



NO. 69313-1-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

ANDRE STEWART,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA HARRIS, JUDGE PRO TEM

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. An issue cannot be raised for the first time on appeal unless the defendant can show a manifest error affecting a constitutional right; i.e., an error that had practical and identifiable consequences in his case. The requirement that the trial court find a factual basis for a plea of guilty is based on CrR 4.2; this requirement is constitutionally significant only insofar as it affects the voluntariness of a plea. Stewart pled guilty as charged, but did not move to withdraw his plea for over four years. The record demonstrates that, despite the omission of the word “negligently” from his factual statement, Stewart understood the law in relation to the facts. Has Stewart failed to meet his burden of showing manifest error affecting a constitutional right?

2. A factual basis is sufficient to support a guilty plea if there is sufficient evidence for a jury to conclude that the defendant is guilty. A trial court may rely on any reliable source to determine factual basis, as long as the source is made part of the record. The record shows that Stewart understood the charge against him and nothing in the record supports the contention that Stewart did not understand the law in relation to the facts. Did the trial court

reasonably conclude that a factual basis existed for the plea and that Stewart was entering the plea voluntarily?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

The State charged Andre Stewart with assault in the third degree with a domestic violence (DV) designation on September 21, 2007. CP 1-5. The Honorable Barbara Harris received the case for a plea on February 29, 2008. 2/29/08 RP 1. Stewart pled guilty as originally charged. CP 6-25; 2/29/08 RP 1-4. The trial court found that there was a sufficient factual basis for the plea and that Stewart was entering into the plea knowingly, intelligently and voluntarily. 2/29/08 RP 4.

At the sentencing hearing on May 9, 2008, the Honorable Jay White imposed a sentence of one day in jail and 232 hours of community service. CP 26-33. The court also ordered Stewart to complete a domestic violence batterer's treatment program and obtain alcohol and substance abuse treatment (following an evaluation) during 24 months of community custody. Id.

On September 12, 2012, Stewart filed a notice of appeal.<sup>1</sup>  
CP 70-79.

**2. SUBSTANTIVE FACTS.**

**a. Facts Of The Case.**

On August 26, 2007, Christina Evans was over at her boyfriend Andre Stewart's apartment in Kent, Washington, when the two began to argue over Evans communicating via text message with a friend. CP 19. Stewart told Evans to leave his apartment. As she was doing so, Stewart said, "Tell that nigger that you're going to see that you like to fuck hard." Id. Evans became very upset by this comment and slapped the back of Stewart's head as he sat on the couch. Id. Stewart jumped up off the couch, slammed Evans against the wall with his forearm against her neck, and told her never to hit him. Id.

As the argument continued, Stewart broke Evans' cell phone and threw some of her belongings over a nearby fence. Id. Stewart also grabbed Evans' upper arms and threw her, causing her to fly into a corner of the couch's armrest before landing hard

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<sup>1</sup> While this notice was clearly untimely, the State did not oppose the Appellant's Motion to Enlarge Time to File Notice of Appeal, due to portions of Stewart's Notice of Rights on Appeal having been stricken. Supp. CP \_\_ (Sub 38).

on the floor. Id. Evans experienced severe pain in her chest and ribcage where she had hit the couch. Id. She lay on the ground with the wind knocked out of her. Id. Stewart stood over Evans and told her to get out of his apartment. Id. Evans did so once she was able to get up. Id.

The following day, on August 27, 2007, Evans called the Kent Police Department to report what had happened and to get help retrieving belongings from Stewart's apartment. CP 18. Evans also went to Valley Medical Center that day. Id. X-rays showed no signs of fractures or breaks. CP 19. Evans was diagnosed with severe bruising and was sent home with medications for pain. Id.

Evans suffered pain through the week, and by the weekend the pain was intolerable. Id. On September 2, 2007, Evans went to Highline Medical Center, where doctors discovered a broken rib and a fractured rib.<sup>2</sup> Id. On September 3, 2007, Evans notified police of this discovery, prompting further investigation. Id.

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<sup>2</sup> A Highline doctor later told the case detective that sometimes rib fractures or breaks will not show up on X-rays until the bones begin to calcify as they mend. CP 20.

**b. Charged With Third Degree Assault.**

On September 21, 2007, Stewart was charged with assault in the third degree - domestic violence. CP 1-5. On October 3, he was arraigned on this charge and provided with a copy of the Information. Supp. CP \_\_ (Sub 6, 11); CrR 4.1(f). The Information alleged that "Stewart in King County, Washington, on or about August 26, 2007, with criminal negligence did cause bodily harm accompanied by substantial pain that did extend for a period sufficient to cause considerable suffering to Christina Evans." CP 1, 17; RCW 9A.36.031(1)(f).

The Information also included a "Prosecuting Attorney Case Summary and Request for Bail and/or Conditions of Release" (prosecutor's summary). CP 1-5. This prosecutor's summary incorporated by reference the Certification for Determination of Probable Cause (probable cause certification) related to this incident, signed by Detective Eliot Hale of the Kent Police Department.<sup>3</sup> Id.

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<sup>3</sup> The facts contained in section B(2)(a), supra, were obtained from this probable cause certification.

**c. Stewart Pleads Guilty As Charged.**

Stewart entered a guilty plea to the originally charged crime of assault in the third degree – domestic violence on February 29, 2008. CP 6-25; 2/29/08 RP 1-4. The court had the following documents before it at the time of the plea: Statement of Defendant on Plea of Guilty, the Information (including the prosecutor's summary and the probable cause certification), the Felony Plea Agreement, the scoring form, Stewart's criminal history, and the State's Sentencing Recommendation.<sup>4</sup> Id.

At the plea hearing, Stewart was represented by defense counsel. 2/29/08 RP 1. Stewart's counsel told the court that he had been through the Statement of Defendant on Plea of Guilty form with Stewart, that he had explained to Stewart the rights he was giving up, and that he was confident that Stewart understood how he was proceeding. Id.

The judge then questioned Stewart about whether he understood his plea. 2/29/08 1-4. The judge asked Stewart, "Your attorney has indicated you do understand the elements of the

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<sup>4</sup> All of these documents were filed along with the plea statement on February 29, 2008. CP 6-25.

offense. Is that correct?" 2/29/08 RP 2. Stewart responded, "Yes."

Id.

Paragraph 11 of the Statement of Defendant on Plea of Guilty, which asked Stewart to state in his own words what he did to make him guilty of the crime, read as follows: "That on 26 August 2007, in King County, Washington, did cause bodily harm accompanied by substantial pain that did extend for a period sufficient to cause considerable suffering to Christina Evans." CP 14; 2/29/08 RP 3. After the judge read Stewart's statement on the record, Stewart acknowledged that the statement was true, and he pled guilty to the charged crime. 2/29/08 RP 3-4. The judge found that there were facts sufficient to accept Stewart's plea. 2/29/08 RP 4. The judge also found that Stewart had entered into the plea knowingly, intelligently, and voluntarily. Id.

Prior to sentencing on May 9, 2008, Stewart never claimed that his plea was in any way flawed and never made a motion to withdraw his plea. CP 26-33. More than four years later, on September 7, 2012, Stewart for the first time claimed that his plea was flawed. The sentencing court heard Stewart's motion to withdraw his plea and transferred the motion to the Court of

Appeals.<sup>5</sup> CP 57-58; 9/7/12 RP 5-34. Stewart's personal restraint petition alleging that his trial counsel was ineffective is stayed in this Court pending the outcome of this appeal. In re Personal Restraint of Stewart, No. 69483-9-I.

**C. ARGUMENT**

**1. THE TRIAL COURT PROPERLY FOUND THAT STEWART'S GUILTY PLEA WAS KNOWING, INTELLIGENT AND VOLUNTARY.**

Stewart asserts that there was an insufficient factual basis for his plea of guilty. He contends that his plea was involuntary because "nowhere in the plea colloquy was Stewart informed that not only did he have to inflict injury on Evans, he had to do so with criminal negligence." Appellant's Brief at 6. This argument should be rejected.

As a preliminary matter, Stewart waived this claim by failing to challenge his plea in the trial court. Because a sufficient factual basis for a plea is not constitutionally mandated and there is no indication that Stewart's plea was anything but voluntary, he is barred from raising this issue for the first time on appeal.

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<sup>5</sup> Stewart moved to withdraw his plea after learning that Evans had committed suicide shortly before he pled guilty. CP 57-58; 9/7/12 RP 5-34.

Even if this Court does consider the issue, Stewart's argument fails. The record shows that Stewart had an understanding of the nature of the charges, that a factual basis for the plea existed, and that Stewart had an understanding of the law in relation to the facts.

**a. Stewart Waived This Claim.**

As a general rule, issues cannot be raised for the first time on appeal. RAP 2.5(a). A limited exception exists where the issue involves a "manifest error affecting a constitutional right." RAP 2.5(a)(3). However, the alleged failure of a plea judge to adequately determine whether there was a factual basis for a plea is not by itself an issue of constitutional magnitude.

CrR 4.2(d) places a requirement upon the plea judge to "not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea." CrR 4.2(d) was promulgated to aid the trial judge in determining whether a guilty plea is voluntary and to create a record of the factors inherent in a voluntary plea, thus decreasing the number of occasions on which a plea must be set aside to correct the "manifest injustice" of an

involuntary plea. In re Personal Restraint of Hilyard, 39 Wn. App. 723, 726-27, 695 P.2d 596 (1985). However, “the establishment of a factual basis is not an independent constitutional requirement, and is constitutionally significant only insofar as it relates to the defendant’s understanding of his or her plea.” In re Personal Restraint of Hews, 108 Wn.2d 579, 591-92, 741 P.2d 983 (1987). CrR 4.2 is “not the embodiment of a constitutionally valid plea,” and “strict adherence to the rule is not a constitutionally mandated procedure.” Hilyard, 39 Wn. App. at 727 (citing State v. Vensel, 88 Wn.2d 552, 554, 564 P.2d 326 (1977)). The “duty imposed by court rule that the judge must be satisfied of the plea’s factual basis should not be confused with the constitutional requirement that the accused have an understanding of the nature of the charge.” Hilyard, 39 Wn. App. at 727.

The Washington Supreme Court in In re Keene, 95 Wn.2d 203, 622 P.2d 360 (1980), stated that the requirements of CrR 4.2 are not constitutionally mandated procedures:

In Superior Court a trial judge must make direct inquiry either personally or by a written statement as to whether the defendant understands the nature of the charge and the full consequences of his plea. This was held to be a requirement of our court rule,

CrR 4.2, and not a constitutionally mandated procedure.

Keene, 95 Wn.2d at 206 (citing Vensel, 88 Wn.2d at 554).

This conclusion in Keene is consistent with other Washington Supreme Court and United States Supreme Court cases. See In re Barr, 102 Wn.2d 265, 269, 684 P.2d 712 (1984) (CrR 4.2(d) is a procedural requirement and failure to comply with the rule does not necessarily establish that a plea is constitutionally infirm); McCarthy v. United States, 394 U.S. 459, 465, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969) (the procedures embodied in Rule 11 of the Federal Rules of Criminal Procedure<sup>6</sup> are not constitutionally mandated); In re Personal Restraint of Benn, 134 Wn.2d 868, 923, 952 P.2d 116 (1998) (petitioner must show that the plea is constitutionally infirm, not simply that the procedural rule, CrR 4.2(d), was violated).

Stewart and his attorney had the opportunity at the time of the plea to correct what he now claims was a failure of the plea judge to sufficiently determine whether there was a factual basis for his plea. Stewart also had the opportunity prior to sentencing to

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<sup>6</sup> Washington's CrR 4.2 is based upon Fed.R.Crim.P. 11, the federal rule designed to fulfill the constitutional requirement that a guilty plea be made voluntarily. Keene, 95 Wn.2d at 206.

make a motion to withdraw his plea under CrR 4.2(f).<sup>7</sup> After sentencing, Stewart again had the opportunity to seek relief under CrR 7.8.<sup>8</sup> Again, he failed to do so.

Stewart may not now claim that his plea should be withdrawn based upon nothing more than an alleged violation of CrR 4.2. See State v. Ridgley, 28 Wn. App. 351, 623 P.2d 717, rev. denied, 95 Wn.2d 1020 (1981) (presented with nothing but the bare assertion that there was a violation of CrR 4.2, appellate court declines to consider issue). Because CrR 4.2(d)'s requirement that the judge find a factual basis for a plea is simply a procedural duty placed upon the plea judge, the defendant's failure to object or move to withdraw his plea precludes his ability to raise this issue for the first time on appeal. See State v. Zumwalt, 79 Wn. App. 124, 129, 901 P.2d 319 (1995) (factual basis issue appealable only because issue was raised at the trial court).

On appeal, Stewart tries to characterize this issue as a question of voluntariness, and thus a constitutional issue.

However, Stewart's claim that his plea was involuntary is in no way

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<sup>7</sup> CrR 4.2(f) provides that the "court shall allow a defendant to withdraw the defendant's plea of guilty whenever it appears that the withdrawal is necessary to correct a manifest injustice."

<sup>8</sup> CrR 4.2(f) provides in pertinent part that when a "motion for withdrawal is made after judgment, it shall be governed by CrR 7.8."

supported by the record. Rather, he simply suggests that the State must prove that his plea was voluntary.

However, even where constitutional rights are implicated, a defendant still must raise the issue below or show that the alleged error is “manifest.” The “manifest error” exception “is a narrow one, affording review only of certain constitutional questions.” State v. Lynn, 67 Wn. App. 339, 343, 835 P.2d 251 (1992) (citing State v. Scott, 110 Wn.2d 682, 687, 757 P.2d 492 (1988)). Essential to a determination of whether an error is manifest “is a plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial of the case.” Lynn, 67 Wn. App. at 345.

[I]t is not sufficient when raising a constitutional issue for the first time on appeal to merely identify a constitutional error and then require the state to prove it harmless beyond a reasonable doubt. The appellant must first make a showing how, in the context of the trial, the alleged error actually “affected” the defendant’s rights. Some reasonable showing of a likelihood of actual prejudice is what makes a “manifest error affecting a constitutional right.

Id. at 346.

Here, Stewart has done no more than allege a procedural error that he speculates resulted in a constitutional error. Specifically, he contends that “[t]he lack of factual basis prevented

Stewart from understanding how his conduct constituted third degree assault.” Appellant’s Brief at pg. 3. To the contrary, the record before this Court gives every indication that Stewart’s plea was completely voluntary, with a full understanding of both the charge against him and how his acts fit within those charges.

A defendant’s “understanding of the nature of the charge may be assumed from his representation by presumptively competent counsel.” Benn, 134 Wn.2d at 923. The record at the time of the plea clearly shows that Stewart and his attorney had reviewed and discussed the plea form, and that defense counsel was confident that Stewart fully understood the manner in which he was proceeding. 2/29/08 RP 1. Stewart filled out a written statement on the guilty plea, as well as had it read to him; he understood and signed it. CP 6-15. Furthermore, the judge questioned Stewart on the record about whether he was entering into the plea voluntarily, and specifically whether he understood the elements of the offense. 2/29/08 RP 2-3. There has never been any showing of actual prejudice, but rather only an assertion of actual prejudice which is not supported by the existing record.

The factual basis of a plea *may* be constitutionally significant where it relates to a defendant's understanding of his plea. Hews, 108 Wn.2d at 591-92. However, the mere fact that the word "negligently" didn't make its way into Stewart's own statement about what he did to make him guilty of the crime, without more, does not support a conclusion that he did not understand the law in relation to the facts. "If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest." State v. McFarland, 127 Wn.2d 322, 338, 899 P.2d 1251 (1995). The present record does not support Stewart's claim.

Stewart's request of this Court to make the huge leap to conclude that the lack of the word "negligently" in his plea statement creates a due process claim should be rejected. This Court should not consider the claimed error for the first time on appeal.

**b. The Error Did Not Affect The Voluntariness Of Stewart's Guilty Plea.**

As ultimately found by the court, the record demonstrates that Stewart entered into his plea voluntarily and that he had full

knowledge of what he was doing and why he was doing it. The numerous procedural requirements of CrR 4.2, while not constitutionally mandated, are designed to insure a defendant's constitutional rights are protected before a guilty plea is accepted.

State v. Taylor, 83 Wn.2d 594, 596, 521 P.2d 699 (1974).

CrR 4.2(d) provides:

The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

A factual basis is sufficient to support a guilty plea if there is sufficient evidence for a jury to conclude that the defendant is guilty; the trial court need not be convinced beyond a reasonable doubt that the defendant is in fact guilty. State v. Saas, 118 Wn.2d 37, 43, 820 P.2d 505 (1991). The purpose behind the factual basis requirement is to protect a defendant who is in the position of pleading guilty with an understanding of the nature of the charge, but without realizing that his or her conduct does not actually fall within the charge. Keene, 95 Wn.2d at 209 (vacating plea to

forgery as constitutionally invalid where conduct admitted by petitioner did not amount to forgery).

The trial court is not limited to the defendant's admissions in his statement of defendant on plea of guilty to determine factual basis; it may rely on any reliable source, as long as the source is made part of the record. State v. Elmore, 139 Wn.2d 250, 262-63, 985 P.2d 289 (1999), cert. denied, 531 U.S. 837 (2000); In re Personal Restraint of Fuamaila, 131 Wn. App. 908, 924 n.24, 131 P.3d 318 (2006). The prosecutor's statement, acknowledged by the defendant, may provide the necessary factual basis for a guilty plea. State v. Osborne, 102 Wn.2d 87, 95, 684 P.2d 683 (1984) (factual basis for defendant's guilty plea may be any reliable source of information, including prosecutor's factual statement, so long as such source is made part of the record); Keene, 95 Wn.2d at 210 (factual basis of the plea must be developed on the record at the time the plea is taken).

In addition to the requirements imposed by CrR 4.2(d) that a defendant understand the nature of the charge that he is pleading to and that the court find that there is a sufficient factual basis for the plea, a defendant must possess an understanding of the law in relation to the facts. McCarthy, 394 U.S. at 466 (guilty plea "cannot

be truly voluntary unless defendant possesses an understanding of the law in relation to the facts”).

This Court should reject Stewart’s claim that he did not have an understanding of the law in relation to the facts for the same reason that this issue is not properly before this Court -- there is nothing in the record to support this assertion.

Stewart asserts that “[t]he lack of factual basis prevented Stewart from understanding how his conduct constituted third degree assault.” Appellant’s Brief at pg. 3. This assertion is conclusory, and Stewart does not offer any basis in the record for it. The fact that the word “negligence” does not appear in Stewart’s plea statement is not dispositive as to whether the court could find a factual basis, nor as to whether Stewart understood the law in relation to the facts.

This Court has no reason to believe that the trial court erred in finding that Stewart entered into his plea voluntarily, with an understanding of the law in relation to the facts.<sup>9</sup> Neither the applicable law nor the alleged facts changed during the pendency of Stewart’s case. It strains credibility to believe that Stewart

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<sup>9</sup> Indeed, the judge’s assessment that Stewart understood the law of third degree assault in relation to the facts alleged against him was later supported by the Certification of Andre Stewart, in which Stewart acknowledges that he pushed Evans. CP 54.

suddenly realized, over four years after the entry of his guilty plea, that he didn't understand the law in relation to the facts of his case. Stewart's change of heart as to his guilty plea is more likely explained by the fact that Evans would no longer be able to testify against him, should he succeed in withdrawing his plea. CP 57-58.

The trial court also reasonably concluded that Stewart understood the nature of the charge, as required by CrR 4.2(d). While Stewart claims that his not using the word "negligently" in his own statement about what he did to make him guilty of the crime renders the plea involuntary, the absence of that one word does not end the inquiry. Stewart had both notice and knowledge of negligence being an element of assault in the third degree, despite the fact that the word did not show up in his statement.

The Information, which explains that Stewart's actions would need to have been performed at least negligently to constitute third degree assault, was provided to Stewart at his October 3, 2007 arraignment hearing. CP 1; Supp. CP \_\_ (Sub 6, 11); CrR 4.1(f). Since Stewart pled guilty as charged, this is not a situation where an amended charge might have a different mens rea from the originally charged crime.

This Court may assume that Stewart understood the nature of the charge because of his representation by presumptively competent counsel. Benn, 134 Wn.2d at 923. The Information, containing the elements of the crime, was before the court at the time of the plea and was incorporated by reference on the very first page of Stewart's Statement of Defendant on Plea of Guilty.<sup>10</sup> CP 6, 17-21. Additionally, Stewart acknowledged verbally that he understood the elements of third degree assault, and again through his signature on the plea statement.<sup>11</sup> CP 6; 2/29/08 RP 2.

Additionally, the trial court properly found that a factual basis existed for the plea. CP 15; 2/29/08 RP 3-4; CrR 4.2(d). There was sufficient evidence for the plea judge to find that a jury could convict Stewart of assault in the third degree. Saas, 118 Wn.2d at 43.

The prosecutor's summary and the probable cause certification, which was incorporated by reference on the summary, were before the court when the guilty plea was entered. CP 6-21.

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<sup>10</sup> Paragraph 4(b) of Stewart's guilty plea statement reads: "I am charged with the crime(s) of assault in the third degree. The elements of this crime(s) are set forth in the information, which is incorporated by reference and which I have reviewed with my lawyer." CP 6.

<sup>11</sup> Paragraph 12 of the guilty plea reads: "My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge." CP 15.

The Felony Plea Agreement, relaying the parties' stipulation that the facts contained in the prosecutor's summary and probable cause certification are real and material facts, was also before the court at that time. CP 22. In formulating the basis for its finding that a factual basis for the plea existed, the court could justifiably rely upon these documents; it was not required to rely only on Stewart's own statement. Osborne, 102 Wn.2d at 95.

Stewart's admission, when combined with these documents, establishes that there is ample factual basis to accept Stewart's guilty plea to the crime as charged. The facts in the probable cause certification, including Stewart grabbing Evans' upper arms and throwing her in the midst of a heated argument, support the conclusion that his actions were not accidental. CP 18-20; see also section B(2)(a), supra. Rather, the facts support that this was an intentional act. If the facts show an intentional act, then the court could reasonably conclude that the act was at least done negligently.<sup>12</sup>

The fact that these additional, reliable documents were before the court and could be considered for the purposes of

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<sup>12</sup> When criminal negligence is required to establish an element of a crime, the element is also established if a person acts intentionally, knowingly, or recklessly. RCW 9A.08.010(1)(d), (2).

establishing a factual basis at the time of the plea distinguishes Stewart's case from one of the primary cases he relies on in his brief: State v. S.M., 100 Wn. App. 401, 996 P.2d 1111 (2000). In that case, Division 2 of this Court held that the record did not affirmatively show that a juvenile defendant pleading guilty to first degree child rape understood the law in relation to the facts or entered the plea intelligently and voluntarily, and thus, acceptance of the plea violated the defendant's right to due process. Id. at 414-15. While the Court found that the necessary factual basis for S.M.'s charge did not exist, the plea court had relied only on the written statement of the defendant on the guilty plea form, as opposed to on any prosecutor's summary or probable cause certification.<sup>13</sup> Id. Additionally, S.M. did not have the full assistance of counsel before entering his plea, as the record showed that his attorney's wife and legal assistant, who was not an attorney, was the only person who gave S.M. any substantive legal advice. Id. at 411. Unlike S.M., Stewart was represented by counsel and the court had documents outside of Stewart's plea statement to consider in determining whether a factual basis for the plea existed.

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<sup>13</sup> "Where the court relies only on the written statement of the defendant on the guilty plea form, it must insure the facts admitted amount to the violation charged. Anything less endangers the finality of the plea." In re Personal Restraint of Taylor, 31 Wn. App. 254, 259, 640 P.2d 737 (1982).

The trial court properly concluded that Stewart understood the law in relation to the facts, that he understood the nature of the charge, and that there was a factual basis for the plea. This Court should reject Stewart's arguments and affirm his conviction.

**D. CONCLUSION**

For the foregoing reasons, the State respectfully asks this Court to affirm Stewart's conviction and sentence.

DATED this 14<sup>th</sup> day of November, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Suzanne Lee Elliott, the attorney for the appellant, at 1300 Hoge Building, 705 Second Avenue, Seattle, WA 98104, containing a copy of the Brief of Respondent in STATE V. ANDRE STEWART, Cause No. 69313-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 14<sup>th</sup> day of November, 2013



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Wynne Brame  
Done in Seattle, Washington