

FILED
March 3, 2014
Court of Appeals
Division III
State of Washington

No. 31274-7-III

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

JAMES J. LANDIS,

Defendant/Appellant.

Appellant's Reply Brief

DAVID N. GASCH
WSBA No. 18270
P.O. Box 30339
Spokane, WA 99223-3005
(509) 443-9149
Attorney for Appellant

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Gasch Law Office, P. O. Box 30339
Spokane WA 99223-3005
(509) 443-9149
FAX - None
gaschlaw@msn.com

A. ARGUMENT

Mr. Landis was denied his constitutional right to effective assistance of counsel, when his attorney failed to pursue a defense of diminished capacity.

Respondent argues at pages 31-35 of his brief that the facts and testimony do not support a defense of diminished capacity. Respondent is incorrect in this assertion. There is ample evidence throughout the record of diminished capacity due to the combination of the PTSD, the medications and the alcohol consumed on the day of this incident. The testimony revealed Mr. Landis was taking two doses of time-release morphine daily for pain from his war injuries as well as Celexa for depression. On the morning of this incident he had gone to the tavern and consumed three beers and continued to drink beer after he returned home around noon. RP 435-39, 889, 899. Sgt. Harrison testified Mrs. Landis told him she was worried about a potential shoot out with law enforcement as a result of the effects of Mr. Landis consuming alcohol along with his medication combined with his PTSD. RP 448.

The actual behavior exhibited by Mr. Landis that day further substantiates this defense and is consistent with the various symptoms of PTSD discussed above. Mr. Landis is not a career criminal. He is an

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Spokane WA 99223-3005
(509) 443-9149
FAX - None
gaschlaw@msn.com

honorable war veteran with an impressive employment history. He worked for Martin Marietta as a missile mechanic, then Rockwell International, and eventually the Boeing Company as a flight line mechanic, and later as a supervisor. RP 886. His behavior on the date of this incident was entirely inconsistent with such a notable background absent some intervening mental condition.

Starting with the tractor episode and the way events escalated thereafter, it was evident that Mr. Landis' behavior was abnormal. This was first demonstrated by the confrontation with his wife over a seemingly trivial matter, his exaggerated reaction, her resulting injury and his apparent refusal to help her (see RP 354-57, 783). Mr. Landis later became further upset when the sheriff deputies arrived at the house and Sgt. Harrison turned on his "take-down" lights. Mr. Landis immediately became angry and yelled at Harrison to turn off the lights. Mr. Landis then went into his garage and came back outside in about ten seconds with a rifle. This type of extreme overreaction could only be categorized as abnormal and the result of some mental condition.

Mr. Landis also behaved strangely when the dispatcher, Patricia Stevens, called Mr. Landis and asked him to come outside and talk to the sheriff deputies. Mr. Landis declined to do that at first. He rambled on for

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gaschlaw@msn.com

some time that his wife has been getting in his face, that “she was living off of me from the day that I met her, and she has not worked a day and contributed ten cents to this relationship.” RP 756-61. He then became abusive, calling her a bitch, as well as his wife, and threatening to kill both his wife and Ms. Stevens. RP 766-71.

Mr. Landis exhibited even more extreme abnormal behavior when he began firing shots at Harrison’s patrol car as Harrison was trying to leave. Later, when Harrison was hiding in the field, he could hear Mr. Landis yelling and crying. Mr. Landis was saying his wife’s name and yelling, “Come take me out.” A few minutes later Mr. Landis came walking straight from the house holding a rifle and muttering to himself. RP 464-66. He then walked to the top of the embankment and fired enough rounds at Harrison’s empty patrol car to cause the headlights or wig-wag lights to start flashing on and off and the horn to start honking. RP 469.

Finally, Deputy Newport testified that after Mr. Landis was shot he was delusional and not making sense. Newport thought he was possibly under the influence of drugs. RP 424-25.

Despite all this evidence in the record, Respondent insists that Appellant is engaging in pure speculation and conjecture in arguing there

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gaschlaw@msn.com

was a sufficient basis for trial counsel to present a diminished capacity defense. Respondent's Brief pp 36-37. To the contrary, there was a plethora of evidence available for defense counsel to present and argue diminished capacity. The failure of defense counsel to present a diminished capacity defense where the facts support such a defense has been held to satisfy both prongs of the *Strickland*¹ test. *State v. Tilton*, 149 Wn.2d 775, 784, 72 P.3d 735 (2003) (citing *State v. Thomas*, 109 Wn.2d 222, 226-29, 743 P.2d 816 (1987)). Defense counsel's performance, herein, was clearly deficient in failing to pursue this defense.

B. CONCLUSION

For the reasons stated herein, and in appellant's opening brief, the conviction for attempted first degree murder should be reversed.

Respectfully submitted March 3, 2014,

s/David N. Gasch #18270
Attorney for Appellant

¹ *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)

PROOF OF SERVICE

I, David N. Gasch, do hereby certify under penalty of perjury that on March 3, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Appellant's Brief:

James J. Landis
#361654
1830 Eagle Crest Way
Clallam Bay, WA 98326

E-mail: syusi@co.okanogan.wa.us
Karl F. Sloan
Okanogan County Prosecutor
P. O. Box 1130
Okanogan WA 98840-1130

s/David N. Gasch
WSBA #18270

Gasch Law Office, P. O. Box 30339
Spokane WA 99223-3005
(509) 443-9149
FAX - None
gaschlaw@msn.com