

2018 IL App (1st) 150627-U
No. 1-15-0627
February 20, 2018

SECOND 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
Plaintiff-Appellee,)	Of Cook County.
v.)	No. 09 CR 11360
TAMILYN ROBERTSON,)	The Honorable
Defendant-Appellant.)	Michele McDowell Pitman,
	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not commit plain error by allowing a psychiatrist to testify that he knew of no cases of temporary insanity and only a major mental illness can prevent a person from appreciating the criminality of her actions. The prosecutor did not commit plain error by basing part of his closing argument on the psychiatrist's opinions. We cannot say that the trial court abused its discretion by imposing a sentence of 55 years on the defendant for first degree murder committed by discharging a firearm.

¶ 2 A jury rejected Tamilyn Robertson's insanity defense and found her guilty of first degree murder. The trial court sentenced Robertson to 55 years in prison. In this appeal, we hold that the trial court did not commit plain error when it permitted the State's expert to express

his opinion that only a major mental illness can prevent a person from appreciating the criminality of her actions, and that the expert knew of no cases of temporary insanity. The prosecutor did not commit plain error by basing part of the closing argument on the expert's opinions. We cannot say that the trial court abused its discretion by imposing a sentence nearer the lower end of the available sentencing range. Accordingly, we affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

In 1997, Tamilyn Robertson gave birth to Travae Collins, the son of Tamilyn and Douglas Collins. Travae suffered from cerebral palsy. Douglas and Tamilyn moved into separate homes while Travae was quite young. Travae remained in Tamilyn's care for several years, but in 2007, a court granted Douglas custody of Travae and limited Tamilyn to one hour of visitation with Travae each week.

¶ 5

Travae had difficulty walking. Doctors scheduled surgery on Travae's hip for May 19, 2009. On May 18, 2009, around 4 p.m., Tamilyn drove to the home of Douglas's mother in Harvey, Illinois. She saw Douglas near his car. She asked Douglas when the surgery would take place. Douglas said she should ask her attorney. She asked again, and Douglas again refused to answer. She pulled out a gun and shot Douglas repeatedly, killing him.

¶ 6

Tamilyn drove out of town. Bernadette Agins called Tamilyn to ask her about Travae's surgery and whether Tamilyn wanted Agins to accompany her to the surgery. Tamilyn called Agins back and told her about the shooting. Tamilyn then drove to Agins's home, arriving after 10 p.m. Agins drove Tamilyn to the home of Agins's godmother, who talked with Tamilyn about the shooting and prayed for Tamilyn. At Tamilyn's request, Agins then drove

Tamilyn to the home of Douglas's mother. Agins paused briefly at the scene. Neither Agins nor Tamilyn got out of Agins's car. After Agins drove off, police, who were conducting surveillance near the home of Douglas's mother, looking for Tamilyn, ordered Agins to pull over. Police arrested Tamilyn and Agins and took them to the police station. They arrived at the station around 2 a.m. on May 19, 2009.

¶ 7 Around 1 a.m. on May 20, 2009, Tamilyn agreed to permit a detective to record some questioning and Tamilyn's responses. A grand jury indicted Tamilyn for first degree murder. Tamilyn's attorney filed an answer stating that Tamilyn would present an insanity defense.

¶ 8 The court ordered a psychologist and a psychiatrist to examine Tamilyn and to render opinions on her sanity at the time of the offense. Both concluded that Tamilyn was legally sane at that time.

¶ 9 At the trial, Douglas's brother, Eddie Vaughns, testified that he saw Tamilyn shoot Douglas. Travae, 12 years old at the time of the shooting, testified that he sat in the car when Tamilyn drove up, and he saw her shoot Douglas. Agins testified about the phone call she received from Tamilyn and their discussion on the night of the shooting.

¶ 10 The prosecution then played a videorecording showing Tamilyn at the police station. According to the recording, Tamilyn explained to the detective that in 2007, she started a new job, and she needed more help taking care of Travae. Douglas took custody of Travae, and then Douglas and others prevented Tamilyn from seeing Travae at all. When Douglas would not even tell her when the doctors would perform the surgery on Travae, "something snapped." She asked where Travae was, and Douglas said he was in Douglas's car. Tamilyn pulled her car over, getting ready to see Travae. Instead, she saw Douglas heading towards

his car, apparently intending to drive away without permitting her to see Travae. She took out her gun and shot Douglas.

¶ 11 Tamilyn testified on her own behalf about the difficulties she faced trying to raise Travae. After she separated from Douglas, Douglas sent her only \$50 per week, and Travae's special needs required a much greater expenditure. Taking care of Travae became more stressful as he grew and his needs grew. Tamilyn neglected herself, slept more and overate. She became depressed and withdrawn. She had failed to respond on time to her new employer on several occasions before she gave Douglas custody of Travae. Tamilyn testified that when Douglas and others kept Tamilyn out of Travae's life, she felt worthless and wanted to die. Agins helped her find a psychiatrist, but Tamilyn derived no benefit from the treatment. On May 18, 2009, she became extremely upset, and she smashed things in her home, including her toilet. She planned to kill herself. She took her gun in its case and carried it with her as she drove to find Travae to say goodbye.

¶ 12 Tamilyn testified that she did not remember shooting Douglas, and even after hearing the evidence at trial, she still did not believe that she shot Douglas. She testified that someone must have altered the videorecording, because she did not recall making the statements purportedly recorded.

¶ 13 In rebuttal, the prosecution presented Dr. Nishad Nadkarni as an expert in forensic psychiatry. Nadkarni diagnosed Tamilyn's condition as a narcissistic personality disorder with borderline features. He said:

"It's my opinion within a reasonable degree of medical and scientific certainty that Ms. Tamilyn Robertson would have been legally sane at the time of the alleged

offense. And that she was not suffering from a mental disease or defect that would have substantially impaired her capacity to appreciate *** the alleged act."

¶ 14 He explained that "[s]omebody who has a major depressive disorder with psychotic features, may certainly be considered to be suffering from a major mental illness," but Tamilyn showed no signs of "psychiatric or cognitive impairments." The prosecutor asked for examples of "What would the person present like who was unable to *** substantially appreciate the criminality of their actions?" Dr. Nadkarni answered:

"[S]omebody with a mental disease and that could include a major mental illness like schizophrenia, bipolar disorder or manic depression, major depression with psychosis ***.

I've had examples of people who have been charged with a variety – one individual with a variety of property crimes and aggravated fleeing *** because he thought that GPS satellites were tracking his thoughts and that he had to flee.

I had another individual in a manic – bipolar manic episode who was hyper religious and felt that he was hearing the voice of God telling him to go to California. ***

I had a case of an individual who was *** psychotically depressed, an elderly individual who *** ended up hitting his wife with a hammer because he thought she was poisoning the air in the home ***."

¶ 15 The examination continued:

"Q. Sir, are you aware of any mental illness, mental defect which would mean a person [could] remember up to minute one not remember minute two and then remember minute three and on?

A. The only thing that I can think of that would account for that pattern of memory impairment is a blow to the head. ***

Q. Is there any mental illness or mental defect which would account for a momentary loss of memory?

A. No.

Q. *** [I]n your experience and your training, would the moment a person shoots another person result in a loss of memory?

A. I have never seen or heard of that in my experience."

¶ 16 On cross-examination, Dr. Nadkarni admitted that he saw no evidence of malingering in his examination of Tamilyn. He admitted that Tamilyn showed signs of stress and depressive symptoms, but not a major depressive disorder. Dr. Nadkarni recognized that Tamilyn suffered from diabetes, and low blood sugar could make her confused.

¶ 17 In closing argument, the prosecutor emphasized the legal definition of insanity and Tamilyn's burden of proof. The prosecutor said:

"[W]hat insanity does is, it basically says that even though she did it, she's not guilty, anyway. ***

*** If they haven't proven mental disease, if they haven't proven mental defect, she is not insane. There's no evidence that she suffered from a mental disease or a mental defect. ***

*** As Dr. Nadkarni told you, for a person to be legally insane, they have to be so mentally ill that they could not appreciate the criminality of their conduct, which is a very serious mental illness, and he gave you examples of that."

¶ 18 Defense counsel established his theme at the outset, and maintained it throughout:

"What's more than she could take? ***

*** [W]hat I want to talk to you about is someone's mental health, someone's perception, the way that these things that build up [] on a person, over time affect them, the compounding and the building of stress, of depression, of rejection, of hurt, of pain and the toll that it has on an [] individual, *** Tamilyn."

¶ 19 Defense counsel tried to cast doubt on Dr. Nadkarni's testimony, referring to his "strange, odd beliefs" about the limits of the insanity defense, and noting that he based his opinion on very limited interactions with Tamilyn.

¶ 20 In rebuttal, the prosecutor read to the jury the legal definition of insanity, and defended Dr. Nadkarni's opinions. The prosecutor said, "[I]f they didn't like that doctor, where is their doctor?" The court overruled defense counsel's objection. The prosecutor continued:

"The law is saying that though you have committed this most serious crime of murder, you have taken another life, we are going to excuse that, because you are

too sick to appreciate, substantially appreciate the criminality of your actions. It is the sickest of the sick."

¶ 21 The court overruled defense counsel's objection. The court also overruled counsel's objection to the prosecutor's comments, "momentary, temporary insanity, Dr. Nadkarni told you there is no such thing ***. This isn't a Lifetime movie."

¶ 22 The jury found Tamilyn guilty of first degree murder. The trial court denied Tamilyn's motion for a new trial. Tamilyn, 45 years old with some college and a good employment history, had no prior criminal history. Several persons who worked with Tamilyn or who knew her for many years wrote letters asking the court for leniency. The court sentenced Tamilyn to 30 years in prison for murder, plus 25 years more because she personally discharged a firearm to kill Douglas, for a total sentence of 55 years in prison. The court denied Tamilyn's motion to reconsider the sentence. Tamilyn now appeals.

¶ 23 ANALYSIS

¶ 24 Tamilyn argues that Dr. Nadkarni misstated the law concerning the insanity defense, and the prosecutor compounded the error by repeating Dr. Nadkarni's misstatements in closing argument. Tamilyn admits that her lawyer failed to object to Dr. Nadkarni's testimony and to most of the closing argument, and that the attorney failed to preserve her objections to the closing argument in her motion for a new trial. She asks this court to review the issue for plain error or as proof of ineffective assistance of counsel.

¶ 25 "[T]he plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the

evidence." *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). Tamilyn argues that the error alleged here comes under the second prong because the misstatements undermined Tamilyn's right to a fair trial.

¶ 26 Dr. Nadkarni and the prosecutor accurately stated the standards the jury must apply to decide whether to find Tamilyn not guilty by reason of insanity. Dr. Nadkarni testified that he had never seen temporary insanity in his experience, and he did not believe anyone suffered from temporary insanity. We see no grounds for precluding Dr. Nadkarni from expressing his expert opinion on the issue, as it formed part of the basis for his opinion about Tamilyn's claim of insanity. See *People v. Scott*, 148 Ill. 2d 479, 527-28 (1992); *Smith v. United States*, 353 F.2d 838, 841-43 (D.C. Ct. App. 1965).

¶ 27 We also find no plain error in the admission into evidence of Dr. Nadkarni's opinion that, for a defendant to be "considered for a defense of insanity," the defendant must suffer from "a major mental illness like schizophrenia, bipolar disorder or manic depression, major depression with psychosis." If the qualified expert actually holds the opinion that only major mental illnesses can render a defendant unable to appreciate the criminality of her actions, we see no obvious grounds for barring testimony as to that opinion. See *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 799-800 (1999).

¶ 28 In closing argument, the prosecutor said that for a person to be legally insane, they have to be so *** mentally ill that they could not appreciate the criminality of their conduct, which is a very serious mental illness." The prosecutor later said that a legally insane person must be "the sickest of the sick." We cannot say that the prosecutor committed plain error by emphasizing the severity of the illnesses that qualify a person for the insanity defense. See

State v. Okie, 2010 ME 6, ¶ 16 (prosecutor made "fair although colloquial comments" that defendants who qualify for the insanity defense are the "worst of the worst" or "crazy of the crazy"); see also *People v. Johnson* 146 Ill. 2d 109, 143-44 (1991).

¶ 29 Defense counsel objected to the remark, "temporary insanity, Dr. Nadkarni told you there is no such thing." Dr. Nadkarni's testimony supported the remark. Tamilyn points out that in other cases, experts have testified that defendants suffered from temporary insanity. See *People v. Lane*, 23 Ill. App. 3d 287, 294-95 (1974). The opinion of other experts in other cases cannot foreclose the prosecutor from basing an argument on the opinions expressed by the expert who testified in this case. See *Johnson*, 146 Ill. 2d at 143-44.

¶ 30 The prosecutor also commented in closing, "where is their doctor?" The prosecutor in *People v. Greer*, 79 Ill. 2d 103 (1980), similarly commented that the defense had not presented any expert evidence saying the defendant was insane. Our supreme court said the comment "was technically correct and an objection could have properly been overruled ***. The remark concerning the expert testimony was not error since it was true." *Greer*, 79 Ill. 2d at 122-23. The remark here, too, correctly described the evidence and reflected the burden of proof.

¶ 31 Tamilyn argues that her counsel provided ineffective assistance when he failed to object at trial to Dr. Nadkarni's opinions and by failing to preserve for review objections to the prosecutor's closing argument. As the trial probably should have overruled objections to Dr. Nadkarni's expert opinions, we find that the failure to object does not show ineffective assistance of counsel. *People v. Lawton*, 212 Ill. 2d 285, 304 (2004). The prosecutor properly based closing remarks on the evidence in the record and the applicable law, so the

failure to object to the closing argument also does not show ineffective assistance of counsel. *People v. McCarthy*, 213 Ill. App. 3d 873, 886 (1991). Tamilyn has not shown plain error or ineffective assistance of counsel. Therefore, we affirm the conviction.

¶ 32 Sentencing

¶ 33 Tamilyn argues that the trial court abused its discretion when it imposed a sentence that will almost certainly keep her in prison for the rest of her life. According to Tamilyn, the sentence of 55 years means that the prison will not release her until she is 94 years old. The sentencing statute required the court to impose a sentence between 20 and 60 years for the murder, plus an additional 25 years for the use of a firearm. 730 ILCS 5/5-8-1(a)(1)(a), (a)(1)(d)(iii) (West 2008). The sentence of 55 years fell towards the lower end of the 45 to 85 year range. The trial court recounted Tamilyn's considerable mitigating evidence, but the court noted in aggravation that Tamilyn shot Douglas multiple times in front of their child. We must defer to the trial court's assessment of sentencing factors, and we will not alter the sentence unless it is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). While the sentence and the spirit of the sentencing statute are undoubtedly harsh, we cannot say that the trial court abused its discretion by imposing a sentence within the statutory guidelines. Accordingly, we affirm the sentence.

¶ 34 CONCLUSION

¶ 35 The trial court did not commit plain error by admitting into evidence Dr. Nadkarni's opinions concerning Tamilyn's condition and the kind of mental illness that can prevent a person from appreciating the criminality of her actions. Admissible evidence supported the

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prosecutor's closing argument. Defense counsel did not provide ineffective assistance by failing to object to Dr. Nadkarni's opinions and the closing argument. We cannot say that the trial court abused its discretion by imposing a sentence towards the lower end of the statutory sentencing guidelines. Accordingly, we affirm the trial court's judgment.

¶ 36 Affirmed.