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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 28958-3-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

CORY MONAGHAN,

Appellant.

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

Following the death of his young daughter, Cory Monaghan became increasingly paranoid and experienced delusions that a business competitor was attempting to ruin his life. Following several years of suffering from Delusional Disorder, and without any motive, planning, deliberation, or explanation, Mr. Monaghan shot and killed his friend and mentee, Jeremy Karavias. The evidence presented in a motion to acquit by reason of insanity plainly established Mr. Monaghan's mental disorder was the cause of his actions and that he was insane at the time of the incident. Because of that, this Court should reverse his convictions.

1. THE TRIAL COURT ERRED IN DENYING MR. MONAGHAN'S MOTION FOR ACQUITTAL.

Prior to trial, Mr. Monaghan filed a motion to acquit based on insanity. CP 109-31. Mr. Monaghan presented the testimony of Dr. Gollogly, and the testimony of numerous other witnesses including those present at the Wessel home on the evening before and morning of the incident, and from family and associates describing his history of delusional and paranoid behavior.

The trial court denied the motion concluding (1) that Mr. Monaghan did not meet the diagnostic criteria of Delusional

Disorder, and (2) that even if he did, a mental disorder cannot be the basis of an insanity defense. CP 271-73.

RCW 9A.12.020 provides "insanity" means

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.

RCW 10.77.080 requires the court hearing a motion to acquit by reason of insanity to weigh the evidence and grant the motion if the defendant meets his burden by a preponderance of the evidence.

State v. Sommerville, 111 Wn.2d 524, 533-34, 760 P.2d 932

(1988). As set forth below, Mr. Monaghan satisfied that burden.

Evidence is "substantial" only if it is of "sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." Here the declared premise, is that a preponderance of the evidence established Mr. Monaghan did not suffer a delusional disorder, was not suffering from a mental disease, was able to perceive the nature and quality of his acts, and was able to tell right from wrong. In reviewing those findings, the cannot ignore the standard of proof that is a part of the court's findings. Put another way, the evidence can only be "substantial" if it permits a fair

minded person to conclude, for example, that a preponderance of the evidence established did not suffer from delusional disorder.

That standard is not met here.

a. Mr. Monaghan proved he suffered from a mental disease. The diagnostic criteria of delusional disorder are

- A. Nonbizarre delusions . . . of at least one month's duration.
- B. Criterion A for Schizophrenia has never been met
- C. Apart from the impact of the delusion(s) or its ramifications, functioning is not markedly impaired and behavior is not obviously odd or bizarre.
- D. If mood episodes have occurred concurrently with delusions, their total duration has been brief relative to the duration of the delusional periods.
- E. The disturbance is not due to the direct physiological effects of a substance . . . or a general medical condition.

American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, p.301, 4th ed. (1994) (Hereafter DSM-IV). The court's conclusion that Mr. Monaghan did not suffer from delusional disorder hinged entirely upon the court's finding that he did not persistently adhere to his delusion when challenged. CP 271 (Finding of Fact 11); RP 869-70. Whether that is the case or not, persistent adherence is not among the diagnostic criteria of the disorder. DSM-IV, at 301. Instead, that requirement is nothing

more than a criterion which the staff at Eastern State Hospital believed necessary. RP 807.

The State responds that Mr. Monaghan places “undue emphasis” upon the diagnostic criteria of DSM-IV. Brief of Respondent at 29. Instead, the State argues its experts are free to redefine mental illness based upon their “real-life experiences.” Id at 29-30. The diagnostic criteria set forth in DSM-IV are the objective criteria relied upon by the mental health community. That Mr. Monaghan does not display a symptom that is not among the diagnostic criteria for the disorder cannot support the conclusion that he does not suffer from the disorder. No more so than the fact that absence of pain in one’s arm does not prevent a diagnosis of a broken leg.

The state further claims that the trial court’s reliance upon this manufactured criteria was not critical to its ultimate conclusion. Brief of Respondent at 30. Yet, it was the absence of persistent adherence which prevented the State’s experts from reaching a diagnosis of delusional disorder. More importantly, it was the absence of persistent adherence which led the trial court to find Mr. Monaghan did not suffer from delusional disorder. Thus, the

reliance upon this manufactured criteria was a critical component of the trial court's conclusion.

Mr. Monaghan proved by a preponderance of the evidence he suffered from delusional disorder beyond a reasonable doubt. Only by relying upon a criterion which is not among the diagnostic criteria of the disorder did the court concluded otherwise. The trial court's findings to the contrary are unsupported by the record.

b. Delusional Disorder is a mental disease. The State's experts opined that delusional disorder is not a "mental disease." RP 778, 806. Dr Travers testified that with very limited exceptions, personality disorders were not "civil committable."³ RP 778. The State repeated that claim in its argument to the court. RP 845-46. In its oral ruling the trial court stated "when I think of personality disorder I think of character - - character. Not mental illness or disease but character." RP 872. Whatever the State, its experts, or trial court may believe with respect to mental illness, Washington courts have repeatedly found personality disorders are serious mental disorders. For instance, in this state numerous individuals with nothing more than a personality disorder have been

³ Dr. Travers explained the exceptions would be limited to instances in which the person was suicidal or otherwise posed a danger to themselves. RP 778.

indefinitely confined under RCW 71.09. See e.g., In re the Detention of Sease, 149 Wn.App. 66, 201 P.3d 1078, review denied, 166 Wn.2d 1029 (2009) (affirming commitment of individual diagnosed with Antisocial Personality Disorder, Narcissistic Personality Disorder and Borderline Personality Disorder). Thus, it is not a matter of the experts' opinion.

c. This Court must reverse the trial court's ruling denying Mr. Monaghan's motion to acquit Mr. Monaghan met his burden under RCW 10.77.080. The trial court's decision is based upon a misapplication of the relevant legal standard. This Court should reverse the trial court's ruling

2. THE STATE DID NOT OFFER SUFFICIENT EVIDENCE TO CONVICT MR. MONAGHAN OF FIRST DEGREE MURDER

To convict Mr. Monaghan of first degree murder the State was required to prove he acted "with premeditated intent to cause the death of another person" RCW 9A.32.030(1)(a).

Premeditation distinguishes first from second degree murder. State v. Brooks, 97 Wn.2d 873, 651 P.2d 217 (1982).

To convict Mr. Monaghan of first degree murder the State had to prove, that "with a premeditated intent to cause the death of another person, he or she cause[d] the death of such person."

RCW 9A.32.030(1)(a). “[A] person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime. RCW 9A.08.010(1)(a); State v. Dunbar, 117 Wn.2d 587, 591, 817 P.2d 1360 (1991). Thus, Mr. Monaghan is guilty of first degree murder only if the State proved he premeditated the act that killed Mr. Karavias.

Here, there was no evidence of which act was the cause of death. RP 1534. As it did at trial, the State’s brief acknowledges the evidence does not establish the when it argues that even if the evidence does not establish Mr. Monaghan had premeditated an intent to shoot Mr. Karavias, the fact that he may have broken Mr. Karavias’s neck after shooting him establishes premeditation. RP 2815, 2843; Brief of Respondent at 39.

But to succeed, the State’s argument requires one to presupposes the shooting was not the cause of death. Further, the State’s argument requires one to assume Mr. Monaghan actually did break Mr. Karavias’s neck and that that act caused Mr. Karavias’s death. There was no evidence of either of those facts. RP 1534.

The State opposed Mr. Monaghan’s requests for a unanimity instruction, arguing it could not prove which act caused death and

that in any event this was a continuing series of acts. RP 2763.

The court agreed with the State's argument and refused the instruction. RP 2771-72. But even if the event was a continuous criminal act, the State was still required to prove Mr. Monaghan premeditated the intent to kill Mr. Karavias prior to the lethal act. RCW 9A.32.030(1)(a). If the shooting was the cause of death and it was done without premeditation, Mr. Monaghan is not guilty of first degree murder. That is so, even if the State did prove Mr. Monaghan premeditated the intent to break Mr. Karavias's neck, or to burn him by starting the fire. Because the State did not establish what the cause of death was and did not prove Mr. Monaghan premeditated the intent to shoot Mr. Karavias, the State did not present sufficient evidence to convict Mr. Monaghan of first degree murder.

B. CONCLUSION

As argued above and as argued in Mr. Monaghan's previous brief, this Court must reverse Mr. Monaghan's convictions.

Respectfully submitted this 1st day of July, 2011.



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