

NO. 46563-9-II

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

STATE OF WASHINGTON, Respondent

v.

VLADIMIR V BELOUSOV, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-02082-3

BRIEF OF RESPONDENT

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A. **ANSWERS TO ASSIGNMENTS OF ERROR**

I. **THE TRIAL COURT DID NOT DENY THE DEFENDANT HIS RIGHT TO BE PRESENT, TO ASSIST COUNSEL, OR TO A FAIR TRIAL.**

B. **STATEMENT OF THE CASE**

I. **PROCEDURAL HISTORY**

Vladimir Belousov was charged by second amended information with Child Molestation in the First Degree and Harassment – Death Threats (Domestic Violence) for acts occurring on or about and between July 1, 2013, and September 30, 2013. CP 9-10. The case proceeded to trial before The Honorable Robert Lewis, which commenced on June 17, 2014, and concluded on June 19, 2014, with the jury’s verdict. RP 1-283; CP 36-37.

The jury found Mr. Belousov guilty of Child Molestation in the First Degree and answered yes in the special verdict form that asked if the defendant used a position of trust and/or confidence to facilitate the commission of the crime. CP 36-38. The trial court dismissed the harassment charge following Mr. Belousov’s motion to dismiss once the State rested its case. RP 188-191. The trial court sentenced Mr. Belousov to 68 months, the high end of the sentencing range, as his minimum

sentence under the indeterminate sentencing scheme of RCW 9.94A.507. CP 38-49; RP 289-290. Mr. Belousov filed a timely notice of appeal. CP 58.

II. STATEMENT OF FACTS

During the trial a number of Russian interpreters were utilized, which included an interpreter for Mr. Belousov. RP 13, 22. Natalyz Alyayeva, the mother of the victim and witness to the crime, testified for the State with the assistance of a Russian interpreter. RP 73-75. The interpreter would translate the questions asked by the attorneys from English to Russian for Ms. Alyayeva and did so in a manner audible to those in the courtroom. *See* Appendix – Audio and Video Recording of Trial (AVRT) DISC I, 3:06:29 – 3:57:40; RP 75-76. Similarly, the interpreter provided an English translation of Ms. Alyayeva’s testimony for the courtroom. App. AVRT DISC I, 3:06:29 – 2:57:40; RP 75-76.

At one point during Ms. Alyayeva’s testimony, there was a break in questioning as the trial prosecutor poured Ms. Alyayeva a glass of water. RP 83; App. AVRT DISC I, 3:19:55. During this break the interpreter that was assisting Mr. Belousov left the defense table and the courtroom. RP 83; App. AVRT DISC I, 3:20:30. When the trial prosecutor was prompted by the court to ask his next question, he responded by stating, “I think we need to wait for the interpreter, your Honor.” RP 83.

The court indicated that “[a]pparently the witness is speaking in Russian so that . . . her comments don’t need to be interpreted.” *Id.* Nevertheless, before questioning of Ms. Alyayeva resumed another interpreter who had been seated in audience took his place beside Mr. Belousov to offer assistance. App. AVRT DISC I, 3:20:52 – 3:21:00. As a result, Mr. Belousov had the assistance of an interpreter during the entirety of Ms. Alyayeva’s direct examination and cross examination.

C. **ARGUMENT**

I. **MR. BELOUSOV WAS NOT DENIED HIS RIGHT TO BE PRESENT, TO ASSIST COUNSEL, OR TO A FAIR TRIAL BECAUSE HE HAD THE ASSISTANCE OF AN INTERPRETER AT ALL TIMES DURING HIS TRIAL.**

a. The Record

“The party presenting an issue for review has the burden of providing an adequate record to establish such error . . . and should seek to supplement the record when necessary.” *State v. Sisouvanh*, 175 Wn.2d 607, 619, 290 P.3d 942 (2012) (citing RAP 9.2(b), 9.9, 9.10); *State v. Miller*, 179 Wn.App 91, 100, 316 P.3d 1143 (2014) (“[A]ppellants bear the burden of perfecting the record for appellate review.”). A reviewing court may “decline to address a claimed error” when the appellant provides the court with an inadequate record or one in which there is a material

omission. *Id.* (citation omitted); *State v. Bennett*, 168 Wn.App. 197, 206-207 N. 9, 275 P.3d 1224 (2012) (holding that defendant bears the burden of perfecting the record and the failure to designate necessary materials precludes review).

Here, Mr. Belousov's claims of error are premised on an inadequate record and one in which there is a material omission, namely, that after one interpreter left Mr. Belousov's side during a break in the questioning of Ms. Alyayeva that another one replaced him before the questioning of the witness resumed. App. AVRT DISC I, 3:19:55 – 3:21:00. Simply put, Mr. Belousov's entire argument is based on the factually inaccurate belief that Mr. Belousov was without the assistance of an interpreter during a significant portion of Ms. Alyayeva's direct examination and cross examination. Because the claimed errors are meaningful only when addressing an inadequate record and simply refuted when an adequate record is in place, this court should either deny review of the claimed errors or outright declare that no errors occurred based on the record supplemented by the audio and video recording of the trial that is attached as an appendix.

b. Manifest Error

Because at the trial court level Mr. Belousov did not raise any issues regarding the assistance of an interpreter impairing or denying his

Sixth Amendment and Article I, section 22 rights, he waived the right to challenge his conviction on those grounds for the first time on appeal. The general rule is that an issue, theory, or argument not presented at trial will not be considered on appeal. RAP 2.5(a); *State v. Hayes*, 165 Wn.App. 507, 514, 265 P.3d 982 (2011) (citing *State v. McFarland*, 127 Wn.2d 322, 332–33, 899 P.2d 1251 (1995)). This “rule reflects a policy of encouraging the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial.” *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1998) (citation omitted).

An exception to the rule exists, however, for manifest errors affecting a defendant’s constitutional rights. RAP 2.5(a)(3); *Hayes*, 165 Wn.App. at 514. To determine whether the exception applies, a reviewing court employs a two-part test. *State v. Kronich*, 160 Wn.2d 893, 899, 161 P.3d 982 (2007) (citing *State v. Lynn*, 67 Wn.App. 339, 345, 835 P.2d 251 (1992) (overruled on other grounds by *State v. Jasper*, 174 Wn.2d 96, 271 P.3d 876 (2012))). “First, the court determines whether the alleged error is truly constitutional. Second, the court determines whether the alleged error is ‘manifest.’” *Id.*

To be manifest, the alleged error must have had “practical and identifiable consequences in the trial of the case.” *Kronich*, 160 Wn.2d at 899 (citing *State v. Stein*, 144 Wn.2d 236, 240, 27 P.3d 184 (2001)). In other words, the defendant must show, in the context of the trial, actual prejudice as it is this “prejudice that makes the error ‘manifest,’ allowing appellate review.” *McFarland*, 127 Wn.2d at 333 (citing *Scott*, 110 Wn.2d at 688). Importantly, “[i]f the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest.” *State v. O’Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009) (quoting *McFarland*, 127 Wn.2d at 333). Similarly, a “purely formalistic error will not be deemed manifest,” nor will an error that is not “unmistakable, evident, or indisputable.” *Kronich*, 160 Wn.2d at 899; *State v. Burke*, 163 Wn.2d 204, 224, 181 P.3d 1 (2008) (citation omitted).

Here, Mr. Belousov’s claimed errors are not manifest because he has failed to show any actual prejudice in the context of the trial and because the facts necessary to adjudicate the claimed error are not in the record he supplied. As a result, if the court reaches the RAP 2.5(a) analysis, it should deny to review the alleged errors.

D. **CONCLUSION**

For the reasons argued above, Mr. Belousov's conviction should be affirmed.

DATED this 17th day of February, 2015.

Respectfully submitted:

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APPENDIX

AUDIO AND VIDEO RECORDING OF TRIAL

DISC I
DISC II

CLARK COUNTY PROSECUTOR

February 17, 2015 - 2:13 PM

Transmittal Letter

Document Uploaded: 4-465639-Respondent's Brief.pdf

Case Name: State v. Vladimir Belousov

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Comments:

Appendix (2 cds), letter, and declaration of mailing being mailed to court and appellate attorney by United States Postal Services as cd's cannot be attached to brief and sent through the portal

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