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IN THE
COURT OF APPEALS OF INDIANA

MATTHEW D. ROZINSKI,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-1010-CR-640
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-1001-FA-3

July 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Matthew D. Rozinski appeals his convictions for attempted murder as a class A felony, three counts of criminal confinement as class B felonies, domestic battery as a class D felony, strangulation as a class D felony, criminal recklessness as a class D felony, and three counts of pointing a handgun as class D felonies. Rozinski raises one issue, which we revise and restate as whether the trial court's finding that Rozinski was guilty but mentally ill was contrary to law. We affirm.

The relevant facts follow. Rozinski and Renissa Rozinski ("Renissa") had been married for nine years as of January 18, 2010 and they lived in Walkerton, Indiana with their seven-year-old child, S.R., and D.B., who was Renissa's nine-year-old child from a previous relationship. Several members of Renissa's family lived close by including her parents and two sisters.

The Rozinskis experienced marital problems "[f]or most of [their] marriage." Transcript at 272. Rozinski displayed his temper every few weeks and would at times punch holes in the walls and throw chairs. On one occasion, Rozinski was physically violent towards Renissa when he refused to allow her to leave the room and shoved her. Rozinski also believed that Renissa was having an affair which made him angry.

On January 18, 2010, Renissa left home in the morning, and Rozinski assumed that she was headed to work as a manager at Fifth Third Bank. However, when Rozinski could not reach Renissa at her place of employment or on her cell phone, he called the corporate number and was informed that all banks were closed for the holiday.

Renissa returned home at approximately 9:00 or 9:30 p.m., and Rozinski approached her while she was in the bathroom talking to a coworker on her cell phone.

Rozinski questioned Renissa about who she was speaking to and proceeded to break her cell phone, and an argument ensued as to Renissa's whereabouts throughout the day.

Renissa attempted to call the police on Rozinski's cell phone; however, Rozinski would not allow her to do so. Renissa then used the bottom half of her broken phone and "just kept pressing the speed dial buttons" in hopes of contacting someone in her family. Id. at 30. Renissa wanted the police to be there because Rozinski was "too aggravated" and "was ready to fight." Id. at 29-30.

Rozinski and Renissa entered their bedroom and a "physical altercation" took place. Id. at 30. After hitting Renissa repeatedly, Rozinski picked up Renissa by her neck and shoved her on the bed. Rozinski then straddled Renissa, struck her in the chest with his fist several times, and squeezed Renissa's throat until she could not breathe. In response to Renissa's screams, S.R. ran to the room and witnessed Rozinski beating Renissa.

Renissa finally fought Rozinski off of her, but he refused to allow her to leave their bedroom. He retrieved a nine-millimeter pistol from a nightstand and told Renissa that the only way that she would leave the home was "in a body bag." Id. at 35. Rozinski fired a bullet that struck the floor approximately three inches from Renissa's foot.

Renissa's sister, Rashel, had received the calls made by Renissa on the broken cell phone, but was unable to hear anything, so she went to the Rozinskis' home to "see what was going on." Id. at 93. After speaking with Renissa in the Rozinskis' kitchen, Rashel asked Rozinski to let the children leave with her, but he refused. Rozinski, who had a

gun at his side, ordered Rashel to leave and escorted her to the street. Rashel then called the police despite Rozinski pointing a gun at her and threatening to "shoot everybody in this house" if she did so. Id. at 97. Rozinski then went back into the home.

Renissa's father, Randy, whom Rashel had also called, and police arrived soon after. The police surrounded the home, but did not approach it because Rozinski had threatened "to kill everyone inside the home unless the police backed off" during one of several phone conversations with Randy. Id. at 150.

Meanwhile, Renissa rushed upstairs and locked herself into S.R.'s bedroom with the children. Rozinski, while still armed, broke down the bedroom door. Randy again called Rozinski and asked him to allow the children to leave the residence. Rozinski, claiming to be named Marcus, called and informed Rashel that he was releasing the children. Rozinski apologized to his children before he allowed them to leave the home.

Renissa attempted to follow her children out the front door, but Rozinski would not allow her to leave the house. Randy shouted from the street asking Rozinski to free Renissa. Rozinski responded: "I'm going to F'ing kill you." Id. at 119. Rozinski then shot once in Randy's direction and once towards a police officer. Both men hid behind a parked van on the street as the shots were fired and neither was injured.

As Rozinski was shooting from the porch, Renissa escaped from the house using a side door. An officer who was positioned in the backyard helped Renissa to safety. Rozinski then appeared at the side door and shouted angrily that he wanted to speak to Renissa.

Rozinski went back inside the home, and the St. Joseph County SWAT team took up position outside the residence. Over the next several hours, Rozinski refused to leave the residence and claimed that his other personalities would not allow him to come out of the home. During his conversations with the SWAT negotiator, Rozinski claimed to be "Matt's guardian" and at other times to be "the bad guy," but his voice remained unchanged regardless of which personality he portrayed. Id. at 205-206. The SWAT team eventually threatened to introduce gas into the home if Rozinski did not surrender. Fifteen minutes after this threat Rozinski came out of the home and surrendered.

Rozinski was transported by Walkerton Police Officer Brett Verkler, who had covered the backyard during the offenses and helped Renissa to safety, to the Walkerton police station and subsequently to the St. Joseph County Jail. Rozinski acknowledged to Officer Verkler an awareness that "things were going to change for him" and did not display any other personalities during transport. Id. at 233-234. Rozinski also accurately described Officer Verkler's position in the backyard during the offenses, stating to Officer Verkler: "I knew exactly where you were at." Id. at 243.

On January 21, 2010, the State charged Rozinski with ten counts: attempted murder as a class A felony, three counts of criminal confinement as class B felonies, domestic battery as a class D felony, strangulation as a class D felony, criminal recklessness as a class D felony, and three counts of pointing a handgun as class D felonies.

On March 22, 2010, Rozinski filed his notice of insanity defense.[1] Prior to trial, Rozinski was examined by two court appointed experts: Dr. Edduyn Figueroa and Dr. Warren Sibilla. Neither doctor had access to external information about Rozinski's past medical or mental history or detailed police reports of his offenses. Both relied solely on the information presented by Rozinski in their interviews with him and his demeanor at that time. Rozinski never mentioned that he heard voices in his interview with Dr. Figueroa. He also told Dr. Figueroa that he had no memory between the time he began fighting with Renissa and coming to consciousness to find a bruise on his abdomen which he believed came from Renissa. In the version of events he provided to Dr. Sibilla, Rozinski remembered nothing between demanding to see Renissa's cell phone and "hearing his telephone (land line) ringing and a police officer finding him with a loaded gun against his chest." Appellant's Appendix at 22. Rozinski also reported to Dr. Sibilla that he had only heard voices as an adult. Based on their observations during the interviews, both doctors concluded that Rozinski was not sane at the time of the offenses.[2]

At the bench trial, Rozinski testified that he had begun hearing voices at eight years of age. He identified the voices as "the guardian," which spoke to him in a thick Scottish accent, and "the bad guy." Transcript at 257, 302. Rozinski conceded that he had never previously told anyone about these voices. Rozinski also testified that he does

[1] Rozinski was given an involuntary medical/psychiatric discharge from the U.S. Navy. He also testified that he believed that his mental problems stemmed from a long history of being physically abused by an older brother.

[2] Dr. Sibilla opened his report with a clinical caveat which stated several factors that "lessened the comprehensiveness of this evaluation;" among them was the lack of medical and psychiatric records from the U.S. Navy. Appellant's Appendix at 20.

not remember his offenses so he could not say whether the voices coaxed him to commit them. Rozinski went on to testify that he did, however, remember shoving Renissa onto the bed.

Renissa testified that she never saw Rozinski manifest other personalities or refer to himself as Marcus during any of his angry bouts throughout their marriage. Renissa further testified that in her nine years of marriage to Rozinski, he had never before claimed an inability to recall what had happened during his angry episodes. Randy testified that Rozinski never claimed to be Marcus or anyone else during the multiple cell phone conversations he had with Rozinski during the offenses.

The court found that Rozinski failed to meet his burden of proof regarding his insanity defense and based its ruling on expert testimony, Rozinski's inconsistent statements, and "the testimony of witnesses regarding incidents before, during, and after the charged events."[3] Appellant's Appendix at 31. The court found Rozinski guilty but mentally ill on all ten counts and sentenced him to an aggregate sentence of twenty years in the Department of Correction.

The issue is whether the trial court's finding that Rozinski was guilty but mentally ill was contrary to law. The insanity defense is an affirmative defense for which the burden of proof is on the defendant. Thompson v. State, 804 N.E.2d 1146, 1148 (Ind. 2004). To avoid responsibility for the crime proven by the State, the defendant must

[3] Rozinski includes in his appellant's appendix a report exploring states of consciousness experienced by those who have psychiatric disorders. The State correctly points out that this report was not part of the record before the trial court and is not considered in this appeal.

establish the insanity defense by a preponderance of the evidence. Ind. Code § 35-41-4-1(b) (2004). To meet this burden, the defendant must establish both: (1) that he suffers from a mental illness; and (2) that the mental illness rendered him unable to appreciate the wrongfulness of his conduct at the time of the offense. Galloway v. State, 938 N.E.2d 699, 708 (Ind. 2010), reh'g denied.

Thus, mental illness alone is not sufficient to relieve criminal responsibility. Weeks v. State, 697 N.E.2d 28, 29 (Ind. 1998). A defendant who is mentally ill but fails to establish an inability to appreciate the wrongfulness of his or her conduct may be found guilty but mentally ill. Galloway, 938 N.E.2d at 708. Whether a defendant appreciated the wrongfulness of his or her conduct at the time of the offense is a question for the trier of fact. Thompson, 804 N.E.2d at 1149. Ind. Code § 35-36-2-2 provides for the use of expert testimony to assist the trier of fact in determining the defendant's insanity. Such expert testimony, however, is merely advisory, and even unanimous expert testimony is not conclusive on the issue of sanity. Cate v. State, 644 N.E.2d 546, 547 (Ind. 1994). The trier of fact is free to disregard the unanimous testimony of experts and rely on conflicting testimony by lay witnesses. Barany v. State, 658 N.E.2d 60, 63 (Ind. 1995). And even if there is no conflicting lay testimony, the trier of fact is free to disregard or discredit the expert testimony. Thompson, 804 N.E.2d at 1149. Further, testimony regarding behavior before, during, and after a crime may be more indicative of actual mental health at the time of the crime than mental exams conducted weeks or months later. Id.

A convicted defendant who claims his insanity defense should have prevailed at trial is in the position of one appealing from a negative judgment, and we will reverse only when the evidence is without conflict and leads only to the conclusion that the defendant was insane when the crime was committed. Id. We will not reweigh the evidence or assess the credibility of witnesses but will consider only the evidence most favorable to the judgment and the reasonable and logical inferences to be drawn therefrom. Id.

Rozinski admits committing the offenses but argues that he presented uncontroverted expert evidence that he was legally insane at the time of the offenses and therefore should have been found accordingly. Rozinski agrees that unanimous expert testimony of insanity can be conversely affected by an inference of sanity by lay witnesses; he argues, however, that there was not sufficient lay opinion testimony offered to establish that he was sane at the time of his offenses. The State argues that there was substantial probative evidence before the trial court from which it reasonably concluded that Rozinski understood that his conduct was wrong.

We find Barany to be instructive in light of the facts of this case. In Barany, the Indiana Supreme Court addressed the issue of whether a guilty but mentally ill verdict was "contrary to law because the evidence was overwhelming and uncontroverted that appellant was insane at the time of the killing." 658 N.E.2d at 62. Three doctors uniformly concluded that "at the time of the murder, appellant was incapable of appreciating the wrongfulness of his conduct." Id. at 63. However, several lay witnesses expressed opinions from which one could infer that the defendant was sane. Id. at 64.

This probative evidence led the Court to affirm the guilty but mentally ill verdict. Id. The Court explained:

> In this case, the medical experts were unanimous in concluding that appellant was insane at the time of the killing. However, the State offered testimony from several lay witnesses that indicated that appellant was sane. Indiana State Police Detective Stotts described how, only a few hours after the crime, appellant talked about the victim's complaints and nagging. One of appellant's friends, Chris Brockman, testified as to unusual topics of conversation, such as conspiracies, but indicated that appellant "seemed O.K." In a conversation with his sister, appellant indicated that he believed that the victim was calling the police when he killed her. The jury could have decided that this testimony about appellant's behavior was more indicative of his actual mental health at the time of the killing than medical examinations conducted four weeks after the arrest. Given this conflicting evidence, we will not invade the jury's fact-finding province.

Id. at 64.

Here, two doctors concluded that Rozinski was insane at the time of his offenses. As previously mentioned, neither doctor had access to external information about Rozinski's past medical or mental history or detailed police reports of his offenses. We also observe that the trial court summarized in part some of the evidence and asked whether "someone wouldn't just come out of that psychotic break quickly," and Dr. Figueroa stated: "Yes. Especially under those circumstances that were so severe hallucinations and acting out, according to the hallucinations. The persistence of psychosis would have been there for a longer period of time." Transcript at 408.

Like in Barany, several lay witnesses expressed opinions from which one could infer that Rozinski was sane. Specifically, Renissa testified that she never had any indication from Rozinski that he did not understand what he was doing. Renissa testified that Rozinski wanted to control the situation and that he made decisions throughout the

course of the evening. Renissa also testified that she believed Rozinski intentionally missed her when he shot at her in their bedroom. Officer Verkler testified that Rozinski seemed "[v]ery relaxed, very relieved . . . and kind of remorseful" during the transport to the police station and jail. Id. at 233. Officer Verkler also testified that he and Rozinski had a "normal conversation like any two adults would do" while in the car. Id. at 235. None of the witnesses had ever previously heard Rozinski refer to himself as Marcus.

The State also directs us to Rozinski's conduct before, during, and after the crimes. Rozinski apologized to his children before he allowed them to leave the home, an act that Dr. Figueroa testified was evidence of awareness of having done wrong. Rozinski also peacefully came out of the house after negotiations with the SWAT team, accurately described the positioning of Officer Verkler in the backyard during his offenses, apologized to the officers he had shot at while being arrested, and acknowledged an awareness that things were going to change for him.

We also note the inconsistencies in Rozinski's statements. The psychiatric histories in regard to hearing voices that Rozinski related to the doctors and to the court conflict with each other. Rozinski also gave varying statements about what he remembered from his offenses.

The trial court had substantial probative evidence from which to conclude that Rozinski was able to appreciate the wrongfulness of his actions. Based upon the conflicting evidence, we conclude that the trial court's ruling of guilty but mentally ill was not contrary to law. See Barany, 658 N.E.2d at 64 (affirming the defendant's murder conviction despite unanimous expert findings of insanity at the time of the offense

because there was conflicting lay witness testimony of sanity); Cate, 644 N.E.2d at 547-548 (affirming the defendant's conviction because of inconsistencies in his statements, which suggested feigning and because there was probative demeanor evidence of defendant's lucidity upon arrest).

For the foregoing reasons, we affirm Rozinski's convictions.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.