

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED – NOVEMBER 1, 2006)

STATE OF RHODE ISLAND

:

VS.

:

NO.: P1/02-2568A

:

ROBERT CALLAZO

:

DECISION

DARIGAN, J. The narrow issue before the Court is whether or not Robert Callazo (the “Defendant”) was legally insane at the time he murdered Brian Araujo (the “Victim”). The Defendant does not dispute the evidence in the record, including various eyewitness accounts and a video taped confession, which establishes beyond a reasonable doubt that the Defendant did attack and kill the Victim.

In the early afternoon of March 10, 2002, the Defendant visited the Victim’s home. The Defendant asked the Victim’s father to wake him up, saying that it was urgent that the two of them speak. The Defendant and the Victim then had a ten minute conversation in the Victim’s bedroom. Afterwards they walked towards Broad Street and Jenks Park, ostensibly to smoke marijuana. At some point during his visit, the Defendant pocketed one of the Araujos’ steak knives.

After a brief walk around the park, the two men proceeded to Cogswell Tower, located near the middle of the park. Around 2:00 P.M., near the top of the stairs leading to the tower, the Defendant stabbed the Victim with the stolen steak knife – breaking it in two places – and then pushed the Victim down two sets of stairs. Upon reaching the bottom of the second set of stairs, the Defendant kicked the Victim and stomped on his

chest and throat. Noticing some passersby, the Defendant then shouted out “Come here and take a closer look and see what happens,” or something to that effect. Once the Victim was lying insensate at the foot of the tower, but before he had actually passed away, the Defendant walked back up the stairs, went into the tower, requested a lighter from a witness, and proceeded to smoke a cigarette.

By the time police and emergency medical personnel responded to a 911 call, the Defendant had returned to the bottom of the stairs and was leaning on a railing near the Victim’s body. Noticing blood on the Defendant’s shoes, clothing and hands, the officer at the scene began to question the Defendant. The Defendant calmly responded that he had tried to help the Victim, and that the Victim was his friend. The officer found the Victim’s wallet and other personal items in the vicinity of his body. Other personal items of the Victim, including a Pyrex glass bowl, and parts of the broken murder weapon, were located up the stairs, near the tower. After the Defendant was taken into custody, an officer located the Victim’s ATM card in the Defendant’s front shirt pocket.

At the police station, where the Defendant’s clothes were seized, he remained calm and cooperative. At approximately 6:10 P.M., the Defendant waived his rights and voluntarily submitted to be interviewed on video tape. For approximately the first hour of this interview, the Defendant denied that he had harmed the Victim, and denied that he had suffered any mental infirmities.

The Defendant’s alibi, stated during the video taped interview, was that the two men had gone to the top of the stairs leading to the tower to smoke marijuana, but that it was too windy for the Victim’s lighter up there, so the two men walked to the bottom of the stairs together. The Defendant then claimed that at the bottom of the stairs the

Victim's lighter ran out of fluid, so the Defendant volunteered to go to the corner store and get matches. However, before he had gotten very far he claimed he heard the Victim shouting for help, at which point he quickly returned to the Victim, who was battered and wheezing. In his haste to get help, the Defendant claimed he fell down, perhaps over the body of the Victim, and then he also began yelling for help from the numerous people walking by. The Defendant speculated that the Victim had been killed during a botched robbery. However, almost one hour into the interview, after being told that there were eyewitnesses and physical evidence that contradicted his alibi, the Defendant abruptly changed his story, admitting responsibility for killing the Victim, and explaining in gruesome detail how he did it. At this point, the Defendant also began to claim that he had believed the Victim to be evil and that he should be made to suffer.

The State has charged the Defendant with first degree murder. In his defense, the Defendant claims that he was legally insane at the time of the offense and, therefore, cannot justly be held accountable for his actions. The Defendant has a well-documented history of mental illness – going as far back as October of 1998 – with frequent hospitalizations at Butler Hospital, Pawtucket Memorial Hospital, St. Joseph's Psychiatric Unit, Landmark Hospital, Eleanor Slater Hospital at MHRH, and the ACI Hospital, as well as receiving outpatient treatment and counseling from the Community Counseling Center of Pawtucket and Northern Rhode Island Mental Health Center. He has at times experienced hallucinations, delusions, paranoia and extreme psychotic behavior. On one occasion, he stole a car and drove it (while naked) into a number of vehicles, then – in a clearly florid psychotic state – assaulted people standing by. On another occasion, he was subdued by police officers and hospitalized after another full

psychotic episode in his home. Both of these episodes were known by the police officers conducting the video taped interview. Based on this history of mental illness and the testimony of his expert witness, the Defendant raised the affirmative defense of insanity. The case proceeded to a jury-waived trial on March 23, 2006, and concluded on March 30, 2006.

**THE CURRENT RHODE ISLAND INSANITY DEFENSE
STANDARD MIRRORS THE MODEL PENAL CODE STANDARD**

Criminal law is premised on the concept that if “an individual manifest[s] free will in the commission of a criminal act, he must be held criminally responsible for that conduct,” but recognizes that insanity can “effectively destroy an individual’s capacity for choice and impair behavioral controls.” State v. Johnson, 399 A.2d 469, 477 (R.I. 1979). Unfortunately, because “language is inherently imprecise and there is a wide divergence of opinion within the medical profession, no exact definition of ‘insanity’ is possible.” Id. at 471 (citing Goldstein, The Insanity Defense 87 (1967)). Nevertheless, courts must distinguish between wrongdoers who are “substantially able to restrain their conduct” and those who cannot so conform their conduct in order to determine who should or should not be subject to criminal penalty. Id.

In the seminal case of State v. Johnson, the Rhode Island Supreme Court modernized the “insanity defense” standard based on growing medical, legal and public criticism regarding the then-current M’Naughten Rule for insanity.¹ Id. at 475-478. The largest criticisms of the previous rule were that it was an “all-or-nothing approach, requiring total incapacity of cognition,” and that it severely restricted “expert testimony,

¹ “To establish a defense on the ground of insanity it must be clearly proved that, at the time of committing the act the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong.” M’Naughten’s Case, 8 Eng. Rep. 718 (1843).

thereby depriving the jury of a true picture of the defendant's mental condition." Id. at 473 (citing Wade v. United States, 426 F.2d 64, 71 (9th Cir. 1970); United States v. Freeman, 357 F.2d 606, 620 (2d Cir. 1966)). To respond to these criticisms, the Rhode Island Supreme Court adopted a rule similar to Model Penal Code § 4.01, which had at that time already been adopted at least in part by the federal courts and twenty-six other states in the country.² Id. at 475-476. Under the current Rhode Island insanity standard, the fact finder must determine "that a mental disease or defect caused a *substantial impairment* of the defendant's capacity to appreciate the wrongfulness of his act or to conform his conduct to legal requirements." Id. at 477 (emphasis added). To ensure that mere recidivism would not provide a defendant with a legal defense, the law goes on to state that "[t]he terms 'mental disease' or 'defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial behavior." Id.

The current standard for an insanity defense "emphasizes that the degree of 'substantial' impairment required is essentially a legal rather than a medical question." Id. Acknowledging that "impairment is a matter of degree," the current Rhode Island standard allows the jury (or the judge in a non-jury trial) "to find that incapacity less than total is sufficient" for an insanity defense. Id. The standard also "employs the more expansive term 'appreciate' rather than 'know'" as a recognition that "mere theoretical awareness that a certain course of conduct is wrong, when divorced from appreciation or understanding of the moral or legal impact of the behavior, is of little import." Id. (citing Freeman, 357 F.2d at 623). Finally, the Rhode Island Supreme Court consciously

² "(1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law. (2) As used in this article, the terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct." Model Penal Code, § 4.01 (Final Draft, 1962).

selected the term “wrongfulness” as opposed to “criminality” because “a person who, knowing an act to be criminal, committed it because of a delusion that the act was morally justified, should not be automatically foreclosed from raising the defense of lack of criminal responsibility.” Id. (noting that, as of 1979, seventeen other states had also elected to use the term “wrongfulness”).

**THE DEFENDANT HAS THE BURDEN OF PROVING
THAT HE SUFFERED FROM A MENTAL DEFECT AT
THE TIME OF THE COMMISSION OF THE OFFENSE**

It is well-established law that the State has the burden of proving all elements of murder beyond a reasonable doubt. State v. Capalbo, 433 A.2d 242 (R.I. 1981). However, Rhode Island law “assumes that a normal individual has the capacity to control his behavior.” Johnson, 399 A.2d at 477. In other words, although the State must prove all the elements of the offense charged, it is the defendant who must establish the affirmative defense of insanity by “a fair preponderance of the evidence.” State v. Arpin, 410 A.2d 1340, 1349 (R.I. 1980) (decided under the M’Naughten Rule) (citations omitted). The defendant’s burden to establish the defense of insanity is identical under the new standard articulated by the Johnson Court. State v. Smith, 512 A.2d 818, 823 (R.I. 1986) (the burden of proving the lack of criminal responsibility, as defined by the new standard remain[s] on the defendant”).

Under this standard, it is not enough that the defendant prove that he suffers from a mental defect. State v. Gardner, 616 A.2d 1124, 1128-1129 (R.I. 1992) (citing Johnson, 399 A.2d at 478). Rather, the defendant must prove that he “suffered from this defect *at the time of the offense.*” Id. at 1129 (emphasis added). Although evidence of the defendant’s “bizarre behavior and non-conformist actions are indicative of [a]

longstanding psychological infirmity . . . [t]hat evidence alone [does not] require a conclusion by the trial jury that [he] lacked the required mental capacity to have been able at the time [of the offense] to conform his conduct to the requirements of the law.” State v. Barrett, 768 A.2d 929, 934-936 (R.I. 2001) (as the expert witness for the prosecution in that case stated succinctly, “[n]ot all crazy people are crazy all the time.”) “[T]he fact that a defendant engaged in unusual behavior or made bizarre or delusional statements *does not compel* a finding of insanity, and a defendant may suffer from a mental illness without being legally insane.” Id. at 938 (emphasis added) (quoting People v. Gilmore, 653 N.E.2d 58, 61 (Ill. App. Ct. 1995)).

Of course, “the process of diagnosing a defendant after a crime and relating that diagnosis back to the time of the offense is an elusive undertaking.” Gardner, 616 A.2d at 1129 (“[i]n a metaphysical sense it may be impossible to know the mental state of the defendant at the time of the criminal conduct”). Where the question is whether the defendant was under mental impairment *at the time of* the offense, fact finders first look to expert witnesses, and assess the credibility of their testimony. Judges and juries also look to the objective and verifiable conduct of the defendant shortly after the criminal conduct occurred. For example, in Barrett, after the defendant, who had a history of mental illness, shot his victim, he attempted to hide evidence of his recent marijuana usage, but otherwise remained at the scene and calmly laid out his weapons and even took off his shirt in order to “not get shot by the police.” 768 A.2d at 934. The Barrett Court held that a jury could determine these actions indicated that the defendant had enough control of his actions to rebut his expert’s inference that he was insane at the time of the commission of the offense. Id. at 938. Similarly, in State v. Arpin, the fact finder

was allowed to consider evidence that the mentally incompetent defendant first lied to the police during an interrogation before abruptly changing his story and confessing to determine whether or not the defendant was sane at the time of the commission of the offense. 410 A.2d 1340, 1342 (R.I. 1980) (the jury found the defendant guilty and sane under the older M'Naughten Rule).

Therefore, the Defendant in this case has the burden to show, by a fair preponderance of the evidence, not only that he suffered from a mental defect or deficiency, but that this defect or deficiency resulted in a substantial impairment of the Defendant's capacity to either appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law at the time he committed the offense charged. The Defendant's proof may include not only the testimony of expert witnesses called on his behalf, but also evidence of his actions before, during and after the crime was committed.

**THE DEFENDANT HAS FAILED PROVE BY A
PREPONDERANCE OF THE EVIDENCE THAT HE WAS
LEGALLY INSANE AT THE TIME HE COMMITTED THE OFFENSE**

The Defendant submits that his behavior before and after he murdered the Victim indicates that he was a person who, as the result of a mental defect, did not have the capacity to appreciate the wrongfulness of his conduct or was unable to conform his conduct to the requirements of the law. However, after reviewing the evidence and the testimony provided, the Court finds as a matter of fact and law that the Defendant was *not* legally insane at the time of the commission of the crime charged.

The Defendant's expert witness, Dr. Ronald Stewart, testified as to Defendant's well-documented mental health history, and stated that the Defendant's behavior at Jenks

Park and shortly thereafter indicated an obvious psychosis much in keeping with his psychiatric condition, as well as the fact that the Defendant had been self-medicating with alcohol and marijuana. As evidence that the Defendant was operating under a substantial mental defect at the time he committed the offense charged, Dr. Stewart and the Defendant pointed out that the Defendant had no clear motive, that he did not flee the scene of the crime, and that the alibi he fabricated makes no sense in light of the evidence against him. Dr. Stewart also testified that the Defendant's statements during his interrogation by the police regarding the Victim's "evilness" indicated that he could not appreciate the wrongfulness of his actions because he was incapable of distinguishing between reality and paranoid delusion – in other words, that the Defendant appreciated the criminality of his actions but believed this particular murder was morally correct. In response to the State's questioning, Dr. Stewart further testified, without explanation, that a person can be in a psychotic state yet still appear "normal," calm and lucid.

The State's rebuttal expert witness, Dr. Robert Cserr agreed that the Defendant suffered from a mental illness. However, Dr. Cserr testified that "at the time of the commission of the murder, although there was some degree of mental impairment . . . , the Defendant knowingly planned to kill Brian Araujo. He knew what he was doing and he knew it was against the law. He was not of such diminished capacity at the time of the stabbing as to preclude his ability to appreciate the wrongfulness of his act or to conform his behavior and conduct to that required by law." As evidence of the fact that the Defendant was not suffering from delusions, Dr. Cserr noted that the Defendant was deliberate about obtaining the murder weapon, that he had a clear recollection of the events of the day in question, and that he was clam and cooperative shortly before and

immediately after the crime was committed. As further evidence, Dr. Cserr and the State pointed to the fact that the Defendant was so aware of the commission of a wrongful act that he lied during his interrogation for almost an hour, pointedly denying any mental infirmity, and that he only changed his story *after* the police confronted his denial with eye-witness accounts and descriptions of physical evidence.

Of the two expert witnesses that testified in this case, the Court finds that the testimony of Dr. Cserr is more reliable and credible. Moreover, the physical and eyewitness testimony evidence submitted, including the video taped police interview, supports Dr. Cserr's and the State's conclusion that at the time of the commission of the act the Defendant was *not* suffering from a mental impairment as a result of a mental disease or defect that substantially impaired his capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. This evidence includes, but is not limited to, the fact that the Defendant had the presence of mind to hold onto the Victim's ATM card so that "he would not be robbed." Also, that the Defendant was able and willing to concoct an alibi as to his whereabouts during the killing and then lie to the police for approximately an hour, and that the Defendant did not change his story or make any "bizarre" statements until *after* he was convinced of the case against him. The Court finds that the Defendant's calm and cooperative behavior prior to his interrogation was premised on the fact he thought his cover story would be believed. The Court further finds that the Defendant's repeated denial of wrongdoing prior to his abrupt confession strongly suggests that he was well aware of the wrongful nature of his crime.

The Court recognizes that under the current standard the insanity defense does not require a showing total incapacity. In other words, the Defendant need not have been in a “clearly florid psychotic state” (as he had been in the past) in order to assert the affirmative defense of insanity. However, the Defendant’s calm and cooperative demeanor after the murder, his ability to vividly recall details regarding the entire day, and his coherent, lucid and attentive behavior during his police interrogation indicates that, at the time of the commission of this crime, he did not meet the modern standard of legal insanity as adopted by the Johnson Court. Although it is clear from the record that the Defendant in this case has a well-documented history of mental illness, his actions immediately before and after the commission of the offense suggests that he had the capacity to appreciate the wrongfulness of his conduct and was able to conform his conduct to the requirements of the law. Therefore, the Defendant has failed to meet his burden in proving the affirmative defense of insanity by a preponderance of the evidence.

CONCLUSION

For the foregoing reasons, this Court holds the Defendant was not legally insane at the time of the commission of the offense. Therefore, the Court holds that the Defendant is guilty of first degree murder as charged.