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COURT OF APPEALS NO. 63542-5-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

REC'D
DEC 31 2009
KING COUNTY COURTS
APPELLANT

STATE OF WASHINGTON,

Respondent,

v.

RICHARD RAYMOND,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF WASHINGTON FOR KING COUNTY

The Honorable Michael Heavey

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

OPENING BRIEF OF APPELLANT

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A. INTRODUCTION

Appellant Richard Raymond lost his temper after King County Animal Control seized Buster, his beloved dog of many years. Distraught and tearful, Raymond telephoned the Sergeant in charge, Jane Wakefield, to inquire whether Buster would be adopted out. The Sergeant informed Raymond that Buster would most likely be euthanized. Grief stricken, Raymond told the Sergeant she did not deserve to breathe the same air as his dog and that she should “watch her back.”

A jury convicted Raymond of intimidating a public servant. As a condition of Raymond’s sentence, the court ordered he undergo anger management, which Raymond had already started at the time of sentencing. The court also ordered he undergo a mental health evaluation and follow all treatment recommendations, which Raymond will argue the court had no authority to order.

B. ASSIGNMENT OF ERROR

The trial court erroneously sentenced appellant to submit to a mental health evaluation and treatment as a condition of community custody.

Issue Pertaining to Assignment of Error

Whether the trial court acted outside its authority in ordering Raymond to undergo a mental health evaluation and to follow treatment recommendations, where the court made no finding Raymond was a mentally ill person or that mental illness contributed to his offense?

C. STATEMENT OF THE CASE

At the time of trial, Raymond was 26 years old. RP 101.¹ He adopted Buster when he was 18 years old, and Buster was only six weeks old. RP 100-101. Raymond testified Buster was his best friend, a good dog that never bit anyone. RP 104, 111, 122. In fact, Raymond testified about a neighbor girl who often played with Buster, riding him like a pony, while her parents held her hands. RP 103.

But there were other neighbors, such as the Cruikshanks, who complained to Animal Control about Buster. RP 59, 62, 137. Raymond thought the complaints related more to Jessie and Emily, Raymond's father's dogs, one of whom Raymond admitted was aggressive. RP 118. Following the family's unsuccessful efforts to

¹ The transcripts are referred to as follows: 1RP – jury trial on February 18, 2009; RP – jury trial on February 19, 2009; and 2RP – sentencing on May 1, 2009.

train that dog, they decided to put her down. RP 118, 134. In the meantime, however, Buster “got caught up in that mix.” RP 119.

Following several complaints in 2005, King County Animal Control ordered Buster to live outside the county. RP 8. After issuing the order, Animal Control officers looked for Buster, but did not find him. Sergeant Wakefield acknowledged Buster was probably living outside the county in compliance with the order. RP 80-81.

In November 2007, however, Raymond was living with his father again in King County, although he had plans to move in the near future. RP 101, 105-106. On November 19, 2007, Animal Control received two complaints about Buster, one alleging he killed a cat. RP 7. The other was from the Cruikshanks, complaining that Buster was in their yard, and that Animal Control was not doing its job. RP 7, 55-56. In their complaint, the Cruikshanks indicated they sent a copy to local media and an attorney. RP 63.

Just two days later, on November 21, Wakefield sent two field officers out to the Raymonds’ residence to seize Buster. RP 57, 62-63.

When the animal control officers arrived – as did 5-6 King County Sheriff's deputies – Raymond and his father met them in the driveway. RP 8-9. Raymond admitted he told the officers Buster was not there, because he suspected the officers came to take him. RP 9, 105. As was his constitutional right, Raymond's father told the officers they could not enter the house without a search warrant. RP 9, 15.

The officers returned with a warrant two hours later. Meanwhile, an animal control officer remained to keep an "eye on the house." RP 10.

Feeling he was out of options, Raymond admitted he took Buster and hid under the house. RP 107-108. The Raymonds were in the process of repairing a washing machine leak, and had cut out the rotten wood and screwed a cover over it. RP 107-08. Raymond lay on the ground underneath the cover holding Buster in a blanket. RP 108.

Animal Control officer David Morris served the search warrant and entered the house with at least 4 sheriff's deputies. RP 11, 14. As the deputies "clear[ed]" the rooms,² Morris noticed the covered hole in the bedroom and opened it. RP 11-12. When

² Raymond testified the house was "tossed." RP 115.

he and the deputies saw a blanket move in the space below, the deputies yelled at Raymond to “freeze” and “show your hands!” RP 12.

Raymond kicked off the blanket and looked up at several officers with their guns drawn, fixed upon him. RP 17, 112. Morris testified Raymond “was clutching Buster, just cuddling him underneath the blanket.” RP 13.

When the deputies yelled for Raymond to come out, he admittedly yelled back “no fucking way; you’re not taking my dog.” RP 113, see also RP 12-13. Raymond relented, however, after officers purportedly threatened to beat him and shoot Buster. RP 114.

Raymond hugged and kissed Buster, told him he was a good dog and to heel before he stood up. Raymond was worried the intensity of the situation might be stressful for Buster. RP 114. As Raymond was removed from the hole, Buster also stood up. When Morris put a leash on him and called for him to come out, Buster “hopped right out of the hole” and into Morris’ control. RP 13.

Morris testified that when Buster came out, he was “[n]ot at all” vicious. RP 18. Raymond testified Buster was sniffing

everyone and wagging his tail. RP 117. Animal Control later euthanized him anyway. RP 41; 2RP 6.

November 21, 2007, was the day before Thanksgiving. RP 66. As a result, Raymond was not able to reach Wakefield by telephone until the following Monday. RP 122-23. He called to inquire what he could do to save Buster. RP 124. Raymond testified Wakefield was cold, said that Buster was a vicious animal and there was nothing he could do; Buster would be "put down." RP 123-25.

Raymond admitted he "freaked" and told Wakefield "she did not deserve to breathe the same air as my dog did" and that "she had better watch her back." RP 97. He also admitted he was trying to change Wakefield's mind about euthanizing Buster. RP 144.

Afterward, Raymond called federal agent John Hansen to ask for assistance with Animal Control. 1RP 14-15. Raymond was a cooperating witness in a case Hansen investigated. 1RP 13-14. Hansen described Raymond as extremely emotional about the loss of his dog and on the verge of tears. 1RP 23. Hansen offered to call Sergeant Wakefield to see if there were options other than euthanasia. 1RP 16.

It took Hansen several attempts, but he finally reached Wakefield. 1RP 24. According to Hansen, Wakefield seemed surprised by his call. 1RP 18. Wakefield claimed that when Raymond called her earlier, he threatened “that if we euthanized his dog, we can consider this a bomb threat, to watch my back, my family, my children’s back and my dog.” RP 37; see also 1RP 18. Wakefield thought Hansen had called to investigate the alleged bomb threat.³ 1RP 18.

After Hansen explained the real reason he called, Wakefield explained there were no further options for Buster. 1RP 20.

Hansen called Raymond, upset by Wakefield’s allegations. 1RP 20. Raymond denied making any bomb threat, but admitted he told Wakefield she “better watch [her] back.” 1RP 21. He also admitted he said something about her children, too. 1RP 21.

At trial, Raymond also denied making any bomb threat, and the jury acquitted him of that charge. RP 97, 125, 144; CP 59. They jury convicted Raymond of Intimidating a Public Servant, however. CP 60.

³ Despite Wakefield’s allegation about the bomb threat, no bomb squad was ever called. Nor did police evacuate the building. 1RP 24, 37. In fact, the responding officer testified Animal Control workers were conducting business in the usual manner when he arrived. 1RP 37. No one appeared distraught or upset. 1RP 37.

As a condition of community custody, the state recommended, and the court imposed, the requirement that Raymond undergo a mental health evaluation and follow all treatment recommendations. CP 67; 2RP 4, 14. The court also ordered anger management classes, which Raymond had already signed up for at the time of sentencing. 2RP 10, 14.

D. ARGUMENT

THE COURT ERRED IN ORDERING RAYMOND TO SUBMIT TO A MENTAL HEALTH EVALUATION AND TREATMENT AS A CONDITION OF COMMUNITY CUSTODY.

The court erred when it sentenced Raymond, as a condition of community custody, to obtain a mental health evaluation and follow all treatment recommendations. Under RCW 9.94A.505(9), the trial court may not order an offender "to participate in mental health treatment or counseling" as a condition of community custody "unless the court finds, based on a presentence report and any applicable mental status evaluations, that the offender suffers from a mental illness which influenced the crime." State v. Jones, 118 Wn. App. 199, 202, 76 P. 3d 258 (2003).

RCW 9.94A.505(9) provides:

The court may order an offender whose sentence includes community placement or

community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

The court, in sentencing Raymond, did not make the statutorily mandated finding that Raymond was a "mentally ill person" as defined by RCW 71.24.025, or that a mental illness influenced the crimes for which he was convicted. The presentence statement of the King County Prosecuting Attorney recommended a mental health evaluation and treatment, but did not explain why. Supp. CP ___ (sub. no. 116, Amended Information), attached plea sentence recommendation. The court thus erred when, without following statutory prerequisites, it ordered Raymond to submit to a mental health evaluation and treatment. Jones, 118 Wn. App. at 202; accord State v. Lopez, 142 Wn. App. 341, 353-54, 174 P.3d 1216 (2007).

Sentencing errors derived from the court's failure to follow statutorily mandated procedures can be raised for the first time on

appeal. Jones, 118 Wn. App. at 204. On remand, this Court should order the trial court to strike the conditions pertaining to mental health treatment. Lopez, supra.

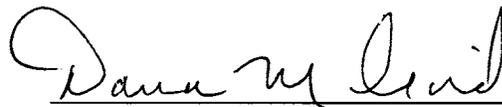
E. CONCLUSION

This Court should remand to amend the judgment and sentence to strike the mental health requirement.

Dated this 31st day of December, 2009.

Respectfully submitted

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