

NO. 36335-6-II
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent,

v.

RICHARD STONE

Appellant.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
DEPUTY

ON APPEAL FROM THE
SUPERIOR COURT OF THURSTON COUNTY

Before the Honorable Richard A. Strophy, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant Richard Stone [Stone] presented sufficient evidence to prove that he was insane at the time of the offense.

2. The State presented insufficient evidence to prove that Stone intended to commit a crime when he entered a residence unlawfully, thus failing to prove an essential element of residential burglary.

3. The trial court erred by committing reversible error by denying the defense motion for a directed verdict, where there was insufficient evidence in the record to support the charge that Stone entered the residence in order to commit a crime.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Insanity is an affirmative defense that the defendant must raise and prove by a preponderance of the evidence. In the instant case, Stone proved by a preponderance of the evidence that he had a mental disease or defect—bipolar disorder with psychotic features—at the time of the offense, which affected his perception of the nature and quality of his acts and made him unable to tell right from wrong. Was sufficient evidence presented to prove Stone was insane when he entered the residence where he was profoundly delusional, took food from the refrigerator and combined it into a “goo,” was playing Led Zeppelin at a high volume, playing “air drums” and thought that the earth was “turning into hell”? Assignment of Error No. 1.

2. Whether Stone's psychosis was due to suspected methamphetamine use or to the underlying mental defect of bipolar disorder?

Assignment of Error No. 1.

3. Intent to commit a crime upon entering a dwelling is an essential element of residential burglary. Here, there was no evidence presented at trial that Stone intended to commit a crime when he entered a residence unlawfully. Did the State fail to present sufficient evidence to prove Stone committed residential burglary where Stone, acting under the influence of delusions and with the belief that he had an "open invitation" and that he could enter the house whenever he wanted, did he act with the objective or purpose to accomplish a result that constituted residential burglary? Assignment of Error No. 2.

4. Did the trial court erroneously deny the defense motion for a directed verdict where there was no evidence presented at trial to support the required element that Stone intended to commit a crime against a person or property when he entered the residence? Assignment of Error No. 3.

C. STATEMENT OF THE CASE¹

1. Procedural history:

A jury convicted Richard Stone of residential burglary, contrary to

¹This Statement of the Case addresses the facts related to the issues presented in accord with RAP 10.3(a)(4).

RCW 9A.52.025,² as charged in the first amended information filed by the State in Thurston County Superior Court on May 2, 2007. CP at 26, 51. 4RP at 257. Following an evaluation at Western State Hospital, Stone was found competent to stand trial and an Agreed Order of Competency was filed February 15, 2007. CP at 17. At trial, Stone asserted an insanity defense.

Stone was sentenced within the standard range on May 24, 2007. CP at 101-110.

Timely notice of this appeal followed. CP at 79-89.

2. Substantive facts:

At approximately 4 a.m. on September 22, 2006, Shauna Haggerty was awakened to hear the sound of screaming. 1 Report of Proceedings [RP] at 17, 21, 25.³ She was in her residence located at 4608 88th Avenue SW in

RCW 9A.52.025 provides:

(1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, the sentencing guidelines commission and the juvenile disposition standards commission shall consider residential burglary as a more serious offense than second degree burglary.

³The trial record consists of 14 volumes:

October 4, 2006 Hearing
March 28, 2007 Omnibus hearing
September 25, 2006 Preliminary Appearance
September 27, 2006 Hearing
February 15, 2007 Hearing regarding competency
April 11, 2007 Pretrial hearing
April 18, 2007 Status hearing
May 2, 2007 Status conference

Littlerock, Thurston County, Washington. 1RP at 13. After Haggerty heard the screaming, her dogs began to bark. 1RP at 21. She went into the bathroom to put in her contact lenses, and at that time she heard something hit her front door. 1RP at 21, 22. Haggerty went from the bedroom to the kitchen and saw a person standing by her refrigerator drinking alcohol that he had apparently taken from the refrigerator. 1RP at 23, 28. Haggerty backed up and went into the bathroom, closed the door and called the police using a cordless telephone. 1RP at 24.

Haggerty had lived in the residence since April, 2006. 1RP at 13, 14. The residence is located approximately four miles south of Tumwater. 1RP at 15. Haggerty testified that before she went to bed on September 21, she locked the front door but did not secure the deadbolt mechanism. 1RP at 16.

When police arrived, they found Stone in the living room of residence. Stone was shirtless, wearing blue jeans, and “was dancing around inside the house and jumping off the couches like he was playing air drums.”

1RP at 51.

May 7, 2007 Pretrial motions
1RP May 7, 2007 Jury trial
2RP May 8, 2007 Jury trial
3RP May 9, 2007 Jury trial
4RP May 10, 2007 Jury trial
May 24, 2007 Sentencing

Stone had consumed most of a bottle of Mudslide that he had retrieved from the refrigerator. 1RP at 35. He also got food out of the refrigerator and freezer and combined it in a frying pan, making what was described as a “goo.” 1RP at 37-39. He used frying pans, a pitcher, and dishes while combining the food, and he washed the pans and dishes he used in the sink. 1RP at 39. Stone threw some of the food items that he did not use into the garbage can in the kitchen and put other items he did not use into the refrigerator. 1RP at 41.

Police stated that when they arrived, Stone had turned on the stereo and was playing Led Zeppelin “extremely loud.” 1RP at 51. He was also singing along with the music, “[e]xtremely loudly.” 1RP at 68. Police entered the house and told Stone to “lay down on the ground[.]” 1RP at 51. Stone uttered an expletive, raised his arms and charged the police officers. 1RP at 52, 69. Police shocked Stone with a Taser, and he dropped to the ground. 1RP at 53. After the Taser “cycled for the five seconds,” Stone started to get up again and was screaming. 1RP at 53. Police shocked him again, and when Stone “began to get back up for the second time,” police shocked him again. 1RP at 54. After that Stone was placed in handcuffs. 1RP at 54. When police attempted to obtain information from Stone

regarding his identify, Stone told police that he was "Luke Skywalker." 1RP at 57. Stone stated that his back was hurt when he was Tased, and he was transported to St. Peters Hospital. 1RP at 63. Stone was later medically cleared and booked into the Thurston County Jail. 1RP at 63, 2RP at 29.

At the Thurston County Jail, Stone was diagnosed with bipolar disorder, and described as being manic with psychotic features. 2RP at 29. Stone told jail personal that he was the King of Australia, that he was Luke Skywalker, that he had a hole in his heart, and that he had Tasers stuck in his body. 2RP at 29, 30.

Following the arrest on September 22, Stone told the treating physician that he had consumed "ice" prior to the incident. 2RP at 48. A drug screen was not conducted at that time. 2RP at 48.

Dr. Julie Gallagher stated that Stone reported that told her that he believed that the house belonged to a friend and that he did not think he was doing anything wrong by entering the residence. 2RP at 37.

In the months leading to his arrest on September 22, Stone was arrested for a probation violation for failing to report to his Community Corrections Officer. 2RP at 124. He was taken to prison at Shelton, and then transported to the Lewis County Jail, where he remained for approximately two weeks. 2RP at 124. He was released from the Lewis County Jail on

September 11, 2006. 2RP at 124.

Three days later, on September 14, Stone stood on railroad tracks and stopped an Amtrak train, convinced that the tracks were loose. 1RP at 19-20, 2RP at 124. He was taken to St. Peters Hospital, where he tested positive for the presence of amphetamine. 2RP at 41, 48, 124. He was later taken to Behavioral Health Resources [BHR].

Stone's mental state on September 14 was described as manic and psychotic. 1RP at 20.

After his release from BHR, Stone attempted to walk to Summit Lake, but instead apparently walked to Tumwater, where he recognized that he was in the area of a house that he believed he had previously been given an open invitation. 2RP at 124-25.

Stone was evaluated by Dr. Gallagher, a forensic psychologist, regarding his competency to stand trial and his mental state at the time of the alleged offense. 2RP at 15. Dr. Gallagher testified regarding the incident that occurred on September 14, 2006, during which Stone was found standing on railroad tracks, forcing the train to stop before hitting him. 2RP at 17. She reported that Stone was taken to St. Peters, and later transferred to BHR for a 72-hour hold. 2RP at 54. At BHR, Stone was found to be floridly manic and psychotic at the time of the incident. 2RP at 17.

Dr. Gallagher diagnosed Stone as having bipolar disorder, and that he was in a severe manic phase of the disorder, with psychotic features, at the time of the incident at Haggerty's house. 2RP at 20. Dr. Gallagher also diagnosed Stone as having polysubstance dependence. 2RP at 21. Stone told Dr. Gallagher that after he was released from BHR inpatient facility after the 72-hour hold, he "walked the entire time" until his arrest on September 22, without eating or sleeping. 2RP at 21-22. Dr. Gallagher stated that when he was arrested, Stone's feet were covered in blisters, his toenails were falling off, and that he was dehydrated. 2RP at 22. Dr. Gallagher reported that while walking, Stone was trying to reach his sisters' house. 2RP at 22. She also reported that Stone believed that the earth was turning into hell and that he needed to escape that. 2RP at 55. She reported that Stone also said that the house occupied by Haggerty belonged to him and that it had been stolen from him. 2RP at 85. Stone told Dr. Gallagher that he walked up to the house and knocked, and then waited, and that the "door just magically popped open." 2RP at 24.

Dr. Gallagher testified that Stone's behavior was consistent with mania, and that he "was jumping from topic to topic[,]" that he talked rapidly, that he had multiple delusions, that he thought the house was occupied by friends named Dale and Frank, that he was invited into the house by a voice,

and that he was “Luke Skywalker Hanna.” 2RP at 23, 24.

Dr. Gallagher testified that in her opinion Stone was not cognizant of the nature and quality of his actions when he entered Haggerty’s residence. 2RP at 36.

Dr. Gallagher stated that methamphetamine use could trigger a psychosis in a person with a pre-existing bipolar disorder. 2RP at 49, 50, 52.

Stone’s mother, Jacqueline Stone, testified that Dale Faulkner and Frank Nelson were good friends of her son’s and that they had visited her house in the past. 2RP at 90. She stated that she had given her son rides to Faulkner’s house, located on the Littlerock Road. 2RP at 91. She testified that Faulkner was free to walk into her house and could help himself to anything he wanted. 2RP at 91. Jacqueline Stone testified that her son did not return to the house where he lived with his sister after the incident with the train on September 14. 2RP at 105.

Dr. Vincent Gollogly, a forensic psychologist, also examined Stone. 2RP at 140. He stated that he believed that Stone has bipolar disorder and that he was in a manic state, with psychotic features including audio hallucinations, at the time of the incident. 2RP at 135, 3RP at 174. He also stated that he believed that Stone met the criteria for insanity. 2RP at 137, 3RP at 175. He testified that Stone had the capacity to form intent, and that in

this case Stone's intent in the house was to cook something to eat. 3RP at 184.

Dr. Gollogly testified that delusional psychosis stemming from an underlying bipolar disorder can be triggered by external factors including a stressful episode or by methamphetamine use. 3RP at 157.

3. Motion for Directed Verdict

After resting, defense counsel moved for a directed verdict. 3RP at 193. The trial court judge denied the motion, ruling that it is "up to the jury to decide whether or not [Stone] voluntarily triggered what eh should have known or did know was an underlying mental condition from which he suffers." 3RP at 196.

4. Jury instructions:

Defense counsel did not note any exception to instructions not given or objection to instructions given. 3RP at 201.

5. Sentencing:

The matter came on for sentencing on May 24, 2007. Sentencing (5/24/07) RP at 3-29. Stone received a sentence within the standard range. Sentencing (5/24/07) RP at 26. CP at 101-110.

D. ARGUMENT

1. **STONE PRESENTED SUFFICIENT EXPERT EVIDENCE TO PROVE HE WAS INSANE AT THE TIME OF THE OFFENSE.**

In Washington, sanity is presumed and insanity is a statutory affirmative defense that the defendant must prove by a preponderance of the evidence. *State v. Box*, 109 Wn.2d 320, 322, 745 P.2d 23 (1987) (citing RCW 10.77.030(2)); *State v. Crenshaw*, 98 Wn.2d 789, 792, 659 P.2d 488 (1983); *State v. Wicks*, 98 Wn.2d 620, 622, 657 P.2d 781 (1983). Washington follows the *M'Naghten* rule, codified under RCW 9A.12.010, requiring the defendant to prove:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He was unable to perceive the nature and quality of the act with which he is charged; or

(b) He was unable to tell right from wrong with reference to the particular act charged.

Box, 109 Wn.2d at 322. Meanwhile, RCW 10.77.010(7) provides, “No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute ‘insanity’.” *Wicks*, 98 Wn.2d at 622. Accordingly, while insanity as a sole result of voluntary intoxication is not a defense to an offense in Washington, if the individual has a mental defect or disease that is triggered by the voluntary ingestion of drugs or alcohol, then

insanity is a defense to the offense. *Wicks*, 98 Wn.2d at 622-23. Even a temporary psychosis not limited merely to periods of intoxication and which rendered the defendant insane under the *M’Naghten* test constitutes a settled insanity that is a complete defense to the offense here charged. *People v. Kelly*, 10 Cal.3d 565, 577 111 Cal. Rptr. 171, 516 P.2d 875 (1973).

a. Standard of review

Because insanity is an affirmative defense that the defendant must prove by preponderance of the evidence, the proper standard of review is that a finding regarding insanity will not be disturbed on review if supported by substantial evidence. *State v. Harris*, 114 Wn.2d 419, 441, 789 P.2d 60 (1990).

b. Stone Suffered From a Mental Disease or Defect at the Time of the Crime.

To prove his insanity defense, Richard Stone had to prove that his mental condition was not “proximately induced by [a] voluntary act.” RCW 10.77.030(2); *Wicks*, 98 Wn.2d at 657. This law limits the extent to which those who have used or are addicted to drugs and alcohol can assert insanity. “But, ‘if the mania, insanity or unsoundness of mind, though produced by drunkenness, be permanent and fixed, so as to destroy all knowledge of right and wrong, then the person thus laboring under these infirmities would not be

responsible.”” *Wicks*, at 622-23, quoting *State v. Huey*, 14 Wn.2d 387, 396, 128 P.2d 314 (1942). Accordingly, where drugs or alcohol are involved, the substance must trigger “an underlying psychotic disorder of a settled nature, such a delirium tremens.” *Wicks*, 98 Wn.2d at 623.

There are three ways under this statute and *Wicks* that Stone proved by a preponderance of the evidence that he suffered from a mental disease or defect apart from voluntary drug use:

First, Stone suffered from an underlying mental disease – bipolar disorder with psychotic features – that existed regardless of his use of methamphetamine. He was diagnosed as having bipolar disorder at Western State Hospital by Dr. Gallagher in February, 2007. 2RP at 16, 36. Dr. Gallagher found that Stone is bipolar and that during his most recent episode in September, 2006 was manic and delusional. 2RP at 36.

The chronology of events leading to his arrest on September 22 is remarkable. Stone stopped a train on September 14, 2006, convinced that the rails were loose. 2RP at 17. He was evaluated at BHR for further hospitalization, and then released. 2RP at 17. Dr. Gallagher stated that after Stone was released following the 72 hour hold at BHR, Stone told her that he walked for approximately three days and did not eat or sleep during that time. 2RP at 22. When he was arrested, his feet were covered with blisters and his

toenails were falling off. 2RP at 22. Upon his arrest, he told the police that he was Luke Skywalker Hanna. 2RP at 23. He was taken to St. Peters Hospital in Olympia and then to the Thurston County Jail. 2RP at 29.

Dr. Gollogly diagnosed him as suffering from bipolar disorder with alcohol and methamphetamine dependence. 2RP at 135. Dr. Gollogly testified that Stone was in a manic state at the time of the incident. 2RP at 135. Stone told jail staff that he was the “King of Australia,” that he was Luke Skywalker, that he had a hole in his heart. 2RP at 29, 30.

In addition to Dr. Gallagher and Dr. Gollogly, other mental health professionals diagnosed Stone with bipolar disorder. At the Thurston County Jail, Stone was evaluated following the September 14 incident and found to be “floridly manic and psychotic.” 2RP at 17, 29.

Peg Cain performed two ‘safe to be at large’ evaluations of Stone, including one dated September 27, in which she stated that Stone’s psychosis was persisting. 2RP at 30.

Dr. Phyllis Knopp evaluated Stone on October 9, 2006 and concluded that he was delusional and psychotic. 2RP at 31.

Because each of the mental health experts diagnosed Stone with bipolar disorder, he met his burden of proving that it is more probably true than not true that he has that underlying mental disease.

Second, although there was evidence Stone used methamphetamine approximately eight days before the September 22 incident, there was no evidence that his mental condition at the time of the offense was proximately induced by use of methamphetamine.

Third, even assuming for the sake of argument that Stone's psychotic disorder was only caused by methamphetamine use, that use triggered a psychotic disorder as settled, profound, and debilitating as delirium tremens addressed in *Wicks*. *Wicks*, 98 Wn.2d at 623.

The State's case that Stone was suffering only from methamphetamine induced psychosis was extremely weak. The State introduced no testimony that Stone had methamphetamine in his system following his arrest on September 22. Instead, the State's case is based on his use of methamphetamine prior to the incident involving the train on September 14 and Stone's statement that he used "ice." Stone was not tested for substances after he was in custody on September 22.

This case is distinguishable from *Wicks*, where the defendant had schizophrenia which made worse when the defendant used alcohol or drugs. *Wicks*, 98 Wn.2d at 624-25. In *Wicks*, the defendant used massive amounts of alcohol and drugs in the two days preceding the crime triggering "toxic psychosis," and without the use of drugs and alcohol he would not have been

insane at that time, and there was no evidence of permanent impairment of the mind except for during that period of time. *Wicks*, 98 Wn.2d at 625-26.

Here, by contrast, the evidence is that Stone suffered severe impairment of the mind, resulting in hospitalizations and arrests leading up to September 22. The testimony was consistent that Stone was profoundly delusional about his identity, that he suffered audio hallucinations, that he had racing thoughts and jumped from topic to topic, that the door to Haggerty's house opened magically, that a voice compelled him to enter, that he owned the house he entered and that it had been stolen from him, had "clang association," and that he attempted to cook and made a "goo" of mixed food in Haggerty's kitchen. 2RP 26, 29, 30, 32, 33, 36, 37, 39.

2. **WHEN STONE ENTERED THE HOUSE, PLAYED THE STEREO, AND MADE "GOO" IN THE KITCHEN AND DRANK ALCOHOL FROM THE REFRIGERATOR, HE WAS UNABLE TO PERCEIVE THE NATURE AND QUALITY OF HIS ACT OR WHAT HE WAS DOING WAS WRONG.**

The dominant aspect of Stone's psychosis was his racing, delusional thoughts. 2RP at 33. He believed himself at the time of the crime to be the King of Australia, Luke Skywalker Hanna, that the earth was turning into hell, and that he owned the residence he entered but that it had been stolen from him, and that the house was occupied by Dale Faulkner and that he had

a standing invitation to enter the house. 2RP at 24, 29, 30, 31.

A finding of sanity or insanity in Washington does not depend on whether a defendant had control of his actions. *State v. Potter*, 68 Wn. App. 134, 145-46, 842 P.2d 481 (1992). In *Potter*, this Court ruled that references in *State v. Rice*, 110 Wn.2d 577, 757 P.2d 889 (1988), *cert. denied*, 491 U.S. 910; 105 L.Ed.2d 707, 109 S.Ct. 3200 (1989), *State v. Cameron*, 100 Wn.2d 520, 674, P.2d 650 (1983), and *State v. Crenshaw*, 98 Wn.2d 789, 659 P.2d 488 (1983) to “free will” were not intended to overrule a long line of cases that reject the so-called “irresistible impulse” defense, but rather should be interpreted as an alternative expression of the traditional insanity test’s inquiry into the actor’s ability to tell right from wrong. *Potter*, 68 Wn. App. 134, 145-47.

Thus, the relevant question is not whether Stone possessed free will at the time he entered the house, but rather whether his subjective understanding of wrong, legal or moral, became so obscured by delusion that he could not actually ‘tell right from wrong’. *Potter*, 68 Wn. App. 134, 149, quoting *People v. Serravo*, 823 P.2d 128, 139 (Colo. 1992), Citing *People v. Schmidt*, 216 N.Y. 324, 339, 110 N.E. 945 (1915). Regarding that question, the State offered no evidence to counter Stone’s defense that his subjective understanding was totally obscured by his deeply delusional thoughts at the

time of the crime, that he was a king, that the earth was turning into hell, that he once owned the house but that it had been stolen from him, and that he had permission to enter the house whenever he wanted. *E.g.*, 2RP at 30, 31. Stone's continuing mania after his arrest, lasting for weeks until he received proper medical treatment, reflected no sense of understanding of what had happened or guilt over what he had done. 2RP at 35.

a. Opinions of both experts who considered relevant evidence unanimously agreed that Stone was insane.

Criminal responsibility is a legal, rather than a medical or scientific problem, and in a larger sense, it is a social question. *State v. Wheaton*, 121 Wn.2d 347, 850 P.2d 507 (1993). Therefore, psychological experts may not determine legal standards for assessing sanity, but rather only provide scientific evidence about psychological disorders and how they affect people and how they may relate to a determination of insanity under the *M'Naghten* standard. *Wheaton*, 121 Wn.2d 347, 354.

Two psychologists testified regarding insanity in Stone's case: Dr. Gallagher and Dr. Gollogly. Regarding the issue of insanity, both experts agreed that Stone's mental disorder rendered him unable to appreciate the wrongfulness of his conduct because he was delusional. 2RP at 36, 137. In particular, Dr. Gollogly stated that Stone believed at the time that he was

invited into the house and that his intention was not to commit a crime, but “to make himself a meal.” 2RP at 137.

Therefore, this case is most like one in which all experts agreed the defendant was insane. *Cameron*, 100 Wn.2d at 525; *See also, Crenshaw*, 98 Wn.2d at 802 (all of the psychological experts except one opined that the defendant was not insane). In *Cameron* all experts agreed that the defendant suffered from paranoid schizophrenia at the time of killing and the time of trial, that he thought he was an agent of God and was required to carry out his directions, and so he was legally insane at the time of the murder, regardless of the defendant’s “technical” understanding of the “mechanical nature of the act.”

Likewise, Stone suffered from delusions, believed he was a king, that he owned the house but that it had been stolen from him, that he was invited into the house, that the door to the house magically opened, and that subject to these delusions, he was unable to tell right from wrong. 2RP at 31, 32.

b. No evidence of calculated efforts to cover up the crime.

The State produced no evidence that Stone engaged in any effort to be stealthy, to hide, cover up or flee from the house. “Such attempts to hide evidence of a crime manifest an awareness that the act was legally wrong.”

Crenshaw, 98 Wn.2d at 804. On the contrary, Stone acted unaware that he had committed any crime; he screamed outside the house, he was extremely loud while in the house, turned up the stereo playing Led Zeppelin and was singing along with the music, and jumping around the living room.

Finally, the fact that when police arrived Stone raised his arms and charged was not proof of awareness of right and wrong or that he understood the nature of his act, but rather simply proof of his delusional behavior. 1RP at 56.

3. **THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO PROVE STONE COMMITTED RESIDENTIAL BURGLARY.**

a. **Burglary requires the defendant intended to commit a crime in the house he entered.**

The State need not prove a defendant charged with burglary intended to commit a specific crime inside the house he entered unlawfully. *State v. Bergeron*, 105 Wn.2d 1, 4, 711 P.2d 1000 (1985). However, specific intent to commit a crime inside the house is an essential element of burglary. *State v. Bergeron*, 105 Wn.2d 1, 4, 711 P.2d 1000 (1985).RCW 9A52.020.

b. **Sufficiency of the evidence requires that a rational trier of fact could have found all elements of the charged crime beyond a reasonable doubt.**

A challenge to the sufficiency of the evidence requires the appellate

court to view the evidence in the light most favorable to the prosecution and decide whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Even on review of a challenge to sufficiency of the evidence, which admits the truth of the State's evidence, inferences drawn from the evidence must still be reasonable inferences. *Salinas*, 119 Wn.2d at 201. To be reasonable, an inference must be rationally related to the proven facts. *State v. Johnson*, 100 Wn.2d 607, 616, 674 P.2d 145 (1983), overruled on other grounds, *State v. Bergeron*, 105 Wn.2d 1, 711 P.2d 2000 (1985).

c. The State failed to prove Stone intended to commit a crime inside the residence.

There was no evidence Stone intended to commit a crime when he entered Haggerty's residence. He believed that a previous occupant of the house had given him an open invitation to go into the house whenever he wanted. Stone was also delusional in a variety of ways, including his belief that the door opened by magic, that a voice invited him into the house, and that earth was turning into hell.

Even in the light most favorable to the State, there was ample evidence to show that Stone had no intent to commit a crime, but that he suffered from multiple delusions, one of which was that he was invited into the house and that he could prepare something to eat while he was there.

4. **THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY DENYING THE DEFENSE MOTION FOR DIRECTED VERDICT, AS THERE WAS INSUFFICIENT EVIDENCE ON THE RECORD TO SUPPORT THE CHARGE THAT STONE ENTERED THE RESIDENCE WITH THE INTENT TO COMMIT RESIDENTIAL BURGLARY.**

The trial court erred in denying the defense motion for directed verdict for insufficiency of the proof if a material element of the crime. Review of a trial court decision denying either a motion for directed verdict or a motion for arrest of judgment requires the appellate court to engage in the same inquiry as the trial court. A directed verdict is appropriate if, after viewing the material evidence in the light most favorable to the nonmoving party, the court determines there is no substantial evidence or reasonable inference to sustain a verdict for the nonmoving party. *Hizey v. Carpenter*, 119 Wn.2d 251, 271-72, 830 P.2d 646 (1992).

The question in this case is whether the required intent was proved beyond a reasonable doubt. The intent in the case at bar was not shown by

direct evidence. It is the position of Stone that there was no evidence presented from which the jury could make such finding legitimately. Stone believed that he had a legitimate reason to be at the in the house, as he believed in his delusional state that he had an open invitation to go into the house and help himself to food inside. Stone made no effort to hide his presence, and in fact he was extremely loud, singing, jumping on the furniture, and playing music at a high volume. The fact that he legitimately believed he was at a friend's house and that he had permission to be there was shown by the fact that he washed dishes that he had used while combining the food into "goo."

"The intent to commit a crime may be inferred if the defendant's conduct and surrounding facts and circumstances plainly indicate such an intent as a matter of logical probability." *State v. Woods*, 63 Wn.App. 588, 591, 821 P.2d 1235 (1991), quoting from *State v. Bergeron*, *supra* at page 4. The court went on to discuss the several different conclusions to be drawn from the evidence presented at trial in the *Woods* case. The court concluded:

In sum, inference of intent to commit a crime does not flow as a matter of logical probability from these circumstances. Intent may not be inferred from evidence that is "patently equivocal", *State v. Bergeron*, *supra* at page 20; *State v. Couch*, 44 Wn.App. 26, 32, 720 P.2d 1387 (1986).

Woods, *supra*, at pages 591-592. The court concluded that based on the

circumstances in that case, the facts did not support the inference that the defendant intended to commit a crime in the residence. Stone urges this court to adopt a similar result and reverse his conviction.

E. CONCLUSION

Richard Stone satisfied the *M'Naghten* test that he was legally insane at the time of his offense. Under RCW 9A.12.010(1), the defendant must be laboring under a mental disease or defect at the time of the commission of the offense. Both experts agreed Stone has bipolar disorder, manic with psychotic features. Because of Stone's mental defect, at the time of the commission of the burglary, he was unable to perceive the nature and quality of the act. Dr. Gallagher and Dr. Gollogly both believed that at the time of the offense, he was unable to perceive the nature and quality of the act.

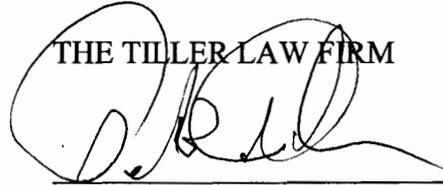
Because Stone presented overwhelming evidence to prove he was insane at the time of his offense, the jury erred in finding him guilty of residential burglary.

Because the State presented insufficient information to prove Stone committed residential burglary, this Court must reverse his burglary conviction.

Last, Stone contends that the trial court erred in denying Stone's motion for directed verdict.

DATED: January 14, 2008.

Respectfully submitted,

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IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

RICHARD STONE,

Appellant.

COURT OF APPEALS NO.
36335-6-II

SUPERIOR COURT NO.
06-1-01763-7

CERTIFICATE OF MAILING

The undersigned attorney for the Appellant hereby certifies that one original Brief of Appellant was mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to Richard Stone, Appellant, and Ms. Carol La Verne, Thurston County Deputy Prosecuting Attorney, by first class mail, postage pre-paid on January 14, 2008, at the Centralia, Washington post office addressed as follows:

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