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OCT 27 2010
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

27742-9-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JONATHAN D. LYTLE, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE MICHAEL P. PRICE

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Mark E. Lindsey
Senior Deputy Prosecuting Attorney
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(509) 477-3662

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I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court abused its discretion in finding defendant competent to stand trial.
2. The trial court abused its discretion in denying defendant's motion to close the courtroom for the competency hearing.
3. The trial court abused its discretion by admitting demonstrative evidence that did not accurately represent the physical attributes of the individuals portrayed thereby.

II.

ISSUES PRESENTED

- A. DID THE TRIAL COURT ERRONEOUSLY FIND DEFENDANT COMPETENT TO STAND TRIAL?
- B. DID THE TRIAL COURT ERRONEOUSLY DENY DEFENDANT'S MOTION TO CLOSE THE COURTROOM FOR THE COMPETENCY HEARING?
- C. DID THE TRIAL COURT ERRONEOUSLY ADMIT INTO EVIDENCE STYROFOAM CUTOUTS AS DEMONSTRATIVE EXHIBITS DEPICTING THE

RESPECTIVE HEIGHTS AND WEIGHTS OF THE
DEFENDANT, CO-DEFENDANT, AND VICTIM?

III.

STATEMENT OF THE CASE

The defendant was charged by information filed in Spokane County Superior Court with one count of homicide by abuse and the aggravating factors that: defendant's conduct during the commission of the crime constituted deliberate cruelty; the victim was particularly vulnerable or incapable of resistance; and defendant used his position of trust, confidence, or fiduciary responsibility to facilitate the commission of the crime. CP 1-2.

Prior to trial, the defendant was sent to Eastern State Hospital ("ESH") for an assessment of his competency to stand trial. On April 16, 2008, Eastern State Hospital's Competency Commission (Dr. Strandquist and Dr. Borromeo) filed its report detailing its 15-day evaluation of defendant's competency to stand trial pursuant to the dictates of RCW 10.77. Defense counsel requested a second opinion be conducted. Dr. Mays filed his evaluation on July 14, 2008.

On September 8, 2008, the trial court heard argument on defendant's motion to close the courtroom for purposes of his competency

hearing. The trial court denied the motion to close the courtroom as reflected by the record. 9/9/08-RP 9-11. Thereafter, the trial court conducted a contested competency hearing herein on September 8th and 9th 2008.

The trial court reviewed all the pleadings and reports previously filed, took testimony and heard arguments regarding defendant's competency. 9/9/08-RP 13-137. The trial court found the defendant competent to stand trial and entered an order to that effect. CP 1351; 9/9/08-RP 150-156. The case proceeded to trial. Defendant was found guilty by a jury of the charged crime and the aggravating factors. CP 1517, 1518.

After trial and prior to sentencing, defendant did not renew his challenge to the trial court's ruling finding him competent. At sentencing, the trial court advised defendant of his right of allocution. RP 1308. Defendant responded, "Can I take the podium, your Honor?" RP 1308. Defendant then indicated to the trial court that he is a good person who has made mistakes. Defendant continued that "life is precious" and "I despise and hate all those that do wrong. I swear to God. And I even hate myself for what I've done." RP 1308-09. The trial court then sentenced defendant. CP 1575-1587. Thereafter, defendant filed this appeal. CP 1589-1607.

IV.

ARGUMENT

A. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN FINDING THE DEFENDANT COMPETENT TO STAND TRIAL.

The defendant makes multiple claims revolving around the issue of the defendant's competency to stand trial.

Trial courts have both inherent authority and the statutory authority of RCW 10.77 to conduct evaluations to determine a defendant's competency to stand trial. *State v. Wicklund*, 96 Wn.2d 798, 801, 638 P.2d 1241 (1982); *State v. Bebb*, 108 Wn.2d 515, 522, 740 P.2d 829 (1987); *State v. Peterson*, 90 Wash. 479, 156 Pac. 542 (1916). In order to obtain an evaluation, a threshold showing of incompetency must be made. *State v. Lord*, 117 Wn.2d 829, 901, 822 P.2d 177 (1991). The ruling on this issue is a matter left to the sound discretion of the trial court. *Id.*; *State v. Wicklund, supra* at 806; *State v. Peterson, supra*. Disagreement with counsel over strategy is not a basis for questioning competence. *State v. Lord, supra*. Here, the trial court granted the defense counsel's RCW 10.77 petition for a stay of proceedings and a competency evaluation on March 6, 2008.

Competency issues under RCW 10.77 arise when a criminal defendant is unable to appreciate the charges against him and assist his

counsel. See RCW 10.77.010(14); *State v. Woods*, 143 Wn.2d 561, 604, 23 P.3d 1046, cert. denied 534 U.S. 964, 122 S. Ct. 374, 151 L. Ed. 2d 285 (2001). Although not raised in this case, in contrast, diminished capacity is a court-created doctrine involving whether a mental condition limited the defendant's ability to have the mental state necessary to commit the offense. E.g., *State v. Atsbeha*, 142 Wn.2d 904, 914, 16 P.3d 626 (2001).

A person is competent to stand trial if he is “capable of properly understanding the nature of the proceedings against him and whether he is capable of rationally assisting his legal counsel in the defense of his cause.” *State v. Wicklund*, 96 Wn.2d at 800 (emphasis added); *Godinez v. Moran*, 509 U.S. 389, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993). Of similar import is RCW 10.77.010(14): “‘Incompetency’ means a person lacks the capacity to understand the nature of proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.”

On April 16, 2008, Eastern State Hospital's Competency Commission (Dr. Strandquist and Dr. Borromeo) filed its report detailing its 15-day evaluation of defendant's competency to stand trial pursuant to the dictates of RCW 10.77. Defense counsel requested a second opinion be conducted. Dr. Mays filed his evaluation on July 14, 2008. The trial

court conducted a contested competency hearing herein on September 8th and 9th 2008.

The trial court conducted the competency hearing pursuant to the dictates of RCW 10.77. 9/9/08-RP 150. The competency hearing included the testimony of Psychologist Strandquist, Ph.D., Psychologist Mays, Ph.D., and Psychiatrist Borromeo, M.D. as well as lay witnesses who had contact with defendant on the date that Summer Phelps was murdered. The trial court acknowledged all the briefing, memoranda, and evidence it had reviewed in preparation for the hearing. RP 150. The trial court noted that the determination of whether defendant is competent to stand trial is subject to a two-prong test. RP 151. Specifically, the trial court had to determine: (1) does the defendant understand the nature of the charges; and (2) is defendant capable of participating in his own defense? RP 151. Finally, the trial court reiterated that the burden of proof regarding competency rests with the defendant by a preponderance of the evidence. RP 152.

The trial court did not abuse its discretion in resolving this issue. Defense counsel did not satisfy their burden of proof showing that defendant's competency to stand trial should be in question. The "evidence" presented in support of the motion was counsel's opinion coupled with Dr. Mays' assessment. There was no showing that defendant

lacked the *capacity* to assist in the defense or understand the proceedings against him. The evidence established that defendant *chose* not to cooperate with defense counsel. Additionally, the trial court had observed defendant on numerous occasions during the pendency of the case. RP 153. The defendant went through an extensive forensic process with Eastern State Hospital, including completion of the MMPI. RP 153. The trial court summarized the evaluations of defendant as concluding that defendant is disagreeable, difficult, argumentative, unpleasant, aggressive, angry, embittered, manipulative and strongly desires to be in control, yet is competent to stand trial. RP 154-56. The trial court found that: defendant does not suffer from a mental disease or defect; has the capacity to understand the nature of the charge; and is capable of participating in his own defense. RP 155-56. The trial court concluded that the defendant is competent within the criteria set forth by RCW 10.77. Defendant understands the nature of the charges and is capable of assisting in his own defense. RP 156. The trial court summed up the hearing with its observation that the fact that defendant is aggressive, disagreeable, uncooperative, and perhaps narcissistic is not a basis to find him incompetent. RP 156.

Interestingly, defense counsel never thereafter presented any claim that defendant was not competent. They never sought a post-conviction

evaluation nor presented any motion to postpone sentencing because of a perceived incompetency of the defendant. On appeal, defendant's counsel has not presented any motion to this court suggesting her client is not competent to pursue this appeal. In short, the alleged incompetency pre-trial appears to have been merely a means to try to find something by which defense counsel could argue to the jury that they should be merciful.

If, at the time of trial, defendant did not understand what he was charged with, he has not stated such, nor has any expert opined that he did not understand. There simply is no expert testimony that defendant could not intend to kill Summer Phelps at the time she died. Indeed, the defendant's own detailed statements to law enforcement regarding his actions and reactions to the events that led to her death belie any such claim.

As noted, "the trial court's determination of competence is a matter within its discretion, reversible only upon a showing of abuse of discretion." *State v. Benn*, 120 Wn.2d 631, 662, 845 P.2d 289 (1993) *cert. denied*, 510 U.S. 944, 114 S. Ct. 382, 126 L. Ed. 2d 331 (1993). "A criminal defendant may be required to prove his incompetence." *Benn, supra* at 661. Here, there simply is no such evidence of defendant being incompetent to stand trial. The defendant was found to be competent by a panel of experts at ESH. CP 808-816; RP 24-38, 122. Defense counsel

offered the evaluation of defendant by their expert; however, that evaluation included findings that concurred with those of the ESH panel. Finally, the trial court was able to observe the defendant interact with counsel and listen to the defendant's comments and questions during numerous hearings spanning the months that the case was pending. The trial court was certainly uniquely positioned to notice any competency issues pre-trial, yet noted none such. By the end of the competency hearing, the trial court had a wealth of information regarding the functioning of the defendant in a "real world" setting which confirmed the findings of the Competency Commission from ESH.

Credibility is for the trier of fact to determine and should not be reviewed on appeal. *State v. Camarillo*, 115 Wn.2d 60, 794 P.2d 850 (1990). It is well settled law that the trier of fact is in the best position to determine credibility. *State v. Johnson*, 12 Wn. App. 40, 527 P.2d 1324 (1974) *review denied* 85 Wn.2d 1001 (1975).

Defendant's claims that the trial court erred in accepting Dr. Strandquist's and Dr. Borromeo's testimony more than Dr. Mays' testimony is nothing more than a reprise of the argument above. The defendant is again arguing that the trier of fact should not have believed Dr. Strandquist and Borromeo. The defendant's arguments are simply

weight issues, not legal issues. There was no error on any point involving the defendant's competency in this case.

B. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING THE DEFENDANT'S MOTION TO CLOSE THE COURTROOM FOR THE COMPETENCY HEARING.

Defendant claims the trial court abused its discretion when it denied the motion to close the courtroom for the competency hearing. The defendant contends that the trial court should have gone through a complete analysis of the viability of closing the courtroom during the competency hearing based upon the decision in *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995). Defendant argues that the trial court's denial of the motion based upon only a cursory analysis under *Bone-Club* violated his constitutional right to a fair trial due to extensive pre-trial publicity.

The trial court advised the parties that its overriding concern was that the defendant's right to a fair trial be preserved. September 8-9, 2008 Report of Proceedings ("9/8/09-RP") 9. The trial court had to balance the right to a fair trial with freedom of the press, the right to an open forum, and the right to an open courtroom. 9/8/08-RP 10. To that end, the trial

court acknowledged that the analysis should involve, in some form, the *Bone-Club* factors.

The trial court framed the issue as, “does an open courtroom deprive the defendant of the right to a fair and impartial proceeding?” 9/8/08-RP 11. The trial court concluded that a competency hearing in an open courtroom would not violate defendant’s right to a fair and impartial trial because of the voluminous material filed in the public court file with regard to the issue of defendant’s competency to stand trial. 9/8/08-RP 11. The trial court noted that the public had already been exposed to a significant amount of the material through the reporting and commentary of the press regarding the issue. 9/8/08-RP 11. Accordingly, the trial court concluded that there was not a basis to close the courtroom pursuant to the concerns articulated in the *Bone-Club* decision. 9/8/08-RP 11.

Defendant further contends that the denial of the motion to close the competency hearing violated the defendant’s constitutional right to a fair trial. The United States Supreme Court has framed the constitutional issue as follows:

Central to the right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on ... other circumstances not adduced as proof at trial.

Holbrook v. Flynn, 475 U.S. 560, 567, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986). Whenever a courtroom arrangement is challenged as inherently prejudicial, the question is not whether jurors actually articulated a consciousness of a prejudicial effect but whether there is an unacceptable risk of impermissible factors coming into play. *Holbrook*, 475 U.S. at 570. If the challenged practice is not found inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over. *Holbrook*, 475 U.S. at 570. Here, the trial court acknowledged the concerns that the possibility of pre-trial publicity regarding the defendant's competency would prejudice his right to a fair and impartial trial. The trial court took great pains, with the extensive participation of defense counsel, to ensure that the jury finally seated was not tainted by that pre-trial publicity. 10/21/08-RP 4-984. The defendant has failed to establish that the process implemented by the trial court to conduct the competency hearing was inherently prejudicial or that defendant suffered actual prejudice as a result of the actions by the trial court. The trial court's management of the courtroom to provide an orderly administration of justice is reviewed for an abuse of discretion.

Inherent in defense counsel's concern for closure of the competency hearing was that the trial court's measures taken to avoid prejudice from pre-trial publicity were inadequate. Here, the trial court

and counsel extensively examined the individual venire panel members who acknowledged some prior exposure to pre-trial publicity. The trial court then removed potential jurors who were found to not be capable of being fair and impartial in trying the defendant's case. The determination of whether a juror should be excused from service is a matter addressed to the trial court's discretion and is reviewed for abuse. *State v. Hughes*, 106 Wn.2d 176, 204, 721 P.2d 902 (1986). The trial court jealously guarded the defendant's right to a trial by a fair and impartial jury by its actions following its denial of the defendant's motion to close the competency hearing. The trial court did not abuse its discretion in denying the motion to close the courtroom because any potential prejudice was remedied by the exhaustive *voir dire* process implemented to seat the jury.

C. THE TRIAL COURT PROPERLY EXERCISED
ITS DISCRETION ADMITTING THE
DEMONSTRATIVE EXHIBITS.

Defendant assigns error to the trial court admitting into evidence three Styrofoam cutouts depicting the relative height and size of the defendant, co-defendant, and victim. Defendant argues that no factual basis was offered to support the admission of the proposed demonstrative exhibits.

“The use of demonstrative evidence is encouraged when it accurately illustrates facts sought to be proved.” *State v. Finch*, 137 Wn.2d 792, 816, 975 P.2d 967 (1999) (citing *Jenkins v. Snohomish County Pub. Util. Dist. No. 1*, 105 Wn.2d 99, 107, 713 P.2d 79 (1986)). Demonstrative evidence is encouraged when it will aid the trier of fact in understanding other evidence, so long as the trier of fact can be made aware of any limits to the evidence's accuracy. *State v. Lord*, 117 Wn.2d at 855-56. If the evidence is sufficient to justify admission, any lack of similarity goes to the weight of the evidence. *Jenkins*, 105 Wn.2d at 107. Additionally, the evidence sought to be admitted must be relevant in that it tends to enlighten the jury and enable it to more intelligently consider the issues presented. *Jenkins*, 105 Wn.2d at 107. The admissibility of demonstrative evidence is within the trial court's discretion. *State v. Stockmyer*, 83 Wn. App. 77, 83, 920 P.2d 1201 (1996). A court abuses its discretion if its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex. Rel. Carroll v. Junker*, 79 Wn.2d 12, 27, 482 P.2d 775 (1971).

Applying these principles, defendant contends the trial court abused its discretion by allowing the jury to view the demonstrative exhibits because the cutouts did not accurately portray the relative three-dimensional aspects of the subjects. Defendant emphasizes that the

exhibits reduce the subjects to “blank, white, fat people.” Appellant’s Brief at 36. However, the exhibits were offered and admitted for the limited purpose of depicting the relative two-dimensional aspects of the subjects. The exhibits demonstrated the size differentials between two fully grown adults and a four-year-old girl. The exhibits demonstrated the victim’s physical vulnerability and the lack of ability to escape her death at the hands of her caregivers. The trial court appropriately limited the jury’s consideration thereof to demonstrative purpose only. Accordingly, the trial court did not abuse its discretion in admitting the cutouts for demonstrative purposes only.

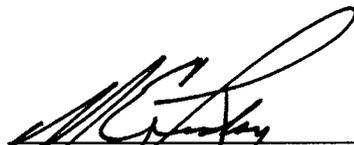
V.

CONCLUSION

For the reasons stated, the conviction of the defendant and special findings of aggravating factors should be affirmed.

Dated this 20th day of October 2010.

STEVEN J. TUCKER
Prosecuting Attorney


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Attorney for Respondent

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v.)	
)	CERTIFICATE OF MAILING
JONATHAN LYTLE,)	
)	
Appellant,)	

I certify under penalty of perjury under the laws of the State of Washington, that on October 21, 2010, I mailed a copy of the Respondent's Brief in this matter, addressed to:

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10/21/2010
(Date)

Spokane, WA
(Place)


(Signature)