

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

TRAMAINE GREGORY MILES,

Appellant.

No. 38668-2-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Tramaine Gregory Miles appeals his Pierce County conviction for making a false or misleading statement to a public servant in violation of RCW 9A.76.175.<sup>1</sup> On appeal, he claims that improper opinion testimony violated his right to trial by an impartial jury. We affirm.<sup>2</sup>

**FACTS**

On May 3, 2007, Puyallup Police Officers Mark Ketter and Michael Lusk responded to a call of drug activity in the back of a van in a McDonald's parking lot. When the officers arrived,

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<sup>1</sup> He was also convicted of unlawful possession of methamphetamine, but he does not appear to challenge that conviction.

<sup>2</sup> A commissioner of this court considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

the van door was open and they could see four people inside, including Miles. The officers asked to see the van's occupants' identification. Miles denied having any printed form of identification, but he told the officers that his name was Richard Green and gave his date of birth as January 16, 1961. Ketter ran a records check for Richard Green as well as the names provided by the other occupants. The check revealed records for each occupant except Green (Miles). When questioned further about the lack of driving record information, Miles claimed that he had a license out of New York. A second check using the New York database showed no record for Green.

Officer Ketter then had Miles write down his name on a piece of paper. Because Miles wrote down "Greenn," instead of "Green," Ketter made a third records check using the alternate spelling. Clerk's Papers at 77. This, too, was unsuccessful in locating a record.

At that point, Officer Ketter detained Miles and advised him of his rights. This time, when Ketter asked his name, Miles said it was Jerome Lily and he was from Colorado. Ketter found no records in Colorado, New York, or Washington for that name either. He then arrested Miles for providing a false name and transported him to the Puyallup jail. Jail staff later determined that his true name was Tramaine Gregory Miles.

At trial, the deputy prosecutor asked Officer Ketter what the lack of any records on the names Miles provided indicated to him. He replied, "Well, after getting three different versions of the name, I was pretty confident that he was lying about his name. And I placed him under arrest for providing a false name to a law enforcement officer." 1 Report of Proceedings at 63. The defense did not object to this testimony.

ANALYSIS

Miles now asserts that Officer Ketter's testimony was improper opinion testimony that violated his right to a trial by an impartial jury. He argues that the testimony meets the "explicit or almost explicit" requirement set out in *State v. Kirkman*, 159 Wn.2d 918, 936-38, 155 P.3d 125 (2007), making this a manifest constitutional error that he can raise for the first time on appeal.

Appellate courts will not approve a party's failure to object at trial where the error could be corrected by the trial court. *Kirkman*, 159 Wn.2d at 935. We will find manifest constitutional error only upon a plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial. *See Kirkman*, 159 Wn.2d at 935.

Opinions of guilt are improper whether they are made directly or by inference. *State v. Montgomery*, 163 Wn.2d 577, 594, 183 P.3d 267 (2008). Opinion testimony is testimony based on one's belief or idea rather than direct knowledge of the facts at issue. *State v. Demery*, 144 Wn.2d 753, 760, 30 P.3d 1278 (2001). Here, the challenged testimony was offered to explain the basis for Miles's arrest. It might have been better phrased as a "belief" that Miles had provided false names. Nevertheless, it was not an opinion regarding Miles's commission of a crime and was not unduly prejudicial. Miles gave Officer Ketter three names for which there were no records. He was identified at trial by a fourth name which he appeared to acknowledge.<sup>3</sup> The names were very different and at least three of them had to be false. Even without Ketter's statement, any jury would have found Miles guilty beyond a reasonable doubt of making a false or misleading statement to a public servant.

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<sup>3</sup> He did not challenge it and defense counsel used it throughout the trial.

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Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

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QUINN-BRINTNALL, J.

We concur:

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BRIDGEWATER, J.

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VAN DEREN, C.J.