SUPREME COURT NO. 99346-7

NO. 52353-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CRYSTAL JACKSON,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Stanley Rumbaugh, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Crystal Jackson asks this Court to grant review of the court of appeals' unpublished decision in State v. Jackson, No. 52353-1-II, filed October 6, 2020 (Appendix A). The court of appeals denied Jackson's motion for reconsideration on November 20, 2020 (Appendix B).

B. ISSUES PRESENTED FOR REVIEW

1. Is this Court's review warranted under all RAP 13.4(b) criteria, where the court of appeals significantly expanded accomplice liability, holding Jackson acted as an accomplice to first degree premeditated murder where she knew the murder was occurring and she was landlord for the property where the murder took place?

2. Is this Court's review further warranted under RAP 13.4(b)(3) and (4), where the court of appeals concluded Jackson understood the relationship of her conduct to accomplice liability for premeditated murder, despite Jackson's intellectual disability (including an I.Q. of 61), severe cognitive limitations, and significant mental health issues?

C. STATEMENT OF THE CASE

Crystal Jackson has an I.Q. of 61. 9RP 79; 14RP 120-23. She suffers from fetal alcohol spectrum disorder (FASD), caused by her mother's daily alcohol, cocaine, and heroin use during pregnancy. 14RP 109-17. She also has longstanding mental health issues, including PTSD, depression, and unspecified schizophrenia spectrum disorder. 9RP 82-84; 13RP 42, 48-50.

Jackson's reading comprehension is "significantly impaired and an extremely low range." 9RP 79, 87-88. Her ability to understand and mentally process information, especially multiple pieces of information at once, is "quite severely impacted." 14RP 115, 124-25, 147-48. Jackson is also highly suggestible, a common trait among individuals with FASD. 14RP 173, 226-27; Ex. 21, at 27. This means "she has a tendency to adopt and accept what she is being told," particularly from an authority figure. 14RP 226-27; Ex. 21, at 27. Answers from Jackson like "yes" or "I agree," especially to complex questions requiring abstract thought, are unreliable. 9RP 79; 14RP 146-47, 183-84; 15RP 251.

With this backdrop, the prosecution extracted Jackson's guilty plea to first premeditated degree murder and second degree manslaughter, with the agreement that if she testified "truthfully" against her two codefendants, the prosecution would move to dismiss the first degree murder conviction. CP 13-22, 661-64.

1. Initial Statements to the Police

The following allegations are taken from the declaration for determination of probable cause. CP 6. Eighteen-year-old Jesus Isidor-Mendoza was reported missing in November of 2014. CP 7. His bisected body was found bagged and dumped in a ravine behind Wallace Jackson's (no relation to Crystal Jackson) Tacoma house in February of 2015. CP 6-7, 511. At one point, Wallace threatened his girlfriend that she would end up like the body in the ravine if she did not behave. CP 6; 5RP 122.

Wallace told police he went to Jackson's house in the fall of 2014, where she told him she needed his help. Jackson supposedly showed Wallace garbage bags outside her house that smelled of decaying human body. Jackson did not tell Wallace anything other than the person "fucked up." Wallace claimed he helped Jackson dispose of the body behind his former house. According to Wallace, dumping the body there was Jackson's idea, even though Jackson had never been to his house. CP 7.

Police searched Jackson's home. There they found a backpack containing schoolbooks and paperwork with the name Isidor on them. Evidence of blood was found in the master bathroom bathtub as well as some flooring in the detached garage. Garbage bags in Jackson's house matched those in which the body was found. CP 8.

Jackson talked to the police once she learned Wallace implicated her. CP 8. Her side of the story differed significantly. CP 8-10. In November of 2014, she explained, Darrel Daves was living in her detached garage. Daves sold methamphetamine and sometimes let Wallace stay with him. One night, a "boy," Isidor-Mendoza, came over to visit Daves and Wallace. When Jackson heard yelling coming the garage, she went to investigate. She observed Wallace raping Isidor-Mendoza. CP 8.

Jackson went back inside her home. Some time later, she heard the hose turn on, prompting her to investigate again. Out in the garage, she saw Wallace and Daves forcing Isidor-Mendoza's head into a bucket of water. CP 8. After Jackson went back in the house again, Daves came inside to retrieve a machete-type knife that Jackson's younger brother kept in his room. CP 8; 5RP 43-44. Jackson went back out to the garage later and saw Isidor-Mendoza deceased. CP 9.

Jackson told the police that Wallace and Daves took garbage bags and cleaning supplies from her house while she left with her children. When Jackson returned hours later, she saw a large, sealed garbage bags in the garage and no victim. The garbage bags remained at Jackson's house for several days before Daves and Wallace commanded Jackson to help them dispose of the body using her SUV. Wallace directed Jackson to his former house, where they threw the bags down a ravine. CP 9.

Daves subsequently admitted he lived in Jackson's detached garage around the time of the murder, but denied killing anyone or disposing of the body. CP 10.

In February of 2015, the Pierce County Prosecuting Attorney's Office charged Wallace, Daves, and Jackson with first degree premeditated murder of Isidor-Mendoza. CP 1; 5RP 89.

2. Jackson's Proffer

Forensic testing was done on floorboards from the garage as well as evidence collected from Jackson's bathroom. Blood was found on the garage floorboards, but it could not be determined whether the blood belonged to Isidor-Mendoza. 4RP 110-13, 121. Isidor-Mendoza was excluded as the source of blood found in Jackson's bathroom. 4RP 65-66. Ultimately, the manner of Isidor-Mendoza's death could never be determined due to decomposition. 6RP 76.

Given the inconclusive forensic evidence, the prosecution realized it likely could not prove its case without a cooperating codefendant. 5RP 118-19, 125-26. Wallace refused to cooperate, claiming he only helped move the body. 5RP 126, 140. Daves denied any involvement (though later confessed to a cellmate). 5RP 140; 6RP 37-38. The prosecution ultimately found its cooperating codefendant in Jackson. 5RP 142; 6RP 81.

Defense Attorney Ann Mahony represented Jackson. 6RP 65. Jackson maintained she did not kill anyone. 7RP 47-48. When the prosecution approached Jackson about cooperating, she was initially reticent because she knew someone whose plea had been revoked. 6RP 81; 7RP 56-57. But, "fixated" on her release, Jackson finally agreed and gave her proffer on April 12, 2016. 7RP 57; CP 314.

The proffer had several similarities but also several differences from Jackson's initial statement. Jackson admitted to being a drug dealer, selling marijuana by shipping it to people in states where it is still illegal. CP 331. Daves introduced her to selling methamphetamine. CP 333-34. Jakeel Mason was Jackson's boyfriend and "enforcer," meaning he helped when a drug deal went sideways. CP 329, 336. Jackson explained Mason might beat someone up, but would never kill anyone. CP 336.

Sometime around November 2014, Jackson explained, $5,000 in drug proceeds went missing from the safe in her bedroom. CP 314, 335. Jackson accused Daves and Wallace of taking the money, who in turn blamed Isidor-Mendoza. CP 314. Isidor-Mendoza, who Jackson had met only once before, was running drugs for Daves and Wallace. CP 338-40.

Jackson did not believe Isidor-Mendoza took her money, explaining he did not have access to her house, only Daves did. CP 315. Jackson told Daves and Wallace, "look, if you guys don't come up with my money, I'm

gonna have somebody fuck both of you guys up." CP 316. Jackson told Mason to "take care of it," but did not tell him to kill anyone. CP 316.

Jackson was inside her house when her brother and oldest daughter told her someone was screaming "stop!" out in the detached garage. CP 317. Consistent with her initial statement, Jackson said she observed Wallace raping Isidor-Mendoza. CP 317. Jackson told Daves and Wallace she just wanted her money back—"I said, I am not asking you to do this. I said, all this is unnecessary." CP 317. Jackson went back inside the house. CP 317. Mason left around this time, concerned for his own safety and not wanting to participate further. CP 317, 345.

After another 30 to 45 minutes, Jackson heard the hose turn on and went back outside to see Daves and Wallace dunking Isidor-Mendoza's head in a large bucket of water. CP 317-18. She asked them, "what the fuck are you going doing?" CP 317. Wallace insisted Jackson was just as involved as he and Daves, to which she responded, "you guys are taking this way too far." CP 317. Jackson went back inside the house again. CP 317-18.

Like her initial statement, Jackson said Daves came inside to get cleaning supplies and her brother's machete. CP 318. Jackson went back outside and saw Isidor-Mendoza lifeless. CP 319. She claimed she then

took her children to Pizza Hut, to get them out of the house.[1] CP 320. When she returned hours later, there was a large puddle of blood on the garage floor and garbage bags she assumed contained Isidor-Mendoza's body. CP 320-22. Jackson again admitted to helping dispose of the body behind Wallace's house. CP 323-33.

Significant to the later-alleged breach of her plea, Jackson claimed Daves and Wallace took her cellphone and did not give it back to her until they dumped the body. CP 321. Jackson denied ever showing Mason a picture of the deceased on her phone. CP 322. She acknowledged, though, that there had been such a photo on her phone and Mason probably saw it. CP 322-23. Jackson later admitted she had her phone throughout the ordeal. 5RP 150; 13RP 107.

3. Plea Agreement

Based on Jackson's proffer, the prosecution made her an offer, even though, according to the prosecutor, "the forensic evidence didn't match her statements." 5RP 180. The offer was Jackson would plead guilty to both first degree premeditated murder and second degree manslaughter. CP 661-64. In exchange for Jackson's "truthful" testimony at her codefendants' trial, the prosecution agreed to move to dismiss the first degree murder conviction

[1] Jackson later admitted she did not take her children to Pizza Hut, but stayed at her house during the murder, getting high on methamphetamine. CP 439-40.

and proceed to sentencing solely on second degree manslaughter. CP 661-63. Jackson's failure to comply with the terms of the plea would result in her being sentenced on first degree murder. CP 663.

Mahony reviewed the prosecution's offer and the plea obligations with Jackson on April 13 for "probably about a half an hour." 7RP 44-45, 53. Mahony recalled Jackson "wasn't happy" about pleading guilty to first degree murder. 7RP 46. Mahony "doubt[ed]" she reviewed the plea's factual basis with Jackson that day. 7RP 50-51. Mahony admitted she likely did not even have the declaration of probable cause with her when they reviewed the plea. 7RP 50-51.

Jackson pleaded guilty the very next day, April 14, before Judge Stanley Rumbaugh. 1RP 3; CP 13-22. The court found a factual basis for the plea established by the declaration for determination of probable cause. 1RP 5-6. The court engaged in the standard plea colloquy with Jackson, asking multiple complex, compound questions. 1RP 6-13. Jackson's responses consisted of one- to two-word answers like, "Yes," "I understand," "Okay," and "Guilty." 1RP 6-13. The court accepted Jackson's plea as voluntary, "made with a full understanding of the direct and the collateral consequences of the plea." 1RP 13.

4. Trial Testimony, Breach, Motion to Withdraw Guilty Plea, and Appeal

On November 1, 2016, Jackson testified at trial against Daves and Wallace. CP 510-11. Her testimony was, by and large, consistent with her prior statements—she accused Daves of taking her money, who in turn blamed Isidor-Mendoza; Jackson did not ask Daves, Wallace, or Mason to murder Isidor-Mendoza; and Daves and Wallace were responsible for the murder. CP 555-78. Trial recessed for the day, at the end of Jackson's direct-examination. CP 621-23; 4RP 150.

The next morning, the parties met with Jackson. 7RP 63-64. Jackson was confronted with Mason's statement that she showed him a photo of the deceased in a bathtub. 7RP 65-66, 70-73. Jackson admitted she showed Mason the photo—different from her proffer.[2] 4RP 146-47; 7RP 65-66. Jackson also mentioned, for the first time, that Demetrius "Fresh" Dixon was present on November 17, the day before the murder when she first discovered the $5,000 missing. 4RP 148-50; 7RP 63-65; 8RP 16-19.

Concerned about Jackson's credibility on cross-examination, the prosecution asked the trial court to strike Jackson's testimony or, alternatively, declare a mistrial. 5RP 179-80; 6RP 62-63; CP 304-05.

[2] This was significant because there was no bathtub in the detached garage where Jackson said the murder and dismembering occurred. CP 308-09. Mason gave a recorded statement to police, but Mason died in March of 2016. 4RP 106; 5RP 128-29. No one listened to the recording before trial because of its poor quality, so Jackson had never been confronted with it before. 5RP 131-32; 7RP 73-74.

Before the court ruled, Wallace pleaded guilty to first degree rendering criminal assistance. 5RP 39-41. The trial court thereafter declared a mistrial, finding no one could receive a fair trial. 5RP 41; 6RP 51; CP 304-05. The charge against Daves were eventually dismissed. Opinion, 8.

After the mistrial, the prosecution moved for the court to find Jackson breached the plea agreement and to sentence her on first degree murder. CP 307-09. New counsel was appointed for Jackson. 2RP 1-2. Jackson moved for the trial court to enforce the plea agreement (i.e., sentence her on second degree manslaughter) or, alternatively, allow her to withdraw her plea. CP 46-63. Jackson asserted her plea was not voluntary because it lacked a factual basis to establish her participation, as a principal or accomplice, in first degree premeditated murder. CP 59-62.

These countermotions set off an evolving evidentiary hearing, again before Judge Rumbaugh, that spanned an entire year. Several clinical psychologists examined Jackson and testified to her significant cognitive limitations and mental health issues. Br. of Appellant, 20-24. Dr. Stanfill concluded Jackson had only "a very basic understanding of the plea agreement." Ex. 17, at 11. Dr. Brown likewise opined Jackson understood only "the time of the sentence attached to the guilty [plea] to the murder and the less time attached to the manslaughter"; she did not comprehend "the consequences and all the ramifications of that guilty plea." 15RP 325-26.

Jackson testified she felt pressured to plead guilty, just going along with what her attorney said to do. 13RP 131-37. Jackson did the same at the plea colloquy—"I'm supposed to say yeah because that's what I'm supposed to say, so I said yes." 13RP 134.

The trial court found Jackson materially breached the plea agreement by not previously mentioning Dixon and by lying about showing the bathtub photo to Mason. CP 254. The court believed Jackson had some cognitive limitations but disagreed "she is restricted in cognition to a degree that she did not understand the plea agreement requirements." CP 255. The court concluded "the weight of the evidence against Ms. Jackson" made it "patently clear that at a minimum she would be found guilty of being an accessory to Murder in the First Degree." CP 266. The court accordingly denied Jackson's motion to withdraw her plea and sentenced her to 320 months for first degree murder. CP 267; 14RP 25.

Jackson argued on appeal that the record at the time of her plea failed to establish a factual basis for her participation in first degree premediated murder, as a principal or an accomplice. Br. of Appellant, 28-38. She further contended the full record demonstrated she did not have an adequate understanding of how her alleged conduct satisfied—or, rather, did not satisfy—the elements of premeditated murder. Br. of Appellant, 38-45. She argued she was therefore entitled to withdraw her plea because it was not

knowing, intelligent, and voluntary. Br. of Appellant, 46. The court of appeals rejected Jackson's arguments and affirmed the trial court's denial of her motion to withdraw her guilty plea. Opinion, 25.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. This Court's review is warranted to address the court of appeals' significant expansion of accomplice liability, upholding Jackson's conviction based on mere presence and knowledge of the murder.

Before accepting a guilty plea, "[t]he trial court must find a factual basis to support the original charge, and determine that defendant understands the relationship of his conduct to that charge." In re Pers. Restraint of Barr, 102 Wn.2d 265, 270, 684 P.2d 712 (1984). The factual basis requirement is "designed to 'protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge.'" McCarthy v. United States, 394 U.S. 459, 467, 22 L. Ed. 2d 418, 89 S. Ct. 1166 (1969) (quoting Fed. R. Crim. P. 11, Notes of Advisory Committee on Criminal Rules). A guilty plea is not truly voluntary "unless the defendant possesses an understanding of the law in relation to the facts."[3] Id. at 466.

[3] In determining whether there is a factual basis to support a plea, the trial court may consider any reliable source of information, "as long as the information is part of the record at the time of the plea." State v. R.L.D., 132 Wn. App. 699, 706 n.7, 133 P.3d 505 (2006). Here, the trial court relied on the declaration of probable cause to find a factual basis for Jackson's plea. 1RP 5-6; CP 21. Jackson's proffer existed at the time of the plea, but it had not yet been made a part of the record. The court of

The court of appeals agreed there was no factual basis to conclude Jackson "had premeditated intent to kill Isidor-Mendoza as a principal." Opinion, 16-17. The court nevertheless held there was a sufficient factual basis to conclude Jackson participated in the murder as an accomplice. Opinion, 17-18. In reaching that conclusion, the court of appeals significantly expanded the law on accomplice liability, warranting review under all four RAP 13.4(b) criteria.

The court of appeals reasoned Jackson "aided" Wallace and Daves in murdering Isidor-Mendoza. Opinion, 17. The court claimed Jackson did so by "providing the supplies and the venue they needed to complete the murder." Opinion, 17. This was contrary to both the facts and the law.

The record at the time of the plea established Jackson "had been allowing [Daves] to reside in her detached garage," and Daves, "in turn, had been allowing Wallace Jackson to stay with him from time to time." CP 3. Thus, Jackson essentially stood in a landlord-tenant relationship with Daves, allowing him to stay in her detached garage. There is no evidence in the record that Jackson provided Daves access to her garage for the purpose of assaulting and murdering Isidor-Mendoza. The court of appeals' conclusion that Jackson provided "a venue for the killing" essentially creates automatic

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appeals accordingly relied solely on the declaration of probable cause. Opinion, 13, 16-17. Clarification on this legal point would likewise be useful.

accomplice liability for landlords and property owners when subtenants or guests commit crimes on their property.

This Court has not yet considered this issue, but the court of appeals has rejected such a result. In State v. Roberts, 80 Wn. App. 342, 355-56, 908 P.2d 892 (1996), the defendant's knowledge and assent to his subtenant's marijuana grow operation was insufficient for accomplice liability. The Roberts court emphasized the defendant "could not be found guilty as an accomplice by accepting rent, paying utilities, and not utilizing self-help to terminate [the subtenant's] grow operation." Id. at 355. The defendant's failure to contact the police or his own landlord likewise amounted "only to presence and assent to criminal activity, which as a matter of law cannot support a finding of accomplice liability." Id.

Jackson knew what was happening on her property. But, again, she did not provide Daves access to her detached garage for the purpose of murdering Isidor-Mendoza. Rather, Daves had previous access as a subtenant of hers. Roberts holds a landlord's knowledge of and assent to a subtenant's criminal activity does not establish accomplice liability. See also State v. Castro, 32 Wn. App. 559, 561-62, 648 P.2d 485 (1982) (individual was not an accomplice even though she invited the defendants to spend the night in her apartment, where they then murdered the victim). This Court's

review is warranted to provide guidance to courts and practitioners on the scope of accomplice liability for landlords and property owners.

The court of appeals further claimed Jackson "knowingly permitted Daves to obtain a machete from her house and the bucket in which Isidor-Mendoza was likely drowned." Opinion, 17. The record does not support this conclusion, either. Opinion, 17. The declaration of probable cause states Daves "had gone into Crystal's brother's room and taken a long machete-type knife that he knew was kept there." CP 4. There is no evidence the machete belonged to Jackson, or that she even had dominion and control over it, as her brother kept it in his room. Nor is there any indication she supplied the machete to Daves or told him where to access it.[4] The court of appeals would apparently require Jackson, as the landlord, to intervene in order to avoid accomplice liability. But, again, physical presence and assent are insufficient to establish accomplice liability—even for landlords. Roberts, 80 Wn. App. at 356.

The court of appeals also took an impermissible leap in claiming Jackson "knowingly permitted" Daves to obtain "the bucket" supposedly

[4] The conclusion the Isidor-Mendoza "likely drowned" is also not supported by *reliable* evidence in the record, where Jackson explained Daves and Wallace were "not like drowning him," CP 318, and Isidor-Mendoza's manner of death could never be determined, 6RP 76. This is significant because procurement of a weapon and method of killing are relevant in establishing premeditation. State v. Pirtle, 127 Wn.2d 628, 644, 904 P.2d 245 (1995). Nothing indicates the weapon or method used to kill Isidor-Mendoza.

used to drown Isidor-Mendoza. Opinion, 17. Again, the declaration of probable cause states, "On her way back out to the garage Crystal noticed that a metal bucket which had been in the backyard was missing. The children's toys which had been in the bucket were dumped out in the yard." CP 4. Thus, Daves and Wallace took Jackson's bucket from her backyard without her knowledge or assent—which, again, are insufficient regardless. The court of appeals decision represents a frightening expansion of accomplice liability for landlords and property owners. Apparently, if a houseguest takes an item belonging to the property owner to use for a crime—with or without the property owner's knowledge—the property owner has "aided" in the commission of the crime by "providing the supplies." Opinion, 17.

Curiously, the court of appeals cited State v. Jackson, 137 Wn.2d 712, 722, 976 P.2d 1229 (1999), for its conclusion that Jackson "knowingly permitted Daves to obtain a machete from her house and the bucket in which Isidor-Mendoza was likely drowned." Opinion, 17. The Jackson court held Washington's accomplice statute does not extend liability "based on the person's failure to fulfill a duty to come to the aid of another." 137 Wn.2d at 722. But this is essentially what the court of appeals demanded of Jackson, as a landlord whose tenant committed a crime on her property. Jackson failed to object to the use of her garage and personal property in Isidor-

Mendoza's murder (and, of course, the machete was not even in Jackson's possession, but her brother's).[5] This does not amount to "providing the supplies and the venue . . . needed to complete the murder." Opinion, 17-18.

The court of appeals stretched the concept of rendering "aid" in an accomplice liability scenario beyond all recognition. "Aid" means assistance, whether given by words, acts, encouragement, or support. State v. Amezola, 49 Wn. App. 78, 88-89, 741 P.2d 1024 (1987) (finding insufficient evidence of accomplice liability where defendant cooked and kept house for household members dealing heroin). Aid requires more than mere presence and assent; it requires an "overt act." State v. McCreven, 170 Wn. App. 444, 477, 284 P.3d 793 (2012). This Court explained long ago:

> Each or the words used in [the aiding and abetting] statute upon which a criminal charge can be predicated signifies some form of overt act; the doing or saying of something that either directly or indirectly contributes to the criminal act; some form of demonstration that expresses affirmative action, and not mere approval or acquiescence, which is all that is implied in assent. To assent to an act implies neither contribution nor an expressed concurrence. It is merely a mental attitude which, however culpable from a moral standpoint, does not constitute a crime, since the law cannot reach opinion or sentiment, however harmonious it may be with a criminal act.

State v. Peasley, 80 Wash. 99, 100, 141 P. 316 (1914). The court of appeals could not point to anything Jackson did or said that *contributed* to Isidor-

[5] Moreover, Jackson later explained in her proffer that she objected multiple times, telling Daves and Wallace that they were "taking this too far." CP 317.

Mendoza's death. "[M]ere approval or acquiescence" amounts only to assent, which is insufficient for accomplice liability. Id.

This Court's decision in In re Welfare of Wilson, 91 Wn.2d 487, 588 P.2d 1161 (1979), drives this point home. There, Wilson, a juvenile, was accused of giving support and encouragement to other youths engaged in reckless endangerment. Id. at 489. The other youths pulled weatherstripping from office building windows, fashioned it into a rope of sorts, and pulled it taut across a road. Id.

The court of appeals upheld Wilson's conviction, reasoning, "once he has knowledge of the theft and the stretching of the rope across the road, his continued presence at the scene of the ongoing crime can be reasonably inferred to 'encourage' the crime." Id. at 491. This Court rejected such an "overly broad rule." Id. This Court explained presence at the scene of an ongoing crime may be sufficient only if the person is "ready to assist." Id. But the record in Wilson's case did not indicate readiness to assist:

> Even though a bystander's presence alone may, in fact, encourage the principal actor in his criminal or delinquent conduct, that does not in itself make the bystander a participant in the guilt. It is not the circumstance of "encouragement" in itself that is determinative, rather it is encouragement plus the intent of the bystander to encourage that constitutes abetting. We hold that something more than presence alone plus knowledge of ongoing activity must be shown to establish the intent requisite to finding Wilson to be an accomplice in this instance.

Id. at 492. The court here made the same error as the court of appeals in Wilson, concluding Jackson's presence and knowledge of what occurred on her property demonstrated readiness to assist. While Jackson's assent may have amounted to tacit encouragement, Wilson holds that is not enough for accomplice liability.

This Court's review is warranted under all RAP 13.4(b) criteria, to provide definitive guidance as to whether mere presence and assent—particularly for landlords and property owners—provides a sufficient factual basis for accomplice liability.

2. This Court's review is further warranted to provide guidance as to when a criminal defendant adequately understands the relationship of her conduct to accomplice liability, despite significant cognitive disabilities.

"At a minimum, 'the defendant would need to be aware of the acts and the requisite state of mind in which they must be performed to constitute a crime.'" State v. Osborne, 102 Wn.2d 87, 93, 684 P.2d 683 (1984) (quoting In re Pers. Restraint of Keene, 95 Wn.2d 203, 207, 622 P.2d 360 (1980)). The record must "affirmatively show" the accused "understood the law in relation to the facts." State v. S.M., 100 Wn. App. 401, 415, 996 P.2d 1111 (2000); accord State v. A.N.J., 168 Wn.2d 91, 119, 225 P.3d 956 (2010) (finding due process violated where the record did not "affirmatively disclose" this understanding).

The court of appeals effectively required Jackson to have intervened in Isidor-Mendoza's murder in order to avoid accomplice liability. This, of course, is not the law. Furthermore, this bending and stretching of accomplice liability makes all the more relevant the fact that Jackson has an I.Q. of only 61. 9RP 79; 14RP 120-23. The court of appeals recognized Jackson is intellectually disabled but failed to even once acknowledge her I.Q. of 61. See Opinion, 9, 20.

To put Jackson's I.Q. in perspective, the Eighth Amendment forbids executing intellectually disabled individuals as cruel and unusual punishment. Atkins v. Virginia, 536 U.S. 304, 321, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002). Washington's death penalty statute, chapter 10.95 RCW, specifies an I.Q. of "seventy or below" is "significantly subaverage general intellectual functioning," and therefore constitutes intellectual disability. RCW 10.95.030(2)(c). In Washington, then, a person with an I.Q. of 70 or below cannot be executed. RCW 10.95.030(2); see also Hall v. Florida, 572 U.S. 701, 724, 134 S. Ct. 1986, 188 L. Ed. 2d 1007 (2014) (defendants whose I.Q. is above 70 must have a fair opportunity to present evidence of their intellectual disability).

Jackson's I.Q. of 61 is well below the cutoff for the death penalty. (And certainly brings Jackson's case much more in line with the juvenile cases the court of appeals rejected as inapposite. Opinion, 18-19.) Both Dr.

Brown and Dr. Stanfill emphasized Jackson's suggestibility, particular with authority figures. One- and two-word answers from Jackson are unreliable. 9RP 79-80; 14RP 146-47, 180, 183-84. The only way to ensure Jackson's understanding of the plea would be to "ask her to repeat back what it is she was asked and provide her answer in context of her. That's the only way you know." 14RP 173-74; see also 9RP 90 (same, Dr. Stanfill). The deficient record on this is readily apparent. Br. of Appellant, 41-43 (quoting plea colloquy at 1RP 6-8).

The court of appeals nevertheless concluded "[t]he evidence does not show that Jackson failed to understand the nature of the charges and she has not overcome the presumption that her plea was voluntary." Opinion, 20. The court's omission of the extent of Jackson's limitations—her I.Q. in particular—is significant because it represents a misunderstanding of the purpose and policy behind requiring a factual basis for a guilty plea.

When the appellant challenges the *sufficiency of the evidence following a jury verdict*, appellate courts defer to the jury on questions of credibility and conflicting evidence.[6] This is because the jury is specially

[6] Morse v. Antonellis, 149 Wn.2d 572, 574-75, 70 P.3d 125 (2003) ("A jury is free to believe or disbelieve a witness, since credibility determinations are solely for the trier of fact. Credibility determinations cannot be reviewed on appeal . . . Juries decide credibility, not appellate courts."); State v. Davis, 182 Wn.2d 222, 227, 340 P.3d 820 (2014) ("Our review on a challenge to the sufficiency of the evidence supporting a criminal conviction is highly deferential to the jury's decision, and we do not consider 'questions of credibility, persuasiveness, and conflicting testimony.'"

designed and equipped to resolve those questions. State v. Saintcalle, 178 Wn.2d 34, 50, 309 P.3d 326 (2013) (explaining "[w]e have juries for many reasons, not the least of which is that it is a ground level exercise of democratic values. The government does not get to decide who goes to the lockup or even the gallows"; and citing studies showing that jury diversity enhances reliability of verdicts, because diverse juries consider more perspectives).

When an appellant challenges *factual sufficiency of a guilty plea*, the policy considerations are different. In the plea context, there is no jury to check the prosecutor's judgment and discretion. Therefore, the factual basis inquiry exists to ensure "the defendant possesses an understanding of the law in relation to the facts . . . [and has not been put] in the position of pleading . . . without realizing that his conduct does not actually fall within the charge." State v. Berry, 129 Wn. App. 59, 65, 117 P.3d 1162 (2005) (quoting McCarthy, 394 U.S. at 466, and 13 Royce A. Ferguson, Jr., Wash. Practice: Criminal Practice & Procedure § 3713, 91-92 (3rd ed. 2004)).

Considering the factual basis of Jackson's plea in this way highlights the fundamental unfairness of her case. The prosecution "came to the realization," given the "nature of the offense and the lack of physical

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(quoting In re Pers. Restraint of Martinez, 171 Wn.2d 354, 364, 256 P.3d 277 (2011)).

evidence," that "we would need a cooperating co-defendant in order to prove the case." 5RP 118-19, 125. Jackson was, ultimately, the easiest target. The Pierce County Prosecutor's Office proceeded in offering her a plea deal and then putting on her on the stand at her codefendants' trial, fully aware that her story had changed several times and did not line up with the physical evidence. 5RP 151-53, 158-59; 6RP 36-38; 7RP 83. And when Jackson's testimony, predictably, fell apart, she took the fall.

The prosecution got its "cooperating co-defendant" by extracting a plea from a woman with an I.Q. of 61, who is now the only one of the three co-defendants to stand convicted of murder. Opinion, 8. Convicted, not as a principal, as the court of appeals recognized, but as an accomplice, for not intervening as Wallace and Daves murdered Isidor-Mendoza on her property. Wallace, who is likely done with his time by now, and Daves, who walked—because they knew better than to take the plea. 5RP 126, 140; 6RP 37-38. This Court's review of the court of appeals' decision is therefore warranted under RAP 13.4(b)(3) and (4), in light of the full record on appeal, particularly Jackson's I.Q. of 61, along with the policy and purpose behind requiring a sufficient factual basis for a guilty plea.

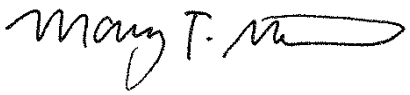
E. CONCLUSION

For the reasons discussed above, this Court should grant review, reverse the court of appeals, and remand to allow for Jackson to withdraw her guilty plea.

DATED this 21st day of December, 2020.

Respectfully submitted,

NIELSEN KOCH, PLLC



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Appendix A

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CRYSTAL SHARE JACKSON, Appellant.	No. 52353-1-II UNPUBLISHED OPINION

GLASGOW, J.—Crystal Share Jackson appeals the trial court's denial of her motion to withdraw her guilty plea to first degree premeditated murder and second degree manslaughter. Jackson argues that her guilty plea to the first degree premeditated murder charge was involuntary because it lacked a factual basis and she did not understand the relationship between her conduct and the charged crimes. She also contends that she received ineffective assistance of counsel with regard to her plea. Finally, Jackson asks this court to reverse the trial court's denial of her motion to withdraw her plea because the trial court excluded her expert witness from the courtroom during Jackson's testimony at the hearing on that motion.

We affirm. The factual basis in the record at the time of Jackson's guilty plea was sufficient to support a conviction for first degree premeditated murder. The record reflects that Jackson understood how her conduct related to the charges and her plea was not involuntary. Jackson did not receive ineffective assistance of counsel because her trial counsel's performance was not deficient. The trial court did not err by excluding her expert from the courtroom at the plea withdrawal hearing.

Jackson raises additional arguments for reversal in a statement of additional grounds (SAG). We decline to consider these arguments because they rely on evidence outside the record.

FACTS

A. Murder of Jesus Isidor-Mendoza

Jackson lived in Tacoma, Washington, with her four children and her younger teenage brother. She sold marijuana and methamphetamine to lower level dealers through a gang-related drug distribution network that operated in several states. Jackson sold drugs out of her home and stored drugs and money there. Beginning in fall 2014, Jackson rented her detached garage to Darrel Daves, who was a dealer in her drug operation. Daves's friend, Wallace Jackson,[1] frequently came to Jackson's house. Jackson, Daves, and Wallace also used marijuana and methamphetamine together.

Jackson's drug sales routinely netted $7,000 per month, and she kept significant amounts of cash in a safe in her room. In November 2014, the safe was not locked because Jackson had lost the key. On November 17, 2014, Jackson discovered that $5,000 was missing from the safe. Jackson accused Daves and Wallace of taking the money. Daves and Wallace accused a third person, Jesus Isidor-Mendoza, of stealing the money. Isidor-Mendoza was an 18 year old who worked with Daves as a drug dealer. Jackson had met Isidor-Mendoza prior to the day her money went missing, but it is not clear from the record how well she knew him.

On November 18, 2014, Isidor-Mendoza was killed at Jackson's home. The details of the killing are disputed, and the record reflects conflicting statements about what happened to him. The following information was presented in the probable cause declaration, which provided the

[1] Crystal Jackson and Wallace Jackson are not related. We refer to Wallace Jackson by his first name to avoid confusion.

factual basis for Jackson's guilty plea according to her stipulation. The probable cause declaration was based on statements the police obtained from Jackson, Wallace, Daves, Jackson's brother, one of Jackson's daughters, Isidor-Mendoza's mother, and a few other witnesses.

Isidor-Mendoza arrived at Jackson's house and entered the detached garage where Daves and Wallace were. A few minutes later, Jackson, who was in the house, heard loud yelling. She went into the garage and saw Wallace holding Isidor-Mendoza by the hair and having sex with him. Isidor-Mendoza appeared to be in pain. Wallace and Isidor-Mendoza were both naked. Jackson left the garage and went back in the house.

Jackson then heard an outside faucet running. She went back to the garage. She saw that Wallace and Daves had filled a large bucket from the backyard with water and they were forcing Isidor-Mendoza's head into it. Isidor-Mendoza's hands were behind his back, Daves was holding Isidor-Mendoza's legs, and Wallace was holding his head underwater. After a few minutes, Jackson returned to the house.

About 20 or 30 minutes later, Daves entered Jackson's house, where he retrieved "a long machete-type knife that he knew was kept there." Clerk's Papers (CP) at 4. Daves then returned to the garage. Next, Jackson "heard what she believed to be a scraping or scrubbing noise coming from the garage." CP at 4. Jackson returned to the garage and found that Isidor-Mendoza was on his stomach on the garage floor with his hands behind his back. He appeared to be dead. Daves was using the knife to "hack at the back of [his] legs." CP at 4.

Daves and Wallace then went in and out of the house, getting cleaning supplies and garbage bags. Jackson told the police that she left with her kids for a while because she was afraid. She said that when she came back several hours later, Isidor-Mendoza's body was gone and she saw a large, sealed black garbage bag, which she believed contained his body.

The bag remained at Jackson's home for four days, but Jackson and her children started to notice the smell. Jackson said Daves and Wallace told her they needed her help. They put Isidor-Mendoza's body in Jackson's car and drove it to a house where Wallace used to live. Wallace and Jackson threw the bag down a steep hillside behind the house.

Wallace told the police a different story—that Jackson threatened him with a gun and demanded he help her dispose of a body. He said Jackson showed him a garbage bag that he believed contained a decaying human body. Wallace said he helped dispose of the body in a ravine behind a house. Wallace reported that Jackson said nothing about the dead person, except that he had "f[****]d up." CP at 3. Wallace's girlfriend confirmed that Wallace told her he had assisted Jackson with disposing of a body.

Jackson's daughter told the police that she recognized Isidor-Mendoza and that before he was killed, he had been caught stealing something from Jackson's bedroom.

B. Jackson's Plea

In February 2015, Jackson, Wallace, and Daves were charged with first degree premeditated murder under RCW 9A.32.030(1)(a).

Jackson was assigned a court-appointed attorney, Ann Mahony. Mahony prepared the case for trial for a year and a half. Mahony explained to Jackson the charges she was facing, the concept of accomplice liability, the State's evidence, and possible defenses. Even though Mahony knew that Jackson had some mental health issues, Mahony did not have trouble communicating with Jackson, nor did Mahony think that Jackson's mental health issues prevented Jackson from assisting in her own defense. After looking "at every possible defense," Mahony decided the evidence did not support a mental health defense. Verbatim Report of Proceedings (VRP) (July 7, 2017) at 28.

In April 2016, the State offered a plea agreement. Jackson was to plead guilty to first degree premeditated murder and second degree manslaughter, but if she provided "complete and truthful information" to the State, law enforcement, and her attorneys at all times, and if she provided truthful testimony against Wallace and Daves at their trial, the State would dismiss the first degree murder conviction and request that she be sentenced for second degree manslaughter. CP at 661. If she failed to provide complete and truthful information and to testify truthfully at trial, this would constitute a breach of the plea agreement and she would be sentenced for first degree premeditated murder. Jackson could not "hold back any information," and the deputy prosecuting attorney's reasonable belief that she was not being completely truthful pretrial or that she did not testify truthfully would be enough to establish a violation of the plea agreement. CP at 662. Truthfulness at trial would "be determined by considering [Jackson's] testimony in light of her tape-recorded offer of proof." CP at 662.

If sentenced for first degree premeditated murder, Jackson faced a standard range sentence of 240-320 months. If sentenced to second degree manslaughter, the standard range sentence was 21-27 months.

On April 12, 2016, Jackson gave a recorded offer of proof. Jackson provided more information that did not appear in the statement of probable cause, including that she was a drug dealer, she had discovered $5,000 missing from her unlocked safe the day before Isidor-Mendoza was killed, and she had accused Wallace and Daves of stealing the money, who in turn accused Isidor-Mendoza. She continued to maintain that she did not know Isidor-Mendoza personally.

Jackson also claimed that Wallace and Daves fought in her bathroom inside her house and damaged the faucet in her shower while cleaning themselves up after the murder. When asked about a photo of Isidor-Mendoza's dead body on her phone, Jackson said that it was possible that

a third person, Jakeel Mason, had seen the photo on her phone, but she insisted she did not take the photo or show it to him. She said she could not possibly have shown the photo to anyone because Wallace and Daves confiscated her phone during the murder and did not return it to her until after she helped them dispose of the body.

On April 13, 2016, the State filed an amended information charging Jackson with first degree premeditated murder under RCW 9A.32.030(1)(a) and second degree manslaughter under RCW 9A.32.070(1).

Mahony met Jackson in the jail to discuss the plea agreement and go over Jackson's plea statement. Mahony did not recall bringing a copy of either the probable cause declaration or proposed plea agreement with her. But Mahony testified that she went over the probable cause declaration with Jackson during her pre-plea representation.

By the time the State offered a plea bargain, Jackson's attorney had been preparing the case for trial for about a year and a half, met with Jackson regularly to discuss the case, and had been talking to Jackson for months about a possible offer of proof, plea bargaining, and reduced charges. Some of these meetings lasted hours. And each time Mahony brought discovery for Jackson to review, the probable cause declaration was in the discovery notebooks. Mahony testified that prior to the change of plea hearing, she read the plea agreement with Jackson, encouraged her to ask questions about anything she did not understand, and "felt comfortable" that Jackson understood the plea agreement. VRP (Aug. 25, 2017) at 38.

A change of plea hearing occurred the day after the State filed the amended information. Jackson had checked a box on the plea statement indicating that the trial court could review the probable cause statement to establish a factual basis for the plea. At the plea colloquy, the trial court confirmed that Jackson understood that it would review the probable cause declaration, rather

than a statement in her own words, to decide if a factual basis for her plea existed. Jackson agreed. Based on the probable cause declaration, original and amended information, the guilty plea statement, and the proposed plea agreement, the trial court found a factual basis sufficient to support a conviction for first degree premeditated murder or second degree manslaughter.[2]

During the plea colloquy, the trial court asked Jackson if she had gone over the probable cause declaration and her guilty plea statement with her attorney, paragraph by paragraph and line by line. The trial court asked if her attorney had answered her questions, and if the answers were to her satisfaction. Jackson answered yes to all of these questions. The trial court then asked Jackson if she needed more time to talk to her attorney. Jackson said no. The trial court then instructed her to stop the proceedings and talk to her attorney if she had any questions. After the plea colloquy, the trial court accepted Jackson's guilty plea as knowing, intelligent, and voluntary.

C. Wallace's and Daves's Trial

Before Wallace's and Daves's trial, Jackson was interviewed twice more by the defense and the State. Some of the information she disclosed in these interviews contradicted her past statements and she acknowledged she had lied before. Notably, Jackson acknowledged she did know Isidor-Mendoza well; she did not leave the house with her children on the night of the murder, but she did go out to purchase cleaning supplies; she had previously lied about Wallace and Daves fighting in the bathroom and damaging the shower; and Wallace and Daves did not confiscate her phone. The State determined that despite these inconsistencies, it would not withdraw the plea deal so long as Jackson was completely truthful in her trial testimony.

[2] The trial court was aware of Jackson's offer of proof but was not provided with a transcript, nor was the offer of proof described to the court at the time of the plea.

Jackson testified for a full day at the trial against Daves and Wallace. The next day, Jackson, Mahony, the prosecutor, and Daves's and Wallace's attorneys had a private conversation with Jackson to discuss a chronology question. Jackson then acknowledged two additional pieces of information that she had not testified to the day before or offered in prior statements. Jackson said that an additional person, Demetrius "Fresh" Dixon,[3] was present at her house the day before the murder, even though she had not mentioned him when asked in her testimony at trial to describe what happened the day before the murder. Jackson also admitted she had shown a photo of Isidor-Mendoza's dead body to Mason,[4] which was inconsistent with her past statements about the photo on her phone. The photo reportedly showed Isidor-Mendoza's body in a bathtub, raising the possibility that the body was inside Jackson's house at some point.

Based on these new revelations, the State decided the trial testimony Jackson gave was not truthful and it could not use Jackson as a witness. The State moved to strike Jackson's testimony or alternatively for a mistrial. Wallace pleaded guilty to first degree rendering criminal assistance before the trial court decided the State's motion. The trial court then declared a mistrial. The charges against Daves were eventually dismissed.

D. Motions to Enforce the Plea Agreement and Motion to Withdraw the Plea

The State then moved to enforce the plea agreement, arguing Jackson had materially breached the agreement and should be sentenced for first degree premeditated murder. New counsel was appointed for Jackson, and Jackson then moved to enforce the plea agreement in her favor. Jackson argued that no material breach occurred, or in the alternative, that she should be permitted to withdraw her guilty plea. Jackson asserted that there was no factual basis for the plea

[3] Dixon was no longer alive at the time of the trial.
[4] Mason was no longer alive at the time of trial.

to first degree premeditated murder, there was no showing that she understood the plea or its consequences, and she received ineffective assistance of counsel at the plea stage.

The trial court held an evidentiary hearing over the course of one year between June 2017 and June 2018. Jackson presented two experts, Dr. Michael Stanfill and Dr. Natalie Brown, who testified that Jackson had mental health issues, substance abuse issues, fetal alcohol spectrum disorder, and cognitive impairments. The experts also testified that Jackson's IQ was below average, and that she falls in the "mild level of intellectual disability." VRP (May 21, 2018) at 123. Stanfill concluded, however, that Jackson was competent to plead guilty. According to Brown, Jackson could not have understood all the elements of the plea because she did not understand abstract concepts, but Brown did believe Jackson "knew what the charge was and she knew the consequences of the plea." VRP (June 11, 2018) at 326.

Prior to Brown's testimony, the State moved to exclude her from the courtroom while Jackson finished testifying. Jackson objected, arguing that it would enrich Brown's expert opinion to observe Jackson testify live. The trial court ruled that it was appropriate to exclude Brown from the courtroom to ensure that watching Jackson did not bolster Brown's testimony. Brown testified that her inability to witness Jackson's live testimony resulted in "a small deficit" in her opinion testimony that was "superficial" because her opinion primarily reflected the results of psychological testing. VRP (May 21, 2018) at 137.

In August 2018, the trial court denied Jackson's motion to withdraw her guilty plea. In written findings of fact and conclusions of law, the trial court found that Jackson was the "key player" in a "very detailed drug distribution network." CP at 254. The trial court was "persuaded that [Jackson] ha[d] a mild intellectual disability based upon the testing performed by [Stanfill] and [Brown]." CP at 254. Nonetheless, the trial court concluded she successfully conducted a

sophisticated drug dealing business, which required her to keep track of "money owed and money paid in multiple transactions on an ongoing and fluid basis," and Jackson was not "merely following simple instructions" from others. CP at 254-55. Accordingly, the trial court found it was also "not credible" that Jackson was unable to understand the plea agreement's requirements. CP at 255. Further, the trial court found that "[t]he record [was] replete" with instances where Jackson "knowingly lie[d] with intent to deceive," and she admitted to telling self-serving lies. CP at 257. The trial court noted that Jackson appeared to "conform her testimony" to Brown's opinion testimony about her cognitive impairments. CP at 258.

The trial court concluded that Jackson materially breached the plea agreement because there were serious inconsistencies between her pretrial statements and testimony at trial, and she provided new information after her first day of trial testimony that "would wholly undermine the State's case." CP at 254. The court concluded that Jackson was competent to plead guilty and she understood the relationship between her conduct and the charges against her. The trial court also concluded that Mahony provided effective assistance of counsel. The trial court did not separately rule on whether there was a factual basis for the plea, but in the context of finding that counsel's advice to accept the plea deal was supported by the evidence, the trial court concluded that "[g]iven the weight of the evidence against Ms. Jackson, it seems patently clear that at a minimum she would be found guilty of being an accessory to Murder in the First Degree." CP at 266.

The trial court imposed a 320-month sentence for first degree premeditated murder. Jackson appeals the trial court's denial of her motion to withdraw her guilty plea.

ANALYSIS

I. MOTION TO WITHDRAW GUILTY PLEA

A. Background on Withdrawing a Guilty Plea and Standard of Review

Under CrR 4.2(f), a trial court must permit a defendant to withdraw a guilty plea if "withdrawal is necessary to correct a manifest injustice." "A manifest injustice is one that is obvious, directly observable, overt, and not obscure." *State v. Wilson*, 162 Wn. App. 409, 414, 253 P.3d 1143 (2011). Per se manifest injustice exists where "(1) the defendant did not ratify the plea, (2) the plea was not voluntary, (3) the defendant received ineffective assistance of counsel, or (4) the plea agreement was not kept." *Id.* at 414-15. The manifest injustice standard is a high bar, but the "heavy burden [on the defendant] is justified by the greater safeguards [under CrR 4.2] protecting a defendant at the time [they] enter[ed] [their] guilty plea." *Id.* at 414.

Due process requires a court to accept a guilty plea "only upon a showing the accused . . . enter[ed] the plea intelligently and voluntarily." *State v. A.N.J.*, 168 Wn.2d 91, 117, 225 P.3d 956 (2010). If the "defendant complete[d] a plea statement and admit[ted] to reading, understanding, and signing it," we apply a strong presumption that the defendant's guilty plea was voluntary. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998). If the trial court then "'inquire[d] orally of the defendant and satisfie[d themselves] on the record of the existence of the various criteria of voluntariness, the presumption of voluntariness is well[-]nigh irrefutable.'" *State v. Knotek*, 136 Wn. App. 412, 428-29, 149 P.3d 676 (2006) (quoting *State v. Perez*, 33 Wn. App. 258, 262, 654 P.2d 708 (1982)).

The voluntariness inquiry under CrR 4.2(d) requires the trial court to determine that a factual basis supports the plea and the defendant understands how their conduct satisfied the charged offense. *State v. Codiga*, 162 Wn.2d 912, 923-24, 175 P.3d 1082 (2008). The

voluntariness requirement does not mandate that the trial court "'be convinced beyond a reasonable doubt that [the] defendant is . . . guilty.'" *State v. Bao Sheng Zhao*, 157 Wn.2d 188, 198, 137 P.3d 835 (2006) (quoting *State v. Newton*, 87 Wn.2d 363, 370, 552 P.2d 682 (1976)). The court must only find that sufficient evidence from any reliable source in the record at the time of the plea could reasonably support a guilty verdict. *Id*.; *see also Codiga*, 162 Wn.2d at 924. To assess factual basis, the trial court may use the prosecutor's declaration of probable cause if it is part of the record and was adopted by the defendant. *Codiga*, 162 Wn.2d at 924. The trial court may also make reasonable inferences based on the facts and circumstances. *State v. Easterlin*, 159 Wn.2d 203, 210, 149 P.3d 366 (2006).

CrR 4.2(d)'s voluntariness requirement also requires the trial court to determine that the defendant understood "the nature of the charge and the consequences of the plea." This means the "defendant must understand the facts of [their] case in relation to the elements of the crime charged, protecting the defendant from pleading guilty without understanding that [their] conduct falls within the charged crime." *Codiga*, 162 Wn.2d at 924. But the trial court need not "orally question the defendant" to assess understanding and can look to the plea documents. *Id.* at 923 (emphasis omitted).

We review the trial court's findings of fact for substantial evidence and its conclusions of law de novo. *State v. Schwab*, 141 Wn. App. 85, 91, 167 P.3d 1225 (2007). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the finding is true. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). The defendant has the burden of establishing that the trial court's findings of fact supporting the denial were not supported by substantial evidence. *A.N.J.*, 168 Wn.2d at 107. We defer to the trier of fact on matters of credibility. *Bao Sheng Zhao*, 157 Wn.2d at 202.

B. Knowing, Intelligent, and Voluntary Plea

Jackson argues that her guilty plea was not knowing, intelligent, and voluntary because, she says, none of the documents in the record at the time of the April 14, 2016 change of plea hearing established that she "acted with premeditated intent to commit first degree murder," either as "a principal or an accomplice." Br. of Appellant at 32. Jackson also argues that she did not understand how her alleged conduct satisfied the elements of first degree premeditated murder. She argues that her plea was involuntary, thereby establishing per se manifest injustice. We disagree.

1. Factual basis

We review whether the documents in the record at the time of the change of plea hearing contained sufficient evidence, or reasonable inferences that could be drawn from that evidence, such that a trier of fact could convict Jackson of first degree premeditated murder as a principal or accomplice. *Bao Sheng Zhao*, 157 Wn.2d at 198; *Codiga*, 162 Wn.2d at 924; *Easterlin*, 159 Wn.2d at 210.

a. First degree premeditated murder

Under RCW 9A.32.030(1)(a), a defendant may be convicted of first degree premeditated murder if the State proves beyond a reasonable doubt that the defendant acted "[w]ith . . . premeditated intent to cause the death of another person" and "cause[d] the death of [that] person." Under RCW 9A.32.020(1), "premeditation . . . must involve more than a moment in point of time." Premeditation requires "'the deliberate formation of and reflection upon the intent to take a human life' and involves 'the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.'" *State v. Pirtle*, 127 Wn.2d 628, 644, 904 P.2d 245 (1995) (quoting *State v. Gentry*, 125 Wn.2d 570, 597-98, 888 P.2d 1105 (1995)). "Premeditation

may be proved by circumstantial evidence" so long as the inferences drawn are reasonable and the evidence supporting premeditation is substantial. *Id.* at 643.

Four nonexclusive factors are "particularly relevant" evidence of premeditation. *Id.* at 644. These factors are "motive, procurement of a weapon, stealth, and the method of killing." *Id.* However, a "wide range" of other facts can also be relevant and can "support an inference of premeditation." *State v. Aguilar*, 176 Wn. App. 264, 273, 308 P.3d 778 (2013). Evidence of a "lengthy and excessive attack" indicates that the defendant had time to deliberate and consider their "actions for the requisite time." *Id.* at 274. And in *State v. Sherrill*, evidence of "multiple attacks over several hours . . . combined with multiple wounds and sustained violence . . . support[ed] an inference of deliberation and reflection." 145 Wn. App. 473, 486, 186 P.3d 1157 (2008). Likewise, in *State v. Notaro*, "procuring a weapon to facilitate the killing . . . and inflicting multiple wounds or shots" was evidence of premeditation. 161 Wn. App. 654, 672, 255 P.3d 774 (2011).

In contrast, in *State v. Hummel*, Division One reversed the defendant's conviction for first degree murder, holding that the evidence of premeditation was insufficient. 196 Wn. App. 329, 359, 383 P.3d 592 (2016). Hummel was accused of killing his wife, who had disappeared. Hummel continued to collect her retirement benefits, but later claimed she had committed suicide. *Id.* at 332-36. On appeal, Division One held, "the State presented no evidence of motive, planning, the circumstances or the method and manner of death, or the deliberate formation of the intent to kill" before the victim's death. *Id.* at 358. The court rejected the State's argument that premeditation could be inferred based on Hummel's conduct after his wife's death. In that case, the court considered "evidence that Hummel disposed of [his wife's] body, concealed her death, and

fraudulently obtained her disability checks after she died" as "evidence of guilt," but the court concluded that these things did "not prove premeditation." *Id.* at 356-57.

b. Accomplice liability

Under RCW 9A.08.020, a person may be guilty of first degree murder under an accomplice liability theory even if their conduct does not actually cause the death of another person. Under RCW 9A.08.020(3)(a)(i)-(ii), an accomplice is a person who "[s]olicits, commands, encourages, or requests [another] person to commit [the crime]" or who "[a]ids or agrees to aid [another] person in planning or committing" the crime, while knowing "that [their conduct] will promote or facilitate the commission of the crime." *See also* WPIC 10.51.[5]

Under RCW 9A.08.020, a person cannot be liable as an accomplice based solely on a "failure . . . to come to the aid of another." *State v. Jackson*, 137 Wn.2d 712, 722, 976 P.2d 1229 (1999). "Accomplice liability requires an overt act." *State v. McCreven*, 170 Wn. App. 444, 477, 284 P.3d 793 (2012). And mere presence is also not sufficient for accomplice liability. *Id*. at 477-78. However, "'[a]id can be accomplished by being present and ready to assist.'" *State v. Truong*, 168 Wn. App. 529, 540, 277 P.3d 74 (2012) (quoting *State v. Collins*, 76 Wn. App. 496, 501-02, 886 P.2d 243 (1995)).

The State is not required to prove "'that the principal and accomplice share[d] the same mental state.'" *State v. Dreewes*, 192 Wn.2d 812, 824-25, 432 P.3d 795 (2019) (internal quotation marks omitted) (quoting *State v. Guloy*, 104 Wn.2d 412, 431, 705 P.2d 1182 (1985)). The State is

[5] The pattern jury instruction defining "accomplice liability" provides: "The word 'aid' means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice." 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL (WPIC) 10.51 (4th ed. 2016).

only required to prove "that the accomplice had general knowledge of [the] coparticipant's substantive crime, not that the accomplice had specific knowledge of the elements of the coparticipant's crime." *Truong*, 168 Wn. App. at 540. A trier of fact may split the elements of a crime between coparticipants so long as at least one participant had the required mental state and one participant, but not necessarily the same one, carried out the criminal act. *Dreewes*, 192 Wn.2d at 824. An accomplice to first degree murder need only know they are "facilitating a homicide." *In re Pers. Restraint of Sarausad*, 109 Wn. App. 824, 836, 39 P.3d 308 (2001). The accomplice "need not have known that the principal had the kind of culpability required for any particular degree of murder." *Id*.

In sum, to conclude that a factual basis supported Jackson's guilty plea to first degree premeditated murder, we must be satisfied that a trier of fact could have reasonably concluded, based on the documents the trial court relied on, that (1) Jackson aided or facilitated the killing; (2) Jackson knew that she was facilitating murder of any degree; (3) one of the participants, but not necessarily Jackson, had premeditated intent to kill Isidor-Mendoza; and (4) one of the participants, but not necessarily Jackson, committed the actual killing of Isidor-Mendoza. *See id.*

c. Whether a factual basis supported Jackson's guilty plea

In assessing whether a factual basis existed at the plea hearing, the trial court relied on the probable cause declaration, the original and amended information, the guilty plea statement, and the proposed plea agreement. Based on these documents, the trial court found a factual basis sufficient to support a conviction for first degree premeditated murder or second degree manslaughter.

We agree with Jackson that no rational trier of fact could have concluded, based on the record at the time of her guilty plea, that she had premeditated intent to kill Isidor-Mendoza as a

principal. The probable cause declaration did not support a reasonable inference that Jackson deliberately formed a plan to kill Isidor-Mendoza and killed him herself. Evidence that Jackson concealed and helped dispose of Isidor-Mendoza's body *after* his death, does not support an inference of premeditation in this case.

We conclude, however, that the evidence was sufficient to support a conviction for first degree premeditated murder as an accomplice. RCW 9A.08.020(2), (3)(a). There is no dispute that Wallace or Daves killed Isidor-Mendoza. And the evidence was sufficient to support an inference that at some point during the attack, Wallace or Daves premeditated Isidor-Mendoza's murder. As in *Aguilar*, *Sherrill*, and *Notaro*, Daves's and Wallace's attack was lengthy and excessive because it involved raping, beating, drowning, and possibly stabbing Isidor-Mendoza. Wallace and Daves had the opportunity to deliberate and reflect on their actions. *See Aguilar*, 176 Wn. App. at 272-274. Wallace and Daves procured means to kill—a bucket filled with water from Jackson's yard and a machete from Jackson's house. *See Pirtle*, 127 Wn.2d at 644. The method of killing was prolonged and violent, involving either drowning due to repeatedly dunking Isidor-Mendoza's head underwater, or a wound inflicted with the machete after the dunking, or both. *See id.* The probable cause declaration also raises a motive—that Isidor-Mendoza had stolen from Jackson.

Moreover, a trier of fact could have inferred from all of the information in the probable cause declaration that Jackson knew Wallace and Daves were preparing to kill Isidor-Mendoza and she aided them. Jackson provided access to the means to kill Isidor-Mendoza and a venue for the killing. She knowingly permitted Daves to obtain a machete from her house and the bucket in which Isidor-Mendoza was likely drowned. *See Jackson*, 137 Wn.2d at 722. A trier of fact could reasonably have concluded that she did not merely fail to act, but was present and ready to render aid, and that she did render aid by providing the supplies and the venue they needed to complete

the murder. Indeed, Mahony testified that she encouraged Jackson to agree to the plea bargain because although the evidence of premeditated murder was thin, the "ready to assist" language in the accomplice liability pattern jury instruction convinced her that going to trial created a real risk that a trier of fact would find Jackson guilty. *See* WPIC 10.51.

A rational trier of fact could also have inferred that Jackson had motive to solicit or at least knowingly promote Isidor-Mendoza's death. This inference is supported by Jackson's daughter's statement that Isidor-Mendoza stole from Jackson and is further reinforced by Wallace's report that Jackson said Isidor-Mendoza had "f***ed up." CP at 3. Moreover, Jackson's actions after Isidor-Mendoza's death—concealing his body and disposing of it—were evidence of guilt even if concealment did not prove premeditation in this case.

The trial court did not err by finding that a factual basis supported Jackson's guilty plea. We hold that Jackson has not demonstrated that her guilty plea was involuntary on the grounds that it lacked a factual basis.

2. Jackson's understanding of the relationship between facts and law

Jackson argues that her plea was not knowing, intelligent, and voluntary because the record did not affirmatively demonstrate that she understood how her actions and mental state constituted a crime. She also asserts that the plea process was rushed and she felt pressured into "acquiesc[ing] to her attorney's advice and then to the trial court's leading questions." Br. of Appellant at 45. We disagree.

Jackson relies on *A.N.J.* and *State v. S.M.*, 100 Wn. App. 401, 996 P.2d 1111 (2000). In *A.N.J.*, the Washington Supreme Court held that a 12-year-old boy accused of first degree child molestation was entitled to withdraw his guilty plea because he did not understand that "mere contact with another [as opposed to contact for sexual gratification] was insufficient to constitute

the crime." 168 Wn.2d at 120. Similarly, in *S.M.*, another case involving a juvenile charged with a sex offense, we held that the defendant's plea statement did not show that he understood the meaning of "sexual intercourse," and his one-word "yes" to the judge's question about whether he knew the meaning of the term failed to establish that S.M. understood the nature of the charges. 100 Wn. App. at 414-15. In both *A.N.J.* and *S.M.*, the defendants received ineffective assistance of counsel and had almost no contact with their respective attorneys before pleading guilty. *A.N.J.*, 168 Wn.2d at 120; *S.M.*, 100 Wn. App. at 411-12.

Here, by the time the State raised the possibility of a plea bargain, Mahony had been preparing the case for trial for about a year and a half, met with Jackson regularly to discuss her case, and had been talking to her for months about a possible offer of proof, plea bargaining, and reduced charges. Some of these meetings lasted hours. Mahony "had at least one conversation about" the probable cause declaration, and brought it with her each time she brought Jackson discovery. VRP (Aug. 25, 2017) at 60. Mahony also recalled that at some point in her months-long representation of Jackson prior to her guilty plea, she went over the elements of the charges in the information and brought "the jury instructions from the book about accomplice liability." VRP (July 7, 2017) at 29.

Jackson's reliance on *A.N.J.* and *S.M.* is unpersuasive. Both of those cases involved a juvenile pleading guilty to a sex offense, where it was unclear that the defendant understood the charges. In contrast to both *A.N.J.* and *S.M.*, Mahony communicated extensively with Jackson about her charges and her plea, and she explained in depth how Jackson's conduct could have exposed her to a guilty verdict for first degree premeditated murder as an accomplice.

Nor did Jackson's experts' testimony conclusively establish that she failed to understand how her conduct related to the charges. Brown testified that Jackson could not have understood all

aspects of her plea because she did not understand abstract concepts. But Brown also opined that Jackson understood the charges against her, the consequences of pleading guilty, and that less time attached to a second degree manslaughter conviction than to a first degree premeditated murder conviction. Jackson's other expert, Stanfill, testified that Jackson was competent to plead guilty, despite a mild intellectual disability. Although Stanfill thought Jackson did not "fully understand the intricacies" of the charges, the facts, and the plea, VRP (Mar. 28, 2018) at 65, he concluded Jackson had "basic . . . floor capacity" and competency to enter a voluntary, constitutionally valid guilty plea, VRP (Mar. 28, 2018) at 16-17.

Here, Jackson affirmed her understanding of the nature of the charges against her on the record. The trial court had no further obligation to orally question Jackson on the degree of her understanding of the nature of the charges. *Codiga*, 162 Wn.2d at 923. The presumption of voluntariness was "well[-]nigh irrefutable." *See Knotek*, 136 Wn. App. at 428-29. The evidence does not show that Jackson failed to understand the nature of the charges and she has not overcome the presumption that her plea was voluntary.

C. Ineffective Assistance of Counsel

Jackson also argues that her trial counsel was ineffective because she failed to investigate whether Jackson had mental health issues or cognitive impairments. Jackson asserts that this is another reason why she should have been allowed to withdraw her plea. We disagree.

1. Ineffective assistance of counsel standards

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). Jackson must show that her counsel's performance was deficient and that

deficient performance prejudiced her. *Grier*, 171 Wn.2d at 32. A failure to prove either prong ends our inquiry. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996). To establish deficient performance, Jackson would need to show that investigating her mental health would have produced new information that would have been useful to her defense. *See In re Pers. Restraint of Davis*, 152 Wn.2d 647, 739, 101 P.3d 1 (2004).

Jackson relies on *State v. Fedoruk*, 184 Wn. App. 866, 871, 339 P.3d 233 (2014), where the defendant's history included a traumatic head injury, a diagnosis of schizophrenia, two admissions to a psychiatric hospital, and prescriptions for psychotropic and antipsychotic medications. Fedoruk had also previously been charged with criminal offenses and found not guilty by reason of insanity. *Id.* at 872.

In contrast, the State relies on *In re Pers. Restraint of Elmore*, where the Supreme Court concluded that defense counsel's decision not to have the defendant evaluated by a mental health expert before he pleaded guilty was objectively reasonable. 162 Wn.2d 236, 254, 172 P.3d 335 (2007). The evidence of guilt was overwhelming, Elmore had no plausible defenses, and he "never wavered in his desire to plead guilty." *Id.* Accordingly, defense counsel opted to advise Elmore to plead guilty and then rely on his "remorse and willingness to take responsibility" at the sentencing phase. *Id.* Attempting to "diminish Elmore's culpability through presentation of mental health experts" at a guilt trial would have undermined that reasonable strategy. *Id.*

2. Whether Jackson's trial counsel was ineffective

Jackson argues that her experts' testimony established that her trial counsel's performance was deficient. Brown testified that Mahony failed to ask Jackson "questions that would elicit a clear, accurate understanding of what Ms. Jackson understood in terms of the legal processes that

were going on." VRP (June 11, 2018) at 324. Stanfill testified that Jackson's trial counsel misunderstood the level of Jackson's comprehension.

Expert testimony, however, is not dispositive of whether Mahony's representation was constitutionally deficient. We conduct an objective inquiry into deficient performance that seeks to "eliminate the distorting effects of hindsight." *Strickland*, 466 U.S. at 689. We assess counsel's performance "by examining the circumstances *at the time of the act*" and in light of all of the circumstances. *In re Pers. Restraint of Cross*, 180 Wn.2d 664, 694, 327 P.3d 660 (2014) (emphasis added), *abrogated on other grounds by State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018); *State v. Weaville*, 162 Wn. App. 801, 823, 256 P.3d 426 (2011). The key question in the objective inquiry is whether there exists some "conceivable legitimate tactic explaining counsel's performance." *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

In *Fedoruk*, the defendant had a preexisting diagnosis of schizophrenia, had previously been found not guilty by reason of insanity, and had been admitted to psychiatric institutions.[6] 184 Wn. App. at 871-72. Jackson did not have such an extensive history of legal trouble arising from mental health issues. Mahony considered every possible defense, including a mental health defense, before deciding that, based on the facts of the case, a mental health defense would not likely be successful if Jackson went to trial. "If reasonable under the circumstances, trial counsel need not investigate lines of defense that [they have] chosen not to employ." *Riofta v. State*, 134 Wn. App. 669, 693, 695, 142 P.3d 193 (2006), *aff'd*, 166 Wn.2d 358, 209 P.3d 467 (2009). Mahony's decision not to pursue a mental health defense before the plea was a conceivably legitimate tactic. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002).

[6] Fedoruk's lawyers raised his mental health as a defense, but they did so just before trial, and coupled with the trial court's decision not to grant a continuance, this resulted in a finding of ineffective assistance of counsel. *Fedoruk*, 184 Wn. App. at 876-77, 883.

At the plea withdrawal hearing, Mahony testified that, in hindsight, it was possible she should have explored Jackson's mental health issues more. But Mahony also said she and Jackson were able to communicate meaningfully, Jackson appeared to understand what Mahony said to her, and Mahony understood Jackson. Stanfill and Brown also testified that a non-mental health professional may not have detected Jackson's impairments. Stanfill testified that he could not say whether it was more probable than not that Jackson's posttraumatic stress disorder affected her ability to communicate with Mahony. And as in *Elmore*, once the plea had been offered, it was reasonable for Mahoney to recommend that Jackson quickly accept it because it offered the prospect of a ten-fold sentence reduction.

Mahony's performance did not fall below an objective standard of reasonableness when she chose not to investigate Jackson's mental health pre-plea. Because we hold that Mahony's performance was not deficient, we do not consider prejudice. *Hendrickson*, 129 Wn.2d at 78. Jackson is not entitled to withdraw her guilty plea due to ineffective assistance of counsel.

II. EXCLUSION OF DEFENSE EXPERT FROM COURTROOM DURING PLEA WITHDRAWAL HEARING

Jackson argues that the trial court abused its discretion and violated Jackson's Sixth Amendment right to present a defense by excluding Brown from the courtroom during Jackson's testimony at the plea withdrawal hearing. Jackson argues that ER 615 exempts experts from witness exclusion orders when reasonably necessary to a party's case. Jackson contends that ER 615 must be interpreted in light of ER 703, which permits an expert witness to testify to an opinion informed by facts or data "'perceived . . . at . . . the hearing.'" Br. of Appellant at 56 (emphasis omitted) (quoting ER 703). Jackson claims that excluding Brown from the courtroom violated her right to present a complete defense because Brown was not able to testify as effectively and credibly as she would have been had she observed Jackson's live testimony. We disagree.

Defendants have a constitutional right to present a defense in criminal prosecutions. U.S. CONST. amends. V, VI, XIV; WASH. CONST. art. I, §§ 3, 22. Jackson does not provide any authority for the proposition that the constitutional right to present a defense extends to proceedings other than trial, like a hearing on a motion to withdraw a guilty plea. Nor does Jackson present authority to establish that the right protects a defendant's ability to develop evidence, rather than to present evidence.

Moreover, even if the constitutional right to present a defense were to apply, the analysis requires us to evaluate harmlessness and any error was harmless here. *See State v. Arndt*, 194 Wn.2d 784, 797-98, 453 P.3d 696 (2019). Brown herself testified that not seeing Jackson's live testimony created only "a small deficit" in her ability to articulate her opinion, because "test results are really what matter in informing any of us what she is capable of in her mind," and Jackson received extensive psychological testing that Brown conducted and reviewed. VRP (May 21, 2018) at 135; VRP (June 11, 2018) at 351. Brown also testified that the information she would have gotten from watching Jackson testify would have been "superficial." VRP (May 21, 2018) at 137. Brown was able to review transcripts of Jackson's past testimony and thoroughly articulated her opinion that Jackson had mental health issues and cognitive impairments that impacted her ability to process complicated information and answer questions. Brown further testified that Jackson was suggestible and likely to acquiesce to authority figures. Thus, Jackson is unable to show prejudice resulting from any error.

Jackson has not shown that a constitutional right to present a defense applies in these circumstances but, even if it did, excluding Brown from the courtroom during Jackson's testimony was harmless.

III. STATEMENT OF ADDITIONAL GROUNDS

Jackson argues that her trial counsel was biased against her. She asserts that Mahony "acted as if she didn't care what happened to" her. SAG at 1. Jackson, who is Black, argues that Mahony made a racially charged comment by asking, "[W]hy do you people always get in [trouble] with the law[?]" SAG at 1. Jackson further asserts that the judge would not let her fire Mahony. Jackson contends that Mahony failed to give her discovery for the first two and a half years of her case, which was "part of the reason [Mahony] made [her] take the [plea]." SAG at 1.

These arguments rely entirely on evidence and facts not in the current record. While Jackson may raise these issues in a personal restraint petition, we decline to consider them in this direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

CONCLUSION

We affirm the trial court's denial of Jackson's motion to withdraw her guilty plea. Jackson's guilty plea was knowing, intelligent, and voluntary, she received effective assistance of counsel, and the trial court did not err by excluding a witness from the courtroom during Jackson's testimony at the plea withdrawal hearing. We decline to consider Jackson's SAG arguments because they rely on evidence outside of the record.

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 in accordance with RCW 2.06.040, it is so ordered.

Glasgow, J.

We concur:

Lee, C.J.

Cruser, J.

Appendix B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

Filed
Washington State
Court of Appeals
Division Two

November 20, 2020

DIVISION II

STATE OF WASHINGTON, Respondent, v. CRYSTAL SHARE JACKSON, Appellant.	No. 52352-1-II ORDER DENYING MOTION FOR RECONSIDERATION

On October 19, 2020, Appellant filed a motion to reconsider this court's opinion filed October 6, 2020. The court having reviewed the records and files herein, it is

ORDERED that appellant's motion for reconsideration is denied.

PANEL: Jj. Lee, Glasgow, Cruser

FOR THE COURT:

Glasgow, J.

NIELSEN KOCH P.L.L.C.

December 21, 2020 - 4:16 PM

Transmittal Information

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