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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46608-2018
Plaintiff-Respondent,)	
)	BANNOCK COUNTY
v.)	NO. CR-2017-9261
)	
CARI LEONE OXFORD,)	
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK**

HONORABLE STEPHEN S. DUNN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Ms. Oxford appeals from her judgment of conviction for burglary and second degree kidnapping, arguing: (1) the district court abused its discretion in denying her motion for funds to retain an expert witness; (2) the district court erred in refusing to permit the psychologist who examined her for purposes of her competency evaluation to testify at trial regarding her mental condition; and (3) the district court erred in ordering her to pay restitution in the amount of \$6,072.09 to the Idaho Industrial Commission for expenses ostensibly incurred for medical treatment of Bambi Thometz. She submits this Reply Brief to respond to the State's legal argument on these issues.

Statement of Facts and Course of Proceedings

Ms. Oxford included a statement of facts and course of proceedings in her Appellant's Brief, which she relies on and incorporates herein. (*See* Appellant's Br., pp.1-6.)

ISSUES

- I. Did the district court deny Ms. Oxford her constitutional right to due process and equal protection when it denied her motion for funds to retain an expert witness to assist with her defense?
- II. Did the district court err in refusing to allow Dr. Traughber to testify as an expert witness for the defense at trial?
- III. Did the district court err in ordering Ms. Oxford to pay restitution in the amount of \$6,072.09 to the Idaho Industrial Commission for expenses ostensibly incurred by Ms. Thometz for medical treatment?

ARGUMENT

I.

The District Court Denied Ms. Oxford Her Constitutional Right To Due Process And Equal Protection When It Denied Her Motion For Funds To Retain An Expert Witness To Assist With Her Defense

Ms. Oxford argued in her Appellant's Brief that the district court abused its discretion in effectively denying her request for funds to retain an expert witness to assist her in defending her case based on lack of specific intent. (Appellant's Br., pp.8-13.) Ms. Oxford specifically stated that this Court reviews a district court's denial of a request for expert assistance at public expense for an abuse of discretion, relying on *State v. Brackett*, 160 Idaho 619, 634 (Ct. App. 2016). (Appellant's Br., p.8.) Ms. Oxford argued the district court abused its discretion because its decision denied Ms. Oxford her constitutional right to a fair trial and violated Idaho Code § 19-852. (Appellant's Br., pp.8-13.) Surely a district court does not act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it, thereby abusing its discretion, when it denies a defendant her constitutional right to a fair trial and violates an Idaho statute. *See Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018) (stating standard for reviewing a trial court's exercise of its discretion).

Despite this rather straightforward application of the abuse of discretion standard of review, the State argues strenuously in its Respondent's Brief that Ms. Oxford cannot raise a constitutional or statutory challenge to the district court's decision effectively denying her request for funds to retain an expert witness. (Respondent's Br., pp.10-13.) The State contends Ms. Oxford can challenge the district court's decision only as fundamental error, and failed to do so. (Respondent's Br., pp.11-12.)

The State misapprehends Ms. Oxford's argument. Ms. Oxford clearly argued in her Appellant's Brief that the district court abused its discretion by effectively denying her request for funds to retain an expert witness. (Appellant's Br., pp.8-13.) This is the proper standard of review under Idaho law:

In determining whether to provide additional assistance at public expense, the Idaho Supreme Court has held that such assistance is not "automatically mandatory, but rather depends upon [the] needs of the defendant as revealed by the facts and circumstances of each case." *State v. Powers*, 96 Idaho 833, 838, 537 P.2d 1369, 1374 (1975). It is incumbent upon the trial court to consider the needs of the defendant and the facts and circumstances of the case and then decide whether an adequate defense is available to the defendant without the assistance of the requested expert or investigative aid. [*State v. Olin*, 103 Idaho 391, 395 (1982).] Denial of a request for expert or investigative assistance will not be disturbed absent a showing that the trial court abused its discretion by rendering a decision which is clearly erroneous and unsupported by the circumstances of the case. *Id.*

Brackett, 160 Idaho at 634. Ms. Oxford filed a motion for expert witness funds in the district court, and properly challenges the denial of that motion on appeal. That the district court's decision constitutes an abuse of discretion because it is contrary to the United States Constitution and Idaho law does not change the standard of review from abuse of discretion to fundamental error.

The State concedes in its Respondent's Brief that Ms. Oxford "undoubtedly had a right to any necessary expert assistance at public expense." (Respondent's Br., p.12.) That concession should resolve this issue in Ms. Oxford's favor. The State goes on to argue, however, that Ms. Oxford is not entitled to relief because she "found an expert to testify;" specifically, Dr. Traugher, and there is no constitutional right to choose an expert of one's personal liking. (*See* Respondent's Br., pp.12-13.) The State acknowledges in a footnote that the district court did not permit Dr. Traugher to testify. (Respondent's Br., p.12, note 3.) That, of course, defeats the State's argument that Ms. Oxford "found an expert to testify."

In *Ake v. Oklahoma*, 470 U.S. 68 (1985), the United States Supreme Court explained that “when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense.” *Id.* at 83; *see also Brackett*, 160 Idaho at 633 (citing *Ake*). The State argued—successfully in the trial court—that Dr. Traugher *did not* conduct an appropriate examination of Ms. Oxford for purposes of forming an opinion as to her specific intent, because he was only asked to evaluate her competency. As a result, Dr. Traugher *did not* assist Ms. Oxford in the evaluation, preparation, and presentation of her defense based on lack of specific intent, and was in fact prohibited from testifying at Ms. Oxford’s trial. (*See R.*, pp.229-30; 7/2/18 Tr., p.10, Ls.6-10; Tr., p.141, L.11 – p.142, L.11, p.143, Ls.7-9.)

The fact that the district court’s decision to deny Ms. Oxford’s request for funds to retain an expert witness was not consistent with the Supreme Court’s holding in *Ake*, and contrary to § 19-852(1)(b), means it was an abuse of discretion, and Ms. Oxford is entitled to relief on appeal. *See Brackett*, 160 Idaho at 633-34.

II.

The District Court Erred In Refusing To Allow Dr. Traugher To Testify As An Expert Witness For The Defense At Trial

Ms. Oxford argued in her Appellant’s Brief that the district court erred in refusing to allow Dr. Traugher to testify as an expert witness for the defense because his testimony would have helped the jury to understand the evidence and determine a fact at issue. (Appellant’s Br., pp.13-17.) This Court reviews questions of relevance *de novo*, *see State v. Raudebaugh*, 124

Idaho 758, 764 (1993), and Ms. Oxford argued Dr. Traughber's testimony regarding her extensive history of severe mental illness and his diagnosis of her as suffering from a psychiatric disorder was relevant, as it would have assisted the jurors in determining whether she possessed the specific intent necessary to be found guilty of burglary and second degree kidnapping. (Appellant's Br., pp.13-17.)

In its Respondent's Brief, the State argues Dr. Traughber's proffered testimony was not relevant, as Ms. Oxford's general mental health would not have constituted a defense to the charged crimes. (*See* Respondent's Br., p.17.) That Dr. Traughber could not have testified specifically as to whether Ms. Oxford possessed the necessary intent to commit burglary and second degree kidnapping does not mean this evidence was irrelevant.

It was ultimately for the jury to determine, as finders of fact, whether the State proved beyond a reasonable doubt that Ms. Oxford possessed the requisite intent to have committed the crimes of burglary and second degree kidnapping on August 13, 2017. (R., pp.101-02.) Dr. Traughber evaluated Ms. Oxford on October 3, 2017, and, during that evaluation, Ms. Oxford reported an extensive history of mental illness, stating she had previously been diagnosed with schizophrenia, anxiety, and bipolar disorder. (Conf. Docs., pp.36-37.) Dr. Traughber concluded, "Ms. Oxford is currently, and has likely suffered from a mental illness for some time." (Conf. Docs., p.38.) He ultimately diagnosed her with a psychotic disorder, and recommended inpatient treatment. (Conf. Docs., p.39.)

The district court erred in concluding Dr. Traughber's testimony would be "completely irrelevant" unless he could get on the stand and testify that she was unable to form the specific intent necessary to commit the charged crimes. (*See* Tr., p.22, Ls.12-21.) "Expert testimony is generally admissible if evidence is beyond the common experience of most jurors and the jurors

would be assisted by such testimony.” *State v. Varie*, 135 Idaho 848, 853 (2001) (citation omitted). “The function of the expert is to provide testimony on subjects that are beyond the common sense, experience and education of the average juror.” *State v. Arrasmith*, 132 Idaho 33, 42 (Ct. App. 1998) (citations omitted).

Dr. Traugher’s testimony would have assisted the jurors in understanding Ms. Oxford’s history of mental illness, what she reported as her prior diagnoses, what those diagnoses mean, why he concluded she had likely suffered from a mental illness for some time, and why he diagnosed her with a psychiatric disorder when he evaluated her shortly after the incident in question. These subjects are beyond the common sense, experience, and education of the average juror and were relevant as they made it less probable that Ms. Oxford possessed, as a factual matter, the specific intent necessary to commit the charged crimes. *See* I.R.E. 401 (defining “relevant evidence” to mean “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence”).

If this Court agrees with Ms. Oxford that the district court erred in refusing to allow Dr. Traugher to testify as an expert witness at trial, it must conclude such error was not harmless, as the State does not argue in its Respondent’s Brief that the error was harmless. *See State v. Almaraz*, 154 Idaho 584, 598-99, 601 (2013) (concluding the State failed to meet its burden of proving the district court’s error was harmless where “the subject is not even discussed in the State’s written brief on appeal”). (*See* Respondent’s Br., pp.13-18.)

III.

The District Court Erred In Ordering Ms. Oxford To Pay Restitution In The Amount Of \$6,072.09 To The Idaho Industrial Commission For Expenses Ostensibly Incurred By Ms. Thometz For Medical Treatment

Ms. Oxford argued in her Appellant's Brief that the district court abused its discretion in ordering her to pay restitution in the amount of \$6,072.09 to the Idaho Industrial Commission because the prosecution did not submit substantial evidence supporting the request. (Appellant's Br., pp.17-21.) The district court had overruled Ms. Oxford's objection to the requested restitution, but with the caveat that the prosecutor submit additional information supporting the request by February 21, 2019, with the defense having one week after that date to file an objection. (2/7/19 Tr., p.10, L.23 – p.12, L.13; 2/13/19 Minute Order.)

The State acknowledges on appeal that the prosecutor never submitted the additional information requested by the court. (Respondent's Br., p.19.) The State argues, however, that Ms. Oxford cannot challenge the restitution award on appeal because she did not renew her objection. (*Id.*) The State does not cite any authority for the proposition that a party must object twice to a restitution award in order to preserve a challenge to the award on appeal. (*See id.*) The district court clearly invited the defense to file an objection within one week of the prosecution's submission of additional information to the court, but absent such additional information, there was nothing to which the defense could have objected. Ms. Oxford had already objected to the prosecution's request, and the district court had already overruled that objection and entered a restitution order. (R., pp.287-90; 2/7/19 Tr., p.1, Ls.5-8, p.10, Ls.23-25.)

The State argues, in the alternative, that if this Court concludes the restitution award was not supported by substantial evidence, the proper remedy is to remand this case to the district court to allow the prosecution to provide the information it was supposed to provide by

February 21, 2019. (Respondent’s Br., p.20.) The State does not provide any explanation as to why the prosecution should be excused from meeting the original deadline, and does cite any authority supporting its position that remand is appropriate under these facts. (*See id.*) This Court should conclude to the contrary that where, as here, the prosecution fails to provide substantial evidence supporting its original restitution request, and fails to provide substantial evidence within the timeframe ordered by the district court to supplement its request, the proper remedy is to vacate the award of restitution and not to remand the matter. *See, e.g., State v. Nelson*, 161 Idaho 692, 697 (2017) (vacating the district court’s award of restitution and declining to remand the case where the State “already had two opportunities to claim restitution”); *State v. Cunningham*, 164 Idaho 759, 765 (2019) (vacating the district court’s award of restitution and declining to remand the matter).

CONCLUSION

For the reasons stated above, as well as those set forth in her Appellant’s Brief, Ms. Oxford respectfully requests that the Court vacate her judgment of conviction, and remand this case to the district court for a new trial. She also requests that the Court vacate the order of restitution.

DATED this 7th day of January, 2020.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2020, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas