

2017 IL App (1st) 151639-U

No. 1-15-1639

Order filed May 5, 2017

Sixth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 4500
)	
ANTON OVERALL,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant affirmatively waived his contention that the trial court improperly sentenced him to inpatient mental health treatment because, at his commitment hearing, he stipulated to evidence that he was in need of inpatient treatment, and failed to object to the sufficiency of that stipulation.

¶ 2 Following a bench trial, defendant Anton Overall was found not guilty of attempted murder by reason of insanity. After a commitment hearing, he was remanded to inpatient mental health treatment. On appeal, defendant contends that the trial court erred by sentencing him to inpatient treatment because there was no evidence presented at his commitment hearing to

establish that he was a danger to himself or others as required by section 5-2-4 of the Unified Code of Corrections (Code) (730 ILCS 5/5-2-4 (West 2014)). We affirm.

¶ 3 Defendant was charged with attempted first degree murder, two counts of aggravated battery, and aggravated unlawful restraint after stabbing the victim, Felicia Clay, at a McDonald's restaurant on February 17, 2013. Defendant had a history of psychiatric treatment for schizophrenia prior to the incident, but was found fit to stand trial with medication. However, before trial, two doctors from Forensic Clinical Services found that defendant was legally insane at the time of the incident. Based on that determination, defendant gave notice of an affirmative defense of insanity. At trial, it was undisputed that defendant attacked Clay. Clay, two eyewitnesses, Kendra Latham and Olivia Derman, and a responding Chicago police officer testified for the State. The evidence established that defendant approached Clay at McDonald's and, without warning or provocation, began to stab Clay with an awl. After stabbing her several times about the head and neck, defendant suddenly stopped and exited the restaurant. Defendant was arrested several minutes later outside McDonald's and was immediately identified as the offender. A surveillance video of the attack was presented at trial.

¶ 4 Dr. Matthew Markos, an expert in forensic psychology, and Dr. Nishad Nadkarni, an expert in forensic psychiatry, both conducted forensic psychiatric examinations of defendant and reviewed his medical records. Both doctors testified for the defense that, in their opinions, within a reasonable degree of medical certainty, defendant was legally insane at the time of the attack. They also testified that defendant was previously diagnosed with schizophrenia and was suffering from schizophrenia at the time of the incident.

¶ 5 The trial court found that the State proved attempted first degree murder beyond a reasonable doubt, but that defendant proved by clear and convincing evidence that he was legally

insane at the time of the attack. The court merged the counts of aggravated battery and unlawful restraint into attempted murder and found defendant not guilty of attempted murder by reason of insanity. Defendant was thereafter ordered to the custody of the Department of Human Services.

¶ 6 Defendant underwent a forensic evaluation, and the court held a commitment hearing on whether defendant required inpatient mental health services. At the hearing, the only evidence presented regarding defendant's need for inpatient mental health services was through the stipulated testimony of Dr. Faiza Kareemi. The parties stipulated that Dr. Kareemi was an expert in the area of forensic psychiatry.

¶ 7 The stipulation established the following facts. Dr. Kareemi was requested to interview defendant to determine whether he needed inpatient or outpatient mental health treatment, or no treatment at all. Dr. Kareemi reviewed: (1) defendant's arrest report; (2) forensic clinical psychiatric summaries from Dr. Nadkarni and Dr. Markos; (3) an evaluation completed by Dr. Phyllis Tolley of the Illinois Department of Human Services dated February 18, 2015; (4) reports from Cermak Health Services with the final report by Dr. Tushar Advani dated February 17, 2015; (5) defendant's criminal history; and (6) defendant's health records from Elgin Medical Center. Dr. Kareemi also had telephone conversations with defendant's mother and interviewed defendant. Dr. Kareemi would testify, to a reasonable degree of medical and psychiatric certainty, that defendant had a major mental illness and a history of substance abuse, has had a lack of adequate health care for his mental illness, and suffers from schizoaffective disorder, bipolar type, and cannabis abuse. Dr. Kareemi's opined that defendant needed treatment on an inpatient basis. This opinion was based on defendant's mental illness diagnosis and his need to demonstrate durable remission of his psychotic symptoms and understand the need for continued treatment. Dr. Kareemi would also testify that, before being considered for discharge from

inpatient treatment, defendant needed to: (1) understand the negative impact that substance abuse has on his mental illness, (2) attend comprehensive inpatient substance abuse treatment programs, and (3) develop a relapse prevention plan and an aftercare plan.

¶ 8 Following this stipulation, both the State and defense rested at the dispositional hearing. The court found that the defendant was in need of mental health treatment on an inpatient basis. The court noted that inpatient treatment “is the least restrictive alternative as it relates to this defendant considering all the testimony here” and gave defendant a *Theim* date of August 18, 2038. See *Williams v. Staples*, 208 Ill. 2d 480, 483 (2004) (the maximum involuntary commitment period is known as the *Theim* date, in reference to *People v. Theim*, 82 Ill. App. 3d 956 (1980)). Defendant then filed a motion to reconsider commitment, arguing that the sentence was excessive and penalized him for exercising his right to trial, the court improperly considered various matters in aggravation, and the State failed to prove eligibility for enhanced penalty or extended term. The court denied defendant’s motion. This appeal followed.

¶ 9 On appeal, defendant contends that the trial court erred by sentencing him to inpatient mental health treatment because the stipulated testimony of Dr. Kareemi did not assert that he poses a current risk of dangerousness to himself or others as required by section 5-2-4 of the Code (730 ILCS 5/5-2-4 (West 2014)). The State counters that defendant waived his challenge to the court’s finding that he is in need of inpatient mental health treatment because (1) he did not preserve the issue for review, (2) he failed to argue for a plain error analysis, and (3) he is bound by the stipulated evidence that established that he required inpatient treatment.

¶ 10 We conclude that defendant affirmatively waived this claim. A defendant must raise an objection at trial and in a written posttrial motion. *People v. Enoch*, 122, Ill. 2d 176 (1988). Defendant failed to take either action. Further, it is well established that “an accused may, by

stipulation, waive the necessity of proof of all or part of the case which the People have alleged against him.” (Internal quotations omitted) *People v. Bush*, 214 Ill. 2d 318, 333 (2005) (quoting *People v. Polk*, 19 Ill. 2d 310, 315 (1960)). When a defendant “procures, invites, or acquiesces in the admission of evidence, even though the evidence is improper, he cannot contest the admission on appeal.” *Id.* at 332. This is because, by acquiescing in rather than challenging allegedly improper evidence at trial, the defendant deprives the State of the opportunity to cure the alleged defect. See *People v. Trefonas*, 9 Ill. 2d 92, 98 (1956) (“A party cannot sit by and permit evidence to be introduced without objection and upon appeal urge an objection which might have been obviated if made at trial”).

¶ 11 Here, defendant acquiesced in the admission of Dr. Kareemi’s opinion by stipulating to the doctor’s conclusion that he was in need of inpatient treatment, and failing to challenge the stipulation’s sufficiency before the trial court. By doing so, defense counsel placed the State in the position of believing that defendant’s need for inpatient treatment was not at issue in this case. See *Polk*, 19 Ill. 2d at 315 (finding that the “stipulation had the effect of eliminating proof which otherwise might have been required”). Had defendant instead raised a timely objection to the sufficiency of Dr. Kareemi’s conclusion, the State would have had the opportunity to cure the alleged defect either by modifying the stipulation to include evidence regarding defendant’s current dangerousness or by calling Dr. Kareemi to testify in person. However, because defendant waited until appeal to raise his objection, the State was not afforded this opportunity. Accordingly, defendant cannot now raise this issue. See *People v. Woods*, 214 Ill. 2d 455, 475 (2005) (defendant waived review of issue by stipulating to it and failing to challenge its sufficiency at trial).

¶ 12 Based on the foregoing, we affirm the order of the circuit court of Cook County.

No. 1-15-1639

¶ 13 Affirmed.