

No. 44709-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Rebecca Bale,

Appellant.

Kitsap County Superior Court Cause No. 12-1-00270-1

The Honorable Judge Anna M. Laurie

Appellant's Opening Brief

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ISSUES AND ASSIGNMENTS OF ERROR

1. The conviction was improper because Ms. Bale was legally insane at the time of the offense.
2. The trial court erred by denying Ms. Bale's motion for acquittal on insanity grounds.
3. The trial court erred by entering Finding of Fact No. II regarding insanity.
4. The trial court erred by entering Finding of Fact No. III regarding insanity.
5. The trial court erred by entering Finding of Fact No. V regarding insanity.

ISSUE 1: A person who was unable to perceive the quality of her acts at the time of an offense is not criminally responsible. Here, Ms. Bale proved that she was unable to perceive the quality of her acts at the time of the offense. Did the trial court err by denying her motion for acquittal on insanity grounds?

ISSUE 2: When an accused person presents evidence that she is insane, the state must produce evidence of sanity that is equal to or greater than the defendant's in probative value. Here, Ms. Bale produced evidence that she was unable to appreciate the quality of her acts at the time of the offense, and the state did not produce any evidence showing that she could appreciate the quality of her acts. Was the evidence insufficient to sustain the trial court's order denying Ms. Bale's motion for acquittal on insanity grounds?

6. The trial court's findings don't support its conclusion that Ms. Bale was sane at the time of the charged crime.
7. The trial court erred by entering Conclusion of Law No. IV regarding insanity.

8. The trial court erred by entering Conclusion of Law No. VI regarding insanity.
9. The trial court erred by entering Conclusion of Law No. VII regarding insanity.

ISSUE 3: Proof that an accused person acted purposefully and tried to evade consequences does not overcome proof that she was unable to appreciate the quality of her actions at the time of the offense. Here, Ms. Bale proved that her delusions rendered her unable to appreciate the quality of her actions at the time of the offense. Were the trial court's findings that she acted purposefully and tried to evade consequences insufficient to support the conclusion that she was sane at the time of the offense?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Rebecca Bale suffers from schizoaffective disorder, bipolar type.

This mental disease can result in “hallucinations, delusions, disorganized thoughts, tangential thinking...” RP¹ 55. Ms. Bale “exhibited all of those symptoms at various times ...” RP 55-56. Her disease is also characterized by

major components of a mood disorder, such as bipolar in this case, which means she would cycle from perhaps manic or hypomanic conditions where she would not require sleep, she would have racing thoughts, and she would be basically acting out from time to time, and it might also include periods of time when she was in a depressed state, so bipolar type would include both characteristics of the hyperactive, the hypomanic or manic conditions, as well as depression.

RP 55-56.

Ms. Bale has been involuntarily committed several times in the past. RP 13. She had no criminal record prior to the current conviction. CP 26.

In February of 2012, Ms. Bale was not on her medications. RP 24. She was suffering from delusions. She believed “thought police” required her to do certain things. She believed that she and her family would be harmed if she didn’t comply. RP 15, 60. Her delusions included an

¹ The only volume of the Verbatim Report of Proceedings cited in this brief is from November, 28, 2012.

alternate legal system, which rewarded behaviors she personally thought were wrong. RP 54, 58-59.

On February 13, 2012, she went to a Group Health clinic, was arrested, evaluated for involuntary commitment², and jailed overnight. RP 25, 46. She was released the next day. RP 25, 46.

On February 14, she watched a movie. She believed that the “thought police” were using the movie to tell her she must “rape, pillage, and plunder.” She believed that she had to do things that she thought were wrong, in order to prevent harm to herself or her family. RP 11-12, 43, 54, 58-59.

After receiving this message from the “thought police,” Ms. Bale visited a nearby apartment. RP 11-12. She offered candy to the girl who lived there. The girl came with her to Ms. Bale’s apartment. Once there, Ms. Bale closed and locked the door. She attempted to pull down the girl’s pants. She also exposed herself, and may have tried to touch the girl’s privates. CP 22-24; RP 11-12, 15, 44-45.

The child escaped to her own apartment. Ms. Bale followed her, and waited outside the girl’s apartment. CP 12-21. The girl’s mother contacted police. Officers arrived and spoke to Ms. Bale, who they found

² She was not involuntarily committed at this point. RP 46.

still waiting outside the apartment. She gave a false name, denied knowing the girl, admitted knowing the girl, denied doing anything to the girl, admitted doing something, and then retracted her admission. RP 12, 36-37. She later explained that she'd been uncertain if the officers were "thought police" or real police. RP 43.

Ms. Bale was involuntarily committed to a psychiatric hospital. RP 26. The state charged Ms. Bale with Attempted Child Molestation in the First Degree. CP 1-7. Ms. Bale moved for acquittal on grounds of insanity under RCW 10.77.080. CP 67-107.

At a hearing on the motion, Dr. Whitehill testified that he had evaluated Ms. Bale. He testified that she was unable to perceive the quality of her actions at the time of the offense. He explained that her delusional system prevented her from understanding the quality of her actions. RP 4-46.

The state presented the testimony of Dr. Hendrickson, who had evaluated Ms. Bale at Western State Hospital. Dr. Hendrickson concluded that Ms. Bale did know the nature of her actions. He was unable to determine whether she knew the quality of her actions. RP 48-65.

When asked about this point, he testified "I have more difficulty because of the manner and the extent to which her delusional belief was apparently affecting her at that time." RP 58. In response to further

inquiry, he said he could not reach a conclusion as to whether she appreciated the quality of her act since he saw that as a legal conclusion.

RP 58. He further explained:

It was about the type of delusion that she has, and the fixed delusional belief that she has that incorporates a whole legal system, so that within the adopted legal system that she was adhering to, it made perfectly good sense to her, even though if you contrast that to the legal system in which we operate and we know about, there certainly is a contrast. It would be contrary -- her acts were certainly contrary to the norms that are established in our society, the legal norms. So that's why I said there is almost a superimposition of these two legal systems, one that she believed in, at least that she expressed she believed in at the time of the event, and two, the legal system which she was aware of when I examined her, when she was basically asymptomatic.

RP 59.

He concluded that he was “undecided” about whether Ms. Bale was able to appreciate the quality of her actions. RP 64.

The trial judge denied the defense motion. The court held that Ms. Bale had not met her burden. The judge said “I think in Washington it almost requires a psychotic break or something of that sort” to find insanity. RP 82. He later entered findings of fact and conclusions of law. CP 9-11.

After a stipulated bench trial, Ms. Bale timely appealed. CP 12-21, 22-24, 25-34, 35.

ARGUMENT

THE ORDER DENYING MS. BALE’S MOTION FOR ACQUITTAL WAS BASED ON INSUFFICIENT EVIDENCE.

A. Standard of Review

Courts review *de novo* issues of statutory interpretation and errors of law. *Barton v. State, Dep't of Transp.*, 178 Wn.2d 193, 202, 308 P.3d 597 (2013).

An appellate court reviews a trial court’s denial of a motion for acquittal on grounds of insanity in two steps. *State v. Monaghan*, 166 Wn. App. 521, 530, 270 P.3d 616 (2012), as amended (Feb. 28, 2012), *review denied*, 174 Wn.2d 1014, 281 P.3d 687 (2012). First, the court considers whether the trial judge’s findings are supported by substantial evidence. *Id.* Evidence is substantial if it is sufficient to persuade a rational person that the finding is correct. *Id.*

Second, the court determines whether the trial judge’s findings support the conclusion that the accused person failed to prove insanity by a preponderance of the evidence. *Id.* This is an issue of law, reviewed *de novo*. *State v. Ortega*, 177 Wn.2d 116, 122, 297 P.3d 57 (2013).

B. An accused person is legally insane if she is unable to perceive quality of her actions.

Insanity at the time of an offense precludes a criminal conviction for that offense. RCW 9A.12.010. Legal insanity is not equivalent to medical insanity. *State v. Crenshaw*, 98 Wn.2d 789, 793, 659 P.2d 488 (1983). To obtain a judgment of acquittal by reason of insanity, the accused person must prove by a preponderance of the evidence that

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 or she was unable to perceive the nature and quality of the act with which he or she is charged; or
- (b) He or she was unable to tell right from wrong with reference to the particular act charged.

RCW 9A.12.010(1). A person may thus be found insane either by showing one of three things: (1) an inability to perceive the nature of her actions, (2) an inability to perceive the quality of her actions, or (3) an inability to tell right from wrong. RCW 9A.12.010(1).

A statute must be construed according to its plain language. *Seashore Villa Ass'n v. Hugglund Family Ltd. P'ship*, 163 Wn. App. 531, 538-39, 260 P.3d 906 (2011) *review denied*, 173 Wn.2d 1036, 277 P.3d 669 (2012). If the statute's language is unambiguous, the analysis ends. *Id.* An interpretation that leads to absurd results must be rejected, as it

“would belie legislative intent.” *Troxell v. Rainier Public School Dist. No. 307*, 154 Wn.2d 345, 350, 111 P.3d 1173 (2005).

Courts must give meaning to each provision of a statute. *Berrocal v. Fernandez*, 155 Wn.2d 585, 599-600, 121 P.3d 82 (2005). Every word must be given effect. *State v. Cheatham*, 80 Wn. App. 269, 275, 908 P.2d 381 (1996).

Undefined words are given their ordinary meaning. *Freeman v. State*, --- Wn.2d---, ___, 309 P.3d 437 (2013). The court may consult a dictionary to determine the ordinary meaning of a word. *Id.*

- C. The evidence does not support the trial court’s finding that Ms. Bale was able to appreciate the quality of her actions.
 - 1. Where the defendant offers testimony establishing insanity, acquittal is required unless the state produces evidence of sanity that is of equal or greater probative value.

The obligation to establish insanity rests with the accused person. RCW 9A.12.010(2). Insanity may be established prior to trial pursuant to RCW 10.77.080. Under the statute, the trial court must weigh the evidence. *State v. Wheaton*, 121 Wn.2d 347, 362, 850 P.2d 507 (1993). Acquittal is required if the evidence “preponderates in favor of the defendant.” *Id.* (quoting *State v. Sommerville*, 111 Wn.2d 524, 531, 760 P.2d 932 (1988)).

When the accused person produces evidence of insanity, the state must do more than “come forward with some evidence of sanity.” *Sommerville*, 111 Wn.2d at 530. Instead, it must “produce evidence which is equal to or greater than the defendant's in probative value.” *Id.*

2. The state did not produce evidence sufficient to overcome Dr. Whitehill's testimony that Ms. Bale was insane.

To be legally sane, a person must understand both the nature and the quality of her actions. RCW 9A.12.010. The statute does not define the phrase “nature and quality.” RCW 9A.12.010. Nor has any published opinion explained its meaning. Accordingly, resorting to a dictionary is appropriate. *Freeman*, --- Wn.2d. at ____.

The word “nature” refers to the “inherent character or basic constitution of a person or thing.” “Nature.” *Merriam-Webster.com* (accessed 10/30/13). A synonym for nature is “essence.” *Id.* The word “quality” means a characteristic or feature of a thing. “Quality.” *Merriam-Webster.com* (accessed 10/30/13).³ Using these definitions, the phrase “nature and quality of the act” refers to both the essence (nature) of the act and the characteristics or features (quality) of the act.

³ Quality can also be a synonym for “nature.” *Id.* Such an interpretation would violate the rule requiring courts to give effect to every word in a statute. *Cheatham*, 80 Wn. App. at 275.

Here, the court considered the testimony of two doctors. RP 4-65. Both agreed that Ms. Bales suffers from schizoaffective disorder, bipolar type. RP 14, 21, 55. Both agreed that her disease causes delusions. RP 15, 28, 31, 40, 62. Both were convinced of the sincerity of her belief in the truth of her delusions. RP 23-24, 40, 61-62.

Dr. Whitehill testified that Ms. Bale was unable to perceive the quality of her actions.⁴ RP 27-32, 35, 39-42. This evidence was uncontradicted. Dr. Hendrickson did not disagree with Dr. Whitehill; instead, he indicated that he could not say for certain whether or not Ms. Bale could perceive the quality of her actions.⁵ RP 57-60, 62-64.

Under these circumstances, the evidence preponderates in Ms. Bale's favor. Dr. Hendrickson's inability to reach a conclusion is insufficient to shift the weight of the evidence. The state did not even "come forward with some evidence of sanity," much less "produce

⁴ Both doctors agreed that Ms. Bale understood the nature of her actions—that is, she knew she was offering candy, locking the door, attempting to remove clothing. RP 27, 57.

⁵ He did not explain his understanding of the word "quality." Nor did he demonstrate an appreciation for the difference between the "nature" of an act (its essence) and the "quality" of the act (its features). RP 56-65. Thus it is not clear that Dr. Hendrickson premised his inability to reach a conclusion on a correct understanding of the phrase "nature and quality." Furthermore, his hesitancy was based in part on his desire not to provide a legal conclusion. RP 58.

evidence which is equal to or greater than the defendant's in probative value." *Sommerville*, 111 Wn.2d at 530.

The trial court found that Ms. Bale "committed an act of attempted sexual molestation..." CP 9. To the extent this finding describes more than mere physical action, it is incorrect. There is nothing in the record suggesting that Ms. Bale attempted to touch a young girl for the purpose of sexual gratification. Instead, her purpose was to protect herself and her family from torture and death at the hands of the thought police. CP 43-44, 54. Finding No. II must be vacated.

The trial court also found that Ms. Bale "knew that there would be consequences to her actions." CP 10. This is incorrect. The fact that Ms. Bale followed the girl downstairs and waited outside her apartment suggested she lacked a basic understanding of the consequences. She apparently expected the girl to emerge from the apartment (despite having been attacked), and made no attempt to flee. RP 12. Likewise, her lies to law enforcement do not indicate an understanding of the consequences. Instead, both doctors explained that she lied because she was afraid the officers might be thought police and not real police. RP 37, 39-40, 43, 54. Finding No. V must be vacated.

Dr. Whitehill testified that Ms. Bale was unable to appreciate the quality of her actions. RP 27-32. The state's expert did not opine that she

could appreciate the quality of her actions. RP 57-60, 63-64.

Accordingly, the trial court should have entered a judgment of acquittal by reason of insanity. RCW 10.77.080.

D. The trial court's findings—that Ms. Bale acted intentionally and knew her actions had consequences—do not support the conclusion that Ms. Bale was able to understand the quality of her actions.

Even if the trial court's factual findings were based on substantial evidence, the findings do not support the conclusion that Ms. Bale was sane. Thus, as a matter of law, the trial court's order must be vacated.

Only two of the court's five findings relate to Ms. Bale's ability to understand the quality of her actions. First, the court pointed to the purposeful nature of her behavior. Finding No. IV, CP 10. But a person's ability to act with intent does not establish sanity. *See United States v. Long*, 562 F.3d 325, 339-40 (5th Cir. 2009) (applying the federal sanity test).

Second, the court suggested that Ms. Bale's apparent attempt to evade consequences established her sanity. Finding No. V, CP 10. An understanding of consequences and a desire to escape punishment does not establish sanity: "The insanity defense is not limited to defendants who, because of their illnesses, are completely ineffectual in pursuing their bizarre intentions." *United States v. Long*, 562 F.3d 325, 340 (5th Cir.

2009); *see also United States v. Dixon*, 185 F.3d 393 (5th Cir. 1999). In both *Long* and *Dixon*, the court held that the defendants' attempts to evade criminal liability did not preclude a finding of insanity.

These two findings were the only ones that addressed Ms. Bale's ability to appreciate the quality of her actions. CP 9-11. They are insufficient to support the conclusion that she was sane at the time of the acts alleged. *Long*, 562 F.3d at 340. Accordingly, the trial court's order must be vacated. *Monaghan*, 166 Wn. App. at 530. The case must be remanded for entry of an order of acquittal on grounds of insanity. *Id.*

CONCLUSION

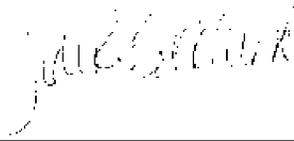
Ms. Bale proved that she was insane at the time of the charged crime. As a result of her delusions, she was unable to appreciate the quality of her actions. Her loss of contact with reality placed her beyond the point where she could be influenced by the criminal law.

As a result of the trial judge's error, Ms. Bale will remain on community custody with the Department of Corrections for the rest of her life. Had the judge entered an order of acquittal on insanity grounds, she would instead have remained under the jurisdiction of DSHS for the rest of her life.

The trial court's order must be vacated. The case must be remanded for entry of an order of acquittal on insanity grounds.

Respectfully submitted on November 4, 2013,

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CERTIFICATE OF SERVICE

I certify that on today's date:

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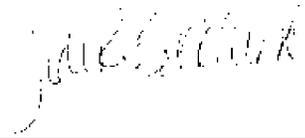
With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

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

Signed at Olympia, Washington on November 4, 2013.



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