IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. RYAN RAYNARD JACKSON , Appellant.	No. 67160-0-I DIVISION ONE UNPUBLISHED OPINION FILED: December 27, 2011

Leach, A.C.J. — Ryan Raynard Jackson appeals his conviction for attempted robbery in the first degree. Jackson claims the police unlawfully seized him in violation of the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington State Constitution. He challenges the sufficiency of the evidence to support his conviction and claims the trial court abused its discretion in admitting certain evidence while excluding other evidence. Jackson further alleges that the trial court failed to properly instruct the jury about unanimity, demeaned his counsel in front of the jury, and erred by denying his motion for a mistrial. Alternatively, Jackson asserts his counsel was ineffective for failing to object to testimony, for failing to challenge his seizure as unlawful, and for failing to request a limiting instruction for ER 404(b) evidence. Jackson also alleges prosecutor misconduct. Finally, in a pro

se statement of additional grounds, Jackson contends the trial court failed to follow the proper procedures for protecting his right not to be tried while incompetent. Because none of Jackson's claims warrant appellate relief, we affirm.

Background

The State charged Ryan Jackson with one count of attempted robbery in the first degree. The following facts are taken from the testimony presented at trial.

On September 19, 2009, at about 1:30 in the morning, two men approached Kelly Crithfield and Jerry Little as they were walking to Crithfield's apartment. One of the approaching men asked, "How's it going?" before asking for money. When Crithfield informed the man he did not have any money, the man stopped walking alongside Crithfield and Little. But a few seconds later, the man returned, pointed a handgun at Crithfield's stomach, and demanded items from Little. Crithfield froze, and Little ran into the middle of the street, yelling for help. The man with the gun turned, walked to a car in the middle of the street, entered the passenger side door, and left.

Crithfield called 911 and reported the incident. Officer Billman responded and took statements from Crithfield and Little. Based on the description of the assailants Crithfield and Little provided, Billman transmitted that the assailants were "[t]wo black males about 30 years of age." Crithfield and Little described the one with the firearm as "the smaller of the two" and wearing "a blue and

white striped shirt with blue Dickie-type pants."

After Billman left to patrol, Crithfield and Little continued walking to Crithfield's apartment. Little observed two men resembling their assailants walking near Crithfield's apartment steps. Crithfield observed the men from behind and recognized one of them as the man who tried to rob them. Crithfield again called the police, and the dispatcher recommended that they get off the street. Crithfield went inside his apartment, and Little drove home.

About one-half hour later, Billman came upon a group of four to five males standing in an alleyway. One of the men matched the description provided by Crithfield. Billman exited his car, identified himself, and asked to speak to a man wearing a blue-and-white patterned shirt. The suspect, Jackson, then turned and attempted to walk away. Billman told him that he could not leave and began interviewing people in the group. Officer Spencer was also present, and in a pat down search of Jackson, he located a realistic-looking CO_2-powered BB gun.

Shortly after Crithfield returned to his apartment, he received a call from a police dispatcher, telling him that an officer outside was ready to drive him to a nearby location to identify a possible suspect in the attempted robbery. The officer drove Crithfield to a location six blocks away where Spencer and Billman had detained Jackson. Spencer asked Crithfield whether he recognized the detained man. Crithfield identified Jackson as the man who tried to rob him. Crithfield also identified Jackson at trial. Although Little identified Jackson at trial, he could no longer recall what the defendant was wearing on the night of

the incident.

The jury convicted Jackson as charged. He appeals.

Analysis

Warrantless Seizure

Jackson argues that Officer Billman unlawfully seized him in violation of the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution. Jackson further alleges that the unconstitutional seizure requires suppression of all the evidence obtained after the seizure occurred. We review claims of unlawful seizures de novo.[1]

Preliminarily, we note that Jackson failed to raise the suppression issue in the trial court. Generally, a failure to move in the trial court to suppress improperly obtained evidence waives the right to raise the issue on appeal.[2] RAP 2.5(a)(3) allows a party to raise for the first time on appeal a "manifest error affecting a constitutional right." This court previews the merits of the constitutional argument to determine whether it is likely to succeed.[3] Because Jackson has not shown a constitutional error occurred, he may not challenge the validity of the search for the first time on appeal.

Generally, a warrantless seizure is per se unreasonable under the Fourth Amendment to the United States Constitution and article I, section 7 of the

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[1] State v. Kypreos, 110 Wn. App. 612, 616, 39 P.3d 371 (2002).

[2] State v. Robinson, 171 Wn.2d 292, 304, 253 P.3d 84 (2011).

[3] State v. Walsh, 143 Wn.2d 1, 8, 17 P.3d 591 (2001) (citing State v. WWJ Corp., 138 Wn.2d 595, 603, 980 P.2d 1257 (1999)).

Washington Constitution.[4] Terry v. Ohio[5] provides an exception for a brief investigative stop of limited scope and duration, commonly known as a Terry stop.[6]

To justify a Terry stop, the State must prove the officer had "'a reasonable, articulable suspicion, based on specific, objective facts, that the person seized has committed or is about to commit a crime.'"[7] This seizure must be justified at its inception,[8] and Washington courts look to the totality of the circumstances presented to the officer when reviewing the propriety of an investigative stop.[9] These circumstances must give rise to "a substantial possibility that the particular person has committed a specific crime or is about to do so."[10]

Here, Billman had sufficient facts to form a reasonable, articulable suspicion that Jackson attempted to rob Crithfield and Little. Billman arrived shortly after Crithfield reported the incident, took statements from Crithfield and

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[4] State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984) (citing Coolidge v. New Hampshire, 403 U.S. 443, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971)). The Fourth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The Washington Constitution, article I, section 7 states, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

[5] 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

[6] State v. Garvin, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

[7] State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008) (quoting State v. Duncan, 146 Wn.2d 166, 172, 43 P.3d 513 (2002)).

[8] Gatewood, 163 Wn.2d at 539.

[9] State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991).

[10] State v. Martinez, 135 Wn. App. 174, 180, 143 P.3d 855 (2006) (citing State v. Garcia, 125 Wn.2d 239, 242, 883 P.2d 1369 (1994)).

Little, and only a short time later, he identified a suspect six blocks from Crithfield's apartment matching the description of the assailant. Under the totality of these circumstances, we hold that Billman acted reasonably when he stopped Jackson. Therefore, Jackson's claim of a manifest error fails.

Evidentiary Challenges

Emphasizing minor discrepancies in witness testimony, Jackson challenges the sufficiency of the evidence to support his attempted first-degree robbery conviction. In a sufficiency challenge, we view the evidence in the light most favorable to the State and decide whether any rational trier of fact could have found guilt beyond a reasonable doubt.[11] We defer to the fact finder on issues of witness credibility and persuasiveness of the evidence.[12]

The State charged Jackson with attempted first-degree robbery. To convict Jackson as charged, the court instructed the jury that it had to unanimously agree beyond a reasonable doubt

> (1) That on or about the 19th day of September, 2009, the defendant did an act which was a substantial step toward the commission of Robbery in the First Degree, to-wit:
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> (a) the unlawful taking of personal property, not belonging to the defendant, from the person or in the presence of another; and
> (b) with intent to commit theft of the property; and
> (c) the taking was against the person's will by the defendant's use or threatened use of immediate force, violence or fear of injury to that person;
> (d) the force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking;

[11] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).
[12] State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

> (e) in the commission of these acts, or in immediate flight therefrom, the defendant displayed what appeared to be a firearm or other deadly weapon;
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> (2) That the act was done with the intent to commit Robbery in the First Degree; and
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> (3) That the acts occurred in the State of Washington.

Despite the alleged incongruities in the testimony at trial, sufficient evidence supports Jackson's conviction. Crithfield and Little both testified that they were walking home from a bar in Tacoma when they were approached by two men. One man asked them for money, their wallets, and jewelry and brandished what appeared to be a firearm. Little then ran into the street yelling for help, while Crithfield dialed 911. Later, when Billman and Spencer detained Jackson, Spencer found a realistic-looking CO_2-powered BB gun on him. Another officer drove Crithfield to Jackson's location, where Crithfield positively identified Jackson as the man who tried to rob him. Crithfield and Little also positively identified Jackson as their assailant at trial.

We conclude that a rational trier of fact could have found each element of the charged offense beyond a reasonable doubt from this evidence. Jackson's sufficiency challenge therefore fails.

Jackson claims the trial court abused its discretion in admitting certain evidence while excluding other evidence. We review the trial court's admission or exclusion of evidence under an abuse of discretion standard.[13] A trial court abuses its discretion when no reasonable person would have decided the matter as the trial court did.[14]

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[13] Thomas, 150 Wn.2d at 856.

[14] Thomas, 150 Wn.2d at 856.

First, Jackson claims that the trial court erred in excluding Crithfield's and Little's written statements as inadmissible hearsay. Jackson argues that the statements were not hearsay because they were not offered to prove the truth of the matter asserted in them. Instead, they were offered as prior inconsistent statements, under ER 801(d)(i), to challenge Crithfield's and Little's credibility.

Whether a statement is hearsay is a question of law we review de novo.[15] "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."[16] However, ER 801(d)(1)(i) excludes from the hearsay definition prior statements of a trial witness that are "inconsistent with the declarant's testimony, and . . . given under oath subject to the penalty of perjury."

Contrary to Jackson's claim, ER 801(d)(i) does not apply because Crithfield and Little did not provide their written statements under oath subject to penalty of perjury. Moreover, Jackson failed to show any inconsistency between the written statements and Crithfield's and Little's trial testimony. Thus, the trial court did not abuse its discretion by refusing to admit the written statements.

Next, Jackson argues that the trial court improperly allowed Officer Spencer to refresh his recollection during his testimony by reviewing Crithfield's written statement.

ER 612 governs the use of a writing to refresh the memory of a witness.

[15] State v. Edwards, 131 Wn. App. 611, 614, 128 P.3d 631 (2006).
[16] ER 801(c).

To refresh a witness's memory under this rule, the trial court must determine that (1) the witness's memory needs refreshing, (2) opposing counsel has had the opportunity to inspect the writing, and (3) the trial court is satisfied that the witness is not being coached and is using the writing to aid rather than supplant his or her own recollection.[17] Because the writing itself is not evidence, it need not satisfy any hearsay and best evidence rules.[18]

Assuming, without deciding, that Jackson's characterization of the record is correct, ER 612 does not help him. Jackson cites no authority for the proposition that the writing must have been prepared by the witness. Contrary to Jackson's assertion, "writings prepared by others may be used so long as the other requirements of [ER 612] are met."[19] Because those requirements were met here, we reject Jackson's argument.

Next, Jackson claims that the trial court erroneously admitted hearsay when it allowed Billman to (1) consult his incident report before testifying that Jackson had a beer can on his person and (2) read the computer assistance dispatch (CAD) logs[20] to refresh his recollection as to when he came into contact with Crithfield and Jackson.

Although Jackson contends the State failed to follow the proper procedure to refresh Billman's memory, the questions asked and answered demonstrate

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[17] State v. Little, 57 Wn.2d 516, 521, 358 P.2d 120 (1961).

[18] 5A Karl B. Tegland, Washington Practice: Evidence Law and Practice § 612.2, at 562 (5th ed. 2007).

[19] 5A Tegland, § 612.4, at 565.

[20] A CAD readout is a record of police officers' radio transmissions and computer entries.

sufficient compliance with ER 612. Without reviewing these documents, Billman did not recall whether Jackson possessed a beer can or the exact time he contacted Crithfield and Jackson. It is also evident that the trial court was satisfied that the witness was not being coached. Furthermore, defense counsel had an opportunity to examine the writings and cross-examine Billman regarding them. Because the requirements of ER 612 were met, we find no error.

Next, Jackson challenges the admissibility of testimony from Robert Ochoa about a crime different from the one charged. Ochoa testified that he and James Tucker were also approached by Jackson. According to Ochoa, Jackson asked for a cigarette, and when Ochoa gave him one, the BB gun became exposed while Jackson looked for a lighter. Jackson put the gun back in his belt and tried to explain that a misunderstanding existed about the weapon. Jackson then asked for some change, which Ochoa gave him. Ochoa testified that he would have given Jackson money even without the display of the gun "just to move on with my evening."

Jackson contends that the trial court's admission of this testimony over objection violated ER 404(b) because the trial court failed to conduct a balancing test on the record.[21]

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[21] Before admitting evidence of prior acts under any of the ER 404(b) exceptions, the trial court must

> (1) find by a preponderance of the evidence that the uncharged acts probably occurred before admitting the evidence, (2) identify the purpose for which the evidence will be admitted, (3) find the evidence materially relevant to that purpose, and (4) balance the probative value of the evidence against any unfair prejudicial effect the evidence may have upon the fact-finder.

We agree that the trial court erred. However, the erroneous admission of ER 404(b) evidence is harmless absent a reasonable probability that the error materially affected the outcome of the trial.[22] "Improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the evidence as a whole."[23] Given the testimony from the other witnesses, we conclude that Ochoa's testimony was of only minor significance. Jackson, therefore, fails to establish that the outcome of the trial would have been different had Ochoa's testimony been excluded.

Ineffective Assistance of Counsel

Jackson claims that his counsel provided ineffective assistance for several reasons. None have merit.

Claims of ineffective assistance involve mixed questions of fact and law we review de novo.[24] To prevail on a claim of ineffective assistance, Strickland v. Washington[25] requires that a defendant satisfy a two-prong test. A failure on either prong is fatal to the defendant's case.[26] First, he must show a deficiency in counsel's representation.[27] Counsel's representation is deficient if it falls below an objective standard of reasonableness.[28] Second, he must show that the deficient performance resulted in prejudice.[29] Prejudice occurs when it is

State v. Kilgore, 147 Wn.2d 288, 292, 53 P.3d 974 (2002).
[22] State v. Halstien, 122 Wn.2d 109, 127, 857 P.2d 270 (1993).
[23] State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001).
[24] In re Pers. Restraint of Brett, 142 Wn.2d 868, 873, 16 P.3d 601 (2001).
[25] 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).
[26] State v. Hendrickson, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).
[27] State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997).
[28] Stenson, 132 Wn.2d at 705.

reasonably probable that but for counsel's errors "'the result of the proceeding would have been different.'"[30] A strong presumption of effective assistance exists, and a defendant has the burden of demonstrating that there was no legitimate strategic or tactical reason for the challenged conduct.[31] We evaluate counsel's performance in the context of the entire record.[32]

Jackson alleges deficient representation based on trial counsel's failure to object to the following testimony from Crithfield:

> Q [Prosecutor]: And do you recall what you told the officers the man looked like?
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> A [Crithfield]: I believe I told them that it was a 30-year-old African American male with a blue and white checkered short-sleeved shirt, collared shirt.

According to Jackson, the prosecutor should have asked Crithfield what the assailant looked like, not what he believed he told the police at the time of the incident. This, Crithfield argues, is "unmitigated hearsay."

But "[a] statement is not hearsay if it is used only to show the effect on the listener, without regard to the truth of the statement."[33] The offered testimony must also be relevant to an issue in controversy.[34] Because Crithfield's

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[29] Stenson, 132 Wn.2d at 705-06.

[30] State v. Lord, 117 Wn.2d 829, 883-84, 822 P.2d 177 (1991) (quoting Strickland, 466 U.S. at 694).

[31] State v. McFarland, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995).

[32] Strickland, 466 U.S. at 695-96 ("[A] court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. . . . [A] verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support."); McFarland, 127 Wn.2d at 335 ("Competency of counsel is determined based upon the entire record below.").

[33] Edwards, 131 Wn. App. at 614.

statement goes directly to whether the officer looked for and detained a person that matched Crithfield's description, it is not hearsay. And because Jackson's defense at trial was misidentification, the testimony was relevant to an issue in controversy and therefore admissible. It follows that defense counsel was not deficient for failing to object to admissible testimony.

Next, Jackson complains that his counsel failed to object to Officer Spencer's testimony regarding Ochoa's and Tucker's identification of Jackson. But again, Jackson fails to establish prejudice. Without this testimony from Spencer, the outcome of the trial is not likely to have been any different.

Jackson also argues that Spencer's testimony violated his right to confront witnesses against him under Crawford v. Washington[35] because Tucker did not testify at trial. "A violation of the confrontation clause is . . . subject to harmless error analysis where the error was harmless beyond a reasonable doubt."[36] Error in admitting testimonial statements is harmless if "the untainted evidence admitted is so overwhelming as to necessarily lead to a finding of guilty."[37] Here, the State presented overwhelming evidence of Jackson's guilt. Jackson's claimed error was therefore harmless beyond a reasonable doubt.

Finally, Jackson complains that his counsel failed to request a limiting instruction for Ochoa's ER 404(b) testimony. But as explained above, Jackson cannot establish prejudice from the admission of Ochoa's testimony. Absent

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[34] Edwards, 131 Wn. App. at 614.
[35] 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).
[36] State v. Davis, 154 Wn.2d 291, 304, 111 P.3d 844 (2005).
[37] Davis, 154 Wn.2d at 305.

prejudice, we find no reversible error.

Unanimity Instruction

Jackson contends that the trial court violated his constitutional right to a unanimous jury by failing to give a unanimity instruction. Specifically, he contends the evidence presented and the State's closing argument allowed the jury to rely on Jackson's contact with Ochoa instead of his contact with Crithfield and Little to convict him of attempted robbery in the first degree.

When the State alleges multiple acts, any one of which could constitute the crime charged, the jury must unanimously agree on which incident constituted the crime.[38] Under such circumstances, "a unanimous verdict will be assured if either (1) the State elects the act upon which it will rely for conviction, or (2) the jury is instructed that all 12 jurors must agree that the same underlying criminal act has been proved beyond a reasonable doubt."[39] But where, as here, the evidence at trial "proves only one violation, then no [unanimity] instruction is required, for a general verdict will necessarily reflect unanimous agreement that the one violation occurred."[40]

In this case, the State charged and presented evidence of a single incident of attempted first-degree robbery. Crithfield and Little testified that Jackson approached them, brandished what appeared to be a firearm, and

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[38] State v. Kitchen, 110 Wn.2d 403, 411, 756 P.2d 105 (1988).

[39] State v. Stark, 48 Wn. App. 245, 251, 738 P.2d 684 (1987) (citing State v. Petrich, 101 Wn.2d 566, 572, 683 P.2d 173 (1984), overruled on other grounds by State v. Kitchen, 110 Wn.2d 403, 756 P.2d 105 (1988)).

[40] State v. Hanson, 59 Wn. App. 651, 657, 800 P.2d 1124 (1990).

demanded their wallets and jewelry. On the other hand, Ochoa testified that Jackson never pointed the gun at him, that he voluntarily gave Jackson some money, and that he would have given Jackson the money even without the accidental display of the gun. And contrary to Jackson's assertion, the prosecutor unambiguously identified the incident the State relied upon in closing argument:

> If you turn to Instruction 9, the one that starts out with the words "to convict," this is where you find the elements of the crime. This is what I have to prove beyond a reasonable doubt. . . .
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> . . . .
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> The next part on the first element is did he take a substantial step towards committing robbery in the first degree? . . . And in this case we pretty much have the entire crime except for the victims did not turn over any property. That's what makes it an attempt. There is nothing to suggest that he—that the man who confronted them did not want to have money, jewelry, a wallet, something from them, he asked for that, he displayed a weapon to do that and the only reason he didn't get it was because Mr. Little ran into the street and started screaming and gave Mr. Crithfield time to call 911. He took every step of this crime except the successful part of actually being able to take it.
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> . . . What happened to Mr. Crithfield and what happened to Mr. Little is an attempted robbery in the first degree.

Further, the prosecutor made clear that Ochoa's testimony pertained to Jackson's identity, not to a separate attempted robbery.

> So now you come down to the question of identity. We know for sure that Mr. Jackson was the man who confronted Mr. Ochoa. We don't have the same situation with Mr. Crithfield and Mr. Little because the man ran away. So you have to ask yourself is he the same man? And what can you use to decide if Mr. Jackson also is the man who confronted Mr. Little and Mr. Crithfield? And to that you go back to their testimony, the fact that they were—Mr. Crithfield was able to make an identification, a positive identification within an hour-and-a-half, the defendant's five-foot five, he's of slender build, this is the same six-block area,

> the same time of day, within an hour-and-a-half, he's wearing a blue and white plaid shirt and he's got a gun in his pocket, and he asked Mr. Ochoa for change and some other things even though the encounter was a little different than what Mr. Crithfield and Mr. Little went through.

Accordingly, the trial court did not err in failing to provide a unanimity instruction.

Prosecutor Misconduct

Jackson argues the prosecutor's "flagrant and ill-intentioned misconduct" requires reversal. Referring to the police reports and Crithfield's and Little's written statements, Jackson contends the prosecutor argued for the admission of hearsay evidence that he knew was clearly inadmissible and for the exclusion of evidence that he knew was admissible.

A defendant cannot raise a claim of prosecutorial misconduct for the first time on appeal unless the misconduct is so "'flagrant and ill intentioned that it cause[d] an enduring and resulting prejudice'" that a curative instruction could not have neutralized.[41] "To prevail on a claim of prosecutorial misconduct, the burden is on the defendant to show that the prosecutor did not act in good faith and that the conduct complained of was both improper and so prejudicial as to deny the defendant a fair trial."[42] Jackson cannot meet this burden.

The prosecutor did not seek to admit the police reports as evidence. Rather, the prosecutor properly used the reports to refresh the recollection of the testifying officers. And, as we have explained, Crithfield's and Little's written

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[41] State v. Warren, 134 Wn. App. 44, 69, 138 P.3d 1081 (2006) (quoting State v. Russell, 125 Wn.2d 24, 86, 882 P.2d 747 (1994)), aff'd, 165 Wn.2d 17, 195 P.3d 940 (2008), cert. denied, 129 S. Ct. 2007 (2009).

[42] State v. Manthie, 39 Wn. App. 815, 820, 696 P.2d 33 (1985).

statements were not admissible. Finding no misconduct, let alone flagrant and ill intentioned misconduct, we reject Jackson's claim.

Motion for Mistrial

Jackson assigns error to the trial court's denial of his motion for a mistrial after witnesses saw Jackson in restraints in the hallway outside the courtroom. Jackson claims this created a dilemma for defense counsel: how to challenge the witnesses about their in-court identifications after they observed the defendant in the hallway without exposing the fact that they observed Jackson in custody, wearing restraints. According to Jackson, this placed his constitutional right to be tried by a jury who did not know he was being held in custody in conflict with his constitutional right to present all relevant, admissible evidence in his defense. We disagree.

Jackson does not explain why his counsel could not cross-examine witnesses about an allegedly tainted courtroom identification by asking about the hallway observations without reference to restraints or custodial status. Also, as noted by the State, the hallway observation does not taint the identification any more than the testifying witnesses observing a single defendant sitting at counsel table. Because Jackson cannot demonstrate prejudice from the hallway observations, we reject his claim.

Demeaning Trial Counsel

Jackson claims the trial court demeaned counsel by asking him to repeat his ER 404(b) objection to Ochoa's testimony in front of the jury and then

promptly overruling it. But we generally will not consider an issue unsupported by adequate argument or citation to relevant authority.[43] Because Jackson provides only passing argument and does not cite any supporting authority, we decline review of this issue.

Cumulative Error

Jackson alleges that cumulative error deprived him of a fair trial. Because the only error in this case—the admission of ER 404(b) evidence without a balancing test on the record—was harmless, we reject this claim.

Incompetency

In a statement of additional grounds, Jackson argues pro se that the trial court failed to observe the proper procedures for protecting his right not to be tried while incompetent. While the trial court must order an expert evaluation of the defendant's mental condition if there is reason to doubt the defendant's competency to stand trial,[44] our review of the record reveals nothing to suggest the need for a competency evaluation. Jackson's argument therefore fails.

Conclusion

We affirm Jackson's conviction for attempted robbery in the first degree.

Leach, A.C.J.

WE CONCUR:

Grosse, J.

[43] Thomas, 150 Wn.2d at 868-69; see also RAP 10.3.
[44] RCW 10.77.060(1)(a).

Appelwick, J.