

SUPREME COURT OF LOUISIANA

No. 94-K-2950

State of Louisiana

Versus

Freddie Armstrong

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF LAFAYETTE*

KIMBALL, Justice, dissenting.

Because I believe a rational trier of fact, when viewing the evidence adduced at trial in the light most favorable to the prosecution, could have concluded defendant failed to prove by a preponderance of the evidence he was insane at the time of the offense, I respectfully dissent from this court's rejection of the jury's determination in this matter.

Under La. Rev. Stat. 14:14,

If the circumstances indicate that because of a mental disease or mental defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question, the offender shall be exempt from criminal responsibility.

Thus, as aptly noted by the court of appeal in the instant case, the existence or nonexistence of a mental disease or defect is not the issue. Rather, the question to be answered by the trier of fact is simply whether the offender could distinguish right from wrong with reference to his conduct at the time he committed the offense. See also *State v. Silman*, 663 So.2d 27, 32 (La. 1995)("Criminal responsibility is not negated by the mere existence of a mental disease or defect. To be exempted of criminal responsibility, defendant must show he suffered a mental disease or mental defect which prevented him from distinguishing between right and wrong with reference to the conduct in question.")

It is presumed that the defendant is sane and responsible for his or her actions, and the defendant has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence. La. C.Cr.P. art. 652; La. Rev. Stat. 15:432. The question of whether a defendant has affirmatively proved his insanity is one to be determined by the trier of fact. All the evidence, including both expert and lay testimony, and the actions of the defendant, should be

considered by the trier of fact in determining sanity.

On appeal, appellate courts must determine whether, viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could conclude that the defendant failed to prove by a preponderance of the evidence that he was insane at the time of the offense. *Silman*, 663 So.2d at 32; *State v. Peters*, 643 So.2d 1222, 1225 (La. 1994); *State v. Nealy*, 450 So.2d 634 (La. 1984). A determination of the weight of the evidence is a question of fact which rests solely with the trier of fact who may accept or reject, in whole or in part, the testimony of any witnesses, and if rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. *Silman*, 663 so.2d at 35.

Although the defendant's psychological history may indicate he suffered from a psychological defect over a period of years, this conclusion does not automatically resolve whether or not a rational trier of fact could have found, viewing the evidence in the light most favorable to the prosecution, defendant did not prove by a preponderance of the evidence that he did not know right from wrong because of this defect at the time he committed the murder. The medical testimony on the issue of whether defendant was insane and knew the difference between right and wrong at the time of the murder is contradictory and therefore, when viewed in the light most favorable to the prosecution, supports a rational trier of fact's conclusion defendant did **not** prove his insanity by a preponderance of the evidence.

Dr. Erwin, defendant's regular treating physician for over ten years prior to the murder testified that when the defendant was "psychotic" he was not capable of distinguishing right from wrong; however, he added that he had only seen defendant in this condition twice in the ten year period and that even individuals who are in a psychotic state are still capable of distinguishing right from wrong. Dr. Weinholt, a psychiatrist who served on the Sanity Commission, examined defendant one or two months after the murder, but found defendant was delusional and obsessed with the anti-Christ. He examined defendant again several months later, and, according to Dr. Weinholt, defendant told him that a voice told him to stop after he began the attack and that God had forgiven him for what he had done.

Dr. Mauronner, a psychiatrist, also examined defendant a few months after the murder in the context of a determination as to whether defendant had the capacity to proceed to trial. Although the doctor concluded defendant had the capacity to proceed to trial, based on an examination of

hospital and physician records, the doctor concluded the defendant was insane at the time of the murder.

Dr. Murphy, another member of the sanity commission, examined defendant within a month after the murder and concluded he was legally sane at the time of the offense, particularly given the fact he believed he had already been forgiven for his actions. She also specifically testified at trial that although a person might have a thought disorder, that person can still know the "difference between right and wrong" and the "difference between God's law and man's law."

Dr. Thomason made an extensive examination of defendant almost a year after the murder and concluded that defendant was mentally retarded, self-center, compulsive and hysterical. During the examination, defendant acknowledged to Dr. Thomason that he knew he did wrong, acknowledged that while he was stabbing the victim a voice said, "this is wrong", and that prior to the attack, he had considered not killing Reverend Neal because of his internal struggle over whether it would be wrong to kill Reverend Neal.

Because the medical testimony did not foreclose the possibility that defendant did know right from wrong at the time of the murder and in fact included substantial expert testimony to the contrary, I do not believe there is any basis for this court to substitute its opinion on this issue for the jury's determination in this matter. There was more than enough evidence to support a finding that a rational juror could have found defendant did not prove by a preponderance of the evidence that he was legally insane at the time he committed the murder. Therefore, I respectfully dissent.