Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Aug 19 2009, 9:02 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

JOHN PINNOW
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JASON CALDWELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 21A01-0812-CR-589
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FAYETTE CIRCUIT COURT
The Honorable Ronald T. Urdal, Special Judge
Cause No. 21C01-0512-MR-382

August 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jason Caldwell appeals his convictions and sentence for three counts of murder. We affirm.

Issues

Caldwell raises three issues, which we restate as:

I. whether the trial court properly admitted a statement he made into evidence;

II. whether there is sufficient evidence to support his convictions of guilty but mentally ill; and

III. whether he was properly sentenced to 165 years.

Facts

On December 18, 2005, Caldwell and his wife, Thelma, were visiting his aunt, Judy Flanigan, and his uncle, Bill Flanigan, at their house in Connersville. Early that morning, Caldwell stabbed Thelma in the neck. As Judy tended to an injured Thelma, Caldwell shot Judy in the head. Caldwell then shot Bill in the head. Thelma died before police arrived, Bill was transported to the hospital and died, and Judy died twelve days later.

Caldwell left the house immediately after the shooting. Shortly thereafter Caldwell approached a police car and told the police officer that he had killed three people. Caldwell was eventually transported to the jail. During an interview with Detective Jason Richardson of the Connersville Police Department, Caldwell admitted to stabbing Thelma and shooting Bill and Judy.

Caldwell was eventually charged with three counts of murder. On January 11, 2007, Caldwell, who was diagnosed with paranoid schizophrenia in 1997,[1] filed a notice of intent to interpose an insanity defense. A jury trial began on September 12, 2008, and on September 30, 2008, a jury found Caldwell guilty but mentally ill of all three counts. The trial court sentenced Caldwell to fifty-five years on each count and ordered the sentences to be served consecutively for a total sentence of 165 years. Caldwell now appeals.

Analysis

I. Admission of Evidence

Caldwell argues that the trial court should not have admitted the statement he gave to Detective Richardson into evidence. Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection. Jackson v. State, 890 N.E.2d 11, 15 (Ind. Ct. App. 2008). We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. Id. "However, we must also consider the uncontested evidence favorable to the defendant." Id.

According to the recording of Detective Richardson's interview of Caldwell, Detective Richardson explained Caldwell's Miranda rights before questioning him about the crimes. Detective Richardson asked Caldwell, "Do you understand these rights, Jason?" Exhibit 100. Caldwell answered, "Yes." Id. Shortly thereafter, Caldwell said that he did not understand his rights. Detective Richardson asked Caldwell what he did

[1] Caldwell was diagnosed with psychosis in 1995.

not understand, and Caldwell responded, "Anything." Id. Detective Richardson began to explain the circumstances leading to Caldwell being placed in jail, Caldwell and Detective Richardson began discussing Caldwell's mental health, and Caldwell eventually admitted to stabbing Thelma and shooting Bill and Judy. Caldwell's interview with Detective Richardson lasted less than forty minutes.

Caldwell argues that he did not knowingly, intentionally, or voluntarily waive his Miranda rights or knowingly, intentionally, or voluntarily give a statement to Detective Richardson. Regarding his understanding of his Miranda rights, Caldwell relies on State v. Keller, 845 N.E.2d 154 (Ind. Ct. App. 2006), which is easily distinguishable. Keller signed a form advising him of his Miranda rights after looking over it briefly. There was no colloquy to ensure that Keller understood his rights. The trial court granted Keller's motion to suppress, and the State appealed. In affirming the suppression of the statement, we concluded:

> It is true that law enforcement officers are not under a burden to orally advise an individual of his rights in order to comply with Miranda. However, we emphasize that an oral advisement, whether or not accompanied by the use of a form, is the preferred method of ensuring an accused's constitutional rights. A colloquy between law enforcement officers and those accused of crimes does more than merely "mechanize a ritual" . . . . Rather, it avoids the loss in reality of rights declared by the words of the Constitution, and enforces them against overzealous police practices. Indeed, had a colloquy between Sergeant Gullion or Detective Scheid and Keller existed in the present case, the adequacy of the warning provided to him would likely not be at issue.

Keller, 845 N.E.2d at 163 (citation omitted).

Unlike in Keller, Detective Richardson explained Caldwell's Miranda rights orally and asked if he understood them. Caldwell responded affirmatively. Although Caldwell then equivocated his understanding of "anything," he was adequately informed of his Miranda rights. Exhibit 100.

As for whether he could voluntarily waive his Miranda rights and make a statement to Detective Richardson, the Supreme Court addressed these issues in Colorado v. Connelly, 479 U.S. 157, 161, 107 S. Ct. 515, 518 (1986), where the defendant argued that his confession should be suppressed because he was suffering from chronic schizophrenia and was in a psychotic state when he confessed. Connelly claimed that he was "following the command of voices" when he confessed. Connelly, 479 at 161, 107 S. Ct. at 519. The Supreme Court rejected Connelly's claims and observed, "Only if we were to establish a brand new constitutional right-the right of a criminal defendant to confess to his crime only when totally rational and properly motivated-could respondent's present claim be sustained." Id. at 166, 107 S. Ct. at 521.

The court held, "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment. We also conclude that the taking of respondent's statements, and their admission into evidence, constitute no violation of that Clause." Id. at 167, 107 S. Ct. at 522. Regarding the waiver of Miranda rights, the court held, "There is obviously no reason to require more in the way of a 'voluntariness' inquiry in the Miranda waiver context than in the Fourteenth Amendment confession context. The sole concern of the Fifth Amendment, on which Miranda was based, is governmental coercion." Id. at 169-

70, S. Ct. at 523. "Miranda protects defendants against government coercion leading them to surrender rights protected by the Fifth Amendment; it goes no further than that." Id. at 170, 107 S. Ct. at 523.

In considering Connelly, our supreme court has held, "Although a person's mental condition is relevant to the issue of susceptibility to police coercion, where the person voluntarily makes a confession without police coercion the confession may be considered in spite of the mental condition." Pettiford v. State, 619 N.E.2d 925, 928 (Ind. 1993). We cannot agree with Caldwell that Detective Richardson's awareness of his mental illness and lack of attempt to treat it within hours of Caldwell's arrival at the jail renders his waiver or statement involuntary. At the suppression hearing, a psychiatrist testifying for the defense stated that a person who was functioning poorly could make a voluntary decision. See Tr. p. 174.

Further, during the interview Caldwell was calm, polite, and responsive. Caldwell knew where he was and was able to recall specific information like Thelma's daughter's phone number. The erratic behavior Caldwell exhibited prior to his statement and the inconsistent responses he gave during his statement go to the veracity of his statement and are not indicative that he was unduly influenced by Detective Richardson. See Pettiford, 619 N.E.2d at 928 ("Although it is obvious appellant was under some mental delusions at the time, it also is obvious he had full recall of the matters which had occurred, was able to talk lucidly to the police, and indicated an understanding of his Miranda rights and in fact signed a written waiver of those rights."); Bailey v. State, 763 N.E.2d 998, 1003 (Ind. 2002) (rejecting argument that waiver of rights was not knowing

and voluntary and that statements were not voluntary where defendant had ingested prescription medications and had some degree of mental illness because defendant signed a written waiver and there was no evidence that police officers coerced, threatened, promised, or in any other way improperly influenced him).[2]

Caldwell knowingly, intelligently, and voluntarily waived his Miranda rights and gave a statement to Detective Richardson. The trial court did not abuse its discretion in admitting Caldwell's statement to police.

II. Sufficiency of Evidence

Caldwell admits that he killed Thelma, Bill, and Judy but argues there is insufficient evidence that he was sane at the time of the killings. According to Indiana Code Section 35-41-3-6:

> (a) A person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of the offense.

[2] Although the State did not respond to Caldwell's argument that the admission of his statement was not harmless error, it is worth noting that Caldwell challenges the admission of his statement as it relates to whether he was insane at the time of the offenses. In fact, he concedes, "There was no dispute that he killed the victims." Appellant's Br. p. 19. Caldwell specifically contends that his statement should not have been considered by one of the court appointed psychiatrists who determined Caldwell was able to appreciate the wrongfulness of his conduct when he committed the crimes. Caldwell, however, does not challenge the consideration of his statement by the two doctors who determined that he was unable to appreciate the wrongfulness of his conduct at the time of the crimes. We do not agree with the implication that a doctor may rely on Caldwell's statement to determine his mental state only if the resulting determination is that he was insane. Further, it was Caldwell who put his mental state at issue with his insanity defense. In this sense he opened the door to the admission of his statement as it relates to his mental state at the time of the crimes. See Buchanan v. Kentucky, 483 U.S. 402, 422-23, 107 S. Ct. 2906, 2917-18 (1987) ("if a defendant requests such an evaluation or presents psychiatric evidence, then, at the very least, the prosecution may rebut this presentation with evidence from the reports of the examination that the defendant requested. The defendant would have no Fifth Amendment privilege against the introduction of this psychiatric testimony by the prosecution.").

> (b) As used in this section, "mental disease or defect" means a severely abnormal mental condition that grossly and demonstrably impairs a person's perception, but the term does not include an abnormality manifested only by repeated unlawful or antisocial conduct.

"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 establish the defense by a preponderance of the evidence." Id. at 1149 (citing Ind. Code § 35-41-4-1(b)).

Whether a defendant can appreciate the wrongfulness of his or her conduct is a question for the trier of fact. Id. A convicted defendant who claims that his or her 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 do not reweigh the evidence or assess the credibility of witnesses. Id. We consider only the evidence most favorable to the judgment and the reasonable and logical inferences to be drawn therefrom. Id.

The three psychiatrists did not dispute that Caldwell suffered from a serious mental disease; however, only two of the psychiatrists testified that Caldwell was unable to appreciate the wrongfulness of his conduct. The third psychiatrist testified that Caldwell was able to appreciate the wrongfulness of his conduct on December 18, 2005. This conflicting evidence was a dispute for the jury to resolve.

As for the other evidence, conflicting inferences may be drawn from Caldwell's behavior before, during, and after the crimes, and weighing those inferences was a task

for the jury. Id. (observing that the trier of fact is free to disregard the testimony of experts and rely upon the testimony of lay witnesses). For example, during an argument with Thelma, Caldwell stabbed her in the neck. Caldwell then retrieved a gun, turned the safety off the gun, and shot Judy in the head as she was tending to Thelma. Caldwell then struggled with Bill and shot him in the head as Bill tried to call 911. At some point, Caldwell shot at parked cars. After the shootings, Caldwell threw the gun onto the sidewalk and ran from the house. During his interview with Detective Richardson, Caldwell unequivocally stated that the wanted to kill Thelma, Bill, and Judy. From this evidence, the jury could have inferred that Caldwell was able to appreciate the wrongfulness of his conduct notwithstanding his mental illness. Because the evidence of insanity was in conflict and did not lead inexorably to a single conclusion, the jury could have found that Caldwell was mentally ill but able to distinguish right from wrong. See id. at 1150.

III. Sentence

In sentencing Caldwell, the trial court considered as aggravating the precision with which he killed the victims, Bill's age of at least sixty-five, and his violation of his relationship with Bill and Judy, who had taken a role in caring for him and obtaining mental health treatment for him. As mitigating, the trial court considered that Caldwell was mentally ill and had voluntarily treated it, that he was in the process of changing medications when he committed the crimes, and that he had a minimal criminal history. The trial court concluded that these aggravating and mitigating factors balanced out and sentenced him to the advisory term of fifty-five years on each count. The trial court,

however, ordered the sentences to be served consecutively for a total sentence of 165 years. The trial court explained:

> To impose any sentence less than the advisory sentences and not run them consecutively would depreciate the seriousness of these three murders committed during the span of a few minutes of each other, and to run the sentences concurrently would seem to the Court to be treating the loss of three individual lives to be the equivalent of only one, which it is not.

Tr. p. 1069 (emphasis added).

Caldwell first challenges the imposition of consecutive sentences. It is well-settled that to impose consecutive sentences, a trial court must find the existence of one or more aggravating circumstances that outweigh any mitigating circumstances. See, e.g., Marcum v. State, 725 N.E.2d 852, 864 (Ind. 2000). If a trial court finds that the aggravators and mitigators are in balance, there is no basis upon which to impose consecutive sentences. O'Connell v. State, 742 N.E.2d 943, 952 (Ind. 2001).

Caldwell argues that the trial court improperly imposed consecutive sentences after it concluded that the aggravators and mitigators were in balance. In determining the length of each sentence, the trial court did state that "the aggravating factors and the mitigating factors equally balance each other out." Tr. p. 1067. However, the trial court went on to explain that it was imposing consecutive sentences based on the loss of three lives. We consider this statement to be an additional aggravating factor that supports the imposition of consecutive sentences. See Gleaves v. State, 859 N.E.2d 766, 771 (Ind. Ct. App. 2007) (affirming the sentence where the trial court found the aggravators and mitigators to be of equal weight, imposed the presumptive sentence for each conviction,

and then ordered the sentences to be served consecutively based on the multiple victims). The trial court did not improperly order Caldwell's sentences to be served consecutively.

Caldwell also argues that his 165-year sentence is inappropriate in light of the nature of the offense and the character of the offender. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id. Caldwell has not met this burden.

As for the nature of the offense, Caldwell stabbed his wife in the neck with a kitchen knife during an argument about his medication. Then Caldwell shot his aunt, who had cared for him for almost ten years, in the head as she tended to Thelma. Caldwell went on to shoot his uncle in the head at close range as his uncle dialed 911. Caldwell left his family members for dead and ran from the house. Caldwell acknowledges that a person "who separately murders his own family members has committed one of the worst offenses." Appellant's Br. p. 28.

As for his character, it is undisputed that Caldwell suffered from serious mental illness and that the mental illness played a role in the commission of the crimes—this is evidenced by the jury's finding of guilty but mentally ill. We also acknowledge that Caldwell had, for the most part, voluntarily treated his mental illness. At the time he committed the crimes, Caldwell was in the process of switching medications and

apparently misunderstood his doctor's instructions for transitioning from one drug to another. Given the nature of the crimes, however, Caldwell's mental illness does not warrant the imposition of less than the advisory sentence on each conviction. Further, the fact that Caldwell killed three people justifies the imposition of consecutive sentences. Thus, we cannot conclude that Caldwell's 165 year sentence is inappropriate.

Conclusion

The trial court did not abuse its discretion in admitting Caldwell's statement into evidence, there is sufficient evidence to support the jury's verdict that Caldwell was guilty but mentally ill, and Caldwell was properly sentenced. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.