

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

FILED  
COURT OF APPEALS  
DIVISION TWO  
SEP 11 2011  
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STATE OF WASHINGTON  
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STATE OF WASHINGTON,

Respondent,

v.

ANDREW ANDERSON,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Gary R. Tabor, Judge

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REPLY BRIEF OF APPELLANT

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CHRISTOPHER H. GIBSON  
Attorneys for Appellant

NIELSEN, BROMAN & KOCH, PLLC  
1908 East Madison  
Seattle, WA 98122  
(206) 623-2373

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A. ARGUMENT IN REPLY<sup>1</sup>

THIS COURT SHOULD REJECT THE STATE'S MYOPIC CHARACTERIZATION OF THE RECORD.

In his opening brief, in addition to other arguments, Anderson argued the trial court erred in excluding evidence contained in a forensic psychological report. Brief of Appellant (BOA) at 16-23. In an attempt to defeat this argument, the State conducts a ridiculously myopic and skewed interpretation of the record to support its claim that trial counsel failed to be sufficiently specify what portion of the report Anderson sought to admit and therefore the issue is not properly before this Court. Brief of Respondent (BOR) at 11-15. This Court reject the State's interpretation of the record.

Anderson's trial counsel sought admission of "a statement in the conclusion" of a forensic psychological report that "would support [Anderson's] particular defense theory[.]" which was that his intent was to "commit suicide by cop" rather than to inflict physical harm to anyone else. 2RP 9-10. The trial court denied admission of this evidence, holding it was not relevant. On appeal, Anderson noted the "Forensic Psychological Report" from Western State Hospital diagnosed him with a depressive disorder, suicidal ideations, low self esteem and anxiety, and argued he

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<sup>1</sup> Counsel for appellant has determined that a reply to most of the arguments in the State's response brief is not warranted as they are adequately addressed in Anderson's opening brief. Counsel is compelled, however, to respond to the State characterization of the record regarding what portion of the psychological evaluation Anderson's trial counsel sought to have admitted.

A. ARGUMENT IN REPLY<sup>1</sup>

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should have been allowed to present this information to the jury as part of his defense. BOA at 19-20; CP 140.

In its response, the State asserts:

Defense counsel did not specify what statement she was referring to, nor did she clarify what section of the report she was referring to as the conclusion. The statements defendant on appeal has focused on were made on pages 4 and 5 of a 12-page report, which would hardly appear to be "in the conclusion". CP 137-148. Thus, the characterization on appeal of what the defendant was seeking to admit at trial is not supported by the record.

BOR at 14.

The State seems to assume that if it is not at the end of the report, it must not be part of the conclusions. A cursory examination of the 12-page report reveals how ridiculous this assumption is as there are several sections of the report that qualify as a "conclusion." For example, on page 4-5, the psychologist sets forth his "DIAGNOSTIC IMPRESSIONS" by concluding Anderson suffers from "depressive symptoms, including a depressed mood, suicidal ideation, low self esteem, and anxiety. These symptoms appear to be chronic and until recently mostly untreated." CP 140-41. At pages 5-7, the psychologist sets forth his opinion regarding Anderson competence to stand trial, which when summarized concludes Anderson suffers from "symptoms of a depressive disorder" but otherwise **"has the capacity to understand the nature of the proceedings against him and to assist in his own defense."** CP 141-43 (emphasis in original). At pages 9-10, the psychologist set forth his opinion on Anderson's likely mental state at the time of the alleged offense, concluding:

The account [of the alleged offense] provided by Mr. Anderson and in the police reports suggested that he was able to engage in purposeful, goal-oriented activity. For example, when he became angry at the party he was attending he was able to leave and walk approximately one mile to his residence. Once at the residence he was able to procure a knife with the objective of harming himself. He was able to conceive of a scenario in which he created an incident in which the police could be called, with the plan of goading the police into shooting him. . . . Consequently, it is my opinion that at the time of the alleged offense Mr. Anderson had the capacity to form the mental state of intent which allowed him to pursue a specific objective or purpose. . . .

CP 146. And finally, at pages 10-12 the psychologist set forth his opinion regarding Anderson's current "dangerousness" to himself and others, concluding:

Based on his known risk factors, a review of criminal history, and his current mental status, Mr. Anderson's risk is probably slightly above average. The pending offense, if he is convicted of it, would suggest that his risk is above average. His larger risk appears to be to himself, and in the process of attempting to harm himself he may endanger others through impulsive, reckless, or negligent activity. His imminent risk is mitigated by his compliance with psychiatric medications while in the hospital, his lack of access to alcohol, and his lack of access to implements that he could use to harm another person. His risk of recidivism is probably above average, based entirely on his two arrests during 2005.

It is not recommended that Mr. Anderson be evaluated by a CDMHP under RCW 71.05. However, due to the long-term status of his suicidal ideations, it is worthwhile to have jail mental health staff screen him before release from custody and ascertain whether he plausibly meets criteria for civil commitment at that time.

CP 147-48.

Each of these "conclusion" sections mention Anderson's depressive disorder, and all but the competency-to-stand-trial conclusion discuss his attempt or desire to commit suicide.

Defense counsel sought "to admit . . . a statement in the conclusion [in the report that] would support" his "suicide by cop" defense. 2RP 9-10. When considered in light of the nature of the report, it is readily apparent defense counsel was referring to one of the conclusion sections that specifically discusses his suicide attempt and/or suicidal ideations because it is those sections that support the defense theory. As such, the State's claim that the record is insufficient to tell what defense counsel sought to have admitted is wrong and should be rejected by this Court.

B. CONCLUSION

For the reasons stated herein and in appellant's opening brief, this Court should reverse Anderson's conviction.

DATED this 2nd day of November, 2006.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC.,



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CHRISTOPHER H. GIBSON  
WSBA No. 25097  
Office ID No. 91051

Attorneys for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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 Respondent, )  
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 v. )  
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 ANDREW ANDERSON, )  
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 Appellant. )

In the Office of the Clerk of Court  
Washington Court of Appeals, Division Three

By \_\_\_\_\_

COA NO. 34415-7-II

**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 3<sup>RD</sup> DAY OF NOVEMBER, 2006, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- THURSTON COUNTY PROSECUTOR'S OFFICE  
2000 LAKERIDGE DRIVE SW  
OLYMPIA, WA 98502
- ANDREW ANDERSON  
DOC NO. 891695  
WASHINGTON CORRECTIONS CENTER  
P.O. BOX 900  
SHELTON, WA 98584

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**SIGNED** IN SEATTLE WASHINGTON, THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2006.

x Patrick Mayovsky