d 914,157WnAp81(2011)

B. - - - THE COURT OF APPEALS OPINION ERRED IN OPINING THAT THE TRIAL COURT DID NOT ABUSE IT'S DISCRETION IN DENYING APPELLANT'S MOTION FOR SEVERANCE; WHEN *THREE OCCUPANTS WERE IN POSSESSION OF ALL TAMPERED EVIDENCE AT TRIAL; IT IS A MANIFEST OF INJUSTICE AND VIOLATES THE APPELLANT'S DUE PROCESS RIGHTS OF THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS OF U.S.C. AND ARTICLE 1, SECTIONS 1,3,7,12 OF THE WASHINGTON STATE CONSTITUTION.

1. The trial court was a massive showing of complex forensic QUANTITY of expert and unexpert testimony covering, (W)hat drug and weapons, clothing that was in POSSESSION OF "THREE OCCUPANTS" who "tampered-planted" such. ((See verbatim report of 20 volumes, pages 1-2222; September 22,2011 to November 1,2011.))

a. Such super massive quantity of testimony and evidence for over or around a month would be forgotten by any sensible JUROR to be able to separate the evidence as it would relate to each different defendant, (W)hen determining each defendant's innocence or guilt ! State v.Canedo-Astorga,79 Wn.App.518,528,903 P.2d 500(1995); quoting U.S.v.Oglesby, 764 F.2d 1273,1276(7thCir1985); State v. Asaeli, Valelua, Williams, 150 Wn.App.543,208 P.3d 1136(2009) Article I Section 12 are violated by statute that prescribes different punishment for the same act committed under "like circumstances" by individuals in "like situations". Olsen v. Delmore, 48 Wn.2d 545,295 P.2d 324(1956) ((Disparities in penalties)) under the Equal Protection Clause protection as provided by the 14th AM. and Article I Section 12 of the WASHINGTON Constitution.

b. NOW then, the "three culprits in Mexico" or ("trying these*three dis-^{Ex No.1-6}parate cases*) Court of Appeals Opinion p 11 is in error creating a manifest of injustice to Hernandez. In re PRP Martinez, No.83219-6(2011); In re Carter, No. 84606-5(2011)

c. The differential in punishment-sentencing "disparity" between the Appellant and the "three occupants in possession of the drugs and weapons" violates "like treatment" of Equal Protection Rights of Valencia-Hernandez; based on "race neutral Jury"; selection, verdict; of "disparity" of incarceration, deportation; disproportionate cruel and unusual punishment sentence!

deportation, disproportionate cruel and unusual punishment sentence !O'Neil v.Vermont, 144 U.S.323,339,340(1892); State v. Birnel, 89 Wn.App.459,474,949 P.2d 433(1998) The Trial Court sentenced Mr.Birnel to *only 60 months for aggravated murder of stabbing his wife 31 times ! Mr.Hernandez killed NOONE, ^{Ex N61-4} AND was NOT in POSSESSION of any of the weapons NOR evidence that was tampered. State v.Lui No.84045-8(2014); State v. Green, No.68444-2-I2013)Tainted Evidence.

Accordingly, Valencia-Hernandez judgment and sentence must be reversed.

2. The Trial Counsel and Appellant's Counsel did Not Investigate, nor interview mitigating witnesses to prove the foregoing; Court of Appeals II erred in it's Opinion page 4,5,7,8,9,10,11,19,20.Hart v. Gomez, 174 F.3d 1067,1070 (9thCir1999) A lawyer who fails to adequately investigate, and to introduce into evidence, information that demonstrates his client's factual innocence, or that raises sufficient doubt as to the question to undermine an erroneous JURY VERDICT, renders extreme prejudice and deficient performance. S.v.Thomas, 109 Wn2d 222,226(1987) quoting Strickland v. Washington, 466 U.S.668,694(1984)

a. The Appellant has clearly shown cause and prejudice by Counsel's DEFICIENT CONDUCT that more likely than not altered the outcome of this case, in a wrongful conviction and illegal imprisonment of Valencia-Hernandez/In re Matter of PRP Martinez, No.83219-6(2011) reversed and vacated.

b. The Appellant's Due Process Rights of the Sixth Amendment have been violated by the compulsory process, confrontation, and the ineffective assistance of counsel to a fair trial of exoneration. State v. Coristine, 300P.3d 400, 177 Wn2d 370(2013) Washinton State Constitution Art.1 Sections 3,12,7*

c. Counsel was NOT allowed to interview, NOR investigate the "OCCUPANTS" of Meadow Wood Apartment, where all the tampered-tainted-planted evidence was obtained.(RP 1-2222) Planted and possessed by Guzman-Sanchez, Bargaro, Montel (RP 2088,)State v. Clark, No.87376-3(2013); State v. Eserjose, 171 Wn2d 907, 913,n5,259 P.3d 172(2011) Exclusion of illegally obtained tainted evidence.

C. - - - WHETHER THE COURT ERRED WHEN IT REFUSED TO CONSIDER INSTRUCTING THE HEAVILY ARMED CUSTODY OFFICER TO BE SEATED IN A MORE NEUTRAL LOCATION. THIS DEPLORABLE IMAGE WAS HIGHLY PREJUDICIAL TO HERNANDEZ :BECAUSE THE JUROR'S MINDS WERE EXTREMELY "INFLAMED" TO GUILT VIOLATING HERNANDEZ'S SIXTH AMENDMENT RIGHTS TO A FAIR TRIAL AND WAS A MAGNITUDE OF MISJUSTICE RP - - -

A. The trial court and Court of Appeals abused discretion as a Miscarriage of Justice by allowing this "HIGHLY PREJUDICIAL" SCENE OF HEAVILY-armed officers surrounding an innocent defendant; inflamed the JUROR'S MINDS OF IMMEDIATE guilt as a Miscarriage of Justice. State v. Turner, 99 WnApp.482,994P2d284

1. The trial court abused discretion, causing an innocent man to be highly unfair prejudiced to a fundamentally unfair trial, by two "heavily armed officers, wear-bulletproof vests, guns and tasers who were seated directly behind the innocent defendant, one to each side, and in front of the "bar." Murray v. Carrier,477 U.S.

a. A MANIFEST SCENE as this is both trial court abuse and Court of Appeals ERROR AND MUST be reversed. State v. Hutchinson, 85 Wn.App.726,938 P.3d 336(1997) Valencia Hernandez was not given an evidentiary hearing to analyze the physical need of two highly prejudicial officers creating a hostile environment to inflame the minds of the Jurors. State v. Turner, 99 Wn. App.482,994 P.2d 284(2000)

b. Without an evidentiary hearing, Valencia-Hernandez's conviction must be reversed; as we must be forever vigilant to guard against the risk of denigrating the presumption of innocence by courtroom SCENE OF HOSTILE ENVIRONMENT. In re PRP Halgren, 132 P.3d 714,723, No.76161-1(2006); Wilson v. McCarthy, 770 F.2d 1482,1484(9thCir1985)

c. The Court of Appeals erred in discretion that must be founded upon factual basis set forth by an evidentiary hearing. The trial court must conduct a hearing and make a record before imposing a "hostile scene of guilt" for an innocent defendant. Murray v. Carrier, 477 U.S.478, 106 S.ct.2639(1986) The Supreme Court, although cautioning that it would not always be true, instructed

2. By analogy here, it is improper for the prosecutor to direct his Opening Statement towards Valencia-Hernandez as being a drug dealer in possession of that "tampered-planted" evidence before a legal search and seizure warrant was obtained. Such improper statements attributed to Valencia-Hernandez were calculated to portray Hernandez as a hostile defendant with two-heavily armed-guards ready to execute him. In re Matter of Halgren, No.76161-2(2006)

a. Such as the Prosecutor's Closing arguments served NO purpose, but to inflame tthe Jury's prejudice against Mr. Hernandez as being guilty and NOT to his innocence of NOT being in possession of improperly seized drugs and weapons. State v. Hernandez No.41707-3-IIn15(2012); In re PRP Martinez, No. 83219-6(2011) holding that the "nexus" requirement of actual possession. State v. Easterlin, 126 Wn Ap.170,173(2005) The Supreme Court has affirmed this concept Easterlin, 159 Wn2d at 209() Valencia-Hernandez was not in possession. Possession becomes an essential element, and the State did NOT prove that Valencia-Hernandez was in possession, when he was over ten miles away or in Oregon. State v. Hayden, 28 Wn. App.935,939(1981)(see Appendix Ex.#1-16)

b. Defense counsel, being newly appointed counsel, was NOT allowed to interview, Nor investigate witnesses, NOR subpoena critically needed witnesses. (See Appendix Exhibit 1-16) This is a magnitude of injustice, when the three "*CULPRITS*" were deported to Mexico. S.v.Northwest Magnesite Co. 28 Wn.2d 1, 182 P.2d 682,643(1947); Bennett v. Grays Harbor County, No.28734; 15 Wn 2d 343 (1942); Johnson v. Upper, 80 P. 807, 38 Wash 693 (1905)

c. The 1/23/14 Court of APPEALS Opinion page 16 is a manifest cumulation error ... (the tampered-planted) evidence "(A)ll discovered inside Valencia-Hernandez's locked bedroom." This is a Manifest gross injustice to Mr.Hernandez receiving a fair trial as a violation of his Sixth and Fourteen Amendment Rights.

In addition to the cumulative error where these statements did inflame the jury and they were not remedied by the court's instructions regarding the jury's duties. This is supported by RP_ _ _ of the Prosecutor's Opening Statement and Closing Argument. In re PRP of D'Allesandro, 314 P.3d 744, No.37217-7-II(2013)

Accordingly, Mr.Hernandez Motions this Court to grant this Petition for review; and reverse and vacate his conviction as a miscarriage of justice. State v. Arquette, 314 P.3d 426,431, No.42546-7-II(2013)

3. Mr.Hernandez has established (1) constitutional error that has caused actual and substantial prejudice to his conviction and (2) also nonconstitutional error that caused a fundamental defect resulting in a complete miscarriage of justice. In re PRP Cook, No.55603-3(1990); (See Appendix Exhibits 1-10)

a. Mr.Hernandez alleges a constitutional error, asserting that the State failed to allow new counsel to investigate, interview, and subpoena , and confront ("three culprit") witnesses and defense mitigating witnesses of alibi. In re PRP of Martinez, No.83219-6(2011); **CRAWFORD V. WASHINGTON**

b. The knowing use of "tampered-planted" evidence contravenes the due process Clause of the Fourteenth Amendment and thus results in unlawful restraint. citing Jackson v. Virginia, 443 U.S.307,316(1979); State v. Arquette, No.42546-7(2013); State v. Brown, No.42752-4(2013) vacated and remanded; In re PRP Morris, No.84929-3 (2012) The trial court's error in precluding testimony of witnesses did result in a complete miscarriage of justice. R&R The substantial likelihood existed that the jury's verdict was influenced by prosecutorial misconduct out to win at any cost. In re Matter of PRP Glasmann No. 84475-5(2012); S.v.Dye, #87929-0(2013) Miller v. Pate, 386 U.S.1,6(1967) A conviction obtain by knowing use of false evidence. White v. White, 925 F.2d 287(9th Cir 1991) Granting... based on petitioner's inability to confront adverse (three culprats deported to Mexico) Noting that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the KNOWING USE OF FALSE evidence. Napue v. Illinois, 360 U.S.264,269(1959)

HOLMAN V. McONEY; PYLE V KANSAS

c. The testimony of the transcript and the Court of Appeals opinion page 16 clearly states, "the Meadow Wood Apartment bedroom door was locked" the officers broke the lock in order of knowing of drugs and weapons; *PRIOR* to obtaining legal authority. This gave the "culprits" opportune time to "plant" or tamper the evidence of Identification. State v. Jones, 303 P.3d 1084, 1095, 175 WnAp 97; No. 41902-5-II(2013)R&R n91 Mr. Hernandez; the court erred by NOT giving weight to officers breaching a locked bedroom door prior to obtaining a legal search warrant. State v. Quezadas-Gomez No. 40162-2-II(2011)R&R Suspicion at the time, the evidence had been tampered with or even planted is a miscarriage of justice, when the real culprits were deported to Mexico. So that they could NOT be confronted is a Washington Constitution violation of Article I, section 22; providing the accused shall have the right ... to meet the witnesses against him face to face...." State v. Lui No. 84045-8(2014): No. 61804-1-I(2009)

d. The cumulative effect of two heavily armed officers, who were seated in a position to "INFLAME THE JURY" OF Mr. Valencia-Hernandez's appearance as being suspicious is a MAGNITUDE OF INJUSTICE TO him receiving a fair trial and violates Article I, Sections 3, 7, 9, 10, 14, 22 as a manifest of injustice. State v. Ruem No. 86214-1(2013)n50 The lead opinion has omitted the threshold question of officer and prosecutorial misconduct to win at any cost. State v. 119 Vote No. 64332-6(1998)957P.2d701 State v. Rivers No. 63412-2(1996)prejudice or unfair. Bennett v. Grays Harbor County No. 28734(1942).R&R This action contributes to a manifest of gross injustice.

D. - - - -CONCLUSION _ - -

FOR ALL THE FOREGOING constitutional and non-constitutional errors of the court, Valencia-Hernandez asks this Court to consider reversing his conviction and either remanding with instructions to fairness or to vacate his conviction.

Dated ~~githis~~ day of ~~April~~ ^{MAY} 2014.

Jose Valencia Hernandez

Jose Valencia-Hernandez, 301220

Appendix 1

MONTHLY RENTAL AGREEMENT

THIS AGREEMENT, entered into this 15th day of June, 2009 (year),
by and between Alberta Barajas + Efrén Posada, hereinafter Lessor,
and Jose Valencia Hernandez, hereinafter Lessee.

WITNESSETH: That for and in consideration of the payment of the rents and the performance of the covenants contained on the part of Lessee, said Lessor does hereby demise and let unto Lessee, and Lessee hires from Lessor those premises described as:

located at: 11119 NE 43rd Cir
Vancouver WA 98682

for a tenancy from month-to-month commencing on the 1st day of June, 2009 (year), and at a monthly rental of eight hundred fifty and no/100 Dollars (\$ 850.00) per month, payable monthly in advance on the 1st day of each and every month, on the following TERMS AND CONDITIONS:

1. **Occupants.** The said premises shall be occupied by no more than 3 adults and 2 children.

2. **Pets.** No pets shall be brought on the premises without the prior written consent of Lessor.

3. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the premises.

4. **Repairs or Alterations.** Lessee shall be responsible for damages caused by his negligence and that of his family or invitees and guests. Lessee shall not paint, paper or otherwise redecorate or make alterations to the premises without the prior written consent of Lessor. All alterations, additions, or improvements made to the premises with the consent of Lessor shall become the property of Lessor and shall remain upon and be surrendered with the premises.

5. **Upkeep of Premises.** Lessee shall keep and maintain the premises in a clean and sanitary condition at all times, and upon the termination of the tenancy shall surrender the premises to Lessor in as good condition as when received, ordinary wear and damage by the elements excepted.

6. **Assignment and Subletting.** Lessee shall not assign this Agreement or sublet any portion of the premises without prior written consent of Lessor.

7. **Utilities.** Lessee shall be responsible for the payment of all utilities and services, ~~_____~~ B.B.

8. **Default.** If Lessee shall fail to pay rent when due, or perform any term hereof, after not less than three (3) days written notice of such default given in the manner required by law, Lessor, at his option, may terminate all rights of Lessee hereunder, unless Lessee, within said time, shall cure such default. If Lessee abandons or vacates the property, while in default of the payment of rent, Lessor may consider any property left on the premises to be abandoned and may dispose of the same in any manner allowed by law.

NOTICE: Contact your local county real estate board for additional forms that may be required to meet your specific needs.

9. Security. The security deposit in the amount of \$ 850.00 , shall secure the performance of Lessee's obligations hereunder. Lessor may, but shall not be obligated to, apply all or portions of said deposit on account of Lessee's obligations hereunder. Any balance remaining upon termination shall be returned to Lessee. Lessee shall not have the right to apply the security deposit in payment of the last month's rent.

10. Right of Entry. Lessor reserves the right to enter the demised premises at all reasonable hours for the purpose of inspection, and whenever necessary to make repairs and alterations to the demised premises. Lessee hereby grants permission to Lessor to show the demised premises to prospective purchasers, mortgagees, tenants, workmen, or contractors at reasonable hours of the day.

11. Deposit Refunds. The balance of all deposits shall be refunded within two (2) weeks (21 days in California) from date possession is delivered to Lessor, together with a statement showing any charges made against such deposits by Lessor.

12. Termination. This Agreement and the tenancy hereby granted may be terminated at any time by either party hereto by giving to the other party not less than one full month's prior notice in writing.

13. Attorney's Fees. The prevailing party in an action brought for the recovery of rent or other moneys due or to become due under this lease or by reason of a breach of any covenant herein contained or for the recovery of the possession of said premises, or to compel the performance of anything agreed to be done herein, or to recover for damages to said property, or to enjoin any act contrary to the provision hereof, shall be awarded all of the costs in connection therewith, including, but not by way of limitation, reasonable attorney's fees.

14. Radon Gas Disclosure. As required by law, (Landlord) (Seller) makes the following disclosure: "Radon Gas" is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in . Additional information regarding radon and radon testing may be obtained from your county public health unit.

15. Lead Paint Disclosure. "Every purchaser or lessee of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller or lessor of any interest in residential real estate is required to provide the buyer or lessee with any information on lead-based paint hazards from risk assessments or inspection in the seller or lessor's possession and notify the buyer or lessee of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

16. Additional Terms and Conditions. - A late fee of \$5000 will be assessed for payments received after the 5th of each month.

Lessee

Lessor

Lessee

Lessor

Appendix 2

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,
Plaintiff,

No. 10-1-00351-7

vs.

JOSE VALENCIA-HERNANDEZ,
Defendant.

AFFIDAVIT OF JOSE VALENCIA
HERNANDEZ IN SUPPORT OF
CrR 7.8 Motion to Modify
and Motion For Order of
Release

1. Jose Valencia-Hernandez, 301220, Declares the following:

2. I'am of adult age, a resident of Stafford Creek Correction Center since 2012.

3. I would like to express my sincere remorse for my past bad action, that have also been a terrible example set for my family, and two children Nou Gomez age 6 and Jaime Llameas, age 9, whom I dearly cherish.

4. I have sincerely realized how much I love and cherish my wife, Ashley Gomez, the mother of my children, and how much I have wronged them by my actions. They come to visit me regularly, causing me to realize that I have a very important responsibility to care for them.

5. It is no excuse that I was suffering a diminished mental state of mind due to drugs at the time of my prior bad actions. I, now have a responsible state of mind control to take on the care of my family.

6. The Trial Court erred in not giving proper review of the insufficient evidence on the current charges.

7. I believe that, I should be given another chance to be productive citizen, and to support my family, in accordance to the current statement and authority of Attorney General Eric Holder's proposal of a reduced sentence.

8. Attorney General Holder's 'fundamentally new approach' to prosecuting minor drug offenders, in a bid to relieve the nations bloating prison population and overcrowding prison population and the financial strain upon other taxpayers and states. "Lawmakers should plunge in and repeal their laws for a just justice system.

9. In addition to caring for my family, I also have the responsibility to care for my father and mother, who are of an age that depends on my help. As I love and cherish them, I would like a second chance to show that care and responsibility.

10. I, Jose Valencia, Hernandez ask this Court to modify my Judgment and Sentence for the time already served from March 2010, to the current date, and honor the conditional Order of Release.

STATE OF WASHINGTON)
GRAYS HARBOR COUNTY) ss



The undersigned on oath states: I am the Defendant, declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Scribed and sworn to before me this 13 day March 2014.

John S. Thompson
Notary
3/13/2014

Jose Valencia Hernandez
Jose Valencia-Hernandez, 301220

Appendix 3

STATE OF WASHINGTON,
Respondent,

No. 42897-1-II

v.

JOSE VALENCIA-HERNANDEZ, AKA,
JAIME JOSE LLAMAS,
APPELLANT.

I, Patricia Barragan am of the legal age, and was
a resident of Clark County, Washington, during and about January-March 2010.

2. That I have been acquainted with Jose Valencia-Hernandez for more than
a period of several years.

3. During this mentioned time period, I always visited Jose Valencia at
11119 N.E. 43 Road, Circle, Vancouver, WA., where he resided.

4. I personally know that during a period of time of 2009-2010, that Jose
Valencia lived with his parents at 11119 N.E. 43 Road, Circle, Vancouver, WA.

5. ~~Also, later, Jose Valencia Hernandez had rented an apartment at~~
~~where I visited him occasionally.~~ P.B.

6. That the Meadow Wood Apartment was leased by and occupied by Gorje
Garcia Tannaia, and Jaun Sanchezx Alfredo Burgara, and Armando Montiel.

I, Patricia Barragan, declare under the penalty of
perjury of the laws of the State of Washington that the forgoing is true and
correct.

Scribed and Sworn, this 25 day of February, 2014.

x Patricia Barragan

13816 NE 63rd ST
Vancouver WA 98682-

Notary Public in and for the State of Washington

COURT OF APPEALS DIVISION II

STATE OF WASHINGTON,
Respondent,

No. 42897-1-II

v.

JOSE VALENCIA-HERNANDEZ, AKA,
JAIME JOSE LLAMAS,
APPELLANT.

I, Juan M. Barragan, am of the legal age, and was a resident of Clark County, Washington, during and about January-March 2010.

2. That I have been acquainted with Jose Valencia-Hernandez for more than a period of several years.

3. During this mentioned time period, I always visited Jose Valencia at 11119 N.E. 43 Road, Circle, Vancouver, WA., where he resided.

4. I personally know that during a period of time of 2009-2010, that Jose Valencia lived with his parents at 11119 N.E. 43 Road, Circle, Vancouver, WA.,

~~5. Also, later, Jose Valencia-Hernandez had rented an apartment at where I visited him occasionally.~~

6. That the Meadow Wood Apartment was leased by and occupied by Gorje Garcia Tannabia, and Jaun Sanchezx Alfredo Burgara, and Armando Montiel.

I, Juan M. Barragan, declare under the penalty of perjury of the laws of the State of Washington that the forgoing is true and correct.

Scribed and Sworn, this 25th day of February, 2014.

Juan Barragan

Notary Public in and for the State of Washington

Juan M Barragan
13816 NE 63rd ST
Vancouver WA 98682

COURT OF APPEALS DIVISION II

STATE OF WASHINGTON,
Respondent,

No. 42897-1-II

v.

JOSE VALENCIA-HERNANDEZ, AKA,
JAIME JOSE LLAMAS,
APPELLANT.

I, Alicia Hernandez Llamas an of the legal age, and was a resident of Clark County, Washington, during and about January-March 2010.

2. That I have been acquainted with Jose Valencia-Hernandez for more than a period of several years.

3. During this mentioned time period, I always visited Jose Valencia at 11119 N.E. Road Circle, Vancouver, WA., where he resided.

4. I personally know that during a period of time of 2009-2010, that Jose Valencia lived with his parents at 11119 N.E. Circle Road, Vancouver, WA.,

5. Also, later, Jose Valencia-Hernandez had rented an apartment at ~~where I visited him occasionally.~~

6. That the Meadow Wood Apartment was leased by and occupied by Gorje Garcia Tannabia, and Jaun Sanchez, Alfredo Burgara, and Armando Montiel.

I, Alicia Hernandez Llamas declare under the penalty of perjury of the laws of the State of Washington that the forgoing is true and correct.

Scribed and Sworn, this 24 day of February, 2014.

++

Notary Public in and for the State of Washington

Alicia Hernandez Llamas
13217 NE 59th st #62
Vancouver WA 98682

Appendix 4

COURT OF APPEALS II

DIVISION II

STATE OF WASHINGTON,
Respondent,

No. 42987-1-II

vs.

DECLARATION IN SUPPORT OF
MOTION FOR RECONSIDERATION

Jose Valaneia- Hernandez, aka
Jaime Jose Llana,
Appellant,

I, GERARDO HERNANDEZ

am of the legal age, and

a resident of TACOMA County, Wasyington, for the last several years.

2. That I am personally acquainted with Jose Valencia-Hernandez, and know that he is a considerate, kind and is NOT violent, Nor hostile person.

3. That he has lived with his parents at 11119 N.E. 43 Road Circle, and also at an apartment 10 miles away from Meadow Wood apartments

4. I strongly believe that Juan Jose Guzman-Sanchez and Alfrado Bargaro and Gorje Tannabia (lessor of Meadow Wood apartment) benefited from a deal to frame Valencia-Hernandez.

5. I also believe they framed Valancia-Hernandez for their wrongful dgug business.

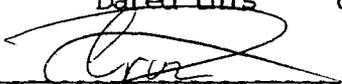
I, GERARDO HERNANDEZ

declare under the penalty

of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this day February, 2014

Witnessed



GERARDO HERNANDEZ

COURT OF APPEALS DIVISION II

STATE OF WASHINGTON,
Respondent,

No. 42897-1-II

v.

JOSE VALENCIA-HERNANDEZ, AKA,
JAIME JOSE LLAMAS,
APPELLANT.

I, Venustiano Llamas Valencia, am of the legal age, and was a resident of Clark County, Washington, during and about January-March 2010.

2. That I have been acquainted with Jose Valencia-Hernandez for more than a period of several years.

3. During this mentioned time period, I always visited Jose Valencia at 11119 N.E. Road Circle, Vancouver, WA., where he resided.

4. I personally know that during a period of time of 2009-2010, that Jose Valencia lived with his parents at 11119 N.E. 43 Road, Circle, Vancouver, WA.

5. Also, later, ~~Jose Valencia-Hernandez had rented an apartment at~~
~~where I visited him occasionally.~~

I believe Jose Hernandez was shared by Sanchez Burgoyne Montiel,
6. That the Meadow Wood Apartment was leased by and occupied by Corje Garcia Tannabia, and Jaun Sanchez Alfredo Burgara, and Armando Montiel.

I, Venustiano Llamas Valencia, declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Scribed and Sworn, this 24th day of February, 2014.

Notary Public in and for the State of Washington

Venustiano Llamas Valencia
13217 NE 59th St. #62
Vancouver WA 98682

COURT OF APPEALS DIVISION II

STATE OF WASHINGTON,
respondent,

No. 43097-1-II

v.

JOSE VALENCIA-HERNANDEZ, aka,
JALME JOSE LLAMAS,
Appellant,

1. JESUS HUMBERTO FELIX CAZAREZ of the legal age, and a resident of Clark County, Washington, for the last several years.

2. I am personally acquainted with Jose Valencia-Hernandez, and know that he is not a violent, nor hostile person.

3. That he sometimes lived with his parents at 11119 N.E. 43 Road Cir Vancouver, WA. 98682 and does not comprehend very well the English language.

4. I believe very strongly that Juan Jose Guzman-Sanchez, and two other fellows took advantage of Jose Valencia for their wrongful drug business.

1. Jesus Humberto Felix Cazarez declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Scribe and Sworn on Oath, this day of February, 2014.

Witness Chad Christensen

J. Llamas

Notary Public in and for the State of Washington

COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON,
respondent,

No. 42897-1-II

v.

JOSE VALENCIA-HERNANDEZ, aka,
JAIME JOSE LLAMAS,
Appellant,

I, *Lucadio Torres Aguilar* an of the legal age, and a
resident of Clark County, Washington, for the last several years.

2. I am personally acquainted with Jose Valencia-Hernandez, and know that
he is not a violent, nor hostile person.

3. That he sometimes lived with his parents at !!!!! (N.E. 43 Road Cir.
Vancouver, WA98682 and does not comprehend very well the English language.

4. I believe very strongly that Juan Jose Guzman-Sanchez, and two other
fellows took advantage of Jose Valencia for their wrongful drug business.

I, *Lucadio Torres, Aguilar* declare under the penalty of
perjury of the laws of the State of Washington that the foregoing is true and
correct.

Scribe and Sworn on Oath, this day of February, 2014.

Witnessed Ramiro W.

Lucadio T. Aguilar

Notary Public in and for the State of Washington

COURT OF APPEALS II

DIVISION II

STATE OF WASHINGTON,
Respondent,

No. 42987-1-II

vs.

DECLARATION IN SUPPORT OF
MOTION FOR RECONSIDERATION

Jose Valencia- Hernandez, aka
Jaime Jose Llana,
Appellant,

I, Arturo Hueta am of the legal age, and
a resident of Waukegan County, Washington, for the last several years.

2. That I am personally acquainted with Jose Valencia-Hernandez, and
know that he is a considerate, kind and is NOT violent, Nor hostile person.

3. That he has lived with his parents at 11119 N.E. 43 Road Circle, and
also at an apartment 10 miles away from Meadow Wood apartments

4. I strongly believe that Juan Jose Guzman-Sanchez and Alfredo Bargarro
and Gorje Tannabia (lessor of Meadow Wood apartment) benefited from a deal
to frase Valencia-Hernandez.

5. I also believe they framed Valencia-Hernandez for their wrongful drug
business.

I, Arturo Hueta declare under the penalty
of perjury of the laws of the State of Washington that the foregoing is true and
correct.

Dated this day February, 2014

Witnessed

[Signature]

Arturo Hueta

Appendix 5

CLARK COUNTY PUBLIC RECORDS DEPARTMENT
CLARK COUNTY SUPERIOR COURT CLERK
1200 Franklin Street
Vancouver, WA 98666

Clark County Sheriff; P.O. Box 410

RE: State of Washington v. Jose Valencia-Hernandez Case No. 10-1-00351-7

Pursuant to the Public Records Act (PRA), under RCW 42.56 et, sequ., I hereby make a "formal" request for disclosure of Public and Institutional records and electronic data (e-mail) etc.

Please be informed that, failure to respond and/or properly comply, in a timely manner, with the disclosure, may result in penalties of upto one-hundred per day.

Said Penalty of the (PRA), is designed to "discourage" improper denial of access to public records and (encourage) adherence to the goals and procedures dictated by the statute. *Yousoufain v. Office of King County Executive*, 152 Wn. 2d 421, 429-430.

Therefore, your cooperation and expedient compliance with this request is very important to avoid penalties. AND therefore, this is my first formal request for the following documents, memos, detective notes, memos of phone calls, e-mails, data storage, informant agreements

1. Please produce all documents of agreement by Detective Sofianos between informants Armando Rocha Montel; Alfredo Ruiz Bargarro; and Jaun Guzman Sanchez for a reduced 6 month sentence, and not limited to but to include notes, memos, phone calls or conversations.

2. Please produce notes, memos, reports, and agreements that Bargarro, Sanchez, Montel were tenants of Meadow Wood Apartments, and were residing there when they were arrested.

3. Please list the firearms, weapons that were in the occupancy of Meadow Wood Apartments.

4. Please produce copy of interstate (California) arrest Warrant that was issued for Jose Valencia-Hernandez.

5. Please produce copies of documents in the "office" that were associated with Montel and Bargarro that were mentioned in (RP 1447) and not limited to money transfer receipts seized by detective Sofianos.

6. Please produce copy of Detective Sofianos resume as a qualification to be a detective, and his oath of impartiality.

Pursuant to RCW 42.56, I look forward to hear from you in ten days, from the date of this request.

IN ACCORDANCE WITH 28 USC section 1746, I declare under penalty of perjury of the laws of the United States, that I mailed this request January ___ 2014.

Jose Valencia Hernandez.

Jose Valencia-Hernandez, 301220
Stafford Creek Correction Center H4 B 67
191 Constantine Way
Aberdeen, WA 98520-9504

Appendix 6



Clark County Sheriff's Office
Garry Lucas, Sheriff

January 30, 2014

Jose Valencia-Hernandez, 301220
Stafford Creek Corrections Center H4 B 67
191 Constantine Way
Aberdeen, WA 98520-9504

Notification of Receipt of Public Records Request

Per your request received: January 30, 2014 / S10-3283

Dear Mr. Valencia-Hernandez :

The Clark County Sheriff is in receipt of your Public Records Request. This information and estimate of response time is required by law.

We are writing to inform you that if we discover the records you have requested, we will review them for applicable exemptions from disclosure and make them available to you. If we do not discover any records responsive to your request, we will inform you. If necessary, we may also inform you that we have notified third persons or agencies of their right to seek a protective order before releasing any documents responsive to your request. We may also ask you for additional clarifications if your request is unclear after a review of the documents we have or don't have.

Based upon other pending requests and availability of personnel, at this writing we are able to reasonably estimate that a response to your request will be available on or before:

March 30, 2014

If possible, we will provide you with your requested material before that time.

For additional explanation of public disclosure regulations, please visit the Washington State Attorney General's public records page at <http://www.atg.wa.gov/records.aspx>

Sincerely,

MaryAnn Gentry
Supervisor
Public Disclosure
Clark County Sheriff's Office/ch3449
cc: File



proud past. promising future

CLARK COUNTY
WASHINGTON

January 30, 2014

Jose Valencia-Hernandez
DOC # 301220
Stafford Creek Correct. Ctr H# B 67
191 Constantine Way
Aberdeen, WA 98520-9504

Dear Mr. Valencia-Hernandez:

Per your letter received 1-29-2014 in the Clerk's Office, you have requested information under public disclosure laws of the State of Washington Act. The information you are seeking is information kept by the Sheriff's Office and your request has been forwarded to them.

Sincerely,

A handwritten signature in black ink, appearing to read "Baine Wilson", written in a cursive style.

Baine Wilson
Chief Deputy Clerk

WASHINGTON STATE SUPREME COURT

CASE NO. 90073-6

STATE OF WASHINGTON,
Plaintiff,
Respondent,

vs.

DECLARATION OF SERVICE
BY MAIL

Jose Valencia, Hernandez,
Appellant.

I, have deposited in the Stafford Creek Correction Center
Mail (outgoing a copy of this Motion for Discretionary Review
of about 18 pages to the following

Clark County Prosecutor
Box 5000
Vancouver, WA 98666-5000

Washington Supreme Court
Box 40929
Olympia, WA 98504-0929

On MAY 8, 2014 LEGAL MAIL

I, Jose Valencia-Hernandez declare under penalty of perjury
that the foregoing was mailed.

Received
Washington State Supreme Court

MAY 12 2014

Ronald R. Carpenter
Clerk

Jose Valencia Hernandez
SCCC H4 B 67
191 Constitution Way
Aberdeen, WA 98520

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DIVISION II

2014 JAN 28 AM 9:52

STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 42897-1-II

Respondent,

v.

JOSE VALENCIA-HERNANDEZ, aka
JAIME JOSE LLAMAS, JAIME LLAMAS-
HERNANDEZ,

UNPUBLISHED OPINION

Appellant.

HUNT, J. — Jose Valencia-Hernandez appeals his sentence and jury convictions for first degree arson, possession of methamphetamine with intent to deliver while armed with a firearm, and first degree unlawful possession of a firearm. He argues that the trial court erroneously (1) denied his motion for continuance; (2) denied his motion to sever counts; (3) admitted surveillance videos; (4) allowed Detective Bill Sofianos, whom Valencia-Hernandez asserts was not a qualified expert, to testify about the significance of a statue of Jesus Malverde; (5) denied his request to impeach Detective Spencer Harris; (6) commented on evidence presented; (7) denied his (Valencia-Hernandez's) request to relocate custody officers; (8) rolled his eyes when overruling his counsel's objection; (9) overruled his objection during the State's closing rebuttal arguments; and (10) miscalculated his sentencing range. Valencia-Hernandez also argues that the evidence is insufficient to support his convictions. We affirm.

FACTS

I. CRIMES

A. Arson

Just before 5 AM on March 5, 2010, Richard Cox called 911 to report a fire; he called back later to add that he had seen a "black SUV" leaving the scene at a high speed. 2 Report of Proceedings (RP) at 267. When Deputy Jesse Henschel arrived at the scene, he saw (1) a Nissan Altima and a BMW engulfed in flames a few feet from the residence, which appeared to be in danger of catching fire; and (2) two men attempting to put out the fire. Henschel and Deputy Justin Messman found two partially melted gas cans and two plastic gas can caps at the scene.

Messman later discovered that a nearby 7-11 convenience store sold gas cans with labels and price tag stickers matching those on the gas can caps found at the scene of the fire. Sergeant Duncan Hoss and Deputy Robin Yakhour followed up by investigating this 7-11 as a possible source of the fire-starting items. The 7-11 store clerk, Bahadur Singh, told them he had sold two gas cans that morning, and the store manager, Harpreet Kaur, showed them a surveillance video of two Hispanic males purchasing two one-gallon gas cans, two V8 bottles, and a Bic lighter at 4:06 AM: One wore a red jacket with white stripes on it and appeared to have a light brown skin tone; the other wore a black-puffy-type jacket. Kaur later made a copy of this surveillance video, which Yakhour picked up, marked with the case and victim's names, and gave to Hoss, who logged it into evidence.

Also on March 5, Hoss and Yakhour investigated a nearby AM/PM store as another possible source of the fire-starting items. The store manager let Hoss run that store's surveillance video, which showed (1) a dark-colored Range Rover pulling into the AM/PM store

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around 4:12 AM; and (2) two men matching the description of the men in the 7-11 video, carrying gas cans: one in a red coat with white stripes on it and the other wearing a black, puffy type jacket, and boots. Hoss copied the relevant portions of the surveillance video onto a computer thumb drive, which he later copied onto a CD that he entered into evidence.

A few days later, Karissa Courtway, who had been at her boyfriend Jonathan Tapia-Farias's residence, the scene of the fire, told Yakhour that (1) she used to date Valencia-Hernandez, (2) suspected he had caused the fires because one or two months earlier he had told her he wanted to light Tapia-Farias's car on fire, and (3) Valencia-Hernandez lived in Meadow Wood Apartments and owned a Range Rover. Hoss went to the Meadow Woods apartment where Valencia-Hernandez allegedly lived and saw a dark-colored Range Rover parked outside the unit, within 1000 feet of a school bus zone.

Hoss obtained and executed a search warrant at Valencia-Hernandez's apartment to collect evidence of the earlier arson. Outside the apartment, the officers found work boots matching those worn by the black-puffy-jacketed suspect in the convenience stores' surveillance videos. Inside the apartment, Hoss found a red jacket matching the red jacket of the man in the surveillance videos, a gun case, a receipt from Portland Tire and Wheels made out to "Jose Valencia"¹ at that Meadow Woods Apartment address, a glass bowl containing what appeared to be methamphetamine, a glass smoking pipe, ziplock bags, packaging material, a methamphetamine test kit, a digital scale, a clear plastic bag containing suspected methamphetamine, a statue of Jesus Malverde with a photograph of Valencia-Hernandez on the

¹ 6 RP at 885.

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base of the statue, three firearms (two of which contained loaded magazines), a bag with “multiple magazines . . . generally of rifle caliber,”² another bag containing both handgun and rifle magazines, a temporary identification card bearing the name Jose Valencia-Hernandez, and a Costco card with a picture of Valencia-Hernandez on the back. Sofianos later discovered a telephone bill addressed to “Jose Valencia,”³ inside the kitchen, a photograph of Valencia-Hernandez bare-chested with handguns tucked in his belt, and several vacuum sealed packages containing “large shards”⁴ of methamphetamine⁵ in a hole in the ceiling.

Hoss, Sofianos, and Detective Steven Fox investigated the Range Rover that had been parked outside Valencia-Hernandez’s apartment. Inside they found two empty V8 juice bottles, a 7-11 plastic bag, two Bic lighters, and gas can tags that said “gasoline” on one side and “gasoline/oil mix” on the other side. 3 RP at 447. A DNA test later found a match between swabs collected from the inside of one of the V8 juice bottles and Valencia-Hernandez.

B. “Kidnapping”

Sometime later in March, Courtway went with Valencia-Hernandez to Oregon. When Tapia-Farias called Courtway from jail on March 22, she told Tapia-Farias that Valencia-Hernandez had kidnapped her and wanted to take her to California. A few months later, Valencia-Hernandez was arrested and booked into Clark County jail on June 10, 2010.

² 7 RP at 921.

³ 10 RP at 1354.

⁴ 11 RP at 1368.

⁵ One package weighed about 1.8 pounds; another weighed just under 1 pound. A Washington State Patrol Crime Lab later tested these drugs and found them positive for methamphetamine.

II. PROCEDURE

The State charged Valencia-Hernandez with first degree arson (count 1), possession of a controlled substance with intent to deliver—methamphetamine (count 2), first degree unlawful possession of a firearm (counts 3-5), felony harassment (count 6), unlawful imprisonment (domestic violence) (count 7), intimidating a witness (count 8), and tampering with a witness (count 9). Valencia-Hernandez remained in custody throughout his trial.

A. Pretrial Motions

Having already continued the trial date seven times, the trial court granted Valencia-Hernandez's September 22, 2011 request for an October 31 trial date. On October 12, Valencia-Hernandez filed a motion to sever counts, which the trial court later denied. On October 27, the trial court reminded the parties that the trial would go forward on October 31; and both agreed. Three days before trial, however, Valencia-Hernandez objected to the October 31 trial date and again moved to continue, stating he needed the time to complete witness interviews. The trial court denied this motion.

Trial commenced on October 31, at which time Valencia-Hernandez renewed his motion to continue, which the trial court denied as untimely. Valencia-Hernandez also asked the trial court to reposition the custody officers, arguing that their presence created an aura that Valencia-Hernandez "is an extremely dangerous character." 1 RP at 65. The trial court also denied this request.

B. Trial

The State's witnesses testified to the facts previously described, with the exception of Courtway, who recanted her earlier kidnapping report to the sheriff's office and testified instead

that she had made up the story. Courtway also testified that (1) she had agreed to go to California with Valencia-Hernandez; (2) on the way to California, they had stayed with his childhood friend Saul Carrillo in Eugene, Oregon; (3) she had “freaked out”⁶ when they drove through Eugene and asked to be taken home; and (4) Valencia-Hernandez had dropped her at a car dealership and given her \$9500 in cash.

1. Surveillance videos

Valencia-Hernandez objected to the State’s offer of the surveillance videos from the 7-11 and AM/PM stores, arguing that they lacked a proper foundation for admission into evidence. The State then presented four witnesses who laid foundations. Valencia-Hernandez moved for a mistrial, arguing that (1) the surveillance videos lacked foundation, and (2) the trial judge had “appeared to roll [his] eyes” when Valencia-Hernandez objected to admission of the surveillance videos. 3 RP at 474. The trial judge expressed surprise because he did not recall rolling his eyes⁷, asked Valencia-Hernandez’s counsel to check “the logs,”⁸ and later instructed everyone in the courtroom, including the jury, to disregard people’s body language.

2. Jesus Malverde statue; attempted impeachment

Detectives Harris and Sofianos testified about the relevance of finding the Jesus Malverde statue at Valencia-Hernandez’s apartment. During his years of experience, executing

⁶ 14 RP at 1681.

⁷ At the start of trial, out of the jury’s presence, the trial judge had mentioned he had sciatica (a pinched nerve) that could lead to fidgeting, standing up, and grimacing facial expressions. He later explained to the jury that his grimacing and fidgeting was not a comment on what the attorneys did in court.

⁸ 3 RP at 474.

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search warrants, and extensive training on clues to look for in narcotics trafficking, Sofianos had learned that Jesus Malverde was known as the “patron saint” of drug smugglers in Latino drug sub-culture and that Jesus Malverde was a narcotics trafficking clue. 10 RP at 1225.

During recess, Valencia-Hernandez stated his intention to impeach Harris about an “IAD”⁹ investigation that had resulted in his suspension “for failing to deliver certain required information to the department.” 13 RP at 1628. Valencia-Hernandez represented that he had “actual documented suspension for [Harris’s] failing to be truthful to the department”; but when the trial court asked for this documentation, Valencia-Hernandez responded that he could not “prove it up by extrinsic evidence.” 13 RP at 1630. The trial court denied the impeachment request.

3. Recorded jail conversation

The State played for the jury the recorded jail cell conversation between Courtway and Tapia-Farias. Because part of the recording appeared unintelligible, the trial court (1) told the jury that although the transcript of the recorded conversation read, “It’s not a big deal,” the trial court had heard, “It’s not a good deal,” 15 RP at 1835; and (2) stressed to the jury, “I reinforce with you, it’s what you heard that’s the evidence, it’s not that printed page, okay?” 15 RP at 1835. Valencia-Hernandez did not object.

4. Motion to dismiss; verdict

Valencia-Hernandez later moved to dismiss the charges of intimidating a witness and tampering with a witness on grounds that the State did not present evidence of his having attempted to change or to influence Courtway’s testimony or of his knowledge that Courtway

⁹ The record does not state the basis for this acronym.

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would serve as a witness. The trial court dismissed the intimidating charge but denied the motion to dismiss the tampering charge (count 9). The State withdrew the felony harassment charge (count 6).

The jury acquitted Valencia-Hernandez of unlawful imprisonment (count 7) and tampering with a witness (count 9). It convicted him of the remaining counts, finding him guilty of first degree arson (count 1), possession of a controlled substance—methamphetamine with intent to deliver while armed with a firearm and within 1000 feet of a school zone (count 2), and first degree unlawful possession of a firearm (counts 3, 4, and 5).

C. Sentencing

At sentencing, the State recommended (1) 36 to 48 months of incarceration for first degree arson (count 1), based on an offender score of three; (2) 152 to 184 months for his level three possession of a controlled substance with intent to deliver methamphetamine (count 2), which recommendation included an additional 60 months for having committed this crime while armed with a firearm and an additional 24 months for having committed this crime within 1,000 feet of a school zone; and (3) 31-41 months for first degree unlawful possession of a firearm (counts 3 to 5), based on an offender score of three. Valencia-Hernandez objected to the State's recommendation for count 2, arguing that (1) possession of methamphetamine with intent to distribute is a Class B, not a Class A, felony; (2) thus, the firearm enhancement should be 36, not 60, months; and (3) consequently, the sentencing range should be 128 to 160 months.

The State also recommended that Valencia-Hernandez receive 171 days credit for time served. Valencia-Hernandez did not propose a different credit for time served.

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The trial court imposed concurrent sentences of 48 months in prison for count 1, 160 months for count 2 (including the special firearm and school zone enhancements), and 41 months for counts 3, 4, and 5, with 171 days credit for time served. Valencia-Hernandez now appeals “every portion of the Felony Judgment and Sentence.” *Spindle* (Notice of Appeal).

ANALYSIS

I. CONTINUANCE

Valencia-Hernandez argues that the trial court abused its discretion in denying his motion to continue the October 31 trial date because this ruling rendered him unable to complete witness interviews before trial. We disagree.

A defendant is not “entitled to a continuance as a matter of right.” *State v. Early*, 70 Wn. App. 452, 457-58, 853 P.2d 964 (1993), *review denied*, 123 Wn.2d 1004 (1994). Whether to grant continuance is discretionary with the trial court, whose decision we will not overturn unless the trial court abused that discretion. *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004).

Valencia-Hernandez concedes that he had eight and a half months to prepare for trial. We further note that (1) the trial court had already granted seven continuances; and (2) a month before trial, at a September 22 hearing, Valencia-Hernandez did not object to the October 31 trial date, did not request an alternate trial date, and pushed the trial court to hear the case sooner. Instead, he waited until only three days before trial to ask for this continuance to interview witnesses. We hold that the trial court did not abuse its discretion in denying this last minute motion for continuance.

II. SEVERANCE

Valencia-Hernandez next argues that the trial court erred in denying his motion to sever counts because none of the charges shared a single element of proof. Because the evidence for various counts was cross admissible and Valencia-Hernandez fails to show prejudice from their joinder, we hold that the trial court did not abuse its discretion in denying his motion for severance.

Washington law does not favor separate trials. *State v. Dent*, 123 Wn.2d 467, 484, 869 P.2d 392 (1994). We review a trial court's decision on a motion for severance for manifest abuse of discretion. *State v. Bythrow*, 114 Wn.2d 713, 717, 790 P.2d 154 (1990). Defendants seeking severance must show that a trial involving multiple counts would be so manifestly prejudicial as to outweigh the concern for judicial economy. *Bythrow*, 114 Wn.2d at 718. To determine whether the potential prejudice requires severance, the trial court considers four factors: (1) the strength of the State's evidence on each count, (2) the jury's ability to compartmentalize the evidence, (3) the ability to instruct the jury to consider each count separately, and (4) the cross admissibility of evidence among various counts. *State v. MacDonald*, 122 Wn. App. 804, 815, 95 P.3d 1248 (2004).

Valencia-Hernandez argues that (1) other than Valencia-Hernandez's identity, the remaining counts that went to trial did not share elements of proof; (2) except for the jacket and boots, the evidence was not cross admissible; (3) the kidnapping evidence was weak; (4) the jury's exposure to all charges during a single trial prejudiced him; and (5) repetition of witnesses hampered judicial economy. We disagree.

First, Valencia-Hernandez cites no authority for the proposition that the charges must share other elements of proof besides his identity. Second, evidence was cross admissible to establish Valencia-Hernandez's identity and mens rea for multiple counts; and a majority of the same witnesses testified about more than one count, such as Courtway, Sofianos, and Hoss. Third, the trial court properly instructed the jury to compartmentalize the evidence and to decide each count separately¹; for example, jury instruction 3 stated, "A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." Clerk's Papers (CP) at 405 (Instruction No. 3). Fourth, Valencia-Hernandez fails to show that trying these "three disparate cases"¹⁰ together was so manifestly prejudicial as to outweigh the concern for judicial economy. We hold that the trial court did not manifestly abuse its discretion in denying the motion to sever.

III. CUSTODY OFFICERS IN COURT

Valencia-Hernandez also argues that the trial court erred in refusing his request to have his two custody officers sit in a more neutral location in the courtroom.¹¹ We will not review issues that a party inadequately briefs or treats in passing. *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970, *abrogated in part on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed.2d 177 (2004). Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. *State v. Johnson*, 119 Wn.2d 167, 171,

¹⁰ Br. of Appellant at 22.

¹¹ Valencia-Hernandez contends that (1) during his trial, two heavily armed officers wearing bulletproof vests, holding guns and tasers, sat directly behind him, one to each side; and (2) this created the impression that he was highly dangerous, which violated his constitutionally protected presumption of innocence.

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829 P.2d 1082 (1992). Generally we will not review an assignment of error without argument and citation to authority. *State v. Cox*, 109 Wn. App. 937, 943, 38 P.3d 371 (2002). Contrary to RAP 10.3(a)(6), Valencia-Hernandez fails to support his factual assertions with citation to the record and fails to support his legal argument with citation to authority in his appellant's brief.¹² Therefore, we do not further consider this argument.

IV. EVIDENCE

Valencia-Hernandez next challenges several of the trial court's evidentiary rulings. The admissibility of evidence is within the sound discretion of the trial court, which decisions we review with great deference under a manifest abuse of discretion standard. *State v. Vreen*, 143 Wn.2d 923, 932, 26 P.3d 236 (2001). Such is not the case here.

A. Surveillance Videos

Valencia-Hernandez argues that the trial court erred in admitting the 7-11 and AM/PM surveillance videos over his objection and without proper foundation. We agree with the State that it properly authenticated both the videos and that the trial court did not abuse its discretion in allowing the videos into evidence.

ER 901 requires proper authentication of videos as a condition precedent to admissibility. For authentication purposes, courts treat video tape recordings like photographs, which Washington courts have a policy of liberally admitting. *State v. Newman*, 4 Wn. App. 588, 593, 484 P.2d 473, *review denied*, 79 Wn.2d 1004 (1971). To lay a proper foundation for admitting a

¹² Valencia-Hernandez's citation to *Holbrook v. Flynn*, 475 U.S. 560, 569, 106 S. Ct 1340, 89 L. Ed. 2d 525 (1986) in his reply brief, (in response to the State's citing this case in its brief of respondent), comes too late. We do not consider arguments raised for the first time in a reply brief. See *Johnson v. Phoenix Assur. Co. of New York*, 70 Wn.2d 726, 729, 425 P.2d 1 (1967).

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video tape recording, some witness, not necessarily the photographer, must be able (1) to show when, where, and under what circumstances the video tape recording was taken; and (2) to testify that the video accurately portrays the subject illustrated. *State v. Tatum*, 58 Wn.2d 73, 75, 360 P.2d 754 (1961). If these two criteria are met, the video tape recording is admissible at the trial court's discretion. *Newman*, 4 Wn. App. at 593.

1. 7-11 video

Multiple witnesses testified about the circumstances under which the video recording was taken and that the copy offered at trial accurately portrayed the subject illustrated. Bahadur Singh testified that he was the store clerk in the 7-11 video who sold two gas cans to two men on March 5, 2010. Store manager Harpreet Kaur testified that (1) this 7-11 took and kept surveillance videos on a daily basis in the regular course of business, (2) she had viewed the surveillance video with Deputy Robin Yakhour and had made a copy for her, and (3) the video accurately depicted the front clerk area of the store and what she had viewed with Yakhour. Yakhour testified that she had picked up a copy of the video from the 7-11, put it in a CD case on which she had handwritten the case name and victim's name, and given the copy to Sergeant Duncan Hoss. And Hoss testified that he had watched the original 7-11 surveillance video and that State's exhibit 134 was an accurate depiction of that video and of the copy Yakhour had given him and which he had logged into evidence. We hold that the State properly authenticated the 7-11 video (State's exhibit 134) and that the trial court did not abuse its discretion in admitting it into evidence.

2. AM/PM video

Sergeant Hoss testified that on the morning of March 5, 2010, (1) he had gone to the AM/PM station; (2) the store manager had escorted him to the backroom and shown him how to run the surveillance video; (3) he had personally reviewed the surveillance video and observed two men in the video carrying gas cans, which men matched the general description of the men in the 7-11 video; (4) he had copied this portion of the surveillance onto his thumb drive and later copied his thumb drive onto a CD, which he entered into evidence; and (5) State's exhibit 133 accurately depicted the surveillance video he had viewed at the AM/PM station. We hold that the State properly authenticated the AM/PM video (State's exhibit 133) and that the trial court did not abuse its discretion in admitting it into evidence.

B. Detective Sofianos' Expert Testimony

Valencia-Hernandez argues that the trial court erred in allowing Detective Bill Sofianos to testify as an expert about the drug-culture significance of Jesus Malverde because Sofianos admitted on cross-examination that he was not an expert and because his testimony was highly prejudicial. We disagree. At the outset, we note that Valencia-Hernandez misreads the record: Sofianos did *not* admit on cross that he was not an expert. Thus, we focus our analysis on the prejudice part of Valencia-Hernandez's argument.

We review a trial court's decision to admit expert testimony for abuse of discretion. *Tatum*, 58 Wn.2d at 76. The admissibility of expert testimony under ER 702 depends on whether (1) the witness qualifies as an expert, (2) the opinion is based upon an explanatory theory generally accepted in the scientific community, and (3) the expert testimony will be helpful to the trier of fact. *State v. Allery*, 101 Wn.2d 591, 596, 682 P.2d 312 (1984). To qualify

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as an expert, a witness need not possess academic credentials; practical experience may suffice. *Harris v. Groth*, 99 Wn.2d 438, 449, 663 P.2d 113 (1983). A witness may qualify as an expert by virtue of knowledge, skill, experience, training, or education. ER 702; *Harris*, 99 Wn.2d at 449. The trial court must evaluate both the relevance of the testimony and its prejudicial impact, excluding unnecessarily cumulative or unfairly prejudicial testimony. *State v. Petrich*, 101 Wn.2d 566, 575, 683 P.2d 173 (1984).¹³

The record shows that Sofianos possessed the requisite practical experience, knowledge, skill, and training to testify about Jesus Malverde. Sofianos' knowledge of Jesus Malverde stemmed from his experience with Latino drug subculture and extensive training on clues to look for in narcotics trafficking, such as Jesus Malverde. Sofianos testified that he had executed search warrants that were consistent with his training and knowledge of Jesus Malverde. Sofianos had also trained in narcotics investigations through the Drug Enforcement Agency, the El Paso Intelligence Center, "ATF", and the Coast Guard, to name a few. 11 RP at 1373. Sofianos provided the trial court with supplemental reading material about Jesus Malverde, to which Valencia-Hernandez did not object. We hold that Sofianos qualified as an expert in the significance of Jesus Malverde in narcotics investigations.

¹³ *Abrogated on other grounds by State v. Kitchen*, 110 Wn.2d 403, 756 P.2d 105 (1988).

We also hold that Sofianos' testimony was not unduly prejudicial.¹⁴ To minimize prejudice, the trial court specifically limited the scope of Sofianos' testimony about Jesus Malverde to the specific purpose of supporting the identity and intent elements at issue. Consistent with this limitation, the State used the Jesus Malverde shrine evidence sparingly, keeping within the trial court's limits. The State also proved identification and intent with an array of other evidence, such as surveillance equipment, police scanner, digital scale, packaging materials, bags of methamphetamine, a methamphetamine testing kit, and three functional and loaded firearms, all discovered inside Valencia-Hernandez's locked bedroom. The bedroom also contained a Washington identification card and a Costco card bearing Valencia-Hernandez's name and photograph, and a red jacket that matched the jacket worn by Valencia-Hernandez, which also matched the suspect in the 7-11 and AM/PM surveillance videos. In light of this other evidence and the trial court's limitations on Sofianos' Jesus Malverde testimony, we hold that this latter testimony did not significantly prejudice or impact the outcome of the case to warrant reversal.

¹⁴ Valencia-Hernandez also argues that Sofianos' testimony, coupled with information that Jesus Malverde was not accepted by "any church," branded Valencia-Hernandez as a drug dealer with no respect for religion. Br. of Appellant at 24. Valencia-Hernandez mischaracterizes Sofianos' testimony: Sofianos did not testify that Jesus Malverde was "not accepted" by any church; rather, he said, "[T]hough not recognized as a *saint* by any churches, he's commonly referred to as the saint of drug trafficking." 11 RP at 1384 (emphasis added).

C. Recorded Jailhouse Conversation

Valencia-Hernandez argues that the trial court violated his constitutional rights and “ER 605(4)”¹⁵ by impermissibly commenting on the jailhouse recording of the conversation between Courtway and Tapia-Farias by providing his own interpretation of what Courtway said. But Valencia-Hernandez makes no reference to the record to support this assertion, contrary to RAP 10.3(a)(6); nor does the record before us show what portion of the recorded conversation the trial court played for the jury. Because Valencia-Hernandez neither cites nor provides “those portions of the verbatim report of proceedings necessary to present the issues raised on review,”¹⁶ contrary to RAP 9.2(b), we cannot adequately evaluate the context in which the trial court made the challenged comment.¹⁷ Accordingly, we do not further consider this argument.

V. REQUEST TO IMPEACH DETECTIVE HARRIS

Valencia-Hernandez next argues that the trial court erred in denying his request to “impeach Detective Harris with his suspension for a breach of Department policy.” Br. of Appellant at 24. This argument fails because Valencia-Hernandez did not proffer foundational evidence of Detective Harris’s suspension. When Valencia-Hernandez asked to impeach Detective Harris with the “actual documented suspension,” the trial court required, “Then bring

¹⁵ Br. of Appellant at 26. There is no such “ER 605 (4)”; ER 605 addresses the competency of a judge as a witness at trial.

¹⁶ RAP 9.2(b).

¹⁷ Similarly, we lack an adequate record on which to decide whether to accept the State’s concession that the trial court improperly commented on the evidence. The State, however, rebuts any presumed prejudice by demonstrating from the record that no prejudice could have resulted. *State v. Levy*, 156 Wn.2d 709, 723, 132 P.3d 1076 (2006).

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me, bring me the information, and I don't mean some article from the Columbian, before I'll let it in." 13 RP at 1630. Despite claiming to have the actual documented suspension, Valencia-Hernandez did not produce such documentation; instead, his counsel said, "Well, Judge, I mean, I can't, I can't prove it up by extrinsic evidence." 13 RP at 1630.

Admission of extrinsic evidence of a witness's character may be allowed, in the court's discretion. ER 608. Here, the trial court asked for documentation of the alleged suspension that Valencia-Hernandez wanted to use to impeach Harris. But Valencia-Hernandez did not provide it. We hold, therefore, that the trial court did not abuse its discretion in denying Valencia-Hernandez's request to impeach Harris with this unsupported alleged misconduct.

VI. MISTRIAL

Valencia-Hernandez argues that the trial court denied his Sixth and Fourteenth Amendment rights¹⁸ by refusing to grant a mistrial after the judge rolled his eyes and gave a look of surprise while ruling on Valencia-Hernandez's motion to strike the convenience store surveillance videos. But Valencia-Hernandez's Brief of Appellant cites neither to the record nor to legal authority to support this assertion, contrary to RAP 10.3(a)(6). Thus, we do not further consider this argument.¹⁹

¹⁸ U.S. CONST. amends. VI, XIV.

¹⁹ Even if we considered the merits of Valencia-Hernandez's argument, he does not show that the trial court abused its broad discretion in refusing to grant a mistrial and instead, electing to instruct the jury (and everyone in the courtroom) to disregard his body language.

VII. CLOSING ARGUMENT

Valencia-Hernandez argues that the trial court erred in preventing him from objecting fully during the State's rebuttal closing argument and by "cut[ting] him off sharply and refus[ing] to allow him to make a full record." Br. of Appellant at 29. But he provides no citation to the record to support this argument, contrary to RAP 10.3(a)(6). Accordingly, we do not further consider this argument.

VIII. SENTENCING

Valencia-Hernandez argues that the trial court erred in accepting the State's proposed sentencing range by (1) elevating count 2; possession of methamphetamine with intent to deliver, to a class A felony; and (2) failing to give him proper credit for time served. These arguments fail because the trial court properly applied sentencing enhancements and sentenced Valencia-Hernandez within the standard range and gave Valencia-Hernandez proper credit for time served.

A. Standard/Scope of Review

A defendant may appeal a standard range sentence only if the sentence (1) fails to comply with the procedural requirements of the "Sentencing Reform Act (SRA)"²⁰; or (2) raises a constitutional issue.²¹ *State v. Osman*, 157 Wn.2d 474, 481-82, 139 P.3d 334 (2006) (citing *State v. Mail*, 121 Wn.2d 707, 711-13, 854 P.2d 1042 (1993)). To appeal under this first criterion, the defendant must show that the sentencing court failed to follow a duty to follow some specific

²⁰ RCW 9.94A.585.

²¹ Valencia-Hernandez raises no sentence-related constitutional issues.

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SRA procedure. Absent such a showing, the clear rule of RCW 9.94A.585 applies and appeal of a standard range sentence is not allowed. *Mail*, 121 Wn.2d at 712.

B. Possession of Methamphetamine with Intent To Deliver While Armed with Firearm

More specifically, Valencia-Hernandez argues that the trial court erred in elevating his possession of methamphetamine with intent to distribute to a class A felony, instead of a class B felony, thus, increasing his sentencing range by 48 months. We disagree.

RCW 9.94A.518 provides that seriousness level “III” drug offenses include: “[a]ny felony offense under chapter 69.50”; “Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine,” delivery by a person “[o]ver 18” of “methamphetamine . . . to someone under 18”; and “[m]anufacture of methamphetamine.” RCW 9.94A.517’s “Drug Offense Sentencing Grid” provides that an offender score of 3 to 5 with a seriousness level of “III” has a sentence range of “68+ to 100 months” of confinement.²² RCW 9.94A.533(6)²³ adds an additional school zone enhancement of 24 months to the standard sentence range. Under RCW 9.94A.533(3)(a), committing a felony while armed with a firearm adds five years to the standard sentence range for any Class A felony or a felony with a statutory maximum sentence of at least 20 years.

²² The legislature amended RCW 9.94A.517 in 2013. LAWS OF 2013, ch. 14, § 1. The amendments did not alter the statute in any way relevant to this case; accordingly, we cite the current version of the statute.

²³ The legislature amended RCW 9.94A.533 in 2011, 2012 and 2013. LAWS OF 2013, ch. 270, § 2; LAWS OF 2012, ch. 42, § 3; LAWS OF 2011, ch. 293, § 9. The amendments did not alter the statutes in any way relevant to this case; accordingly, we cite the current version of the statute.

The jury returned special verdicts finding that Valencia-Hernandez (1) had used a firearm in committing a Violation of the Uniform Controlled Substances Act (VUCSA)²⁴; and (2) had committed this VUCSA violation within 1000 feet of a school zone. His conviction for possession of a controlled substance with intent to deliver methamphetamine while armed with a firearm fit within seriousness level “III”. With an offender score of 3, the sentencing range of “68 months to 100 months” conformed with RCW 9.94A.517 and RCW 9.94A.518. CP at 542. The school zone and firearm sentencing enhancements added 24 months and 60 months, respectively, to the standard sentence range of 68–100 months; with these enhancements, Valencia-Hernandez’s sentence range for count 2 totaled 152-184 months of confinement. The trial court, therefore, did not err in sentencing Valencia-Hernandez to 160 months for count 2.

C. Credit for Time Served

For the first time on appeal, Valencia-Hernandez challenges the amount of credit the trial court gave him for time served. Generally, a party cannot raise an issue for the first time on appeal unless it is a “manifest error affecting a constitutional right.” RAP 2.5(a). *See also State v. Munguia*, 107 Wn. App. 328, 340, 26 P.3d 1017 (2001). This exception to the general rule does not automatically mandate review whenever a criminal defendant identifies some constitutional issue not raised below. *State v. McFarland*, 127 Wn.2d 322, 333-34, 899 P.2d 1251 (1995). Rather, the appellant must show actual prejudice in order to establish that the error is “manifest.” *McFarland*, 127 Wn.2d at 333. Valencia-Hernandez fails to meet these tests.

²⁴ RCW 69.50.401 and RCW 69.50.435. The legislature amended RCW 69.50.401 in 2013. LAWS OF 2013, ch. 3, § 19. The amendment did not alter the statute in any way relevant to this case; accordingly, we cite the current version of the statute.

Valencia-Hernandez fails to show that the alleged error is “manifest.” At the sentencing hearing, the State recommended that Valencia-Hernandez receive 171 days credit for time served. Not only did Valencia-Hernandez fail to propose a different number of days of credit below, but also he fails to establish actual prejudice on appeal in that he fails to show on the record before us that he was entitled to additional credit days. Accordingly, we do not further consider this issue.

IX. STATEMENT OF ADDITIONAL GROUNDS

In Valencia-Hernandez’s Statement of Additional Grounds (SAG), he asserts that the State erred in “deviating”²⁵ from the standard sentencing range because (1) the State did not present sufficient evidence to support his convictions, and (2) the trial court failed to issue a “Stipulated Agreement” to support imposing an “exceptional sentence.” Statement of Additional Grounds (SAG) at 3. Valencia-Hernandez’s assertion that the jury lacked sufficient evidence to “convict him outside the [sentencing] guidelines” has no bearing on the correctness of the imposed standard-range sentence. SAG at 3. Thus, we do not further address this point.

Similarly, his challenge to an “exceptional sentence” without a “stipulated agreement” is unsupported.²⁶ Not only is there no such rule requiring a “stipulated agreement” to justify an exceptional sentence, but also the trial court here did not impose any exceptional sentences. Thus, we do not further consider this point.

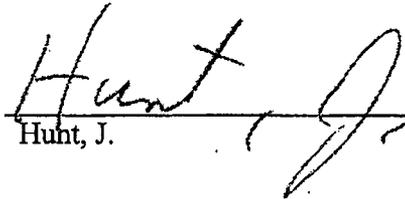
²⁵ Statement of Additional Grounds (SAG) at 3.

²⁶ We first note that Valencia-Hernandez’s sentence was within the standard range, not an “exceptional” sentence. SAG at 3. Second, he cites RCW 9.94A.105 (now recodified as RCW 9.94A.480), which has no bearing on his claims: Instead, this statute addresses delivery of a judgment and sentence document to the “caseload forecast council”; it has nothing to do with requiring a stipulated agreement. SAG at 3.

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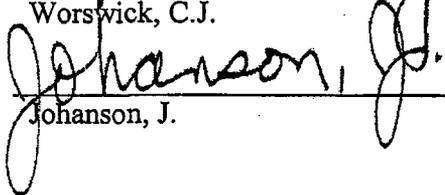
We affirm Valencia-Hernandez's convictions and sentences.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Hunt, J.

We concur:


Worswick, C.J.


Johanson, J.