

NO. 43249-8-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RICHARD DONALD LLOYD JANSSEN,

Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	PAGE
A. ANSWER TO ASSIGNMENTS OF ERROR.....	1
B. STATEMENT OF THE CASE.....	1
C. ARGUMENT.....	9
1. THE TRIAL COURT PROPERLY EXCLUDED EVIDENCE OF THE VICTIM'S DRUG USE.....	9
A. JANSSEN FAILED TO MAKE AN ADEQUATE OFFER OF PROOF REGARDING THE PROFFERED TESTIMONY; THEREFORE, THERE IS NOT A SUFFICIENT RECORD FOR REVIEW.....	9
B. THE TRIAL COURT PROPERLY DID NOT ALLOW JANSSEN TO CROSS-EXAMINE THE VICTIM REGARDING HIS PRIOR DRUG USE FOR THE PURPOSE OF CALLING INTO QUESTION THE VICTIM'S ABILITY TO ACCURATELY RECALL AND RELATE PAST EVENTS.	13
C. THE TRIAL COURT PROPERLY DID NOT ALLOW JANSSEN TO CROSS-EXAMINE THE VICTIM REGARDING HIS PRIOR DRUG USE FOR THE PURPOSE OF ESTABLISHING BIAS OR PREJUDICE.	15

2.	THE TRIAL COURT PROPERLY ALLOWED THE WRITTEN STATEMENT INTO EVIDENCE.....	16
D.	CONCLUSION	23

TABLE OF AUTHORITIES

	Page
CASES	
<i>Brown v. United States</i> , 411 U.S. 223, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973).....	15
<i>Chapman v. California</i> , 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d (1967)...	14
<i>Cruz v. New York</i> , 481 U.S. 186 (1987).....	15
<i>Davis v. Washington</i> , 547 U.S. 813 (2006).....	15
<i>Harrington v. California</i> , 395 U.S. 250, 89 S.Ct. 1726, 23 L.Ed.2d 284 (1969).....	14
<i>Parker v. Randolph</i> , 442 U.S. 62, 99 S.Ct. 2132, 60 L.Ed.2d 713 (1979)	14
<i>State v. Benn</i> , 161 Wn.2d 256, 165 P.3d 1232 (2007).....	9
<i>State v. Cunningham</i> , 93 Wn.2d 823, 613 P.2d 1139 (1980)	14
<i>State v. Damon</i> . 144 Wn.2d 686, 25 P.3d 418 (2001)	13
<i>State v. Darden</i> , 145 Wn.2d 612, 41 P.3d 1189 (2002).....	12, 13
<i>State v. Davis</i> , 154 Wn.2d. 291, 111 P.3d 844 (2005).....	15
<i>State v. Demery</i> . 144 Wn.2d 753, 30 P.3d 1278 (2001)	9
<i>State v. Fisher</i> , 165 Wn.2d 727, 202 P.3d 937 (2009).....	9
<i>State v. Guloy</i> , 104 Wn.2d 412, 705 P.2d 1182 (1985)	13, 14
<i>State v. Halstien</i> , 122 Wn.2d 109, 857 P.2d 270 (1993).....	14
<i>State v. Nist</i> , 77 Wn.2d 227, 461 P.2d 322 (1969).....	14

State v. Smith, 97 Wn.2d 856, 651 P.2d 207 (1982)..... 19

State v. Stephens, 93 Wn.2d. 186, 607 P.2d 304 (1980)..... 13

State v. Tharp, 96 Wn.2d 591, 637 P.2d 961 (1981) 14

STATUTES

RCW 9A.36.011(1)(a) 1

OTHER AUTHORITIES

Sixth Amendment to the U.S. Constitution and Article 1, §22 of the
Washington Constitution 9

RULES

ER 612 17

ER 801(d)(1)(i) 18, 19

ER 803(a)(5) 18

A. ANSWER TO ASSIGNMENTS OF ERROR

- 1. THE TRIAL COURT PROPERLY EXCLUDED EVIDENCE OF THE VICTIM'S DRUG USE.**
- 2. THE TRIAL COURT PROPERLY ALLOWED THE WRITTEN STATEMENT INTO EVIDENCE.**

B. STATEMENT OF THE CASE

1. Procedural History

On June 1, 2011, the State charged appellant Richard Donald Lloyd Janssen¹ with assault in the first degree with a deadly weapon enhancement and aggravating factors, or in the alternative, assault in the second degree with a deadly weapon enhancement and aggravating factors. CP 6. On January 4, 2012, the State filed notice of Janssen's persistent offender status. CP 30. On January 5, 2012, the State filed an amended information charging Janssen with assault in the first degree²

¹ Although Janssen's counsel on appeal states that Janssen has changed his name to Ali Akbar Muhammad, we have not received any notice from the Court of Appeals regarding a change in the case name. As such, the State will refer to the appellant as Janssen in this brief. The State means no disrespect.

² RCW 9A.36.011(1)(a) reads as follows:

A person is guilty of the crime of assault in the first degree if, with intent to inflict great bodily harm upon another person, he intentionally assaults another person with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death....

Janssen was charged with assaulting his victim with a deadly weapon.

with a deadly weapon enhancement, or in the alternative, assault in the second degree with a deadly weapon enhancement but dropping the aggravating factors. CP 33.

On January 11, 2012, Janssen's jury trial commenced. RP 1-28. Witnesses Roger Berry and Brandon Johnson testified while in custody on material witness warrants in this matter. RP 45, 118. On January 13, 2012, the jury found Janssen guilty of assault in the first degree and also found that at the time of the offense he was armed with a deadly weapon. CP 54, 57. At sentencing on February 27, 2012, the trial court found that the crime of assault in the first degree is a most serious offense and that Janssen had been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other. CP 62. The court sentenced Janssen to life in prison without the possibility of early release. *Id.* Janssen filed a timely notice of appeal. CP 65.

2. Substantive Facts

In May 2011, the victim Brandon Johnson was an inmate at the Cowlitz County jail. RP 106. Johnson was relocated to Janssen's cell,

located in the “F Unit” or “F Pod”. RP 107, 116.³ On the same night that Johnson was moved into Janssen’s cell, Janssen was on out time in the common areas of the pod and spoke with another inmate, Roger Berry, who was still locked in his cell. RP 40-41, 162-63. Johnson was on the phone or in the shower in the common area at the time. RP 41-42, 162. Janssen told Berry that his new cellmate Johnson was not going to last long. RP 41. When Berry asked Janssen why, Janssen said because Janssen was going to hurt Johnson badly. Ex. 3. The jail’s video recording system corroborated this movement during out time. RP 162.

After out time, the cellmates went back into their cells, and Janssen told Johnson, “You can make your bed.” RP 109, 164. Johnson made his bed, lay down and pulled the covers over himself. *Id.* Janssen ran and jumped on top of Johnson and started stabbing him in the neck. *Id.* Johnson told Janssen not to kill him, and Janssen replied, “I gotta.” RP 109-10. Johnson somehow worked his way over to the call box and pushed the button a couple times, while Janssen continued to stab him in the neck. RP 109-11.

³ Although it has no bearing on the issues on appeal, Janssen’s brief claims that “jail personnel caught Mr. Johnson masturbating.” BRIEF OF APPELLANT 3. However, the record reflects that this was actually an accusation made by inmates, and there was no indication this was seen by jail personnel. RP 116.

During the 9:00 hour that evening, Officer Steven Caldwell received a call in the control room from the intercom in the F Unit. RP 49. Officer Caldwell called into the F Unit and asked what the inmates needed. RP 50. He did not get a response but heard what sounded like people wrestling around. *Id.* After a couple seconds, he heard someone saying, “Help” and asking “why this was happening, why they were hurting him.” *Id.* Officer Caldwell radioed other jail officers to respond to the F Unit. *Id.*

Officers Ryan Munger, Lyle Manni and Tracy Bottemiller responded to the F Unit and could hear an altercation in cell F-10, the cell shared by Janssen and Johnson. RP 52, 78, 87. Munger heard someone saying, “Help me! Help me!” *Id.* From the outer cell door, Officers Munger and Manni could see Janssen and Johnson rolling around fighting. RP 53, 88. Officers Manni and Bottemiller saw Janssen on top of Johnson. RP 79, 89. Officer Munger ordered them to stop fighting. RP 53. Once Officer Munger got to the inner cell door, he saw Janssen “swinging and trying to strike the head and neck region of Mr. Johnson.” RP 53-54. Johnson appeared to be “trying to get away or disengage and was saying ‘Help me! Help me!’” RP 56. Officer Manni saw “blood

all over...” and heard Johnson say, “Get him off me, he’s trying to kill me!” RP 80-81. Officer Bottemiller saw Janssen throw something that hit the wall. RP 89-90.

As Munger separated Janssen and Johnson, Officer Manni deployed pepper spray, which got on Officer Munger, Janssen and Johnson. RP 57, 81. Officers Manni and Bottemiller handcuffed Janssen. RP 59, 82, 90. Officer Bottemiller could see “quite a bit of blood” on Janssen’s hands and lower forearms. RP 91. Officer Bottemiller retrieved the object that Janssen had thrown. RP 98. It was four to five inches long, wrapped tightly in cellophane, with a razor blade in the end of it, with inmate clothing strips wrapped around it. RP 67, 98.

Officer Munger had Johnson prone on the floor, and he and Officer Bottemiller could see lacerations on Johnson’s neck. RP 60, 91. Within the next five minutes, Officer Munger took Johnson to the medical unit. RP 62. Johnson was distraught throughout this time. RP 63-65. Johnson told Officer Munger that Johnson had been trying to be cordial with Janssen when Janssen “stood up and just started attacking him...” RP 65.

Cowlitz County Sheriff's Deputy Lorenzo Gladson investigated the assault. RP 145. He spoke with Johnson after Johnson's wounds had been cleaned up by the jail's medical staff, and Johnson still "appeared quite fearful." RP 145-46. Johnson told Deputy Gladson that Johnson was getting ready to go to sleep when Janssen began stabbing his neck. RP 146. Deputy Gladson asked the other F Unit inmates if any of them had seen the assault, but none had since they were all locked in their cells at the time and the cells do not face each other. *Id.* Deputy Gladson inspected the cell Johnson and Janssen shared. The floor was in disarray, and there was some blood on it. RP 147. Deputy Gladson also took photos of Johnson's injuries. RP 148; see, e.g., Ex. 4, 6-9. He also took a written statement from inmate Berry, detailing Barry's conversation with Janssen about Johnson just before the attack. RP 148.

Immediately after the assault, the jail officers removed Janssen from the F Unit and took him to the booking area. RP 70, 85, 92. Later, they moved him to a different part of the jail, and during the move, Officer Munger and Deputy Gladson heard Janssen talking to inmate Carrie Hall. RP 71. Hall asked Janssen why they were moving him, and Janssen replied, "I just slashed up a dude in the F Unit" or "I just slashed some

dude's throat over in F Pod.” RP 72, 148. The jail staff and Deputy Gladson examined Janssen and did not see any injuries. RP 154.

Within half an hour of the assault, Officer Bottemiller took Johnson to the hospital for treatment. RP 92. Johnson still appeared scared. *Id.* Johnson told Officer Bottemiller that he had almost been asleep in his bunk when Janssen jumped on his chest and started hitting and cutting him. RP 94. Johnson told Officer Bottemiller that he told Janssen, “Please don’t kill me,” and Janssen let him go for a moment. RP 94. Johnson told Officer Bottemiller that Janssen then came back at him and said, “Nope, I have to.” RP 95.

Doctor Marc Krantz treated Johnson that night in the emergency room of the local hospital. RP 126-27. The wounds to Johnson’s neck were past the outer layer of skin, down to the connective tissue and fat on his neck.⁴ RP 128-29. Dr. Krantz expected that these wounds would result in scarring. RP 129. Dr. Krantz considered stapling the wounds

⁴ Janssen states in his brief that Dr. Krantz “noted a number of ‘superficial’ lacerations to the head and neck....” BRIEF OF APPELLANT 4. However, Dr. Krantz did not testify that the wounds were superficial. Instead, when asked about the billing information on his chart notes, Dr. Krantz acknowledged that he had entered “closure of superficial layer”. RP 133.

but was concerned that would cause “Frankenstein”-type scarring. *Id.* He also considered suturing them but was concerned about railroad-type scarring. *Id.* Dr. Krantz opted to close the wounds with a type of glue. RP 129-30. As of the date of his testimony at Janssen’s trial, Johnson still had scars all around his neck. RP 114.

Two days after the assault, Janssen made a phone call from the jail. RP 166-73. During the call, he spoke to a female who asked who Johnson was. RP 169. Janssen responded, “He’s some pervert mother fucker who --.” *Id.* The female responded in part by saying, “Like you said, guys like him just need to get stuck.” *Id.* Janssen then spoke to a male who asked, “Did you get him a good one for me?” RP 171-72. Janssen replied, “Yeah, I tried to saw his fucking head off with a razor.” RP 172.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXCLUDED EVIDENCE OF THE VICTIM'S DRUG USE.

- a. Janssen failed to make an adequate offer of proof regarding the proffered testimony; therefore, there is not a sufficient record for review.**

The right to confront and cross-examine adverse witnesses is guaranteed by the Sixth Amendment to the U.S. Constitution and Article 1, §22 of the Washington Constitution. However, the right is not absolute. A trial court's ruling on the admission of evidence is reviewed for abuse of discretion. *State v. Demery*, 144 Wn.2d 753, 758, 30 P.3d 1278 (2001). The court abuses its discretion when it fails to apply the requirements of the rule or when it does not have tenable grounds and reasons for the decision. *State v. Fisher*, 165 Wn.2d 727, 745, 202 P.3d 937 (2009). If the substance of the evidence sought to be admitted is not apparent, the proponent must provide an offer of proof. *See State v. Benn*, 161 Wn.2d 256, 268, 165 P.3d 1232 (2007).

In Janssen's case, defense counsel attempted to question the victim Brandon Johnson about possible recent drug use. RP 118-19. The State

objected, and after a sidebar, the trial court sustained the objection. RP 119. After Johnson had testified, the trial court asked each attorney whether “there is any further need for this witness,” and both the State and defense counsel stated there was not. RP 120. Johnson was then excused. *Id.* After another witness took the stand, defense counsel at that time sought to put the earlier sidebar on the record. RP 122. The offer of proof was as follows:

Uh, and, the question the State objected to that I was going to be asking was “Isn’t it true that when he was arrested this past weekend that he was in possession of two, uh, what are described in the affidavit of probable cause, as well-used glass drug pipes?” And, uh, I intended to follow up with that that he is currently being held on a charge of possession of amphetamines arising out of that arrest. And it was my position that, one, the fact that recent drug use, particularly a drug like amphetamines, that can often have very, um, longer last effects on a person than just the time that they are intoxicated. And the indication to where these were well used that, uh, that to be relevant as to his ability to testify now, even if it didn’t rise to a level of competency to testify, but also that given the fact that wide latitude is, uh, given to Counsel in cross examination regarding issues of bias that we should have been allowed to introduce the evidence of a pending possession charge in that he would have a motive to testify here today in a way that would make the State, in essence, happy with him even if there had been no indication that he had been offered any sort of plea agreement on that case. And that was, in essence, the offer of proof that we made, and we understand the Court’s, you know, overruled that objection.

RP 123-24. Additionally, defense counsel provided the court a copy of the probable cause statement so that it could be considered on review. Ex. 19.

In Janssen's opening brief, appellate counsel refers to the events in the probable cause statement as having occurred "four days before the trial started." BRIEF OF APPELLANT 7. It should be noted, however, that Johnson did not testify at trial until five days after his arrest. RP 106-20. Appellate counsel represents that the probable cause statement "reveals that Mr. Johnson was in possession of two methamphetamine pipes with methamphetamine residue when arrested, and that he had admitted to recent methamphetamine use." BRIEF OF APPELLANT 7. However, the probable cause statement indicates that two "well used glass drug pipes" (not methamphetamine pipes) were found on Johnson. Ex. 19. The probable cause statement indicates only that there was material in one pipe (not both) that was field-tested. *Id.* The probable cause statement indicates that the material tested positive for amphetamines (not methamphetamine). *Id.* Finally, the probable cause statement indicates that Johnson "admitted ownership and use of the two recovered pipes"

(not that he had recently used them or that he had recently used methamphetamine). *Id.*

A trial court may within its sound discretion, deny cross examination if the evidence sought is vague, argumentative, or speculative. *State v. Darden*, 145 Wn.2d 612, 620-21, 41 P.3d 1189 (2002). The proposed evidence in Janssen's case was speculative both as to Johnson's ability at trial to recall events and as to any bias or prejudice. While Janssen made an offer of proof, it was not sufficient for review. Janssen could have asked to voir dire the witness outside the presence of the jury as part of his offer of proof, because as his actual offer of proof shows, trial counsel did not know what the answers to any of his questions of the witness would be. The trial court in Janssen's case did not abuse its discretion in sustaining the State's objection based on the offer of proof provided.

- b. The trial court properly did not allow Janssen to cross-examine the victim regarding his prior drug use for the purpose of calling into question the victim's ability to accurately recall and relate past events.**

Even if this court finds that the offer of proof was sufficient for review, the trial court properly denied cross examination regarding potential past drug use. Again, a trial court may within its sound discretion, deny cross examination if the evidence sought is vague, argumentative, or speculative. *Darden*, 145 Wn.2d at 620-21, 41 P.3d 1189. The applicable standard of review depends on whether the alleged error deprived the defendant of a constitutional right. Because constitutional error is presumed prejudicial, when constitutional error is established, the State bears the burden of proving that the error was harmless beyond a reasonable doubt. *State v. Stephens*, 93 Wn.2d. 186, 190-91, 607 P.2d 304 (1980). A constitutional error is harmless if the State shows beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error. *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). *See also State v. Damon*, 144 Wn.2d 686, 693, 25 P.3d 418 (2001). Even an alleged violation of a

defendant's rights under the confrontation clause, may be so insignificant as to be harmless. *Harrington v. California*, 395 U.S. 250, 251-52, 89 S.Ct. 1726, 23 L.Ed.2d 284 (1969); *Chapman v. California*, 386 U.S. 18, 21, 87 S.Ct. 824, 17 L.Ed.2d (1967).

Where, however, the claimed error is a violation of an evidentiary rule, not a constitutional mandate, this stringent “harmless error beyond a reasonable doubt” standard is not applied. *State v. Cunningham*, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980) (citing *State v. Nist*, 77 Wn.2d 227, 461 P.2d 322 (1969)). Instead, reviewing courts apply “the rule that error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred.” *State v. Tharp*, 96 Wn.2d 591, 599, 637 P.2d 961 (1981) (citing *Cunningham*, 93 Wn.2d at 831, 613 P.2d 1139); *see also State v. Halstien*, 122 Wn.2d 109, 127, 857 P.2d 270 (1993). To determine whether the error is harmless, reviewing courts look to the clearly admissible evidence to determine whether it is so overwhelming that it “necessarily leads to a finding of guilt.” *Guloy*, 104 Wn.2d at 426, 705 P.2d 1182 (citing *Parker v. Randolph*, 442 U.S. 62, 70-71, 99 S.Ct. 2132, 60 L.Ed.2d 713 (1979), *abrogated on other grounds by Cruz v. New York*,

481 U.S. 186 (1987); *Brown v. United States*, 411 U.S. 223, 231, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973)). See also *State v. Davis*, 154 Wn.2d. 291, 305, 111 P.3d 844 (2005), *aff'd*, *Davis v. Washington*, 547 U.S. 813 (2006). Such is the case here.

Even evaluating the trial court's exclusion of Johnson's potential drug use testimony under the more stringent constitutional error standard, in light of Janssen's admissions that he "tried to saw [Johnson's] head off" and that he "just slashed up a dude in the F Unit", the outcome would have been the same if the trial court had allowed trial counsel to cross examine Johnson about his past drug use. RP 72, 172.

- c. **The trial court properly did not allow Janssen to cross-examine the victim regarding his prior drug use for the purpose of establishing bias or prejudice.**

Applying either standard above, exclusion of this speculative testimony does not warrant reversal. Additionally, Janssen cites a number of cases to support an argument that a defendant can cross-examine a witness on any agreement that the witness has with the State for purposes of establishing bias or prejudice. However, Janssen offers no authority for his contention that the defendant can cross-examine a witness about

the defendant's speculative belief that the witness might hope that the State would be less aggressive in handling his current case. Such a bare assertion should not be considered.

2. THE TRIAL COURT PROPERLY ALLOWED THE WRITTEN STATEMENT INTO EVIDENCE.

Inmate Roger Berry was called as the State's first witness at trial. RP 40-45. He was being held as a material witness in the case. RP 45-47. For the most part, Berry testified consistently with the written statement he had given Deputy Lorenzo Gladson on the date of the incident, including that Janssen had told Berry prior to the attack on Johnson that "the kid was not going to last another five minutes in his cell." RP 41; Ex. 3. At trial, when questioned by the State whether Janssen had told him why the kid was not going to last long, Berry testified that Janssen had not. RP 41. This statement was inconsistent with Berry's written statement, in which Berry said he asked Janssen why the kid was not going to last long and Janssen replied, "Cuz [sic] I'm going to hert [sic] him bad." Ex. 3.

The State then asked Berry if he recalled giving a written statement to Deputy Gladson immediately after the incident. RP 42. Berry

acknowledged this and acknowledged it was a freely-given, truthful statement, made under penalty of perjury. RP 42, 44. He also acknowledged that his memory of the incident was better when he wrote the statement than it was at trial. RP 42. He was given an opportunity to review the statement and acknowledged that it was the statement he made to Deputy Gladson. RP 43. However, after reading the statement, he testified that he could not remember what reason Janssen gave for saying that the kid was not going to last long, and then he testified that Janssen did not tell him why. RP 43-44.

At this point, the State had attempted to refresh Berry's memory under ER 612⁵. Had the State been successful, neither the written statement nor its contents would have been admissible, since Berry would have testified that Janssen told Berry he was going to hurt Johnson badly.

⁵ **ER 612. WRITING USED TO REFRESH MEMORY** If a witness uses a writing to refresh memory for the purpose of testifying, either: while testifying, or before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires.

The State then attempted to lay a foundation to get the contents of the written statement into evidence as a recorded recollection under ER 803(a)(5)⁶. However, Berry ultimately claimed that he remembered everything and that Janssen did not tell him why the kid would not last long. Therefore, the State was not able to read the contents of the statement into the record.

Instead, the State was left to offer the statement itself as substantive evidence under ER 801(d)(1)(i)⁷. To do so, the State needed

⁶ ER 803 reads in pertinent part as follows:

**RULE 803. HEARSAY EXCEPTIONS; AVAILABILITY OF
DECLARANT IMMATERIAL**

(a) **Specific Exceptions.** The following are not excluded by the hearsay rule, even though the declarant is available as a witness: ...

(5) *Recorded Recollection.* A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

⁷ ER 801 reads in pertinent part as follows:

(d) **Statements Which Are Not Hearsay.** A statement is not hearsay if--

(1) *Prior Statement by Witness.* The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement, and the statement is (i) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition....

to call Deputy Gladson to the stand to inquire whether Berry voluntarily gave him the statement, whether the statement was taken as standard procedure to determine probable cause and whether Deputy Gladson explained the oath to Berry. Only then could the State offer the statement into evidence. *State v. Smith*, 97 Wn.2d 856, 651 P.2d 207 (1982).

Janssen now argues that his right to confront Berry was violated because he claims the State “strategically refrained from moving the statement into evidence while Mr. Berry was on the witness stand.” BRIEF OF APPELLANT 17. However, it is clear from the record that the State could not offer the statement while Berry was on the stand because it first had to lay the foundation to get the statement in under ER 801(d)(1)(i).

Janssen also claims that the State did not move to admit the statement until “after both sides had closed their cases.” BRIEF OF APPELLANT 17. However, this is not true. The State called Deputy Gladson to the stand later on the same day of trial. RP 143-50, 153-73. The State asked him about the written statement he had taken from Berry. RP 148; Ex. 3. Deputy Gladson testified that he explained the oath portion of the pre-printed form to Berry so that Berry would know the

statement was being made under penalty of perjury. RP 149. Deputy Gladson also confirmed that the statement was taken to help him to establish probable cause for the eventual charge against Janssen. RP 149. Deputy Gladson also confirmed that he in no way forced or coerced Berry to make the written statement. RP 149-50. The State then moved to admit the written statement. RP 150. There was a brief sidebar at the request of the defense. *Id.* The trial court did not at that time rule on the motion to admit the exhibit. *Id.* Another witness was recalled to the stand to testify about matters not at issue in this appeal. RP 150-53.

Deputy Gladson was then recalled, and the State again moved to admit the written statement. *Id.* The trial court said, “Counsel, understanding your objection, that will be admitted.” *Id.* Gladson then went on to testify about matters not at issue in this appeal. RP 153-73. The State rested only after Deputy Gladson testified the second time. RP 174. The defense then also rested. *Id.* The defense then put its objection to the admission of the written statement on the record. RP 176-77. The objection was not one of unfair surprise or untimeliness as Janssen argues on appeal; instead, it was an objection to the entire written statement being admitted as substantive evidence rather than being used to

impeach Berry as a prior inconsistent statement. *Id.* The trial court then reiterated its prior ruling. RP 178.

Janssen offers no authority for his claim that the State's motion to admit the exhibit was untimely. He also does not indicate where in the record defense counsel was denied an opportunity to cross-examine Berry regarding the statement: the defense did not seek to recall Berry to the stand after the statement was admitted.

As in the first assignment of error, whether this court reviews this assignment of error as a constitutional one or an evidentiary one, the outcome would have been the same if the trial court had the defense actually recalled Berry to the stand or had the court granted Janssen's objection to the exhibit. While Janssen claims on appeal that there was no other evidence of Janssen's intent other than his statement to Berry that he was going to hurt Johnson badly, that is also not accurate. First, the nature of the injuries themselves is evidence of Janssen's intent. *See Ex. 4, 6-9.* The doctor testified that the cuts were down to the connective tissue and fat in the neck, and that he would expect scarring. RP 128-29. At the trial almost eight months after the assault, Johnson still had scars around his neck. RP 114. Second, Johnson told a corrections officer that

during the attack when Johnson asked Janssen not to kill him, Janssen responded, “Nope, I have to.” RP 93-95. Third, Johnson himself testified that when Janssen started stabbing him, Johnson said, “Don’t kill me” and Janssen replied, “I gotta.” RP 109-10. Fourth, Janssen was heard telling another inmate, “I just slashed up a dude in the F Unit” or “I just slashed some dude’s throat over in F Pod.” RP 72, 148. Finally, in a call from Janssen to an acquaintance two days after the attack, Janssen said, “... I tried to saw his fucking head off with a razor.” RP 166, 172. There was overwhelming evidence of Janssen’s intent to cause Johnson great bodily harm. As such, any error in admitting Berry’s written statement would not justify reversal of Janssen’s conviction.

D. CONCLUSION

The trial court's evidentiary rulings were proper. For the reasons argued above, Janssen's conviction should be affirmed.

Respectfully submitted this 3rd day of December, 2012.

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CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on December 3, 2012.


Michelle Sasser

COWLITZ COUNTY PROSECUTOR

December 03, 2012 - 2:13 PM

Transmittal Letter

Document Uploaded: 432498-Respondent's Brief.pdf

Case Name: State of Washington Richard Donald Lloyd Janssen

Court of Appeals Case Number: 43249-8

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Answer/Reply to Motion: _____
- Brief: Respondent's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Petition for Review (PRV)
- Other: _____

Comments:

No Comments were entered.

Sender Name: Michelle Sasser - Email: sasserm@co.cowlitz.wa.us

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