

Original

No. 36335-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

RICHARD STONE,

Appellant

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DIVISION II
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STATE OF WASHINGTON
BY DEPUTY

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

The Honorable Richard Hicks, Judge
Cause No. 06-1-01763-7

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether sufficient evidence was submitted to the jury to allow it to find that Stone intended to commit a crime when he entered or remained unlawfully in the victim's residence and so committed the crime of residential burglary, RCW 9A.52.025

Appellant's Assignment of Error No. 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.*

Appellant's Assignment of Error No. 3. *The trial court erred by committing reversible error (sic.) 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.*

2. Whether the evidence Stone offered required the jury to find that he was legally insane when he entered or remained unlawfully in the victim's residence.

Appellant's Assignment of Error No. 1. *Appellant Richard Stone presented sufficient evidence to prove that he was insane at the time of the offense.*

B. STATEMENT OF THE CASE

In the early morning hours of September 22, 2006, Stone illegally entered the home of Shauna Haggerty in rural Thurston County by forcing open the lock on the door of her double-wide mobile home. A screaming noise outside woke her up and her dogs started barking. She went toward her kitchen, looked in and found a stranger there drinking alcohol from a container taken from her refrigerator. Obviously frightened, she retreated to her bathroom,

shut the door as quietly as she could and called 911. The responding officers said they saw Stone through the window “jumping” to loud music. They entered, “tased” him, and arrested him. [RP I 52-55] It was obvious that he had helped himself to various items from the refrigerator in addition to the alcohol. [RP I 13-45] Stone’s attorney offered no objections to Mrs. Haggerty’s testimony and elected not to cross-examine her. The 911 tape was played without objection and the State offered exhibits, including photos and food items which she identified, were admitted without objection. Without objection, Sheriff’s Officer Mitchell King explained how the locked deadbolt had been forced open [RP 1 59-60] and described the initial investigation and arrest of Stone. [RP I 45-64] On cross-examination he reiterated his description of Stone’s strange behavior, including jumping around, playing loud music and singing. [I RP 66-67]

Having presented the testimony of Mrs. Haggerty and Officer King and offered its exhibits, all without objection, the State rested its case. [I RP 70]

Stone called Julie Gallagher (PhD in clinical psychology 2000, Baylor University), a forensic psychologist employee of

Western State Hospital retained neither by Stone nor the State. [RP II 13-42]

Based on three interviews and her review of the record, she testified on direct that although she thought Stone met the Washington State test for insanity at the time of the crime [RP II 36-38], voluntary use of methamphetamine could have triggered the condition; however, she could not offer an opinion about whether it had or had not done so. [RP II 41-42]

“Whether or not that particular episode was triggered by taking methamphetamine, I can’t say—it’s possible it was—but his symptoms in my opinion were due to his mental disorder.” [RP II 42, 5-8]

Earlier she had described his progress during a ninety day commitment to Western starting the month after his arrest as “excellent”.

“He still had some delusions for a while and then he got from the point of saying there’s nothing wrong with me; I’m Luke Skywalker, to admitting that he had mental illness and he needed medication. He was much calmer.” [RP II 35, 10-13]

On cross-examination, she testified at some length about the “triggering” effect of substance abuse, particularly methamphetamine, and the consequences of ceasing medication. [See e.g. RP II 49-52, 65-66]

In further support of his insanity defense, Stone called Vincent Gollogly (Ph.D. Clinical Psychology from Union Institute, Cincinnati, Ohio). [RP II 116-139] Gollogly was retained by Stone. [RP II 149] Based on one 3-4 hour interview, seven months after the crime, and after Jones had spent several months in Western State, and his review of the clinical record, [RP II 123, 141] Gollogly opined that Stone "made himself at home" at the home of friends, pushing open the door to Mrs. Haggerty's home and fixing himself a meal; a rational, if delusional, explanation. [RP II 125] His clinical diagnosis was bipolar I disorder, manic state, psychotic features present, suffering from alcohol and methamphetamine dependence and insomnia. [RP II 135] After expressing familiarity with the Washington definition of insanity, he opined:

"He did act with intent, but he was psychotic and delusional at the time. The intent was once he got in there was to make himself a meal, but the reality was he had no intent on committing a crime when he went in there." [RP II 137]

Consistent with Dr. Gallagher's testimony, he also testified that methamphetamine can trigger an episode of mania, but had no way of knowing whether that was the case in this particular incident. [RP II 180]

The Trial Court's ruling on Stone's motion for directed verdict was succinct.

"Certainly the state has made a *prima facie* case, and at this stage we would take all the evidence in the light most favorable to the state that Mr. Stone has committed the crime that's alleged, which is a residential burglary." [RP III 194, 8-12] "But there's a second issue here, and that is whether or not somebody who has an underlying mental illness can trigger that illness by the voluntary act and that will take away the defense of insanity. I will deny the motion. I think that's up to the jury to decide whether or not he voluntarily triggered what he should have known or did know was an underlying mental condition from which he suffers." [RP III 195, 22 –196, 4]

C. ARGUMENT

Stone makes two arguments. First, that he was legally insane at the time of the illegal entry/remaining. Second, that the evidence presented did not establish that he had the requisite intent to commit a crime at the time he illegally entered/remained. Because insanity is an affirmative defense, Respondent respectfully suggests that it is logical to address the evidentiary support for the existence of a crime prior to addressing the support for an affirmative defense to the charged crime, and therefore elects to discuss Stone's arguments in reverse order.

1. Sufficient evidence was submitted to the jury to allow it to find that Stone intended to commit a crime when he entered or remained unlawfully in the victim's residence and so committed the crime of residential burglary.

RCW 9A.52.025 – Residential Burglary – reads as follows:

9A.52.025(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.

Stone, having made no objection at trial to any part of the State's case, now argues the evidence was insufficient to support the element of intent.

"We therefore view the evidence in the light most favorable to the State. And we will affirm a conviction if a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

State v. Bergeron, 105 Wn.2d 1, 11, 711 P.2d 1000 (1985); see also, State v. Green, 94 Wn.2d 216, 220 -21, 616 P.2d 628 (1980).

A challenge to the sufficiency of the evidence to support a criminal conviction admits the truth of the State's evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Once the State shows that a person entered the premises unlawfully, a permissible inference arises that the entry was made with the intent to commit a crime. RCW 9A.52.040; State v. Brunson, 76 Wn. App. 24, 877, P.2d 1289 (1994), *aff'd*, 128 Wn.2d 98, 905 P.2d 346 (1995). The fact finder may find from common knowledge and

experience that there are few honest reasons for unlawfully entering a dwelling. State v. Bishop, 90 Wn.2d 185, 189, 580 P.2d 259 (1978); Brunson, *supra*, at 27. Once unlawful entry is proved, however, the intent to commit a crime is subject to a “more likely than not” standard of proof rather than a “reasonable doubt” standard. Id., at 27. The burden of proof shifts to the defense to rebut the inference of criminal intent. Bergeron, *supra*, at 7. That evidence must be sufficient to raise a reasonable doubt. State v. Carter, 5 Wn. App. 802, 805, 490 P.2d 1346 (1971). Once the defendant rebuts the inference by producing plausible evidence that he entered the premises for some lawful purpose, such as to reclaim his own property for example, the State once again has the burden of persuasion beyond a reasonable doubt that a crime was intended. To do this, the State must produce evidence that a specific crime was intended.” State v. Cantu, 123 Wn. App. 404, 408, 98 P.3d 106 (2004)

Here, there was no question Stone’s entry was objectively unlawful. Even assuming that Vincent Gollogly’s speculation about Stone’s subjective “intent” to “make himself at home” in the home of friends could be construed as rising to the level of actual evidence, the jury was clearly free to disregard it. The “specificity” element is

clearly established by testimony and exhibits, illegally appropriated food and drink. The specific crime intended either before or subsequent to the illegal entry was the crime of theft.

2. The evidence Stone offered did not require the jury to find that he was legally insane when he entered or remained unlawfully in the victim's residence.

RCW 10.77.030 - Establishing insanity as a defense

(2) Insanity is a defense which the defendant must establish by a preponderance of the evidence.

(3) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute insanity.

RCW 9A.12.010 – Insanity

To establish the defense of insanity, it must be shown that:

(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.

(2) The defense of insanity must be established by a preponderance of the evidence.

Stone argues that sufficient evidence was presented to allow the jury to have found him insane at the time he committed the crime of residential burglary. Assuming *arguendo* that he is correct in his assertion that sufficient evidence was submitted, he has

submitted no authority for the proposition that the jury was any more *required* by law to find that his evidence met the preponderance test than a jury would be required to convict after hearing overwhelming evidence of guilt. As the trial court quite properly observed in denying Stone's motion for directed verdict, the existence of a mental state meeting the legal definition of insanity at the time of the crime was a question of fact. Questions of fact are for the trier of fact. Because a jury *could* have found does not meant that it *must* have found.

As Stone quite accurately points out, insanity is an affirmative defense that he had the burden of proving by a preponderance of the evidence. State v. Harris, 114 Wn.2d 419, 441, 789 P.2d 60 (1990). That the jury was not persuaded by the testimony of the two clinical psychologists (not psychiatrists) he offered is not a supportable argument for reversal. As he also quite accurately observes, in Washington sanity is presumed.

In State v. Wicks, 98 Wn.2d 620, 622 657 P.2d 781 (1983), cited by Stone, our Supreme Court reaffirmed the longstanding rule that "No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute 'insanity'" and affirmed a conviction despite the fact that the trial court refused to

submit an instruction allowing the defense because it found the offered evidence insufficient. Here the trial court, arguably erring on the side of caution and not having to respond to strong objection by the prosecution, allowed the jury to consider the testimony of the two psychologists. The jury had the option of completely disregarding their testimony. As pointed out above in the "Statement of the Case", both psychologists left room for the possibility that Stone's condition at the time of the crime was induced by methamphetamine use/abuse. This was not a question on which the State had to produce any evidence at all. Nor did the State have to produce experts to testify that Stone was "sane" at the time of his crime. The "burden-shifting" analysis discussed above which is applicable in the case of the "intent" element of the crime of burglary simply does not apply here in the context of an insanity plea. The entire burden of persuading the jury he was insane when he committed the burglary was on Stone.

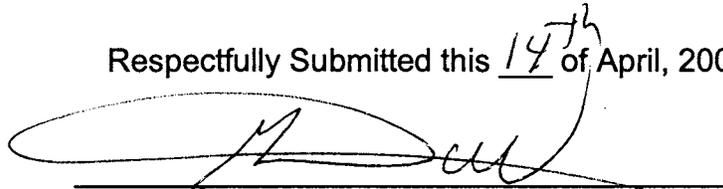
As the trier of fact, the jury was free to conclude that Stone did not suffer from a mental disease or defect, RCW 9A.12.010(1), that even if he did, his mind was not so affected that he could not perceive the nature or quality of his act or was unable to know his act was right or wrong, RCW 9A.12.010 (1)(a)(b), and that even if

he was so affected it was because the condition was proximately induced by his voluntary act, RCW 10.77.030(3).

C. CONCLUSION

Based on the foregoing authorities and arguments, the State requests this Court to affirm the Trial Court's denial of Stone's motion for Directed Verdict and accepting the jury's verdict finding Stone guilty of residential burglary and rejecting the insanity defense.

Respectfully Submitted this 14th of April, 2008



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CERTIFICATE OF SERVICE

I certify that I served a copy of the Respondent's Brief, No. 36335-6-II, on all parties or their counsel of record on the date below as follows:

- US Mail Postage Prepaid
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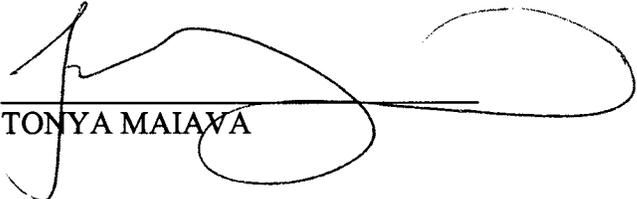
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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 14th day of April, 2008, at Olympia, Washington.


TONYA MAIAVA