ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAYLA JEREAU BRYAN

APPELLANT

APPELLATE CASE NO. 2014-001220

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the court err by failing to direct a verdict of not guilty by reason of insanity when the state failed to present any evidence from which the court could have found Appellant was sane when she injured her daughter?

STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Appellant at the January 26, 2012 term of General Sessions for attempted murder. R. 304-305. Her case was called to trial on May 19, 2014 before the Honorable Maite Murphy. R. 1. Circuit Solicitor Isaac McDuffie Stone and Assistant Solicitors Sean Thornton and Hunter Swanson represented the state. Charles Russ Keep represented Appellant. R. 2.

At trial, Appellant raised the affirmative defense that she was not guilty by reason of insanity. See R. 34, l. 17 – 35, l. 24 and R. 271, l. 13 – 273, l. 2. On May 21, 2014, Judge Murphy found Appellant guilty and sentenced her to thirty years imprisonment. R. 276, ll. 2-21.

This appeal follows.

ARGUMENT

The court erred by failing to direct a verdict of not guilty by reason of insanity when the state failed to present any evidence from which the court could have found Appellant was sane when she injured her daughter.

Relevant Facts

The state alleged at trial that Appellant beat and stabbed her three year old daughter, Minor, in their apartment and then tossed Minor over the third story stairwell located just outside their apartment door. R. 30, l. 24 – 31, l. 10. Minor suffered from internal bleeding in her abdomen, swelling of her brain, and numerous skull fractures, lacerations, abrasions, and bruising, but ultimately made a full recovery. R. 132, l. 3 – 139, l. 2; R. 152, ll. 4-8; R. 172, ll. 4-24; R. 174, l. 20 – 175, l. 1. During a six hour interview with law enforcement, Appellant eventually confessed to harming Minor. R. 101, l. 1 – 110, l. 6; R. 113, l. 2 – 125, l. 21.

At trial, Appellant raised the affirmative defense that she was not guilty by reason of insanity. R. 271, l. 13 – 273, l. 2. Several family members testified that Appellant was raised by her parents in a loving and financially secure home and that she was a caring mother to her daughter. R. 149, ll. 16-18; R. 153, ll. 5-19; R. 170, l. 5 – 171, l. 20; R. 174, ll. 8-19. At the time of the incident, Appellant had a nice apartment and a reliable car, and was employed as an assistant manager at a retail store. R. 153, l. 20 – 154, l. 9. In the months prior to the incident, family and friends noticed that Appellant had become distant and exhibited occasional strange behavior. For example, one day Appellant, while pacing back and forth, told her mother she had met a "powerful" woman at work and that this woman "knew [her] life" and "knew everything about [her]." R. 155, l. 2 – 158, l. 2.

Several expert psychiatrists testified in Appellant's defense. Dr. Judith Treadway treated Appellant while she was incarcerated at the local detention center after it was reported Appellant

was exhibiting unspecified "bizarre behavior." R. 195, l. 17 – 196, l. 19. Dr. Treadway diagnosed Appellant with "psychosis, not otherwise specified" after Appellant reported hearing voices and other auditory hallucinations. R. 196, l. 19 – 197, l. 20. Specifically, Appellant told Treadway that before the incident she heard a female voice tell her to harm her daughter. She also said she was hearing voices while incarcerated. R. 201, l. 15 – 202, l. 13. Treadway ultimately prescribed Appellant Risperdal and later Lorazepam, both medications used to treat psychosis. R. 199, ll. 7-16.

Dr. Ana Gomez and Dr. Leonard Mulbry, both forensic psychiatrists at the Medical University of South Carolina (MUSC), evaluated Appellant to determine whether she was "criminally responsible" for her actions when she injured Minor. Both experts interviewed Appellant on two occasions and Dr. Gomez contacted six individuals, including Appellant's treating physician and various family members and friends, as collateral sources. R. 206, l. 20 – 207, l. 24.

Appellant reported having visual and auditory hallucinations starting around the summer of 2011. She told Gomez and Mulbry that she began hearing a female voice telling her what to do in September 2011 about three months before this incident. She also experienced a visual hallucination while at work and "described it as . . . somebody passing behind her." R. 209, l. 24 – 210, l. 18. These hallucinations continued after Appellant was incarcerated. Appellant said she began calling a fellow inmate by her daughter's name and "that she felt the inmate was sending her a sound statement . . . telling Ms. Bryan [Appellant] to stay away from this inmate, or she [Appellant] would hurt her [the inmate]." R. 210, l. 19 – 211, l. 10. Moreover, Appellant reported periods of paranoia during her incarceration.

Dr. Gomez and Dr. Mulbry both diagnosed Appellant with a "psychotic disorder, not otherwise specified" based on the "substantial evidence of psychotic thinking" and reported hallucinations "that were credible and verified." R. 212, ll. 10-15; R. 232, ll. 17-24. Dr. Gomez

opined that "at the time of the alleged offense she [Appellant] was experiencing symptoms of mental illness, specifically psychosis, that was impairing her thinking." R. 214, ll. 1-8. Similarly, Dr. Mulbry opined that "at the time of the event, [Appellant] was . . . laboring under delusions and hallucinations, and . . . her thinking was not rational and . . . **she did not recognize legal and moral right from legal, and certainly, moral wrong.**" R. 233, ll. 3-16 (emphasis added). Thus, both experts concluded that Appellant was not criminally responsible for her actions when she harmed Minor.

Moreover, both Dr. Mulbry and Dr. Gomez concluded that "[i]t is very unlikely the effects of marijuana would lead to the conduct described in the alleged offense."[1] R. 213, ll. 7-16; R. 233, ll. 17-22.

On the other hand, the state argued at trial that the numerous stories Appellant told law enforcement regarding what happened to her child demonstrated she knew moral and legal right from moral and legal wrong when she injured Minor. Appellant originally told investigators that she did not know what happened to Minor. She later maintained that an unknown white male entered her apartment and harmed the child and then subsequently identified the perpetrator as a Justin Singleton before ultimately confessing. R. 113, l. 2 – 125, l. 21.

The state presented the testimony of Dr. Jesse Raley in rebuttal. Dr. Raley, a forensic psychiatrist, was hired by the state several months before trial and was paid three hundred and fifty dollars an hour for his evaluation and testimony. He never met with Appellant. Instead, his opinion

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[1] During her interview with law enforcement, Appellant discussed her daily marijuana use and the fact that she had smoked marijuana approximately nine hours before this incident. She also allegedly said she was "high" when she injured Minor. The state used this evidence to argue that the effects of marijuana may have led Appellant to injure her daughter. R. 33, ll. 3-10; R. 275, ll. 11-17. Specifically, the solicitor argued, "Any problems or any issues she had, were brought about by the marijuana use." R. 33, ll. 8-20.

was based solely on reviewing the evidence collected by law enforcement, particularly Appellant's taped interview. R. 241, ll. 4-16.

Dr. Raley testified that Appellant was "criminally responsible" for her actions when she harmed Minor. He maintained that Appellant "interact[ed] fairly appropriately" with the various individuals she encountered during her interview with law enforcement after the incident and did not appear to be suffering from any psychosis at the time. R. 246, ll. 9-12. He also stressed that Appellant told "elaborate lies" when questioned about what happened. R. 243, l. 23 – 244, l. 25. According to Dr. Raley, Appellant's attempt "to conceal what . . . happened" showed "that she knew the difference between right and wrong" when she injured Minor and was criminally responsible for her actions despite any mental illness she may have been suffering from at the time. R. 245, ll. 1-23. Lastly, Dr. Raley emphasized Appellant's statement during her interview with law enforcement that she knew what she did was wrong. R. 247, ll. 4-22.

Motion for a Directed Verdict

At the end of the state's case in chief, defense counsel moved for a directed verdict. The court denied the motion finding there was "credible evidence tending to find the [d]efendant guilty on each of the elements of the crime charged." R. 141, ll. 16-22.

After the state's presentation of rebuttal evidence, counsel renewed his motion for a directed verdict of not guilty by reason of insanity. In response, the solicitor argued that Dr. Raley's testimony established Appellant was criminally responsible for her conduct and that it was a factual matter for the court to determine. R. 265, ll. 9-21. The court ultimately denied the motion after ruling it was "a factual determination for the Court to determine based upon the evidence that has been presented." R. 265, l. 22 – 466, l. 1.

Discussion

The court erred by failing to direct a verdict of not guilty by reason of insanity when the state failed to present any evidence from which the court could have found Appellant was sane when she injured Minor.

"It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize that particular act charged as morally or legally wrong." State v. Poindexter, 314 S.C. 490, 493, 431 S.E.2d 254, 255 (1993) (citing S.C. Code Ann. § 17-24-10(A) (Supp. 1992)).

"There is a presumption that every criminal defendant is sane. This presumption relieves the State of the burden of proving sanity in every case. However, when the defendant offers evidence of insanity, the presumption disappears and it is [i]ncumbent on the State to present evidence from which a jury could find the defendant sane. Any evidence of sanity is sufficient to present a jury issue when the defendant relies on the affirmative defense of insanity." State v. Millian-Hernandez, 287 S.C. 183, 185, 336 S.E.2d 476, 477 (1985).

In Millian-Hernandez, our Supreme Court directed a verdict of not guilty by reason of insanity after it found the appellant had proved insanity by a preponderance of the evidence. Id. at 186, 336 S.E.2d at 477-478. Millian-Hernandez, a Cuban immigrant, was assaulted by a fellow Cuban in California and, when the police were summoned, they killed the other man. Id. at 184, 336 S.E.2d at 476. Afterwards, the deceased man's brother threatened to kill Millian-Hernandez. Fearing for his safety, Millian-Hernandez fled to Chicago and then later decided to travel to Texas by bus. While traveling through Washington, D.C. and the Carolinas, Millian-Hernandez feared he was being followed by the brother and became increasingly agitated and nervous. He ultimately

shot and severely injured two men who boarded the bus in Charlotte. After the shooting, Millian-Hernandez fled into the woods before surrendering to the police the next morning. Id. at 184-185, 336 S.E.2d at 476-477. While our Supreme Court recognized "that evidence of flight is evidence of guilty knowledge from which a jury may infer sanity," it held the state presented no evidence of sanity and directed a verdict of not guilty by reason of insanity. Id. at 186, 336 S.E.2d at 477-478.

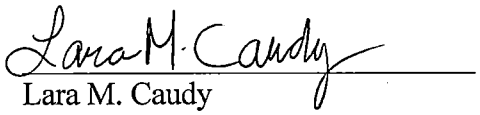
Here, Appellant offered substantial evidence that she was insane at the time of her alleged conduct and did not know moral and legal right from moral and legal wrong thereby overcoming the presumption of sanity. Specifically, Appellant offered **two** expert forensic psychiatrists who concluded with a reasonable degree of medical certainty that Appellant was insane when she injured Minor and did not know moral and legal right from moral and legal wrong. These experts opined that Appellant was "laboring under delusions and hallucinations" that "impair[ed] her thinking." R. 214, ll. 1-8; R. 233, ll. 7-16; R. 278-298.

Because Appellant offered evidence of her insanity, the state was required to present evidence from which the court could have found Appellant sane. However, the state failed to do so. Thus, the court should have directed a verdict of not guilty by reason of insanity. Its failure to do so was error.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of not guilty by reason of insanity.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of May, 2016.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shayla Jereau Bryan states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial before the Honorable Maite Murphy that was held on May 19-21, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue that arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Shayla Jereau Bryan.

Respectfully submitted,

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of May, 2016.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-Billed Indictment;
(2) Entire Trial Transcript Dated May 19-21, 2014;
(3) Defendant's Exhibit No. 4 (Criminal Responsibility and Capacity to Conform Evaluation);
(4) State's Exhibit No. 27 (Forensic Psychiatric Evaluation).

I certify that this designation contains no matter which is irrelevant to this appeal.

May 9th, 2016

Lara M. Caudy

Lara M. Caudy
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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 9, 2016

Lara M. Caudy

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case have been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Shayla Jereau Bryan, #360135 at Graham Correctional Institution, 4500 Broad River Road, Columbia, SC 29210, this 9th day of May, 2016.

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of May, 2016.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.