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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JACQUELINE RENA RAY,

Appellant.

No. 46035-1-II

UNPUBLISHED OPINION

SUTTON, J. — Jacqueline Rena Ray appeals her sentence following her guilty plea conviction for second degree murder. She argues that the sentencing court violated the real facts doctrine and the appearance of fairness doctrine. Because Ray failed to object to these issues in the trial court, these arguments fail, and we affirm.

FACTS

I. BACKGROUND

Ray's son-in-law was Leon Baucham. On July 12, 2012, Baucham's body was discovered next to a road near Ray's home. The cause of death was a single gunshot wound to the back.

The murder investigation quickly focused on Ray. Although Ray had initially told the investigating officers that she had not seen Baucham on the night of his murder, she eventually met with detectives and admitted that she had participated in the murder. She told the detectives that Baucham had been violent toward her daughter Umeko Baucham and that she (Ray) was afraid

he would kill Umeko, so she recruited and paid Luis Barker to assault Baucham. She stated that when Barker and another man had confronted Baucham at her home, she stepped outside and then heard a gunshot. She then heard Baucham “moan and beg” and say he would not bother her daughter anymore. Clerk’s Papers (CP) at 5. She continued to hear noises, and Barker came outside and told her they were taking her minivan and needed a bag to contain the blood; she gave them her keys and a tarp.

II. PROCEDURE

A. Guilty Plea

The State charged Ray with premeditated first degree murder as an accomplice (count I) and first degree felony murder as an accomplice predicated on the kidnapping of Baucham (count II). The State also alleged firearm sentencing enhancements for each charge. The State and Ray then negotiated a plea.

After Ray cooperated with her codefendants’ prosecutions, she entered her plea to second degree murder. In her statement of defendant on plea of guilty, Ray stated:

On July 11, 2012, in Pierce County, Washington, I knowingly aided my co-defendants in the assault [of] Leon Baucham and in furtherance of that assault, my co-defendants caused the death of Leon Baucham while using a firearm.

CP at 40. The standard sentencing range for this offense was 123 to 220 months. The State agreed to recommend a standard range sentence with a 60-month firearm sentencing enhancement and to allow Ray to argue for any lawful sentence.

B. Sentencing

In her sentencing memorandum, Ray asked for a downward departure from the standard range sentence based on the mitigating circumstance of domestic violence, asserting that she had

acted to protect her daughter from spousal abuse and that she had only recruited and paid her codefendant \$10,000 to assault Baucham and “scare him away from the family.” CP at 78. The State argued for a sentence of 220 months plus the 60-month firearm sentencing enhancement.

The State also invited six individuals to give oral victim impact statements. In addition to talking about what kind of a person Baucham was and the effect his murder had on them, the speakers commented that (1) other than one incident after Umeko had disclosed she was having an affair, Ray’s allegations of Baucham’s domestic violence against Umeko were false; (2) Ray had intended to have her accomplices kill rather than assault Baucham; (3) Ray’s decision to kill Baucham was not a “spur-of-the-moment decision,” but, rather, a premeditated act; (4) they believed the prosecutor should have charged Ray with first degree premeditated murder rather than second degree murder; and (5) having to plan and attend Baucham’s funeral with Ray while knowing that she had killed Baucham greatly contributed to their trauma and further demonstrated Ray’s deceitful nature. They also characterized Ray as disingenuous, lying, wicked, coldhearted, cold-blooded, calculating, merciless, and deceitful. Ray did not object to any of the speakers’ statements.

The sentencing court thanked each speaker, acknowledged the pain and trauma they and their families had suffered as a result of Baucham’s death, and assured them that it would consider their statements in determining what sentence to impose. Although the sentencing court advised the speakers that it did not make the charging decisions, it also specifically agreed that Ray’s participating in planning Baucham’s funeral was particularly deceitful and traumatic for Baucham’s family.

Additionally, in response to Baucham's grandmother, who had asserted that the murder was not a "spur-of-the-moment decision"¹ and that Ray had always intended to kill Baucham, the sentencing court stated, "This also was, as you stated, a cold-blooded and calculated effort on Ms. Ray's part. I'm convinced of that. I will certainly take your comments into account as I determine what sentence to impose." Report of Proceedings (RP) (Jan. 10, 2014) at 24. In response to Baucham's mother, the sentencing court commented on her anguish, despair, and emotional torment; characterized the statements about Baucham's possible domestic violence against his wife as "disingenuous and even slanderous"; and commented that using these assertions of domestic violence as a justification for premeditated murder was offensive to the court's sense of justice. RP (Jan. 10, 2014) at 41. The court also stated, "Deception, dishonor, disgrace and duplicity are prominent features of Ms. Ray's conduct." RP (Jan 10, 2014) at 41-42. Ray did not object to any of the sentencing court's responses to the oral victim impact statements. After hearing from Baucham's family and friends, the sentencing court recessed.

The sentencing hearing resumed several weeks later. Ray presented numerous written statements on her behalf attesting to her character, and the sentencing court reviewed a psychological report. Defense counsel argued for a low end sentence, citing the fact that Ray had been the victim of past spousal abuse² and this incident was domestic violence related.

After defense counsel stated that Umeko and one of her children had told Ray about several domestic violence incidents between Umeko and Baucham, the sentencing court asked defense

¹ Report of Proceedings (RP) (Jan. 10, 2014) at 24.

² Ray had been abused by her first husband; he later killed himself and his second wife.

counsel whether there had been any other documented domestic violence other than the single domestic violence incident reported in May 2012. Defense counsel stated that there was no other documented evidence but that this was not unusual in a domestic violence situation. The sentencing court responded that it was concerned because it was confronted with a situation where the person accused of domestic violence was dead, so independent corroboration of the alleged domestic incidents would be helpful to the court. Defense counsel “disagree[d]” with the court, stating that he was not there “to try the case of Umeko versus her husband,” and what was relevant was what Ray knew or believed to know. RP (Feb. 21, 2014) 21. Defense counsel did not request an evidentiary hearing to resolve this issue.

Ray’s husband, Lethaniel Ray, also spoke to the court, describing an assault against Umeko by Baucham and explaining why Umeko did not report this incident. Lethaniel also asserted that Ray had committed the crime only to protect her child. The sentencing court thanked Lethaniel, commented on how hard it must have been to address the court under the current circumstances, and assured him the court would “keep [his] comments in mind.” RP (Feb. 21, 2014) at 34.

Umeko also spoke. She attempted to address the sentencing court’s earlier question about why there was no record of any other domestic violence incidents, stating that she had attempted to seek a restraining order but did not follow through. She also stated that she did not call 911 to report the abuse because she did not think the police would be able to protect her and would make it worse because Baucham was not afraid of the police or afraid of going to jail. Umeko stated that although Ray made a “horrible choice and decision,” she had just been trying to protect Umeko and her children. RP (Feb. 21, 2014) at 36. The sentencing court concluded Umeko’s statements

suggested that she felt guilty about what had happened and reassured her that she was not guilty of anything.

After Ray's brief allocution, in which she thanked her family and others for their support and apologized to Baucham's family, the sentencing court gave an oral ruling. In this ruling, the court commented on Ray's lack of mercy and forgiveness, her "shocking" behavior when Baucham's family was making funeral arrangements, and the fact Baucham was not able to defend himself against the allegations against him. RP (Feb. 21, 2014) at 41. The court also commented that although it could not question the State's decision to charge Ray with second degree murder, Ray was as much a murderer as those who actually killed Baucham and the killing was not a "spur-of-the-moment" reaction to a domestic violence situation but, rather, an act of vigilantism. RP (Feb. 21, 2104) at 40. Ray did not object to any of the sentencing court's statements.

The court sentenced Ray to 160 months and a 60-month firearm sentencing enhancement. Ray appeals her sentence.

ANALYSIS

Ray argues that she should receive a new sentencing hearing before a different judge because (1) the sentencing court violated the real facts doctrine by considering the oral victim impact statements that "presented argument for a higher degree of the crime charged" and (2) the sentencing court's comments about the oral victim impact statements violated the appearance of fairness doctrine. Br. of Appellant at 11. Ray is not entitled to relief on either of these grounds.

I. REAL FACTS DOCTRINE

Ray first argues that the sentencing court violated the real facts doctrine by considering facts relevant to a more serious offense than Ray admitted in the plea agreement that were introduced via the oral victim impact statements.³ Because Ray did not object, this argument fails.

The sentencing court is required to consider any victim impact statements. RCW 9.94A.500(1). The real facts doctrine, RCW 9.94A.530(2), however, arguably limits the sentencing court's ability to consider these statements. It provides in part:

In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgment includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point.

But to be entitled to raise a real facts doctrine issue, Ray must first show that she raised a timely and specific objection to the sentencing court's consideration of the allegedly improper information. *State v. Mail*, 121 Wn.2d 707,712, 854 P.2d 1042 (1993); *State v. Grayson*, 154 Wn.2d 333, 338-39, 111 P.3d 1183 (2005).

³ The State argues that (1) Ray waived her right to appeal as part of her plea agreement, (2) Ray cannot appeal her standard range sentence, (3) Ray failed to support her claims with sufficient argument to establish that the trial court committed a manifest error affecting a constitutional right under RAP 2.5(a), and (4) the sentencing court did not violate the real facts doctrine because it was required to consider the victim impact statements before imposing sentence. We note that (1) Ray did not present a RAP 2.5(a) argument related to her real facts doctrine issue, and (2) Ray may appeal the procedure by which her standard range sentence was imposed. *State v. Mail*, 121 Wn.2d 707, 712-13, 854 P.2d 1042 (1993); *State v. Brown*, 178 Wn. App. 70, 80 n.3, 312 P.3d 1017 (2013). As to the State's two other arguments, because we reject Ray's real facts doctrine issue on other grounds, we do not address these issues.

Here, although Ray alleged at sentencing that Baucham had abused Umeko and asserted that she had only intended to have Barker assault Baucham, she did not raise any specific objections to the oral victim impact statements. Nor did Ray object to the sentencing court's reliance on these oral statements. Additionally, not only did Ray's counsel fail to request an evidentiary hearing, he discouraged the sentencing court's attempt to discuss the domestic violence issue by essentially telling the court that the issue was irrelevant: RP (Feb. 21, 2014) at 21 (when the sentencing court commented about its concern about proof of domestic violence, defense counsel stated that he was not there "to try the case of Umeko versus her husband," and asserted the relevant issue was Ray's belief that there had been domestic violence). Given Ray's failure to raise a specific and timely objection, we decline to address this issue further.

II. BIAS AND PREJUDICE

Ray next argues that the sentencing court violated the appearance of fairness doctrine and demonstrated bias or prejudice when it commented on the oral victim impact statements. Ray contends that the sentencing court's comments following these statements, particularly those that demonstrated that the court believed her to be more culpable than she admitted to having been, established that the court was biased against her. She further contends that this bias is even clearer when one compares the court's responses to the oral victim impact statements and its responses to the statements made on her behalf. Ray has waived this argument.

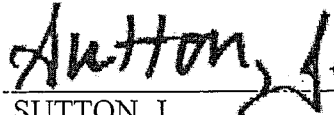
"Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that the parties received a fair, impartial, and neutral hearing." *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995) (quoting *State v. Ladenberg*, 67 Wn. App. 749, 754-55, 840 P.3d 228 (1992), *reversed on other*

No. 46035-1-II

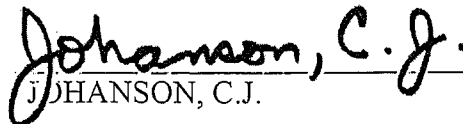
grounds by *State v. Finch*, 137 Wn.2d 792, 975 P.2d 967 (1999)). But our Supreme Court has held that this doctrine does not implicate constitutional rights. *State v. Tolias*, 135 Wn.2d 133, 140, 954 P.2d 907 (1998); see also *State v. Morgensen*, 148 Wn. App. 81, 91, 197 P.3d 715 (2008) (applying waiver to defendant's appearance of fairness claim); *City of Bellevue v. King County Boundary Review Bd.*, 90 Wn.2d 856, 863, 586 P.2d 470 (1978) ("Our appearance of fairness doctrine, though related to concerns dealing with due process considerations, is not constitutionally based."). Consequently, Ray waived this claim by failing to raise it with the trial court. RAP 2.5(a).

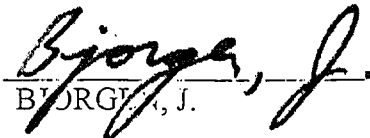
We affirm.

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


SUTTON, J.

We concur:


JOHANSON, C.J.


BJORGE, J.