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Filed
Washington State
Court of Appeals
Division Two

June 3, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. PETER COUCH, Appellant.	No. 58122-1-II PART-PUBLISHED OPINION

LEE, J. — Peter Couch appeals his convictions for one count of first degree robbery while armed with a firearm and three counts of second degree assault. Couch argues that the trial court erred by requiring him to register as a felony firearm offender. We hold that the felony firearm registration statute did not apply to Couch. Accordingly, we reverse the imposition of the felony firearm registration requirement and remand for the trial court to strike the firearm felony registration requirement from Couch's judgment and sentence.

In the unpublished portion of this opinion, we address Couch's arguments that the trial court erred by (1) not entering written findings or conclusions after the CrR 3.5 hearing, (2) conditionally vacating the merged second degree assault conviction involving the victim of the robbery conviction, (3) referencing the merged second degree assault conviction in the judgment and sentence, and (4) imposing the crime victim penalty assessment (CVPA) and DNA collection

fee. Couch also filed a statement of additional grounds for review (SAG)[1] containing additional arguments.

We hold that the trial court's oral ruling after the CrR 3.5 hearing was sufficiently thorough to permit appellate review, and therefore, the trial court's error in failing to enter written findings and conclusions was harmless. We further hold that, on remand, in addition to striking the firearm felony registration requirement from Couch's judgment and sentence, the trial court must unconditionally vacate Couch's conviction for second degree assault involving the victim of the robbery conviction, remove any reference to the merged second degree assault conviction from Couch's judgment and sentence, and strike the CVPA and DNA collection fee from Couch's judgment and sentence. Finally, we hold that Couch's SAG claims do not merit reversal. Thus, we otherwise affirm Couch's convictions and sentence.

FACTS

A. BACKGROUND

Two men entered a pizza store: one wearing green and carrying a handgun, the other wearing black and apparently unarmed. Couch was later identified as the man dressed in black. Three employees were working at the pizza store that night, including Adrian Villanueva. All three employees were in the back of the store when the men entered.

The man dressed in green pointed his handgun at each employee and ordered them to lie on the ground. While Villanueva lay face down on the ground, Couch stood over him and demanded his wallet. Villanueva looked at the ground to deescalate the situation and handed over

[1] Rap 10.10(a).

his wallet without protest. Villanueva knew that the man dressed in green had a gun, but was not sure if Couch was armed. Surveillance footage showed Couch holding his hand as if it were a gun pointed towards Villanueva during this interaction.

Couch removed money from Villanueva's wallet, then ordered him to stand up and go to the front of the store to open the cash registers. Once at the front of the store, Villanueva opened the cash registers, and Couch took the money from them. After opening the registers, Villanueva lay back down on the floor. When Couch finished removing the cash from the registers, he and the man dressed in green fled the store. The employees then called 911.

Shortly after receiving the call about the robbery, police received another call about a suspicious car in an alley. Officers saw two men fleeing on foot when they arrived at the alley. Couch was wearing shorts and the same black sweatshirt he had worn during the robbery, although he discarded the sweatshirt after the officer lost sight of him. Couch later caught the attention of police searching the area because he was wearing shorts and a T-shirt in 40-degree weather with rain at night. After police followed him to a high school parking lot, Couch asked them to call him a taxi and then sat on the front of a police cruiser to speak to officers.

Couch asked the officers, "Is everything okay?" and one officer responded that police were "just seeing what's going on." Ex. 89, at 6:53-6:59. When asked, Couch denied fleeing the car in the alleyway and told police he was leaving a friend's house, although he could not tell them where the friend lived or direct them to the house.

Police officers had access to surveillance footage of the robbery that one officer reviewed while other officers were speaking to Couch. The officer saw that Couch was wearing the same

socks and distinctive shoes that surveillance footage showed the unarmed man dressed in black was wearing during the robbery. Officers then arrested Couch.

The State charged Couch with one count of first degree robbery while armed with a firearm of Villanueva and three counts of second degree assault, one for each employee. Due to later events that occurred when police attempted to collect a DNA sample, the State also charged Couch with intimidating a public servant.

B. TRIAL PROCEEDINGS

At trial, witnesses testified consistently with the facts described above. In closing argument, defense counsel argued that someone else robbed the pizza store and that Couch was arrested because he was a Black male and the only person on foot in the area near the robbery.

A jury instruction addressing the firearm sentencing enhancement on the robbery charge explained, "For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the [first degree robbery]." Clerk's Papers (CP) at 73. The instruction continued, "If one participant in a crime is armed with a firearm, all accomplices to that participant are deemed to be so armed, even if only one firearm is involved." CP at 73. And the instruction stated, "A firearm is a weapon or device from which a projectile may be fired by an explosive such as gunpowder." CP at 73.

The jury convicted Couch of one count of first degree robbery and three counts of second degree assault. The jury also entered a special verdict finding that Couch was armed with a firearm during the robbery. The jury acquitted Couch on the intimidating a public servant charge.

Couch's criminal history included convictions from California for second degree robbery and battery against a police officer. At sentencing, the State asked the trial court to require Couch

to register as a felony firearm offender based on Couch's "prior violent criminal history" and because he "was involved with robbery that involved a firearm," which was "evidence of propensity for violence that would endanger other persons." 7 Verbatim Rep. of Proc. (VRP) at 537. The trial court stated that it was concerned about Couch's prior "criminal history and the fact that it continues" with a firearm being pointed at three people "for a few dollars." 7 VRP at 540. "He's getting closer to 40, which is the statistical age where everyone stops committing crime, but here is he at age 33 committing robbery with a gun and threatening others with the gun." 7 VRP at 540. The trial court required Couch to register as a felony firearm offender based on his criminal history and propensity for violence. Couch did not object to the felony firearm offender registration requirement.

The trial court imposed a mid-range sentence of 150 months for the robbery conviction and 84 months for each remaining second degree assault conviction. The court also imposed 60 months for the firearm sentencing enhancement to be served consecutively to the sentence on the robbery conviction. Thus, the trial court imposed a total of 210 months of confinement.

Couch appeals.

ANALYSIS

Couch argues that the trial court erred by requiring him to register as a felony firearm offender. Couch contends that he was not carrying a firearm and that RCW 9.41.330, the felony firearm offender registration statute, does not authorize a registration requirement for accomplices that are unarmed. Couch contrasts the felony firearm offender registration statute with RCW 9.94A.533, which imposes firearm sentencing enhancements when the offender or an accomplice is armed with a firearm. Couch asserts that the omission of the "or an accomplice" language in

the felony firearm offender registration statute shows that the registration requirement applies only to those who are actually armed and not to unarmed accomplices. Because the State argued a theory of accomplice liability for the robbery charge and agreed that Couch was not the person carrying the gun, Couch reasons that the trial court erred by requiring him to register as a felony firearm offender.

In response, the State emphasizes that the jury entered a special verdict finding that Couch was armed with a firearm at the time of the robbery. Accordingly, the State asserts that Couch was convicted of a felony firearm offense within the meaning of RCW 9.41.330, so the trial court properly imposed the registration requirement. The State also notes that the legislative history of RCW 9.41.330 indicates that the law seeks offender accountability and police officer safety—goals that the State believes are furthered by subjecting both principal and accomplice offenders to the registration requirement.

A. LEGAL PRINCIPLES

We review questions of statutory interpretation de novo. *State v. Dennis*, 191 Wn.2d 169, 172, 421 P.3d 944 (2018). The purpose of statutory interpretation is to determine and give effect to the legislature's intent. *Id.* "When we interpret a criminal statute, we give it a literal and strict interpretation." *State v. Delgado,* 148 Wn.2d 723, 727, 63 P.3d 792 (2003). "We derive the legislative intent of a statute solely from the plain language by considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole." *Dennis*, 191 Wn.2d at 172-73. "If, after this inquiry, there is more than one reasonable interpretation of the plain language, then a statute is ambiguous and we may rely on principles of statutory construction, legislative history, and relevant case law to discern

legislative intent." *Id.* at 173. "A statute is 'not ambiguous simply because different interpretations are conceivable.'" *Id.* (quoting *Berger v. Sonneland,* 144 Wn.2d 91, 105, 26 P.3d 257 (2001)). "We cannot add words to an unambiguous statute under the guise of construction." *State v. M.V.*, 33 Wn. App. 2d 658, 665, 564 P.3d 564 (2025).

RCW 9.41.330 governs felony firearm offender registration. That statute provides that "whenever a defendant in this state is convicted of a felony firearm offense . . . the court must consider whether to impose a requirement that the person comply with the registration requirements of RCW 9.41.333 and may, in its discretion, impose such a requirement." RCW 9.41.330(1). The definition of "felony firearm offense" includes "[a]ny felony offense if *the offender* was armed with a firearm in the commission of the offense." Former RCW 9.41.010(10)(e) (2021) (emphasis added).

In determining whether to impose the felony firearm registration requirement, the trial court must consider factors "including, but not limited to" the defendant's criminal history, whether they have "previously been found not guilty by reason of insanity of any offense in this state or elsewhere," and "[e]vidence of the person's propensity for violence that would likely endanger persons." RCW 9.41.330(2)(a)-(c). And if the defendant has been convicted of a serious violent offense, the court *must* impose the registration requirement. RCW 9.41.330(3).

First degree robbery is not a serious violent offense. Former RCW 9.94A.030(46) (2021). Accordingly, we review de novo whether a defendant committed a felony firearm offense, and if yes, we review for abuse of discretion whether the trial court properly imposed the felony firearm offender registration requirement. *Dennis*, 191 Wn.2d at 172; RCW 9.41.330(1).

In contrast to the felony firearm offender registration statute, RCW 9.94A.533(3) governs firearm sentencing enhancements, which must be imposed "if the offender *or an accomplice* was armed with a firearm as defined in RCW 9.41.010." (Emphasis added.) The definition of "firearm" for purposes of RCW 9.94A.533(3) is "a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder." Former RCW 9.41.010(11) (2021). There is no express link between former RCW 9.41.010(10)(e) and RCW 9.94A.533, and although both statutes use the term "armed with a firearm," they are in different chapters of the Revised Code of Washington.

Additionally, a jury must find that a defendant or accomplice was armed with a firearm before a court may impose the firearm sentencing enhancement. *State v. Williams*, 147 Wn. App. 479, 484, 195 P.3d 578 (2008). No jury finding is required for a trial court to impose the felony firearm offender registration requirement because that requirement is regulatory, not punitive. *See State v. Gregg*, 196 Wn.2d 473, 484-85, 474 P.3d 539 (2020) (holding that the felony firearm offender registration requirement is a regulatory consequence of conviction, not a punitive one); *State v. Felix*, 125 Wn. App. 575, 579, 105 P.3d 427 (holding that jury findings are required to support only punitive consequences that increase a defendant's potential punishment, while trial court findings suffice for civil or regulatory consequences), *review denied*, 155 Wn.2d 1003 (2005). As a result, the trial court, not the jury, determines whether a defendant has committed a felony firearm offense.

B. WHETHER COUCH WAS ARMED WITH A FIREARM

Here, pursuant to RCW 9.94A.533(3) for purposes of the firearm sentencing enhancement, the jury entered a special verdict finding that Couch was armed with a firearm when he robbed

Villanueva. The jury instructions explained that for the purposes of the special verdict, "[i]f one participant in a crime is armed with a firearm, *all accomplices to that participant are deemed to be so armed*, even if only one firearm is involved." CP at 73 (emphasis added). The firearm sentencing enhancement instruction is worded to reflect the fact that RCW 9.94A.533(3) expressly imposes a firearm sentencing enhancement regardless of whether the principal or accomplice carries the gun, so long as the jury finds that a participating party was armed. Accordingly, there is no question that Couch was subject to a firearm *sentencing enhancement*. RCW 9.94A.533(3). But whether the trial court properly imposed the felony firearm offender registration requirement is a different matter.

A defendant commits a felony firearm offense subjecting them to the registration statute "if *the offender* was armed with a firearm in the commission of the offense." Former RCW 9.41.010(10)(e) (emphasis added); RCW 9.41.330. Former RCW 9.41.010(10)(e) and RCW 9.41.330, which address the felony firearm offender registration requirement, do not expressly include unarmed accomplices in the category of people subject to registration. "We cannot add words to an unambiguous statute under the guise of construction." *M.V.*, 33 Wn. App. 2d at 665. Thus, under a strict reading of the statutes, contrasted with RCW 9.94A.533(3)'s express inclusion of accomplices, an unarmed accomplice does not commit a felony firearm offense that subjects them to the registration requirement.[2]

[2] The State submitted an additional authority directing this court's attention to *State v. Silva-Baltazar*, 125 Wn.2d 472, 886 P.2d 138 (1994), and *State v. Allen*, No. 49421-3-II (Wash. Ct. App. March 6, 2018) (unpublished), *review denied*, 191 Wn.2d 1006 (2018), https://www.courts.wa.gov/opinions/pdf/D2%2049421-3-II%20Unpublished%20Opinion.pdf. *Silva-Baltazar* addressed a sentencing enhancement for drug crimes near school bus stops and the enhancement's application to accomplices who were within that zone. 125 Wn.2d at 480. *Allen*,

Here, it is clear that Couch was not armed with a firearm within the meaning of former RCW 9.41.010(10)(e) and RCW 9.41.330. Therefore, we hold that the trial court erred by concluding that Couch committed a felony firearm offense that required him to register as a felony firearm offender. Because the felony firearm offender registration requirement statute did not apply to Couch, the trial court abused its discretion by requiring Couch to register as a felony firearm offender.

CONCLUSION

We reverse the trial court's imposition of a firearm offender registration requirement and remand for the trial court to strike the firearm felony registration requirement from Couch's judgment and sentence. And, as discussed below in the unpublished portion of this opinion, we remand for the trial court to unconditionally vacate Couch's conviction for second degree assault of Villanueva, remove any reference to the merged second degree assault conviction of Villanueva from Couch's judgment and sentence, and strike the CVPA and DNA collection fee. We otherwise affirm Couch's convictions and sentence.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

UNPUBLISHED PORTION

Couch also argues that the trial court erred by (1) not entering written findings or conclusions after the CrR 3.5 hearing, (2) conditionally vacating the merged second degree assault

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an unpublished case, involved a different aspect of the felony firearm registration requirement statute that is not at issue in this case. slip op. at 9-10. Neither case is persuasive.

conviction involving Villanueva, (3) referencing the merged second degree assault conviction in the judgment and sentence, and (4) imposing the CVPA and DNA collection. Couch raises additional arguments in a SAG. We address each argument in turn below.

ADDITIONAL FACTS

A. CrR 3.5 HEARING

During Couch's trial, pursuant to CrR 3.5, the State sought to admit two videos taken from the body cameras of officers who spoke to Couch before he was arrested. At the CrR 3.5 hearing, both officers testified about their conversation with Couch in the high school parking lot. The trial court also reviewed body camera footage from each officer.

The trial court orally summarized the testimony from each officer, noting undisputed facts such as Couch initiating the interaction by asking police to call him a taxi. The trial court then stated that Couch made other statements, including denying fleeing the car in the alley and claiming to have left a friend's house. "At that point, neither of the officers had firearms pulled, there were no tasers out, no one was touching Mr. Couch." 3 VRP at 272. The trial court also stated that it was undisputed that at one point Couch asked if he could leave and the officers told him no, and that the parties agreed that Couch was in custody at that point. The trial court then ruled:

> So with regard to the statements that all occurred in that period of time between when [one officer] made contact up to the point where he's told he can't go, the question is, is he in custody such that statements that he made could be admissible.
>
> I'm relying heavily on the video footage that I saw . . . . There are some questions asked of Mr. Couch, but he is thanked for cooperating. He asks if there's something going on and the other officer . . . says, "No, we're just trying to figure out what's going on."
>
> That is an appropriate response for officers who are just investigating. What's important is that [one officer] testified that the reason no one was touching

> Mr. Couch at that point was because they had not yet formed probable cause. She didn't feel that they had a right to touch him or detain him, and in her mind he was not being detained.
>
> So the Court's going to find that based on the Court's review of the videos and the testimony that was presented, Mr. Couch was not being detained. He was not in custody. The statements that he made and the gestures he made of what was showing under his shirt were all voluntary and those are admissible.

3 VRP at 272-73. The trial court did not enter written findings of fact or conclusions of law on its CrR 3.5 ruling.

B. SENTENCING

At sentencing, the parties agreed that the conviction for second degree assault of Villanueva merged into the conviction for first degree robbery of Villanueva. The trial court entered an order stating, "[T]his Court hereby merges Count 2 [the second degree assault of Villanueva] into Count 1 [the first degree robbery of Villanueva] due to, and conditioned upon, that merger, this Court herby vacates the conviction on Count 2." CP at 83. Despite the trial court's order, the judgment and sentence included the merged second degree assault conviction in Couch's list of current convictions.

In addition to sentencing Couch to a term of confinement, the trial court also imposed two then-mandatory legal financial obligations—the CVPA and DNA collection fee. However, the trial court acknowledged that the law requiring those fees would be changing in a few months.

ANALYSIS

A. CrR 3.5 HEARING

Couch argues that the trial court failed to enter required written findings of fact and conclusions of law after the CrR 3.5 hearing on the admissibility of Couch's prearrest statements.

He asserts that we must remand for the trial court to enter written findings and conclusions. We disagree.

CrR 3.5(c) provides that, after a hearing on the admissibility of the defendant's statements to police, "the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor." "Although failure to enter findings of fact and conclusions of law is error" when such findings and conclusions are required by court rule, "such error is harmless if the trial court's oral findings are sufficient to permit appellate review." *State v. Richards*, 11 Wn. App. 2d 84, 87, 450 P.3d 1238 (2019), *review denied,* 195 Wn.2d 1005 (2020).

Here, the trial court summarized the testimony from each police officer who testified at the CrR 3.5 hearing and the contents of body camera footage that the court reviewed. The trial court emphasized that there was one point—when police told Couch he was not free to leave—that the parties agreed Couch was in custody, but that it was disputed whether Couch was in custody before that moment. Before that point, Couch asked the officers, "Is everything okay?" and an officer responded that police were "just seeing what's going on." Ex. 89, at 6:53-6:59. Couch then made statements about coming from a friend's house.

The trial court ruled that the officer's response to Couch's question was "an appropriate response for officers who are just investigating" and that, when Couch made the statements at issue, "no one was touching Mr. Couch at that point . . . because they had not yet formed probable cause." 3 VRP at 273. "[The officer] didn't feel that they had a right to touch him or detain him, and in [the officer's] mind he was not being detained." 3 VRP at 273. The trial court then ruled

that Couch was not detained or in custody at that point, and Couch's statements and gestures before he was told he was not free to leave were admissible.

The trial court's oral summary of the facts, conclusion that Couch was not in custody before he was told he could not leave, and explanation for why Couch's statements and gestures were admissible are sufficiently thorough to permit appellate review. *Richards*, 11 Wn. App. 2d at 87. Accordingly, based on this record, we hold that the trial court's error in failing to enter written findings and conclusions was harmless.[3]

B. MERGER

Couch argues, and the State concedes, that the judgment and sentence improperly referenced the merged conviction for second degree assault of Villanueva, and that the order vacating that conviction improperly stated that the vacation of the assault was conditional.

"[A] court may violate double jeopardy *either* by reducing to judgment both the greater and the lesser of two convictions for the same offense *or* by conditionally vacating the lesser conviction while directing, in some form or another, that the conviction nonetheless remains valid." *State v. Turner*, 169 Wn.2d 448, 464, 238 P.3d 461 (2010). "To assure that double jeopardy proscriptions are carefully observed, a judgment and sentence must not include any reference to the vacated conviction—nor may an order appended thereto include such a reference; similarly, no reference should be made to the vacated conviction at sentencing." *Id* at 464-65. In *Turner*, the Supreme Court remanded for the trial court to "enter a corrected judgment removing the conditional vacation order" for one defendant and to "redact all references to any validity or import

[3] We admonish the trial court to review its duties under CrR 3.6(b).

attributable to the vacated lesser conviction" for the other defendant. *Id*. at 466. "In the future, the better practice will be for trial courts to refrain from any reference to the possible reinstatement of a vacated lesser conviction." *Id*.

Here, the trial court entered an order stating that the second degree assault of Villanueva merged into the first degree robbery of Villanueva and vacated the assault conviction "due to, and conditioned upon, that merger." CP at 83. And the judgment and sentence included the second degree assault of Villanueva on the list of Couch's current offenses. The parties agree that, under *Turner*, we should remand with instructions for the trial court to unconditionally vacate the second degree assault of Villanueva conviction and remove any reference to that conviction from the judgment and sentence.

We accept the parties' agreement and remand for the trial court to correct the order to unconditionally vacate the conviction for second degree assault of Villanueva. On remand, the trial court shall also correct the judgment and sentence to remove all references to the vacated conviction.

C. LEGAL FINANCIAL OBLIGATIONS

Couch argues, and the State concedes, that we should remand for the trial court to strike the CVPA and DNA collection fee from Couch's judgment and sentence. The legislative amendments that barred courts from imposing these legal financial obligations on indigent defendants took effect three months after Couch's sentencing, and the trial court imposed those fees in anticipation that it would need to later strike them because Couch was indigent. LAWS OF 2023, ch. 449, §§ 1(4), 4, 27. Because this appeal was pending when the amended cost statutes took effect, Couch's case was not yet final at that time, and the amended cost statutes apply to his

case. *State v. Wemhoff*, 24 Wn. App. 2d 198, 202, 519 P.3d 297 (2022). Accordingly, we accept the State's concession. On remand, the trial court should strike the CVPA and DNA collection fee from Couch's judgment and sentence.

D. SAG ISSUES

Couch's SAG raises several additional grounds for review. He claims that his right to a timely trial was violated because roughly a year elapsed between his arrest and trial. And he contends that he received ineffective assistance of counsel from the failure to call witnesses in his defense. Couch then lists several additional grounds for review that appear to allege the existence of other suspect evidence and *Brady*[4] violations, as well as a request that we vacate his second degree assault convictions.

First, Couch claims that he did not waive his right to a timely trial under CrR 3.3, citing *State v. Saunders*, 153 Wn. App. 209, 220 P.3d 1238 (2009). As that case explains, CrR 3.3(b)(1)(i) provides that a trial for a defendant in custody should commence within 60 days of the defendant's arrest. *Saunders*, 153 Wn. App. at 216. But certain occurrences may extend this time limit. *See* CrR 3.3(b)(1)(ii), (b)(5), (e), (f). Relevant here, the parties may agree to continue a trial, or "the court may continue the trial date to a specified date when such continuance is required in the administration of justice and the defendant will not be prejudiced in the presentation of his or her defense." CrR 3.3(f)(2).

Shortly before trial in this case, Couch, on his own, made a motion to dismiss the charges against him based on the violation of CrR 3.3. At a pretrial hearing, the trial court discussed the

[4] *Brady v. Maryland*, 373U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

requirements of CrR 3.3 and each continuance in the case. Some continuances had been agreed on by the parties, while others were granted due to pending discovery, and other continuances were granted because Couch requested and received a new attorney after proceeding as a self-represented litigant for several months or because the attorneys were involved in other trials. The trial court found that each of the continuances satisfied CrR 3.3(f)(2) because they were in the administration of justice. Couch does not argue or show how this ruling was erroneous. Accordingly, this claim fails.

Next, Couch claims that he received ineffective assistance of counsel because trial counsel did not call any witnesses and rested rather than presenting a case. A defendant claiming ineffective assistance of counsel must show that counsel performed deficiently and that this deficient representation prejudiced the defendant. *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). "Courts engage in a strong presumption counsel's representation was effective" and when such a "claim is brought on direct appeal, the reviewing court will not consider matters outside the trial record." *Id.* at 335. "Because the presumption runs in favor of effective representation, the defendant must show in the record the absence of legitimate strategic or tactical reasons supporting the challenged conduct by counsel." *Id.* at 336. Trial counsel may have legitimate tactical reasons for deciding not to introduce testimony that would open the door to other evidence that would undermine the defense theory of the case. *See In re Pers. Restraint of Mockovak*, 194 Wn. App. 310, 321, 377 P.3d 231 (2016) (holding that trial counsel had legitimate tactical reasons for not presenting expert testimony about the defendant's learned helplessness when such testimony would have opened the door to evidence that the defendant was in fact manipulative and narcissistic).

Couch does not identify any witnesses that he wanted counsel to call or evidence that he wished counsel to present. And there are legitimate tactical reasons why trial counsel may avoid calling witnesses when the defense theory of the case is mistaken identity, as was the case here. Couch does not argue how or explain why counsel's decision constituted deficient performance, or how counsel's decision prejudiced him. Thus, Couch fails to establish that he received ineffective assistance of counsel.

Couch's remaining SAG claims are vague and do "not inform the court of the nature and occurrence of alleged errors." RAP 10.10(c). Thus, we do not consider them. In sum, none of the arguments in Couch's SAG merit reversal.

CONCLUSION

In addition to reversing the trial court's imposition of a firearm offender registration requirement as discussed in the published portion of this opinion, we remand for the trial court to unconditionally vacate Couch's conviction for second degree assault of Villanueva, remove any reference to the merged second degree assault conviction of Villanueva from Couch's judgment and sentence, and strike the CVPA and DNA collection fee. We otherwise affirm Couch's convictions and sentence.

Lee, J.

We concur:

Maxa, J.

Veljacic, A.C.J.