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Division II
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NO. 51112-6-II

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

STATE OF WASHINGTON,
Respondent,

v.

JACOB LOYD EVELAND,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE DAVID L. EDWARDS, JUDGE

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

1. **The trial court properly excluded irrelevant evidence.**
2. **The trial court property denied the Appellant's proposed involuntary intoxication instruction as he did not meet his burden.**

RESPONDENT'S COUNTER STATEMENT OF THE CASE

The State generally agrees with the procedural and factual statement made by the Appellant. The State supplements the Appellant's recitation with the following.

Statements of Appellant

The Appellant made four audio-taped statements to law enforcement and a video re-enacting his commission of the crime. Exhibits 120, 121, 122, 123, 128. The State introduced the audio recordings and the video at trial. RP 504, 495, 496, 497, 507. While not admitted at trial, the State marked transcripts of the audio recordings. Exhibits 124, 125, 126, 129. For convenience, the State will cite to the transcripts in this recitation.

During the first interview, on June 7, 2016, the Appellant gave a detailed statement of how he murdered the victim, Roy Jones. Exhibit 129 at 1.

Det. Scotty Bach: Okay. Do you know where Roy is?
Jacob Eveland: I think he's gone.
Det. Scotty Bach: Why?
Jacob Eveland: I killed him.
Det. Scotty Bach: Why'd you kill him?
Jacob Eveland: He had wronged me in the past and for some selfish reason, I thought I would make it right.

Exhibit 129 at 10.

Det. Scotty Bach: Okay. What did you do?
Jacob Eveland: I stabbed him and then shot him.
Det. Scotty Bach: Did he fight back at all?
Jacob Eveland: No—yes and no, I guess.

Exhibit 129 at 10-11.

Det. Scotty Bach: Did he see you coming at all?
Jacob Eveland: Roy?
Det. Scotty Bach: Yeah
Jacob Eveland: We were face-to-face.
Det. Scotty Bach: Okay. Like standing or sitting?
Jacob Eveland: He was sitting and I was standing up in front of him, and then he stood up, and I mean we were a foot apart.
Det. Scotty Bach: You already had the knife in your hand or no?
Jacob Eveland: It was in my pocket, yeah.

Det. Scotty Bach: It was in your pocket?
Jacob Eveland: Mm-hmm.
Det. Scotty Bach: What kind of knife was it?
Jacob Eveland: Just a black foldout locking knife.
Det. Scotty Bach: How long was it roughly?
Jacob Eveland: The blade on it was about like that.
Det. Scotty Bach: So he stood up and you had words?
What was said?
Jacob Eveland: You know, at the moment, I don't think I said Anything. I just think I—
Det. Scotty Bach: How many times do you think you stabbed him?
Jacob Eveland: Quite a few times, yeah.
Det. Scotty Bach: And then why'd you shoot him?
Jacob Eveland: To make sure it was done with.
Det. Scotty Bach: Okay. When you shot him, how many times did you shoot him?
Jacob Eveland: Six, seven times.
Det. Scotty Bach: Do you remember where you shot him?
Jacob Eveland: The chest.
Det. Scotty Bach: Okay. Was he already on the ground at that time?
Jacob Eveland: Mm-hmm.
Det. Scotty Bach: Was he still alive?

Jacob Eveland: Yeah, but I think he was bleeding out. He was done.

Det. Scotty Bach: How many times do you think you stabbed him?

Jacob Eveland: Quite a few times. The first time I hit him right in the neck, on the carotid.

Det. Scotty Bach: Oh, and it started to bleed?

Jacob Eveland: Yeah, it was over. I didn't even have to shoot him or anything else. It was over from there out.

Exhibit 129 at 11-13.

The Appellant also confessed to starting the fire at the house. Exhibit 129 at 15, 101-102; Exhibit 125 at 2. He stated he burned the house in order to get rid of evidence. Exhibit 124 at 8.

When asked why he stabbed the victim instead of simply shooting him, the Appellant stated, "I know this sounds sadistic, but I wanted a chance for him to look in my eyes and feel the pain that I felt from him taking everything from me." Exhibit 129 at 100. Eventually, he shot Jones to put him "out of his misery." Exhibit 129 at 100.

The Appellant also detailed efforts he made to dispose of evidence after the murder. The Appellant threw out his bloody clothes and disposed of the knife and gun, although he did give conflicting accounts of how he

accomplished this. Exhibit 129 at 105; Exhibit 124 at 5; Exhibit 125 at 1-2; Exhibit 126 at 1.

The Appellant was asked if used drugs in the previous two weeks, and he responded, “No sir, I’m clean.” Exhibit 129 at 6. He then stated he had “smoked marijuana” and “drank once in the two weeks.” Exhibit 129 at 6. He later said that “[i]n the last two weeks, I’ve had four drinks in two weeks” and that “I mean I’m going to AA, you know, I haven’t been drugging.” Exhibit 129 at 20, 78.

The Appellant also discussed dabbling in cocaine “back in the day” and smoking heroin. Exhibit 129 at 43. However, he claimed that he hadn’t used methamphetamine until “just recently.” Exhibit 129 at 43. When offered a cigarette, the Appellant said cigarettes were his “crutch” because he had “just recently quit everything else.” Exhibit 129 at 54-55. He later reiterated that “I’ve recently quit all my other bad habits...” Exhibit 129 at 66.

The Appellant described Roy Jones as “shoving meth in my face” and stated that even though he had used methamphetamine before, not to the extent that he did with Jones. Exhibit 129 at 93. The Appellant described being “delusional” after his use, but there is no description that this was close in time to the crime. Exhibit 129 at 93.

Defense Witnesses

Ray Eveland

The Appellant's father, Ray Eveland, was called by the defense and testified generally about the Appellant's upbringing and work history.

RP 518-519. There were five questions that were successfully objected to by the State.

Q: So were you aware of any struggles with drug abuse with Jacob?

State: Objection, relevance.

Court: Sustained

RP 520.

Q: Ultimately, Jacob stopped working for you; is that right?

A: Yes.

Q: Why did he stop working for you?

State: Objection, relevance.

Court: Sustained.

RP 520.

Q: Did you observe any strange behavior from Jacob?

State: Objection. Relevance.

Court: Without an appropriate time frame, the objection is sustained.

RP 520-521.

Q: In 2016, are you aware of any strange behavior from Jacob?

A: Yes.

Q: What was that?

A: Well, it's non compliance with what would be normal company rules, as far as time lines, and doing his jobs and his duties. Um, everybody has to excuse me little bit, I wasn't really aware of what some

things do to a person, and I didn't figure it out, I didn't know what was going on.

State: Objection.

Court: Sustained. That last answer will be stricken.

RP 521.

Q: In 2016 did Jacob bring some technical speakers or wires over to your house?

A: Yes, sir.

State: Objection.

Mr. Creekpaum: It's a time frame that goes towards his mental state.

Court: What's the basis of the objection?

State: There is no relevance.

Court: Sustained.

RP 521.

Janet Eveland

The Appellant's step-mother, Janet Eveland, also testified. She was asked about seeing the Appellant in the hospital in March 2016. RP 523. There were four questions that were successfully objected to by the State.

Q: Did you go to the hospital?

A: Yes.

Q: Were you able to see him?

A: When I got there, yes, I did see him.

Q: Why was he there?

State: Objection. Lack of foundation.

Court: Sustained.

RP 523-524.

Q: So, did you see Jacob at the hospital?

A: In the parking lot.
Q: In the parking lot, okay. Did you get to speak to him?
A: Yes.
Q: Was there anything about his behavior that was strange?
State: Objection, relevance.
Court: Sustained.

RP 524.

Q: After you arrived at the hospital, what did you do?
A: I saw the car parked -- his girlfriend's car parked, and they were in the car, and I went over to speak with them, and I spoke with Jacob after I -- he was incoherent.
State: Objection, non-responsive.
Court: Sustained. That last answer will be stricken. Please ask another question.

RP 524.

Q: Was Jacob's behavior on that night different than you know Jacob's behavior to normally be?
State: Objection. Relevance.
Court: Sustained.
Mr. Creekpau: It goes to the theory of the defendant's case.
Court: Sustained.

RP 524-525.

Angela Pesacreta

In reference to a conversation she had with the Appellant on an unspecified date in May 2016, the State successfully objected to two questions based on hearsay.

Q: Did Jacob say that he was using drugs?

State: Objection, hearsay.

Court: Sustained.

Mr. Creekpaum: It -- there is an exception for the defendant's mental state.

Court: Sustained.

RP 527.

Q: Did Jacob explain that he was having any mental issues when you were speaking with him?

State: Objection.

Mr. Creekpaum: There is a hearsay objection for mental state.

Court: Sustained.

RP 527.

Roderick White

Roderick White is the Health Information Services Director for Summit Pacific Medical Center. RP 529. He was called by the defense to testify regarding records of the March 2016 hospitalization of the Appellant. RP 530. The State successfully objected to admission of these records. RP 531.

Officer Jeralyn Berg

Jeralyn Berg is a Port of Seattle Officer who had contact with the Appellant on May 29, 2016. RP 532. The Appellant was contacted for criminal trespass at Sea-Tac Airport. RP 533. The State objected successfully to the following three questions:

Q: Did you observe anything about Mr. Eveland that you considered to be different?

State: Objection. It's a vague question.

Court: Sustained.

RP 533.

Q: How was Mr. Eveland's appearance on May 29th?

A: His clothes were disheveled. He was sleeping in the airport baggage claim.

Q: Is that strange behavior?

State: Objection, relevance.

Court: Sustained.

RP 533-534.

Q: Handing you what's been pre-marked as Exhibit 131, please don't show it to the jury. Is that a photo you took of Mr. Eveland on May 20th of 2016?

A: Yes.

Mr. Creekpau: Move to admit as an exhibit.

State: Objection, the relevance of the photo.

Court: Sustained.

RP 534.

Boe Bishop

Bishop initially testified that he met the Appellant on May 31, 2016, the day of the murder, at American Lake. RP 536. However, he eventually corrected the date of this contact as being May 30, 2016. RP 542-543.

Bishop testified that he let the Appellant on his boat and saw the Appellant smoke marijuana. RP 536-537. Bishop also testified that the

Appellant “made some strange comments” that a “normal person would not make.” RP 537. These statements were described as “talking about moving to California for work, and then...moving to Seattle to live with some girl, and then there was two Jamaican guys that were there with him, and then...he was moving out of the country to Jamaica to live with them...” RP 541-542.

Based upon the timeframe, Bishop’s testimony was stricken as irrelevant. RP 543-544.

Officer Rene Klusman

Rene Klusman is Squaxin Island patrol officer, and she was called to testify about contact she had with the Appellant on May 25, 2016. RP 557-558. The defense attempted to elicit why Officer Klusman wasn’t able to return the Appellant’s identification and statements the Appellant may have made about his mental state. RP 558-559. These answers were excluded by the court. RP 558-559.

Dr. David M. Dixon

The proposed testimony of Dr. David M. Dixon was presented by way of a report dated June 5, 2017 and a supplemental declaration dated August 16, 2017. CP 10-22. The initial report was done “to determine the

client's mental state at the time of the alleged offense and evaluate any possible mental disorder." CP 12.

The Appellant reported no prior mental health history. CP 15. The Appellant also denied a current alcohol problem, stating "that he does not drink and had not drank in years." CP 15. He did report using heroin and meth. CP 15. However, no specific timeframe regarding this drug use was established.

During the assessment, Dr. Dixon found the Appellant to have an average intellectual functioning, an excellent ability to concentrate and maintain attention span, an above average general fund of knowledge, and an intact comprehension. CP 17. Dr. Dixon found "no evidence of thought or perceptual disorder (illusions, auditory, visual or other type of hallucination)." CP 17. He also found "no evidence of thought content disorder..." CP 17-18. The Appellant also demonstrated excellent memory ability and good judgment. CP 18.

In regards to substance abuse, Dr. Dixon was only able to reference things that "suggested" such abuse. CP 20. He opined that the Appellant's Million Clinical Multiaxial Inventory-IV (MCMI-IV) profile "suggests his abuse of prescription medications and illicit drugs." CP 20. The most specific information is the Appellant's statement that "I have

enjoyed using marijuana and have used alcohol excessively after a bad day. I usually need a few drinks to relax. I take drugs and sleeping pills without doctor's orders. I have a drug and alcohol problem, once a week or more I get high or drunk." CP 20.

The Appellant's statement of the crime to Dr. Dixon starts with a description of "smoking meth" and going to the airport. CP 20. This would have been May 29th when he had contact with Officer Berg. RP 532-534.

The Appellant then discusses being told that the methamphetamine he was given was laced with MDMA. CP 21. The Appellant makes no mention of any drug use after being at Sea-Tac Airport on May 29th. He also claims that his "memory is vague" and that he doesn't "remember blacking out." CP 21. However, his statements to law enforcement, as detailed above, were thorough and he made no claim of memory lapse or blackout.

Further, the Appellant makes a telling statement that "**I knew what I was doing**, but didn't know why I was doing it." CP 21.

In his conclusion, Dr. Dixon finds the evidence suggestive that the Appellant "was toxic by his abuse of methamphetamine in the time frame of the alleged incident." CP 22. However, the dates he gives are no closer in time to the crime than May 29th and June 7th. CP 22. This leaves a

significant gap between the observations and the commission of the murder. The time is significant because Dr. Dixon states that the effects of MDMA “can last between three to six hours.” CP 23.

ARGUMENT

1. The trial court properly excluded irrelevant evidence.

Standard of review.

A trial court's relevancy determinations are reviewed for manifest abuse of discretion. *State v. Gregory*, 158 Wash.2d 759, 147 P.3d 1201, corrected (2006). Any error in a trial court's decision regarding the relevance or prejudicial effect of evidence requires reversal only if, within reasonable probabilities, it materially affected the outcome of the trial. *State v. Barry*, 184 Wash.App. 790, 339 P.3d 200 (2014).

Application.

It is a basic evidentiary principle that all relevant evidence is admissible. However, evidence “which is not relevant is not admissible.” ER 402. “Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. ER 401.

In this case, the Appellant complains that the trial court “improperly excluded relevant evidence in support of his defense.” Appellant’s Brief at 10. However, the trial court excluded or struck testimony that was irrelevant and, therefore, not admissible.

Lay Witnesses

None of the proposed lay witnesses saw the Appellant or interacted with him on the day of the crime. Therefore, their proposed evidence is irrelevant pursuant to ER 401 and 402 and was properly excluded.

Dr. Dixon’s report states that the effects of MDMA “...can last between three to six hours...” This is consistent with a WebMD article on methamphetamine which states: When it's smoked or injected, it brings on an immediate and intense euphoric rush that lasts several minutes. Taken other ways, the high comes on more gradually, producing an elevated sense of well-being, increased alertness and activity, and decreased appetite, which lasts up to 12 hours. The effects of meth are often compared to those of cocaine.¹

Given a window of 3-12 hours, observations of the Appellant more than 24 hours prior to the crime are not useful to the jury and does not tend

¹ <https://www.webmd.com/mental-health/addiction/features/meth-101#1> last visited November 24, 2018

to make the existence of any fact of consequence more or less probable.

Therefore, this testimony was properly excluded.

The Appellant asserts that his father and step-mother were not allowed to testify that “they were aware of Eveland’s struggles with drug abuse and they observed Eveland exhibiting strange behavior in the weeks before May 31st.” Appellant’s Brief at 9. However, as detailed above, there was no such evidence offered.

Ray Eveland was asked a very general question about whether or not he was aware of the Appellant’s “struggles with drug abuse.” He was also questioned about why the Appellant stopped working for him and about “strange behavior;” however, there was no time frame put on these questions and no offer of proof was made that would make them close in time to the crime. Finally, Ray Eveland was asked if the Appellant had brought “technical speakers or wires” to his house. Again, no foundation was laid to link this testimony to the time of the crime.

The Appellant offers nothing to support that any of Ray Eveland’s excluded testimony would support a defense of involuntary intoxication on the date of the crime. Nor would this have any tendency to make the existence of any fact that is of consequence to the determination of the

action more probable or less probable as required by ER 401. This evidence was properly excluded by the trial court.

The only proffered testimony of Janet Eveland related to the Appellant's hospital stay in March 2016. The Appellant offers no argument or authority as to how the Appellant's state in March 2016 would have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable as required by ER 401. This evidence was properly excluded by the trial court.

Angela Pescatera had no first-hand knowledge of the Appellant's drug use or mental state in May 2016. Instead, the defense attempted to elicit self-serving hearsay statements from her. This evidence could have been properly offered if the Appellant chose to testify.

The records of the Appellant's March 2016 hospital stay offered through Roderick White were excluded. Again, the Appellant fails to make any compelling argument why these records would have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable as required by ER 401. This evidence was properly excluded by the trial court.

Officer Berg testified that the Appellant was found “disheveled” and “sleeping in the airport baggage claim.” She was precluded from opining whether or not this was “strange behavior.” However, the defense could certainly have made that argument. The court did exclude a photograph taken of the Appellant on May 29th. Again, there is no argument that this photograph would have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable as required by ER 401. This evidence was properly excluded by the trial court.

The Appellant also complains that “...testimony from Boe Bishop who observed Eveland on May 30th at American Lake intoxicated, smoking marijuana and making strange comments that Bishop said a normal person would not make, was stricken.” Appellant’s Brief at 9; RP 535-544. However, Bishop did not see the Appellant use methamphetamine and his observations would not have any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable as required by ER 401. This evidence was properly excluded by the trial court.

Expert Witness

After significant consideration, the trial court excluded the proposed testimony of Dr. Dixon. ER 702 governs admissibility of expert testimony. Expert testimony is admissible if the expert is qualified and relies on generally accepted theories in the scientific community. The expert testimony must be helpful to the trier of fact. *Johnston–Forbes v. Matsunaga*, 181 Wash.2d 346, 352, 333 P.3d 388 (2014); ER 702. “Expert testimony is helpful to the jury if it concerns matters beyond the common knowledge of the average layperson and is not misleading.” *State v. Groth*, 163 Wash.App. 548, 564, 261 P.3d 183 (2011).

A trial court's decision on expert witness testimony will be reviewed for an abuse of discretion. *Johnston–Forbes*, 181 Wash.2d at 352, 333 P.3d 388. A trial court abuses its discretion if its “decision is ‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’ ” *State v. Gentry*, 183 Wash.2d 749, 761, 356 P.3d 714 (2015) (internal quotation marks omitted) (quoting *Wilson v. Horsley*, 137 Wash.2d 500, 505, 974 P.2d 316 (1999)).

In *State v. Morales*, the defendant was charged with Rape of a Child in the First Degree and Child Molestation in the First Degree. Before trial, the State moved in limine to exclude or limit certain expert testimony that Morales intended to introduce at trial. The evidence dealt

with the expert's evaluation of a detective's interview of G.C., the complaining witness. The trial court ruled that the expert's testimony would be allowed, but prohibited the expert, Dr. Yuille, from testifying about the evaluation of this witness's credibility. *State v. Morales*, 196 Wash. App. 106, 110, 383 P.3d 539, 541 (2016), review denied, 187 Wash. 2d 1015, 388 P.3d 483 (2017).

Dr. Yuille testified at the ER 702 hearing about his evaluation of the interview by a detective of the alleged victim. In Yuille's evaluation, he concluded that it was "not possible to assess the credibility of the child's allegation based upon such a poor quality interview. Credibility assessment requires the child's version of the event and [G.C.] was never given an opportunity to provide [G.C.'s] version." *State v. Morales*, 196 Wash. App. 106, 124, 383 P.3d 539, 547 (2016), review denied, 187 Wash. 2d 1015, 388 P.3d 483 (2017).

The trial court ruled that Yuille "...may discuss and testify to his evaluation of the interview of GC and his conclusion about [the detective's] interview technique. He will not be allowed to testify about his conclusion [that] [i]t is not possible to assess the credibility of a child's allegation based upon such a poor-quality interview...**A nonconclusion is not helpful to the trier of fact.** *Morales*, 196 Wash. App. 106, 124–25.

The Court of Appeals held that the trial court's decision was not “ ‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’ ” *Id.* As part of its rationale, the Court cited to *State v. Thomas*, 123 Wash.App. 771 (2004).

In *State v. Thomas*, the Court also concluded that the trial court did not abuse its discretion in excluding expert testimony. In that case, Thomas sought to have Dr. Robin LaDue testify to support her diminished capacity defense to assault. Dr. LaDue concluded that it was “possible” that Thomas blacked out at the time of the alleged assault. The trial court excluded this conclusion, stating that it would not assist the jury. *Morales*, 196 Wash. App. 106, 123–24

On review, the Court of Appeals agreed that the testimony was not helpful to the jury, stating, “[the medical expert] did not express the opinion that Thomas suffers from a mental disorder that impairs her ability to form the intent necessary to commit first degree assault.” The Court further stated “Nor did [the expert] express an opinion as to whether, if Thomas were in a blackout at the time of the crime, the blackout affected Thomas's ability to form the intent to commit assault in the first degree.” Thus, the Court concluded that the trial court did not violate Thomas's right to present a defense. *Id.*

In the case at bar, the Appellant was evaluated by Dr. David Dixon “to determine [his] mental state at the time of the alleged offense and evaluate any possible mental disorder.” CP 10-22. After evaluating the Defendant and relevant records, Dr. Dixon offers that “assessment of diminished capacity is difficult.” He never opines that the Defendant’s intoxication impaired his ability to form intent in the case at bar. Therefore, akin to *Morales* and *Thomas*, his testimony was properly excluded.

2. The trial court properly denied the Appellant’s proposed involuntary intoxication instruction, as he did not meet his burden.

Standard of Review.

Criminal defendants have a constitutional right to present a defense under the Sixth Amendment of the United States Constitution and article I, section 22 of Washington's constitution. *State v. Wade*, 186 Wash.App. 749, 763, 346 P.3d 838, review denied, 184 Wash.2d 1004, 357 P.3d 665 (2015). But “ ‘[t]he accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.’ “ *State v. Lizarraga*, 191 Wash.App. 530, 553, 364 P.3d 810 (2015) (some alteration in original) (quoting *Taylor v.*

Illinois, 484 U.S. 400, 410, 108 S.Ct. 646, 98 L.Ed.2d 798 (1988)), review denied, 185 Wash.2d 1022, 369 P.3d 501 (2016).

Application.

RCW 9A.16.090 provides that:

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his or her intoxication may be taken into consideration in determining such mental state.

A defendant seeking a voluntary intoxication instruction must show (1) the charged offense has a particular mens rea, (2) there is substantial evidence the defendant was drinking and/or using drugs, and (3) there is evidence the drinking or drug use affected the defendant's ability to acquire the required mental state. *State v. Webb*, 162 Wash. App. 195, 209, 252 P.3d 424, 431 (2011).

Obviously the crimes at bar have a specific mens rea that meets (1); however, the Appellant fails to provide any evidence that would support (2) and/or (3) in this case. In this case, there is no evidence that the Appellant was using drugs or drinking on the day of the crime, or at a time that he would have still been under the influence at the time of the crime.

The Appellant asserts that “the lay witnesses would testify that in the weeks leading up to the May 31st, Eveland was perpetually consuming drug[s].” Appellant’s Brief at 7. However, he does not cite to any portion of the record that supports this. In fact, no one saw the Appellant using any drugs leading up to the murder, except Boe Bishop’s observation of the Appellant smoking marijuana on May 30th. The Appellant’s own statements were that he had been clean from methamphetamine and heroin in the days leading up to the murder.

Even if the Appellant could produce evidence that he used methamphetamine on the day in question, evidence of intoxication alone is insufficient to warrant the instruction; instead, there must be “substantial evidence of the effects of the alcohol on the defendant's mind or body.” *Safeco Ins. Co. v. McGrath*, 63 Wash.App. 170, 179, 817 P.2d 861 (1991), *review denied*, 118 Wash.2d 1010, 824 P.2d 490 (1992).

In this case, the Appellant provided several audio recorded interviews and a video re-enactment of the crime. At no time during these did he express any issues with remembering what happened. In fact, he provided an extremely detailed account of what happened before, during, and after the crime. This significantly undercuts a claim that he lacked the capacity to form the requisite intent.

CONCLUSION

The evidence excluded by the trial court was irrelevant to the proposed defense of involuntary intoxication. The Appellant also fails to point to any evidence in the record that would support a claim he was intoxicated on the day of the murder. He certainly fails to show that there was any impairment of his ability to form the requisite intent in this case.

The overwhelming evidence supports the verdicts in this case and the matter should be affirmed in all respects.

DATED this _____ day of November, 2018.

Respectfully Submitted,



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GRAYS HARBOR CO PROS OFC

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