2018 IL App (4th) 160226-U

NO. 4-16-0226

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 20, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
THOMAS A. BOITNOTT,	)	No. 15CF850
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Harris and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court erred by not providing defense counsel the opportunity to make a closing argument during defendant's stipulated bench trial.

¶ 2 On June 12, 2015, the State charged defendant, Thomas A. Boitnott, by information with attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014)), child abduction (720 ILCS 5/10-5(b)(3) (West 2014)), and unlawful possession of a stolen vehicle (625 ILCS 5/4-103(a)(1) (West 2014)). On January 13, 2016, after a stipulated bench trial, the trial court found defendant guilty but mentally ill of attempt (first degree murder) and child abduction but found defendant not guilty of unlawful possession of a stolen vehicle. On March 22, 2016, the court sentenced defendant to 20 years in prison for attempt (first degree murder) and a concurrent term of 3 years in prison for child abduction with credit for 286 days served. Defendant appeals, arguing (1) the court erred in finding defendant failed to prove by clear and

convincing evidence he was not guilty by reason of insanity, (2) the court erred by not allowing defense counsel the opportunity to make a closing argument and prejudging defendant's guilt, (3) defendant's attorney provided ineffective assistance of counsel by agreeing to allow the court to consider defendant's invocation of his right to counsel during a custodial interrogation during the stipulated bench trial, and (4) defendant is entitled to an additional $70 in credit toward his fines for time served in custody prior to his sentencing. We reverse defendant's convictions and remand for a new trial before a different trial judge.

¶ 3 I. BACKGROUND

¶ 4 The charges in this case stemmed from defendant removing his daughter, K.B., a six-month-old infant, from her home at approximately 11:00 a.m. on June 11, 2015, without her mother's permission. This occurred after defendant and K.B.'s mother, Kayla Reifsteck, had a verbal disagreement. Kayla exercised sole physical custody of the child, and she did not authorize defendant to use her vehicle to take K.B. from Kayla and K.B.'s home. According to the stipulated facts, "Kayla Reifsteck immediately reported the situation out of concern for [K.B.'s] welfare because the Defendant had been paranoid and verbally aggressive towards her in the recent past and she had concerns about his mental health." The police found Kayla's vehicle abandoned on a country road about 4:30 p.m.

¶ 5 The police later found defendant at approximately 8:15 p.m. walking alone through a field. Defendant would not provide his name to the police officers and said he did not know what his daughter's name was. However, one of the police officers testified defendant responded to his name one time. He was taken into police custody and questioned. He denied he was Thomas Boitnott, having a child, or knowing anything about the missing infant. When shown a picture of the infant, he denied knowing the child. He also denied knowing his own

father, David Boitnott, who came to the station to talk to defendant to help find K.B. After speaking with defendant, David Boitnott told one of the police officers defendant denied knowing who David was but inadvertently acknowledged David was his father one time. Defendant asked for counsel on numerous occasions during the custodial interrogation. However, the police officers continued questioning him, attempting to get information to locate the missing child.

¶ 6 Eventually, a public defender arrived to speak with defendant. Defendant provided his attorney with information about the child's possible location, which the attorney provided to the police. Shortly thereafter, the child was located in a flooded, muddy bean field at approximately 1:45 a.m. The child had been in the field for an extended period of time. K.B. was sunburnt and dehydrated but had no serious injuries. The high temperature on June 11 was 89 degrees.

¶ 7 The public defender referred defendant to Dr. Lawrence Jeckel, a medical doctor specializing in psychiatry. After speaking with defendant for 45 minutes on June 24, 2015, and 30 minutes on July 2, 2015, and interviewing David Boitnott and Kayla Reifsteck, Dr. Jeckel prepared a report which was filed with the trial court on July 9, 2015. Dr. Jeckel diagnosed defendant with unspecified psychotic disorder. With regard to his fitness to stand trial, Dr. Jeckel offered the following opinion:

> "It is my professional opinion, to a reasonable degree of medical and psychiatric certainty, that Thomas Boitnott fulfills the criteria for the mental condition of Unspecified Psychotic Disorder in addition to a history of Alcohol Abuse and Attention Deficit/Hyperactivity Disorder, and due to the psychotic disorder, his thinking is disorganized, he is paranoid and delusional and unable to fully

> understand the nature and purpose of the proceedings against him or assist his attorney in his defense. Therefore, it is my opinion that [defendant] is **UNFIT** to stand trial. I recommend that he be transferred to a secure psychiatric facility such as McFarland Mental Health Center where the psychosis can be intensively treated. It is furthermore my opinion that he can become fit within one calendar year." (Emphasis in original.)

As to defendant's criminal responsibility, Dr. Jeckel stated:

> "Mr. Boitnott's present mental condition limits my ability to fully examine him regarding the issue of sanity at the time of the alleged crime. Therefore, I am unable to form an opinion at this time. On the issue of criminal responsibility, I would like the opportunity to further examine [defendant] regarding his mental state at the time of the alleged crime following restoration to fitness."

¶ 8 On July 14, 2015, the trial court found defendant was not fit to plead or stand trial. The court placed defendant in the custody of the Department of Human Services (Department) for treatment. On October 19, 2015, the Department informed the court of its opinion defendant had been restored to fitness and was able to understand the nature of the charges against him and cooperate in his defense.

¶ 9 On October 27, 2015, the trial court entered an order, finding defendant was fit to stand trial and ordered his release from the Department and his remand to the Champaign County Correctional Center.

¶ 10 After defendant's return to Champaign County, Dr. Jeckel met with defendant for 60 minutes on November 20, 2015, and for 30 minutes on December 9, 2015. In a report dated December 15, 2015, Dr. Jeckel offered the following conclusions:

"[Defendant] is a twenty-four year old single Caucasian father of two charged with Attempted First Degree Murder, Child Abduction and Unlawful Possession of a Stolen Vehicle on June 11, 2015. It is my opinion that during the commission of the instant offenses, [defendant] was suffering from a severe mental illness, a psychotic disorder, which is consistent with the observations of the mental health staff at the jail, my evaluations and the observations of the staff at Chester Mental Health Center. He was so ill[] that his normal solicitousness for his infant daughter, which had been previously described as caring and perhaps even too intense, was transformed in a psychotic delusion of altruistic religious fervor, in that he told the staff at Chester Mental Health Center[,] where he was sent after being found unfit, that he had been praying for the child's deliverance. In other words, he irrationally attempted to save her soul by abandoning her in the field and wishing to send her to heaven.

He was strange and evasive when he was interviewed by police. He refused to give them the location of his daughter or even admit that he had a child. He irrationally equivocated with the officers about his name, for example, denying that his real name was Thomas Boitnott; he denied knowing his father. This was consistent with a severe psychosis. I interviewed [defendant] twice for the fitness evaluation. In the first interview, I found him guarded, paranoid and suspicious. He was highly mistrustful of my role as an evaluator and as a physician. He inappropriately laughed while expressing paranoid ideas. In the second interview, he was more open and brighter, but the psychosis was more florid. He endorsed auditory hallucinations, in that he heard voices telling him

that his manhood was being demeaned and that he was being threatened with rape. (These likely were psychotic ideas about being gay and unfaithful to his girlfriend. In my most recent interview, he did not recall having any thoughts about being gay and said he had never thought about being homosexual.) In the jail, he visually saw and heard angels who reassured him. He repeatedly read the Bible. At Chester, his thoughts were full of religious ideas with concerns about God, evil and demons. He reported that he had been arrested in June and was 'in prison at Madology.' As noted above, he told the staff there that he did something to his little girl but what he did to her was, 'I was praying for her deliverance.'

At Chester, [defendant] was given a diagnosis of Delusional Disorder with Alcohol and Marijuana Abuse, In a Controlled Environment. His thinking cleared with the antipsychotic, olanzepine (Zyprexa), and he was eventually found fit. I gave [defendant] the diagnosis of Unspecified Psychotic Disorder[,] which is similar to Delusional Disorder. However, it is my belief that the psychosis was more disorganized than what I usually think of with Delusional Disorder.

It is my opinion, therefore, that during the commission of the alleged offenses, [defendant] was in the throes of a severe psychotic episode, and his behavior was consistent with acting on delusions of religious grandeur and psychotic ideas of self-alienation. It is furthermore my opinion, that during the commission of the alleged offenses, [defendant] was unable to weigh and consider the meaning and consequences of his conduct, that he was in an altered psychotic state of mind. There was no evidence that he had any countervailing thoughts that would indicate that he was conscious of the consequences of his actions. In fact,

> he was so delusional that he could not express proper concern for the welfare of his child, something he had been able to do before. The delusion of sacrificing her and altruistically delivering her from evil was overarching. Only after he was hospitalized at Chester Mental Health Center and received psychotropic medication[] did he come to admit that his actions were irrational. He could not recall to me how ill he was at the time of the incident, but that is not unusual in certain individuals with a severe mental illness. I found no evidence that Mr. Boitnott was malingering mental illness at anytime during the episode."

Dr. Jeckel stated it was his professional opinion that defendant lacked substantial capacity to appreciate the criminality of his conduct at the time of the offenses due to his psychosis.

¶ 11 At a hearing on January 13, 2016, the trial court indicated the case was set for a bench trial. The State noted it had prepared a stipulation. The court then told defendant's counsel the State had presented the court

> "with a stipulation and an order that would indicate the defendant is not guilty by reason of insanity. That's a negotiated plea, counsel. If you're going to a bench trial in front of this court, then I will take the evidence and make a determination as to whether or not he is guilty, not guilty, [not] guilty by reason of insanity, or guilty but mentally ill. So your client has to understand that the court is not part of any agreement. If it's going to be presented as a bench trial, those are the possible outcomes. So [defense counsel], I will give you an opportunity to discuss this with your client."

After a brief recess, defense counsel noted defendant wanted the case tried that day "pursuant to a stipulation we have reached with the State as to what the evidence would be that the court

would consider." Defendant indicated he had not been promised or guaranteed what the court's judgment would be. The court admonished defendant what a stipulated bench trial entailed. Defendant stated he was voluntarily agreeing to go along with a stipulated bench trial.

¶ 12 The trial court stated trial courts, not experts, must determine a defendant's fitness in a stipulated bench trial. The trial court noted it "must analyze and evaluate the basis for the expert's opinion instead of *** merely relying upon the expert's ultimate opinion."

¶ 13 The trial court found the State proved beyond a reasonable doubt defendant intended to kill the child by leaving her in the bean field. The court then turned to whether defendant had proved by clear and convincing evidence he lacked the substantial capacity to appreciate the criminality of his conduct when he committed the offense at issue. The court noted Dr. Jeckel's professional opinion was that defendant lacked the substantial capacity to appreciate the criminality of his conduct. The court noted Dr. Jeckel based his decision on multiple examinations of defendant and reviewing the reports presented to the court. The court then ruled:

> "It's the court's opinion that Dr. Jeckel is correct. [Defendant] is suffering from a mental illness, but does that preclude him from responsibility for his acts or does this fit more with the issue of a person is mentally ill if, at the time of the commission of the offense, he was afflicted by a substantial disorder of thought, mood or behavior which impaired his judgment but not to the extent that he was unable to appreciate the wrongfulness of his behavior.
>
> Counsel, I believe that's what we have here."

As a result, the court found defendant guilty but mentally ill of attempt (first degree murder). The court also found defendant guilty but mentally ill of child abduction but found defendant not

guilty of unlawful possession of a stolen vehicle.

¶ 14 The trial court then continued the matter for posttrial motions. At that point, defendant's attorney asked to be heard and stated, "I just want the record to reflect that the court did not afford defense counsel an opportunity to make an argument following this bench trial before the court reached its conclusions." The court simply responded, "All right. Can we use Friday morning, February 12 at 9:00?"

¶ 15 On January 29, 2016, defendant filed a motion for a new trial. The motion noted:

> "1. The State and the defendant reached an agreement and stipulated to the entirety of the evidence this court could consider in determining the outcome of this case.
>
> 2. The evidence presented to the Court consisted of police reports and the written report of Dr. Larry Jeckel, a psychiatrist appointed by the court.
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> 3. This Court has appointed Dr. Larry Jeckel in dozens of cases over the past 20 years for the purpose of rendering an opinion as to the fitness and sanity of defendants in the criminal courts in Champaign County. Dr. Larry Jeckel has been the primary forensic psychiatrist appointed by the courts in Champaign County and the most frequently appointed forensic psychiatrist in Champaign County for the past 20 years.
>
> 4. Nothing in the police reports purported to offer an opinion as to whether or not the defendant met the definition for insanity within the meaning of Illinois criminal law.
>
> 5. A finding that the defendant is not guilty by reason of insanity requires expert testimony by a witness qualified to render such an opinion. It follows that

the uncontradicted evidence of such a witness would be sufficient to compel a verdict in accordance with such opinion absent at least one expert witness to challenge it.

6. The sole and exclusive evidence with respect to whether or not the defendant met the definition for insanity within the meaning of the criminal law was contained in the written report of Dr. Larry Jeckel. It was uncontroverted. It was not challenged by the State[,] and it was stipulated by the State that the Court can and should consider the uncontradicted evidence of Dr. Larry Jeckel's report.

7. The decision of this Court that the defendant was guilty but mentally ill was contrary to the manifest weight of the evidence.

8. The Court erred when it failed to offer an opportunity for the attorney for the defendant to make an argument at the close of evidence in this case."

¶ 16 On February 12, 2016, the trial court denied defendant's posttrial motion, citing *People v. Frank-McCarron*, 403 Ill. App. 3d 383, 396, 934 N.E.2d 76, 88 (2010), for the proposition that "[w]hen assessing a defendant's sanity, the trier of fact is free to reject all expert testimony and base its conclusion on lay testimony alone." The court stated:

"In this case, I believe Dr. Jeckel's assessment that the Defendant suffered from a mental disease or defect was obviously appropriate. However, I don't believe that the evidence presented proved clear and convincing—was of clear and convincing burden to alleviate the Defendant for his responsibility."

¶ 17 On March 22, 2016, the trial court sentenced defendant to twenty years' imprisonment for attempt (first degree murder) and three years' imprisonment for child abduction to be served concurrently with credit for 286 days.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant first argues the trial court erred in finding he failed to establish by clear and convincing evidence he was not guilty by reason of insanity. Defendant next argues the trial court prejudged the case and violated defendant's constitutional rights to counsel and a fair trial by entering its judgment without giving defense counsel an opportunity to present a closing argument. Defendant also argues his trial counsel was ineffective by agreeing to have a stipulated bench trial that included otherwise inadmissible evidence, including defendant's multiple invocations of his right to a lawyer and his right to remain silent during a custodial interview, which the trial court relied on to support its decision defendant was legally responsible for his criminal acts. Finally, defendant argues he is entitled to $70 in credit toward fines imposed by the trial court for time he spent in the county jail prior to sentencing.

¶ 21 A. Insanity Defense

¶ 22 We first address defendant's argument the trial court erred when it found defendant failed to prove by clear and convincing evidence that he was not guilty by reason of insanity. Section 6-2 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/6-2 (West 2014)), states in pertinent part:

> "(a) 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.
>
> ***
>
> (c) A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal

responsibility for his conduct and may be found guilty but mentally ill.

(d) For purposes of this Section, 'mental illness' or 'mentally ill' means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior.

(e) When the defense of insanity has been presented during the trial, the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of each of the offenses charged, and, in a jury trial where the insanity defense has been presented, the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged." 720 ILCS 5/6-2 (West 2014).

¶ 23 Defendant does not argue the stipulated evidence was insufficient to establish the elements of attempt (first degree murder) and child abduction beyond a reasonable doubt. Further, defendant does not contend the trial court should have found him not guilty. Instead, defendant argues the court erred in finding he did not prove by clear and convincing evidence he was not guilty by reason of insanity.

¶ 24 We first note we will not disturb a trial court's determination with regard to a defendant's sanity unless the court's decision is contrary to the manifest weight of the evidence,

meaning the opposite conclusion is clearly evident or the court's finding is unreasonable, arbitrary, or not based on the evidence presented. *People v. McCullum*, 386 Ill. App. 3d 495, 504, 897 N.E.2d 787, 796 (2008). The parties stipulated it was Dr. Jeckel's expert opinion defendant lacked the substantial capacity to appreciate the criminality of his conduct at the time of the offense because of his psychosis.

¶ 25 Defendant concedes the State was not required to present expert testimony to rebut defendant's expert's testimony on the issue of sanity. Instead, the trier of fact can rely on facts in evidence and inferences drawn from those facts. *McCullum*, 386 Ill. App. 3d at 504, 897 N.E.2d at 796. "Expert testimony may be entirely rejected by the trier of fact if he or she concludes a defendant was sane based on factors such as: whether lay testimony is based on observations made shortly before or after the crime; the existence of a plan for the crime; and methods undertaken by the defendant to prevent detection." *McCullum*, 386 Ill. App. 3d at 504-05, 897 N.E.2d at 796. However, the court in *McCullum* also stated the weight the trier of fact determines to give an expert's opinion on a defendant's sanity should be based on "the reasons given and the facts supporting the opinion." *McCullum*, 386 Ill. App. 3d at 504, 897 N.E.2d at 796.

¶ 26 In this case, while the court had Dr. Jeckel's report to consider, the parties also stipulated the trial court could consider other evidence, including defendant's numerous requests for counsel during his custodial interrogation. The trial court was also allowed to view police reports which stated on at least two occasions defendant responded to his name and acknowledged David Boitnott was his father even though he claimed not to know who he was or who his father was. The trial court was also allowed to consider evidence defendant provided to his attorney that led to the child being found even though defendant had told the police officers

he had no knowledge of either the infant or the infant's whereabouts.

¶ 27 Based on the stipulated evidence the trial court could consider, we do not find the trial court's determination was against the manifest weight of the evidence. We presume the trial court found defendant knew both taking the child and leaving the child alone in the field was wrong because his behavior, when viewed as a whole, established a consciousness of guilt. While we may have ruled differently, this is not sufficient to reverse the trial court's determination based on the standard of review at issue in this case.

¶ 28 B. Closing Argument

¶ 29 Defendant next argues the trial court violated his right to counsel and a fair trial by failing to give his attorney the opportunity to present a closing argument. In addition, defendant argues the record contains evidence the court prejudged his guilt. Defendant argues we should remand this case for a new trial before a new judge. The standard of review when determining whether an individual's constitutional rights were violated is *de novo*. *People v. Burns*, 209 Ill. 2d 551, 560, 809 N.E.2d 107, 114 (2004)

¶ 30 The United States Supreme Court has stated a defendant's constitutional right to counsel includes the right to make a closing argument on the evidence and applicable law. *Herring v. New York*, 422 U.S. 853, 857-59, 863, 865 (1975); *People v. Stevens*, 338 Ill. App. 3d 806, 810, 790 N.E.2d 52, 56 (2003). In *Herring*, the Court stated, "[N]o aspect of [partisan] advocacy could be more important than the opportunity finally to marshal the evidence for each side before submission of the case to judgment." *Herring*, 422 U.S. at 862. We see no reason why this right is not equally guaranteed when the parties stipulate to the evidence presented to the trial court as happened in this case.

¶ 31 The State argues defendant was not denied his right to have his attorney deliver a

closing argument. Citing *People v. Liggins*, 229 Ill. App. 3d 621, 623, 593 N.E.2d 1113, 1114-15 (1992), the State argued defendant cannot make this claim because defense counsel did not interrupt the judge when it was pronouncing its judgment and object to the court's failure to allow counsel to make a closing argument. We disagree. While the right to make a closing argument can be waived (*Liggins*, 229 Ill. App. 3d at 623, 593 N.E.2d at 1114), defendant did not waive his right to make a closing statement. The trial court did not ask defense counsel if he would like to make a closing argument before it announced its judgment in this case. Instead, the court simply made its ruling. Defense counsel brought this issue to the trial court's attention immediately after the court announced its judgment.

¶ 32 Once defendant raised this issue with the trial court, the court should have allowed both the State and defendant to make closing arguments. *People v. Daniels*, 51 Ill. App. 3d 545, 548, 366 N.E.2d 1085, 1088 (1977). At the very least, the court should have asked defense counsel whether he wanted to make a closing argument. However, this is not what happened. Instead, the trial court simply disregarded the significance of its mistake and stated, "All right. Can we use Friday morning, February 12 at 9:00 [for the hearing on post-trial motions]?" Defense counsel should have been allowed to marshal the evidence for defendant's position, including presenting an argument defendant was not guilty by reason of insanity. See *People v. Crawford*, 343 Ill. App. 3d 1050, 1059, 799 N.E.2d 479, 486 (2003), where the First District stated, "[i]t is not uncommon for a trial court to change its initial impression following argument by defense counsel or the prosecutor. [Citations.] Even though closing argument is not evidence, a trial judge has an obligation to be attentive, patient, and impartial."

¶ 33 Defendant also argues the trial court prejudged this case, and defendant seems to infer the court foreclosed closing arguments because it anticipated the State and defendant would

agree defendant should be found not guilty by reason of insanity. We note the record reflects the State was willing to stipulate defendant was not guilty by reason of insanity at the start of the hearing based on the same evidence the court considered and it seems probable the State's position on this issue would have remained the same throughout the hearing. Accordingly, given all the circumstances of this case, we find the trial court deprived defendant of the effective assistance of counsel by foreclosing counsel's closing argument. Thus, we reverse defendant's conviction and remand this case for a new trial. We also choose to exercise our discretion pursuant to Supreme Court Rule 366(a)(5) and order this case be assigned to a new trial judge on remand. *Eychaner v. Gross*, 202 Ill. 2d 228, 279, 779 N.E.2d 1115, 1146 (2002).

¶ 34 C. Ineffective Assistance of Counsel and Pre-Trial Custody Credit

¶ 35 Because we are reversing defendant's conviction based on the trial court's failure to allow defense counsel to make a closing argument, we do not need to address defendant's claims (1) his trial counsel was ineffective for agreeing the court could consider otherwise inadmissible evidence or (2) he was entitled to additional monetary credit for time he spent in custody prior to his trial.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we reverse defendant's conviction and remand for a new trial before a different trial court judge.

¶ 38 Reversed; cause remanded with directions.