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NO. 96292-8

SUPREME COURT OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION I
NO. 76914-6-I

Y.M.A.,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

Petition for Review

GREGORY C. LINK
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A. IDENTITY OF PETITIONER

Petitioner Y.M.A. was the juvenile defendant in King County Superior Court case 16-8-01101-4 SEA. He appealed his conviction to the Division I Court of Appeals. He seeks review of the Court of Appeals decision opinion in *State of Washington v. Y.M.A.*, No. 76914-6-I.

B. OPINION BELOW

The Court of Appeals affirmed Y.M.A's felony conviction concluding he had no right to a jury determination of his guilt. Moreover, the court concluded a trial before a judge who was familiar with Y.M.A.'s history did not create an appearance of unfairness.

C. ISSUES PRESENTED FOR REVIEW

1. The appearance of fairness doctrine requires recusal where the impartiality of the court might reasonably be questioned by a disinterested observer. Recusal is required unless a reasonably prudent and disinterested person would conclude all parties obtained a fair, impartial, and neutral hearing. Was recusal required where the trial judge was impermissibly familiar with Y.M.A.; had him appear before the court in jail attire; and minimized the presence of racism in the complaining witness's accusations?

2. Washington's Article I, §§ 3, 21, and 22 provide for a jury trial for all individuals accused of a crime. The scope of the jury trial right is determined by the framers' intent and the right as it existed at the time the Washington Constitution was adopted. Where, at the time the constitution was adopted and for nearly 50 years thereafter, juveniles charged with crimes were afforded a jury trial, do Article I, §§ 21 and 22 require a jury trial for a juvenile accused of a crime?

D. STATEMENT OF THE CASE

Y.M.A. was charged as a juvenile with attempted robbery in the second degree. RP 40.

Defense counsel argued that Y.M.A.'s case deserved a jury trial given the nature of the crimes charged and that Y.M.A. had a pending adult matter. RP 13, 14. After hearing about Y.M.A.'s other pending case, the court denied the request for a jury trial. RP 15.

Defense counsel then raised questions about the court's ability to be impartial given its familiarity with Y.M.A., having been before the judge on prior occasions. RP 15. The judge agreed that he had seen Y.M.A. on a regular basis and his impartiality was worth discussing. RP 15-16. Yet the judge decided he was capable of compartmentalizing this case. RP 16.

When Y.M.A. appeared for trial dressed in jail attire, his defense attorney raised the fact that he was supposed to be in civilian clothes. RP 41. Defense counsel told the judge that he had asked Y.M.A. if he wanted a recess to change but Y.M.A. said he would "rather just proceed."[1] RP 41. He asked the judge if he would hold any bias against Y.M.A., and the judge remarked that one of the nice things about juvenile court is that he had seen Y.M.A. in civilian clothes, detention clothes, and now jail clothes. RP 41.

At trial, the State presented its only witness to the incident, David Agnes. RP 42. The court found that Agnes had been approached by two black males who had asked for his beer and cigarettes. RP 213. The court found that after declining, Agnes was immediately defensive and responded with overactive language. RP 213. Agnes claimed that the males said they would "fuck him up" if he did not comply. RP 213. Agnes moved to a bus stop to protect himself. RP 213. The court found that it was unclear what happened after that point. RP 213. Agnes claimed there were fake punches thrown from somewhat of a distance

[1] There is no indication from the record that Yahya's response to defense counsel was a knowing or intentional waiver of his right to not appear at trial in jail garb. *See Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938).

and the police report states that Agnes reported the males threatened to "pop him." RP 214. Agnes denied this was in reference to a weapon, yet the police reported it was. RP 214. The court found that the two males left after a third black male approached and told them to leave Agnes alone. RP 214.

Agnes called 911. RP 214. During his report, Agnes made derogatory remarks about the black males, describing them as "hood rats" and "Section 8 housing things." RP 127, 122. He asked the operator why "don't they leave us alone." RP 119. The man then went further stating that he felt like he "should move down to South Carolina where everybody carries a .44," but denied this was in reference to the racially motivated massacre of black congregants in South Carolina two years earlier. RP 120, 130. The court found these statements not as prejudicial as they sounded. RP 125.

At trial, Agnes agreed that he possibly directed profanities at the individuals along the lines of the individuals being black or that they should "go back to Africa." RP 131. However, the court deemed this to be due to unconscious or implicit bias harbored by Agnes. RP 216. The court determined that Agnes's identification made was credible enough to discern that Y.M.A. was the male responsible. RP 216. The judge

decided that the racism displayed by Agnes was belied by his account that it was a black male who stopped the interaction. RP 218–19.

The trial court found Y.M.A. guilty of attempted robbery in the second degree and sentenced him to twenty days in incarceration. RP 237. The Court of Appeals affirmed the trial court's conviction, writing, "Whether the juvenile system has been so altered by recent developments that the jury right should extend to juveniles is a decision for a higher court or legislature." *State v. Y.M.A.*, No.76914-6-1, slip op. at 2.

E. ARGUMENT

When Y.M.A. was deprived of his rights to a jury trial and a fair trial by an impartial tribunal as guaranteed by the Washington Constitution, conviction became a mere formality.

The record shows a court glossing over its essential responsibility to maintain an appearance of fairness. The trial judge was impermissibly familiar with Y.M.A., allowed him to appear for trial in his jail clothing, and downplayed flagrant racism from the State's chief witness, yet he failed to recuse himself despite an appearance of partiality. Concerns about the impartiality of judges as fact-finders are precisely why the framers guaranteed a right to trial by jury. Y.M.A.

tried to exercise that right, but the court abandoned this safeguard against potential judicial bias and denied Y.M.A. due process and the protections intended for all persons accused of crimes by the framers of the Washington Constitution.

Because of the many and increasingly frequent parallels between Y.M.A.'s proceedings and cases against similarly-charged adults, and the stigma and future legal consequences of a juvenile conviction, the Court should require that Yayha's trial have the requisite procedural safeguard—a trial by jury. The Court of Appeals admitted that such was a question for a higher court. The Court should respond by taking up the issue and ruling that Y.M.A. had a right to trial by jury.

1. Y.M.A. DID NOT HAVE A FAIR TRIAL BECAUSE THE TRIAL JUDGE VIOLATED THE APPEARANCE OF FAIRNESS DOCTRINE AND DID NOT RECUSE HIMSELF.

Under the U.S. and Washington Constitutions, a person charged with a crime has the right to be tried and sentenced by an impartial court. U.S. Const. amends. VI, XIV; Wash. Const. art. I, § 22; *State v. Solis-Diaz*, 187 Wn.2d 535, 539, 387 P.3d 703 (2017). Judges should recuse themselves in proceedings where their impartiality might

reasonably be questioned by a reasonable observer. *Sherman v. State*, 128 Wn.2d 164, 206, 905 P.2d 355 (1995); CJC Canon 2.11.

The command of the judicial canon requires judges to remove themselves from cases presenting an appearance of bias regardless of whether a motion to disqualify is filed. CJC Canon 2.11, comment 2.2. Washington's Supreme Court has endorsed this judicial canon, recognizing that "even a mere suspicion of partiality" "can be debilitating" in its "effect on the public's confidence in our judicial system." *Sherman*, 128 Wn.2d at 205.

A party may seek a new judge for the first time on appeal. *Solis-Diaz*, 187 Wn.2d at 540. Where a review of the facts in the record shows that a "judge's impartiality might reasonably be questioned, the appellate court should remand the matter to another judge." *Id*. The record of Y.M.A.'s trial illustrates that the trial judge's impartiality was tainted by his familiarity with Y.M.A. (including other alleged criminal charges), his allowance of Y.M.A. to appear for trial in jail attire, and his statements demonstrating a failure to give appropriate weight to the State's essential witness' obvious anti-black racial animus. *See* RP, 14–16, 41, 216–19.

At trial, "actual prejudice need not be proved; a 'mere suspicion of partiality' may be enough" to rule that recusal is warranted. *State v. Davis*, 175 Wn.2d 287, 306, 290 P.3d 43 (2012); *Sherman*, 128 Wn.2d at 205. Due process requires such stringent standards that it sometimes would bar a trial by a judge who had "no actual bias and who would do their very best to weigh the scales of justice equally" *Tumey v. Ohio*, 273 U.S. 510, 532, 47 S. Ct. 437, 71 L. Ed. 749 (1927).

The facts in the trial record show the judge, at minimum, *appeared* to be biased sufficient to require recusal. While filling both the roles of the judge and jury, the trial court judge was aware of his familiarity with Y.M.A. and the impropriety of him attending trial in jail clothing, as well as the racists remarks of the essential witness. The judge openly discussed his familiarity with Yayha in acknowledging the possibility of bias was "worth discussing"; "we see all of these kids a number of times," he said, adding, "I do know things about him." RP, 15–16. The judge also suggested the jail clothes could not be a source of bias because seeing Y.M.A. in civilian, detention, and jail clothes was "one of the nice things about Juvenile Court." RP, 41.

Despite his acknowledgement of the potential for biases, the trial judge kept the case, and he later downplayed the full effect of

racist statements on the credibility of the State's chief witness. RP, 216. The witness had described the boys who accosted him as "Section 8 housing things" and "hood rats," admitted he may have told them to "go back to Africa," and lamented that he did not live in South Carolina where he could have had a gun. RP, 119–20, 122, 127. 130–31. The court softened these statements by attributing them to "unconscious or implicit bias" harbored by the witness and determined the identification was credible enough to discern that Y.M.A. was one of the boys responsible for accosting the witness. RP 216. The court further downplayed the witness' racial animus by noting a different black person about whom the witness had nice things to say. RP, 218–19.

No reasonable person would attribute these witness statements to unconscious bias. They were overtly racist. Downplaying the comments in this manner was a clear violation of the appearance of fairness doctrine, whatever the judge's intentions or actual unconscious biases may have been. An objective reasonable observer would have to conclude that the judge did not think the witness' statements were sufficiently problematic to have a greater impact on his fact-finding assessment of credibility. The judge's reliance on the witness' positive feelings toward a different black person as evidence belying the

witness' racial animus only highlights the court's dismissive approach to the prospect of clear racial ambivalence affecting the witness' creditability in identifying the boys who accosted him.

As is the case with everyone, judges' perceptions of their own impartiality suffer from the failure to acknowledge the existence of unconscious motivations. Debra Lyn Bassett & Rex R. Perschbacher, *The Elusive Goal of Impartiality*, 97 Iowa L. Rev. 181 (2011); *see generally* Jeffrey J. Rachlinski, *Heuristics and Biases in the Courts: Ignorance or Adaptation?*, 79 Or. L. Rev. 61 (2000) (noting judges are susceptible to various biases). Whether Y.M.A.'s trial judge was indeed aware of his own unconscious bias is beside the point; the appearance of bias was clear to an objective and reasonable observer. The familiarity, allowance of jail attire, and improper weighing of the witness' statements of racial invective all demonstrate the prejudice Y.M.A. faced. Recusal was required. As Y.M.A.'s trial was not presided over by an impartial judge, his conviction should be vacated and his case should be remanded for a new trial.

2. THE WASHINGTON CONSTITUTION PROVIDES A BROAD RIGHT TO A JURY TRIAL, INCLUDING FOR JUVENILES ACCUSED OF CRIMES.

Article I, § 21 provides the right to a jury trial shall remain "inviolate." Article I, § 22 provides "In criminal prosecutions the accused shall have the right to . . . have a speedy public trial by an impartial jury."

a. Washington's framers intended a jury trial was a right for all those accused of a crime.

This Court concluded that the Washington Constitution provides a broader right to a jury trial than the federal constitutional provision. *State v. Smith*, 150 Wn.2d 135, 156, 75 P.3d 934 (2003). The "extent of the right must be determined from the law and practice that existed in Washington at the time of our constitution's adoption in 1889." *Id*. at 151. At the time the Washington Constitution was adopted, there was no provision differentiating between juveniles and adults for purposes of a right to a jury. Code of 1881, ch. 87, § 1078. Even after the juvenile court's inception in 1905, juveniles were statutorily entitled to trial by jury until 1937 when the Legislature struck the right. Laws of 1937, ch. 65, § 1.

Using the *Gunwall*[2] analysis, *Smith* noted both the textual differences between the state and federal provisions as well as the

[2] *See State v. Gunwall*, 106 Wn.2d 54, 58, 720 P.2d 808, 811 (1986).

structural differences of the federal and state constitutions support such a conclusion. *Smith*, 150 Wn.2d at 150-52. So too, the manner in which crimes are prosecuted is a matter of local concern. *Id.* at 152. *Smith* clarified:

> ...in order to determine the scope of the jury trial right under the Washington Constitution, it must be analyzed in light of the Washington law that existed at the time of the adoption of our constitution.

Id. at 153.

Smith held there was no provision for jury sentencing at the time the state constitution was enacted, as an 1866 law had done away with the practice. *Id.* at 154. Because the right did not exist at common law or by statute at the time of the enactment of the state constitution, it was not embodied within the jury trial rights of Article I, §§ 21, 22.

Smith illustrates the logic the Court had earlier relied on in *State v. Schaaf*, 109 Wn.2d 1, 743 P.2d 240 (1987), which said that juveniles had no right to jury trial, was faulty and erroneous in its analysis of how the framers' intent affects the broader jury trial right. The *Schaaf* court concluded the history of providing juries to juveniles at the time of the adoption of the constitution did not lead to the conclusion that juveniles must now be afforded a jury trial. *Id.* at 14. However, the examination in *Schaaf* of the framers' intent relied on legislation

enacted nearly five decades after drafting of Article I, § 21. This logic was expressly disavowed in *Smith*. *Smith*, 150 Wn.2d at 154.

The right to a jury trial was plainly intended to cover both adults and juveniles in 1889. The introduction of the juvenile court in 1905 codified that right for decades.[3] The court should reassert this state constitutional protection for juveniles facing criminal charges, and rule that Y.M.A. has a constitutional right to a jury trial and remand his case to the juvenile court as he requested. Correspondingly, the court should strike down the statute, RCW 13.04.021, that tramples on this right as a violation Article I, Article I, §§ 21, 22.

b. <u>It is the stigma of a criminal conviction that concerned the framers in protecting the jury trial right.</u>

As the Court subsequently disavowed its own analysis in *Schaaf*, it is important to address the other aspects of *Schaaf*'s reasoning. *Schaaf* reasoned that the jury-trial right did not extend to juvenile adjudications because for several decades Washington had

[3] The original juvenile court statute in Washington State provided that "[i]n all trials under this act any person interested therein may demand a jury trial, or the Judge, of his own motion, may order a jury to try the case." Laws of 1905 ch. 18, § 2 (repealed, 1937). This provision remained substantially unchanged through revisions of the statute in 1909, 1913, 1921, and 1929.

made every effort "to avoid accusing and convicting juveniles of crimes." *Schaaf*, 109 Wn.2d at 15. That observation is no longer true in law or fact.

The information in this case states:

> "[B]y the authority of the State of Washington, do accuse [Y.M.A.] of a crime..."

CP 5.

The filing of this Information is done in precisely the same manner as if Y.M.A. were an adult. The substantive offenses alleged are precisely the same in juvenile and adult proceedings. Y.M.A. and other youth are particularly vulnerable to having the profound stigma of a criminal conviction follow them into adulthood. The legislature has been inconsistent in how it defines so-called juvenile "adjudications," saying that these are not convictions while at the same time defining "conviction" as "an adjudication of guilt pursuant to Title 13 RCW" under RCW 9.94A.030(9). *See* RCW 13.04.240.

This Court has similarly recognized the legislature tends to identify these juvenile adjudications in many statutes as "convictions," holding that juvenile offenders had been "convicted" of a crime for purpose of a DNA collection statute. *In re Juveniles A, B, C, D, E*, 121 Wn.2d 80, 87–88, 847 P.2d 455 (1993). More recently, the court relied

upon *A, B, C, D, E* to conclude a juvenile adjudication is a "conviction" upon which the state can predicate a petition for indefinite confinement as a sexually violent predator. *In re Det. of Anderson*, 185 Wn.2d 79, 86, 368 P.3d 162 (2016) (citing RCW 13.40.077 (recommended prosecutorial standards for juvenile court), RCW 13.40.215(5) (school placement for "a convicted juvenile sex offender" who has been released from custody), RCW 13.40.480 (release of student records regarding juvenile offenders); RCW 13.50.260(4) (sealing juvenile court records); Juvenile Court Rules 7.12(c)–(d) (criminal history of juvenile offenders)).

Both in theory and practice, there is little distinction between "convictions" and "adjudications" or "offenses" and "crimes." The stigma attaches regardless of the semantics—and it is that stigma that underpins the jury trial right in the first instance. This Court has indeed observed, "for those offenses which carry a criminal stigma and particularly those for which a possible term of imprisonment is prescribed, the constitution requires that a jury trial be afforded unless waived." *Pasco v. Mace*, 98 Wn.2d 87, 100, 653 P.2d 618 (1983).

That the legislature has labeled these "adjudications" rather than "convictions" does not make a substantive difference as to the reality

facing Y.M.A. that these judgments are treated almost exactly like convictions. The court should rule that the Washington Constitution's broader protection of the jury trial right required Y.M.A. to receive the jury trial that he was denied.

c. There are no significant distinctions between juvenile and adult proceedings that justify the denial of a trial by jury.

The *Schaaf* court further concluded the right to a jury trial does not attach because "juvenile proceedings do not yet so resemble adult proceedings." *Schaaf*, 109 Wn.2d at 13. That is a standard divorced from the language of Article I, §§ 21 and 22. The constitutional provisions do not limit the jury right to proceedings that "resemble" adult proceedings. In fact, the absence of such a limitation is readily explained by the fact that in 1889, and until 1937, juveniles were entitled to a jury. Thus, the framers had no basis to limit the right to only those cases that "resemble an adult proceeding."

Even if one employs the malleable "resemble" standard, it is difficult if not impossible to distinguish juvenile and adult proceedings given their similar appearances and qualities in common. Importantly, the relevant comparison is not just with adult felonies but with

misdemeanors as well, as each group is afforded the jury-trial right without reservation.

Like an adult, Y.M.A. is required to provide the court with a collection of his personal data, a DNA sample, fingerprints, and photographs upon arrest. RCW 43.43.735; RCW 43.43.754. Background checks apply both to adults and to children tried in juvenile court. RCW 43.43.830(6). Children convicted in juvenile court may be housed in adult prisons. RCW 13.40.280. When the State seeks to transfer a child to an adult prison, it is the child's burden to demonstrate why they should not be transferred. *Id*. Juveniles convicted of sex offenses or kidnapping must register with their local sheriffs just as adults do. RCW 9A.44.130. Children can be subject to involuntarily commitment under RCW 71.09. *Anderson*, 185 Wn.2d at 86.

Furthermore, adults convicted of felonies are now entitled to have the sentencing court consider youthfulness as a factor in sentencing the person below the standard range. *State v. O'Dell*, 183 Wn.2d 680, 688, 358 P.3d 359 (2015). Just this year, the legislature has revised the conditions under which a person is subject to exclusive adult jurisdiction and extended juvenile court jurisdiction over serious cases to age twenty-five. Laws of 2018, ch. 162.

Juvenile prosecutions differ from current and historical adult felony and misdemeanor prosecutions in only two ways—the name attached and the absence of a jury. Even if rehabilitation was more central to the juvenile courts than in the adult system, the right to the protection of a jury of one's peers is not inconsistent with that motivation. Rehabilitative models in adult sentencing have never justified the denial of the right to a jury trial for adults.

The Washington Constitution requires a criminal defendant charged with a serious crime be guaranteed the right to a trial by jury. Denying Y.M.A. this right led to a violation of his right to a fair trial and due process, which requires a new trial by jury.

3. Y.M.A. WAS DENIED A JURY TRIAL AND THEREFORE DEPRIVED OF HIS DUE PROCESS RIGHTS UNDER ARTICLE I, § 3.

Y.M.A.'s right to a trial by jury is enshrined in the law in part because the framers sought to provide an invaluable safeguard against the potential biases of a single judge. *Duncan v. Louisiana*, 391 U.S. 145, 156, 88 S. Ct. 1444 (1968). The Washington Constitution provides that: "No person shall be deprived of life, liberty . . . without due process of law." Const. art. I, § 3.

Originally, children charged with crimes in Washington were afforded the right to a jury trial as a basic safeguard of due process. Const. art. I, §§ 21, 22. This right was taken away when the legislature decided the primary purpose of juvenile court was rehabilitation and the primary purpose of adult court was accountability. However, Washington courts have indicated that when the juvenile system becomes sufficiently like the adult criminal system, the right to a jury for Y.M.A. and other juveniles should be restored. *See State v. Lawley*, 91 Wn.2d 654, 659, 591 P.2d 772 (1979).

Far from becoming less similar, the two court systems have largely "converted the [juvenile] procedure into a criminal offense atmosphere totally comparable to an adult criminal offense scenario," as *Lawley* speculated. *See generally id.* at 659. Adult and juvenile proceedings have merged in their practices to the point where they are largely indistinguishable. Ten years ago, Justice Madsen wrote that recent legal developments such as convictions being used to increase a sentence for a subsequent offense (without a jury determination of the fact of the juvenile conviction) had already "tipped the scales for juveniles faced with charges of serious offenses," requiring the due process right to trial by jury. *State v. Chavez*, 163 Wn.2d 262, 275, 180

P.3d 1250, 1255–56 (2008) (Madsen, J., dissenting). Adult and juvenile proceedings have only grown more similar in the intervening time. At this point, Washington precedent and due process requires that the jury trial right now attach to Y.M.A.'s case.

F. CONCLUSION

The Court should reverse the Court of Appeals decision, vacate Y.M.A.'s conviction, and remand the case back to the juvenile court for a new trial by jury.

DATED this 4th day of September, 2018.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. Y.M.A., Appellant.	)	No. 76914-6-I DIVISION ONE UNPUBLISHED OPINION FILED: August 6, 2018

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BECKER, J. — The appellant, a juvenile, contends his trial was unfair because he was denied a jury and the judge appeared biased. We find no basis for reversal.

Y.M.A. was charged with attempted second degree robbery for trying to steal beer and cigarettes from a stranger on September 13, 2016. He was adjudicated guilty at a bench trial in juvenile court on April 4, 2017, when he had already turned 18 years old. At the time, Y.M.A. had other felony cases pending, including an adult robbery case. He received a disposition of 20 days of detention, 16 days of community service, and 9 months of supervision. This appeal followed.

Y.M.A. contends that he was entitled to a jury. The trial court denied this claim.

It is a statutory requirement that juvenile cases be tried without a jury. RCW 13.04.021(2). Our Supreme Court has consistently rejected arguments that this mandate violates the jury right guaranteed by the state and federal constitutions. See, e.g., State v. Lawley, 91 Wn.2d 654, 655, 591 P.2d 772 (1979); State v. Schaaf, 109 Wn.2d 1, 4, 743 P.2d 240 (1987); State v. Chavez, 163 Wn.2d 262, 264, 180 P.3d 1250 (2008). The court has reasoned that the juvenile system's emphasis on rehabilitation, rather than punishment, means that juvenile proceedings are not "criminal prosecutions" to which the jury right attaches. Schaaf, 109 Wn.2d at 4-5; Chavez, 163 Wn.2d at 267-68, 269. We are bound by these decisions. Whether the juvenile system has been so altered by recent developments that the jury right should extend to juveniles is a decision for a higher court or the legislature. Given the current state of the law, the trial court did not err by denying Y.M.A.'s request for a jury.

Y.M.A. contends that he is entitled to a new trial because the trial judge appeared biased. Y.M.A. contends that the trial judge "was impermissibly familiar" with him from past cases, "minimized the presence of racism" in the accusations made by the victim, considered "prejudicial pending criminal matters" involving Y.M.A. while deliberating on how to dispose of this particular case, and unfairly allowed Y.M.A. to appear in jail garb.

Y.M.A. did not seek recusal below. At one point, defense counsel said, "We're not asking the court to recuse himself because of the prior knowledge, unless you feel that there's something that you know about him or about his situation which you think might color the way you look at the—at this trial." The

doctrine of waiver applies to appearance of fairness claims. State v. Morgensen, 148 Wn. App. 81, 91, 197 P.3d 715 (2008), review denied, 166 Wn.2d 1007 (2009). Y.M.A.'s failure to ask the court to recuse precludes him from raising the issue on appeal.

In addition, the record does not bear out Y.M.A.'s assertion of apparent bias. The judge acknowledged his familiarity with Y.M.A. He assured the parties of his ability to decide the present case based solely on the facts before him. The presumption is that judges in bench trials ignore inadmissible evidence, such as other misconduct evidence. State v. Read, 147 Wn.2d 238, 244-45, 53 P.3d 26 (2002). The judge assured the parties that seeing Y.M.A. in jail clothes would not affect his impartiality. The judge was aware of the racial bias displayed by some of the comments of the complaining witness. The fact that the judge nevertheless believed the victim's account of the robbery does not compel a finding of actual or apparent bias on the part of the judge.

We conclude that Y.M.A. has not shown a violation of his right to a fair trial.

Affirmed.

Becker, J.

WE CONCUR:

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 76914-6-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: September 4, 2018

WASHINGTON APPELLATE PROJECT

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Transmittal Information

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