

FILED
Court of Appeals
Division II
State of Washington
7/30/2019 9:32 AM

NO. 52353-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

CRYSTAL JACKSON,

Appellant.

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

The Honorable Stanley Rumbaugh, Judge

BRIEF OF APPELLANT

MARY T. SWIFT
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	2
B. <u>STATEMENT OF THE CASE</u>	2
1. <u>Initial Statements to the Police</u>	4
2. <u>Jackson’s Proffer</u>	7
3. <u>Plea Agreement</u>	12
4. <u>Subsequent Interviews and Trial Testimony</u>	14
5. <u>Allegation of Breach and Evidentiary Hearing</u>	17
6. <u>Defense Experts</u>	20
7. <u>Parties’ Arguments, Court’s Findings, and Sentencing</u>	24
C. <u>ARGUMENT</u>	26
1. JACKSON’S GUILTY PLEA TO PREMEDITATED MURDER WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY WHERE THERE WAS NO FACTUAL BASIS TO SUPPORT THE CHARGE.....	26
a. <u>A guilty plea that was not knowing, intelligent, and voluntary may be withdrawn</u>	26
b. <u>Jackson’s plea to premeditated murder was not knowing, intelligent, and voluntary where it lacked a factual basis.</u>	28
c. <u>The record further demonstrates Jackson did not understand the relationship of her conduct to the elements of premeditated murder</u>	38

TABLE OF CONTENTS (CONT'D)

	Page
2. JACKSON WAS DENIED HER CONSTITUTIONAL RIGHT TO EFFECTIVE REPRESENTATION WHERE HER ATTORNEY FAILED TO CONDUCT ANY INVESTIGATION INTO JACKSON’S MENTAL HEALTH.....	46
3. THE TRIAL COURT ERRED IN PROHIBITING A DEFENSE EXPERT FROM OBSERVING JACKSON’S TESTIMONY TO INFORM HER PROFESSIONAL OPINION.	53
a. <u>The evidence rules exempt experts from witness exclusion orders when reasonably necessary to a party’s case</u>	54
b. <u>The trial court improperly excluded Dr. Brown from the courtroom, contrary to the rules of evidence and Jackson’s right to present a complete defense.</u>	59
c. <u>Excluding Dr. Brown from the courtroom prejudiced Jackson, where it undercut Dr. Brown’s credibility and went to the heart of Jackson’s defense</u>	63
E. <u>CONCLUSION</u>	66

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>In re Det. of Pouncy</u> 168 Wn.2d 382, 229 P.3d 678 (2010).....	57
<u>In re Pers. Restraint of Barr</u> 102 Wn.2d 265, 684 P.2d 712 (1984).....	27, 29
<u>In re Pers. Restraint of Clements</u> 125 Wn. App. 634, 106 P.3d 244 (2005).....	28
<u>In re Pers. Restraint of Davis</u> 152 Wn.2d 647, 101 P.3d 1 (2004).....	50
<u>In re Pers. Restraint of Elmore</u> 162 Wn.2d 236, 172 P.3d 335 (2007).....	49
<u>In re Pers. Restraint of Hews</u> 108 Wn.2d 579, 741 P.2d 983 (1987).....	45
<u>In re Pers. Restraint of Jeffries</u> 110 Wn.2d 326, 752 P.2d 1338 (1988).....	49
<u>In re Pers. Restraint of Keene</u> 95 Wn.2d 203, 622 P.2d 360 (1980).....	37, 38
<u>In re Welfare of Wilson</u> 91 Wn.2d 487, 588 P.2d 1161 (1979).....	36, 37
<u>Lodis v. Corbis Holdings, Inc.</u> 172 Wn. App. 835, 292 P.3d 779 (2013).....	56
<u>State v. A.N.J.</u> 168 Wn.2d 91, 225 P.3d 956 (2010).....	38, 46, 51
<u>State v. Amos</u> 147 Wn. App. 217, 195 P.3d 564 (2008).....	28

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. Atsbeha</u> 142 Wn.2d 904, 16 P.3d 626 (2001).....	51
<u>State v. Bingham</u> 105 Wn.2d 820, 719 P.2d 109 (1986).....	33
<u>State v. Clark</u> 143 Wn.2d 731, 24 P.3d 1006 (2001).....	30
<u>State v. Codiga</u> 162 Wn.2d 912, 175 P.3d 1082 (2008).....	27
<u>State v. Commodore</u> 38 Wn. App. 244, 684 P.2d 1364 (1984)	33
<u>State v. Darden</u> 145 Wn.2d 612, 41 P.3d 1189 (2002);.....	55
<u>State v. DeVincentis</u> 150 Wn.2d 11, 74 P.3d 119 (2003).....	54
<u>State v. Estes</u> 188 Wn.2d 450, 395 P.3d 1045 (2017).....	47
<u>State v. Fedoruk</u> 184 Wn. App. 866, 339 P.3d 233 (2014).....	47
<u>State v. Finch</u> 137 Wn.2d 792, 975 P.2d 967 (1999).....	29
<u>State v. Franklin</u> 180 Wn.2d 371, 325 P.3d 159 (2014).....	63
<u>State v. Gentry</u> 125 Wn.2d 570, 888 P.2d 1105 (1995).....	30
<u>State v. Gibson</u> 47 Wn. App. 309, 734 P.2d 32 (1987).....	30

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. Gregory</u> 158 Wn.2d 759, 147 P.3d 1201 (2006).....	29, 30
<u>State v. Harris</u> 122 Wn. App. 498, 94 P.3d 379 (2004).....	51
<u>State v. Hoffman</u> 116 Wn.2d 51, 804 P.2d 577 (1991).....	29
<u>State v. Hudlow</u> 99 Wn.2d 1, 659 P.2d 514 (1983).....	55
<u>State v. Hummel</u> 196 Wn. App. 329, 83 P.3d 592 (2016).....	29, 30, 31, 34, 39
<u>State v. Jones</u> 168 Wn.2d 713, 230 P.3d 576 (2010).....	55
<u>State v. J-R Distribs., Inc.</u> 82 Wn.2d 584, 512 P.2d 1049 (1973).....	36
<u>State v. Luna</u> 71 Wn. App. 755, 862 P.2d 620 (1993).....	36
<u>State v. Marshall</u> 144 Wn.2d 266, 27 P.3d 192 (2001).....	26
<u>State v. Massey</u> 60 Wn. App. 131, 803 P.2d 340 (1990).....	30
<u>State v. Neal</u> 144 Wn.2d 600, 30 P.3d 1255 (2001).....	54, 63
<u>State v. Nuss</u> 52 Wn. App. 735, 763 P.2d 1249 (1988).....	51
<u>State v. Osborne</u> 102 Wn.2d 87, 684 P.2d 683 (1984).....	38

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. Pirtle</u> 127 Wn.2d 628, 904 P.2d 245 (1995).....	30
<u>State v. R.L.D.</u> 132 Wn. App. 699, 133 P.3d 505 (2006)	27, 28, 32, 37
<u>State v. Rehak</u> 67 Wn. App. 157, 834 P.2d 651 (1992)	30
<u>State v. Roberts</u> 142 Wn.2d 471, 14 P.3d 713 (2000).....	36
<u>State v. Roberts</u> 80 Wn. App. 342, 908 P.2d 892 (1996)	36
<u>State v. S.M.</u> 100 Wn. App. 401, 996 P.2d 1111 (2000)	38, 46
<u>State v. Schapiro</u> 28 Wn. App. 860, 626 P.2d 546 (1981)	54
<u>State v. Shaver</u> 116 Wn. App. 375, 65 P.3d 688 (2003)	47
<u>State v. Sisouvanh</u> 175 Wn.2d 607, 290 P.3d 942 (2012).....	27
<u>State v. Skuza</u> 156 Wn. App. 886, 235 P.3d 842 (2010)	54
<u>State v. Stein</u> 144 Wn.2d 236, 27 P.3d 184 (2001).....	37
<u>State v. Stowe</u> 71 Wn. App. 182, 858 P.2d 267 (1993)	53
<u>State v. Thomas</u> 109 Wn.2d 222, 743 P.2d 816 (1987).....	46, 47, 48

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. Vasquez</u> 178 Wn.2d 1, 309 P.3d 318 (2013).....	30, 34
<u>State v. W.R.</u> 181 Wn.2d 757, 336 P.3d 1134 (2014).....	29
<u>State v. Wakefield</u> 130 Wn.2d 464, 925 P.2d 183 (1996).....	47
<u>State v. Wittenbarger</u> 124 Wn.2d 467, 880 P.2d 517 (1994).....	55
<u>State v. Yarbrough</u> 151 Wn. App. 66, 210 P.3d 1029 (2009).....	47
 <u>FEDERAL CASES</u>	
<u>Chambers v. Mississippi</u> 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973).....	55
<u>Jackson v. Virginia</u> 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).....	28
<u>Mayo v. Tri-Bell Indus., Inc.</u> 787 F.2d 1007 (5th Cir. 1986)	57
<u>McCarthy v. United States</u> 394 U.S. 459, 22 L. Ed. 2d 418, 89 S. Ct. 1166 (1969).....	27
<u>Morvant v. Constr. Aggregates Corp.</u> 570 F.2d 626 (6th Cir. 1978)	56, 58
<u>Rios v. Rocha</u> 299 F.3d 796 (9th Cir. 2002)	50
<u>Rock v. Arkansas</u> 483 U.S. 44, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987).....	55

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>Strickland v. Washington</u> 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).....	46
 <u>OTHER JURISDICTIONS</u>	
<u>State v. Traversie</u> 387 N.W.2d 2 (S.D. 1986)	58, 62
 <u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
11 WASH. PRACTICE: WASH. PATTERN JURY INSTRUCTIONS: CRIMINAL 10.51 (4th ed. 2016) (WPIC).....	36
5A KARL B. TEGLAND, WASH. PRACTICE: EVIDENCE LAW & PRACTICE § 615.2 (5th ed. 2007).....	54, 57
CrR 4.2.....	26, 27, 47
ER 615	1, 2, 54, 56, 57, 59, 62, 65
ER 702	56
ER 703	1, 2, 56, 59, 62
Fed. R. Crim. P. 11, Notes of Advisory Committee on Criminal Rules...	27
Fed. R. Evid. 615	56, 57, 58
Fed. R. Evid. 703	56
MODEL PENAL CODE § 2.06 cmt. 6(b) (1985)).	36
RCW 9A.32.020.....	29
RCW 9A.32.030.....	28, 29
RCW 9A.76.050.....	39
S.D. CODIFIED LAWS § 19-19-615(c).....	58

TABLE OF AUTHORITIES (CONT'D)

	Page
U.S. CONST. amend. VI.....	46
CONST. art. 1, § 22	46

A. ASSIGNMENTS OF ERROR

1a. The trial court erred in denying appellant Crystal Jackson's motion to withdraw her guilty plea to first degree premeditated murder, where the charge lacked a sufficient factual basis.

1b. Jackson's guilty plea to first degree premeditated murder was not knowing, intelligent, and voluntary where she did not understand the law in relation to the facts.

1c. The trial court erred in entering related Findings of Fact (16, 17, 20, 27, 34, 36, 38, 40) and Conclusions of Law (8). CP 254-67.

2a. The trial court erred in denying Jackson's motion to withdraw her guilty plea where her attorney was constitutionally ineffective for failing to conduct any investigation into Jackson's mental health.

2b. The trial court erred in entering related Findings of Fact (27, 28, 34, 36, 38, 40) and Conclusions of Law (7, 8, 9, 10). CP 254-67.

3a. The trial court violated Jackson's constitutional right to present a complete defense when it prohibited a defense expert from observing Jackson's testimony to inform her professional opinion.

3b. The trial court abused its discretion under ER 615 and ER 703 in prohibiting a defense expert from observing Jackson's testimony.

3c. The trial court erred in entering related Findings of Fact (34, 36). CP 261.

Issues Pertaining to Assignments of Error

1. Should Jackson be allowed to withdraw her guilty plea to first degree premeditated murder, where it lacked a sufficient factual basis to support the charge and Jackson did not possess an adequate understanding of the law in relation to the facts, and therefore did not knowingly, intelligently, and voluntarily enter the guilty plea?

2. Should Jackson be allowed to withdraw her guilty plea to first degree premeditated murder, where her trial counsel failed to conduct any investigation into Jackson's mental health, despite being aware Jackson had both current and longstanding mental health issues, depriving Jackson of her constitutional right to effective assistance of counsel?

3. Is reversal of Jackson's conviction and remand for a new evidentiary hearing necessary, where the trial court erroneously prohibited Jackson's expert witness from observing Jackson's testimony to inform her professional opinion, violating ER 615 and ER 703, as well as Jackson's constitutional right to present a complete defense?

B. STATEMENT OF THE CASE

Crystal Jackson is an intellectually disabled 34-year-old mother of five, with an extensive trauma history involving both physical and sexual

abuse. CP 364-65; 13RP 50.¹ She has longstanding mental health issues, going back to at least 14 years old. 9RP 82. She has suffered from post-traumatic stress disorder (PTSD) her entire adult life, exhibiting all its hallmarks, like avoidance, hypervigilance, recurring nightmares, and dissociation. 13RP 42, 48-50. More recently, she has been diagnosed with depression and unspecified schizophrenia spectrum disorder, manifesting in hallucinations and delusions. 9RP 82-84; 13RP 42.

Jackson also suffers from fetal alcohol spectrum disorder (FASD), a disorder associated with prenatal alcohol exposure that causes brain damage. 14RP 109-10, 116-17. Jackson's mother consumed alcohol, crack cocaine, and heroin on a daily basis during her pregnancy. 14RP 112. Consistent with this, Jackson has an IQ (intelligence quotient) of 61, which makes her mildly intellectually disabled. 9RP 79; 14RP 120-23.

Verbal communication is Jackson's relative strength, which can mask her limitations. 9RP 79, 87, 90-91. "In other words, she fools people." 14RP 115. Jackson's reading comprehension, however, is "significantly impaired and an extremely low range." 9RP 79, 87-88. Her ability to understand and mentally process information, especially multiple

¹ This brief refers to the verbatim reports of proceedings as follows: 1RP – April 14, 2016; 2RP – February 24, 2017; 3RP – April 17, 2017; 4RP – June 26, 2017; 5RP – June 27, 2017; 6RP – June 30, 2017; 7RP – July 7, 2017; 8RP – August 25, 2017; 9RP – November 2, 2017; 10RP – November 27, 2017; 11RP – January 19, 2018; 12RP – January 29, 2018; 13RP – March 28, 2018; 14RP – May 21, 2018; 15RP – June 11, 2018; 16RP – June 25, 2018; 17RP – August 3, 2018; 18RP – August 29, 2018.

pieces of information at once, is also “quite severely impacted.” 14RP 115, 124-25, 147-48.

Jackson is also highly suggestible, a common trait among individuals with fetal alcohol syndrome. 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. As such, 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 State extracted Jackson’s guilty plea to first premeditated degree murder and second degree manslaughter, with the agreement that if she testified “truthfully” (as defined by the prosecuting attorney) against her two codefendants, the State 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 2015.² 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 was arrested shortly thereafter and spoke to the police. CP 7. Wallace claimed he went to Jackson's house in the fall of 2014, where she told him she needed his assistance. CP 7. Jackson supposedly showed Wallace large garbage bags outside her house that smelled of decaying human body. CP 7. Jackson did not tell Wallace anything about the body other than the person "fucked up." CP 7. Wallace claimed he helped Jackson dispose of the body behind his former house. CP 7. 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. CP 8. There they found a backpack containing schoolbooks and paperwork with the name "Isidor." CP 8. Evidence of blood was found in the master bathroom bathtub as well as some flooring in the detached garage. CP 8. Garbage bags in Jackson's house matched those in which the body was found. CP 8.

Jackson was arrested. CP 8. Though she initially denied any involvement, she talked to the police once she learned Wallace implicated her. 5RP 124. Her side of the story differed significantly from Wallace's.

² To avoid confusion, Crystal Jackson will be referred to as Jackson, while Wallace Jackson will be referred to as Wallace.

CP 8-10. In November of 2014, she explained, Darrel Daves was living in her detached garage. CP 8. Daves sold methamphetamine and would sometimes let Wallace stay with him. CP 8. One night, a “boy,” Isidor-Mendoza, came over to visit Daves and Wallace. CP 8. When Jackson heard yelling coming the garage, she went to investigate. CP 8. She observed Wallace anally raping Isidor-Mendoza. CP 8.

Jackson went back inside her home. CP 8. Sometime later, she heard the hose turn on, prompting her to investigate again. CP 8. 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, Jim “Devonte” Moore, kept in his room. CP 8; 5RP 43-44. After some time, when Jackson went back out to the garage 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, concerned for their safety. CP 9. When Jackson returned hours later, she saw a large, sealed garbage bags in the garage and no victim. CP 9. 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 sport utility vehicle (SUV). CP 9. Wallace directed Jackson to his former house, where they threw the bags down a ravine. CP 9.

Daves was subsequently arrested. CP 10. He 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.

On February 19, 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 master 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. Blood was also found in Jackson's bathroom, but Isidor-Mendoza was excluded as the source. 4RP 65-66. There was some damage to the bathtub enamel, which also could not be linked to the murder. 4RP 58-59, 67.

Given the inconclusive forensic evidence, Deputy Prosecuting Attorney (DPA) Jared Ausserer realized the State 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 State 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 State 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 “Kel” 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. Jackson had met Isidor-Mendoza only once before, when she picked him at the Emerald Queen Casino for

Wallace.³ CP 338-39. Isidor-Mendoza was running drugs for Daves and Wallace. CP 339-40.

Jackson did not believe Isidor-Mendoza took her money—“I didn’t believe for one moment that the victim took anything.” CP 315. Jackson explained Isidor-Mendoza 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 likewise 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, Moore, 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.

³ In her proffer, Jackson said, “I didn’t know the victim,” but also explained she had met him only once before. CP 314, 338-39. The trial court later criticized Jackson for this purported inconsistency, even though the statements are not necessarily inconsistent. CP 257-58 (Finding of Fact 26). Ultimately, however, this brief has not assigned error to that finding because it is not material to the issues presented on appeal.

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 Moore'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. 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.

The State gathered several pieces of evidence that corroborated Jackson's proffer. Jackson was able to pinpoint November 18, 2014 as the date of the murder based on an unusually high utilities bill she recalled receiving that month, which the State confirmed. 9RP 70-71; 14RP 27-30. She also remembered keeping her children home for three days after the murder, which the State likewise confirmed with school records. 6RP 36-37; 9RP 70-71; 14RP 35-36. Phone records placed Daves at Jackson's house during the relevant time period. 6RP 36-37. The State also had text messages confirming Wallace got Jackson's car detailed after they disposed of the body. 6RP 36-37; 14RP 33.

Mason also gave a recorded statement to police. 5RP 128-29. He admitted he was present—bolstering his credibility—and corroborated much of Jackson's proffer. 5RP 32, 128-29. Mason said he saw a photo on Jackson's phone of a body "twisted" and "weird." CP 626. Mason thought it looked like the body was in a bathtub, but did not recognize it to be Jackson's bathroom. CP 626. However, the interview recording was poor quality, so neither Ausserer nor Mahony listened to it, relying solely

on the detectives' summary. 5RP 131-32; 7RP 73-74. To complicate matters, Mason died in March of 2016.⁴ 4RP 106.

3. Plea Agreement

Based on Jackson's proffer, the State made her an offer, even though, according to Ausserer, "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, and waive speedy sentencing. CP 661-64. She needed to provide "complete and truthful information at all times to the State." CP 661. The offer also required Jackson to "testify truthfully and fully" at her codefendants' trial, and "not hold back any information." CP 662. The prosecutor's "reasonable belief" that Jackson "is not being completely truthful during her testimony will result in a violation of this agreement." CP 662.

In exchange for Jackson's compliance, the State agreed to move to dismiss the first degree murder conviction and proceed to sentencing solely on second degree manslaughter. CP 663. But, if Jackson "fail[ed] to perform any of her promises or obligations truthfully or honestly," she would be sentenced on first degree murder. CP 663. With Jackson's offender score of .5, the standard range for first degree murder is 240 to

⁴ Mason was killed in a completely unrelated event—a convenience store clerk shot Mason as he was fleeing from a shoplifting incident. 5RP 126-27. Mason did not otherwise have a significant criminal history. 5RP 128.

320 months, while the standard range for second degree manslaughter is 21 to 27 months. CP 662.

Mahony reviewed the State'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.⁵ 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

⁵ For example:

THE COURT: If you went to trial on the charges the State filed against you, your lawyer would have the right to cross-examine witnesses, that is to ask questions of any of the witnesses that the State brought in to testify against you.

You would also have the right to have witnesses brought in that might provide favorable testimony for you. They would be brought in at no cost to you. And the Court would make them come, even if they didn't want to.

Do you understand you give that right up when you plead guilty?

MS. JACKSON: Yes.

1RP 10.

Jackson's plea as voluntary, "made with a full understanding of the direct and the collateral consequences of the plea." 1RP 13.

4. Subsequent Interviews and Trial Testimony

Daves's and Wallace's defense attorneys interviewed Jackson on July 18, 2016. CP 363. Jackson's statement was consistent with her April proffer, reiterating, "I really didn't tell them to do anything to the victim. They just did it on their own. All that what they did, I didn't say do that. They did that on their own." CP 399.

The State interviewed Jackson's brother Moore on July 29, revealing some inconsistencies with Jackson's proffer. 4RP 36-38. The State spoke with Jackson again on August 3, attempting to reconcile the differences. 4RP 40-41. Jackson acknowledged she had not been completely truthful in her proffer, wanting to minimize her role in the murder and worried the State would not offer her a deal. 4RP 41.

A second defense interview was held on September 14, 2016. 4RP 42; CP 428. Jackson admitted she was supplying the drugs to Daves that Isidor-Mendoza was running. CP 430. Isidor-Mendoza had been to her house three times total—once when Jackson picked him up from the Emerald Queen Casino; once when she was unaware he was visiting Daves; and then the night of the murder. CP 431-35, 491-92. On the night of the murder, Jackson explained, there was an altercation between

Isidor-Mendoza, Daves, and Mason about the missing money. CP 435-36.

Isidor-Mendoza insisted he did not take the money. CP 436.

Jackson's remaining account of the murder stayed the same. CP 436-37, 476-80. Jackson admitted, however, that she did not take her children to Pizza Hut, but stayed at her house during the murder, getting high on methamphetamine. CP 439-40. Jackson later explained she lied about this point because she did not want to be seen as a bad mother. 6RP 39-42. Jackson also acknowledged she bought cleaning supplies at Daves's command that night. CP 446-48, 456-62.

With this new information, Mahony became concerned about a breach of the plea agreement. 5RP 149-50; 6RP 37. But Ausserer still planned to give Jackson the benefit of the plea deal if she testified truthfully against her codefendants, given the corroborating cellphone records. 5RP 151-53, 158-59; 6RP 36-38; 7RP 83.

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. Jackson admitted she previously tried to minimize

her involvement in the murder. CP 605-14. Trial recessed for the day, at the end of Jackson's direct-examination. CP 621-23; 4RP 150.

The next morning, November 2, 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. 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. Jackson explained she previously told Mahony about Dixon, but Mahony told her to focus on other potential witnesses because Dixon was deceased by that time. 4RP 107; 8RP 20-23.

Concerned about Jackson's credibility on cross-examination, the State asked the trial court to strike Jackson's testimony or, alternatively, declare a mistrial. 5RP 179-80; 6RP 62-63; CP 304-05. 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. As of June 2017, Daves's case had not yet resolved. 4RP 188, 192.

5. Allegation of Breach and Evidentiary Hearing

After the mistrial, the State moved for the court to find Jackson breached the plea agreement and enforce its terms (i.e., sentence her on first degree murder). CP 307-09. The State asserted Jackson's failure to previously mention Dixon was a material breach. CP 307-08. The State further argued Jackson's admission to showing Mason the bathtub photo was material, because it was inconsistent with Jackson's version of events. CP 308-09. Specifically, there was no bathtub in the detached garage where Jackson said the murder and dismembering occurred. CP 308-09.

New counsel, Walter Peale, was appointed for Jackson. 2RP 1-2. In response to the State's motion, Jackson also 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 contended 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. The State presented testimony from one of the detectives who took Jackson's proffer, counsel for both Daves and Wallace, and Jackson's little brother, Moore. 4RP 23-24 (Det. Stuart Hoisington), 129-30 (Daves's attorney

Brett Purtzer), 167-68 (Wallace's attorney Sean Wickens); 5RP 43-44 (Moore). Daves's and Wallace's attorneys agreed the new information from Jackson was significant to their respective cases. 4RP 151, 173-74.

Moore, only 16 at the time of the murder, testified Isidor-Mendoza was frequently at Jackson's house in the two months leading up to the murder. 5RP 47-48, 72. Moore claimed Jackson referred to Isidor-Mendoza as her "little homie." 5RP 48. Moore said Jackson, Isidor-Mendoza, Wallace, and Daves were all in Jackson's room on Halloween 2014. 5RP 51-54. Moore claimed this was the last time he saw Isidor-Mendoza. 5RP 54-55. But Moore also testified, on November 18, Daves entered his room to retrieve the machete. 5RP 56. Moore admitted his memory was fuzzy, corroborated by his conflicting testimony, along with his marijuana usage. 5RP 64, 72.

DPA Ausserer,⁶ Jackson's prior counsel Mahony (after Jackson waived her attorney-client privilege), and Jackson were called by the defense. 5RP 88-89 (Ausserer); 6RP 65-68 (Mahony); 13RP 97 (Jackson). During her representation, Mahony acknowledged she was aware Jackson had mental health issues. 7RP 24-28. Mahony also knew Jackson was on suicide watch at the jail. 7RP 28. Mahony nevertheless rejected a mental health defense, without retaining an expert or conducting any

⁶ Ausserer represented the State at the evidentiary hearing but was cross-examined by a different prosecutor. 6RP 60-61.

investigation. 7RP 24-29. Mahony did not feel concerned about Jackson's cognition or comprehension; "She seemed to follow our conversation well enough." 7RP 30.

Jackson provided only brief testimony on direct-examination. 13RP 97-98. Jackson explained she was not trying to be untruthful at trial. 13RP 98. Ausserer—the same prosecutor who negotiated Jackson's plea and questioned Jackson at her codefendants' trial—then began an extensive cross-examination of Jackson. 13RP 98-157; 14RP 8-103.

Jackson acknowledged she previously minimized her involvement in the murder, explaining, "It's not that I chose not to [tell the truth]. It's just that I didn't really know what to do in the situation, and I was scared." 13RP 105, 114-15, 154-56 (taking her kids to Pizza Hut); 14RP 9-10 (buying cleaning supplies), 11-13 (drug dealing and missing \$5,000). Jackson insisted Isidor-Mendoza had been over to her house only three times, consistent with her previous statements but contrary to Moore's claim. 13RP 150-51; 14RP 52-53.

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.

6. Defense Experts

Several experts interviewed Jackson and reached conclusions about her intellectual deficits and mental health: Dr. Michael Stanfill (clinical psychologist and forensic evaluator at the Special Commitment Center), Dr. Ken Jones (medical doctor), Dr. Paul Connor (clinical psychologist specializing in neuropsychology and prenatal alcohol exposure), and Dr. Natalie Novick Brown (clinical and forensic psychologist specializing in fetal alcohol spectrum disorder). 9RP 74-75; 14RP 107-08; Ex. 17 (Dr. Stanfill's evaluation); Ex. 21 (Dr. Brown's evaluation). Dr. Stanfill and Dr. Brown testified at the hearing.

Dr. Stanfill diagnosed Jackson with PTSD, depression, substance abuse, and unspecified schizophrenia spectrum disorder. 9RP 82-84. He did not see any signs of malingering. 9RP 84-85. Dr. Stanfill also evaluated Jackson's cognitive functioning and diagnosed her with an intellectual disability (total IQ of 61). 9RP 77-78; Ex. 17, at 10. While her verbal abilities are a relative strength, they are still "low and impaired." 9RP 79. Jackson's processing speed and working memory are both in the "extremely low" range. Ex. 17, at 10-11. She "has difficulty fully understanding complex information," particularly "if questions are asked in multiple parts" or "asked slightly differently than they were asked

before.” 9RP 80. Jackson will “very easily” misunderstand a question or miss the full context. 9RP 80.

Dr. Stanfill expressed particular concern about Jackson’s “significantly impaired” reading comprehension. 9RP 79. For instance, Dr. Stanfill gave Jackson an informed consent form to read, which she looked at for two minutes, signed, and then handed back, stating she did not have any questions. 9RP 87-88; Ex. 17, at 8. When Dr. Jackson asked Jackson about her understanding of it, she had “a really difficult time describing a single sentence.” 9RP 88. She could barely pronounce several of the words and inserted words that were not there. 9RP 88.

Given her “significant cognitive limitations across multiple domains of functioning,” Dr. Stanfill concluded Jackson had only “a very basic understanding of the plea agreement.” Ex. 17, at 11; 9RP 80; 13RP 65-66. It would take “a significant amount of time” for Jackson to fully understand the consequences of her guilty plea. 9RP 90. He elaborated:

My biggest concern with the colloquy that occurred is she was asked a series of mostly yes-and-no questions. They say, “Do you understand this?” “Yes.” “Do you understand this?” “Yes.” It’s that way all the way through.

That doesn’t necessarily reflect her actual understanding. I would suspect it would take a significant amount of time back and forth saying, “Now I have just told you this. Explain to me what I just said,” and so there is kind of a back and forth on full understanding. It would take a while.

9RP 90. Dr. Stanfill concluded Jackson “met the basic requirements of competency,” given “her ability to know what the plea is and work with her attorney in working through that plea.” 9RP 80; 14RP 16-17. But, Dr. Stanfill emphasized, “she cannot fully understand the intricacies of the arrangement because of her cognitive limitations.” 13RP 65.

Dr. Brown reviewed all testing done and diagnosed Jackson with fetal alcohol spectrum disorder, consistent with Jackson’s “pervasive cognitive and adaptive dysfunction.” 14RP 111-17, 120-23; Ex. 21, at 27. Dr. Brown said such individuals often “try to conceal those impairments and pass themselves off as unimpaired.” 14RP 130. For instance, “[t]hey mimic other people” and “become adept at reading facial expressions to determine when they should smile, when they should be serious, when they should agree and not agree, and so forth.” 14RP 130. For the same reason, they also tend to be agreeable. 14RP 130-31.

Dr. Brown believed Jackson was no exception. 15RP 301. For this reason, Dr. Brown wanted to observe Jackson’s cross-examination to inform her professional opinion of Jackson’s limitations. 14RP 5-7. Dr. Brown emphasized the subtle nuances and nature of the questioning (tone, forcefulness, etc.), not just the questions themselves, were relevant to her analysis. 14RP 135-36, 148. Yet, pursuant to the State’s request, the

court excluded Dr. Brown from the courtroom during Jackson's testimony, believing it would be improper "witness bolstering." 14RP 7.

Consistent with Dr. Stanfill, Dr. Brown concluded Jackson "is so suggestible she has a tendency to accept and adopt what she is being told, what she sees others around her believing and conveying to her. And she will accept that as the truth." 14RP 173. Jackson is also "highly inclined to acquiesce to leading questions," particularly from an authority figure. 14RP 179, 226-27. As such, Jackson's answers such as "yes" and "I agree," like in the plea colloquy, would be unreliable. 14RP 180, 183-84. The only way to ensure Jackson's understanding 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.

Based on her evaluation, Dr. Brown concluded "Ms. Mahoney did not ask Ms. Jackson questions that would elicit a clear, accurate understanding of what Ms. Jackson understood in terms of the legal processes that were going on." 15RP 324. Dr. Brown further opined Jackson's "mental defect substantially reduced her ability to understand the terms of her plea agreement as well as follow questions and provide complete and truthful responses during her testimony." Ex. 21, at 27. 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.

7. Parties’ Arguments, Court’s Findings, and Sentencing

In closing, the State argued Jackson knowingly, intelligent, and voluntarily entered the plea agreement, and then materially breached it during her codefendants’ trial. 16RP 366-67, 393-95. In addition to his prior arguments, defense counsel asserted Jackson should be allowed to withdraw her plea because Mahony was ineffective in failing to investigate Jackson’s mental health. 16RP 402-06.

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 (Finding of Fact (FF) 15). 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 (FF 17); see also CP 262 (FF 38, “Ms. Jackson did have and still retains the capacity to understand the plea agreement and her obligations pursuant to the plea agreement.”).

In making these findings, the court put great emphasis on what it characterized as Jackson’s “very detailed drug distribution network.” CP 254 (FF 16). But Jackson testified she received step-by-step instruction from others and did not keep track of the drug sales herself. 14RP 73-87.

Consistent with this, Dr. Brown explained, “I’ve seen many individuals with FASD and significant cognitive deficits manage drug selling once they learn the ropes.” 15RP 280.

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 (Conclusion of Law (CL) 8). The court further concluded Mahony was not ineffective for failing to investigate Jackson’s mental health, “[a]bsent some indication of [Jackson] being incompetent or somehow exhibiting a diminished capacity.” CP 266 (CL 7, 9, 10). The court accordingly denied Jackson’s motion to withdraw her plea and ordered her to be sentenced on first degree murder. CP 267.

At sentencing, defense counsel urged the low end of the standard range, pointing out the lack of evidence supporting Jackson’s conviction for premeditated murder, along with her cognitive limitations and mental health issues. 18RP 12-16. Counsel emphasized Jackson “did not admit that she killed this man, and she did not knowingly admit that she acted as a knowing accomplice with the devout purpose of accomplishing that death.” 18RP 17. Jackson told the court, “I deeply apologize for what happened that day at my house. I didn’t intend for anyone to get hurt, period. I would like to apologize to Ms. Mendoza and her family, and I

send my condolences to them. But I am not the murderer who murdered Mr. Mendoza.” 18RP 22.

Despite Jackson’s and her attorney’s entreaties, the court sentenced her to the top of the standard range, 320 months, “because of the circumstances of the crime itself to which Ms. Jackson pled guilty.” 14RP 25. Jackson appeals. CP 271.

C. ARGUMENT

1. JACKSON’S GUILTY PLEA TO PREMEDITATED MURDER WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY WHERE THERE WAS NO FACTUAL BASIS TO SUPPORT THE CHARGE.

The record at the time of Jackson’s plea failed to establish a factual basis for first degree premeditated murder. The full record further demonstrates Jackson did not have an adequate understanding of how her alleged conduct satisfied—or, rather, did not satisfy—the elements of premeditated murder. Jackson’s plea was therefore not knowing, intelligent, and voluntary. She is entitled to withdraw her plea.

a. A guilty plea that was not knowing, intelligent, and voluntary may be withdrawn.

A defendant is entitled to withdraw a guilty plea when necessary to correct a manifest injustice. CrR 4.2(d); State v. Marshall, 144 Wn.2d 266, 280-81, 27 P.3d 192 (2001), overruled on other grounds by State v.

Sisouvanh, 175 Wn.2d 607, 290 P.3d 942 (2012). A manifest injustice exists if the plea was not voluntary. Marshall, 144 Wn.2d at 281.

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); see also CrR 4.2(d). 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).

Constitutional due process requires that a guilty plea be knowing, intelligent, and voluntary. State v. Codiga, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008). A guilty plea cannot be truly voluntary “unless the defendant possesses an understanding of the law in relation to the facts.” McCarthy, 394 U.S. at 466; accord State v. R.L.D., 132 Wn. App. 699, 705-06, 133 P.3d 505 (2006) (“Without an accurate understanding of the relation of the facts to the law, a defendant is unable to evaluate the strength of the State’s case and thus make a knowing and intelligent guilty plea.”). The accused

must not only understand the elements of the offense, but how her alleged criminal conduct satisfies those elements. R.L.D., 132 Wn. App. at 705.

A factual basis for a guilty plea is established if sufficient evidence exists to sustain a jury finding of guilt. State v. Amos, 147 Wn. App. 217, 228, 195 P.3d 564 (2008). The sufficiency standard is a well-established one: whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). In making this determination, 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.” R.L.D., 132 Wn. App. at 706 n.7; see also In re Pers. Restraint of Clements, 125 Wn. App. 634, 643, 106 P.3d 244 (2005) (“A review of factual sufficiency is confined to the record at the time of the plea.”).

- b. Jackson’s plea to premeditated murder was not knowing, intelligent, and voluntary where it lacked a factual basis.

The State originally charged Jackson with the first degree premeditated murder of Isidor-Mendoza, contrary to RCW 9A.32.030(1)(a). CP 1. At the time of Jackson’s plea, the State amended the information to charge Jackson with first degree premeditated murder and second degree manslaughter. CP 11-12. Jackson pleaded guilty to both charges. CP 13.

The question is, then, whether there is a factual basis for the original charge of first degree premeditated murder. Barr, 102 Wn.2d at 270.

RCW 9A.32.030(1)(a) specifies a person is guilty of murder in the first degree when, “[w]ith a premeditated intent to cause the death of another person, he or she causes the death of such person or of a third person.” The essential element of premeditation differentiates first degree murder from second degree intentional murder.⁷ State v. Hummel, 196 Wn. App. 329, 3354, 83 P.3d 592 (2016). Premeditation “must involve more than a moment in point of time.” RCW 9A.32.020(1)(a). “[M]ere opportunity to deliberate is not sufficient to support a finding of premeditation.” State v. Finch, 137 Wn.2d 792, 831, 975 P.2d 967 (1999).

The Washington Supreme Court has defined premeditation as the “deliberate formation of and reflection upon the intent to take a human life [that] involves the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.” State v. Gregory, 158 Wn.2d 759, 817, 147 P.3d 1201 (2006) (quoting State v. Hoffman, 116 Wn.2d 51, 82-83, 804 P.2d 577 (1991)), overruled on other grounds by State v. W.R., 181 Wn.2d 757, 336 P.3d 1134 (2014). “Premeditation may be proved by circumstantial evidence where inferences

⁷ A person is guilty of second degree murder when, “[w]ith intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person.” RCW 9A.32.050(1)(a).

supporting premeditation are reasonable and the evidence is substantial.” Gregory, 158 Wn.2d at 817. Inferences based on circumstantial evidence “cannot be based on speculation.” State v. Vasquez, 178 Wn.2d 1, 16, 309 P.3d 318 (2013).

“Four characteristics of the crime are particularly relevant to establish premeditation: motive, procurement of a weapon, stealth, and the method of killing.” State v. Pirtle, 127 Wn.2d 628, 644, 904 P.2d 245 (1995). The second and third factors can be combined as evidence of planning. Id. Washington courts have found sufficient evidence of premeditation where, for instance, “multiple wounds were inflicted with a knife or other weapon, there were signs of a struggle, the victim was at some point struck from behind, and there was evidence that sexual assault or robbery was an underlying motive.”⁸ Gregory, 158 Wn.2d at 817.

By contrast, in Hummel, the court found sufficient evidence Hummel killed his wife, Alice, but insufficient evidence of premeditation. 196 Wn.

⁸ See, e.g., State v. Clark, 143 Wn.2d 731, 769-70, 24 P.3d 1006 (2001) (seven-year-old victim stabbed at least seven times in the neck; cuts on her hands suggested a struggle; and she was sexually assaulted); State v. Gentry, 125 Wn.2d 570, 600-01, 888 P.2d 1105 (1995) (defendant picked up a large rock to use as a weapon; he struggled with victim over some distance on a wooded trail; there were blows to both sides of the victim’s head; and sexual assault was apparently attempted); State v. Rehak, 67 Wn. App. 157, 164, 834 P.2d 651 (1992) (defendant prepared the gun; crept up behind victim sitting quietly in his chair; victim shot three times in the head, twice after he had fallen to floor); State v. Massey, 60 Wn. App. 131, 145, 803 P.2d 340 (1990) (defendant brought a gun to the murder site); State v. Gibson, 47 Wn. App. 309, 312, 734 P.2d 32 (1987) (three separate blunt force blows to the head, possibly with a heavy pipe, followed by strangulation with a rope or cord-like object).

App. at 354-56. Alice disappeared only a few days after their daughter disclosed to Alice that Hummel had been sexually molesting her for years. Id. at 355. Hummel's claim that Alice committed suicide was not supported by the evidence. Id. Hummel lied to their children about Alice's death, writing them cards and letters from Alice. Id. The evidence also showed Hummel disposed of Alice's body, concealed her death, and then fraudulently obtained her disability payments for over a decade. Id.

However, 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 Alice beforehand." Id. at 358. Alice's body was never found. Id. at 356. Nor was there any evidence Alice actually confronted Hummel about the molestation. Id. And, the court reasoned, "even if the evidence support[ed] a reasonable inference that a confrontation occurred, there [was] no evidence to show deliberation or reflection before Hummel killed Alice." Id. The court emphasized that disposing of Alice's body, concealing her death, and fraudulently obtaining her disability checks "does not prove premeditation." Id. at 356-57.

The Hummel court accordingly concluded there was insufficient evidence that Hummel killed Alice with premeditated intent to commit first degree murder. Id. at 358-59. The court vacated Hummel's conviction and remanded for dismissal of the charge with prejudice. Id. at 359.

Here, the court relied on the declaration of probable cause to find a factual basis for Jackson's plea. 1RP 5-6; CP 21. The declaration contained forensic discoveries, as well as Wallace's and Jackson's conflicting statements to police. CP 6-10. It does not appear Jackson's proffer was made part of the record at the time of her plea. R.L.D., 132 Wn. App. at 706 n.7. But, for the sake of argument, this brief assumes the trial court could have considered it, because it existed at the time of the plea. Nevertheless, none of these sources established Jackson, as either a principal or an accomplice, acted with premeditated intent to commit first degree murder.

Isidor-Mendoza was reported missing in November 2014. CP 7. His body was discovered in February 2015. CP 6-7. The forensic evidence in the declaration of probable cause established Isidor-Mendoza's body had been bisected around the pelvis, bagged, and dumped in a ravine behind Wallace's former home. CP 6-7. Some of Isidor-Mendoza's belongings were found at Jackson's home, where there was also evidence of blood in Jackson's garage and master bathroom. CP 8. These facts do not establish how or by whom Isidor-Mendoza was murdered. Indeed, the manner of Isidor-Mendoza's death could ultimately never be determined due to decomposition. 6RP 76.

Wallace gave a statement to the police after his arrest. Wallace said he went to Jackson's house in late fall 2014, where she "brought out a

handgun and placed it on the bed while telling [Wallace] that she needed his assistance,” which Wallace took as a threat. CP 7. Wallace then helped Jackson dispose of large, heavy-duty garbage bags that smelled of decaying human body. CP 7. According to Wallace, Jackson said “nothing else about the body other than that the person had ‘fucked up.’” CP 7.

Wallace’s statement, taken together with the forensic evidence, does not establish Jackson’s premeditated intent to murder Isidor-Mendoza. Jackson’s purported explanation that Isidor-Mendoza “fucked up” does not provide any insight into the circumstances surrounding the killing, or the method or manner of his death. Nor does it establish any planning, or even any motive preceding the moment of the killing. Put simply, it does not demonstrate any “deliberation or reflection” before or during the killing. State v. Bingham, 105 Wn.2d 820, 827, 719 P.2d 109 (1986).

For instance, Isidor-Mendoza could have been killed accidentally or in self-defense, after some mistake he made. Perhaps he was intentionally killed in the heat of the moment, but without the necessary element of premeditation, making it only a second degree murder. State v. Commodore, 38 Wn. App. 244, 247, 684 P.2d 1364 (1984) (“[P]remeditation cannot simply be inferred from the intent to kill.”); see also Bingham, 105 Wn.2d at 827-28 (emphasizing “no evidence was presented of deliberation or reflection before or during the strangulation, only the strangulation”). Nor

does the statement that Isidor-Mendoza “fucked up” even establish Jackson participated in his murder, only that she was helping cover it up. The Hummel court clearly held disposing of the body and concealing the death “does not prove premeditation.” 196 Wn. App. at 357.

In short, nothing about the statement that Isidor-Mendoza “fucked up” established Jackson’s (or anyone else’s) “deliberate formation of the intent to kill [him] beforehand.” Hummel, 196 Wn. App. at 358. The circumstances surrounding his death were completely lacking. Any inferences regarding premeditation would have to be based solely on speculation, which this Court cannot do. Vasquez, 178 Wn.2d at 16.

That leaves only Jackson’s initial statement to the police and her proffer, both of which likewise fail to prove Jackson’s participation in Isidor-Mendoza’s murder. Jackson has, at all times, maintained Daves and Wallace murdered Isidor-Mendoza. CP 7-8, 314. She acknowledged in her proffer she was irate when she discovered \$5,000 missing from her safe. CP 314. She accused Daves and Wallace of taking her money and they, in turn, accused Isidor-Mendoza. CP 314-16. But Jackson did not believe Isidor-Mendoza took her money, because she barely knew him and he had no reason to be inside her house. CP 315-16.

Jackson admitted she told her enforcer, Jakeel Mason, to “take care of it,” but never told him to kill anyone. CP 316. Jackson explained Mason

would beat people up if a drug deal went sideways, but would not kill anyone. CP 336. Furthermore, Mason left before Isidor-Mendoza's murder that night, afraid for his own safety. CP 316. Jackson explained, "Jakeel felt like he was obligated to do bodily harm to [Daves]. And then, [Wallace] had [Daves's] back. So, it was like Jakeel was against both of those guys." CP 316. Jackson's direction for Mason to "take care of it" did not establish her premeditated intent to murder Isidor-Mendoza, but rather her intent for Mason to retrieve her money from Daves.

Nor did Jackson direct Daves and Wallace to kill anyone, let alone Isidor-Mendoza. She emphasized in her proffer, "I didn't tell anybody to kill anybody." CP 317. Indeed, Jackson repeatedly told Daves and Wallace they were taking things too far. When she saw Wallace raping Isidor-Mendoza, Jackson told Wallace, "I'm not asking you to do this. I said, all this is unnecessary." CP 317. Later, when she saw Daves and Wallace dunking Isidor-Mendoza's head in water, Jackson demanded, "what the fuck are you guys doing?" CP 317. She told them, "you guys are taking this way too far," emphasizing, "I don't even want the money no more." CP 317. Despite her protestations, the next time Jackson went out to the garage, Isidor-Mendoza was dead. CP 319.

Jackson's proffer demonstrates she was neither a principal nor an accomplice to first degree premeditated murder. She did not participate in

the killing. She did not direct Mason, Daves, or Wallace to kill Isidor-Mendoza. In order to be an accomplice, an individual must “have the purpose to promote or facilitate the particular conduct that forms the basis for the charge.”⁹ State v. Roberts, 142 Wn.2d 471, 510-11, 14 P.3d 713 (2000) (emphasis in original) (quoting MODEL PENAL CODE § 2.06 cmt. 6(b) (1985)).

An individual cannot be an accomplice unless “he associates himself with the undertaking, participates in it as something he desires to bring about, and seeks by action to make it succeed.” In re Welfare of Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979) (quoting State v. J-R Distributions, Inc., 82 Wn.2d 584, 593, 512 P.2d 1049 (1973)). Physical presence at the scene and assent to the crime, without more, are insufficient to establish accomplice liability. State v. Roberts, 80 Wn. App. 342, 355, 908 P.2d 892 (1996); State v. Luna, 71 Wn. App. 755, 759, 862 P.2d 620 (1993).

⁹ The pattern jury instruction for accomplice liability provides, in relevant part:

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

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 WASH. PRACTICE: WASH. PATTERN JURY INSTRUCTIONS: CRIMINAL 10.51 (4th ed. 2016) (WPIC).

Foreseeability that another might commit the crime is also insufficient. State v. Stein, 144 Wn.2d 236, 246, 27 P.3d 184 (2001).

Per her proffer, Jackson did not associate with Daves's and Wallace's killing of Isidor-Mendoza, did not participate in it, and did not seek to make it succeed. She was not ready to assist them in killing Isidor-Mendoza; she expressly opposed it. She was physically present on the property during the murder, but she did not even assent to the crime, which is itself insufficient. Wilson, 91 Wn.2d at 492 (mere presence plus knowledge of ongoing criminal activity insufficient to show intent required for complicity). On the contrary, she repeatedly told Daves and Wallace they were going too far.

In summary, nothing in the record at the time of Jackson's plea provided a factual basis for first degree premeditated murder. There was no evidence Jackson deliberated on the killing of Isidor-Mendoza. Nor was there any evidence she participated in his premeditated murder as an accomplice. Without a factual basis, Jackson's plea was not knowing, intelligent, and voluntary. This Court should reverse Jackson's conviction and remand to allow Jackson to withdraw her guilty plea. See, e.g., In re Pers. Restraint of Keene, 95 Wn.2d 203, 211-13, 622 P.2d 360 (1980) (vacating Keene's guilty plea to forgery where it lacked a factual basis); R.L.D., 132 Wn. App. at 706 (vacating R.L.D.'s guilty plea to second degree

theft where it lacked a factual basis and therefore “[did] not meet constitutional muster”).

- c. The record further demonstrates Jackson did not understand the relationship of her conduct to the elements of premeditated murder.

To the extent this Court believes reversal is not required based on the lack of factual basis alone, it should consider the entire record before it. The record reveals Jackson lacked the necessary understanding of how her alleged conduct did or, rather, did not satisfy the elements of first degree premeditated murder.

“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 Keene, 95 Wn.2d at 207). 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).

A.N.J. provides a useful starting point. A.N.J. was charged with first degree child molestation. A.N.J., 168 Wn.2d at 118. The supreme court held the record failed to establish A.N.J.’s understanding that offense required sexual contact done for the purpose of sexual gratification. Id. at

118-19. At the plea colloquy, the court asked whether A.N.J. understood the factual basis for his plea, but did not review the elements of the crime with him. Id. at 102, 118-19. Nothing else in the “charging documents, the plea document, nor other evidence of record show[ed] that A.N.J. understood the meaning of sexual contact.” Id. at 119. The trial court therefore “violated [A.N.J.’s] right to due process when it accepted his plea and erred when it denied his motion to withdraw his plea.” Id.

Jackson has consistently maintained Daves and Wallace killed Isidor-Mendoza in the detached garage; she was not present for the murder; and she never directed or encouraged it. 4RP 67-71, 91-93. She has also consistently admitted to helping dispose of Isidor-Mendoza’s body, which is rendering criminal assistance, not murder.¹⁰ 4RP 92-93; CP 9, 324-25; see Hummel, 196 Wn. App. at 357. Jackson “wasn’t happy” when she learned “that if she wanted the reduction to manslaughter . . . she would have to plead guilty to murder in the first degree.” 7RP 46.

Jackson’s original attorney, Ann Mahony, testified she discussed principal and accomplice liability, as well as premeditation, with Jackson. 6RP 72; 7RP 47, 58-59. But Mahony emphasized even she “struggle[s] with the difference between premeditation and intent.” 7RP 59. She noted

¹⁰ RCW 9A.76.050 (“[A] person ‘renders criminal assistance’ if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime . . . , he or she: . . . (5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person.”).

Jackson “appeared to understand,” but “[i]t’s not an easy concept. I’m an attorney, and I have trouble with it.” 7RP 59. Mahony explained:

When I tried to explain to her from the beginning was showing her the statute. I said, “This is what you’re charged with.” Actually, it was the Information. I should say that. I shouldn’t say the statute. It was the Information. I said, “These are the facts that the State would have to prove.”

And she should always say: “But I didn’t kill anyone. I didn’t kill anyone.” I would say, “Yes, but there’s the accomplice liability factor.” And so it was the Information together with the accomplice liability pattern instruction and to try and get her to understand that she could be found guilty at trial of murder in the first degree based on accomplice liability.

7RP 47-48. Given that the murder was so gruesome, Mahony felt a trial “was too much of a risk to take.” 7RP 48. Mahony also believed the facts alleged in the declaration of probable cause met the standard for accomplice liability, though “[b]arely.” 8RP 71. Mahony accordingly advised Jackson to take the plea. 7RP 48, 55; 8RP 49.

The plea itself happened “surprisingly quickly” after Jackson’s April 12 proffer. 7RP 42. Following the proffer, Mahony met with Jackson on April 13 for only “about a half hour” to review the plea agreement and obligations. 7RP 44-45. No personal statement of the facts was included in the plea statement. CP 13-22; 7RP 45. The plea statement simply noted the court could rely on the declaration of probable cause to establish a factual basis. CP 21. Mahony answered “[p]robably not” when asked if she

reviewed the declaration of probable cause with Jackson that day. 7RP 51. Mahony “doubt[ed]” she even had that document with her. 7RP 51-52. The plea also did not state the elements of the offense, referring only to the amended information. CP 13-22. The amended information alleged simply that Jackson acted “with premeditated intent to cause the death of another person.” CP 11.

Jackson proceeded to a plea hearing the very next day, April 14. 1RP 3. The trial court found a factual basis for the plea, then began its colloquy with Jackson. 1RP 5-6. The court inquired:

THE COURT: You understand that you’re here to plead guilty to a felony crime?

MS. JACKSON: Yes.

THE COURT: A felony crime -- one of them is a serious violent felony specifying that you committed Murder in the First Degree. Do you understand that?

MS. JACKSON: Yes.

....

THE COURT: Ms. Jackson, have you had an opportunity to read the Declaration for Determination of Probable Cause that has been generated as a result of this case?

MS. JACKSON: Yes.

THE COURT: Have you gone over that with Ms. Mahony?

MS. JACKSON: Yes.

THE COURT: You understand and agree that I'm relying on the contents of that probable cause declaration in moving this case forward to a plea?

MS. JACKSON: Yes.

THE COURT: In other words, that's the factual basis for your plea?

MS. JACKSON: Yes.

THE COURT: And you adopt that statement as your own; is that correct?

MS. JACKSON: Yes.

THE COURT: Have you had an opportunity in looking through the probable cause declaration to go over your Statement on Plea of Guilty with Ms. Mahony?

MS. JACKSON: Yes.

THE COURT: Every paragraph?

MS. JACKSON: Yes.

THE COURT: Line by line?

MS. JACKSON: Yes.

THE COURT: Was Ms. Mahony able to answer the questions that you had when you went through the statement with her?

MS. JACKSON: Yes, she did.

THE COURT: Were those answers to your satisfaction?

MS. JACKSON: Yes.

THE COURT: Do you need any more time to speak with Ms. Mahony before we go ahead with your plea?

MS. JACKSON: No.

1RP 6-8. The court did not review the elements of premeditated murder with Jackson, nor did it discuss accomplice liability with her. See 1RP 6-13. The court found Jackson's plea to be voluntary. 1RP 13.

Subsequent evaluation revealed Jackson suffers from significant cognitive limitations. She has an IQ of 61, which makes her intellectually disabled. 9RP 79; 14RP 120-23. She has fetal alcohol spectrum disorder, including hallmark traits of suggestibility and preservation. 14RP 111-17, 120-23, 162-63, 173, 226-27; Ex. 21, at 27. She is highly inclined to acquiesce to authority figures, "even if she does not understanding what she is agreeing to." Ex. 21, at 27; 14RP 179; 15RP 249-50. Verbal communication is her relative strength (though still impaired), while her reading comprehension and mental processing speed are extremely impaired. 9RP 79, 87-91; 14RP 125. She has longstanding mental health issues, including PTSD, depression, and unspecified schizophrenia spectrum disorder, which encompasses delusions, dissociation, and hallucinations. 9RP 82-84; 13RP 42, 48-52.

Based on Jackson's cognitive deficits, Dr. Natalie Novick Brown concluded Jackson's answers to leading questions are "unreliable." 14RP 179-80, 185. As such, Dr. Brown explained, a typical plea colloquy would be inadequate to ensure Jackson's understanding, "unless she was able to explain the components of that plea in her own words and those words were accurate." 14RP 183-84. Dr. Brown likewise believed Mahony failed to "elicit a clear, accurate understanding of what Ms. Jackson understood in terms of the legal processes that were going on." 15RP 324. Instead Mahony "took Ms. Jackson's agreement that she understood at face value." 14RP 186. Dr. Brown accordingly opined Jackson did not understand the elements and obligations of her guilty plea. 15RP 324-25.

Dr. Michael Stanfill similarly believed Mahony's discussions with Jackson, as well as the plea colloquy, were insufficient to elicit Jackson's true comprehension of the plea agreement.¹¹ 9RP 88-89; Ex. 17, at 15 ("[H]er simplistic and concrete capacity constrained her complete and full understanding of the complex and intricate legal issues."). He explained the plea colloquy consisted of "mostly yes-and-no questions," which "doesn't necessarily reflect her actual understanding." 9RP 90. Dr. Stanfill, too,

¹¹ Dr. Stanfill suspected Jackson's acquiescence to Mahony and the court reflected "a certain level of embarrassment and shame when she doesn't understand something." 9RP 186; see also Ex. 17, at 15 ("Because of her shame and embarrassment related to these difficulties, she would just nod and pretend to read the material, thus making the presumption that she understood despite her abilities to the contrary.").

testified “it would take a significant amount of time back and forth saying, ‘Now I have just told you this. Explain to me what I just said,’ and so there is kind of a back and forth on full understanding.” 9RP 90. Of course, neither Mahony nor the trial court did so.

Consistent with all this, Jackson later testified, regarding the plea colloquy, “I’m supposed to say yeah because that’s what I’m supposed to say, so I said yes.” 13RP 134. She explained she signed the plea agreement “because my attorney told me at the time that it was the best thing that I could do and my deal wasn’t going to get any better than that.” 13RP 135. Jackson felt “pressured into signing the plea agreement.” 13RP 135.

The record demonstrates Jackson lacked the requisite understanding of how her alleged conduct satisfied—or, as was the case, failed to satisfy—the elements of first degree premeditated murder. The difference between premeditation and intent is a difficult concept, even for attorneys. The same for accomplice liability. Add to that significant cognitive limitations, suggestibility, and a rushed plea process. No one took the necessary time to ensure Jackson understood premeditation and accomplice liability—the critical elements of the charged crime. In re Pers. Restraint of Hews, 108 Wn.2d 579, 593-94, 741 P.2d 983 (1987). Instead, without a factual basis for either, Jackson acquiesced to her attorney’s advice and then to the trial court’s leading questions.

The missing factual basis for premeditated murder, combined with Jackson's incomplete understanding of the law in relation to facts, render Jackson's plea invalid. Under the circumstances, Jackson could not enter a knowing, intelligent, and voluntary guilty plea to premeditated murder. This Court should reverse her conviction and remand to the trial court with instruction that Jackson be allowed to withdraw her plea. A.N.J., 168 Wn.2d at 120; S.M., 100 Wn. App. at 415.

2. JACKSON WAS DENIED HER CONSTITUTIONAL RIGHT TO EFFECTIVE REPRESENTATION WHERE HER ATTORNEY FAILED TO CONDUCT ANY INVESTIGATION INTO JACKSON'S MENTAL HEALTH.

Every accused person enjoys the right to effective assistance of counsel. U.S. CONST. amend. VI; CONST. art. 1, § 22; Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). That right is violated when (1) the attorney's performance was deficient and (2) the deficiency prejudiced the accused. Strickland, 466 U.S. at 687; Thomas, 109 Wn.2d at 225-26.

Counsel's performance is deficient when it falls below an objective standard of reasonableness. Thomas, 109 Wn.2d at 226. Only legitimate trial strategy or tactics constitute reasonable performance. Strickland, 466 U.S. at 689; State v. Yarbrough, 151 Wn. App. 66, 90, 210 P.3d 1029

(2009). Prejudice occurs when there is a reasonable probability that but for counsel's deficiency, the result would have been different. Thomas, 109 Wn.2d at 226. A reasonable probability is one sufficient to undermine confidence in the outcome. Id.

As discussed, "a trial court must permit the withdrawal of a guilty plea 'to correct a manifest injustice.'" State v. Wakefield, 130 Wn.2d 464, 472, 925 P.2d 183 (1996) (quoting CrR 4.2(f)). A manifest injustice exists where the accused is denied effective assistance of counsel. Id. Appellate courts review ineffective assistance claims de novo. State v. Shaver, 116 Wn. App. 375, 382, 65 P.3d 688 (2003).

"A defendant can overcome the presumption of effective representation by demonstrating 'that counsel failed to conduct appropriate investigations.'" State v. Estes, 188 Wn.2d 450, 462-63, 395 P.3d 1045 (2017) (quoting Thomas, 109 Wn.2d at 230). For instance, in State v. Fedoruk, 184 Wn. App. 866, 871, 339 P.3d 233 (2014), Fedoruk had a long history of mental illness. Leading up to the charged crime, Fedoruk engaged in increasingly strange behavior and angry outbursts. Id. at 872. Despite this evidence, Fedoruk's counsel did not attempt to advance a diminished capacity defense until the eve of trial, instead pursuing the defense that Fedoruk "didn't do it." Id. at 875-76.

This Court held Fedoruk's counsel was ineffective for failing to timely investigate a mental health defense by consulting with a qualified expert. Id. at 879. The court acknowledged the record was not "entirely clear what investigation Fedoruk's counsel may have conducted." Id. at 881. Nevertheless, given Fedoruk's extensive history of mental illness, "the decision not to seek to retain an expert to evaluate Fedoruk until the day before jury selection fell below an objective standard of reasonableness." Id. at 881-82. This was especially true "[i]n light of the State's strong circumstantial evidence against Fedoruk." Id. at 882.

Thomas involved another failure to investigate that warranted reversal. 109 Wn.2d at 232. There, counsel (ineffectually) pursued a voluntary intoxication defense to rebut a charge of attempting to elude a police vehicle. Id. at 223-25. Counsel called an "expert" witness, Pamela Hammond, to explain alcoholic blackouts and their effects. Id. at 229-30. Hammond, however, turned out to be only an alcohol counselor trainee. Id. at 229. Based on her lack of qualifications, the trial court refused to allow her to testify as an expert. Id. No other expert was called. Id.

The record revealed defense counsel was unaware of his so-called expert's total lack of qualifications. Id. at 230-31. The supreme court held counsel's failure to discover Hammond's lack of qualifications to be deficient performance: "Had he conducted any investigation into

Hammond's qualifications he would have discovered she was only a trainee with minimal experience." Id. at 230.

By way of contrast, the supreme court rejected an ineffective assistance claim in In re Personal Restraint of Jeffries, 110 Wn.2d 326, 331, 752 P.2d 1338 (1988), where defense counsel neglected to call witnesses whose testimony would have provided mitigation evidence. The court held counsel's actions were reasonable because (1) Jeffries stated his wish that the witnesses not testify and (2) calling the witnesses would have opened the door to the Jeffries's extensive criminal record. Id. at 332.

Likewise, in In re Personal Restraint of Elmore, 162 Wn.2d 236, 252-54, 172 P.3d 335 (2007), counsel was not ineffective in failing to investigate Elmore's mental deficiencies before advising him to plead guilty. From the time he surrendered to authorities, Elmore was determined to take responsibility for his actions and plead guilty. Id. at 254. Nor was there any indication Elmore was incompetent, insane, or otherwise acted with diminished capacity at the time of the crimes. Id. at 253. And, Elmore's defense team conducted an in-depth investigation in preparation for a mitigation report to the prosecutor's office. Id.

Jackson's case stands in contrast to Jeffries and Elmore, where counsel made reasonable, strategic choices in not investigating their clients' mental health. Mahony testified she was aware Jackson suffered from

mental health issues. 7RP 24-25, 29. The discovery likewise suggested questions regarding Jackson's mental health, as well as her illicit drug use. 7RP 26-28. When Mahony was first assigned the case, Jackson was on suicide watch at the jail and was being seen by jail psychiatric staff. 7RP 28. But Mahony "didn't connect it to the incident which had been months earlier." 7RP 28.

Despite this information, Mahony did not retain a mental health expert or conduct any investigation whatsoever into Jackson's mental health. 7RP 24-30. She explained only, "I looked at every possible defense, one of them being a mental health defense. And I decided early on that that would not be the course of this case." 7RP 28. Mahony said Jackson "seemed to follow our conversation well enough," and apparently left it at that. 7RP 30.

A constitutionally adequate investigation requires "investigating all reasonable lines of defense." In re Pers. Restraint of Davis, 152 Wn.2d 647, 721, 101 P.3d 1 (2004). Reasonable investigation enables defense counsel to make informed decisions as to how best represent her client. Id. "Counsel's failure to consider alternate defenses constitutes deficient performance when the defense attorney neither conduct[s] a reasonable investigation nor ma[kes] a showing of strategic reasons for failing to do so." Id. at 722 (alteration in original) (internal quotation marks omitted) (quoting Rios v. Rocha, 299 F.3d 796, 805 (9th Cir. 2002)).

Here, defense counsel did not make a reasonable choice in failing to investigate Jackson's mental health. The record does not indicate any tactical reason for not pursuing such an investigation, other than Mahony simply ruled it out. This brief has repeatedly discussed, and will not repeat again here, Jackson's significant cognitive limitations and longstanding mental health issues—readily discovered in subsequent evaluations. These conditions, particularly Jackson's intellectual disability resulting from fetal alcohol syndrome, existed at the time of Isidor-Mendoza's murder.¹² 13RP 21-22. It could have informed Mahony's view of the evidence and how she advised Jackson. But, instead, Jackson's limitations were never investigated and never raised at the most critical time: her proffer and plea.

There is a reasonable probability the outcome of the proceedings would have been different had Mahony discovered what we now know about Jackson's cognitive impairments. "Effective assistance of counsel includes assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial." A.N.J., 168 Wn.2d at 111. Mahony believed the statement of probable cause "[b]arely" established Jackson's

¹² Diminished capacity is a mental condition not amounting to insanity that prevents the defendant from forming the mental state necessary to commit the charged crime. State v. Harris, 122 Wn. App. 498, 506, 94 P.3d 379 (2004). It is not an affirmative defense, but rather negates the mental state element of the charged crime. State v. Nuss, 52 Wn. App. 735, 739, 763 P.2d 1249 (1988). To show diminished capacity, "a defendant must produce expert testimony demonstrating that a mental disorder, not amounting to insanity, impaired the defendant's ability to form the culpable mental state to commit the crime charged." State v. Atsbeha, 142 Wn.2d 904, 914, 16 P.3d 626 (2001).

liability as an accomplice to premeditated murder. 8RP 71. She accordingly advised Jackson to plead guilty, believing the State's offer was the best Jackson could do. 7RP 48, 55; 8RP 49. Mahony's advice might very well have been different had she understood the extent of Jackson's disabilities, including Jackson's suggestibility. Mahony may also have been able to use the mental health information to strike a better bargain with the State. Without the investigation, Jackson was denied the opportunity to make a meaningful decision as to whether or not to plead guilty.

Perhaps even more importantly, the mental health information would have (hopefully at least) changed how everyone interacted with Jackson. As the experts explained, the only way to ensure Jackson's understanding was to ask simple, concrete questions and then have Jackson summarize her understanding of them. 9RP 87-91; 14RP 147-48, 173-74. But no one did this—not Mahony, not the prosecutor, not the trial court. Using this method would have revealed Jackson did not grasp the significance of pleading guilty to a charge of first degree premeditated murder that lacked a factual basis. 13RP 131-37. Jackson likely would not have done so had she fully comprehended the elements of the offense, as well as the intricacies and consequences of her guilty plea. 13RP 131-37; 15RP 324-25.

The record establishes Mahony was deficient in failing to conduct any investigation into Jackson's mental health. This lack of investigation, in

turn, prejudiced Jackson in pleading guilty to premeditated murder. Jackson was accordingly denied her right to effective assistance of counsel. This Court should reverse Jackson's conviction and remand to the trial court with directions to allow Jackson to withdraw her plea. State v. Stowe, 71 Wn. App. 182, 188-89, 858 P.2d 267 (1993).

3. THE TRIAL COURT ERRED IN PROHIBITING A DEFENSE EXPERT FROM OBSERVING JACKSON'S TESTIMONY TO INFORM HER PROFESSIONAL OPINION.

Defense expert Dr. Brown wanted to observe the State's cross-examination of Jackson, to inform her professional opinion. Dr. Brown explained the manner of questioning, form of questions, and vocabulary used were all significant in interpreting Jackson's answers. This, in turn, informed Jackson's capacity to enter the plea agreement and whether she materially breached it. Yet the trial court excluded Dr. Brown from the courtroom during Jackson's testimony, reasoning it amounted to improper bolstering of Dr. Brown's credibility. This ruling is contrary to both the rules of evidence and Jackson's constitutional right to present a complete defense. The State then impeached Dr. Brown on this very basis. Under the circumstances, reversal is necessary.

- a. The evidence rules exempt experts from witness exclusion orders when reasonably necessary to a party's case.

ER 615 provides that, at the request of a party, “the court may order witnesses excluded so that they cannot hear the testimony of other witnesses.” ER 615, however, “does not authorize exclusion of . . . (3) a person whose presence is shown by a party to be reasonably necessary to the presentation of the party's cause.” “The intent of ER 615 is ‘to discourage or expose inconsistencies, fabrication, or collusion.’” State v. Skuza, 156 Wn. App. 886, 896, 235 P.3d 842 (2010) (quoting 5A KARL B. TEGLAND, WASH. PRACTICE: EVIDENCE LAW & PRACTICE § 615.2, at 623 (5th ed. 2007)).

A trial court's interpretation of the rules of evidence is a question of law reviewed de novo. State v. DeVincentis, 150 Wn.2d 11, 17, 74 P.3d 119 (2003). Its application of the rules to particular facts is reviewed for abuse of discretion. Id.; State v. Schapiro, 28 Wn. App. 860, 867, 626 P.2d 546 (1981) (recognizing ER 615 rulings are discretionary). A trial court abuses its discretion if its decision is manifestly unreasonable, is based on untenable grounds or reasons, or is contrary to the law. State v. Neal, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001).

The trial court's ruling also implicated Jackson's constitutional right to present a defense. “The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the

State's accusations." Chambers v. Mississippi, 410 U.S. 284, 294, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). "Few rights are more fundamental than that of an accused to present witnesses in his own defense." Id. at 302. Fundamental fairness therefore requires "a meaningful opportunity to present a complete defense." State v. Wittenbarger, 124 Wn.2d 467, 474, 880 P.2d 517 (1994). In light of this constitutional guarantee, courts review de novo whether exclusion of defense evidence violated the right to present a defense. State v. Jones, 168 Wn.2d 713, 719-20, 230 P.3d 576 (2010).

To safeguard the accused's right to defend herself, relevant defense evidence must be admitted unless the State can show a compelling interest in excluding it. State v. Darden, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002); State v. Hudlow, 99 Wn.2d 1, 15-16, 659 P.2d 514 (1983). If the court believes defense evidence is barred by the evidence rules, "the court must evaluate whether the interests served by the rule justify the limitation." Rock v. Arkansas, 483 U.S. 44, 56, 107 S. Ct. 2704, 97 L. Ed. 2d 37 (1987). The restriction on defense evidence must not be arbitrary or disproportionate to its purpose. Id. Once it is shown that the evidence is even minimally relevant, the trier of fact must be allowed to hear it unless the State can show it is "so prejudicial as to disrupt the fairness of the fact-finding process at trial." Darden, 145 Wn.2d at 622.

Jackson's case involves the interplay between ER 615 and ER 703. No Washington case appears to be directly on point. However, the plain text of ER 703 is instructive. Qualified experts may testify, "in the form of an opinion or otherwise," to "scientific, technical, or other specialized knowledge," if it will assist the trier of fact. ER 702. ER 703 provides: "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing." (Emphasis added.) Thus, ER 703 allows experts to base their opinion on facts or data *perceived at the hearing*. The plain language of ER 703 allowed Dr. Brown to base her opinion on Jackson's testimony at the hearing. See Lodis v. Corbis Holdings, Inc., 172 Wn. App. 835, 860, 292 P.3d 779 (2013) ("Expert witnesses need not have personal knowledge of the evidence prior to trial." (citing ER 703)).

ER 615 must therefore be interpreted in light of ER 703. See Morvant v. Constr. Aggregates Corp., 570 F.2d 626, 629-30 (6th Cir. 1978) ("Certainly an expert who intends to base his opinion on 'facts or data in the particular case' ([Fed. R. Evid.] 703) will be unable to testify if he has been excluded (from the courtroom by an order under [Fed. R. Evid.] 615)."). Tegland recognizes "[a]n expert witness who intends to express an opinion based upon the testimony of other witnesses is apt to qualify under [ER

615(3)].” TEGLAND, supra, § 615.3, at 626. Tegland relies on several federal cases for this proposition. Id. at 626 n.7.

Notably, Fed. R. Evid. 615, is narrower than our state counterpart. Fed. R. Evid. 615(c) specifies a trial court may not exclude “a person whose presence a party shows to be essential to presenting the party’s claim or defense.” (Emphasis added.) The federal rule therefore requires the person’s presence to be “essential,” compared to just “reasonably necessary” under our state rule, ER 615(3). Tegland notes this textual difference makes ER 615(3) “a rule of even greater flexibility than the corresponding federal rule.” TEGLAND, supra, § 615.3, at 625-26. Thus, in considering federal cases interpreting Fed. R. Evid. 615(c), it is important to keep in mind that our state rule is even more generous. See In re Det. of Pouncy, 168 Wn.2d 382, 392 n.9, 229 P.3d 678 (2010) (“Where our evidence rules mirror their federal counterparts, we may look to federal case law interpreting the federal rules as persuasive authority in interpreting our own rules.”).

The Fifth Circuit, for instance, held defense experts in a wrongful death action were properly exempted from a witness exclusion order. Mayo v. Tri-Bell Indus., Inc., 787 F.2d 1007, 1013 (5th Cir. 1986). The court emphasized “the experts were not witnesses whose recollections might have been colored by accounts of prior witnesses.” Id. Rather, “they would be

testifying solely as to their opinion based on the facts or data in the case.”

Id.

The South Dakota Supreme Court, interpreting a rule identical to Fed. R. Evid. 615(c), recognized “it has been generally held or stated that experts are usually excepted from sequestration.” State v. Traversie, 387 N.W.2d 2, 6-7 (S.D. 1986); S.D. CODIFIED LAWS § 19-19-615(c) (requiring witness’s presence to be “essential”). The trial court in Traversie, however, did not err in prohibiting a defense fingerprint expert from hearing the testimony of the State’s fingerprint expert. 387 N.W.2d at 7. The record revealed “both fingerprint experts had access to the physical evidence and that the two expert witnesses met and discussed their conclusions just prior to trial.” Id. Thus, the defense expert’s presence was not required to “ascertain facts or data upon which to base his expert opinion.” Id.

Finally, the Sixth Circuit recognized “the decision whether to permit [an expert] to remain is within the discretion of the trial judge and should not normally be disturbed on appeal.” Morvant, 570 F.2d at 630. But the court “perceive[d] little, if any, reason for sequestering a witness who is to testify in an expert capacity only and not to the facts of the case.” Id. at 629. The court therefore held, “where a fair showing has been made that the expert witness is in fact required for the management of the case, and this is made

clear to the trial court, we believe that the trial court is bound to accept any reasonable, substantiated representation to this effect by counsel.” Id. at 630.

Thus, an ER 615 witness exclusion order must capitulate to ER 703 when an expert’s observation of a witness’s testimony will inform her opinion and is reasonably necessary to that party’s case.

- b. The trial court improperly excluded Dr. Brown from the courtroom, contrary to the rules of evidence and Jackson’s right to present a complete defense.

DPA Ausserer—the same prosecutor who negotiated Jackson’s plea and examined Jackson at her codefendants’ trial—began his cross-examination of Jackson on March 28, 2018. 13RP 98-156; CP 509-11. He did not finish that day. 13RP 157. Before cross-examination resumed at the next hearing (May 21, 2018), Ausserer moved to exclude Dr. Brown from the courtroom during Jackson’s testimony. 14RP 4-5. Defense counsel asked that Dr. Brown be allowed to remain, asserting “[t]he subject matter of her testimony is assisted by her observing Ms. Jackson testify.” 14RP 5. The court responded, “Well, that’s sort of the problem.” 14RP 5.

Defense counsel continued, explaining:

Well, [Dr. Brown] is not offering fact evidence of the same area that Ms. Jackson would be testifying to. But she has been allowed to observe Ms. Jackson answering questions concerning her testimony. My position is that it would be helpful to her as an expert who is testifying about whether or not Ms. Jackson can testify truthfully during the course of a trial to observe her testifying to see whether the

mannerisms and the method with which she is able to receive questions and answer them are consistent or inconsistent with her testing and her opinion that's been formed by that.

14RP 5-6. Ausserer repeated his objection, claiming, "I'm not sure how viewing live testimony now would impact her opinion." 14RP 5.

The trial court excluded Dr. Brown from the courtroom during Jackson's testimony. 14RP 7-8. The court noted, "My concern is that it will at least have the potential for creating testimony in conformance with an opinion that's already been formed." 14RP 7. The court believed it "also to be witness bolstering." 14RP 7. Defense counsel reiterated, "what better source of information is there for [Dr. Brown] than to actually observe Ms. Jackson go through the process of being asked questions and answering them." 14RP 7. The court repeated its ruling. 14RP 7-8. The State then completed its remaining, extensive cross-examination of Jackson, without Dr. Brown present in the courtroom. 14RP 8-106.

Dr. Brown testified immediately after Jackson's cross-examination. 14RP 107-08. Dr. Brown explained Jackson suffers from significant cognitive deficits, likely caused by fetal alcohol syndrome. 14RP 115-16, 123-25. Dr. Brown testified Jackson is both highly suggestible, particularly with authority figures, and "has a very significant tendency to perseverate." 14RP 153; 15RP 250. "Perseverate" means Jackson "tends to repeat over and over again either what she has said or what she has heard from others."

14RP 163. Dr. Brown expressed her opinion that Jackson “is highly inclined to acquiesce to leading questions,” making her responses unreliable. 14RP 179-80. And, given Jackson’s slow processing speed and limited ability for abstract thought, “she will miss the gestalt of the question,” focusing instead “on a word or two words maybe.” 14RP 175.

In this context, Dr. Brown emphasized the importance of observing Jackson’s testimony. 14RP 132-34. Dr. Brown explained, regarding the prosecutor’s questioning of Jackson:

The subtle nuances are really important in the interaction. So it’s not just the black and white words as they appear on the paper in terms of a transcript, but I would also be watching, for example, the prosecutor and the way he’s asking the questions, the forcefulness of his -- of the questions, whether there is any perceived pressure that I can tell, and then how Ms. Jackson is responding to the prosecutor or to you based on how much pressure there is in the way the questions are asked. So it’s those subtle nuances that I can’t pick up on paper.

14RP 135. Dr. Brown reiterated “the tone of the words, the forcefulness of the words, where the prosecutor or you were standing in the room, how close you were to her” were all relevant “to determining whether or not she may have felt some pressure to acquiesce.” 14RP 136. In other words, “the nature of the questioning is really critical.” 14RP 148; see also 15RP 251 (“Every word matters.”), 269 (“It’s very dependent on the context. And her suggestibility has to be taken into consideration if you are confronting her.”).

The record demonstrates the trial court's exclusion of Dr. Brown from the courtroom during Jackson's cross-examination was clear error under ER 615 and ER 703. ER 703 expressly permitted Dr. Brown to base her opinion on facts perceived at the hearing. Defense counsel established Dr. Brown's presence was reasonably necessary to Jackson's case, as required by ER 615(3). Dr. Brown was not a fact witness whose recollection might be influenced or altered by Jackson's testimony.

Rather, Dr. Brown wanted to observe the content, form, and manner of questions asked, to inform her professional opinion regarding Jackson's suggestibility and cognitive limitations. This was particularly relevant where the same prosecutor questioned Jackson (1) at her codefendants' trial, (2) when she supposedly breached her plea, and (3) again at the evidentiary hearing.¹³ 6RP 47-48; 13RP 98-156; CP 509-11. And, unlike the South Dakota case, Traversie, Dr. Brown made clear there was no adequate substitute for observing the prosecutor's manner of questioning and Jackson's responses in real time.

The trial court abused its discretion under ER 615 by excluding Dr. Brown from the courtroom. The ruling also infringed Jackson's right to present a complete defense. Dr. Brown's expert opinion was the cornerstone of Jackson's defense that her plea was invalid, her original attorney was

¹³ The trial court seemed to think the codefendants' trial "involved different people," but was mistaken on this point. 14RP 148-49.

ineffective, and her breach was neither material nor intentional. Instead, the trial court limited Dr. Brown's ability to observe Jackson in the very same setting where Jackson pleaded guilty and then allegedly breached that plea agreement. The result hamstrung Jackson's ability to fully defend herself from the State's accusations. This Court should hold the trial court erred in excluding Dr. Brown from the courtroom during Jackson's cross-examination.

- c. Excluding Dr. Brown from the courtroom prejudiced Jackson, where it undercut Dr. Brown's credibility and went to the heart of Jackson's defense.

Evidentiary error requires reversal when there is a reasonable probability that the error affected the outcome of the trial. State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001). However, an erroneous evidentiary ruling that violates the accused's right to present a defense is constitutional error, presumed to be prejudicial unless the State can show the error was harmless beyond a reasonable doubt. State v. Franklin, 180 Wn.2d 371, 377 n.2, 325 P.3d 159 (2014); Jones, 168 Wn.2d at 724. Dr. Brown's exclusion from the courtroom during Jackson's cross-examination was prejudicial to Jackson's case under both standards.

As discussed, Dr. Brown's expert opinions were critical to Jackson's defense and her request to withdraw her guilty plea. Dr. Brown believed Jackson's answers to leading questions were unreliable, given her cognitive

limitations and suggestibility. 14RP 179-80. Dr. Brown further opined that the plea colloquy and Mahony's conversations with Jackson were inadequate to ensure Jackson's true understanding of the plea. 14RP 182-86; 15RP 321-24. Dr. Brown concluded Jackson did not grasp the elements and obligations of her plea, understanding only that there was less prison time associated with manslaughter. 15RP 324-26, 347-38.

Dr. Brown was deprived of a critical opportunity to observe Jackson's cross-examination by the prosecutor. The same prosecutor then impeached Dr. Brown on this very basis, undercutting Dr. Brown's credibility. For instance, the prosecutor questioned Dr. Brown extensively about Jackson's testimony at the evidentiary hearing:

Q. Well, Doctor, how do you reconcile then the fact that Ms. Jackson in this case before you testified last time we were in court acknowledged that she intentionally lied because she understood that she had to maintain that untruth to get the benefit of the plea bargain? You would have to agree that that's inconsistent with the opinion that you just offered, right?

15RP 249-50. Dr. Brown responded that Jackson is highly suggestible. 15RP 250. She emphasized, again, "it all depends on how the question is asked of her," which she was not allowed to observe. 15RP 250.

The prosecutor then continued to impeach Dr. Brown's opinion and credibility with Jackson's testimony at the hearing. 15RP 253-56. For instance, the prosecutor confronted Dr. Brown with his belief that Jackson's

testimony was “inconsistent with [her] findings.” 15RP 254; see also 15RP 255 (“And if she testified to that last time we were before the Court, that would be inconsistent with your opinion and findings in this case, right?”). All Dr. Brown could say was, “I don’t know what she said precisely,” which the prosecutor cut off, “No, that’s not my question.” 15RP 256.

Thus, the State used the trial court’s erroneous ER 615 ruling as a sword against Jackson’s most important witness. The trial court then largely discredited Dr. Brown’s opinion on Jackson’s suggestibility. CP 261 (FF 36, “[T]he overwhelming majority of the material questions to which untrue responses were made by Ms. Jackson did not contain suggestions as to the desired response. The questions were straightforward and fact seeking.”). The court also discounted Dr. Brown’s opinion that no one recognized Jackson’s deficits, finding “Dr. Brown has no way of knowing the actual language or method of questioning used when inquiry was being made of Ms. Jackson.” CP 261 (FF 34). But, of course, watching the same prosecutor cross-examine Jackson at the hearing would have been highly probative on this point.

Dr. Brown’s expert opinion and credibility were undermined because of the trial court’s erroneous exclusion order. The result prejudiced Jackson’s defense against the State’s accusations of breach, as well as her

motion to withdraw her guilty plea. This Court should reverse Jackson's conviction and remand for a new evidentiary hearing.

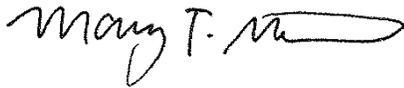
E. CONCLUSION

For the reasons discussed above, this Court should reverse Jackson's conviction for first degree premeditated murder and remand to the trial court with instructions to allow Jackson to withdraw her plea. Alternatively, this Court should reverse Jackson's conviction and remand for a new hearing at which her expert witness may properly observe Jackson's testimony to inform her professional opinion.

DATED this 30th day of July, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



MARY T. SWIFT
WSBA No. 45668
Office ID No. 91051

Attorneys for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

July 30, 2019 - 9:32 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52353-1
Appellate Court Case Title: State of Washington, Respondent v. Crystal S. Jackson, Appellant
Superior Court Case Number: 15-1-00698-5

The following documents have been uploaded:

- 523531_Briefs_20190730093136D2689189_8247.pdf
This File Contains:
Briefs - Appellants
The Original File Name was BOA 52353-1-II.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- kristie.barham@piercecountywa.gov

Comments:

Copy mailed to : Crystal Jackson, 410511 Washington Corrections Center for Women 9601 Bujacich Rd NW Gig Harbor, WA 98332

Sender Name: John Sloane - Email: Sloanej@nwattorney.net

Filing on Behalf of: Mary Swift - Email: swiftm@nwattorney.net (Alternate Email:)

Address:
1908 E. Madison Street
Seattle, WA, 98122
Phone: (206) 623-2373

Note: The Filing Id is 20190730093136D2689189