IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MATTHEW RYAN HASTINGS, Appellant.	No. 38979-7-II UNPUBLISHED OPINION

Worswick, J. — Matthew Hastings appeals his convictions for attempted first degree murder and second degree assault with firearm enhancements, raising trial court error in failing to grant a request for a continuance, violating the appearance of fairness doctrine, and imposing a firearm enhancement in violation of double jeopardy. He also raises additional arguments pro se in a statement of additional grounds (SAG).[1] We affirm.

FACTS

The State charged Hastings with eleven counts for attempted first degree murder and first degree assault following a shootout at the Runyon home between Hastings and the Southwest Regional SWAT[2] team that left one officer and a hostage, Shane Runyon, injured. Prior to the

[1] RAP 10.10.

[2] SWAT stands for Special Weapons and Tactics.

shootout, police officers set up surveillance outside Kim Runyon's[3] Vancouver home on the morning of July 18, 2007, based on information that Hastings, wanted on multiple arrest warrants, was inside. Kim left the home at the officers' request, but Shane, Kim's adult son, did not. The officers were concerned that Hastings was armed. When Hastings called Kim's cellular phone, an officer spoke with him and directed Hastings to come out of the home. Hastings refused.

The SWAT team and a hostage negotiator arrived. After some discussion between Hastings and the hostage negotiator, Hastings threatened to cut off Shane's fingers. Soon thereafter, the SWAT team entered the home in an attempt to safely remove Shane from the home.

Once inside, SWAT team members came under gunfire and Vancouver Police Corporal Chris LeBlanc was shot. The standoff continued.

Police officers ended the standoff approximately 18 hours after it began by blowing a hole in an exterior wall of the home and shooting gas inside. Officers then tased Hastings and arrested him.

At a pretrial hearing regarding security, the trial court judge stated that he had signed the warrant authorizing the SWAT team to enter the home to retrieve Hastings and that he had watched the events unfold on television. Neither Hastings nor the State objected to the judge's continued involvement in the case and the judge did not recuse himself. At two other pretrial hearings, Hastings sought a continuance so that he could have additional time to review materials with his attorneys. The trial court denied the requests.[4]

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[3] We use first names when referring to Kim and Shane Runyon for clarity, intending no disrespect.
[4] The trial court had granted six prior continuances at defense counsel's request for a number of

A jury found Hastings guilty of four counts of attempted first degree murder and two counts of second degree assault, all with firearm enhancements. At sentencing, the trial court and Hastings had a heated exchange, in which the trial court threatened to have Hastings gagged and told him, "You shut your damn mouth, sir." XXVII Report of Proceedings (RP) at 2409. The court later apologized to the public about his loss of temper and his language. Hastings appeals.

ANALYSIS

Request for a Continuance

Hastings first contends that the trial court abused its discretion by denying Hastings's pro se request for a continuance. "The decision to grant a continuance under CrR 3.3 rests in the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion." *State v. Nguyen*, 131 Wn. App. 815, 819, 129 P.3d 821 (2006). A trial court abuses its discretion if it exercises such discretion on untenable grounds or for untenable reasons. *Nguyen*, 131 Wn. App. at 819.

At the December 18, 2008 omnibus hearing, defense counsel moved for a continuance at Hastings's request because he (1) had not been given access to the jail law library, due to security concerns, in order to conduct his own legal research; (2) wanted additional time to meet with his attorney to go over police reports and witness interviews; and (3) wanted his father to testify at trial, but medical issues made it unlikely that could happen in the short term. The trial court considered the motion and then asked Hastings's defense counsel directly if he would be ready to go to trial, to which he answered, "I believe I will be ready to go to trial." XII RP at 170. The

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reasons, including voluminous discovery, witness interview delays, and the addition of another defense attorney.

trial court then denied the motion but ordered that Hastings be given access to the jail law library. The trial court also instructed defense counsel to find the time to work with Hastings so that he would be adequately prepared for trial.

Then at the January 22, 2009 readiness hearing, Hastings addressed the trial court directly as to his request for a continuance. He told the trial court that he had not received all of the police reports, that he still had not received answers to specific paperwork-related questions, that some of his witnesses had yet to be interviewed, and that due to restrictions and time limitations he still did not have time to discuss these matters with his attorney. The trial court asked defense counsel if he was ready for trial, to which he replied, "I believe we are." XIV RP at 2422. The trial court denied the request and stated that he found Hastings to be extremely manipulative, that this request was simply another attempt to delay the case, and that the attorneys were ready for trial.

The record makes clear that the trial court considered the requests and the arguments of counsel before it denied Hastings's motions as to the continuance at issue here. The record does not support Hastings's argument that a continuance was justified. The trial court did not abuse its discretion. Thus, Hastings's argument fails.

Appearance of Fairness

Hastings next contends that the trial judge violated the appearance of fairness doctrine by presiding over the trial despite having watched the events of the case unfold on television and being troubled when he realized his signature was on the warrant that authorized the SWAT team to enter the home. Hastings raises this issue for the first time on appeal.

"'Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent, 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)).

But Hastings did not object to the trial judge's remarks at the pretrial hearing below nor did he ask the trial judge to recuse himself. Because a violation of the appearance of fairness doctrine is not a manifest constitutional error entitled to review for the first time on appeal, we decline to reach this issue. RAP 2.5(a);[5] *see State v. Tolias*, 135 Wn.2d 133, 140, 954 P.2d 907 (1998). Thus, Hastings waived this issue by failing to raise it below and, therefore, we do not further consider it.

Double Jeopardy

Finally, Hastings contends that his conviction for two counts of second degree assault based on the use of a firearm along with a firearm enhancement violates double jeopardy. Our Supreme Court recently issued *State v. Kelley*, 168 Wn.2d 72, 84, 226 P.3d 773 (2010), in which the court reaffirmed its earlier holdings that the imposition of a firearm enhancement does not

[5] RAP 2.5(a) provides in relevant part:

> The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

violate double jeopardy when an element of the underlying offense includes the use of a firearm.[6] Hastings's argument fails.

Statement of Additional Grounds

Ballistics Evidence

In his SAG, Hastings first contends that the trial court mishandled pertinent information when the bullet removed from Corporal LeBlanc was mismarked, which was disregarded as a "'clerical error'" and "'not a big deal.'" SAG at 2. Hastings also contends that the bullet assumed to be the bullet that shot Corporal LeBlanc "was so physically mauled that it could not be identified through normal ballistics, but instead had to be weighed. The weight of that bullet actually matched that of the bullets used by the officers involved, NOT the weight of the firearm that was used by myself." SAG at 2.

It is unclear what exactly Hastings is referring to here. Although the rules of appellate procedure do not require Hastings to cite to the record or authority in his SAG, nonetheless he has an obligation to "inform the court of the nature and occurrence of alleged errors." RAP 10.10(c). And we are not required to search the record to find support for his claims. RAP 10.10(c). Moreover, we cannot review issues of credibility of witnesses and weight to accord the evidence; these issues are for the finder of fact, here, the jury. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Hastings's argument fails.

[6] Our Supreme Court issued *Kelley* after the parties submitted their briefing in this case.

Judicial Bias

Hastings next contends that the trial court judge was "emotionally compromised" and essentially biased because he signed the warrant that authorized the SWAT team to enter the home where Corporal LeBlanc and Shane were shot.[7] SAG at 2. Hastings did not raise this bias claim below. Thus, under

RAP 2.5(a), he has failed to preserve this issue for review. *See State v. Morgensen*, 148 Wn. App. 81, 90-91, 197 P.3d 715 (2008), *review denied*, 166 Wn.2d 1007 (2009).

Hastings further argues that the judge's comments during sentencing demonstrated bias. "'Due process, the appearance of fairness, and Canon 3(D)(1) of the Code of Judicial Conduct require disqualification of a judge who is biased against a party or whose impartiality may reasonably be questioned.'" *State v. Perala*, 132 Wn. App. 98, 110-11, 130 P.3d 852 (2006) (quoting *Wolfkill Feed & Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 841, 14 P.3d 877 (2000)). A judicial proceeding is valid only if it has an appearance of impartiality, such that a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing. *Bilal*, 77 Wn. App. at 722. "Before we can find a violation of this doctrine, however, there must be evidence of a judge's actual or potential bias." *Bilal*, 77 Wn. App. at 722.

We have reviewed the cited interaction between the trial judge and Hastings. This interaction is an exchange between an antagonistic defendant who appears determined to provoke the court and an experienced trial judge who has lost his patience. While the trial judge's

[7] The appearance of fairness argument related to the trial judge's statements at a pretrial hearing is discussed above; the analysis is not repeated here.

interaction with Hastings was certainly unfortunate, it is not evidence of actual or potential bias. We presume that the trial court properly discharged its official duties without bias or prejudice. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 692, 101 P.3d (2004). And "[j]udicial rulings alone almost never constitute a valid showing of bias." *Davis*, 152 Wn.2d at 692. The sentence actually imposed here suggests bias was not a factor in the trial court's determination. Hastings's sentence was within the standard range and the trial court followed the State's recommendation. *See State v. Kinneman*, 155 Wn.2d 272, 283, 119 P.3d 350 (2005) (a sentence within the standard range is not appealable because as a matter of law there can be no abuse of discretion). Because Hastings fails to articulate specific facts supporting his bias allegation, his argument fails.

Medical Evaluation

Last, Hastings contends in his SAG that during the shooting he was in an extremely delusional state of mind and that the sheriff's office never transported him to Western State Hospital for a mental health evaluation, contrary to the trial court's order. Again, he fails to sufficiently "inform the court of the nature and occurrence of alleged errors." RAP 10.10(c). Moreover, it is not clear from the record that an error occurred. And we do not review matters outside the record on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 338 n.5, 899 P.2d 1251 (1995). The trial court issued an order for a mental health evaluation to take place at either Western State Hospital or the Clark County jail and a Western State Hospital psychologist conducted the evaluation. Hastings's argument fails.

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.

Worswick, J.

We concur:

Penoyar, C.J.

Serko, J.P.T.[8]

[8] Judge Serko is serving as a judge pro tempore of the Court of Appeals, Division II, pursuant to CAR 21(c).