

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM ALEXANDER MANUS,

Appellant.

No. 39164-3-II

UNPUBLISHED OPINION

Penoyar, C.J. — William Manus appeals his bail jumping conviction. He argues that the trial court erred by admitting evidence of new unrelated charges, that the prosecutor committed misconduct by questioning him about and arguing on this evidence, and that his trial counsel was ineffective by failing to object to the evidence. We affirm.

**FACTS**

In April 2007, the State charged Manus with possession of a controlled substance (cocaine).<sup>1</sup> Manus posted bail and signed a scheduling order that directed him to appear in court at 8:30 a.m. on May 24, 2007, for a continuance hearing. Manus failed to appear and the court issued a bench warrant. In an amended information, the State charged Manus with bail jumping.<sup>2</sup>

At trial, Manus asserted that he had a seizure on the morning of May 24. He testified that he has a seizure disorder and his seizures cause memory loss.<sup>3</sup> Manus testified that a bail bondsman called a month later to inform him that he had missed his court date and needed to quash the warrant that had been issued. The bail bondsman called on a Friday evening and Manus

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<sup>1</sup> In violation of RCW 69.50.4013(1)

<sup>2</sup> In violation of RCW 9A.76.170.

<sup>3</sup> Manus testified that he suffers from memory loss when he has grand mal seizures.

planned to quash his warrant the following Monday. However, Manus testified, “[O]n Monday morning I was placed under arrest. . . . I got arrested like Monday afternoon.” 3 Report of Proceedings (RP) at 226.

In response to Manus’s testimony, the State argued:

The other thing I want to bring to the Court’s attention is [Manus] said on Monday morning “I was arrested *for this*,” meaning the warrant that was issued. That is not why he was arrested on the 26th [of June], Your Honor. He was arrested on the 26th because he was in a vehicle, and when they talked to him, he gave a false name and he told the officer the reason he gave the false name . . . is because he had this warrant for his arrest.

I don’t think you’re going to take the stand and make an allegation that you’re here on a clean slate and you’re picked up just on this warrant. There was drugs [sic] found on him on that date. . . . [H]e was arrested on that date for drugs. He gave a false name. After he was arrested, he gave his real name. This warrant [for missing the continuance hearing] is not why he was arrested. He was arrested for additional charges, and I would ask to be allowed to go into that.

3 RP at 237 (emphasis added).

The trial court ruled that Manus had opened the door for cross-examination on his June arrest. Defense counsel did not object.<sup>4</sup>

The State then cross-examined Manus:

[The State:] You testified that you were arrested roughly three weeks, maybe four weeks after you failed to appear because of this warrant, and that’s not entirely true, correct?

[Manus:] It’s one of the reasons.

[The State:] You were arrested because of new charges; is that correct?

[Manus:] Yes.

[The State:] And as a result of the new charges, they found this warrant; is that correct?

[Manus:] Yeah.

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<sup>4</sup> Before the State questioned Manus, defense counsel asked “what the State intends to ask with regard to the warrant and the arrest.” 3 RP at 250. When the State sought to admit detailed evidence of the charges for which Manus was arrested, defense counsel argued, “I again renew my objection to that. I think it’s appropriate to say he was arrested.” 3 RP at 251. The trial court then ruled, “I would prefer you sanitize it a bit and not mention the new charges. I think that has a very strong prejudicial effect.” 3 RP at 251.

3 RP at 260.

During closing argument, the State argued:

He's picked up again on June 26, almost a month later. He testifies that when he's picked up, it was only because of the warrant in this case, but on cross-examination he admitted, [w]ell, no, there [were] new charges and then they found the warrant.

You determine the credibility of whose story you're going to believe.

4 RP at 332.

In rebuttal, the State once again discussed Manus's other charges:

When we were picking a jury, we talked about how you determine someone's credibility, and some of the things is [sic]: Do they look you straight in the eye, do they not jitter, do they say things that make sense. And then it was also brought to your attention that people can do that but also call into the question of credibility. Mr. Manus did that. He took the stand. He's a very articulate man and he told a story, but he told you multiple stories and he also told you what you wanted to hear. He wanted you to hear that the officer just patted him down. He wanted you to believe it was because he was picked up on a warrant as a result for not appearing in court on the 24th. That is not the case. He was picked up for a subsequent charge and they filed one.

He takes the stand and he tells you what he thinks you want to hear. Remember, it's an abiding belief.

4 RP at 347. Defense counsel did not object to either of the State's comments.

The jury acquitted Manus of the unlawful possession of a controlled substance charge but convicted him of bail jumping. Manus appeals.

## ANALYSIS

### I. Evidence of New Charges

Manus's argument focuses solely on the evidence that he was arrested on new charges. He argues that the trial court erred in admitting this evidence, that the prosecutor committed misconduct by questioning him and arguing on this evidence, and that his trial counsel was

ineffective in failing to object to the evidence and argument on it. For any of these arguments to succeed, Manus would have to show prejudice.<sup>5</sup>

To establish prejudice from prosecutorial misconduct, the defendant must demonstrate a substantial likelihood that the misconduct affected the jury's verdict. *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997). Similarly, in order to prove prejudice in an ineffective assistance of counsel claim, Manus must show that there is a reasonable probability that the result would have been different but for counsel's performance. *See Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome after considering the totality of evidence before the jury. *Strickland*, 466 U.S. at 694-95. We do not see such a probability here. The prosecutor also attacked Manus's credibility on other grounds arguing that there was no evidence Manus suffered from grand mal seizures, Manus's mother did not remember the exact date of Manus's seizure, and he did not have safeguards in place to ensure he did not miss his scheduled court appearance. The jury also knew that Manus allegedly possessed cocaine. In light of this other properly admitted evidence, the jury most likely disbelieved Manus's assertion that he had no knowledge of the requirement of a subsequent personal appearance before the court. Because we see no prejudice from any of the errors Manus raised, we affirm.<sup>6</sup>

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<sup>5</sup> An error in admitting evidence that does not prejudice the defendant is not grounds for reversal. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). To establish prosecutorial misconduct, the defendant must show that the prosecutor did not act in good faith and that the prosecutor's conduct was both improper and prejudicial. *State v. Manthie*, 39 Wn. App. 815, 820, 696 P.2d 33 (1985). Likewise, to prevail on a claim of ineffective assistance of counsel, Manus must show both ineffective representation and resulting prejudice. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002).

<sup>6</sup> We note that the State persuasively argued that any claimed error was waived and that any error by the prosecutor was not ill-intentioned, but the result of an honest mistake.

II. Cumulative Error

Manus also argues that the cumulative error doctrine requires reversal of his conviction. Cumulative error may warrant reversal, even if each error standing alone would otherwise be considered harmless, when the errors combined denied the defendant a fair trial. *State v. Weber*, 159 Wn.2d 252, 279, 149 P.3d 646 (2006); *State v. Greiff*, 141 Wn.2d 910, 929, 10 P.3d 390 (2000). The defendant bears the burden of proving an accumulation of error of sufficient magnitude that retrial is necessary. *State v. Yarbrough*, 151 Wn. App. 66, 98, 210 P.3d 1029 (2009). Manus has failed to meet this burden.

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.

Penoyar, C.J.

We concur:

Quinn-Brintnall, J.

Grosse, J.