

FILED
Court of Appeals
Division II
State of Washington
10/15/2019 3:06 PM

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

REPLY 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>ARGUMENT IN REPLY</u>	1
THE STATE REPEATEDLY OVERSTATES AND MISCHARACTERIZES THE RECORD, UNDERCUTTING THE TENABILITY OF THE STATE’S ARGUMENTS	1
B. <u>CONCLUSION</u>	8

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>In re Welfare of Wilson</u> 91 Wn.2d 487, 588 P.2d 1161 (1979).....	3, 4
<u>State v. Hummel</u> 196 Wn. App. 329, 383 P.3d 592 (2016).....	2, 4
<u>State v. Roberts</u> 142 Wn.2d 471, 14 P.3d 713 (2000).....	4
<u>State v. Wilson</u> 162 Wn. App. 409, 253 P.3d 1143 (2011).....	7

A. ARGUMENT IN REPLY

THE STATE REPEATEDLY OVERSTATES AND MISCHARACTERIZES THE RECORD, UNDERCUTTING THE TENABILITY OF THE STATE'S ARGUMENTS.

The State's response brief is light on the law but heavy on the "facts," in quotes because the State repeatedly overstates or misrepresents the record. For instance, the State attempts to minimize Mahony's awareness of Jackson's mental health issues, stating Jackson only "report[ed] sleeplessness and hallucinations," which "subsided with medication." Br. of Resp't, 4. The State glosses over the fact that Mahony knew the jail put Jackson on both antidepressants and antipsychotics. 9RP 130. At the time of her proffer and plea, Jackson was "largely stable" and "functioning pretty well," though "still reporting symptoms." 9RP 130. And, significantly, Jackson was "on an antipsychotic" at the time. 9RP 130. The State, apparently, seems to think antipsychotic medication is really no big deal and does not signify any mental health concerns worth investigating.

The State likewise asserts Jackson "claimed she observed everything" surrounding Isidor-Mendoza's murder. Br. of Resp't, 5. This misrepresents Jackson's proffer. Jackson was inside her house when Moore and her oldest daughter said someone was screaming out in the detached garage. CP 317. Jackson went outside and saw Wallace raping Isidor-Mendoza. CP 317. She told him to stop and went back inside the house,

where she remained for 30 to 45 minutes. CP 317-18. When she heard the hose turn on, she waited another 10 to 15 minutes, then went back outside to see Daves and Wallace dunking Isidor-Mendoza's head in water. CP 317-18. She told them they were "taking this way too far," and again went back inside the house. CP 317-18. When Jackson went back out to the garage some time later, she saw Isidor-Mendoza lifeless. CP 319. Thus, Jackson observed only bits and pieces of the ordeal—"no longer than 5 minutes each time" she went out to the garage. CP 318.

In the same vein, the State misstates the record in contending "the group set upon Isidor-Mendoza, raping, beating, and eventually drowning him." Br. of Resp't, 17. Again, Jackson maintained she did not participate in the killing and never encouraged Mason, Daves, or Wallace to do it. CP 7-8, 314. Moreover, Isidor-Mendoza's cause of death could never be established. 6RP 76. The State, put simply, is wrong in asserting the "group" drowned him. See also CP 318 (Jackson explaining, "He was dunking his head in and out of the bucket. But, not like drowning him."). This undercuts the State's credibility in responding to Jackson's lack of factual basis argument, where the manner of death is a significant factor in assessing premeditation (or lack thereof). State v. Hummel, 196 Wn. App. 329, 358, 383 P.3d 592 (2016).

The State again undercuts its own credibility in claiming the photograph of Isidor-Mendoza in a bathtub, “[t]ogether with the blood evidence,” “established that the events occurred in [Jackson’s] home, not Daves’ garage residence.” Br. of Resp’t, 8. This is a gross misrepresentation of the record.¹ Blood was found in Jackson’s bathroom, but Isidor-Mendoza was explicitly excluded as the source. 4RP 65-66. Mason likewise told detectives that it appeared the body was in a bathtub, but did not recognize it to be Jackson’s bathroom because of the location of the bathtub—“it was in a different spot.” CP 626. (And, indeed, the detective responded, “Yeah, and again, I’ve been in the house so I know what you’re talking about.” CP 626.) Far from the State’s contention, the photo suggested only that the murder did not occur in the garage, which had no bathtub.

The State notes Jackson maintained she “neither commanded nor prevented” the murder. Br. of Resp’t, 5. The State later emphasizes Jackson “did nothing to prevent or report the attack.” Br. of Resp’t, 17. Neither of these make Jackson an accomplice or principal to murder. “Washington case law has consistently stated that physical presence and assent alone are insufficient to constitute aiding and abetting.” In re Welfare of Wilson, 91

¹ The State also claims Jackson “admitted that she had taken a picture of Isidor-Mendoza’s mangled body and shown it to Mason on her phone.” Br. of Resp’t, 8. Again, however, Jackson admitted only that she showed Mason the photo, not that she took the photo. 4RP 146-47; 7RP 65-66.

Wn.2d 487, 491, 588 P.2d 1161 (1979); accord State v. Roberts, 80 Wn. App. 342, 355, 908 P.2d 892 (1996). Instead, an accomplice must be ready to assist in the commission of the crime. Wilson, 91 Wn.2d at 491. While Jackson admitted to assisting in concealing the murder and disposing of the body, she never indicated she was willing to assist in the murder itself. Hummel holds that disposing of the body and concealing the death “does not prove premeditation.” 196 Wn. App. at 356-57. Notably, the State does not once cite or address Hummel.

The State also seems to believe Jackson is some type of criminal mastermind because of her high school diploma and limited job experience. Br. of Resp’t, 10. But the record shows Jackson “bounced all around” schools, attending quite a few middle and high schools, and then dropping out of Seattle Vocational Institute and Bates Technical College. CP 365. Her unskilled work experience was seasonal, temporary, or she worked for only a few months before getting fired or quitting. CP 366-67. All of this is completely consistent with Jackson’s cognitive limitations.

Like the trial court, the State also repeatedly emphasizes the supposed “sophisticated” drug business Jackson was running. Br. of Resp’t, 11. But Jackson testified she received step-by-step instructions from her associates in San Quentin. 14RP 77-86. She did not track any of the sales herself and simply used a prepaid “Green Dot” Visa card to transfer money.

14RP 80-86. Consistent with this, Dr. Brown testified, “I’ve seen many individuals with FASD and significant cognitive deficits manage drug selling once they learn the ropes.” 15RP 280.

The State again mischaracterizes the record in claiming Jackson texted her fiancé after disposing of Isidor-Mendoza’s body: “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.” Br. of Resp’t, 12 (citing CP 336-37). But this text message was sent well before Isidor-Mendoza’s death (before, even, he was reported missing), and referred to another individual named Uso. CP 336-37; 9RP 67-68. Everyone below agreed the text was in no way related to Isidor-Mendoza’s murder.² 8RP 73-74; 9RP 67-68; 14RP 31. The State’s current attempt to characterize the text message as an admission of guilt to Isidor-Mendoza’s murder is egregiously incorrect. Moreover, this type of repeated mischaracterization of the record should call into question the State’s entire statement of the case, as well as its responses to Jackson’s arguments.

The State also claims motive can be inferred from Jackson’s proffer, where she supposedly said the murder “would have been ‘to make an

² The prosecutor, himself, asked Mahony on recross, “Now, when we looked at the records, it was clear that that text message was sent and received prior to the time that Mr. Mendoza was reported missing, right?” and, “Well, it’s clear it wasn’t related to this incident?” 9RP 67-68.

example.” Br. of Resp’t, 17 (quoting CP 323). The State takes this quote out of context. In context, Jackson told the detectives:

And again, [Wallace and Daves] said that if I didn’t say anything, that nothing would happen to me and the kids. So, I didn’t say anything. I was just like, well, however you guys [dispose of the body], we gotta make sure that me and my kids are not brought into it, because I didn’t ask you guys to do this. And he was like, well, quit saying that. Quit saying that. And, he was basically saying like, that’s what happens in the drug game if a mother fucker steals. But then at the same time, I’m not . . . thinking that they didn’t take it. You know, I, I know that they took it. *Um, and I thought that maybe they just killed the victim to make an example.* To try to play it all the way off.

CP 323 (emphasis added). Jackson was clearly talking about Wallace and Daves, not her, killing Isidor-Mendoza “to make an example.” CP 323. Meanwhile, Jackson maintained she did not participate and, in fact, expressly discouraged them to murder Isidor-Mendoza. CP 232. This so-called motive cannot be attributed to Jackson.

The State also suggests Jackson’s employment of Mason as her enforcer establishes some kind of motive. Br. of Resp’t, 17-18. This, again, is belied by the record. Jackson explained Mason would beat people up if a drug deal went sideways, but would not kill anyone. CP 336. She never instructed Mason to kill Isidor-Mendoza. CP 316. Furthermore, it was basically undisputed that Mason left before Isidor-Mendoza’s murder, not wanting to participate and afraid for his own safety. CP 316.

Finally, with regard to the law, the State cites the incorrect standard for withdrawal of a guilty plea. Br. of Resp't, 14. The State claims, "[h]aving failed to persuade the lower court, [Jackson] must now establish that the denial of the [motion to withdraw her plea] was an abuse of discretion," relying on State v. Wilson, 162 Wn. App. 409, 253 P.3d 1143 (2011). Br. of Resp't, 14. Again, not so.

The Wilson court recognized there are "four *per se* nonexclusive instances where a manifest injustice exists." 162 Wn. App. at 414. They are: "where (1) the defendant did not ratify the plea, (2) the plea was not voluntary, (3) the defendant received ineffective assistance of counsel, or (4) the plea agreement was not kept." Id. at 414-15 (footnote omitted). Wilson did not contend any of these four *per se* categories of manifest injustice applied, so abuse of discretion was the appropriate standard. Id. at 415. Jackson, on the other hand, contends both that her plea was not voluntary (because of the lack of factual basis for premeditation) and that she received ineffective assistance of counsel (because of her counsel's failure to investigate Jackson's mental health). Jackson is therefore entitled to withdraw her plea, because she has established a *per se* manifest injustice.

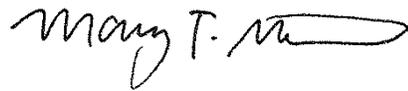
B. CONCLUSION

For the reasons discussed here and in the opening brief, this Court should hold Jackson is entitled to withdraw her guilty plea to first degree premeditated murder.

DATED this 15th day of October, 2019.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

A handwritten signature in black ink, appearing to read "Mary T. Swift", with a horizontal line extending to the right from the end of the signature.

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

Attorneys for Appellant

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

October 15, 2019 - 3:06 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_20191015150544D2896641_9300.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was RBOA 52353-1-II.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- teresa.chen@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 20191015150544D2896641