IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 66995-8-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
ARNOLDO ZARATE CORIA,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 4, 2012
	)	

Ellington, J. — Arnoldo Zarate Coria appeals his convictions for burglary in the first degree, assault in the first degree, and misdemeanor violation of a court order. Coria alleges several errors related to the court's decision to allow a therapy dog to sit with Coria's 11-year-old son during his testimony about Coria's attack on his mother. But Coria expressly waived any objection below, so there is nothing to review. We affirm.

BACKGROUND

Coria was once married to V.A. In June 2010, Coria went to her apartment in violation of a court order prohibiting him from contacting her or their three children. V.A. was at work, but the children were home with their aunt. Coria asked three-year-old B.D. for a hug, but she ran from him, and he struck her. The children's aunt called V.A., who immediately left work and called 911.

When V.A. arrived home, the children were crying in the living room and Coria was lying on her bed. When she told him to leave, he assaulted her. In the presence of the children, he struck her in the head, pulled out her earrings, bit her on the cheek, and threatened to kill her. Nine-year-old J.D. yelled at Coria not to kill his mother.

When police arrived, Coria fled. They discovered him laying in tall grass nearby and arrested him.

The State charged Coria with burglary in the first degree, assault in the second degree, felony violation of a court order protecting V.A., and misdemeanor violation of a court order protecting the children. In addition, the State alleged as aggravating factors that Coria had a history of domestic violence and that the current offense occurred in the presence of the children.

F.D. was to testify on the second day of trial. Unbeknownst to the prosecutor, a paralegal and the victim advocate arranged for Ellie, the King County Prosecutor's Office "therapy dog," to sit with F.D. during his testimony. The prosecutor explained the situation to the court, acknowledged he would normally give advance notice of such plans, and asked permission for the dog to sit near F.D. on the witness stand.

The court asked for Coria's position on the use of the dog. His attorney replied:

> Normally, I would object. But the problem here is that [F.D.] had the opportunity to meet [Ellie], to, apparently, go up on the witness stand with her now. I think that there are more problems associated with taking the dog away from the child at this point. So I think that the lesser of two evils at this point is for me not to object to having the dog remain with the child.[1]

[1] Report of Proceedings (Jan. 27, 2011) at 251.

The court permitted the dog to sit beside F.D. during his testimony. Neither the prosecutor nor defense counsel asked F.D. about the dog.

The defense conceded that Coria had assaulted V.A. and that F.D. had witnessed the crime, but argued that the assault did not occur until they were outside the apartment, and thus, he was not guilty of burglary in the first degree. The defense further argued that V.A.'s injuries were not severe enough to constitute an assault in the second degree, that Coria was too intoxicated to form intent, and that Coria did not understand the protection order.

The jury convicted Coria as charged and found that both aggravating factors were established. The court imposed an exceptional sentence of 72 months.

DISCUSSION

The issues raised on appeal focus entirely upon the presence of the dog during the child's testimony. Coria contends the court erred by allowing Ellie to sit with F.D., the prosecutor committed reversible misconduct by failing to give advance notice of a request to allow Ellie's presence, and the court abused its discretion by failing to inquire into the necessity of allowing the child to have Ellie during his testimony.

Coria raised none of these issues below and in fact expressly waived any objection to the presence of Ellie during F.D.'s testimony. He now contends we should review the issue because he had "no meaningful choice" to object below, given that the dog was present and the child was scheduled to testify.[2] But the jury had not seen the dog with the child, the court asked the defense for its position, and the defense

[2] Reply Br. at 9.

expressly declined to object. There was no effort by defense counsel to establish what effect there would be on the child if the dog were removed. There is thus no record to support the claim that the defense was somehow prevented from making any objection.

Coria then argues as if no objection had been made and the defense had remained silent. Even if this were a proper analysis, which it is not, it is unavailing. Generally, an appellate court will not review issues raised for the first time on appeal.[3] Although there is an exception for "manifest error affecting a constitutional right," the defendant "must identify a constitutional error and show how, in the context of the trial, the alleged error actually affected the defendant's rights."[4] Failure to object waives a claim of prosecutorial misconduct unless the conduct was "so flagrant and ill-intentioned that it evinces an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury."[5]

Coria now argues that Ellie's presence violated his right to a fair trial by improperly bolstering F.D.'s credibility, suggesting an unusual vulnerability, and implying he needed protection from Coria. But the mere allegation of a constitutional violation does not establish a right to review.[6] The defendant must make a plausible showing that the error had "practical and identifiable consequences at trial."[7] Coria's speculation about the impact Ellie's presence may have had on the jury falls short of

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[3] RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995).

[4] McFarland, 127 Wn.2d at 333.

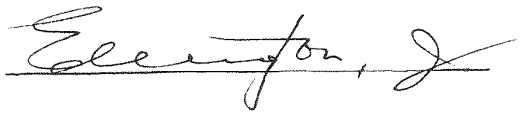
[5] State v. Stenson, 132 Wn.2d 668, 719, 940 P.2d 1239 (1997).

[6] McFarland, 127 Wn.2d at 333-34.

[7] State v. Lynn, 67 Wn. App. 339, 345, 835 P.2d 251 (1992).

this requirement. Because Coria fails to demonstrate a manifest error, we do not consider his claim further.

Affirmed.



WE CONCUR: