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Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 34739-7-III

STATE OF WASHINGTON, Respondent,

v.

JESSICA RAVENHEART, Appellant.

APPELLANT'S BRIEF

Andrea Burkhart, WSBA #38519
Burkhart & Burkhart, PLLC
6 ½ N. 2nd Avenue, Suite 200
PO Box 946
Walla Walla, WA 99362
Tel: (509) 529-0630
Fax: (509) 525-0630
Attorney for Appellant

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I. INTRODUCTION

The State tried Jessica Ravenheart on charges of assaulting a police officer as well as her boyfriend, and preventing her boyfriend from reporting the assault. At trial, Ravenheart presented a diminished capacity defense supported by a mental health expert who testified that she suffered from post-traumatic stress disorder resulting from severe childhood sexual trauma. The prosecuting attorney, in closing, argued to the jury that Ravenheart needed to “face consequences” for her violent acts. Ravenheart contends on appeal that the prosecutor’s argument was flagrantly improper and denied her a fair trial.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR 1: The prosecuting attorney committed flagrant misconduct in closing argument by arguing to the jury that the defendant needed to face consequences.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE 1: Whether arguing that the defendant should face consequences encourages the jury to base its decision on irrelevant and inflammatory considerations.

ISSUE 2: Whether the improper argument likely affected the outcome in the case.

IV. STATEMENT OF THE CASE

Len Nash, now Jessica Ravenheart's husband, called police after an argument over him not finishing his dinner escalated. RP 4-6. He told police that Ravenheart had a history of mental illness and suicidality, and he thought they would help her. RP 8. Police arrested her and transported her to the police station. RP 17. Although they knew Ravenheart was in pain, police apparently refused her medication. RP 17, 18. She became combative and struck one of the officers twice before being confined to a restraint chair. RP 21-24.

The State charged Ravenheart with third degree assault for striking the officer, and fourth degree assault and interfering with a report of domestic violence arising from the initial dispute with Nash. CP 24-25. At trial, Ravenheart presented uncontested testimony from a medical expert, who examined her and confirmed that she suffered from severe post-traumatic stress disorder resulting from a history of severe sexual trauma. RP 48-50. Explaining that people with PTSD can suffer from dissociative events, the doctor testified that it was reasonably probable that Ravenheart suffered a dissociative event at the police station, and that

videos of the incident were consistent with a person experiencing a dissociative event. RP 51-54, 56, 61.

Ravenheart also testified on her own behalf and told the jury that she did not have much memory of the events but was in extreme pain. RP 65-66, 69. At Ravenheart's request, the judge instructed the jury on the defense of diminished capacity. RP 72, CP 42. In its final closing remarks to the jury, the prosecuting attorney stated,

This case isn't about whether or not someone said they were sorry. This case is about accepting consequences for your actions. And on February 28, 2016, Ms. Ravenwood [sic] got mad, and she got violent. She had violent actions. She needs to face the consequences for those.

RP 100. Ravenheart did not object.

The jury convicted Ravenheart on all counts. RP 105, CP 48-50. The court imposed a sentence of time served under a first-time offender waiver option and imposed 12 months' community custody. CP 53-54, RP 118. Ravenheart now appeals and has been found indigent for that purpose. CP 63, 75.

V. ARGUMENT

Ravenheart argues that the State's argument in closing that she should face consequences appealed to the jury's prejudices, injected improper considerations into the case, and denied her a fair trial. The

defendant carries the burden of establishing that the conduct is both improper and prejudicial. *State v. Korum*, 157 Wn.2d 614, 650, 141 P.3d 13 (2006). The error is not prejudicial unless there is a substantial likelihood the misconduct affected the verdict. *State v. Stenson*, 132 Wn.2d 668, 718-19, 940 P.2d 1239 (1997) (citing *State v. Brett*, 126 Wn.2d 136, 175, 892 P.2d 29 (1995)). Absent a defense objection at trial, the issue is waived unless the misconduct is “so flagrant and ill-intentioned that it evinces an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury.” *Korum*, 157 Wn.2d at 650 (quoting *Stenson*, 132 Wn.2d at 719).

The prosecutor has broad latitude to draw reasonable inferences from the evidence and express those inferences to the jury in closing argument. *Stenson*, 132 Wn.2d at 727. However, the injection of the prosecutor’s personal reaction to a defense theory is improper. *State v. Stith*, 71 Wn. App. 14, 856 P.2d 415 (1993). Because a prosecuting attorney represents the people and must act with impartiality in the pursuit of justice, he “must subdue courtroom zeal for the sake of fairness to the defendant.” *State v. Thorgerson*, 172 Wn.2d 438, 443, 258 P.3d 43 (2011) (citing *State v. Fisher*, 165 Wn.2d 727, 746, 202 P.3d 937 (2009)). He must further refrain from making “bald appeals to passion and prejudice.” *Fisher*, 165 Wn.2d at 747. “A prosecutor may not properly invite the jury

to decide any case based on emotional appeals.” *In re Det. of Gaff*, 90 Wn. App. 834, 841, 954 P.2d 943 (1998).

A prosecutor may use the evidence to explain why the jury might want to believe one witness over another, or one version of events over another. *See Brett*, 126 Wn.2d at 175. Such explanations are consistent with the prosecutor’s responsibility to act impartially in the public interest.

But,

If he lays aside the impartiality that should characterize his official action to become a heated partisan, and by vituperation of the prisoner and appeals to prejudice seeks to procure a conviction at all hazards, he ceases to properly represent the public interest, which demands no victim, and asks no conviction through the aid of passion, sympathy or resentment.

State v. Reed, 102 Wn.2d 140, 147, 684 P.2d 699 (1984).

No published Washington case squarely addresses the propriety of “accountability” arguments to the jury. However, in *State v. Montjoy*, 366 N.W.2d 103 (Minn. 1985), the Minnesota Supreme Court considered a similar argument by the State that included the following statements:

This whole trial—you stop to think about it, the whole trial boils down to one word. You know what that one word is? That’s this: The word “Accountability”. The word “Accountability”. The rule that people who break the law have to be held accountable for their actions, because the minute they are not held accountable for the actions, is the

same minute that the entire system of justice that brings us all together here in this courtroom becomes meaningless.

366 N.W.2d at 108. In that case, the Minnesota Supreme Court observed that “the prosecutor should not emphasize accountability to such an extent as to divert the jury's attention from its true role of deciding whether the state has met its burden of proving defendant guilty beyond a reasonable doubt” and concluded that the argument arguably crossed the line of propriety. *Id.* at 109. However, because other portions of the argument emphasized the defendant’s rights and the State’s burden of proof, and because the defendant did not object at trial, the *Montjoy* Court determined that the argument did not warrant reversal. *Id.*

The prosecuting attorney’s final remarks to the jury in this case were very similar to the argument in *Montjoy*. As the *Montjoy* prosecutor argued that the case boiled down to one word, “accountability,” so here the prosecuting attorney argued, “This case is about accepting consequences for your actions . . . She needs to face the consequences for those.” RP 100. In both cases, the State summarized the essence of the case as holding the defendant accountable for certain conduct. But the essence of a criminal case is never simply about punishing behavior; it is about whether the State has proved beyond a reasonable doubt that a crime was committed. In this case, where the issues in dispute were never

whether the defendant committed the acts in question, but whether her mental illness affected her ability to act with the volition and intent necessary to amount to a criminal act, the argument served to suggest that failing to convict Ravenheart would amount to a failure to hold her responsible for violent acts. Such argument is inflammatory and prejudicial because it minimizes the State's burden to prove all elements of the charged crime and encourages the jury to base its verdict on feelings of proportionality and retribution, rather than the requirements of the law.

Furthermore, unlike in *Montjoy* where the improper arguments were interspersed with appropriate admonitions to the jury to consider the defendant's rights and the prosecutor's burden, the argument here comprised the State's total rebuttal argument and its very last words to the jury before deliberations commenced. In other words, after the defense closed by arguing that the State did not prove a crime occurred, the State responded by urging the jury to make sure Ravenheart faced consequences. The context of the statements in this case emphasizes their prejudicial effect because, rather than responding substantively to the defense arguments, the State simply urged an emotional response.

Because the issue in dispute in the case was not the commission of the acts but Ravenheart's capacity to form the requisite intent, it is highly

likely that the improper argument affected the jury's verdict. She presented undisputed evidence from an expert that she suffered from a mental illness in which dissociative events are common, and in whose opinion her actions on the day in question were more likely than not the result of a dissociative event. The State's rebuttal argument discouraged the jury from giving fair consideration to this testimony and the diminished capacity defense by suggesting that considering Ravenheart's intent, rather than merely the violence of her actions, the jury would be failing to hold Ravenheart accountable. This amounts to a cognitive trap that requires the jury to convict, or let a violent actor escape without consequences.

Because the State's argument was highly inflammatory, undermined the defense and its own burden to prove Ravenheart acted intentionally, and injected considerations of accountability that the jury had no place evaluating in its deliberations, it constituted flagrant and ill-intentioned misconduct that sought to produce a conviction on improper grounds. As a result, the fairness of the trial was undermined and the outcome cannot be trusted. The verdict should be reversed, and Ravenheart granted a new trial.

VI. CONCLUSION

For the foregoing reasons, Ravenheart respectfully requests that the court REVERSE her convictions and REMAND the case for a new trial.

RESPECTFULLY SUBMITTED this 23 day of March, 2017.

A handwritten signature in cursive script, appearing to read "Andrea Burkhart", written in black ink.

ANDREA BURKHART, WSBA #38519
Attorney for Appellant

DECLARATION OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Denis Paul Tracy
Whitman Co Prosecutor
PO Box 30
Colfax, WA 99111

Jessica Ravenheart
523 SE South Street
Pullman, WA 99163

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 23rd day of March, 2017 in Walla Walla, Washington.


Breanna Eng