

FILED
Court of Appeals
Division II
State of Washington
9/27/2019 1:51 PM

NO. 52353-1-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CRYSTAL JACKSON,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Stanley Rumbaugh

No. 15-1-00698-5

BRIEF OF RESPONDENT

MARY E. ROBNETT
Prosecuting Attorney

Teresa Chen
Deputy Prosecuting Attorney
WSB # 31762
930 Tacoma Ave., Rm 946
Tacoma, WA 98402
(253) 798-7400

TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESTATEMENT OF THE ISSUES 2

 A. Where the probable cause declarations describe a murder committed over a prolonged period of time in the Defendant’s home with the Defendant’s continuing knowledge and material assistance by the Defendant’s employees and for the Defendant’s benefit, has the trial court manifestly abused its discretion in finding the charge is supported by an adequate factual basis and that there is no manifest injustice requiring withdrawal of the guilty plea? 2

 B. Does effective assistance in the context of a guilty plea require an attorney to hire experts to pursue a defense that the attorney has chosen not to pursue and which later proves unavailing? 2

 C. Did the trial court properly exclude a witness from the courtroom during the Defendant’s testimony where the purported purpose for her observation was so that she might later opine on inadmissible ultimate issues including the credibility of the Defendant? 2

III. STATEMENT OF THE CASE..... 2

IV. ARGUMENT 13

 A. The superior court did not abuse its discretion in finding a factual basis to support the plea to murder in the first degree. 13

B.	The Defendant received effective assistance of counsel where the her attorney considered all defenses and made a strategic decision not to pursue a futile mental defense.	18
C.	The court did not abuse its discretion in excluding witnesses from the hearing.....	24
V.	CONCLUSION.....	26

TABLE OF AUTHORITIES

State Cases

<i>In re Elmore</i> , 162 Wn.2d 236, 172 P.3d 335 (2007)	22
<i>In re James</i> , 190 Wn.2d 686, 416 P.3d 719 (2018)	23
<i>Matter of Taylor</i> , 31 Wn. App. 254, 640 P.2d 737 (1982)	16
<i>State v. Wilson</i> , 162 Wn. App. 409, 253 P.3d 1143, <i>review denied</i> 173 W.2d 1006, 268 P.3d 943 (2011)	14
<i>State v. A.N.J.</i> , 168 Wn.2d 91, 225 P.3d 956 (2010)	18
<i>State v. Codiga</i> , 162 Wn.2d 912, 175 P.3d 1082 (2008)	13
<i>State v. Fedoruk</i> , 184 Wn. App. 866, 339 P.3d 233 (2014).....	23
<i>State v. Grier</i> , 171 Wn.2d 17, 246 P.3d 1260 (2011)	19, 21
<i>State v. Kirkman</i> , 159 Wn.2d 918, 155 P.3d 125 (2007)	26
<i>State v. Lamb</i> , 175 Wn.2d 121, 285 P.3d 27 (2012).....	14
<i>State v. Martin</i> , 94 Wn.2d 1, 614 P.2d 164 (1980).....	22
<i>State v. Min Sik Kim</i> , 7 Wn.App.2d 839, 436 P.3d 425 (2019)	3
<i>State v. Montgomery</i> , 163 Wn.2d 577, 183 P.3d 267 (2008).....	26
<i>State v. Pugh</i> , 153 Wn. App. 569, 222 P.3d 821 (2009).....	13
<i>State v. Schapiro</i> , 28 Wn. App. 860, 626 P.2d 546 (1981), <i>overruled in part on other grounds by State v. Fry</i> , 30 Wn. App. 638, 638 P.2d 585 (1981)	24
<i>State v. Shelmidine</i> , 166 Wn. App. 107, 269 P.3d 362 (2012)	18

<i>State v. Thomas</i> , 109 Wn.2d 222, 743 P.2d 816 (1987)	23
<i>State v. Wilson</i> , 162 Wn. App. 409, 253 P.3d 1143, <i>review denied</i> 173 W.2d 1006, 268 P.3d 943 (2011)	14
 Statutes	
RCW 7.69A.030(4).....	3
RCW 9A.32.020(1)(a)	17
 Rules	
CrR 4.2(f).....	13
ER 615	24
 Other Authorities	
Flavie Waters et al., <u>Severe Sleep Deprivation Causes Hallucinations and a Gradual Progression Toward Psychosis With Increasing Time Awake</u> , <i>Frontiers in Psychiatry</i> 9:303 (July 10, 2018).....	20
Holly M. Harner & Mia Budescu, <u>Sleep Quality and Risk for Sleep Apnea in Incarcerated Women</u> , <i>Nurs. Res.</i> 63 (3): (May-Jun 2014).....	20
Naveed Saleh, <u>Sleep deprivation may exacerbate these serious health conditions</u> , <i>MDLinx: Internal Medicine</i> (Feb. 1, 2019).....	20
<u>Sleep and Mental Health</u> , <i>Harvard Mental Health Letter</i> , (July 2009).....	20

I. INTRODUCTION

The Defendant Crystal Jackson ran a sophisticated, interstate drug dealing operation coordinating with her gang members in San Quentin and employing distributors and enforcers. She participated in the murder of a young street dealer Jesus Isidor-Mendoza. With the assistance of her attorney Ann Mahony, the Defendant entered into a plea agreement requiring her to testify truthfully at the trials of her co-defendants.

Twice the trial court considered the factual basis for her guilty plea to first degree murder, first when it accepted her guilty plea and then when it denied her motion to withdraw the guilty plea. Isidor-Mendoza was suspected of having stolen from the Defendant. He was killed in her home by her tenants/employees and with her oversight. She watched as Isidor-Mendoza was beaten, abused, drowned, and mutilated. She provided the tools, materials, and facilities for others to dismember Isidor-Mendoza's body and clean up after themselves. A few days later she drove the body to an overpass and dumped it into a ravine. The court did not manifestly abuse its discretion in finding a factual basis from these facts.

After the Defendant breached the plea agreement, she was appointed a new attorney to litigate the motion to withdraw guilty plea. Walter Peale argued unsuccessfully that the Defendant lacked the mental capacity to testify truthfully, because she was slow and suggestible. The trial court

found this claim “[flew] in the face of common sense.” Not only did the Defendant have the mental capacity to run a complicated interstate drug enterprise, but she also only withheld the truth when it benefitted her.

The Defendant argues that her first attorney was constitutionally required to retain mental health experts. In the context of a guilty plea, an attorney is not required to hire experts to pursue a defense that the attorney did not choose and which flies in the face of common sense.

II. RESTATEMENT OF THE ISSUES

- A. Where the probable cause declarations describe a murder committed over a prolonged period of time in the Defendant’s home with the Defendant’s continuing knowledge and material assistance by the Defendant’s employees and for the Defendant’s benefit, has the trial court manifestly abused its discretion in finding the charge is supported by an adequate factual basis and that there is no manifest injustice requiring withdrawal of the guilty plea?
- B. Does effective assistance in the context of a guilty plea require an attorney to hire experts to pursue a defense that the attorney has chosen not to pursue and which later proves unavailing?
- C. Did the trial court properly exclude a witness from the courtroom during the Defendant’s testimony where the purported purpose for her observation was so that she might later opine on inadmissible ultimate issues including the credibility of the Defendant?

III. STATEMENT OF THE CASE

Isidor-Mendoza’s mother reported him missing in November 2014; she had last seen him getting into a vehicle being driven by the Defendant

Crystal Jackson. CP 2, 5. On February 8, 2015, Isidor-Mendoza's badly decomposed body was found in a ravine. CP 2. His body had been cut in half and deposited in two plastic bags inside a nylon tarp inside a larger garbage bag. *Id.*

The Defendant's minor-aged brother JM¹ told police that Isidor-Mendoza came to see the Defendant at her house on the day of his death. CP 5, 395, 489. The Defendant's daughter told police that Isidor-Mendoza had been caught stealing from the Defendant's bedroom and was now dead. CP 5. The Defendant's paramour Jakeel Mason² told police that the Defendant had shown him a picture on her phone of a twisted dead body. CP 626; 4RP³ 55, 58; 5RP 33, 130, 167. Wallace Jackson (hereinafter referred to as "Wallace" to avoid confusion) told police that he had seen a heavy-duty garbage sack at the Defendant's home that smelled like a dead body. CP 2. The Defendant told Wallace that the dead person had "fucked up." *Id.* He claimed he helped her load the bag into her car and leave it in the ravine. *Id.*

¹ The State notes that the Defendant has named her brother in her brief. No court rule prohibits this, however, a penumbra of authority suggests the use of initials is the better practice. *See* this Court's General Order dated August 22, 2018 (re. changes to case title) and General Order 2011-1 (re. use of initials or pseudonyms for child witnesses in sex crimes). *See also* RCW 7.69A.030(4) (right of child witnesses to not have their identity disclosed).

² Mr. Mason passed away March 25, 2016, the month before the Defendant entered her guilty plea. CP 150, 554; 4RP 1016; 5RP 126-27; *State v. Min Sik Kim*, 7 Wn.App.2d 839, 841, 436 P.3d 425, 427 (2019).

³ The State adopts the transcript notation as set forth in the Brief of Appellant at 3, n.1.

When the Defendant learned what Wallace had told police about her, she was determined to “get back” at him. CP 3, 348, 610-11, 613; 5RP 123-24. She made her own statement to police, accusing Wallace and his best friend Darrel Daves of raping and drowning Isidor-Mendoza and then cutting up the dead body. CP 3-4. She said the men, who were living in her detached garage, left the body in a garbage bag at her house for a couple of days before asking her to drive them to an overpass where they threw the body over the side. *Id.*

The State charged the Defendant, Wallace, and Daves with murder. CP 1-2. Over the next year, the Defendant had extensive meetings with her attorney Ann Mahony to discuss the evidence and her defenses. 1RP 4; 6RP 74, 79-80. Ms. Mahony was aware of her client’s mental health issues and knew that she had been placed on suicide watch at the jail after reporting sleeplessness and hallucinations. 7RP 24-25, 28; 9RP 130-31; Exh. 17 at 3. Counsel considered “every possible defense, one of them being a mental health defense.” 7RP 27-28. But the symptoms subsided with medication, and Ms. Mahony decided against such a defense. 7RP 28; 9RP 130. She had no reason to believe that mental health issues affected the Defendant’s mental capacities. 7RP 26.

The Defendant had desired and intended to cooperate with the prosecution from the time of her arrest. 5RP 121-24. She had hoped in this

way to avoid any charges at all. 6RP 81. The prosecutor approached Wallace and Daves first, and the Defendant worried they would conspire against her. CP 353; 5RP 140. When discussions with Wallace and Daves proved unsuccessful, the State entered into a plea deal with the Defendant in which she agreed to testify against her co-defendants. CP 249, 302, 661-64; 5RP 140.

The Defendant's proffer explained that: she was a drug dealer; Daves was her tenant and distributor; and Dave's best friend Wallace was also a distributor. CP 329-35, 349, 547. She said, although she was Isidro-Mendoza's supplier, all his business had been through a third party, and she did not know him at all. CP 250, 349. When \$5000 went missing from her safe, she believed Daves and Wallace were responsible. CP 314. She used her enforcer Mason to strong-arm them. CP 314-16. Daves and Wallace blamed the theft on Isidor-Mendoza, and then, in an apparent effort to recover her money, the men proceeded to torture the boy in the Defendant's garage until he died. CP 250-51, 314-17, 340. Daves and Wallace cut Isidore-Mendoza's body into pieces with tools that they gathered from the Defendant's house. CP 319, 322-23. Afterwards, they cleaned up using the Defendant's cleaning supplies and bathroom. CP 251, 319, 326-27. The Defendant claimed she observed everything, but neither commanded nor prevented it. CP 317-19.

After the Defendant recorded her proffer of testimony, she pled guilty to amended charges of first degree murder and second degree manslaughter. 1RP. The plea agreement required the Defendant to give a complete and accurate account of events, to participate in interviews, and to testify at the trials of her co-defendants. CP 249, 302, 661-62; 4RP 27. If she fulfilled her obligations with complete honesty, the State would make a motion to vacate the murder count, and the Defendant would be sentenced only on the second count. CP 3-4. 249, 661-64.

At the change of plea. Ms. Mahony explained:

I have represented Ms. Jackson on this matter for over a year. We've had extensive meetings. We discussed the evidence against her, what a trial would look like, what kind of defense would be put forth for her.

She has made a proffer of testimony which has caused the State to make an offer to her. We have discussed that at length. I do believe that she is making a knowing and intelligent entry of these pleas. I would ask the Court to accept the pleas.

1RP 4.

A few months later, the Defendant acknowledged that she had not been completely truthful. CP 3, 438-39, 604-05, 612; 5RP 150. She had minimized her role in the crime to make herself look better and in order to persuade the prosecutor to enter into the plea agreement with her. CP 605-06, 611, 613; 4RP 41; 5RP 150. The prosecutor impressed on her again that

she needed to be 100% honest and complete in her statement going forward or she would be sentenced to murder in the first degree. 4RP 40-42, 49.

The Defendant then gave a revised⁴ statement. CP 251, 436-37. Where she had previously denied knowing the victim, now the Defendant admitted that two months before the murder she had confronted Isidor-Mendoza over a drug debt and instructed him to deal directly with her from then on. CP 250, 396, 429-32, 609-10; 4RP 43. But Isidor-Mendoza stole from her again. CP 432-33 (“The first time, it was just drugs. ... The second time was \$5,000 came up missing out of my room, out of a safe.”).

The Defendant also admitted that she had lied about fleeing the house with her children during the dismemberment of the body. CP 251-52, 439-40, 612-14; *Cf.* CP 320-21, 380-81, 400 (originally claiming she gathered the children so quickly that she left her brother behind, leaving him to barricade himself in his room); 4RP 44. In fact, she had only left the house by herself to buy cleaning supplies and breakfast. CP 440, 456.

The co-defendant cases were joined for trial, and the Defendant testified. CP 508-624. After her first day of testimony, it became apparent that the Defendant had been lying about the location of the crime. 4RP 57-58, 139-40, 146-48, 171-72; 5RP 13-14.

⁴ The attorneys for Daves and Wallace testified that the Defendant gave 11 different statements before the co-defendants’ trial and “every single time she talked, her story changed.” 4RP 135-38, 151, 169, 174.

Confronted outside of the courtroom, the Defendant admitted that she had taken a picture of Isidor-Mendoza's mangled body and shown it to Mason on her phone. CP 252-53; 4RP 146, 148, 171-73; 14RP 60-61. (Previously she had claimed that she had not been in possession of her phone. CP 318-21.) Mason had told police the body in the picture was in a bathtub. CP 253. Together with the blood evidence, this established that the events occurred in the Defendant's home, not Daves' garage residence. 4RP 139-40, 146-48, 171-72; 5RP 13-14.

During this conversation, the Defendant also admitted that another associate Demetrius "Fresh" Dixon had been at her house around the time of the murder and had participated in some sort of confrontation regarding the missing \$5000. CP 253-54; 4RP 49-50, 103-04, 149-51, 175-77; 5RP 28, 163, 168; 6RP 40-41, 49; 13RP 78-79; 14RP 49-51. Mr. Dixon was unknown to the local police. 4RP 103-04. In earlier interviews, the Defendant had identified "Cue Bone," "Spodie," and other gang members who had come up from California. 5RP 30-32. Because she had acknowledged that she had access to out-of-state enforcers, the State was able to address these identified parties in a motion in limine. CP 495-97; 5RP 31. But the Defendant had never spoken of Mr. Dixon. 4RP 70.

These latest revelations were "completely inconsistent with everything else," and the prosecutor could not proceed. 4RP 135-35, 151-

52, 170. Based on the untimely disclosures and the prosecutor's inability to continue to endorse the Defendant's testimony, a mistrial was declared, and the murder charges had to be dismissed against Daves and Wallace. 4RP 17, 152; 5RP 15, 19, 29, 41; 6RP 64. Wallace pled guilty to Rendering Criminal Assistance. CP 61; 5RP 41. Although Daves had confessed his culpability to an inmate and suggested the same in text messages, once the court struck the Defendant's testimony, the State was not able to proceed with any charges against Daves. 6RP 37-38, 51-52.

The State requested that the Defendant Jackson be sentenced on the murder after breaching her plea agreement. CP 302-626. Ms. Mahony withdrew as counsel and was replaced by Walter Peale, III. CP 685-87. Six months after his appointment, Mr. Peale filed a response asking the court to sentence the Defendant only on the manslaughter or, in the alternative, to allow her to withdraw her plea. CP 40-41, 49-50, 57. The motion was filed more than a year after the guilty plea. CP 13, 38.

Over the next year, the court heard testimony on the parties' motions. Ms. Mahony's testimony was taken on four separate days over a period of five months – interrupted repeatedly for Mr. Peale to investigate mental health claims and seek out expert witnesses. CP 69-70; 6RP 3; 7RP 3, 5-23; 8RP 3, 6-13; 9RP 3.

Ms. Mahony testified that she became acquainted with her client's family circumstances, mental and physical health, and criminal history. 6RP 70. They had discussed the evidence, charges, accomplice liability, lesser included offenses, and possible defenses. 1RP 4; 6RP 72, 74, 79-80. She brought the discovery into the jail for the client to review at length, but did not coach her on discrepancies between her statements and other evidence. 6RP 73-74, 76. Ms. Mahony had a DNA expert and an investigator on standby and was beginning the process of conducting witness interviews when the plea agreement was reached. 6RP 78, 81.

The court, expert, prosecutor, and defense counsel all agreed the Defendant was competent. CP 255; 6RP 61, 69; 7RP 6-7, 15-16; 9RP 38, 79-80, 96; 13RP 99; 16RP 367-68. However, the Defendant's retained experts depicted her as cognitively incapable of complying with the plea agreement. Exhibits 17 and 21. This portrayal was inconsistent with the Defendant's many interviews in which she described juggling jobs and men in a busy, eventful life. The Defendant had earned a high school diploma and taken classes at the Seattle Vocational Institute in business management and at Bates Technical College. CP 365. She had been employed in floral design, food preparation, hospitality, sales, and as a nurse's aide with senior care. CP 366-67. She had five young children and was raising four of them by herself while also caring for younger siblings. CP 365, 371; 5RP 44. At

the time of her arrest, she was earning income by renting out her detached garage, by selling T-shirts to raise cultural consciousness, and from public assistance. CP 330, 369, 390. And she was active in the conscious community, attending lectures and traveling to California to record her own lectures and music videos on Facebook and Youtube under her African praenomen Amenet Ma`at. CP 342, 364, 368, 389, 390, 402, 493-94.

On the street, however, she was known as "Lady Hoodsta" and had long been affiliated with the Rollin 90's Crips. CP 312, 349-50, 364, 388-89. The Defendant's fiancé and all three of the men who had fathered her children were with the Rollin 90's Crips. CP 337, 370, 389, 402. While the Defendant's fiancé was serving time in San Quentin, the Defendant took her enforcer Mason as her lover. CP 315, 370. Another romantic interest, Nehemiah Weekly, provided her cars and money. CP 329 ("pretty much whatever I wanted"). And she dallied with Wallace. CP 329, 372, 387.

The Defendant had her own sophisticated business distributing marijuana and methamphetamine. She began selling marijuana at 14. CP 367, 371. She would purchase marijuana through dispensaries and individual growers, and then ship the product to Tennessee, South Carolina, and California. CP 331, 369, 519 (vacuum-sealed and hidden in clothing). She also arranged through an inmate at San Quentin (via contraband cell phone) for methamphetamine to be mailed to her from California which she

then distributed locally. CP 333-34, 370, 391-93. At one time, the Defendant attempted to expand her business to sell MDMA (molly), which she repackaged in capsule form. but she could not find the right clientele for the product. CP 349, 369. She was earning \$5500-8000 a month in the illegal drug trade, holding as much as \$15,000 in cash in the house, and making untraceable electronic transfers using Green Dot, Rush Cards, MoneyPak, and prepaid Visa. CP 331, 349, 369-70, 391-92, 522. The Defendant enlisted Daves and others to assist her in distributing the methamphetamine, and she enlisted Mason to be her enforcer. CP 314-16, 329-36, 368-70, 373, 376, 396, 530-31, 547.

Isidor-Mendoza was murdered for stealing from her. CP 314-17, 340. While she was aware that Isidor-Mendoza was being tortured on her behalf and with her children in the house. she got high and had sex. CP 398-99. After disposing of the body, she texted her fiancé:

I'll bet he won't be able to steal anything anymore. Fucking dope feens. SMH. LOL. Now I can rest. I'm done running the streets. 'Cause this one was way messy Crip King.

CP 336-37. Her fiancé was in prison for his own murder of a person who had robbed him while he was dealing drugs. CP 402.

The superior court did not give credence to the expert testimony that the Defendant was able to manage a "sophisticated" drug operation by "merely following simple instructions." CP 255. Nor did it find that the

Defendant misunderstood the “straightforward” requirement that she “provide truthful answers” to questions. CP 254-55. Her deceptions were conscious and goal directed. CP 257. They always benefitted her whether by minimizing her criminal culpability, distancing Mason from the crime in order to hide the intimacy of that relationship from her fiancé, or inventing a tale of concern for her children’s security. CP 257; 4RP 119; 13RP 105-18, 143-44, 153.

The trial court denied the Defendant’s motions, found a breach of the plea agreement, and sentenced her accordingly. CP 248-70, 282-95.

IV. ARGUMENT

A. The superior court did not abuse its discretion in finding a factual basis to support the plea to murder in the first degree.

The Defendant seeks review of the denial of her motion to withdraw her guilty plea. The standard of review is very high.

The enforcement of valid plea agreements is of profound public importance. *State v. Codiga*, 162 Wn.2d 912, 922, 175 P.3d 1082 (2008). Therefore, a defendant asking a superior court to withdraw a guilty plea must prove withdrawal of the plea is “necessary to correct a manifest injustice.” CrR 4.2(f). A manifest injustice is one that is obvious, directly observable, overt, and not obscure. *State v. Pugh*, 153 Wn. App. 569, 577, 222 P.3d 821 (2009).

“Without question, this imposes upon the defendant a demanding standard.” *Taylor*, 83 Wash.2d at 596, 521 P.2d 699. This heavy burden is justified by the greater safeguards protecting a defendant at the time she enters her guilty plea. *See Taylor*, 83 Wash.2d at 596, 521 P.2d 699 (discussing CrR 4.2 requirements which are “carefully designed to insure that the defendant’s rights have been fully protected *before* a plea of guilty may be accepted”). Accordingly, trial courts should exercise greater caution in setting aside a guilty plea once the required safeguards have been employed. *Taylor*, 83 Wash.2d at 597, 521 P.2d 699.

State v. Wilson, 162 Wn. App. 409, 414, 253 P.3d 1143, *review denied* 173 W.2d 1006, 268 P.3d 943 (2011).

Having failed to persuade the lower court, the Defendant must now establish that the denial of the motion was an abuse of discretion. *Wilson*, 162 Wn. App. at 414.

A trial court abuses its discretion if its decision “is manifestly unreasonable or based upon untenable grounds or reasons.” *State v. Powell*, 126 Wash.2d 244, 258, 893 P.2d 615 (1995). A court’s decision “is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *In re Marriage of Littlefield*, 133 Wash.2d 39, 47, 940 P.2d 1362 (1997). “A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard.” *Id.* The “untenable grounds” basis applies “if the factual findings are unsupported by the record.” *Id.*

State v. Lamb, 175 Wn.2d 121, 127, 285 P.3d 27, 30–31 (2012).

The Defendant challenges whether there is a factual basis for the element of premeditation. Brief of Appellant (BOA) at 32. It took some

time for the Defendant to notice this supposed manifest injustice. She filed her motion with the superior court fourteen months after she pled guilty and six months after the prosecutor filed a bench brief to sentence her on the murder. CP 13, 38, 302. In that motion, she argued that a confession was necessary to establish a factual basis for the plea. CP 50, 59-62, 302. In her testimony, she was unable to say what part of the plea she misunderstood. 13RP 134-39; 16RP 381-83. In her oral presentation, made a year after the filing of her motion, she then claimed that the probable cause statement did not demonstrate that she intended Isidor-Mendoza to die. 16RP 408-10.

When the superior court accepted her guilty plea, it found a sufficient factual basis. CP 27-28 (“there are facts alleged that if proven would support the allegations”); 1RP 5-6. When the court heard her motion two years later, it maintained this opinion. 16RP 410. Its decision is tenable.

The Defendant knew that premeditation was an element of the offense. She had received the amended information and reviewed the elements therein. CP 13. That information charges that she “did unlawfully and feloniously, *with premeditated intent to cause the death of another person*, cause the death of such person ... Jesus Isidor Mendoza.” CP 11 (emphasis added). “The defendant’s understanding of the nature of the

charges against [her] is assured by [her] acknowledgment that [she] received a copy of the information and that [she] read and understood it.” *Matter of Taylor*, 31 Wn. App. 254, 258, 640 P.2d 737, 739 (1982).

The Defendant had also read and reviewed “every paragraph” of the two probable cause declarations and the plea statement with her attorney “line by line” and had all her questions answered to her satisfaction. CP 30. The probable cause declarations describe an impersonal, remorseless assassination in the context of drug dealing. CP 2-10. The Defendant knew Isidor-Mendoza and knew where he lived. CP 5 (the month before, she had shown up at his house and given him a ride). She lied about this to police. CP 3 (describing him only as a “boy”). On the day he was killed, Isidor-Mendoza was summoned to the Defendant’s home where JM saw him meet with her. CP 3, 5. She lied about this to the police. CP 3 (saying Isidor-Mendoza walked to the back of the home to meet Daves and Wallace only).

The Defendant permitted drug dealers Daves and Wallace to live in her detached garage and was their source of drugs. CP 3 (Wallace said when the Defendant invited him to her house, he expected she would provide him with methamphetamine). Wallace felt threatened by her and did what she told him. CP 3 (she pulled out a handgun and demanded his identification, and he helped her dispose of a body).

The Defendant's daughter told police Isidor-Mendoza had been caught stealing from the Defendant. CP 5. This group impressed upon Isidor-Mendoza that he had "fucked up." CP 3. In service of the Defendant's cause, the group set upon Isidor-Mendoza, raping, beating, and eventually drowning him. CP 4. It was not a quick death and involved much "more than a moment in point of time." RCW 9A.32.020(1)(a).

After this barbarism, there was nothing left but to destroy the evidence. They killed him, dismembered him, and cleaned up. CP 2-5. The Defendant did nothing to prevent or report the attack. Indeed, the acts were committed for her benefit by persons who depended upon her for a residence and drugs and whom she had threatened.

From this record, a jury could conclude that the Defendant, alone or with accomplices, intentionally killed Isidor-Mendoza as retribution and deterrence. Isidor-Mendoza was punished for a theft, and the killing deterred others from considering stealing from her.

This motive, which can be inferred from the probable cause statement, became more explicit in later interviews. The murder would have been "to make an example." CP 323. "[A]s a drug dealer ... if she doesn't send a message when the money comes missing, it keeps happening over and over again." 4RP 115-16.

[Stealing is] the type of stuff that people do when they're not afraid of you. They're -- they're just testing you to see how far they can get away with whatever. That's how the drug game is. Like, and that's why I had Jakeel.

CP 495. The Defendant's enforcer Jakeel Mason was connected with more dangerous people in California who could come to Washington, take care of business, and leave the state. CP 495-97.

There is a factual basis for premeditation. The trial court tenably found that a withdrawal of the guilty plea was not required to prevent a manifest injustice.

B. The Defendant received effective assistance of counsel where the her attorney considered all defenses and made a strategic decision not to pursue a futile mental defense.

The Defendant claims counsel's performance is per se defective if, in her consideration of and decision against a mental health defense, she does not obtain an expert evaluation. BOA at 50-52. The superior court disagreed. CP 266.

In the context of a guilty plea, effective assistance includes evaluating the state's evidence and assisting the defendant in making an informed decision about whether to plead guilty or proceed to trial. *State v. Shelmidine*, 166 Wn. App. 107, 112, 269 P.3d 362, 365 (2012). The defendant must show counsel's performance fell below an objective standard of reasonableness which prejudiced the client. *State v. A.N.J.*, 168 Wn.2d 91, 109, 225 P.3d 956, 965 (2010). The threshold for a showing of

deficient performance is high, given the deference and strong presumption afforded to counsel's decisions in the course of representation. *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260, 1268 (2011). Actions which go to the theory of the case or to trial tactics will not support an ineffective assistance claim. *Id.*

The superior court found that if the Defendant went to trial:

... it seems patently clear that at a minimum she would be found guilty of being an accessory to Murder in the First Degree. ... In point of fact, it would likely have constituted ineffective assistance for Ms. Mahony to have advised rejection of the plea and advised Ms. Jackson to proceed to trial.

CP 266.

The record is that Ms. Mahony had studied the State's evidence and considered all possible defenses. She had extensive meetings with the Defendant over a year's time in order to discuss the evidence and the proposed defense at trial. 1RP 4; 6RP 74, 79-80.

Ms. Mahony had considered the possibility of a diminished capacity defense based on drug abuse. 7RP 27-28. However, the crime occurred over a prolonged period and in concert with others. It is unlikely that she was intoxicated for days and yet maintained this singular purpose and cooperation. Moreover, the Defendant was not merely a drug user. She was a drug dealer who had been ordered to attend substance abuse treatment

repeatedly in the past, but never graduated. Exh. 17 at 3. 7. Such a defense to a charge of murder would have little jury appeal.

Ms. Mahony had considered a mental health defense. 7RP 28. She did so, because the client disclosed mental health issues. 7RP 25. Counsel was also aware that early on, after the Defendant had trouble sleeping and reported that she was hallucinating, the jail had placed her on suicide watch. 7RP 28; 9RP 130-31; Exh. 17 at 3. However, it is common for detainees to suffer from disrupted sleep cycles due to racing thoughts and environmental noise.⁵ Exh. 17 at 5 (Defendant “regularly complained of racing thoughts”). Sleep deprivation can cause hallucinations⁶ and exacerbate other health conditions.⁷ With medication, including an antihistamine to help her sleep, the symptoms subsided. 9RP 130. By the time of her proffer and plea, she was “largely stable” and “functioning pretty well.” 9RP 130.

⁵ Holly M. Harner & Mia Budescu, Sleep Quality and Risk for Sleep Apnea in Incarcerated Women, *Nurs. Res.* 63 (3): 158-169 (May-Jun 2014).
https://journals.lww.com/nursingresearchonline/Abstract/2014/05000/Sleep_Quality_and_Risk_for_Sleep_Apnea_in.3.aspx

⁶ Flavie Waters et al., Severe Sleep Deprivation Causes Hallucinations and a Gradual Progression Toward Psychosis With Increasing Time Awake, *Frontiers in Psychiatry* 9:303 (July 10, 2018).
https://www.researchgate.net/publication/326296690_Severe_Sleep_Deprivation_Causes_Hallucinations_and_a_Gradual_Progression_Toward_Psychosis_With_Increasing_Time_Awake

⁷ Naveed Saleh, Sleep deprivation may exacerbate these serious health conditions, *MDLinx: Internal Medicine* (Feb. 1, 2019)
[https://www.mdlinx.com/internal-medicine/article-3369: Sleep and Mental Health](https://www.mdlinx.com/internal-medicine/article-3369:Sleep-and-Mental-Health), *Harvard Mental Health Letter*, (July 2009).
https://www.health.harvard.edu/newsletter_article/Sleep-and-mental-health

The Defendant cannot claim that counsel did not consider a mental health defense. Counsel did consider it.

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.

Instead, the Defendant argues that her attorney should have focused resources down a path she had chosen not to pursue. BOA at 50. The choice of a defense is plainly a tactical decision. Ms. Mahony is entitled to the presumption that this tactical decision in choosing a different defense was a legitimate trial strategy. *Grier*, 171 Wn.2d at 33. Counsel's decision was also a reasonable one.

Mr. Peale pursued a mental health defense in the post-conviction motion, arguing that the Defendant was slow, suggestible, and agreeable. BOA at 3-4, 22-23. This tactic failed. After a full review of this record, the trial court found that the Defendant was "the key player in a very detailed drug distribution network" involving the coordination of partners in various states and employing local drug runners and enforcers. CP 254. Every one of the Defendant's failures to tell the whole truth was to her benefit. 16 RP 375. To say that her omissions or false statements resulted from suggestion or agreeableness, the superior court found, "flies in the face of common sense." 16 RP 373. "Absent some indication of Defendant being

incompetent or somehow exhibiting a diminished capacity, failure to have Ms. Jackson evaluated by mental health experts before accepting a favorable plea deal is not ineffective assistance of counsel.” CP 266-67 (citing *In re Elmore*, 162 Wn.2d 236, 253-54, 172 P.3d 335, 344-45 (2007)).

Ms. Mahony’s choice not to pursue a mental health defense was reasonable, tactical, and clearly not prejudicial.

The Defendant claims that *Elmore*, the case cited by the superior court, is distinguishable, but fails to show how. BOA at 49-50. It is distinguishable in one aspect. *Elmore* was facing the death penalty, which required the creation of a mitigation report. *Elmore*, 162 Wn.2d at 253. “The United States Supreme Court has more than once reminded us of the indisputable fact that ‘death is different,’ and that this difference must impact on the court’s decision making, requiring the utmost solicitousness for the defendant’s position.” *State v. Martin*, 94 Wn.2d 1, 21, 614 P.2d 164, 174 (1980). Yet even in a death penalty case, the court did not require defense counsel to obtain a mental health evaluation prior to a guilty plea.

In other respects, the cases are on point. There was “no indication that *Elmore* was incompetent, insane at the time of the commission of the crime, or under the influence of any condition that would have diminished his capacity to form the requisite intent to commit the crimes charged.” *Elmore*, 162 Wn.2d at 253. In the same way, there was no indication that

the Defendant was incompetent at the time of plea, no allegation of insanity, and no credible reason to support a diminished capacity defense. Like the Defendant, Elmore wanted to avoid a trial and he pled guilty. *Elmore*, 162 Wn.2d at 254. They both gave lengthy statements. *Id.*

The Defendant claims that two other cases are more comparable. BOA at 47-48 (citing *State v. Thomas*, 109 Wn.2d 222, 232, 743 P.2d 816, 821 (1987) and *State v. Fedoruk*, 184 Wn. App. 866, 870, 339 P.3d 233, 235 (2014)). They are not.

First, both involve cases that went to trial. The standards are different for a case that resolves by guilty plea. In the context of a plea, counsel must assist the client in making an informed decision after evaluating the evidence and considering the likely outcome at trial. *In re James*, 190 Wn.2d 686, 689-90, 416 P.3d 719 (2018).

Second, in both cases, defense counsel actually wanted to pursue a mental health defense. *Thomas*, 109 Wn.2d at 223-25; *Fedoruk*, 184 Wn. App. at 881. In one case, counsel failed to obtain an expert in advance of trial. *Fedoruk*, 184 Wn. App. at 881. In the other, counsel obtained a witness who lacked expert qualifications. *Thomas*, 109 Wn.2d at 229. Their performances were deficient because they did not make adequate preparations in order to present the defense they had chosen. But Ms. Mahony had not chosen to pursue a mental health defense. And this was a

reasonable choice. A jury would be unlikely to give the benefit of a mental defense to a drug dealer who exposed her children to her violent, criminal lifestyle and who commissioned the murder, dismemberment, and disposal of a teenage boy in her own home. And, considering her demonstrated proficiencies, the defense “flew in the face of common sense.” 16 RP 373.

The constitution does not require an attorney to hire experts in support of a defense that she had chosen not to pursue and which has proven unavailing.

C. The court did not abuse its discretion in excluding witnesses from the hearing.

The Defendant complains about the removal of a witness from the courtroom during another witness’ testimony. BOA at 53. As the Defendant notes, ER 615 governs witness exclusion. BOA at 54. “Questions concerning the exclusion of witnesses and the violation of that rule are within the broad discretion of the trial court and will not be disturbed, absent manifest abuse of discretion.” *State v. Schapiro*, 28 Wn. App. 860, 867, 626 P.2d 546, 550 (1981). *overruled in part on other grounds by State v. Fry*, 30 Wn. App. 638, 638 P.2d 585 (1981).

Psychologist Natalie Brown was the last witness to testify. She arrived in court during the conclusion of the prosecutor’s cross-examination of the penultimate witness, the Defendant. 14RP 4. Defense counsel argued

that it would assist Ms. Brown to observe whether the Defendant actually testifies in a manner consistent with the psychologist's report. 14RP 5-6.

THE COURT: Well, that's sort of the problem.

14RP 5 (explaining that the purpose of the rule is to prevent one witness from conforming her testimony to that of another). The court noted that the psychologist had already had an opportunity to interview the Defendant. 14RP 7-8. Ms. Brown had conducted a 3½ hour interview with the Defendant in jail, followed by an interview with the Defendant's mother. 14RP 111; Exhibit 21 at 2. She had reviewed the reports of three other mental health professionals, each of whom had evaluated the Defendant personally. 14RP 113-16. And she had been provided with all the transcripts of interviews with the Defendant which are contained in this appellate record and possibly more. Exhibit 21 at 3.

The judge excluded the witness, explaining that her presence would allow her to "creat[e] testimony in conformance with an opinion that's already been formed" which would have the effect of an improper vouching or bolstering of the Defendant's testimony. 14RP 7.

The Defendant claims there is no Washington case which considers the exclusion of a witness who has been qualified as an expert. BOA at 56. However, the Washington Supreme Court has considered whether it is proper for an expert to opine on ultimate issues. It is improper. *State v.*

Montgomery, 163 Wn.2d 577, 589-95, 183 P.3d 267, 273 (2008) (improper for chemist to testify as to defendant's intent); *State v. Kirkman*, 159 Wn.2d 918, 930, 155 P.3d 125 (2007) (a clear comment on the victim's credibility would amount to manifest error of constitutional magnitude).

The reason offered for the witness' inclusion was to assist Ms. Brown in preparing opinion testimony which the court found would be inadmissible anyway. It would not hear testimony which opined upon or bolstered the Defendant's credibility. The expert already had more than enough material to have formed an opinion. This is precisely the type of ruling that is well within a trial court's discretion. The court's ruling was more than tenable.

V. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction and sentence.

RESPECTFULLY SUBMITTED this 27th day of September, 2019.

MARY E. ROBNETT
Pierce County Prosecuting Attorney



Teresa Chen WSB# 31762
Deputy Prosecuting Attorney

Certificate of Service:

The undersigned certifies that on this day she delivered by E-File of U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

9-27-19
Date

Cherita Kar
Signature

PIERCE COUNTY PROSECUTING ATTORNEY

September 27, 2019 - 1:51 PM

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_20190927135039D2905354_2105.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Jackson Response Brief.pdf
- 523531_Designation_of_Clerks_Papers_20190927135039D2905354_9723.pdf
This File Contains:
Designation of Clerks Papers - Modifier: Supplemental
The Original File Name was jackson Designation.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- swiftm@nwattorney.net

Comments:

Sender Name: Therese Kahn - Email: tnichol@co.pierce.wa.us

Filing on Behalf of: Teresa Jeanne Chen - Email: teresa.chen@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

Address:
930 Tacoma Ave S, Rm 946
Tacoma, WA, 98402
Phone: (253) 798-7400

Note: The Filing Id is 20190927135039D2905354