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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

STATE OF WASHINGTON,	)	**No. 30487-6-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
JAY KELLY ANDERSON,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	
	)	

Sweeney, J. — There are two essential principles either of which requires us to affirm the conviction here for third degree assault while armed with a deadly weapon. First, a defendant waives the right to assign error to the judge's pretrial rulings when he pleads guilty to a crime. Second, we will not second guess a judge's assessment of a witness's credibility, that is, whether a defendant has met his burden of persuasion. Here, the trial judge found the testimony of the defendant's expert—that he was insane at the time of the relevant events—unpersuasive. We therefore affirm the conviction.

FACTS

Jay Anderson felt moved one morning to try to find his childhood home. Mr.

Anderson has had mental health challenges. He traveled by bus in the general direction of the home before getting off at a convenience store. He then entered an unlocked car parked outside the store. The owner of the car returned and confronted Mr. Anderson. Mr. Anderson brandished a box cutter, said "I'm sorry," and fled with the owner's cell phone. The owner and several witnesses caught Mr. Anderson and held him until the police arrived.

The State charged Mr. Anderson with one count of first degree robbery while armed with a deadly weapon. Mr. Anderson successfully moved for an order directing a competency evaluation. The court considered the assessment and concluded that Mr. Anderson was competent to stand trial. Mr. Anderson entered a plea of not guilty by reason of insanity and moved for acquittal. He then underwent a second mental health evaluation. And the trial court held a hearing to take evidence and consider his motion to acquit.

Psychologist Phyllis Knopp testified. She concluded that Mr. Anderson suffered from a psychotic disorder and schizophrenia. She believed he was in a delusional state when he entered the parked car and took the phone. The court apparently was not impressed, concluded that Mr. Anderson was sane at the time he committed his crime, and refused to dismiss the charge:

FINDINGS OF FACT

I.

The court finds there were a number of blanks and/or gaps in the information provided to Dr. Phyllis Knopp by the defendant. For example, the defendant had a clear and detailed memory of the events that occurred the morning of this incident, and then claimed he could not recall the details of the incident.

II.

The defendant did not claim he was hearing voices or getting commands to commit the crime. The defendant described getting a "nudge" from his computer that morning, but the "nudge" directed him to go look at some property from the defendant's past and not to commit the offense he committed.

III.

The court does not find Dr. Knopp is credible when she states she could reasonably reach her conclusion in this incident in 2009 based on an isolated incident in 2002. There were records and/or mental health evaluations between those dates that did not support a conclusion that the defendant was acting under a compulsion to commit the crime he committed in this case.

IV.

The court does not find Dr. Knopp is credible when she states she can fill in the gaps in the defendant's memory of this incident with conclusions that he was in fact acting under the direction of voices from "Tech Omega" and/or "Mr. Rothstein."

V.

Dr. Knopp admits that it is very unusual that a person who is hearing voices directing him to commit an act would not remember the details of the act. Further, it does not make sense that the person who is hearing voices directing him to commit an act would not remember that he was hearing those voices when asked why he committed the act.

VI.

Many of the defendant's actions during this incident, as described by the witnesses, suggest the defendant recognized that he was engaging in an act that was wrong.

VII.

Based on all of the information presented and from the totality of the circumstances, the court finds Dr. Knopp's conclusion that the defendant

> was not able to distinguish right from wrong during this incident is not credible.
>
> . . . .
>
> CONCLUSIONS OF LAW
>
> I.
>
> The defendant has not met his burden of proving by a preponderance of the evidence that he was insane at the time of the commission of the crime charged in this case.
>
> II.
>
> The defendant's motion for acquittal by reason of insanity should be denied.

Clerk's Papers (CP) at 81-83.

The next day, Mr. Anderson pleaded guilty to a reduced charge of third degree assault while armed with a deadly weapon.

DISCUSSION

Mr. Anderson contends that the court's findings are not supported by substantial evidence and the court could not then conclude that he was sane when he committed his crime. The State responds that Mr. Anderson's unqualified plea of guilty eliminates his right to assign error to the court's refusal to conclude he was insane at the time of his crime. *State v. Bisson*, 156 Wn.2d 507, 517, 130 P.3d 820 (2006). Our review is de novo. *Id.*

A guilty plea generally waives the right to appeal pretrial motions. *State v. Smith*, 134 Wn.2d 849, 852, 953 P.2d 810 (1998); *State v. Olson*, 73 Wn. App. 348, 353, 869

P.2d 110 (1994); *State v. Wiley*, 26 Wn. App. 422, 425, 613 P.2d 549 (1980). A guilty plea is "more than a confession which admits that the accused did various acts; it is itself a conviction" and "nothing remains but to give judgment and determine punishment." *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). A statement on plea of guilty that a defendant read, understood, and signed creates a strong presumption that the plea is voluntary. *Smith*, 134 Wn.2d at 852.

And that is what we have here. Mr. Anderson signed a standard statement on plea of guilty and agreed that he waived the "right to appeal a finding of guilt after trial as well as other pretrial motions such as time for trial challenges and suppression issues." CP at 60-68. His lawyer confirmed all of this. He pleaded guilty without reservation. The court confirmed that Mr. Anderson fully reviewed the plea and related documents with his attorney. The court then properly accepted Mr. Anderson's guilty plea as being entered knowingly, voluntarily, and intelligently. He has waived his right to appeal. *Smith*, 134 Wn.2d at 852-53.

But even if we were to review his assignment of error, we would be led to conclude that the court's findings are supported by this record. The standard of review, "substantial evidence," is modest. *Nw. Pipeline Corp. v. Adams County*, 132 Wn. App. 470, 475, 131 P.3d 958 (2006). Mr. Anderson challenges findings of fact III, IV, V, VI,

and VII.

Whether the evidence produced by Mr. Anderson met his burden of persuasion was for the trial judge to decide. *State v. Huff*, 64 Wn. App. 641, 655, 826 P.2d 698 (1992). That judge started with a presumption that Mr. Anderson intended the natural and probable consequences of his actions. *State v. Caldwell*, 94 Wn.2d 614, 617, 618 P.2d 508 (1980). He then bore the burden to prove that he was insane at the time of the charged offense. RCW 10.77.080. We follow the *M'Naghten* rule, codified in RCW 9A.12.010. *M'Naghten's Case*, 10 Clark & Fin. 200, 210, 8 Eng. Rep. 718, 722 (H.L. 1843), *cited in State v. Klein*, 156 Wn.2d 103, 113, 124 P.3d 644 (2005). A defendant must then show by a preponderance of the evidence that:

> (1) At the time of the commission of the offense, as a result of a 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.

Former RCW 9A.12.010 (1975).

Mr. Anderson's problem here is that the trial judge did not believe his expert. And that judge (not this court) was privileged to do just that. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). For example, the court found that "it does not make sense

that the person who is hearing voices directing him to commit an act would not remember that he was hearing those voices when asked why he committed the act." CP at 82 (Finding of Fact (FF) V). And the court found that Mr. Anderson "recognized that he was engaging in an act that was wrong." CP at 82 (FF VI). This finding is supported by the Lakewood Police Report and the attached witness statement noting that "the subject said he was sorry and dropped my items on the ground, and then he started to run off with what appeared to be my other cell phone." Ex. 2 at 10.

The court's findings are supported by substantial evidence. Those findings justify the conclusion that Mr. Anderson failed to meet his burden of persuasion.

We then affirm the conviction for third degree assault while armed with a deadly weapon.

A majority of the panel has determined that 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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Sweeney, J.

WE CONCUR:

_____

Korsmo, C.J.

_____
Siddoway, J.