

**FILED**  
**JAN. 31, 2013**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,	)	No. 30079-0-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
LUIS ALEJANDRO BALLESTEROS,	)	
	)	
Appellant.	)	
	)	

Kulik, J. — Luis Alejandro Ballesteros entered a plea of not guilty by reason of insanity for charges of first degree burglary, second degree assault, and third degree attempted theft. On appeal, he contends that his plea was not made knowingly and voluntarily.

We remand for an evidentiary hearing to determine whether Mr. Ballesteros’s plea was voluntarily and knowingly made, and for entry of findings of fact.

FACTS

Mr. Ballesteros was charged with first degree burglary, second degree assault, and third degree attempted theft for an incident occurring at Touchet Mercantile. According

to reports, Mr. Ballesteros entered the store, went into a storage room where a girl was sleeping, and began going through items. When a delivery person opened the door to the storage room, Mr. Ballesteros attacked him. Mr. Ballesteros had just been released from prison earlier that morning.

Mr. Ballesteros later told an evaluator at Eastern State Hospital that something told him to enter the storage room because someone was in trouble. He thought he could save the girl and help catch the kidnappers. He took keys found next to the girl and moved the keys next to an electric junction box because he believed that scanning them that way would put the kidnappers' prints on the keys.

The trial court ordered Mr. Ballesteros to undergo a sanity and competency evaluation. After months of treatment, the evaluator found Mr. Ballesteros was not legally sane at the time of the offense, but competent to stand trial. In the evaluation, Mr. Ballesteros conveyed to the evaluator that he knew the specific charges against him and the potential penalties, he knew of the three types of pleas available to him, he knew he could challenge witnesses, and he knew that he had an attorney whose role was to help him. The court entered an order finding Mr. Ballesteros competent to stand trial.

The next month at a court proceeding, Mr. Ballesteros pleaded guilty by reason of insanity. When asked by the trial court, Mr. Ballesteros said he did not object to the plea.

The State did not enter a plea statement.

The trial court accepted the plea. The court found that Mr. Ballesteros was competent to stand trial and understood the proceedings, but was legally insane at the time of the commission of the crimes. The court also found that if Mr. Ballesteros was not kept under further control of the court, there was a substantial danger that Mr. Ballesteros may injure other persons or himself and that Mr. Ballesteros may commit felonious acts jeopardizing public safety. The trial court informed Mr. Ballesteros that he would remain at Eastern State Hospital as long as the secretary shall designate. Mr. Ballesteros said he understood the findings.

The trial court found Mr. Ballesteros not guilty by reason of insanity and committed Mr. Ballesteros to Eastern State Hospital. Mr. Ballesteros appeals. He contends that the trial court failed to determine if his plea of not guilty by reason of insanity was entered with full knowledge of the consequences of the plea.

#### ANALYSIS

The legislature has provided for acquittal on the grounds of insanity and entry of an order of commitment, upon a motion of the accused. RCW 10.77.080.

The constitutional constraints on the acceptance of a motion for acquittal on grounds of insanity and a related plea are similar to those on the acceptance of a guilty

plea. *State v. Brasel*, 28 Wn. App. 303, 311, 623 P.2d 696 (1981). Due process requires that before a court can accept the motion for acquittal by reason of insanity and a related plea, the defendant must understand the nature of the charges against him and the consequences of the motion at the time the motion is made. *Id.* at 311-12. A defendant must be informed of and understand: “(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 State bears the burden of proving that a guilty plea was voluntary and made with full knowledge of the consequences. *Wood v. Morris*, 87 Wn.2d 501, 507, 554 P.2d 1032 (1976) (quoting *Roddy v. Black*, 516 F.2d 1380, 1384 (6th Cir. 1975)).

In dealing with motions for acquittal on grounds of insanity, “[w]hen the record of a plea-taking procedure fails to demonstrate that constitutional standards were satisfied, but the procedure conformed to all applicable statutes and court rules, the 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." *Brasel*, 28 Wn. App. at 313 (quoting *Wood*, 87 Wn.2d at 507).

In *State v. Autrey*, 58 Wn. App. 554, 794 P.2d 81 (1990), the Court of Appeals determined that the record supported the conclusion that Mr. Autrey knowingly and voluntarily entered a plea of not guilty by reason of insanity and motion for acquittal based on such a plea. *Id.* at 560-61. The record showed that Mr. Autrey's attorney reviewed the motion and plea statement with him, that Mr. Autrey answered "yes" when asked if he understood the consequences of his plea, that the trial court reviewed the motion with Mr. Autrey informing him of what it said, and that Mr. Autrey certified his complete understanding of all aspects of such a plea. *Id.* at 560.

Here, the record of a plea-taking procedure fails to demonstrate that constitutional standards were satisfied. The record does not contain a written motion for acquittal by reason of insanity or plea agreement in which Mr. Ballesteros admits that he understood the consequences of his plea. During the pretrial proceeding, the trial court did not question Mr. Ballesteros about whether he understood the essential elements of the charged offense, or whether he understood that he was waiving his constitutional rights. The trial court did not enter written findings of fact that Mr. Ballesteros's plea was made knowingly and voluntarily.

The State relies on Mr. Ballesteros's competency evaluation as extrinsic evidence that he understood the nature of the charges against him and the consequences of the motion. The record of the evaluation states that the evaluator discussed the not guilty by reason of insanity plea at some length with Mr. Ballesteros. However, the competency evaluation did not question Mr. Ballesteros specifically on the consequences of the plea, such as the admittance of the charges against him and his waiver of his constitutional rights. Consequently, Mr. Ballesteros never stated that he understood the consequences of the plea. It is clear that the focus of the evaluation was to determine competency. Thus, the competency evaluation does meet the criteria set forth in *Brasel*. Unlike *Autrey*, the record does not indicate that Mr. Ballesteros entered the motion knowingly.

The State does not make a clear and convincing showing that the plea was knowingly and voluntarily entered. The correct course of action is to remand for an evidentiary hearing and the entry of findings as to whether Mr. Ballesteros was informed and understood (1) the essential elements of the offense charged; (2) that by making the motion he admitted to committing 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. *Brasel*, 28

Wn. App. at 313. If the trial court finds that Mr. Ballesteros did not understand the nature and consequences of his motion under RCW 10.77.080, “the judgment of acquittal by reason of insanity must be vacated upon defendant’s motion.” *Brasel*, 28 Wn. App. at 313.

Mr. Ballesteros also filed a brief statement of additional grounds for review contending that his attorney misinformed him that he would only serve a six month sentence if he pleaded not guilty by reason of insanity. The issue of whether Mr. Ballesteros was aware of the potential length of his sentence will be addressed in the findings on remand. The issue of whether Mr. Ballesteros’s attorney acted ineffectively by providing this information cannot be addressed because the record does not contain evidence to support this contention. *See* RAP 10.10(c).

The record does not indicate Mr. Ballesteros knowingly and voluntarily entered his plea of not guilty by reason of insanity.

We remand to the trial court for an evidentiary hearing with the entry of findings as to whether Mr. Ballesteros understood the nature and consequences of his plea, as set forth in *Brasel*.

No. 30079-0-III  
*State v. Ballesteros*

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, J.

WE CONCUR:

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Brown, J.

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Siddoway, A.C.J.