2017 IL App (3d) 150292-U

Order filed September 22, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0292 Circuit No. 02-CF-140
CHARLES D. HARDIG,	)	
Defendant-Appellant.	)	Honorable Richard Schoenstedt, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Holdridge and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's finding of not not guilty at defendant's discharge hearing was not contrary to the manifest weight of the evidence.

¶ 2 Defendant, Charles D. Hardig, appeals from the circuit court's ruling at his discharge hearing. Specifically, the court found that defendant failed to meet his burden of proving himself not guilty by reason of insanity. Defendant argues that this ruling was erroneous in that the manifest weight of the evidence proved he lacked the substantial capacity to appreciate the criminality of his conduct as a result of mental disease or defect. We affirm.

¶ 3 FACTS

¶ 4 In January 2002, the State charged defendant with first-degree murder (720 ILCS 5/9-1(a)(2) (West 2002)). The indictment alleged that defendant shot his father, Richard Hardig, Sr. While defendant was initially found unfit to stand trial, he was found fit following a subsequent examination.

¶ 5 Testimony from officers involved in the case revealed that officers had been on the scene for approximately one hour when defendant walked out of a field on the property. Defendant appeared to be cold, and was apparently scared when officers drew their weapons. Police found a .357-caliber handgun and shell casings in and around the dresser in defendant's bedroom. Forensic analysis revealed that handgun to be the one used to shoot Richard Sr.

¶ 6 In his interview with detectives, defendant admitted to shooting Richard Sr. "at least two times." Defendant stated that he then took a shotgun into a field with the intent of taking his own life. He told detectives that he had left that shotgun in the field. With that information, officers on the scene were able to retrieve the shotgun.

¶ 7 Defendant testified that he lived at the house with his parents and his older brother, Richie. He testified that on the day of Richard Sr.'s death, Richie and Richard Sr. had gotten into an argument, and Richie had "stormed out" of the house. After eating dinner with his parents, defendant went outside to feed the sheep. It was while feeding the sheep that he heard gunshots. Defendant disregarded the sounds, as they were not uncommon in the area. Approximately 15 minutes later, defendant returned to the house and saw Richie driving Richard Sr.'s van down the driveway. He then noticed his father on the ground, covered in blood. Defendant testified: "I was in shock. I couldn't believe that my dad was laying there dead."

¶ 8 Defendant noticed that a door leading to the basement of the house was open near Richard Sr.'s body. He entered the house, where his mother, Grace Hardig, was playing the organ, and told her to go to a neighbor's house to call the police. He then heard footsteps outside. Defendant testified that he took his shotgun and went outside. He testified that he saw footprints in the snow in the backyard, and followed those footprints into a field. The footprints went through the field and onto the neighbors' property. Defendant denied shooting his father. Defendant also denied telling officers that he planned to take his own life with the shotgun.

¶ 9 Defendant testified that while he was in the field he eventually heard sirens, then heard the police calling his name. He put the shotgun down, because he did not want to approach the police officers with a gun in his hand. Defendant denied that he told the officers that he had shot his father.

¶ 10 Defendant testified that upon arriving at the police station, he asked for a lawyer. A man wearing a shirt and tie entered the interrogation room and told defendant he was his lawyer, but defendant suspected the man was actually a police officer. Defendant testified that one of the officers questioning him choked him and repeatedly slammed his head onto a table while accusing defendant of killing his father. Defendant continued to deny that he killed his father. According to defendant, "[t]hat's why they got really mad and *** started hitting me in the head with these metal telescoping rods." Even after being hit in the head "about 50 times," defendant continued to deny that he killed his father.

¶ 11 The jury found defendant guilty of first-degree murder, and the court sentenced him to a term of 52 years' imprisonment. On appeal, this court vacated that judgment and remanded for a new trial based on certain irregularities in the jury's deliberation process. *People v. Hardig*, No. 3-07-0029 (Apr. 3, 2009) (unpublished order under Supreme Court Rule 23).

¶ 12 After remand, defendant was found to be unfit and remanded to the custody of the Department of Human Services (DHS). Defendant remained unfit, and on April 8, 2015, the circuit court held a discharge hearing, at which defendant asserted the affirmative offense of not guilty by reason of insanity. Prior to the hearing, the court and parties agreed that the court would hear testimony from each party's expert witness, and then review the trial transcript before ruling.

¶ 13 At the hearing, Dr. William Hillman was qualified as an expert in the fields of clinical and forensic psychology. Hillman performed an evaluation on defendant, relying on his interview with defendant as well as police reports and previous medical evaluations. Hillman testified that police reports and accounts of witnesses interviewed at the scene were the most important to him.

¶ 14 With regard to defendant's history, Hillman testified that defendant had left his job approximately a year before Richard Sr.'s death. Defendant had experienced some pain in his side and suspected that his boss was trying to poison him. Hillman also testified that defendant—as well as his brother and father—had a drinking problem. Defendant had a previous conviction for driving under the influence of alcohol.

¶ 15 In September 2011, Hillman interviewed defendant for approximately three hours. Hillman reported that defendant consistently denied having any memory of the day Richard Sr. died. While defendant was aware of his circumstances and legal situation, Hillman testified that when he asked defendant more complex questions, defendant "lapsed into delusional references [about] being an FBI agent." Based on the interview, Hillman concluded that defendant was presently mentally ill, and that "his mental illness was consistent with schizophrenia and

delusional behavior related to paranoid notions and grandiosity." The diagnosis was based on Hillman's own evaluation and his review of previous evaluations.

¶ 16 Hillman testified that defendant had been put on suicide watch following his arrest. In Hillman's interview with defendant, defendant reported that he thought he had been given the suicide gown in preparation for some surgery. Hillman further reported that a social worker who had evaluated defendant "within a day or so of his arrest" had ruled out schizophrenia. In the ensuing weeks after the arrest, defendant was prescribed antipsychotic medication, antidepressants, and other medication intended to reduce impulsive or aggressive behavior.

¶ 17 In total, Hillman testified that he reviewed eight or nine fitness reports conducted on defendant in previous years, all by doctors retained either by the State or the public defender's office. Hillman summarized the reports, noting that the doctors retained by the State had concluded that defendant was sane, defendant was not psychotic at the time of the offense, and that defendant's primary psychiatric problem was alcohol abuse. He was diagnosed with alcohol dependency and malingering. The malingering diagnosis was based on doctors' application of the Rorschach and Minnesota Multiple Personality Tests.[1] Hillman testified that reports from neighbors indicated that defendant, his brother, and his father frequently drank alcohol. In evaluations performed by doctors retained by the public defender's office, the prevailing opinion was that "it didn't reach the standard to conclude that [defendant] was malingering."

¶ 18 Hillman noted that defendant had not been diagnosed with any mental illness prior to his father's death, despite having received counseling. However, Hillman pointed out that it is not uncommon for people to begin drinking heavily as a way to cope with symptoms of

[1]Dr. Syed Ali, who testified later in the discharge hearing, defined malingering as as "the presentation of symptoms such as to involve an illness or a condition or a disease for the purposes of some secondary gain." Black's Law Dictionary defines malinger as "[t]o feign illness or disability." Black's Law Dictionary 1102 (10th ed. 2014).

schizophrenia. He testified that symptoms of schizophrenia tend to begin manifesting anywhere from age 16 through a person's midthirties. Hillman noted that defendant was 36 years old on the night of his father's death.

¶ 19 Hillman was unable to interview defendant's mother for his evaluation, but gleaned her account of the night in question from the police reports. According to those reports, Grace told the police that defendant entered the house carrying a shotgun while she was playing the organ; defendant told her: "[T]hey are coming to get us, we will all be dead tonight." Defendant more than once tried to grab Grace and prevent her from leaving the house. The reports also indicated that defendant was hiding in a field when police arrived, and police utilized canine assistance to find him. Grace told the police that defendant would become irrational when he drank. Though defendant had previously indicated he had not been drinking that night, he admitted to Hillman that he had consumed four beers. In any event, Hillman concluded that defendant's behavior was not consistent with alcohol intoxication.

¶ 20 Hillman opined, within a reasonable degree of scientific certainty, that defendant was insane at the time of the offense, defendant had a mental illness, and that mental illness caused defendant to not appreciate the criminality of his conduct. Hillman based that opinion on a number of facts. First, defendant had walked off the job a year prior to his father's death "for odd and somewhat bizarre reasons." Second, defendant drank heavily, which Hillman concluded was a form of self-medication for schizophrenia. Third, Hillman felt that defendant's reported behavior after the alleged murder "just didn't fit," concluding that "[t]he most efficient explanation was that [defendant] was psychotic."

¶ 21 Hillman testified that he did consider whether defendant was malingering. Hillman noted that defendant's initial willingness to proceed to trial without mounting an insanity defense was

consistent with a person who was actually mentally ill. Hillman also allowed for the possibility that defendant might presently be malingering or exaggerating his symptoms. He testified:

> "My impression is that [defendant] because of his grandiosity and his personality, he exaggerates symptoms. *** I couldn't make a determination whether he was exaggerating symptoms because that's just who he is, he is a grandiose, somewhat narcissistic in his personality, or because he was trying to persuade others that he was indeed mentally ill or insane at the time of the offense."

¶ 22 Hillman noted, however, that his primary concern was not whether defendant was now malingering, but whether he was malingering at the time of the offense. He testified: "There is very little way to be absolutely certain at the time of the offense that he was malingering." Further, Hillman stated: "Certainly malingering after the offense suggests he could be malingering the whole narrative. But we don't have strong information as to what was going through his mind regarding malingering at the time of the offense."

¶ 23 Hillman testified that DHS had never reported that defendant was malingering, and that day-to-day observations of defendant did not give that impression. Hillman was unaware of any instance in which a person, immediately after committing a criminal offense, decided to begin malingering. He testified that defendant's odd behavior in the immediate aftermath of his father's death defeated any conclusion of malingering at the time of the offense. Hillman did not perform any tests for malingering, such as the Rorschach or Minnesota Multiple Personality Tests.

¶ 24 In his interview with Hillman, defendant speculated that the man who cleaned the family's septic tank may have killed Richard Sr. He also speculated that his brother or a neighbor may have been responsible for the killing. On cross-examination, Hillman agreed that the act of

speculation more closely resembles malingering than it does true delusion. Hillman also testified that defendant was aware of his legal circumstances and the consequences of being found guilty versus being found not guilty by reason of insanity. In reports Hillman had read, defendant had indicated a preference to remain in DHS custody.

¶ 25 Following cross-examination, the circuit court asked a number of questions of Hillman. Among those questions, the court asked Hillman why defendant, who was apparently concerned about someone "coming to get [him]," discarded his weapon in the field. Hillman could not offer an opinion, and explained why he had not asked defendant that question:

> "[W]hen I am doing these evaluations, although I am tempted to try to solve the questions from a law enforcement perspective, what happened, I have to focus on the mental components influencing the behavior.
>
> To start confronting him about different irregularities, usually when I have ever succumbed to that curiosity, the defendant tightens up and stops disclosing information to me that I actually need for the opinion."

¶ 26 The State called Dr. Syed Ali, who was qualified as an expert in the field of psychiatry. Ali testified that he met with defendant on at least five occasions since 2002. Their first meeting was on June 26, 2002, approximately five months after defendant was charged with first-degree murder. Their most recent meeting was in March 2013. Ali also reviewed police reports and the reports of other doctors in evaluating defendant.

¶ 27 Ali testified that "alcohol played a major role" in the present offense. He noted that defendant had never been diagnosed with any mental illness, such as schizophrenia or bipolar

disorder, despite having seen a psychologist regularly before the incident in question. On the other hand, there had been multiple reports of defendant's heavy drinking, including Grace's stated concern that defendant had been drinking.

¶ 28 Ali testified that despite being treated with antipsychotic medications for a number of years, defendant was still reporting severe symptoms such as hallucinations or delusions. He noted that defendant was receiving high dosages of extremely potent medications. Ali testified that one would expect to see psychotic symptoms subside in persons taking such medications.

¶ 29 Although Ali did not administer standardized tests for malingering, he read the report of Dr. Oris Wasyliw, who did administer the Rorschach and Minnesota Multiple Personality Tests on defendant. Wasyliw had concluded that those test results indicated defendant was malingering. However, Wasyliw had also diagnosed defendant in that and other reports with a psychotic condition.

¶ 30 Ali also concluded that defendant was malingering. In addition to Wasiylaw's results, Ali based his conclusion on the fact that defendant's explanations of his delusions were inconsistent over time. Ali also noted that defendant communicated delusional beliefs, but did not act in a manner consistent of a person actually having those beliefs. Ali concluded that defendant's behavior on the night of Richard Sr.'s death was the result of an alcohol-induced condition, which did not meet the standard of mental disease or defect.

¶ 31 In its ruling, the circuit court first found that the evidence showed defendant was guilty beyond a reasonable doubt of the first-degree murder of Richard Sr. Turning to the question of defendant's sanity at the time of the offense, the court questioned defendant's behavior in the immediate aftermath of his father's death. Specifically, the court noted that if defendant did indeed believe someone was "coming to get" his mother and himself, it did not make sense that

he would relinquish his shotgun in a field. In the court's opinion, such actions ran counter to Hillman's conclusion that psychosis was the most efficient explanation for defendant's behavior at the time. Instead, it was more consistent with intoxication, where defendant chose to discard the weapon once the effects of the alcohol began to wear off. The court stated that Hillman had not sufficiently explained his conclusion in that regard. The court concluded:

> "I do find that the defense has not met their burden to show clear and convincing evidence that he was insane at the time of the incident and that he was unable therefore to appreciate the criminality of his conduct. I do make a finding here that I suppose it is that he is not not guilty of this charge."

The court remanded defendant to DHS custody for a maximum of five years, and ordered 90-day progress reports.

¶ 32 ANALYSIS

¶ 33 On appeal, defendant does not challenge the circuit court's determination that he was guilty beyond a reasonable doubt. Defendant only contends that the court's holding that he was not insane at the time of the offense—and thus, the court's ultimate ruling of not not guilty—was contrary to the manifest weight of the evidence.

¶ 34 The Code of Criminal Procedure of 1963 (Code) provides that when a defendant is deemed unfit, and it is determined that there is not a substantial probability that said defendant will attain fitness, a discharge hearing may be requested. 725 ILCS 5/104-23(a), (b) (West 2014). The Code characterizes a discharge hearing as "a hearing to determine the sufficiency of the evidence." 725 ILCS 5/104-25(a) (West 2014). The Code contemplates three possible results at a discharge hearing. First, the court may determine that the evidence does not prove the defendant

guilty beyond a reasonable doubt, and enter an acquittal. 725 ILCS 5/104-25(b) (West 2014). Second, the court may find the defendant not guilty by reason of insanity, enter an acquittal, then follow the procedures set forth in the Unified Code of Corrections for such acquittals. 725 ILCS 5/104-25(c) (West 2014). Third, if the discharge hearing does not result in an acquittal, the court may remand the defendant for further treatment. 725 ILCS 5/104-25(d) (West 2014). A finding that the evidence is sufficient to establish a defendant's guilt does not result in a conviction; instead, it is said that the defendant is found "*not* not guilty." (Emphasis in original.) *People v. Waid*, 221 Ill. 2d 464, 478 (2006).

¶ 35 The basic tenets of an insanity defense are set forth in section 6-2 of the Criminal Code of 2012. 720 ILCS 5/6-2 (West 2014). It provides: "A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct." 720 ILCS 5/6-2(a) (West 2014). That section also provides that the burden of proof is on the defendant to show by clear and convincing evidence that he is not guilty by reason of insanity. 720 ILCS 5/6-2(e) (West 2014).

¶ 36 In the present case, the circuit court found that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt. Moreover, it found that defendant had not met his burden in showing he was suffering from a mental disease or defect at the time of the offense, thus rejecting his insanity defense and finding defendant "not not guilty." The appellate court will not reverse a court's determination of a defendant's sanity unless that determination is contrary to the manifest weight of the evidence. *People v. McDonald*, 329 Ill. App. 3d 938, 946 (2002). "A finding is against the manifest weight of the evidence only if the opposite conclusion

is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon,* 227 Ill. 2d 322, 332 (2008).

¶ 37 I. Evidence Before the Circuit Court

¶ 38 Before considering the weight of the evidence, we must first consider an issue that has been raised regarding precisely what constitutes that evidence. In his initial brief, defendant makes numerous references to reports and transcripts spanning the entire 13-year history of this criminal case. This includes testimony from a suppression hearing held before his first trial. It also includes copious fitness reports, doctors evaluations, and transcripts of fitness hearings, most of which were compiled in the 10 years prior to his discharge hearing.

¶ 39 The State contends that these documents and transcripts were not put into evidence at the discharge hearing, and thus should not be considered by this court on appeal. Indeed, the State correctly points out that while the parties and court at the discharge hearing agreed that the court would examine the original trial transcript, there was no agreement that it would examine any other extrinsic evidence, nor did the defense make such a request.

¶ 40 Defendant, in reply, makes three arguments as to why this court may consider the evidence in question. First, defendant argues, Supreme Court Rules 321 and 323, governing the record on appeal, provide that the evidence in question is properly before this court. Ill. S. Ct. Rs. 321 (eff. Feb. 1, 1994) and 323 (eff. Dec. 13, 2005). Second, defendant argues that Judge Schoenstedt, who presided over the discharge hearing, also presided over many of the previous hearings in defendant's case, and thus "had intimate knowledge of the proceedings in this case." Third, defendant contends that the reports and transcripts in question were relied upon by Hillman and Ali, and thus may be considered by the circuit court.

¶ 41 We reject each of defendant's arguments. First, Supreme Court Rules 321 and 323 govern the propriety of the record *on appeal*. *Id.* For example, Rule 321 provides:

> "The record on appeal shall consist of the judgment appealed from, the notice of appeal, and the entire original common law record, unless the parties stipulate for, or the trial court, after notice and hearing, or the reviewing court, orders less. The common law record includes every document filed and judgment and order entered in the cause and any documentary exhibits offered and filed by any party." Ill. S. Ct. R. 321 (eff. Feb. 1, 1994).

But the State does not contend that the evidence in question is improperly part of the record on appeal. It simply maintains that that evidence was not put before the circuit court at defendant's discharge hearing, and thus should not be considered as a part of this court's manifest weight of the evidence analysis. We agree. "A reviewing court will not consider evidence not before the trial court." *Palmros v. Barcelona*, 284 Ill. App. 3d 642, 645 (1996).

¶ 42 Second, we find it irrelevant that the judge at defendant's discharge hearing also presided over other proceedings in the case. Notably, the court made no indication at the discharge hearing that it would consider any of the evidence now in question. Nor does defendant cite to any authority for the proposition that the circuit court may consider facts not in evidence so long as the judge has a good recollection of them.

¶ 43 Finally, the reports and transcripts relied upon by the experts testifying at the discharge hearing were not themselves entered into evidence. Certainly the contents of those underlying reports were considered by the circuit court insofar as Hillman and Ali testified—without

objection—regarding them. But defendant does not, and we suspect cannot, provide any citation to authority that would support the proposition that those reports are properly before the circuit court simply because they were relied upon by experts. By all indications, the only evidence considered by the circuit court in defendant's discharge hearing was the testimony of Hillman and Ali and the transcript of defendant's criminal trial. Accordingly, that is the only evidence we will consider in our analysis.

¶ 44 II. Defendant's Sanity

¶ 45 The testimony from the expert witnesses testifying at defendant's discharge hearing was conflicting. Hillman testified that defendant had a mental disease or defect at the time of the offense that rendered him unable to appreciate the criminality of his conduct. Ali testified that defendant's condition at the time of the offense was one induced by alcohol, and that the indications of psychosis were merely a result of defendant's malingering. While the trial transcript shows some possible delusional beliefs on defendant's part, its probative value is significantly less than that of the expert testimony, especially where malingering is a central issue in the case.

¶ 46 Each doctor's conclusion was supported by his interview and previous evaluations. Hillman found defendant's behavior was most efficiently explained by a schizophrenia diagnosis, and noted that DHS had not indicated any malingering. Hillman also suggested that defendant's alcohol abuse was a form of self-medication for his schizophrenia. Ali relied on multiple reports of defendant's alcohol problem, as well as the conclusions of previous doctors who had suggested defendant was malingering. Ali also noted that defendant's delusions were not consistent, his medications had little to no effect upon the delusions, and his behavior was inconsistent with the purported delusions. Standardized testing had indicated that defendant was

malingering. Both doctors noted that the opinions of other doctors who had evaluated defendant were split as to his possible malingering.

¶ 47 Where conflicting expert testimony is present, it is the province of the fact-finder to resolve that conflict. *E.g.*, *People v. Houseworth*, 388 Ill. App. 3d 37, 52 (2008) ("As the central issue at trial was the conflicting expert testimony, it was in the unique province of the trial court, as the trier of fact, to determine which expert it would regard as more credible and worthy of belief."). In this case, the circuit court, as the trier of fact, concluded that defendant failed to prove by clear and convincing evidence that he was insane at the time of the offense. Given that each expert presented reasonable and well-supported testimony, we cannot say that the opposite conclusion was clearly evident or that the circuit court's conclusion was otherwise arbitrary.

¶ 48 Defendant takes specific exception to the circuit court's reasoning in reaching its conclusion. In its remarks, the court relied upon the fact that defendant relinquished his shotgun in the field, commenting that this behavior was inconsistent with his prior statement that "they are coming to get us, we will all be dead tonight." The court found that such behavior was more consistent with intoxication. Defendant argues that neither doctor relied upon defendant's actions with the shotgun in reaching his conclusion, and contends that "the court arbitrarily focused on one piece of irrelevant evidence and disregarded the massive amount of forensic material in favor of its own psychological opinion."

¶ 49 Initially, we note that the court's reference to a particular piece of evidence does not imply in any way that the court disregarded other evidence that was not mentioned. Further, the court did not form "its own psychological opinion." It simply accepted Ali's conclusion over that of Hillman. See *People v. Bouchard*, 180 Ill. App. 3d 26, 36 (1989) ("In deciding questions of sanity, the trier of fact may accept one expert's opinion over another."). Ali testified that

defendant's behavior on the night of the offense was a result of his intoxication; the court agreed, and used defendant's behavior with the shotgun as illustration. Moreover, Ali testified that one reason he concluded defendant was malingering was that defendant did not act in a manner consistent with his purported delusions. This was precisely the point made by the court: If defendant had truly believed that "they [were] coming to get" him, he would likely have kept his shotgun for protection.

¶ 50 In summary, the circuit court in this case was tasked with resolving the conflict in the testimony of two expert witnesses. It resolved that conflict in favor of Ali's testimony, concluding that defendant had failed to show by clear and convincing evidence that at the time of the offense he lacked the substantial capacity to appreciate the criminality of his conduct as a result of mental disease or defect. The opposite conclusion was not clearly evident, and thus the court's determination was not contrary to the manifest weight of the evidence.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 53 Affirmed.