IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. DZEVAD KULOGLIJA, Appellant.	)	No. 65809-3-I DIVISION ONE UNPUBLISHED OPINION FILED: February 19, 2013

Appelwick, J. — Kuloglija appeals from his conviction of second degree attempted murder. He argues that the trial court should have suppressed his confession at the scene that he stabbed his mother, because he did not first receive Miranda[1] warnings. He also contends that the court improperly allowed two detectives to provide non-expert testimony about blood splatter evidence. We affirm.

FACTS

On October 15, 2009, Alija Kuloglija was stabbed repeatedly. She telephoned her daughter, Suada Curavac, to tell her she was hurt. Curavac arrived within minutes

[1] Miranda v. Arizona, 384 U.S. 436, 467-68, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

at the apartment her mother shared with her adult son, Dzevad Kuloglija.[2] She found her mother lying inside the front door covered in blood and called 911.

Tukwila Fire Department emergency responders arrived first at the scene and began treating Alija. Tukwila Police Officers Gregory LeCompte, William Devlin, and Todd Bisson arrived soon after in separate vehicles. They passed Alija still being treated in the entryway and immediately began a sweep of the apartment. With their weapons out, they searched each room for other victims or suspects. Officer LeCompte found Kuloglija in a bedroom, lying face down on the floor behind a bed. Kuloglija was covered in blood and holding a knife, which appeared to be impaled in his armpit. Kuloglija was clearly injured. LeCompte described him as looking ashen, distraught, and in agony. LeCompte called out to the other officers. Officers Bisson and Devlin entered the bedroom with their guns drawn. Devlin jumped on the bed and from a crouched position held Kuloglija at gun point.

LeCompte ordered Kuloglija to drop the knife. Kuloglija let the knife fall away from his body. LeCompte asked Kuloglija, "[W]hat happened[?]" Kuloglija responded, "I stabbed my mom." Unsure whether he heard Kuloglija correctly, LeCompte asked again, "[W]hat happened[?]" and Kuloglija repeated, "I stabbed my mom." Devlin then jumped off the bed, handcuffed Kuloglija, and read Kuloglija his Miranda rights from a police department-issued card. Miranda v. Arizona, 384 U.S. 436, 467-68, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Kuloglija acknowledged that he understood his rights. He did not invoke his right to counsel or his right to remain silent. Devlin asked

[2] To avoid confusion, we refer to Dzevad Kuloglija as Kuloglija. We refer to his mother, Alija Kuloglija, as Alija or as the victim.

Kuloglija, "[W]hat happened here[?]" Kuloglija responded, "I stabbed my mother. . . . [T]hanks for helping me. . . . I want to die."

Kuloglija had three wounds in his abdomen, as well as wounds in his neck, upper chest, and jaw. He was treated at the scene, then transported to Harborview Medical Center in critical condition. He stayed at Harborview for six days before he was taken to King County jail. Alija was also transported to Harborview. She had several deep wounds in her chest and near her heart, which required immediate surgery. She also had wounds on her hands and forearms, as well as a collapsed lung.

The day after the attack, Detective James Seese was assigned to guard Kuloglija while restrained in his hospital bed. Seese was dressed in plain clothes, but his badge, gun, and handcuffs were visible. Seese did not want to talk and did not ask Kuloglija questions. But, Kuloglija initiated conversation with Seese several times, asking about his surroundings and Seese's presence. At one point, Kuloglija told Seese, "I am stupid. . . . I stab mother and stab self. . . . How is my mother?" and "I should have used gun. . . . [S]hoot everyone and myself." Kuloglija also expressed a desire to die and asked Seese how long he would be in jail.

Detectives David Heckelsmiller and Gary Koutouvidis went to interview Kuloglija while he was at Harborview. Koutouvidis informed Kuloglija of his Miranda rights. Kuloglija immediately invoked his right to counsel, so the detectives did not ask any questions. Kuloglija then added that he just wanted to talk as friends and have some fun, but that it was too late.

Kuloglija was charged with second degree attempted murder and first degree assault. Both charges included deadly weapon enhancements. The trial court held a

CrR 3.5 hearing and determined that Kuloglija's statements at the scene and later at Harborview were admissible. At trial, Alija Kuloglija testified that she was stabbed by an unknown, masked man wearing gloves and plastic over his shoes. She explained that she answered her door and he immediately began to stab her. She said that her son fought with the intruder. Curavac also testified that her mother told her the same story and told her to tell everyone that Kuloglija tried to help. Kuloglija testified that he had no memory of the events.

The jury found Kuloglija guilty on both counts. On the State's motion, the court dismissed the conviction for first degree assault. The court denied Kuloglija's motion to arrest judgment based on insufficiency of the evidence. It then imposed a standard range sentence of 116.25 months. Kuloglija appeals.

DISCUSSION

I. Kuloglija's Incriminating Statements

Kuloglija argues that the trial court erred by refusing to suppress his pre-Miranda statements made at the scene. Likewise, he contends that the trial court should have suppressed his post-Miranda statements at the scene. He assigns error to the trial court permitting Detective Seese to testify about Kuloglija's statements at Harborview. Similarly, he argues that trial court erred in admitting his statements to Detectives Heckelsmiller and Koutouvidis at the hospital.

If unchallenged, findings of fact entered at a CrR 3.5 hearing are verities on appeal. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). If challenged, they are verities if supported by substantial evidence. Id. This court reviews de novo whether those findings support the trial court's conclusions of law. State v. Armenta,

134 Wn.2d 1, 9, 948 P.2d 1280 (1997).

A. Pre-Miranda Statements at the Scene

Kuloglija argues that the trial court erred at the CrR 3.5 hearing by not suppressing his confession to Officer LeCompte at the scene that he stabbed his mother. Miranda warnings must be given whenever a suspect is subject to custodial interrogation by police. Miranda, 384 U.S. at 467-68. This prophylactic rule protects the defendant's Fifth Amendment privilege against self-incrimination. Id. at 467. If police conduct a custodial interrogation without Miranda warnings, statements made by the suspect during the interrogation may not be introduced trial. Id. at 479. Kuloglija contends that he was both in custody and being interrogated when LeCompte asked him "what happened?" before giving Miranda warnings.

A person is in "custody" if, after considering the circumstances, a reasonable person would feel that his or her freedom was curtailed to a degree associated with formal arrest. State v. Heritage, 152 Wn.2d 210, 218, 95 P.3d 345 (2004). In other words, the court must consider how a reasonable person in the suspect's shoes would have understood the situation. See id. Here, Officer LeCompte found Kuloglija lying on the floor holding a knife. Though Kuloglija was not yet a suspect, three officers had their guns trained on him. A reasonable person in Kuloglija's shoes would not have felt free to leave at that point. We hold that Kuloglija was in custody for Miranda purposes. See State v. Richmond, 65 Wn. App. 541, 544, 828 P.2d 1180 (1992).

The primary issue in determining if Kuloglija's pre-Miranda confession should have been suppressed is whether Officer LeCompte's question, "[W]hat happened[?]" constituted interrogation. Interrogation can be both express questioning and its

functional equivalent. Rhode Island v. Innis, 446 U.S. 291, 300-01, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). Functional equivalent means words or actions the officer should have known were reasonably likely to elicit an incriminating response from the suspect. Id. at 301. However, under the public safety exception, even if a suspect is in custody, there is no Miranda violation if the officer asks questions necessary for officer or public safety. See, e.g., New York v. Quarles, 467 U.S. 649, 657, 104 S. Ct. 2626, 81 L. Ed. 2d 550 (1984); State v. Lane, 77 Wn.2d 860, 863, 467 P.2d 304 (1970).

In Lane, the Washington Supreme Court held that the suspect's statement did not need to be suppressed when officers asked him before Miranda warnings whether he had a gun. 77 Wn.2d at 864. The court explained that it was not a violation of either the letter or spirit of Miranda when police ask questions strictly limited to protecting their immediate physical safety and which could not reasonably be delayed until after the warnings are given. Id. at 863. Likewise, the United States Supreme Court in Quarles applied the exception where officers asked the suspect where he discarded his gun before advising him of his Miranda rights. 467 U.S. at 652, 657. The Court held that such a question does not violate Miranda, because there was an objectively reasonable need for the officers to protect the public from immediate danger. Id. at 656, 659. The Court explained that "the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." Id. at 657.

Washington courts have since applied the exception where there is an immediate threat to officer, public, victim, and even suspect safety. In State v. Finch,

the Washington Supreme Court applied the exception when a SWAT team negotiated with a suspect who shot two people then barricaded himself in a trailer. 137 Wn.2d 792, 830, 975 P.2d 967 (1999). The suspect indicated he was suicidal, had shot himself, and intended to shoot police officers. Id. The court determined there was an objectively reasonable need to protect both police and the defendant himself from immediate danger, so Miranda warnings were not required before initial contact. Id.

Likewise, in Richmond, this court explained that where officers responded to a reported stabbing, the need for answers regarding location of the victim outweighed the need for Miranda warnings. 65 Wn. App. at 545 n.4. There, after the officer asked Richmond who called 911 before advising him of his Miranda rights. Id. at 542. Richmond responded that he did not know, but it might be the other person in the apartment. Id. The officer asked where that person was, and Richmond pointed down the hall. Id. The officer then found the stabbing victim in a pool of blood in the bathroom. Id. The court reasoned that the officer's questions did not first require Miranda warnings, because they were not intended to elicit incriminating testimony. Id. at 546 n.5. Rather, they were intended to determine whether someone inside the apartment was seriously injured. Id. These cases make clear that officers may ask questions reasonably necessary to protect themselves, potential victims, the public, or even the suspect. The exception is one aimed at public safety, not just officer safety.

Like Finch and Richmond, concern for victim safety and urgency to control a dangerous situation necessitated Officer LeCompte's questions.[3] When LeCompte

[3] After the CrR 3.5 hearing, the trial court made findings of fact that LeCompte found Kuloglija facedown with a knife in or near his body. The court found that it was not clear to LeCompte whether Kuloglija was a suspect or a victim. Kuloglija does not

came across Kuloglija, he was lying face down, covered in blood, and clearly injured. Kuloglija was holding a knife that looked like it might be impaled in his armpit. LeCompte testified that at that point, he thought Kuloglija was another victim and he "didn't know what was going on." LeCompte explained that he asks "[W]hat happened[?]" anytime he comes across someone who is injured. LeCompte had to take quick actions to neutralize a volatile situation. When he asked Kuloglija what happened, there was an objectively reasonable need to secure the scene and locate other possible victims or a fleeing suspect. His surprise at Kuloglija's response also suggests that his question was not intended to elicit an incriminating response.

Kuloglija argues that here there was no dire officer safety concern like in Lane or Quarles, where a gun was on the loose. However, the exception is not as narrow as Kuloglija would have us believe. The public safety exception does not require there to be a threat to officer safety. Nor does it require there to be a gun on the loose. LeCompte did not know whether a suspect was present in the apartment or had fled the scene and was out in the public somewhere.

Testimony from Officer Devlin does not compel a different conclusion. Devlin testified that when he heard LeCompte shout that Kuloglija had a knife, he assumed Kuloglija was a suspect. However, he arrived in the room after being summoned there by LeCompte. His first impression of Kuloglija was that he was holding a knife and being held at gunpoint by Officer LeCompte. This could have influenced his perception of Kuloglija as a suspect instead of a victim. And, even if Kuloglija was a suspect when

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specifically assign error to these findings. However, he argues that from the time LeCompte found Kuloglija, he treated Kuloglija like a suspect.

LeCompte asked what happened, Finch contemplates such questions when necessary to protect suspect safety. Moreover, Devlin testified about his concern for officer safety at that point, which also falls within the public safety exception.

On these facts, LeCompte's question was not an interrogation for purposes of Miranda. An objectively reasonable need existed for LeCompte to protect Kuloglija, other potential victims, and the public from immediate danger. Even though the trial court below did not explicitly state that the public safety exception was being applied,[4] its findings properly and adequately invoked it. Because Kuloglija's pre-Miranda confession was not made in response to police interrogation, it was not error to deny suppression of those statements.

B. Post-Miranda Statements at the Hospital

Kuloglija argues that Detective Seese's proximity, appearance, and repeated presence near his hospital bed created a coercive environment functionally equivalent to interrogation and therefore required Miranda warnings. Below, the State conceded that Kuloglija was in custody when he was restrained in his hospital bed. But, the trial

[4] The trial court admitted the statements, finding that:

> [I]t was reasonable under the circumstances for the officers to ask what happened. Although the defendant was not free to leave, these statements are admissible because the officers were attempting to determine if anyone else was present and it was reasonable to ask what happened. These statements were made in response to a limited number of questions asked by the officers in an attempt to ascertain if the defendant was an additional victim or a suspect. These types of questions are permissible without advisement of Miranda warnings under State v. Walton, 7 Wash.App. 130 (1984) and Berkmer v. McCarty, 468 US 420[, 104 S. Ct. 3138, 82 L. Ed. 2d 317] (1984).
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> (We believe the trial court intended to cite to State v. Walton, 67 Wn. App. 127, 130, 834 P.2d 624 (1992).)

court admitted Kuloglija's statements to Seese despite lack of Miranda warnings, because Seese asked no questions to elicit Kuloglija's spontaneous statements.

Only questions or actions reasonably likely to elicit an incriminating response from the defendant can be characterized as equivalent to interrogation. State v. Peerson, 62 Wn. App. 755, 773, 816 P.2d 43 (1991). Generally, a statement is not the product of custodial interrogation when it is spontaneous and unsolicited. State v. Ortiz, 104 Wn.2d 479, 484, 706 P.2d 1069 (1985). For instance, we held in Peerson that it was not interrogation when a hospitalized defendant freely volunteered incriminating statements, even though he was in physical pain, depressed, medicated, and under 24 hour police surveillance. 62 Wn. App. at 773. The officer guarding Peerson neither asked any questions nor said anything reasonably likely to elicit an incriminating response. Id. The court explained that while the defendant's emotional and physical state might affect the weight a jury attributes to the statements, those factors do not affect their admissibility. Id. at 774.

Like Peerson, Kuloglija was in physical pain, emotionally distressed, and under Detective Seese's guard while he was treated at Harborview. And, like in Peerson, the record is devoid of evidence that Seese asked any questions or said anything that would be reasonably likely to elicit incriminating statements from Kuloglija. The trial court found and Kuloglija does not now dispute that Seese did not want to speak to Kuloglija, did not initiate conversation, and did not ask any questions. Rather, Kuloglija freely volunteered statements about his remorse and stabbing his mother. Many times Seese walked away, attempting to disengage. Under Peerson, an officer's surveillance of a hospitalized defendant does not, by itself, constitute interrogation. We hold that

the trial court correctly admitted Kuloglija's statements to Detective Seese, because there was no interrogation.

Kuloglija also assigns error to the trial court's denial of his motion to suppress statements made to Detectives Heckelsmiller and Koutouvidis at Harborview. Kuloglija asserts that his statement to the detectives that he "just wanted to talk as friends but that it was too late" was just a cryptic version of invoking his right to counsel, so should have been excluded at trial. However, at that point, Kuloglija was under arrest, restrained in his hospital bed, and guarded by police. Clearly, the situation was adversarial and no longer friendly. Kuloglija's remark is not obviously related to invoking his right to counsel. Moreover, Kuloglija's statement was unsolicited—the officers asked him no questions after they read him his Miranda rights and he invoked his right to counsel. We find no error in admitting his statement that it was too late to talk as friends.

Kuloglija also asserts that the trial court erred in admitting several other statements he made to Seese, arguing that they were highly prejudicial and not relevant. For instance, Seese testified regarding Kuloglija's comments about female staff at Harborview, what was on TV, and Seese's gun. However, defense counsel did not object at trial. Kuloglija makes no claim of constitutional error, so the objection cannot be raised for the first time on appeal. RAP 2.5(a)(3); State v. Kirkman, 159 Wn.2d 918, 926, 155 P.3d 125 (2007). Therefore, the issue was not preserved and we decline to reach it.

C. Validity of Waiver of Rights

Before a statement may be admitted against the defendant at trial, the State

bears the burden of showing by a preponderance of the evidence that waiver was knowing, voluntary, and intelligent. State v. Athan, 160 Wn.2d 354, 380, 158 P.3d 27 (2007). Kuloglija asserts that any waiver of his Miranda rights was not knowing and voluntary, because he does not speak and understand English well. This argument goes to both his statements made at the scene and at Harborview. Kuloglija is correct that a defendant's language difficulty is a consideration in determining the voluntariness of a confession. See, e.g., State v. Lopez, 74 Wn. App. 254, 270, 872 P.2d 1131 (1994). It is clear that English is not Kuloglija's native language. Officers acknowledged that he had a "fairly heavy accent" and his speech "[e]very once in a while [was] a little broken."

However, the State put forth and the trial court found ample evidence that Kuloglija spoke and understood English well enough to understand and waive his Miranda rights. In his interactions with police in both 2007[5] and 2009, Kuloglija never indicated he did not understand what was being said. He never requested an interpreter. Both in 2007 and 2009, he acknowledged that he understood his Miranda rights. 6Indeed, he invoked his right to counsel with Detectives Heckelsmiller and Koutouvidis at Harborview. All detectives were able to communicate with Kuloglija in English and understand him. The court also listened to a recorded telephone call that Kuloglija made from jail and found "that the defendant speaks and understands the English language to a sufficient degree to understand what the officers were saying as well as to understand his Miranda warnings." Therefore, substantial evidence supports

[5] Detective Sampson interviewed Kuloglija and investigated his involvement in a 2007 domestic violence harassment charge.

the trial court's finding that Kuloglija understood his rights. We find no error in the court's conclusion that Kuloglija's waiver of his Miranda rights was knowing and voluntary.

II. Nonexpert Blood Splatter Testimony

Kuloglija argues that the trial court erred when it allowed two detectives to offer lay opinion testimony about blood splatter at the scene of the stabbing. Kuloglija contends that blood splatter is a unique, forensic science that requires expert analysis and testimony. At trial, Detectives Heckelsmiller and Philip Glover testified that there was a significant amount of blood inside the front door and on a closet behind the front door. On the other hand, there was no blood outside the front door in the hallway or stairway. They explained that blood could not have landed on the closet door if the front door was open at the time of attack. The trial court admitted Detective Heckelsmiller's testimony, concluding that it was "within the realm of common human experience" and therefore did not require an expert. The State points out that defense counsel did not object to Detective Glover's testimony. However, blood splatter testimony was the subject of a motion in limine.

ER 701 permits lay witness testimony in the form of opinions or inferences, so long as it is "(a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of rule 702." This court reviews a trial court's decision to admit lay opinion testimony for abuse of discretion. State v. Ortiz, 119 Wn.2d 294, 308, 831 P.2d 1060 (1992). A trial court abuses its discretion when its decision is manifestly unreasonable, or exercised

on untenable grounds or for untenable reasons. State v. Lord, 161 Wn.2d 276, 283-84, 165 P.3d 1251 (2007). A trial court's decision to admit evidence is entitled to great deference. State v. Luvene, 127 Wn.2d 690, 706-07, 903 P.2d 960 (1995).

The State concedes that a complex conclusion drawn from details of blood patterns requires expert testimony. Washington case law supports this concession. See, e.g., In re Pers. Restraint of Stetson, 150 Wn.2d 207, 211-12, 76 P.3d 241 (2003) (expert testified that blood on the defendant's jeans could have only gotten there by dripping from above or a high velocity splattering caused by the impact of a bullet upon a body); State v. Roberts, 142 Wn.2d 471, 481, 520-21, 14 P.3d 713 (2000) (expert testified that a blood spot pattern indicated the victim was bound and bleeding when he was dragged on a chair by two people).

However, if an issue involves a matter of common knowledge about which inexperienced people are capable of forming a correct judgment, there is no need for expert opinion. State v. Smissaert, 41 Wn. App. 813, 815, 706 P.2d 647 (1985). For instance, nonexpert testimony about an individual's intoxication has consistently been held to be admissible when based upon personal observation. See, e.g., City of Seattle v. Heatley, 70 Wn. App. 573, 580, 854 P.2d 658 (1993). Likewise, a lay witness may testify that a substance appeared to be blood, semen, or some other bodily fluid, if the opinion is rationally based on the witness's perception and helpful to the jury. Halstien, 122 Wn.2d at 128.

Testimony by police officers may also constitute lay opinion when based on their personal knowledge and experience. See State v. Russell, 125 Wn.2d 24, 71, 882 P.2d 747 (1994). In Russell, the State called two detectives to provide nonexpert

testimony about the rarity of posed victims at crime scenes to support its argument of serial crimes. Id. at 69-70. Likewise, in Ortiz, an experienced border patrol tracker's testimony was admissible as both lay and expert opinion testimony. 119 Wn.2d at 308. There, the tracker visited the crime scene, investigated the victim's house, and tracked the suspect's trail through a field behind the house. Id. at 309. In both cases, the testimony was admissible, because it was based on the officers' personal knowledge and perceptions of the crime scene. Id.; Russell, 125 Wn.2d at 71.

This case law supports the conclusion that because some blood splatter analysis requires expert testimony does not mean all blood splatter analysis requires expert testimony. Detectives Glover and Heckelsmiller personally investigated the crime scene and took photographs, which were shown at trial. At trial, the defense theory was that the victim was attacked by someone outside the house. But, Detective Heckelsmiller testified that he observed blood behind the front door on a closet door. He explained that if the front door were open, as the defense argued, it would not be possible for blood to be behind the door. Likewise, Detective Glover testified based on his personal observations of blood in the main entryway and behind the front door. Detective Glover explained that "[b]lood would not have been able to land [behind the front door] because the door would have blocked it. So the door was most likely closed when the blood was splattered." This testimony is about the door obstructing any splattered fluid rather than testimony about the characteristics of blood.

The detectives' testimony did not require any complex blood splatter analysis. Rather, they testified based on their personal observations and perceptions of the crime scene. And, their testimony was useful, because it helped visually reconstruct

the scene for the jurors, who were limited to viewing photos and a diagram of the apartment. A trial court's decision to admit lay opinion testimony is given great weight. Here, it was tenable for the trial court to conclude that the detectives' testimony was within the realm of common human experience. We hold that the trial court did not abuse its discretion in permitting the detectives to provide lay opinion testimony under ER 701.

At oral argument, Kuloglija's counsel also asserted that Detective Heckelsmiller impermissibly testified about the difference between blood smears, castoff, and droplets. Heckelsmiller explained that he observed blood smears near the front door, indicating someone made contact with the surface. He distinguished smears from castoff, which is "[t]hrown off like shaking a hand." The distinction between blood smears and castoff is a different issue than the presence of blood somewhere it could not be if the front door was open. We need not decide whether this was a matter of ordinary perception and experience or the proper subject of expert testimony. Kuloglija did not identify and argue this issue in briefing. He discussed it for the first time at oral argument. Where an issue is not raised until oral argument, it is not properly before the court and need not be considered. State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 893 n.3, 969 P.2d 64 (1998); State v. Johnson, 119 Wn.2d 167, 170-71, 829 P.2d 1082 (1992).

III. Non-Expert Defensive Wounds Testimony

Kuloglija argues that the trial court erred in permitting the victim's treating surgeon, Dr. Hugh Foy, to provide nonexpert opinion testimony about the victim's defensive wounds. Kuloglija asserts that this testimony exceeded the scope of Dr.

Foy's expertise as a surgeon. As a result, he explains, he was deprived an opportunity to prepare a cross-examination or call a defense expert. Kuloglija concedes that his defense counsel failed to object to Dr. Foy's testimony about Alija's defensive wounds. Generally, appellate courts will not consider issues raised for the first time on appeal. RAP 2.5(a); Kirkman, 159 Wn.2d at 926. But, under RAP 2.5(a)(3), a claim of error may be raised for the first time on appeal if it is a manifest constitutional error. Kirkman, 159 Wn.2d at 926. The defendant must identify the constitutional error and show how it actually affected his rights at trial. Id. at 926-27. It is this showing of actual prejudice that makes the error "manifest." Id. at 927. Kuloglija claims that his constitutional rights of due process and assistance of counsel were harmed by the trial court's error. However, he provides no further legal authority or explanation for this assertion. See RAP 10.3(6).

Kuloglija also fails to show how Dr. Foy's testimony adversely affected his rights at trial. Kuloglija contends that he was not provided notice of Dr. Foy's testimony. This argument has no basis in the record. At a pretrial hearing, the court noted that Dr. Foy was likely to be a witness and his surgical notes could be admissible. It was entirely foreseeable that he would testify about Alija's injuries, including defensive wounds. Kuloglija also claims the State failed to lay a foundation for his testimony as an expert. Dr. Foy testified that wounds on Alija's hands and forearms were typical of victims attempting to defend themselves from knife stabbings. The defense theory at trial was that Alija was attacked by an unknown assailant standing outside the apartment—not that she was in fact the attacker or that she was not attacked at all. Alija testified that she attempted to defend herself from the attacker. Even if Kuloglija were correct that a

foundation was not properly laid, Dr. Foy's testimony corroborated Alija's own testimony. Though Foy's testimony regarding her defensive wounds may also have supported the State's theory, Kuloglija fails to establish how this caused actual prejudice. There is no manifest constitutional error.

IV. Use of the Term "Domestic Violence" at Trial

Kuloglija argues that the trial court erred when it allowed the term "domestic violence" to be used at trial. In State v. Hagler, we recognized that it is not necessary or advisable to inform the jury that charges are designated as domestic violence crimes, because it may prejudice the defendant. 150 Wn. App. 196, 198, 202, 208 P.3d 32 (2009). The concern in Hagler was that the domestic violence designation might influence the jury's determination of whether the evidence established the use or threat of force necessary to prove specific elements of charged offenses. Id.

Before trial, the court granted Kuloglija's motion to block reference to the crime as one of domestic violence at trial or in jury instructions. But, at trial, Detective Philip described his current area of work as felony domestic violence. The prosecutor then asked if Philip had received special training for domestic violence crimes. He responded that he attended conferences on the dynamics of domestic violence. Kuloglija argues that this exchange violated the court's pretrial rulings, constituted prosecutorial misconduct, and prejudiced his defense.

Even if a trial court excludes evidence through a pretrial order, the complaining party should object to admission of that evidence. State v. Weber, 159 Wn.2d 252, 272, 149 P.3d 646 (2006). Such an objection preserves the issue for review and gives the trial court an opportunity to cure potential prejudice with a remedial jury instruction

or by striking the evidence. Id. Kuloglija's attorney failed to object to the error, request a curative instruction, or move for a mistrial. Absence of objection strongly suggests that the testimony did not appear critically prejudicial to the defendant in the context of trial. State v. McKenzie, 157 Wn.2d 44, 53 n.2, 134 P.3d 221 (2006).

Moreover, the Hagler court determined that any error from repeated "domestic violence" designation in jury instructions was harmless, given the weight of evidence against Hagler. 150 Wn. App. at 202. At Kuloglija's trial, "domestic violence" was mentioned briefly only to describe the detective's unit and training. The crime itself was not referred to as one of domestic violence. Any inference from this testimony was insufficient to affect the outcome of the trial. The jury heard Kuloglija's confession that he stabbed his mother. DNA (deoxyribonucleic acid) and blood splatter evidence corroborated that confession. Any error relative to this testimony is harmless.

V. Testimony About Kuloglija's Previous Police Contact

At trial, the State called Detective Cynthia Sampson to testify about her previous contact with Kuloglija. The State intended Sampson's testimony to rebut the argument that Kuloglija did not speak and understand English well enough to understand previous Miranda warnings. Three years prior, Sampson interviewed Kuloglija, read him Miranda warnings, and arrested him as the primary suspect in a domestic violence harassment case. Concerned about impermissible inferences the jury might make about Kuloglija's prior bad acts, the prosecutor promised to elicit testimony that Sampson contacted Kuloglija as a witness. When the prosecutor failed to elicit that testimony, the court excused the jury and instructed her to do so.

Kuloglija contends that this was error, because it "restricted defense counsel in

an untenable way, required Detective Sampson to perjure herself, and denied Kuloglija his Sixth Amendment right to assistance of counsel." But, Kuloglija does not cite any supporting legal authority. Where a party fails to cite any authority, we treat it as a concession that the argument lacks merit. State v. McNeair, 88 Wn. App. 331, 340, 944 P.2d 1099 (1997).

Further, as the State points out, Kuloglija failed to preserve any error below. The only objection raised regarding Sampson's testimony was that it would be cumulative, and Kuloglija was no longer arguing that he did not understand his Miranda rights. Because Kuloglija raises this issue for the first time on appeal, he must identify the constitutional error and show how it actually affected his rights at trial. RAP 2.5(a)(3); Kirkman, 159 Wn.2d at 926-27. Kuloglija fails to explain how the alleged violation of his Sixth Amendment right to counsel actually affected his rights at trial or even expand upon his bare assertion of constitutional violation. Moreover, the steps taken by the court and prosecutor protected Kuloglija from unfair prejudice resulting from jury inferences about his prior bad acts. Other detectives also testified about Kuloglija's English comprehension, not just Sampson. Therefore, we hold that Sampson's testimony, though cumulative, was not prejudicial.

VI. Victim's Statements at the Scene

Kuloglija argues that the trial court erred in not allowing him to elicit testimony from Curavac, Alija's daughter, that Alija told her at the scene that Kuloglija attempted to protect Alija from an unknown assailant. The record does not support this argument. The record shows that Curavac testified that her mother said she struggled with an unknown assailant at the front door. Curavac then explained that her mother told her to

"tell everyone that it was Dzevad who tried to help her, and was also attacked." Later during closing, defense counsel referred back to this testimony. There is no error.

VII. Motion to Arrest Judgment

Kuloglija argues that, because there is insufficient evidence to support his conviction, the trial court erred in denying his motion to arrest judgment. Sufficient evidence supports a conviction when, viewing the evidence in the light most favorable to the State, a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). This court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83, P.3d 970 (2004).

Here, the jury heard extensive evidence against Kuloglija. Kuloglija confessed at the scene to stabbing his mother. He confessed again at Harborview. Blood splatter evidence corroborated the State's theory that Alija was attacked from inside the house. DNA evidence on a broken knife hidden in the garbage matched Kuloglija's DNA on the handle and Alija's DNA on the blade. Though Alija told a contradictory story, the jury determines credibility of witnesses. Those determinations are not subject to our review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We hold that there is sufficient evidence to support Kuloglija's conviction. The trial court properly denied his motion to arrest judgment.

VIII. Cumulative Error Doctrine

Lastly, Kuloglija argues that even if we conclude that none of the asserted errors alone warrant reversal, their cumulative effect requires us to reverse. Where several

errors standing alone do not warrant reversal, the cumulative error doctrine requires reversal when the combined effects of the errors denied the defendant a fair trial. State v. Coe, 101 Wn.2d 772, 789, 684 P.2d 668 (1984). In Coe, the Court found cumulative error when there were discovery violations, prior bad acts improperly admitted, hypnotized witnesses, unduly prejudicial cross-examination, among other errors. Id. Any errors that occurred in Kuloglija's trial were minor, and do not rise to the level of cumulative error like in Coe.

We affirm.

Appelwick, J.

WE CONCUR:

Schindler, J.

Cox, J.