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Court of Appeals  
Division III  
State of Washington

30079-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

LUIS A. BALLESTEROS, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF WALLA WALLA COUNTY

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APPELLANT'S BRIEF

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## INDEX

A.	ASSIGNMENT OF ERROR .....	1
B.	ISSUE .....	1
C.	STATEMENT OF THE CASE.....	1
D.	ARGUMENT .....	5
	1. BEFORE ACCEPTING A PLEA OF NOT GUILTY BY REASON OF INSANITY THE COURT MUST DETERMINE THAT THE PLEA IS KNOWING AND VOLUNTARY .....	5
E.	CONCLUSION.....	9

## TABLE OF AUTHORITIES

### WASHINGTON CASES

IN RE FLEMING, 142 Wn.2d 853, 16 P.3d 610 (2001).....	5, 6
IN RE HARRIS, 94 Wn.2d 430, 617 P.2d 739 (1980).....	6
STATE V. BRASEL, 28 Wn. App. 303, 623 P.2d 696 (1981).....	6, 7, 9
STATE V. HOLSWORTH, 93 Wn.2d 148, 607 P.2d 845 (1980).....	6
STATE V. JOHN EDWARD BARROWS, 122 Wn. App. 902, 96 P.3d 438 (2004), <i>review denied</i> , 154 Wn.2d 1003 (2005).....	7
STATE V. SMITH, 88 Wn.2d 639, 564 P.2d 1154 (1977).....	6
WOOD V. MORRIS, 87 Wn.2d 501, 554 P.2d 1032 (1976).....	9

### SUPREME COURT CASES

HENDERSON V. MORGAN, 426 U.S. 637, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976).....	6
--	---

### STATUTES

RCW 10.77.080 .....	8, 9
RCWA 10.77.080.....	5

### COURT RULES

CrR 4.2(d) .....	6
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A. ASSIGNMENT OF ERROR

1. The court erred in failing to determine that Mr. Ballesteros's plea of not guilty by reason of insanity was knowing and voluntary.

B. ISSUE

1. Does the court violate due process in failing to determine whether the accused knows the elements of the charges, the constitutional rights he is waiving, and the possible consequences, before accepting a plea of not guilty by reason of insanity?

C. STATEMENT OF THE CASE

Luis Ballesteros was charged with burglary, assault and attempted theft in June 2010. (CP 1) The information alleged that Mr. Ballesteros had unlawfully entered or remained in a building with an intent to assault Joseph Hunt, that he assaulted Mr. Hunt with intent to commit an unspecified felony, and attempted to take unlawful possession of merchandise belonging to Touchet Mercantile. (CP 1-2) According to the arresting officer, Mr. Ballesteros had entered a store, Touchet Mercantile, gone behind the counter and entered a storage room in which a child was sleeping, and begun "going through items in the store room." (CP 4) A

delivery person opened the door to the storeroom and saw Mr. Ballesteros. (CP 4) According to the delivery person, once he had entered the storeroom, Mr. Ballesteros closed the door and attacked him. (CP 4-5)

Mr. Ballesteros told his attorney that he believed he was in the store to help or protect the child. (CP 10) Based on this and other factors, defense counsel sought and obtained an order for a competency evaluation. (CP 8-44) The evaluation report showed a diagnosis of schizophrenia and an opinion that Mr. Ballesteros was not competent to stand trial. (CP 47, 49) The report recommended treatment with anti-psychotic medication. (CP 50)

The court entered an order for further evaluation and administration of recommended treatment. (CP 52-53)

Following treatment, the sanity commission report maintained Mr. Ballesteros's schizophrenia diagnosis, but indicated that he had responded well to medication and was competent to stand trial. (CP 61, 63) The report indicated Mr. Ballesteros believed he was charged with second degree assault, first degree robbery and third degree attempted robbery; that he faced a possible life sentence, but was more likely to be sentenced to ten years, if convicted; and that he understood a plea of not guilty by reason of insanity would likely result in extended hospitalization. (CP 64)

Following treatment, Mr. Ballesteros explained his actions on the date of the alleged offenses: “My intuitions told me to go into this room. I saw a girl there. I thought she’d been kidnapped. Somebody came in and I thought that was the kidnapper. I fought with him and he got me down.” Asked why he went into the room, he replied that “Something told me to. I thought somebody was in trouble.” Asked to elaborate on his intuition, he stated, “I was looking around outside before I went into the room. I thought somebody was in trouble.” Asked about the possible basis for his theft charge, he said that he had found keys by the girl and thought he could save them and help catch the kidnappers. He moved the keys in front of an electric junction box because he thought scanning them that way would put the kidnappers’ prints on the key. (CP 65-66)

The report concluded that Mr. Ballesteros was not legally sane at the time of the offenses, in that he did not know the wrongfulness of his behavior, but that he was capable of forming an intent to enter a room and attack another person. (CP 66) Upon receiving this report, the court entered an order finding Mr. Ballesteros competent to stand trial. (CP 71)

On January 18, apparently as part of a plea agreement, Mr. Ballesteros pleaded not guilty by reason of insanity. (CP 75; RP 4, 7)<sup>1</sup> He

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<sup>1</sup> All citations to the report of proceedings refer to the hearing held on January 18, 2011.

assured the court that he understood the hospital staff had determined that at the time of the incident he was incompetent to form the criminal intent, understand the elements of the crime or that what happened was illegal, but that he was now able to understand the court proceedings; that he did not object to a plea of not guilty by reason of insanity; and that his attorney was authorized to proceed. (RP 6-7)

The prosecutor advised the court that no plea statement had been prepared and that it appeared that the only documents required were the Findings of Fact and the Order of Commitment. (RP 7)

The court told Mr. Ballesteros: “You have been charged in this cause with Count 1, burglary in the first degree; Count 2, assault in the second degree; Count 3, attempted theft in the third degree. To these charges, how do you plead?” Mr. Ballesteros responded: “Not guilty by reason of insanity.” (RP 8)

The court found that Mr. Ballesteros had committed the alleged acts, but was legally insane at the time, that he presented a future danger to himself and the public, and that ordering him to be treated at Eastern State Hospital was in the best interest of the public. (CP 76-77) The court signed written findings and an order of commitment for an indefinite period of time. (RP 8-9; CP 79-80) The court asked Mr. Ballesteros whether he understood that “you will remain at Eastern State Hospital as

long as the secretary shall designate subject to further proceedings by this Court for conditional or final discharge.” (RP 9) Mr. Ballesteros said that he did. (RP 9)

#### D. ARGUMENT

##### 1. BEFORE ACCEPTING A PLEA OF NOT GUILTY BY REASON OF INSANITY THE COURT MUST DETERMINE THAT THE PLEA IS KNOWING AND VOLUNTARY.

The legislature has provided for the entry of a plea of not guilty by reason of insanity, and entry of an order of commitment, upon motion of the accused:

The defendant may move the court for a judgment of acquittal on the grounds of insanity: PROVIDED, That a defendant so acquitted may not later contest the validity of his or her detention on the grounds that he or she did not commit the acts charged. At the hearing upon the motion the defendant shall have the burden of proving by a preponderance of the evidence that he or she was insane at the time of the offense or offenses with which he or she is charged. If the court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings in substantially the same form as set forth in RCW 10.77.040. . . .

West’s RCWA 10.77.080.

In order to enter a plea of not guilty by reason of insanity, the accused must be competent to stand trial. *In re Fleming*, 142 Wn.2d 853, 864-865, 16 P.3d 610 (2001); *State v. Smith*, 88 Wn.2d 639, 642,

564 P.2d 1154 (1977). A defendant who waives trial and moves for acquittal on grounds of insanity effectively admits having committed the charged acts. *In re Harris*, 94 Wn.2d 430, 437, 617 P.2d 739 (1980).

The court cannot accept a plea of guilty, “without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea.” *In re Fleming*, 142 Wn.2d at 853, quoting CrR 4.2(d). A defendant cannot make an intelligent admission that he committed the offense charged unless he is aware of the essential elements of the offense. *State v. Brasel*, 28 Wn. App. 303, 311, 623 P.2d 696 (1981), citing *Henderson v. Morgan*, 426 U.S. 637, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976); *State v. Holsworth*, 93 Wn.2d 148, 607 P.2d 845 (1980).

As a matter of due process, accepting pleas of guilty or not guilty by reason of insanity requires a similar determination, since both pleas have similar consequences:

A motion for judgment of acquittal under RCW 10.77.080 has many of the same consequences as a plea of guilty. By filing the RCW 10.77.080 motion, a defendant admits to committing the act charged, and if the court accepts the motion, he waives his constitutional right to a jury trial on that issue. *State v. Jones*, 84 Wash.2d 823, 832-33, 529 P.2d 1040 (1974). He may not later contest the validity of his detention on the ground that he did not commit the acts charged. RCW 10.77.080. Furthermore, if the court accepts the motion, he waives the right to have a jury determine whether he is dangerous to others or likely

to commit felonious acts jeopardizing public safety or security, RCW 10.77.040, .080, and he may give up the right to confront his accusers. Significantly, he subjects himself to the possibility of commitment as criminally insane for as long as the maximum penal sentence for the offense charged. Accordingly, due process entitles a defendant to have such a judgment vacated unless he understood, at the time of the motion for acquittal by reason of insanity, the nature of the charges against him and the consequences of the motion.

*Brasel*, 28 Wn. App. at 312. “For purposes of due process, the constitutional constraints imposed on the acceptance of a motion for acquittal by reason of insanity are similar to those imposed in the acceptance of a guilty plea.” *State v. John Edward Barrows*, 122 Wn. App. 902, 907, 96 P.3d 438 (2004), *review denied* 154 Wn.2d 1003 (2005).

The due process requirement of a voluntary and intelligent plea includes at a minimum a showing that:

defendant was informed of and understood: (1) the essential elements of the offense charged; (2) that by making the motion he admitted to committing the acts charged and that, if acquitted, he might not later contest the validity of his detention on the ground that he did not commit the acts charged; (3) that by making the motion he waived his rights to remain silent, to confront his accusers, and to be tried by a jury; and (4) that, if acquitted, he could be committed to a state hospital for the criminally insane for a term up to the maximum possible penal sentence for the offense charged.

*Id.* at 313.

The record here does not show that Mr. Ballesteros's RCW 10.77.080 motion and plea were made voluntarily and intelligently.

The only evidence of his understanding of the charges against him consists of his statements in the second competency evaluation, when he erroneously indicated he was charged with two counts of robbery. His statements during the competency evaluation do not reflect an understanding that the charges involved an intent to commit a crime or felony, and indeed, his description of events involves a clear assertion that he was acting in defense of another throughout the incident. No one advised Mr. Ballesteros on the record that as a result of his plea he would be precluded from later claiming that he did not commit any of the alleged acts. The court did not advise Mr. Ballesteros that by pleading not guilty by reason of insanity he was waiving any of the enumerated constitutional rights. The court did not tell Mr. Ballesteros that in effect he could be kept at Eastern State Hospital indefinitely until after Mr. Ballesteros had entered his plea, nor is it clear that the court's statement conveyed the fact that he could be confined for the term of the maximum sentence for his alleged offenses. Certainly, Mr. Ballesteros was not told how long that term would be.

The record fails to demonstrate that Mr. Ballesteros knowingly and intelligently pleaded not guilty by reason of insanity.

If he did not understand the nature and consequences of the motion, the judgment of acquittal by reason of insanity is subject to a motion to vacate. *See Brasel*, 28 Wn. App. at 313. Before considering a motion to vacate Mr. Ballesteros's not guilty pleas, however, the court must afford the State an opportunity to "demonstrate that constitutional standards were satisfied . . . [T]he state must make 'a clear and convincing showing that the plea was in fact knowingly and understandably entered,' but may introduce evidence extrinsic to the plea hearing record in making this showing". *Id.*, quoting *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976).

#### E. CONCLUSION

This matter should be remanded to the trial court for a determination as to whether Mr. Ballesteros understood the nature and consequences of his pleas under RCW 10.77.080, and, unless the State presents sufficient evidence that he did, an opportunity to move to vacate his pleas.

Dated this 3rd day of April, 2012.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 30079-0-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
LUIS A. BALLESTEROS,	)	
	)	
Appellant.	)	

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I certify under penalty of perjury under the laws of the State of Washington that on April 3, 2012, I served a copy of Appellant's Brief in this matter by email on the attorney for the respondent, receipt confirmed, pursuant to the parties' agreement:

Teresa Chen  
tchen@wapa-sep.wa.gov

I certify under penalty of perjury under the laws of the State of Washington that on April 3, 2012, I mailed a copy of Appellant's Brief in this matter to:

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Signed at Spokane, Washington on April 3, 2012.

  
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