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Supreme Court No. 98523-5
COA No. 78554-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID LAWRENCE HOAR,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/DECISION BELOW

David Lawrence Hoar requests this Court grant review pursuant to RAP 13.4 of the unpublished decision of the Court of Appeals in State v. Hoar, No. 78554-1-I, filed on April 13, 2020. A copy of the Court of Appeals' opinion is attached as an appendix.

B. ISSUES PRESENTED FOR REVIEW

1. Any evidence that Samantha Ellis died as the result of another person's intentional acts was speculative and equivocal. The evidence supported the inference that she died from blood loss after falling multiple times and injuring herself in the apartment while she was either intoxicated or suffering from a medical condition. Did the Court of Appeals err in holding the State proved beyond a reasonable doubt that Hoar intentionally assaulted Ellis, causing her death? RAP 13.4(b)(1), (3), (4).

2. A suspect's statements to the police are not admissible at trial if they are not voluntary. If a suspect is intoxicated while talking to the police, his statements may not be voluntary and any waiver of Miranda rights may not be knowing, intelligent or voluntary. Here, Hoar was extremely intoxicated when he spoke to the police. Did the trial court err in admitting his statements? RAP 13.4(b)(1), (3), (4).

C. STATEMENT OF THE CASE

1. The evidence that Samantha Ellis died as the result of another person's intentional acts was equivocal.

David Hoar lived in a studio apartment in Edmonds. 4/25/18RP 532. He was a severe, longtime alcoholic who had trouble taking care of himself. 4/25/18RP 617-19, 630.

Samantha Ellis was also an alcoholic who had other, serious psychiatric and medical conditions, including a history of dependence on opiates and benzodiazepines. 4/25/18RP 582, 585-87; 4/27/18RP 935. She had a history of "fainting spells" and encephalopathy, which is a brain disorder that can cause a person to be unsteady on her feet and prone to falling. 4/26/18RP 703, 708; 5/01/18RP 1178-80, 1195-96. In 2004 or 2005, Ellis had "a bad fall" and hit her head, causing it to bleed. 4/25/18RP 582, 586. Another time a few months before her death, she fell and broke her ankle and was in the hospital for weeks. 4/25/18RP 601.

In the summer of 2016, Ellis was evicted from her apartment because she could not pay her rent. 4/25/18RP 591. Hoar felt bad for her and allowed her to stay with him rent-free. 4/25/18RP 611-13. He also paid for her car insurance and storage unit. 4/25/18RP 613.

On the night of December 13, 2016, the next-door neighbor heard the television set and loud voices talking in Hoar's apartment until early the next morning around 2 a.m. 4/25/18RP 642-44. The neighbor heard mainly Ellis's voice talking loudly and did not hear any yelling. 4/25/18RP 642, 644-47. The last outgoing call on Ellis's cell phone, before Hoar used it to call 911, was at 9:57 p.m. on December 13. 5/01/18RP 1251-52.

On the afternoon of December 19, 2016, Hoar called 911 and reported Ellis had fallen and died in his apartment. 4/25/18RP 543-44; Ex. 411. EMTs and police officers responded and found Ellis's body lying on the floor by the bed. 4/25/18RP 532. She had blood on her face and the soles of her feet, and there was blood on the floor around her body and on a pillow on the bed. 4/25/18RP 655.

Hoar was obviously intoxicated. 4/25/18RP 530-31. He told the first responders that Ellis had fallen a couple of days earlier and cut the back of her head. 4/25/18RP 531. He said she tripped and fell in the kitchen, got up, walked to the bathroom, fell there, came out, then fell again near the bed. 4/25/18RP 651; 4/26/18RP 714-15, 718; 5/01/18RP 1243. She did not ask for help. 4/25/18RP 652. He said she fell frequently and might have taken too much medication. 4/26/18RP 689,

718. Pill bottles were at the scene. 4/26/18RP 843. Hoar had not called 911 earlier because he was hoping Ellis would wake up. 4/25/18RP 531-32. He had been drinking steadily for three days. 4/26/18RP 692.

Initially, neither the police nor the investigator from the medical examiner's office viewed the death as suspicious. 4/26/18RP 773, 853. Although a great deal of blood was present, injuries caused by accidents can cause that amount of blood loss. 4/30/18RP 1082.

On the night of December 19, Hoar told his sister that Ellis had fallen and died. 4/25/18RP 613-16. He cried and said he "loved her" but she did not have the same feelings for him. 4/25/18RP 614-15.

On December 21, the medical examiner performed an autopsy and decided to classify the death as a homicide. 4/27/18RP 931; 5/01/18RP 1271. Ellis had multiple injuries, including five one-inch lacerations on her head. 4/27/18RPRP 941-43, 948-49, 952-53. These were blunt force injuries, caused by separate contacts with the same or different objects or hard surfaces. 4/27/18RP 953, 956; 4/30/18RP 1111, 1135-36. No bones were broken but a blunt force impact had caused a subdural hemorrhage which was life threatening. 4/27/18RP 959-60; 4/30/18RP 1116; 5/01/18RP 1193-94. Ellis also had an "avulsion" injury on her face, which occurs when skin is dragged and

torn loose from the underlying tissue. 4/27/18RP 944, 947. This was also caused by an impact with a hard object or surface. 4/30/18RP 1112-13. The medical examiner believed the avulsion injury was consistent with stomping, although no mark such as a shoe print was present. 4/27/18RP 966, 970-76; 4/30/18RP 1114; 5/01/18RP 1148, 1271. The medical examiner believed Ellis sustained some of her injuries through falls after an initial assault. 4/30/18RP 1117-18; 5/01/18RP 1176-80.

The lacerations on Ellis's head had caused a fatal loss of blood, which would have gradually caused confusion and loss of consciousness over a period of hours. 4/27/18RP 945, 962-63; 4/30/18RP 1115; 5/01/18RP 1166. Ellis would have bled more readily than most people due to her severe fatty liver, caused by alcoholism. 4/27/18RP 966. Although Ellis had no substances in her system at the time of her death, she could have been intoxicated even an hour before death. 4/27/18RP 967-68; 5/01/18RP 1202.

The medical examiner could not pinpoint the time of death but said Ellis probably died one and a half to three days before her body was found. 4/27/18RP 945.

After the autopsy, the police arrested Hoar at his apartment. 4/26/18RP 730-31. He was extremely intoxicated. 4/26/18RP 733, 801-02; 4/27/18RP 994-95; 4/30/18RP 1006, 1014. He had blood on his shoes, his lower right pant leg, and the shoulder of his jacket. 4/25/18RP 531; 4/26/18RP 737; 4/30/18RP 1024-27, 1032-36. He said he had not assaulted Ellis and they had not had an argument. 3/23/18RP 16; 4/27/18RP 997.

The police searched the apartment. 4/27/18RP 859. They found blood on the kitchen floor and counter, in the bathroom, around the coffee table in the living room, and on the bed, wall, closet door and floor near the body. 4/25/18RP 532-33, 537, 654; 4/27/18RP 862. The closet door was askew and bloodstains on the door indicated Ellis had probably fallen against it while bleeding. 4/30/18RP 1077-78; 5/01/18RP 1243, 1269. The police did not find any blood outside of the apartment. 4/26/18RP 827; 5/01/18RP 1242-43. The blood drip patterns in the kitchen, bathroom, hallway, and living room/bedroom indicated Ellis had moved through those areas while dripping with blood. 4/30/18RP 1067, 1073.

Several objects in the apartment had been moved recently. 4/30/18RP 1101-02, 1106. Ellis had blood drip stains on the collar of

her denim shirt/jacket, indicating either someone had stood above her with a dripping object or she had put on the jacket after the blood was deposited. 4/30/18RP 1039-41. Any object held above her was not necessarily an object used to injure her. 4/30/18RP 1103.

None of the State's witnesses could say from the bloodstain patterns where in the apartment Ellis had received her injuries. 4/27/18RP 977; 4/30/18RP 1070. If Ellis had sustained the injuries to her head in a single attack, the forensic scientist would expect to see impact patterns and a significant amount of bloodstain spatter in one general area of the apartment but that was not present. 4/30/18RP 1071-72. The forensic scientist could not say the scene showed clear signs of homicide. 4/30/18RP 1106.

The police never found a weapon or blunt object that could have caused Ellis's wounds. 4/30/18RP 1080; 5/01/18RP 1241.

At trial, the defense presented the testimony of Dr. Carl Wigren, a forensic pathologist. 5/01/18RP 1278. Dr. Wigren testified that Ellis could have received her wounds accidentally. 5/01/18RP 1301. She could have been intoxicated, experiencing alcohol withdrawal, or suffering from encephalopathy, and fallen multiple times, causing the multiple injuries. 5/01/18RP 1302, 1308-17, 1334; 5/02/18(a.m.)RP 29-

30. She could have fallen and hit her head on the kitchen floor or the edge of the coffee table. 5/01/18RP 1294-95, 1304-07. She could have received the avulsion injury by falling on her face on a hard surface from a standing position, an opinion supported by evidence-based medical science. 5/01/18RP 1294-98; 5/02/18(a.m.)RP 58. The avulsion injury was probably not caused by a stomping, as a stomping injury generally leaves behind a shoe mark. 5/01/18RP 1296-97; 5/02/18(a.m.)RP 38. Nothing distinctive about Ellis's injuries suggested they must have been caused by an assault or a stomping. 5/01/18RP 1301, 1310; 5/02/18(a.m.)RP 33-35.

2. Hoar spoke to the police while extremely intoxicated but the trial court admitted his statements at trial.

After Hoar called 911, the police responded and spoke to him at his apartment. 3/23/18RP 8-9. He was "pretty drunk" and "very intoxicated." 3/23/18RP 20, 23, 45. He was "unsteady on his feet" and "leaned against the wall." 3/23/18RP 19, 56. He was "slow and repetitive in his speech" and spoke with a slur in his voice. 3/23/18RP 23, 56. But the officers thought "he was able to hold a conversation" and knew who they were and why they were there. 3/23/18RP 20-22.

On December 21, the police arrested Hoar at his apartment and brought him to the police station for interrogation. 3/23/18RP 27-28.

Hoar was “extremely intoxicated,” was “slow and deliberate in responding” to the officers’ requests, was “unsteady on his feet,” and “was walking extremely slow and needed help balancing as he walked to the car.” 3/23/18 RP 30, 39.

At the police station, a detective read Hoar his Miranda rights. 3/23/18RP 47. Hoar said he understood and wanted to tell the detective what happened. 3/23/18RP 49. The detective interviewed him for about 30 or 35 minutes. 3/23/18RP 49; Ex. 434A. He was “still intoxicated.” 3/23/18RP 48. But he answered the detective’s questions and “seemed to understand what [they] were talking about.” 3/23/18RP 48.

After the interview, Hoar was “still intoxicated.” 3/23/18RP 32. A portable breath test given to him at that time, about four hours after his arrest, showed his blood alcohol level was .252. 3/23/18RP 40; 4/30/18RP 1006, 1014. The police searched his body and found three bruises on his back that looked like finger marks. 3/23/18RP 29; 4/26/18RP 734; 4/27/18RP 996-97. Hoar said Ellis had fallen and “grabbed onto his shoulder for him to try to help her up off the floor.” 3/23/18RP 29; 4/25/18RP 534; Ex. 435.

The defense moved to suppress Hoar’s statements to the police, arguing he did not validly waive his Miranda rights and his statements

were not voluntary due to his intoxication. 3/23/18RP 66-67. The court denied the motion. CP 123.

3. Charge, jury instructions, and verdict.

Hoar was charged with one count of second degree felony murder based on second degree assault. CP 118; RCW 9A.32.050(1)(b). The jury found him guilty as charged. CP 58.

D. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. **The State did not prove beyond a reasonable doubt that Ellis died as the result of Hoar's intentional acts.**

The evidence supported the conclusion that Ellis's death was accidental. Any evidence that Ellis died as the result of Hoar's intentional acts was equivocal and speculative. Therefore, the evidence did not rise to the level of proof beyond a reasonable doubt.

a. Due process required the State to present evidence that was more than equivocal or speculative.

“[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, § 3. An essential component of due process is that no person shall be made to suffer the onus of a

criminal conviction except upon sufficient proof, defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense. Jackson v. Virginia, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

The critical inquiry on review is to “determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” Jackson, 443 U.S. at 316-19. This inquiry impinges on the discretion of the fact finder “to the extent necessary to guarantee the fundamental protection of due process of law” and focuses on “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Id. “A ‘reasonable doubt, at a minimum, is one based upon ‘reason.’ Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt.” Id. Where sufficient evidence does not support a conviction, such a conviction “cannot constitutionally stand.” Id.

The State charged Hoar with second degree felony murder based upon second degree assault. CP 133-34; RCW 9A.32.050(1)(b). The

State bore the burden to prove beyond a reasonable doubt that Hoar intentionally assaulted Ellis and recklessly inflicted substantial bodily harm, and that Ellis died as a result of the assault. CP 69-70. To prove the underlying assault, the State bore the burden to prove Hoar committed an intentional battery. CP 72.

When intent is an element of the crime, the State may prove it through circumstantial evidence, but it may not rely upon evidence that is “patently equivocal.” State v. Vasquez, 178 Wn.2d 1, 8, 309 P.3d 318 (2013) (internal quotation marks and citation omitted). Intent may be inferred only if the defendant’s conduct and the surrounding facts and circumstances “plainly indicate such an intent as a matter of logical probability.” Id. (internal quotation marks and citation omitted). Inferences based on circumstantial evidence must be reasonable and “cannot be based on speculation.” Id. A “modicum” of evidence does not meet this standard. Jackson, 443 U.S. at 320.

“Equivocal” means “having two or more significations : capable of more than one interpretation : of doubtful meaning.” Webster’s Third New International Dictionary 769 (1993). Thus, if the evidence was “capable of more than interpretation,” it was insufficient and Hoar’s conviction violates due process. Vasquez, 178 Wn.2d at 8.

- b. The evidence that Ellis died as the result of an intentional assault was equivocal.

The evidence of an intentional assault was equivocal and insufficient to prove the crime.

Ellis was addicted to drugs and alcohol and had a history of fainting spells, disorientation, and spastic movements that caused her to fall frequently and require medical attention. 4/25/18RP 599-600; 4/26/18RP 702-08, 719-20, 727; 5/01/18RP 1178-80, 1195-96. In the past, she had fallen and seriously injured her head and her ankle. 4/25/18RP 582, 586, 601. Pill bottles were at the scene. 4/26/18RP 843. Although Ellis did not have any drugs or alcohol in her system at the time of death, she could have been intoxicated even one hour earlier and fully metabolized any substances by the time of death. 4/27/18RP 967-68; 5/01/18RP 1202. Hoar affirmed she was intoxicated, disoriented, and fell multiple times in the apartment before she died. 4/25/18RP 531, 651; 4/26/18RP 714-15, 718; 5/01/18RP 1243.

The State did not establish that Ellis's blunt force injuries were caused by an intentional assault as opposed to a series of accidental falls. Dr. Wigren testified Ellis could have fallen repeatedly against the kitchen floor, the coffee table, and/or another hard surface in the apartment. 5/01/18RP 1294-98, 1301-17, 1334; 5/02/18(a.m.)RP 29-30,

58. The injuries contained no distinguishing features indicating they must have been caused by a particular object or a stomping. 5/01/18RP 1301, 1310; 5/02/18(a.m.)RP 33-35. A person who falls accidentally can lose as much blood as Ellis lost. 4/30/18RP 1082.

Moreover, the State's forensic science witnesses could not say the blood patterns in the apartment unequivocally established a homicide. 4/26/18RP 773, 853; 4/30/18RP 1106. No blood pattern in any one location indicated Ellis was injured in one spot, which suggests she received her injuries in multiple locations throughout the apartment, perhaps as she stumbled from room to room, and not from a single assault. 4/27/18RP 977; 4/30/18RP 1070-72. And the police never found a weapon or any object in the apartment that could have inflicted Ellis's blunt force injuries. 4/30/18RP 1080; 5/01/18RP 1241.

Hoar had no blood spatter or other blood patterns on his clothing indicating he had struck Ellis with a bloody object. He had blood on his shoes, lower right pant leg, and shoulder. 4/25/18RP 531; 4/26/18RP 737; 4/30/18RP 1024-27, 1032-36. He could have gotten the blood on his shoes and lower pant leg by walking around the apartment and perhaps moving against any bloody furniture. He explained he probably

got the blood on his shoulder when Ellis grabbed him one time as she fell. 4/25/18RP 534; 4/26/18RP 734; 4/27/18RP 996-97.

The State presented no evidence that Hoar and Ellis had a fight or an argument that night. Hoar said they did not have an argument. 4/27/18RP 997. The next-door neighbor heard Ellis's loud voice but specifically said she did not hear yelling or fighting. 4/25/18RP 642-47.

Moreover, the State's evidence of motive was highly speculative. The State surmised that Hoar assaulted Ellis that night because earlier in the day he had received notice from the manager that she must leave or he would be evicted. 4/25/18RP 594-95; 5/02/18RP 65. But the State presented no evidence to support this theory. 4/25/18RP 653, 668-70; 4/26/18RP 689.

Finally, the prosecutor speculated that Hoar delayed in calling 911 because he knew he had killed Ellis. 5/02/18(p.m.)RP 52. But Hoar did not call 911 sooner because he was hoping she would wake up. 4/25/18RP 531-32. He was intoxicated for days before calling 911. 4/25/18RP 530-31; 4/26/18RP 692. A reasonable interpretation is that his intoxication prevented him from thinking clearly.

In sum, the State did not prove unequivocally that Hoar intentionally assaulted Ellis, causing her death.

2. **The court erred in admitting Hoar's statements to the police because he was too intoxicated to knowingly, intelligently and voluntarily waive his Miranda rights and because his statements were involuntary.**

Hoar spoke to the police on two occasions while extremely intoxicated. On December 19, Hoar called 911 and the police responded to the apartment. 3/23/18RP 8-9. The officers noted Hoar was "drunk" and "very intoxicated." 3/23/18RP 20, 23, 45. He was "unsteady on his feet," he "leaned against the wall," and he was "slow and repetitive in his speech" and spoke with a slur in his voice. 3/23/18RP 19, 23, 56.

The police spoke to Hoar again on December 21 after they arrested him. Hoar was "extremely intoxicated." 3/23/18RP 39. He was "slow and deliberate in responding" to the officers' requests, was "unsteady on his feet," and "was walking extremely slow and needed help balancing as he walked to the car." 3/23/18 RP 30, 39. At the police station, he was "still intoxicated." 3/23/18RP 48. After his interview with the detective, he was "still intoxicated." 3/23/18RP 32. About four hours after his arrest, his blood alcohol level was a remarkably high .252. 3/23/18RP 40; 4/30/18RP 1006, 1014.

Hoar's extreme intoxication rendered his statements to the police involuntary and prevented him from knowingly, intelligently and voluntarily waiving his Miranda rights.

- a. Hoar's extreme intoxication rendered his statements involuntary.

An accused is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession. Jackson v. Denno, 378 U.S. 368, 376, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964); U.S. Const. amends. V, XIV; Const. art. I, § 3.

The term "voluntary" means the statement is the product of the defendant's own free will and judgment. State v. Unga, 165 Wn.2d 95, 102, 196 P.3d 645 (2008). The inquiry is whether, under the totality of the circumstances, the statement was coerced by police conduct. State v. Broadaway, 133 Wn.2d 118, 132, 942 P.2d 363 (1997); Fulminante, 499 U.S. at 285. A statement is involuntary if police tactics prevented the suspect from making a rational decision whether to make a statement. Unga, 165 Wn.2d at 101-02.

The Court considers both whether the police exerted pressure on the defendant and the defendant's ability to resist the pressure. Unga, 165 Wn.2d at 101-02. Any form of custodial interrogation is itself inherently coercive. State v. Lavaris, 99 Wn.2d 851, 857, 664 P.2d

1234 (1983). Moreover, the impact of the police conduct or tactics must be determined in relation to the defendant's subjective experience of them. State v. Setzer, 20 Wn. App. 46, 49-50, 579 P.2d 957 (1978). The Court considers the defendant's physical condition, age, mental abilities, and experience. State v. Rupe, 101 Wn.2d 664, 678-79, 683 P.2d 571 (1984); State v. Burkins, 94 Wn. App. 677, 694, 973 P.2d 15 (1999). A suspect's weak mental or physical condition can make him particularly vulnerable to subtle and overt forms of police pressure. Unga, 165 Wn.2d at 101-02.

“Intoxication alone does not render a statement involuntary, but may be a factor in deciding whether the defendant understood his rights and made a conscious decision to forego them.” State v. Gardner, 28 Wn. App. 721, 723, 626 P.2d 56 (1981).

Here, Hoar was indisputably highly intoxicated when he spoke to the police. His intoxication made him particularly vulnerable to any form of overt or indirect police pressure. As his attorney explained to the court, Hoar “may not really have understood the gravity of the situation, the thrust of the officers’ questions and why they were asking him.” 3/23/18RP 66. Anyone with such a high blood alcohol level cannot “make intelligent decisions.” 3/23/18RP 67.

Due to his high level of intoxication, Hoar was unable to make a rational decision whether to make a statement. His statements were involuntary. See Unga, 165 Wn.2d at 101-02.

- b. Hoar did not knowingly, intelligently and voluntarily waive his Miranda rights.

Before a statement obtained during custodial interrogation can be used at the defendant's trial, the government must establish the defendant was advised of, understood, and waived his right to remain silent and to speak with an attorney. Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). The requirement of Miranda is based on the right against self-incrimination found in the Fifth Amendment. U.S. Const. amend. V; Dickerson v. United States, 530 U.S. 428, 434-35, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000).

The government has the burden to establish that any statement obtained was made only after the suspect "knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Miranda, 384 U.S. at 475; Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938).

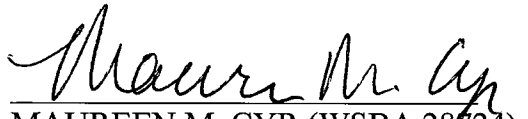
Intoxication is "a factor in deciding whether the defendant understood his rights and made a conscious decision to forego them." Gardner, 28 Wn. App. at 723.

Here, Hoar's extreme intoxication at the time of custodial interrogation prevented him from understanding his rights or making a conscious decision to forego them. His statements should have been suppressed.

E. CONCLUSION

For the reasons provided, this Court should grant review and reverse the Court of Appeals.

Respectfully submitted this 12th day of May, 2020.


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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID LAWRENCE HOAR,

Appellant.

No. 78554-1-I

DIVISION ONE

UNPUBLISHED OPINION

CHUN, J. — Samantha Ellis died in the apartment she shared with David Hoar, after sustaining multiple head injuries and massive loss of blood. A jury found Hoar guilty of second degree felony murder predicated on assault in the second degree. Hoar claims there was insufficient evidence before the jury to find that he intentionally assaulted Ellis and caused her death. He also challenges the trial court’s denial of his motion to suppress statements he made to law enforcement and first responders and raises issues related to legal financial obligations. We affirm the conviction and remand for the trial court to strike the criminal filing fee.

BACKGROUND

David Hoar and Samantha Ellis were friends who lived in the same apartment complex. In the summer of 2016, after the landlord evicted Ellis from her unit, Hoar allowed her to move into his apartment. Both Hoar and Ellis had long-term, chronic struggles with alcohol.

In mid-December 2016, after receiving a second complaint about noise in Hoar's apartment, the apartment manager delivered a ten-day notice to Hoar, requiring him to either remove Ellis or vacate the apartment himself. On December 15, Ellis's mother's birthday, Ellis did not visit her mother or deliver flowers, as she had done before.

On December 19, 2016, Hoar called 911 to report that Ellis had died in his apartment approximately three days earlier. He admitted to the dispatch operator that he should not have waited so long to call for help, but explained that "when you're in love with someone and she passes away, you don't want her to leave you." When emergency medical technicians and law enforcement arrived at the apartment, they found Ellis's body in a prone position on the floor near the bed, beginning to show signs of decomposition. There was dried blood on Ellis's face and on the soles of her feet, and a large amount of blood on the floor surrounding her body. There was blood throughout the apartment on various surfaces, a blood-soaked pillow on the bed, and blood on Hoar's clothing and shoes.

Hoar was visibly intoxicated. He told the responding police officers and fire department personnel that several days before, Ellis fell multiple times and cut her head. He indicated that Ellis mixed prescription medications and alcohol and suggested she might have overdosed. Hoar explained that he had blood on his shoulder because Ellis grabbed him at one point for him to help her up and said he got blood on his pants when Ellis "went down for the last time."

Hoar said he had been inside the apartment the entire time in the days after Ellis fell. Hoar also mentioned that Ellis had stopped breathing three or four days previously. When asked why he waited so long before summoning aid, Hoar said he was hoping that Ellis would “wake up.”

Hoar volunteered to several responding officers that he did not have a sexual relationship with Ellis. Hoar called his sister after the police left, informed her that Ellis had died, and confessed that he had wanted a romantic relationship with Ellis but she had not felt the same way.

Two days later, the Snohomish County Medical Examiner, Dr. Daniel Selove, performed an autopsy to determine the cause of death. Dr. Selove also reviewed Ellis’s medical records, the photographs his office’s investigator took at Hoar’s apartment, and the blood pattern reports. He also considered Ellis’s toxicology report, which did not indicate the presence of alcohol or drugs in her system.

Dr. Selove noted multiple injuries to Ellis’s face and head, including an “avulsion injury,” where the skin was pulled loose from the bone between Ellis’s nose and her forehead. Dr. Selove concluded that this blunt injury was the result of a high velocity impact. In his experience of performing approximately 8,000 autopsies, he had seen such an injury only as a result of being forcefully “stomp[ed]” on or run over by a vehicle. Dr. Selove determined that Ellis sustained at least five separate impacts to face and head, including three deep incisions on the back of her head. Examination of Ellis’s brain revealed subdural

and subarachnoid bleeding, indicative of blunt force trauma to her head.

Dr. Selove concluded that Ellis died as a result of her head injuries and blood loss. Due to the effects of her alcoholism, Dr. Selove opined that Ellis likely experienced fatal blood loss more rapidly than the average person.

Dr. Selove concluded that Ellis's injuries were inflicted upon her, and not accidental. Dr. Selove testified that the concentration of injuries around the face and head was a hallmark of assault. Dr. Selove could not envision a scenario in which accidental falls caused the specific separate impacts Ellis sustained, particularly as to the three closely-spaced injuries at the back of her head. He also determined that the avulsion injury to Ellis's face required an "angled dragging force on the face," and was not the type or severity of injury that would result from falling.

Following the autopsy results, police officers arrested Hoar. Again, Hoar was intoxicated at the time of arrest. After being advised of his rights under Miranda,¹ Hoar agreed to speak with law enforcement. Consistent with his statements two days earlier, Hoar claimed that Ellis fell in the bathroom, kitchen, against the closet door, and finally, by the bed. Hoar described Ellis as his girlfriend and admitted that they argued on the night in question and that he lost his temper. But he denied assaulting her. He explained that he did not call 911 for several days because he believed Ellis would "pull out of it."

Testing later confirmed that Ellis's blood, in the form of both blood transfer stains and blood spatter, was on Hoar's clothing and shoes. When officers later

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

collected a DNA sample from Hoar pursuant to a warrant, they observed several finger-shaped bruises on his back. Hoar explained that Ellis must have grabbed him as she fell. The State charged Hoar with second degree felony murder based on second degree assault.

During the trial, the jury considered the testimony of more than 30 witnesses and 400 exhibits. The jury found Hoar guilty as charged. The court imposed a standard range sentence and ordered certain legal financial obligations (LFOs), including restitution and a \$200 filing fee.

ANALYSIS

Sufficiency of the Evidence

Hoar challenges the sufficiency of the evidence supporting his conviction. He claims the only evidence supporting the theory that Ellis died as a result of an intentional assault was “equivocal and speculative.” Pointing to Ellis’s medical history and evidence of prior falls, Hoar claims the evidence supported only the inference that Ellis’s injuries resulted from multiple falls in the apartment.

It is the State’s burden to prove beyond a reasonable doubt every essential element of a charged crime. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Vasquez, 178 Wn.2d 1, 6, 309 P.3d 318 (2013). When resolving a challenge to the sufficiency of the evidence, we determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime proved beyond a reasonable doubt. State v. Salinas, 119 Wn.2d

192, 201, 829 P.2d 1068 (1992); State v. Garbaccio, 151 Wn. App. 716, 742, 214 P.3d 168 (2009). Direct and circumstantial evidence can be equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are reserved for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). And we defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

In order to convict Hoar of murder in the second degree, as charged in this case, the jury had to find that he “committed second degree assault” and thereby “caused the death of Samantha Ellis,” and that Ellis was not a participant in the assault. RCW 9A.32.050(1)(b). The instructions further required the jury to find that Hoar assaulted Ellis by “intentionally assault[ing] another and thereby inflict[ing] substantial bodily harm.” See RCW 9A.36.021(1)(a). [CP 70] The instructions defined assault as “an intentional touching or striking or cutting of another person that is harmful or offensive regardless of whether any physical injury is done to the person.” See State v. Villanueva-Gonzalez, 180 Wn.2d 975, 982-83, 329 P.3d 78 (2014). “A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a). The defendant’s “specific criminal intent ... may be inferred from the conduct where it is plainly indicated as a matter of

logical probability.” State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004) (quoting Delmarter, 94 Wn.2d at 638).

It is true that some evidence before the jury was consistent with Hoar’s theory that Ellis sustained her injuries by falling repeatedly while she was intoxicated. For instance, a forensic pathologist testified on behalf of the defense and expressed the opinion that the evidence did not provide a basis to rule out either assault or accident. And Hoar emphasizes evidence suggesting that Ellis could have been intoxicated at the time she fell, but fully metabolized the intoxicating substances by the time of her death. He notes that police officers failed to recover a weapon in his apartment or identify any other item that appeared to have been used to strike Ellis.

Relying on State v. Vasquez, 178 Wn.2d at 7, Hoar maintains that equivocal evidence is insufficient to support a criminal conviction. But the presence of conflicting evidence and competing inferences does not mean that the evidence was equivocal. Hoar’s argument ignores the framework of our review of the sufficiency of the evidence, which requires that we construe all of the evidence in the light most favorable to the State. The jury was entitled to reject the inferences urged by Hoar and to conclude from the circumstances, including his statements and the fact that he was the only person in the apartment with Ellis and failed to call for assistance for several days, that he intentionally assaulted her and caused the injuries that led to her death. The jury was also entitled to credit the testimony of the medical examiner who testified

without equivocation that Ellis's injuries were not consistent with accidental falls, but were the result of inflicted blunt force trauma. The medical examiner's testimony was not speculative simply because he could not identify the exact mechanism of injury. He definitively concluded, based on the number, location, and types of injuries, that Ellis's injuries were the result of intentional assault. The jury had sufficient evidence before it to convict Hoar of second degree felony murder based on assault.

Motion to Suppress

Hoar contends that the trial court erred by denying his motion to suppress statements made to law enforcement officers and first responders both before and after his arrest. Hoar claims that because he was undisputedly intoxicated, he was unable to knowingly waive his constitutional rights and his statements were, therefore, inadmissible.

Due process requires that a confession must be voluntary and not the product of police coercion. State v. Reuben, 62 Wn. App. 620, 624, 814 P.2d 1177 (1991). A confession is coerced if, based on the totality of the circumstances, the defendant's will was overborne. Mincey v. Arizona, 437 U.S. 385, 402, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978). The court considers the totality of the circumstances to determine voluntariness, including the defendant's physical condition, age, mental abilities, experience, and the conduct of the police. State v. Aten, 130 Wn.2d 640, 663-64, 927 P.2d 210 (1996); State v. Burkins, 94 Wn. App. 677, 694, 973 P.2d 15 (1999). We will not disturb a trial

court's determination that statements were voluntary if there is substantial evidence in the record from which the trial court could have found voluntariness by a preponderance of the evidence. State v. Broadaway, 133 Wn.2d 118, 129, 942 P.2d 363 (1997).

Under the Fifth Amendment to the United States Constitution and article I, section nine of the Washington Constitution, absent waiver of Miranda rights, a suspect's statements during custodial interrogation are presumed involuntary. State v. Hickman, 157 Wn. App. 767, 772, 238 P.3d 1240 (2010). But a confession is voluntary, and therefore admissible, if after being advised of his constitutional rights under Miranda the defendant knowingly, voluntarily, and intelligently waives those rights. Hickman, 157 Wn. App. at 772. A defendant's waiver is voluntary if it is the product of rational intellect and free will. State v. Brown, 158 Wn. App. 49, 61, 240 P.3d 1175 (2010). In determining voluntariness of such a waiver, we look to the totality of the circumstances, including the defendant's physical and mental condition, experience, and the conduct of the police. Brown, 158 Wn. App. at 61. We review de novo whether a defendant validly waived his Miranda rights. State v. Campos-Cerna, 154 Wn. App. 702, 708, 226 P.3d 185 (2010).

Like other factors, intoxication is relevant, but does not necessarily render custodial statements involuntary or a waiver of Miranda rights invalid. State v. Turner, 31 Wn. App. 843, 845-46, 644 P.2d 1224 (1982); Reuben, 62 Wn. App. at 625-26; State v. Saunders, 120 Wn. App. 800, 810, 86 P.3d 232 (2004). To

require such findings, the intoxication must rise to a level of rendering the defendant incapable of comprehending his words and actions. State v. Cuzzetto, 76 Wn.2d 378, 386, 457 P.2d 204 (1969).

Hoar challenges the court's findings, after a CrR 3.5 hearing, that despite his intoxication, his statements were voluntary and he validly waived his constitutional rights. Specifically, Hoar challenges the court's finding that his impairment on December 19 and 21 did not render his statements involuntary:

Turning then to the issue of intoxication, I find from the evidence that during each of these incidents, the defendant was intoxicated, according to the officers who each would have had sufficient experience to make an accurate determination. However, during each incident he was able to answer questions coherently, was calm, appeared to understand the officer's questions, understood his rights, indicated no major confusion, was not answering incoherently, and despite his intoxication, appears to have been of a state of mind sufficient to be able to understand who he was talking to and what the questioning was about.

The court also found that given Hoar's severe and chronic alcoholism, a blood alcohol test result of .252 at the time of booking, "does not in and of itself, given the direct testimony that he was able to understand the questioning, indicate that he was unable to understand his rights or answer coherently." And the court determined that the recording of Hoar's custodial interview demonstrated that he was properly advised of his constitutional rights and wanted to discuss the incident. The court found that the "interaction between Detective Honnen and the defendant is consistent with Detective Honnen's testimony that he was able to understand the questioning and answer coherently."

Hoar argues that because his intoxicated condition was obvious, his statements could not be voluntary. And he argues that any individual with the “remarkably high” blood alcohol level that he had at the time of booking would be unable to knowingly and voluntarily waive his Miranda rights.

Nevertheless, substantial evidence supports the court’s finding that Hoar’s statements were voluntary. Police officers who interacted with Hoar on both occasions, testified that while he exhibited signs of apparent intoxication, he also understood he was talking to police officers, was responsive, expressed no confusion, and was able to explain “in complete sentences” what had occurred. Detective Honnen testified that during his approximately 30-minute custodial interview, Hoar answered all of his questions responsively and appropriately. An officer also testified that a blood alcohol level of .252 would not affect all individuals in the same manner, and that consistent heavy drinkers “can function and be coherent at a higher BAC level.”

As to Hoar’s waiver of constitutional rights, the record demonstrates that a police officer informally advised Hoar upon arrival at the police station that he had the right to remain silent and the right to an attorney. Before interviewing him, Detective Honnen advised Hoar of his Miranda rights in full, and Hoar expressly waived them. Hoar did not request the appointment of an attorney, displayed no confusion about his constitutional rights, and indicated that he wanted to discuss the incident with Detective Honnen. Detective Honnen testified as to Hoar’s comprehension of the substance and context of the

interview. The totality of the circumstances indicates that Hoar's waiver of his constitutional rights was both knowing and voluntary, despite his intoxication. The trial court did not err in denying Hoar's motion to suppress his custodial and non-custodial statements.

Legal Financial Obligations

Based on legislative changes that became effective shortly after he was sentenced, Hoar challenges the sentencing court's imposition of a \$200 filing fee as a part of his judgment and sentence. He also contends that the judgment and sentence must be remanded to clarify that (1) in accordance with recent changes in the law, no interest should accrue on his non-restitution LFOs and (2) social security income may not be used to satisfy LFOs.

However, as the State points out, the record demonstrates that Hoar's LFOs have been satisfied in full. There is nothing to suggest that those obligations accrued any interest or that social security income was used to satisfy them.² Accordingly, the question of whether the judgment and sentence should be remanded to clarify interest accrual and/or protection of his social security income, is moot. See State v. Ingram, 9 Wn. App. 2d 482, 490, 447 P.3d 192 (2019) (issue is moot where this court can no longer provide effective relief).

With respect to the criminal filing fee, courts can no longer impose that fee on indigent defendants. See RCW 36.18.020(2). The State concedes that because Hoar receives a part of his income from social security, he is indigent as

² Although his declaration in support of the order of indigency in the record reported only social security income, it was clear from the record that Hoar received additional income from a trust managed by his sisters.

defined by RCW 10.101.010(3)(a), and that the filing fee should be stricken from the judgment and sentence. We accept the State's concession.

We affirm the conviction and remand for the trial court to strike the criminal filing fee from the judgment and sentence.

Chun, J.

WE CONCUR:

Andrus, A.C.J.

Appelwick, J.

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. 78554-1-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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