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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.)	

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

Cari Leone Oxford was convicted of burglary and second degree kidnapping following a jury trial. Ms. Oxford was initially determined to be incompetent, and was diagnosed with a psychotic disorder. Ms. Oxford's competence was restored, however, allowing her case to proceed to trial. At trial, the jury never learned of Ms. Oxford's mental illness, which could have provided a complete defense to the charges against her, as the district court denied her attorney's request for funds to retain an expert to provide an opinion as to whether Ms. Oxford was capable of possessing the intent necessary to commit the charged crimes. Because there was no evidence presented to the jury regarding Ms. Oxford's mental condition, the district court refused to instruct the jury that it could consider Ms. Oxford's mental condition in determining whether she had the requisite criminal intent.

Ms. Oxford appeals from her judgment of conviction, raising three issues. First, she contends she was denied her constitutional right to due process and equal protection when the district court denied her motion for funds to retain an expert witness. Second, she contends 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. Third, she contends 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.

Statement of Facts and Course of Proceedings

On August 13, 2017, Ms. Oxford confronted one of her neighbors, Bambi Thometz, who was carrying her 18-month-old son at the time, and yelled at her "about not going into the laundry room." (Tr., p.166, L.21 – p.169, L.8.) Ms. Oxford followed Ms. Thometz into her

apartment, and began kicking and punching her. (Tr., p.169, L.23 – p.175, L.13.) Ms. Oxford grabbed Ms. Thometz’s baby by his arm, and dragged him, screaming, out of his mother’s apartment and into her own apartment, locking the door behind her. (Tr., p.177, L.19 – p.178, L.11.) Ms. Thometz testified Ms. Oxford “was spouting complete nonsense,” and she “was absolutely trying to snap [Ms. Oxford] out of whatever was making her so mad” (Tr., p.196, Ls.10-14, p.197, Ls.14-21.)

When the police arrived, Ms. Oxford let them into her apartment after they knocked “several times.” (Tr., p.205, Ls.9-21.) One of the officers testified Ms. Oxford was holding the baby to her chest, and “said she didn’t want me to take her baby away.” (Tr., p.206, Ls.7-25.) The officer took the baby from Ms. Oxford, and two other officers handcuffed Ms. Oxford. (Tr., p.207, L.1 – p.208, L.10.) The officer who took the baby testified Ms. Oxford said the baby’s name was Javon Oxford, and said she did not want the officer to give the baby back to the neighbor.¹ (Tr., p.208, Ls.14-23.) The officer testified Ms. Oxford “seemed . . . confused about the baby’s age” saying at one point that he was a few months old, and at another point that he was in his twenties. (Tr., p.208, L.24 – p.209, L.3.) The officer testified Ms. Oxford “really seemed disoriented” and “there was certainly something going on.” (Tr., p.210, L.17 – p.211, L.2.) The officer returned the baby, unharmed, to his mother. (Tr., p.209, Ls.4-9.) The jury heard an audio recording of the incident, in which Ms. Oxford can be heard shouting repeatedly, “It’s my son!” and saying, “They’re stealing my baby from me.” (Def. Ex. 2 at 00:00-00:21, 01:00-01:03; Tr., p.219, Ls.2-4.)

¹ Though the jury did not learn of it, Ms. Oxford has a son, Jerron, who was [REDACTED] at the time of Ms. Oxford’s sentencing. (Conf. Docs., p.14.) Ms. Oxford reported to the presentence investigator that her ex-husband kidnapped her son, and she had not had any contact with her son for 25 years. (*Id.*)

The State filed charges against Ms. Oxford on August 14, 2017. (R., pp.17-19.) The magistrate court continued the preliminary hearing at defense counsel's request, and ordered a competency evaluation of Ms. Oxford pursuant to Idaho Code §§ 18-210 and 18-211. (R., pp.57-64.) Dr. Traughber, a licensed psychologist, evaluated Ms. Oxford on October 3, 2017, and determined she was not competent to proceed. (R., p.82; Conf. Exs., pp.5-9.) Dr. Traughber noted Ms. Oxford reported an extensive history of severe mental illness, including diagnoses of schizophrenia, anxiety, and bipolar disorder. (Conf. Exs., p.6.) Dr. Traughber diagnosed Ms. Oxford with a psychotic disorder, and recommended inpatient treatment. (Conf. Exs., p.8.)

Based on Dr. Traughber's evaluation, the magistrate court ordered Ms. Oxford into the custody of the Department of Health and Welfare on October 27, 2017. (R., pp.78-80, 82-85.) On December 21, 2017, the Chief of Psychology at State Hospital South filed a report with the court, stating Ms. Oxford's competence had been restored and she was now fit to proceed. (R., p.88; Conf. Docs., pp.43-45.) On January 8, 2018, the magistrate court held a preliminary hearing, and bound Ms. Oxford over to the district court. (R., pp.94-95.) The State then filed an Information charging Ms. Oxford with burglary and second degree kidnapping. (R., pp.101-02.)

Counsel for Ms. Oxford filed a motion for appointment of an expert witness, requesting an order "approving the retention of a licensed psychiatrist or psychologist to review the facts in this matter . . . and to advise the Defendant regarding her defense in this matter that her mental health situation on the date of the incident . . . was such that she could not have possessed the requisite intent to have committed the offenses charged." (R., pp.113-15.) Counsel requested funding for the expert based on Ms. Oxford's indigence. (R., p.114.) The district court held a hearing on Ms. Oxford's motion, and ruled it was "going to grant the motion, with one exception," which was that the public defender's office had to pay for the expert witness out of

its budget. (Tr., p.10, L.18 – p.11, L.3.) Following the hearing, the district court ordered the costs for the expert “shall be paid by the Public Defender’s budget.” (R., p.119.)

Prior to trial, counsel for Ms. Oxford filed a motion in limine requesting a ruling that “the Defendant is allowed to produce evidence that she suffered from a mental illness which resulted in her inability to form the required intent . . . and a ruling that Dr. Traughber will be allowed to testify regarding his observations and conclusions about the Defendant during the competency evaluation.” (R., pp.174, 179-80.) Counsel told the district court he “made a request for funds to be allocated from the public defender’s office budget [for the retention of an expert witness], but was denied because the funds were necessary for the defense of a capital case, *State of Idaho v. Brad Compher*, CR-2014-12727-FE.” (R., p.174.)

The district court held a hearing on Ms. Oxford’s motion. (7/2/18 Tr., pp.1-21.) The district court asked counsel if he had a report from Dr. Traughber. (7/2/18 Tr., p.8, Ls.6-8.) Counsel explained “the 18-211 exam was the only evaluation and the only opinion [he’d] ever gotten from Dr. Traughber.” (7/2/18 Tr., p.8., Ls.23-25.) Counsel said he wanted Dr. Traughber to testify “[t]o his observations and professional opinion” regarding the mental illness she was suffering from at the time of the crime.” (7/2/19 Tr., p.9, Ls.7-11.) The district court said it would have to determine at trial whether the defense could lay a foundation for Dr. Traughber’s testimony. (7/2/19 Tr., p.10, Ls.12-25.)

Prior to trial, the State filed a motion to exclude Dr. Traughber. (R., pp.229-31.) The State argued his testimony “is irrelevant and would be confusing to the jury” because the competency evaluation “does not determine the ability of the defendant to form the necessary intent to commit the crime.” (R., pp.229-30.) The State said a mens rea evaluation would need to

have been completed, and was never done. (R., p.330.) The district court held a hearing on the State's motion, and ruled as follows:

There's no question that the case law allows you to put on an expert witness to testify as to whether or not . . . the accused has the ability to form the intent necessary to commit the crimes; in this case kidnapping and burglary, which are specific-intent crimes

And you can put expert testimony on to testify that she did not have the ability to form the specific intent to commit those crimes. That's the compromise that the legislature came up with, and the cases have confirmed, to get rid of the insanity defense.

But if he can't get on the stand and testify that based on my evaluation . . . she was unable to form the specific intent necessary to commit these crimes, then . . . how she was acting at the time that he interviewed her . . . is completely irrelevant. I can't see any basis for a defense on that.

(Tr., p.21, L.24 – p.22, L.21.) At trial, the district court ruled the defense had not presented a sufficient foundation for allowing Dr. Traughber to testify regarding Ms. Oxford's mental condition because his role in evaluating Ms. Oxford was solely to determine competency. (Tr., p.141, L.11 – p.142, L.11.)

At trial, the jury heard testimony from Ms. Thometz and one police officer. (Tr., pp.165-226.) The jury did not hear any evidence regarding Ms. Oxford's lengthy history of mental illness. The district court instructed defense counsel that, in closing, he "can't make any reference to mental health issues." (Tr., p.234, Ls.12-15.) With respect to mental illness, the jury was instructed only that "[o]ur law provides that mental illness is not a defense to any charge of criminal conduct." (R., p.277.) The jury reached a verdict after less than one hour of deliberation, finding Ms. Oxford guilty on both counts. (R., pp.237, 246.)

The district court ordered a full mental health assessment of Ms. Oxford in advance of sentencing. (R., p.250.) The mental health assessment reflects that Ms. Oxford has suffered from mental health problems her entire life, and had been hospitalized for psychiatric treatment six

times as an adult. (Conf. Docs., p.26.) The licensed clinical professional counselor who evaluated Ms. Oxford concluded “it is clear that Ms. Oxford suffers from a severe and persistent mental illness.” (Conf. Docs., p.30.)

The district court sentenced Ms. Oxford for second degree kidnapping to a unified term of ten years, with three years fixed, and for burglary, to a unified term of five years, with two years fixed, to be served concurrently. (12/3/18 Tr., p.7, Ls.4-8.) The district court suspended the sentences and placed Ms. Oxford on probation for six years, with the primary condition that she be accepted into, and participate successfully in, the Life and Recovery Program. (12/3/18 Tr., p.7, Ls.9-16.) Ms. Oxford filed a timely notice of appeal from the judgment of conviction. (R., pp.293-96, 299-309).

At sentencing, the district court ordered Ms. Oxford to pay \$6,072.09 in restitution to the Idaho Industrial Commission for medical treatment allegedly received by Ms. Thometz. (12/3/18 Tr., p.7, Ls.19-20.) Counsel for Ms. Oxford objected, and the district court said it was going to order it, but counsel could “bring up another argument about that later if [he wanted] to.” (12/3/18 Tr., p.8, Ls.7-11.) The district court entered the restitution order on December 4, 2018, and the order was recorded on January 30, 2019. (R., pp.287-90.) Counsel for Ms. Oxford filed an objection. (R., pp.291-92.) The district court overruled the objection following a hearing. (2/7/19 Tr., p.10, Ls.23-25.) The district court ordered, however, that the State submit additional information supporting its restitution request by February 21, 2019. (2/7/19 Tr., p.10, Ls.23-25; p.12, Ls.3-13.) The State did not submit any additional information to the district court.

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?
- II. Did the district court err in refusing to allow Dr. Traugher 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 And Violated I.C. § 19-852(a)(2) When It Denied Her Motion For Funds To Retain An Expert Witness To Assist With Her Defense

A. Introduction

Counsel for Ms. Oxford realized early in his representation of Ms. Oxford that she could have a complete defense to the charges against her based on lack of specific intent. Counsel filed a motion for appointment of, and funds for, a psychiatrist or psychologist to assist in the defense of Ms. Oxford based on her lack of specific intent. The district court effectively denied the motion by ordering the costs for the expert be paid out of the public defender's budget, as there was no money in the budget to hire an expert in this case. The defense was thus unable to defend based on lack of specific intent, and the jury heard no evidence at trial regarding Ms. Oxford's extensive history of severe mental illness. By denying Ms. Oxford's request for funds to retain an expert witness, the district court denied her constitutional right to due process and equal protection and violated I.C. § 19-852(a)(2).

B. Standard Of Review

This Court reviews a district court's denial of a request for expert assistance at public expense for an abuse of discretion. *See State v. Brackett*, 160 Idaho 619, 634 (Ct. App. 2016). In reviewing a trial court's exercise of discretion, this Court must determine whether the trial court: (1) correctly perceived the issue as one involving the exercise of discretion; (2) acted within the outer boundaries of its discretion and consistently with any legal standards applicable to specific

choices it had; and (3) reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600 (1989).

C. Ms. Oxford Was Subjected To An Unfair Trial Because She Was Denied Expert Assistance At Public Expense

“Indigent defendants are entitled as a matter of due process and equal protection to the basic tools of an adequate defense, including the provision of expert assistance at public expense, when such is necessary for a fair trial.” *Brackett*, 160 Idaho at 633-34 (citations omitted); *see also Ake v. Oklahoma*, 470 U.S. 68, 76 (1985) (noting “justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake”). In Idaho, these due process and equal protection rights are safeguarded by I.C. § 19-852(a)(2), which provides that needy defendants are entitled “to be provided with the necessary services and facilities of representation (including investigation and other preparation).” *Brackett*, 160 Idaho at 634. Whether a defendant in a particular case is entitled to additional assistance at public expense “depends upon [the] needs of the defendant as revealed by the facts and circumstances of each case.” *State v. Powers*, 96 Idaho 833, 838 (1975); *see also State v. Olin*, 103 Idaho 391, 395 (1982).

Here, the district court denied Ms. Oxford her constitutional right to due process and equal protection and violated I.C. § 19-852(a)(2) when it denied her funds to retain a psychiatrist or psychologist to assist with her defense. Dr. Traughber, a licensed psychologist, evaluated Ms. Oxford at defense counsel’s request prior to the preliminary hearing, and determined she was not competent to proceed. (R., pp.57-64, 82; Conf. Exs., pp.5-9.) Dr. Traughber noted Ms. Oxford reported an extensive history of severe mental illness, including previous diagnoses of schizophrenia, anxiety, and bipolar disorder. (Conf. Exs., p.6.) Dr. Traughber diagnosed

Ms. Oxford with a psychotic disorder, and recommended inpatient treatment. (Conf. Exs., p.8.) Ms. Oxford's competence was restored only after she was hospitalized at the State Hospital South. (R., pp.88, 94-95; Conf. Docs., pp.43-45.)

After the Information was filed, counsel for Ms. Oxford filed a motion for appointment of an expert witness, requesting an order "approving the retention of a licensed psychiatrist or psychologist to review the facts in this matter, including an interview of the Defendant, and to advise the Defendant regarding her defense in this matter that her mental health situation on the date of the incident . . . was such that she could not have possessed the requisite intent to have committed the offenses charged." (R., pp.113-15.) Counsel told the district court:

Based on counsel's contact with the Defendant shortly after her arrest and thereafter, her hospitalization, the testimony at the preliminary hearing, review of the recordings of contact by law enforcement with the Defendant at the time of the incident, it is believed that the Defendant has a defense to the specific intent portions of the charges brought against her.

(R., p.114.) Counsel requested funding for the expert based on Ms. Oxford's indigence.

(R., p.114.) The district court ruled:

As to the appointment of the expert, I think . . . this makes some sense, that you want to at least explore that possibility, and we can argue at some later date as to whether anything you find is admissible or not on the question of intent.

So I'm going to grant the motion, with one exception: And that is the PD's office does have, I think, an expert witness portion of their budget. So—and we're in January. So I would think that—I'm reluctant to order the district court to pay for it if there is a budget amount for that.

(Tr., p.10, L.18 – p.11, L.3.) The district court ordered the costs for the expert "shall be paid by the Public Defender's budget." (R., p.119.)

Prior to trial, counsel for Ms. Oxford filed a motion in limine requesting a ruling that "the Defendant is allowed to produce evidence that she suffered from a mental illness which resulted in her inability to form the required intent to commit Burglary and Kidnapping In The Second

Degree, and a ruling that Dr. Traughber will be allowed to testify regarding his observations and conclusions about the Defendant during the competency evaluation.” (R., pp.174, 179-80.) Counsel told the district court that, following its earlier ruling, he “made a request for funds to be allocated from the public defender’s office budget [for the retention of an expert witness], but was denied because the funds were necessary for the defense of a capital case, *State of Idaho v. Brad Compher*, CR-2014-12727-FE.” (R., p.174.)

The district court held a hearing on Ms. Oxford’s motion. (7/2/18 Tr., pp.1-21.) The district court asked counsel for Ms. Oxford, “So do you have a report from Dr. Traughber, and is that . . . report . . . the extent of the opinions he’s going to offer?” (7/2/18 Tr., p.8, Ls.6-8.) Counsel explained “the 18-211 exam was the only evaluation and the only opinion [he’d] ever gotten from Dr. Traughber.” (7/2/18 Tr., p.8., Ls.23-25.) Counsel explained he wanted Dr. Traughber to testify “[t]o his observations and professional opinion” regarding the mental illness she was suffering from at the time of the crime.” (7/2/19 Tr., p.9, Ls.7-11.) The district court said, “I do think that the defendant’s allowed to present evidence that goes to the question of can the defendant form the requisite mental intent” (7/2/19 Tr., p.10, Ls.6-10.) The district court said it would have to determine at trial whether the defense could lay a foundation for Dr. Traughber’s testimony. (7/2/19 Tr., p.10, Ls.12-25.) The district court ultimately determined Dr. Traughber could not testify as an expert, and ruled it would not instruct the jury on mental health issues because the defense had no admissible evidence regarding Ms. Oxford’s mental health. (Tr., p.141, L.11 – p.142, L.11, p.143, Ls.7-9.)

Thus, because the district court denied Ms. Oxford’s request for funds to retain a psychiatrist or psychologist to assist with the defense, and because such funds were not available from the public defender’s office due to financial constraints arising from that office’s

concurrent defense of a capital case, Ms. Oxford was not able to argue to the jury that she had mental health issues which may have provided her with a complete defense to the charges against her. Indeed, the jury did not even learn that Ms. Oxford has a history of severe mental illness, and was diagnosed with a psychotic disorder just a few weeks after her alleged criminal conduct. (Conf. Exs., pp.6, 8.)

The United States Supreme Court recognized in *Ake v. Oklahoma* that “psychiatrists for each party enable the jury to make its most accurate determination of the truth on the issue before them.” 470 U.S. at 81. Thus, the *Ake* Court held 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. That clearly did not happen here. Ms. Oxford was granted a competency evaluation after the filing of a criminal complaint, but was denied a subsequent psychiatric examination which would have assisted her in the evaluation, preparation, and presentation of her defense.

In *State v. Olin*, the Idaho Supreme Court explained that “a defendant’s request for expert or investigative services should be reviewed in light of all the circumstances and be measured against the standard of ‘fundamental fairness’ embodied in the due process clause.” 103 Idaho at 394. The Court said:

It is thus incumbent upon the trial court to inquire into the needs of the defendant and the circumstances of the case, and then make a determination of whether an adequate defense will be available to the defendant without the requested expert or investigative aid. If the answer is in the negative, then the services are necessary and must be provided by the state.

Id. at 395. In other words, “[b]efore authorizing the expenditure of public funds for a particular purpose in an indigent’s defense, the trial court must determine whether the funds are necessary in the interest of justice.” *State v. Dunlap*, 155 Idaho 345, 382 (2013) (quoting *State v. Lovelace*, 140 Idaho 53, 65 (2003)).

Here, the district court agreed with defense counsel that appointing an expert to evaluate Ms. Oxford “makes some sense,” but denied the request for funds to retain such an expert. In effect, the district court told Ms. Oxford she could hire an expert if she could afford it.² Because of her poverty, she could not. And as a result of the district court’s decision, Ms. Oxford was not able to present a defense that would have allowed the jury to make an accurate determination as to her intent. Any dispute between the district court and the public defender’s office regarding the public defender’s budget should not have harmed Ms. Oxford in the presentation of her defense. Ms. Oxford was denied her constitutional right to a fair trial, and is entitled to relief on appeal. *See Brackett*, 160 Idaho at 633-34.

II.

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

A. Introduction

Counsel for Ms. Oxford wanted to call Dr. Traughber at trial to provide expert testimony regarding Ms. Oxford’s mental health. The district court concluded Dr. Traughber could not testify at trial because his role in evaluating Ms. Oxford was solely to determine her competency. The district court abused its discretion in excluding Dr. Traughber from testifying as an expert

² This is, of course, always the standard. A defendant who has sufficient financial means does not need to file a motion with the court to hire an expert.

witness for the defense because his testimony would have helped the jury to understand the evidence and determine a fact at issue—specifically, whether Ms. Oxford had the specific intent to commit burglary and second degree kidnapping.

B. Standard Of Review

“The admission of expert opinion testimony pursuant to I.R.E. 702 is reviewed on appeal under an abuse of discretion standard.” *State v. Faught*, 127 Idaho 873, 875 (1995). In reviewing a trial court’s exercise of discretion, this Court must determine whether the trial court: (1) correctly perceived the issue as one involving the exercise of discretion; (2) acted within the outer boundaries of its discretion and consistently with any legal standards applicable to specific choices it had; and (3) reached its decision by an exercise of reason. *Hedger*, 115 Idaho at 600.

C. Dr. Traughber’s Testimony Would Have Helped The Jury To Understand The Evidence And Determine A Fact At Issue In This Case

Idaho Rule of Evidence 702 states, in pertinent part, that “[a] witness who is qualified as an expert . . . may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.” Where state of mind is an element of the offense, I.C. § 18-207(3) provides for the admission of expert evidence on the issue of mens rea, subject to the rules of evidence. *See State v. Card*, 121 Idaho 425 (1981).

Ms. Oxford was charged with burglary and second degree kidnapping. (R., pp.101-02.) State of mind is an element of both of these offenses. *See* I.C. § 18-1401 (criminalizing the act of entering any building “with intent to commit any theft or any felony”); I.C. § 18-4501(1) (criminalizing the act of kidnapping another “with intent to cause him . . . to be secretly confined or imprisoned . . . or in any way held . . . kept or detained against his will”); I.C. § 18-4501(2)

(criminalizing the act of taking a child away from its parent or guardian “with intent to keep or conceal”).

Counsel for Ms. Oxford sought to call Dr. Traugher as an expert at trial to testify “[t]o his observations and professional opinion” regarding the mental illness she was suffering from at the time of the crime.” (7/2/19 Tr., p.9, Ls.7-11.) The State argued Dr. Traugher’s testimony was “irrelevant and would be confusing to the jury” because the competency evaluation “does not determine the ability of the defendant to form the necessary intent to commit the crime.” (R., pp.229-30.) The district court ruled if Dr. Traugher “can’t get on the stand and testify that based on [his] evaluation . . . she was unable to form the specific intent necessary to commit these crimes, then . . . how she was acting at the time that he interviewed her . . . is completely irrelevant.” (Tr., p.22, Ls.12-21.) At trial, the district court ruled the defense had not presented a sufficient foundation for Dr. Traugher’s testimony because his role was solely to determine competency. (Tr., p.141, L.11 – p.142, L.11.)

The district court abused its discretion in excluding Dr. Traugher’s testimony as his testimony would have helped the jury to understand the evidence or to determine a fact at issue. Dr. Traugher evaluated Ms. Oxford on October 3, 2017, which was less than a month after the incident that led to Ms. Oxford’s criminal charges. (*See* R., pp.101-02.) He interviewed her, reviewed her records, conducted a mental status examination, and reviewed information regarding her behavior in jail. (Conf. Docs., p.37.) He noted Ms. Oxford reported an “extensive history of severe mental illness” and concluded she “is currently, and has likely suffered from a mental illness for some time.” (Conf. Docs., pp.37-38.) He further concluded her “problems affect her cognitive processes, behavior, and certainly her impulse control.” (Conf. Docs., p.38.) He ultimately diagnosed her with a psychotic disorder. (Conf. Docs., p.39.)

The district court was correct to conclude that Dr. Traughber could not testify that, based on his evaluation, Ms. Oxford “was unable to form the specific intent necessary to commit these crimes.” (Tr., p.22, Ls.12-21.) But that does not make his testimony inadmissible. “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, 26 P.3d 31, 36 (2001) (citation omitted). Dr. Traughber could have testified regarding his clinical diagnosis of Ms. Oxford, which is a concept beyond the common experience of most jurors, and would have assisted the jurors in evaluating the evidence.

Expert opinions are inadmissible only when the normal experience of jurors permits them to draw proper conclusions from the evidence without the need for expert testimony. *See State v. Arrasmith*, 132 Idaho 33, 42 (Ct. App. 1998). That is not the case here. Absent Dr. Traughber’s testimony, the jury heard evidence regarding Ms. Oxford’s bizarre behavior and statements to the police, but it heard no evidence that Ms. Oxford had an extensive history of severe mental illness, and was diagnosed with a psychotic disorder shortly after the alleged crime. Testimony regarding Ms. Oxford’s mental condition would have assisted the jurors in determining whether Ms. Oxford possessed the specific intent necessary to be found guilty of burglary and second degree kidnapping, which was an element it was instructed the State had to prove. (R., pp.272, 275.)

Because the jury did not hear any evidence about Ms. Oxford’s mental illness, the district court refused to instruct the jury, as requested by the defense, that it “should consider the defendant’s mental condition in determining whether the defendant had the intent to commit” the crimes of burglary and second degree kidnapping. (R., pp.163, 164; Tr., p.142, Ls.15-23.) The district court also ruled defense counsel “can’t make any reference to mental health issues” in

closing. (Tr., p.234, Ls.12-15.) With respect to mental health, the jury was instructed only that “[o]ur law provides that mental illness is not a defense to any charge of criminal conduct.” (R., p.277.)

The district court’s ruling excluding Dr. Traughber from testifying all but eviscerated Ms. Oxford’s defense. Dr. Traughber’s testimony was admissible under I.R.E. 702 and I.C. § 18-207(3), and the district court did not reach its decision by an exercise of reason. The district court’s error in excluding Dr. Traughber’s testimony was not harmless beyond a reasonable doubt, and Ms. Oxford is entitled to relief on appeal. *See State v. Perry*, 150 Idaho 209, 222 (2010) (where a district court makes an erroneous evidentiary ruling in favor of the State, the State has the burden on appeal of demonstrating the district court’s error was harmless beyond a reasonable doubt); *State v. Pokorney*, 149 Idaho 459, 466 (Ct. App. 2010) (“To hold an error harmless, this Court must declare a belief, beyond a reasonable doubt, that there was no reasonable possibility that the evidence complained of contributed to the conviction.”).

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

A. Introduction

The district court ordered Ms. Oxford to pay restitution to the Idaho Industrial Commission in the amount of \$6,072.09 for medical expenses ostensibly incurred by Ms. Thometz based on a one-page, unsworn document from the Idaho Industrial Commission, and the prosecutor’s statement that the amount it sought was “just for medical expenses” from when Ms. Thometz went to the emergency room and “had to do some CT scans.” (R., p.225;

2/7/19 Tr., p.2, L.24 – p.3, L.4.) The district court recognized some additional information was necessary to support the State’s request, but nonetheless entered the restitution order as requested, absent any additional information. The district court abused its discretion in awarding restitution in the absence of substantial evidence supporting the request.

B. Standard Of Review

“The decision of whether to order restitution, and in what amount, is within the discretion of a trial court” *State v. Burggraf*, 160 Idaho 177, 179 (Ct. App. 2016) (citations omitted). This Court “will not overturn an order of restitution unless an abuse of discretion is shown.” *Id.* (citation omitted). In reviewing a trial court’s exercise of discretion, this Court must determine whether the trial court: (1) correctly perceived the issue as one involving the exercise of discretion; (2) acted within the outer boundaries of its discretion and consistently with any legal standards applicable to specific choices it had; and (3) reached its decision by an exercise of reason. *Hedger*, 115 Idaho at 600.

C. The District Court Abused Its Discretion In Awarding Restitution In The Absence Of Substantial Evidence Supporting The Request

The State submitted a request for restitution prior to Ms. Oxford’s sentencing, seeking an order requiring Ms. Oxford to pay \$6,072.29 to the Idaho Industrial Commission. (R., pp.223-25.) In support of its request, the State submitted an unsworn letter to the district court from the Crime Victims Compensation Program stating it was “requesting restitution for payments made on behalf of Bambie Thometz.” (R., p.224.) The payment summary lists the following charges:

- ID EM-1 Medical Services, P.C., billed amount \$1,616.00, amount allowed \$326.14
- Medical Imaging Associates, billed amount \$396.00, amount allowed \$348.23

- Portneuf Medical Center, billed amount \$6,747.15, amount allowed \$5,397.72

(R., p.225.) There is no information regarding the dates of service or the nature of the services provided. (R., p.225) There is also no information on what amount the Idaho Industrial Commission actually paid. (R., p.225.)

At sentencing, the district court ordered Ms. Oxford to pay \$6,072.09 in restitution to the Idaho Industrial Commission based on the State's request. (12/3/18 Tr., p.7, Ls.19-20.) Counsel for Ms. Oxford objected, and the district court said it was going to order it, but counsel could "bring up another argument about that later if [he wanted] to." (12/3/18 Tr., p.8, Ls.7-11.) The district court entered the restitution order on December 4, 2018, and the restitution order was recorded on January 30, 2019. (R., pp.287-90.) Counsel for Ms. Oxford filed an objection, and the district court held a hearing on the objection on February 7, 2019. (2/7/19 Tr., p.1, Ls.5-8.)

At the hearing, defense counsel argued, among other things, that "the only thing I got from the State was a request that the State Insurance Fund wanted paid a particular sum" and "[t]here was no medical reports . . . or billing to support it." (2/7/19 Tr., p.1, Ls.21-25.) Counsel argued "we need some information from the State Insurance Fund that would support the claim." (2/7/19 Tr., p.2, Ls.7-9.) The prosecutor responded that the costs were "just for medical expenses" and not mental health services. (2/7/19 Tr., p.2, L.25 – p.3, L.2.) The prosecutor said, "It was when Ms. Thometz had to go to the emergency room after she was beaten by the defendant. She had to get some CT scans." (2/7/19 Tr., p.3, Ls.2-4.) The district court agreed with Ms. Oxford that "the request is insufficient as far as providing adequate support." (2/7/19 Tr., p.3, Ls.11-12.) The district court identified two issues with the request: "One, what bills were incurred at what times and for what circumstances? To make sure that they're related to the events of the particular day. Two, what amounts were actually paid by the Industrial

Commission? Where there any offsets from the actually incurred bills?” (2/7/19 Tr., p.3, Ls.12-19.) The district court requested additional information from the prosecutor “so that [it] could adequately review the request.” (2/7/19 Tr., p.3, L.24 – p.4, L.1.) The prosecutor said it “can get those documents” and “can have that submitted to the Court by next week.” (2/7/19 Tr., p.4, Ls.2-3, p.5, Ls.17-20.)

The district court overruled Ms. Oxford’s general objection to restitution (based on whether Ms. Thometz was a victim within the meaning of the restitution statute) but “with the caveat that I want the information that I’ve asked for.” (2/7/19 Tr., p.10, Ls.23-25.) The district court requested the additional information from the State by February 21, 2019, and said it would “make a final ruling after all submissions are made.” (2/7/19 Tr., p.12, Ls.3-13; *see also* Minute Entry & Order, filed February 13, 2019.)³ The State did not submit any additional information to the district court supporting its request, and the district court never entered a final ruling on restitution, meaning the restitution order filed on December 4, 2018, and recorded on January 30, 2019, remains in effect.

The Idaho Supreme Court has held the amount of restitution to award “is a question of fact for the district court, whose findings will not be disturbed if supported by substantial evidence.” *State v. Wisdom*, 161 Idaho 916, 919 (2017) (citation omitted); *see also State v. Taie*, 138 Idaho 878, 879 (Ct. App. 2003) (“Once it is determined that an award is appropriate . . . the amount of the award must be supported by substantial evidence.”). “Substantial evidence is relevant evidence as a reasonable mind might accept to support a conclusion.” *Wisdom*, 161 Idaho at 919 (quotation marks and citation omitted).

³ The Record does not contain the district court’s Minute Entry & Order, filed February 13, 2019. Simultaneously with the filing of this Appellant’s Brief, Ms. Oxford is filing a Motion to Augment the Record to include a copy of this Order.

Here, the State did not submit substantial evidence to the district court in support of its restitution request. The fact that payment was made by the Crime Victims Compensation Program to three medical providers for the allegedly of Ms. Thometz is not enough. As the district court recognized, there is no information regarding “what bills were incurred at what times and for what circumstances” and “what amounts were actually paid by the Industrial Commission.” (2/7/19 Tr., p.3, Ls.12-19.) The prosecutor’s unsworn statements are not, in and of themselves, evidence. *See Zepeda v. State*, 152 Idaho 710, 716 (Ct. App. 2012); *State v. Gerardo*, 147 Idaho 22, 26 (Ct. App. 2009). Because the State never provided the district court with the information it requested, the district court should have vacated the restitution order filed on December 4, 2018, and denied the State’s request for restitution.

CONCLUSION

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 3rd day of September, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of September, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

AWR/eas