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NO. ~~64228-4-I~~

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

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STATE OF WASHINGTON,

Respondent,

v.

JODY E. SANDS,

Appellant.

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BRIEF OF RESPONDENT

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COURT OF APPEALS  
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## **I. ISSUES**

1. Did the trial court abuse its discretion when it found the defendant was competent to stand trial?

## **II. STATEMENT OF THE CASE**

### **A. THE MURDER.**

On December 19, 2007 at 2:49 a.m. the defendant, Jody Sands, called 911 and reported that he had struck his grandfather, Albert Beasley, with an axe. The assault occurred at the home the defendant shared with his mother and grandfather. 4 RP 12, 34, 47-48, 96-97, 214<sup>1</sup>.

Officers Sutherland and Wardlaw were the first to respond to the scene. When officers arrived the defendant was outside the home. Officer Wardlaw asked the defendant what happened and where was the axe. The defendant told her that he had struck his grandfather with the axe, and that the axe and his grandfather were still in the house. 4 RP 12-13, 50-52.

Inside the home police found Mr. Beasley lying on the floor near a brick hearth. A wheelchair was a few feet away. An axe was found propped up against a wall. Mr. Beasley had visible injuries to his head and shoulder. Police noticed that his head was

bleeding. Mr. Beasley was treated by fire personnel. He was alert as to time but not as to person or place. On the way to the hospital his condition deteriorated to the point he was not responsive to verbal stimuli. 4 RP 19, 52-55, 7, 112-123.

The defendant was taken into custody and read his Miranda rights. He told Officer Atkins at the scene that he hit his grandfather in the head with the back side of the axe blade. 4 RP 101-105.

The defendant was taken to the police station where he was interviewed by detectives. He was again read his Miranda rights. The defendant then told detectives that his grandfather was sitting in his wheelchair when the defendant struck Mr. Beasley in the head several times with an axe. The defendant denied acting in self defense. The defendant said he stopped “because it was the right thing to do.” 4 RP 140-142, 154-158.

Mr. Beasley was transported to Harborview Hospital. He died on December 28, 2007 as a result of complications from multiple blunt force injuries to his head and torso. 4 RP 165-185.

DNA testing was performed on the axe found in the home.

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<sup>1</sup> The references to the numbered volumes for the report of proceedings are the ones adopted by the defense. BOA at 1, n. 1.

The defendant's DNA was found on the axe handle. Mr. Beasley's DNA was found on the head of the axe. 4 RP 80, 92-93, 133-35, 192-203.

**B. PRE-TRIAL PROCEEDINGS, TRIAL, AND SENTENCING.**

The defendant was charged with Second Degree Murder with a Deadly Weapon, Domestic Violence. 2 CP 220-21. Before he was arraigned the Court entered an order of commitment for 15 days to determine the defendant's competency to stand trial. 3 CP 235-36. The defendant was subsequently committed to Western State Hospital for evaluation and treatment for two 90 day periods. 1 CP 196-97; 2 CP 214-15. The court then ordered Western State Hospital would be authorized to administer the defendant medications in order to restore his competency. 3 CP 222. The defendant was then returned to Western State Hospital for an additional 180 days for competency restoration. 1 CP 185-187.

On April 30, 2009 the court held a competency hearing. The court considered the testimony of Lori Thiemann, Ph.D., Lee Gustafson, Ph.D., the defendant, and Dr. Thiemann's report dated February 25, 2009. 1 CP 160; 1 RP 12-13; Ex. 2.

Dr. Thiemann testified that she interviewed the defendant several times, reviewed a competency assessment instrument, the

police reports and statements in the discovery, and a forensic mental health report, and consulted with the defendant's treating physician. 1 RP 8-10. Dr. Thiemann stated that the defendant had a good understanding of the charge against him, his legal peril, the basic workings of the court and the people that would be in court. 1 RP 12-15. The defendant also understood he had a defense attorney and expressed willingness to work with her. 1 RP 16-17. The defendant expressed some beliefs that may not have been held by the majority of people. Despite that belief the defendant stated those beliefs would have nothing to do with his approach to his case. 1 RP 16; Ex. 2 page 5. Dr. Thiemann concluded that the defendant was competent to stand trial as of the date of her February report. 1 RP 17, 19-23, 41.

Dr. Gustafson reviewed the forensic reports prepared for the defendant's case. Dr. Gustafson had met the defendant in January 2008, but not since then. 1 RP 45-46, 83. Dr. Gustafson agreed the defendant suffered from paranoid schizophrenia. The defendant's records showed the defendant's condition had improved with medication. 1 RP 48-49. Dr. Gustafson agreed the defendant understood the charges and how the court system worked. 1 RP 53. After listening to the defendant's testimony Dr.

Gustafson stated he could not form an opinion regarding the defendant's competency to stand trial. He did have some concern that the defendant's mental disorder was preventing him from considering whether to present a mental defense to the charge. 1 RP 79, 82.

The defendant testified that he understood he had been at Western State Hospital for the last year in order to have his competency to stand trial assessed. He was aware of his diagnosis, although he did not agree with it. He knew the alternative to prison would be civil commitment. He knew the range of punishment he would face and the basis for that range. He knew the State's burden of proof and defense counsel's role to "create doubt." He got along well with his attorney, even though he tried to fire her at point because he did not agree with her strategy to continue to contest his competency to stand trial. He said he was willing to work with his defense attorney. 1 RP 57-58, 64-66, 73-74.

The defendant did not believe he would actually be in prison for the period prescribed by law. He believed the world would end in December 2012, and therefore he would not serve the entire sentence if convicted. The defendant did not believe the State had sufficient evidence to convict him. He was 99 per cent sure that he

was going to be acquitted. He was not 100 percent sure because “things could go wrong.” 1 RP 64-66.

At the conclusion of the hearing the trial court found the defendant was competent to stand trial. 1 CP 160-166. The defendant waived jury and he was found guilty beyond a reasonable doubt. 1 CP 83-85, 136.

The defendant’s standard range for the offense was 123-220 months confinement plus 24 months for the deadly weapon enhancement. The Court found the defendant’s capacity to conform his conduct to the requirements of the law was significantly impaired. The court then found that fact justified declaring an exceptional sentence of 96 months confinement<sup>2</sup>. It ordered the defendant serve 60 months on community custody after his release. 1 CP 22, 25-26.

### **III. ARGUMENT**

#### **A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT FOUND THE DEFENDANT WAS COMPETENT TO STAND TRIAL.**

“No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.” RCW 10.77.050. “[T]he conviction of an

accused while he is legally incompetent violates his constitutional right to a fair trial under the Fourteenth Amendment's due process clause." State v. Wicklund, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982). A person is incompetent to stand trial if he lacks the capacity to understand the nature of the proceedings against him or assist in his own defense as a result of mental disease or defect. RCW 10.77.010(15).

When assessing the defendant's competency to stand trial the court may consider many things including the defendant's appearance, demeanor, conduct, medical and psychiatric reports and the statements of counsel. State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302, cert. denied, 387 U.S. 948, 87 S.Ct. 2086, 18 L.Ed.2d 1338 (1967). Although counsel's opinion must be given substantial weight, it alone cannot be determinative. State v. Swain, 93 Wn. App. 1, 10, 968 P.2d 412 (1990).

The trial court's decision in a competency hearing is reviewed for an abuse of discretion. State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985), cert. denied, 476 U.S. 1144, 106 S.Ct. 2255, 90 L.Ed.2d 700 (1986). A trial court abuses its discretion

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<sup>2</sup> The term of confinement consisted of 72 months for the underlying charge plus 24 months for the deadly weapon enhancement.

when its decision is manifestly unreasonable or is based on untenable grounds or reasons. State v. Adamy, 151 Wn. App. 583, 587, 213 P.3d 627 (2009).

The defendant challenges the trial court's determination that he was able to assist in the criminal proceedings when it found he was competent to stand trial. The ability to assist prong of a competency determination is a minimal requirement. State v. Harris, 114 Wn.2d 419, 429, 789 P.2d 60 (1990). The defendant need not be able to suggest a particular trial strategy or to choose among alternative defenses. Id. He need not have the ability to recall past event. Id. A mental disease does not necessarily render a defendant incompetent to stand trial. Id. Rather what is required is that the defendant understands his peril and be able to communicate rationally with counsel. Id.

This court found that prong had been met when the evidence showed that the defendant acknowledged the need to aid his attorney in preparing for a defense, could recall the facts of the case and could identify circumstances leading up to the commission of his crime. State v. Hicks, 41 Wn. App. 303, 704 P.2d 1206 (1985). Similarly, the trial court did not abuse its discretion in finding a developmentally delayed defendant

competent when he was able to recall past facts and relate them to his attorney. Ortiz, 104 Wn.2d at 482-84. The Court has likewise found no abuse of discretion when a trial court found a defendant competent to stand trial after mental health experts examined the defendant and found he understood the nature of the proceedings and was able to assist counsel. State v. Crenshaw, 27 Wn. App. 326, 617 P.2d 1041 (1980), affirmed, 98 Wn.2d 789, 659 P.2d 488 (1983), State v. Benn, 120 Wn.2d 631, 662, 845 P.2d 289, cert. denied, 510 U.S. 944 (1993).

The evidence showed that Dr. Lori Thiemann, Ph.D. had most recently evaluated the defendant two months before the hearing. Her opinion was that the defendant suffered from paranoid schizophrenia but was in remission. His thought processes were organized and he was capable of abstract thought. Ex. 2 page 4. She further opined that the defendant understood the charge against him and what the potential legal ramifications were if he was found guilty. She believed that the defendant was overconfident that he would secure an acquittal. That overconfidence was not a result of any delusional thought process, but rather that he viewed the State's evidence as weak. Ex. 2, page 6. Dr. Thiemann was also of the opinion that the defendant

was able to assist in his defense since had established a rapport with defense counsel which permitted him to comfortably discuss the details of the case with her. The defendant had also expressed his intent to work with his attorney when planning his legal strategy. Ex. 2 page 6.

At the competency hearing Dr. Thiemann reaffirmed her belief that the defendant was competent to stand trial. With respect to the “ability to assist” prong of the test Dr. Thiemann noted that the defendant not only said he was willing to work with his attorney but that he was confident in the work that she had done. 1 RP 16. Dr. Thiemann’s opinion did not change after hearing the defendant testify at the competency hearing. The defendant was able to “stay on topic” when discussing the potential evidence against him, and was able to express some flexibility in his thinking, both of which were related to his ability to assist in his defense. 1 RP 86.

The defendant’s testimony at the hearing supported Dr. Thiemann’s conclusions. The defendant understood the court’s options depending on whether he was found guilty or not guilty by reason of insanity. 1 RP 61, 64. He stated he had gotten along with counsel over the course of most of the case, although at one point he did not agree with counsel’s continued attempts to

discredit the report which stated he was competent to stand trial. The defendant affirmed that he was willing to work with his attorney and do the things she thought needed to be done, or at least consider the options she presented him. 1 RP 72-74.

The defendant assigns error to the court's conclusion that he was competent to stand trial on the basis that it erroneously determined that it need not find the defendant was "rational" when addressing whether he was able to assist in his defense. He argues that he was not able to "rationally" assist in his defense as a result of three beliefs which he held. First he did not believe he was mentally ill. Second, he viewed the State's evidence as so weak that he believed there was a 99 percent chance of acquittal. Third he believed that even if he were to be convicted he would serve only three and one-half years in prison because according to the Mayan calendar the world would end as of December 2012.

The trial court found the defendant was able to assist his attorney in his own defense. It also found that he was able to make decisions regarding alternative defenses available to him, although those decisions may be influenced by his mental illness. 1 CP 165. The defendant did not challenge these findings; they are therefore verities. State v. Lewis, 141 Wn. App. 367, 384, 166 P.3d 786

(2007), review denied, 163 Wn.2d 1030, 185 P.3d 1195 (2008). Despite this he now asserts that his mental illness compromised his defense in that it affected his ability to choose among defenses, and thus he could not rationally assist in his defense. The Supreme Court has stated that the test for competency to stand trial does not include the ability to choose among alternative defenses. State v. Hahn, 106 Wn.2d 885, 894, 726 P.2d 25 (1986), Ortiz, 104 Wn.2d at 483. Thus the trial court did not err in finding the defendant competent to stand trial even though his mental illness may have affected his decision to forgo a not guilty by reason of insanity plea.

The trial court found the defendant had made statements regarding how the victim died which contradicted his previous statements and with the facts as summarized in the affidavit of probable cause. The court also found that the defendant understood others did not see the evidence the same way he did. 1 CP 164 - 165. Neither of the psychologists who testified could say that the defendant's current version of events was the product of a delusion or just a version of events that he was asserting. 1 RP 80, 84-85. The court did not find the defendant's view of the evidence was the product of a delusion, or that it affected his ability

to assist in his defense. It did find the defendant was able to discuss the case with his attorney, even if he was not likely to change his mind regarding the evidence. 1 CP 165.

The defendant cites no authority which holds a trial court abuses its discretion finding a defendant competent to stand trial where the defendant's view of the evidence differs from how other view it. Rather the Court has upheld a trial court's finding of competency even where it is established that the defendant is delusional. Similar to the defendant here, the defendant in Harris had a delusional belief that he would be exonerated and set free before sentence was imposed. Despite this delusion the Court upheld the trial court's determination that that the defendant was competent to be executed stating what is required is the defendant understand what he is facing, and an ability to "communicate rationally with counsel." Harris, 114 Wn.2d at 430.

In Hahn this Court upheld the trial court's determination that the defendant was competent to stand trial despite his delusional belief that he was an agent of a secret government agency and that he was working on a clandestine government project. State v. Hahn, 41 Wn. App. 876, 879-80, 707 P.2d 699 (1985), reversed on other grounds, 106 Wn.2d 885, 726 P.2d 25 (1986). The Court

reasoned the defendant was competent because he understood the nature of the charges and recalled the events in question. Id. at 880.

Here the court did not abuse its discretion in determining the defendant was able to assist in his defense despite his view of the strength of State's evidence and his chances for acquittal. Dr. Thiemann noted the defendant currently had an interest in defending himself in contrast to earlier interviews with him. 1 RP 35. Dr. Gustafson stated the defendant was thinking logically and rationally about the information that had been presented to him. 1 RP 82. After observing the defendant testify Dr. Thiemann said that the defendant was able to stay on topic and discuss the evidence against him. She also said that the defendant did a good job of expressing flexibility in his thinking, "which I think is an important aspect related to his ability to assist." 1 RP 86.

The defendant's testimony supported the witnesses' statements and the trial court's findings. He testified that he was trying to help his counsel establish reasonable doubt in his case. He said that he was willing to work with counsel if she was willing to work with him. He demonstrated that he was willing to consider views other than his in the preparation of his case. While he

originally did not want to meet with Dr. Gustafson by the time of the hearing he had changed his mind. In addition, he acknowledged that he could be found guilty because things do not always work out as anticipated. 1 RP 61, 66, 73-74.

Lastly the trial court did not abuse its discretion in finding the defendant competent despite his belief that the world would end in December 2012. The defendant knew that he could face up to 14 years in prison. He thought that in reality, if convicted, he would serve far less time. This belief did not affect how he approached the case. When asked of some of his other beliefs would be relevant to his defense the defendant stated "Absolutely not, it has nothing to do with my case." 1 RP 67, Ex. 2, page 5.

#### **IV. CONCLUSION**

The trial court applied the correct standard when considering whether the defendant was competent to stand trial. The evidence supported the court's determination that he was competent. The defendant was able to logically and rationally discuss the case with his attorney, and accept that others may not view the evidence in the same way he did. He demonstrated flexibility in his thought process. His beliefs did not interfere with his ability to communicate with counsel. The court was not required to find the defendant was

able to choose among alternative defenses in order to find him competent to stand trial. For the forgoing reasons the State asks the Court to affirm the trial court's determination that the defendant was competent to stand trial, and affirm his conviction.

Respectfully submitted on August 19, 2010.

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