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IN THE
COURT OF APPEALS OF INDIANA

THOMAS E. CURTIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 18A05-1101-CR-48
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause No. 18C04-0912-MR-1

August 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Thomas E. Curtis ("Curtis") appeals his conviction for Murder, a felony,[1] presenting for review the sole issue of whether the trial court's determination that he was guilty but mentally ill, as opposed to insane, is contrary to law. We reverse and remand with instructions.

Facts and Procedural History

In 1996, Curtis was diagnosed with post-traumatic stress disorder ("PTSD"). In 2008, he was awarded disability payments for that condition. In 2009, he was diagnosed as bipolar. He received outpatient mental health services for many years at veterans' facilities in Indianapolis and Muncie, Indiana. His psychiatrist, Dr. Esther Schubert, also observed indications of organic brain disorder, presumably from a prior head injury. Because Curtis manifested psychotic symptoms, he was treated with anti-psychotic medications as well as anti-depressants and mood-stabilizing drugs.

In 2002, Curtis married Crystal. They moved into a trailer home in Muncie, near Curtis' brother, Robert. The couple regularly visited with Robert and a few neighbors. To neighbors and family members, the spouses appeared supportive of each other. Curtis could not drive because of seizures; Crystal drove him to his appointments. Crystal had some learning disabilities; Curtis cooked and managed the household finances. Their seven-year marriage was not marred by any known incident of domestic violence.

On December 12, 2009, Curtis went to sleep in his bedroom, leaving Crystal and a

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[1] Ind. Code § 35-42-1-1.

fourteen-year-old neighbor, C.R., in the living room watching movies. Crystal was reclined on the sofa. At some point, C.R. fell asleep on the floor. Shortly after midnight, Curtis rose from his bed, retrieved an ornamental dagger from the wall, walked into the living room, and plunged the dagger into Crystal's torso. Crystal cried out "no, Tom, no" and fell from the sofa onto C.R. (Tr. 56.) There was no discernable provocation or motive for the attack and there were no signs of a struggle in the trailer home.[2]

Reportedly jolted into reality by Crystal's outcry, Curtis called 9-1-1 to say that he may have killed his wife. He directed C.R. to call Robert and say that there was an emergency. When Muncie police officers arrived, Robert was holding Curtis in a bear hug and Curtis was wailing "what did I do" and trying to beat his head against the wall. (Tr. 55.) Medical personnel could not save Crystal, who had bled to death from a single stab wound.

Curtis was arrested. In the jail, he was discovered wrapping clothing around his neck as if to hang himself. Curtis' outer clothing was taken away. Sitting in his underwear, Curtis gave a coherent statement to police in which he denied any specific memory of killing Crystal.

On December 17, 2009, Curtis was charged with Murder. On March 18, 2010, he filed notice of his intent to interpose an insanity defense. The trial court appointed two experts (a psychologist and psychiatrist) to evaluate Curtis; each testified at a bench trial and opined that Curtis was insane at the time he killed Crystal. At the close of the evidence on December 1, 2010, the trial court took the matter under advisement. On December 20, 2010,

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[2] The sole item out-of-place was a framed poster that had fallen to the floor.

the trial court found Curtis guilty but mentally ill ("GBMI"). Curtis was sentenced to fifty-five years imprisonment. This appeal ensued.

Discussion and Decision

Curtis admits that he killed Crystal. However, he claims that he established his insanity defense by a preponderance of the evidence and the trial court's determination that he is guilty but mentally ill is contrary to law.

Pursuant to Indiana Code Section 35-41-3-6, "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." A "mental disease or defect" is defined as "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." Ind. Code § 35-41-3-6(b).

The insanity defense is an affirmative defense; thus, the defendant bears the burden of proof. Thompson v. State, 804 N.E.2d 1146, 1148 (Ind. 2004). The State must prove the charged offense, including mens rea, beyond a reasonable doubt but need not disprove insanity. Id. The defendant must establish his or her defense by a preponderance of the evidence. Id. at 1149. To meet his burden, Curtis must have established both that he suffers from a mental illness and 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). Indiana law recognizes the defense of "temporary insanity." Id. at 714.

Whether a defendant appreciated the wrongfulness of his conduct at the time of the

offense presents a question for the trier of fact. Id. at 709. Indiana Code Section 35-36-2-2 provides for the use of expert testimony to assist the trier of fact; however, such expert testimony is merely advisory. Id. Even unanimous expert testimony is not conclusive on the issue of sanity and the trier of fact "is free to disregard the unanimous testimony of experts and rely on conflicting testimony by lay witnesses." Id. However, the decision must be based upon probative evidence, which means '"evidence that tends to prove or disprove a point in issue."' Id. at 711 (quoting Black's Law Dictionary 639 (9th ed. 2009)).

Because it is within the province of the trier of fact to weigh the evidence and assess witness credibility, a finding that a defendant was not insane "warrants substantial deference from reviewing courts." Id. at 709. An appellant who claims that his insanity defense should have prevailed at trial is in the position of one appealing from a negative judgment. Id. We do not reweigh the evidence, reassess the credibility of witnesses, or disturb reasonable inferences made by the trier of fact. Id. Nonetheless, the reviewing court is not to merely "rubber stamp" the fact finder's determinations and a conviction will be set aside when the evidence is without conflict and leads only to the conclusion that the defendant was insane when the crime was committed. Id. at 709-710.

Here, there was no conflict in the expert testimony. Dr. Frank Krause, a clinical psychologist who had been appointed to evaluate Curtis, and who also served as the jail psychologist, testified that he had observed Curtis over an eleven-month period of incarceration. In Dr. Krause's opinion, Curtis suffered from PTSD and "some other DSM-IV diagnosis." (Tr. 24.) Dr. Krause did not believe that Curtis could appreciate the

wrongfulness of his conduct when he killed Crystal. During the sanity evaluation, Curtis had reported that he had heard Crystal say, "no, Tom" but lacked any memory of the immediately preceding events. (Tr. 35.) Dr. Krause found this to be consistent with Curtis' mental health history and found no evidence of malingering. According to Dr. Krause, after Curtis became aware of his actions, he "was intent on taking his [own] life." (Tr. 25.) Dr. Krause observed that Curtis was already being treated for psychosis, signs of which included hallucinations, delusion, hearing voices, and seeing objects.

Dr. Rebecca Mueller, the court-appointed psychiatrist, also testified to her opinion that Curtis had been unable to appreciate the wrongfulness of his conduct at the time of the offense. She had consulted with Dr. Schubert, who had advised Dr. Mueller that Curtis was psychotic, with a history of auditory and visual hallucinations. Dr. Schubert had viewed Curtis as dangerous and, "in hindsight," she felt that Curtis should be in a mental hospital. (Tr. 181.) Dr. Schubert had personally observed Curtis in a hallucinogenic state. Dr. Schubert had described the psychosis to Dr. Mueller as a "true psychosis" because the hallucinations included non-combat themes and Curtis was not merely re-living a traumatic episode. (Tr. 173.) Dr. Schubert had suspected organic brain injury, a suspicion that Dr. Mueller shared.

According to Dr. Mueller, Curtis' primary diagnosis was that of PTSD and his secondary diagnosis was that of bipolar, with psychotic features. During the evaluation, Curtis had reported no memory of killing Crystal, although he recalled her crying out "no, Tom." (Tr. 177.) Dr. Mueller found the report that a cry "brought him around" was

consistent with PTSD and "organic brain syndrome."[3] (Tr. 177-78.) She believed that his ability to retrieve a telephone, give details to a 9-1-1 operator, and direct C.R. to summon Robert was consistent with the cessation of a PTSD episode.

Where there is no conflict among the expert opinions that a defendant was insane at the time of the offense, there must be other evidence of probative value from which a conflicting inference of sanity can be drawn. Galloway, 938 N.E.2d at 712. Usually, such probative evidence is in the form of lay opinion testimony that conflicts with the experts or demeanor evidence that, considered in light of other evidence, permits a reasonable inference of sanity to be drawn. Id. "[D]emeanor evidence is of more limited value when the defendant has a long history of mental illness with psychosis." Id. at 713.

Accordingly, we next consider the testimony from lay witnesses. Delaware County Jail nurse Terri Hamilton ("Hamilton") testified that her original contact with Curtis had been on the day after he was admitted and that he had asked for medication because he was hearing voices. According to Hamilton, Curtis had been taking several drugs when he came to the jail, including Risperdone, "an anti psychotic that helps with hearing voices." (Tr. 158.) After Curtis experienced swelling of his face and hands, some psychotropic medication was discontinued. After the third day, Curtis' cellmate Ottis Blair sought Hamilton's help for Curtis because Curtis had been unable to sleep, pacing the floor, hitting his head on the wall,

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[3] The State disingenuously argues that Dr. Mueller questioned her diagnosis and ultimately her professional opinion of insanity after learning that Curtis likely exaggerated his naval service and may not have seen active combat. To the contrary, Dr. Mueller clarified, upon questioning from the trial court: "you could still have a bipolar with psychotic symptoms, even in the absence of combat." (Tr. 193.)

and moaning. The psychotropic drug was reinstituted after consultation with a physician.

The State offered testimony from Curtis' neighbors and brother regarding his behavior near the time that Crystal was killed, but stopped short of eliciting a lay opinion as to Curtis' sanity at the time of the offense. Robert testified that he and Curtis drank coffee together the morning before Crystal was killed. Curtis had been in a good mood. However, Robert had been aware that Curtis wasn't sleeping well.

Neighbor Randall Williams testified that Curtis would "out of the blue" proclaim that his hands were deadly weapons, that he had them "licensed as a Navy Seal," and that "I could hurt you" and "go to jail." (Tr. 61.) Williams also recalled an incident in which Curtis was reflecting upon a soldier's recent suicide, stated that he sometimes could not afford his medicine, and commented "I could kill Crystal and I could get away with it because my medicine makes me loopy." (Tr. 60.) Startled, Williams had said "do what" and Curtis repeated himself. (Tr. 60.) Williams testified, "It just seemed like he had no rational [sic]." (Tr. 60.)

Kathy Williams recalled meeting Curtis for the first time, walking his dog in the trailer park. He had introduced himself, his dog, and his wife. Two hours later, when he encountered Kathy again, he repeated the same introduction. Kathy recalled the incident to which her husband, Randall, had earlier testified:

> [M]e and my husband was [sic] sitting on the couch and they was sitting on the love seat. And he said, well, you know, I could react to that because if I didn't take my medication, my, if I didn't take my medication, I could kill my wife Crystal, and he put his hand on her knee and just kind of looked and she just kind of looked over at him, sideways, and then she looked back away. And he wouldn't know, he wouldn't know anything about it because he didn't take his

> medication. But he was aware that if he didn't take his medication, that he could kill his wife."

(Tr. 67.) Kathy denied that the statement had been made in a threatening manner. She perceived Curtis as gesturing lovingly toward his wife.

Additionally, the trial court heard evidence of Curtis' demeanor immediately after the killing. Curtis had retrieved a telephone and called 9-1-1 and was able to assist the 9-1-1 operator with identification and location details. He later gave a statement to police, albeit while clad only in his underwear due to a suicide attempt and suicide watch. Nonetheless, Dr. Mueller testified that lucidity after emerging from a blacked-out event was consistent with Curtis' mental illness. There is no testimony to the contrary.

The trial court did not enter particularized findings on the defense of insanity. However, it appears that the trial court did not find the expert testimony to be lacking in credibility. The trial court commented at the sentencing hearing, "I applaud the fact that he was in the service. So, although, in this case, it may have been one of the cause[s] or roots of what happened today." (Tr. 261.)

In the absence of either an expert or lay opinion that Curtis was sane when he killed Crystal, we are left to wonder whether the trial court looked beyond the evidence probative of Curtis' sanity, as the trial court expressed "concern" about the adequacy of available treatment:

> Court: But unfortunately, I guess, my concern is, let's say he is put in a state hospital.
>
> Dr. Mueller: Yes, sir.

> Court: They will kick him out as soon as they can, right?
>
> Dr. Mueller: In this day and age, probably so.
>
> Court: And then there's no guarantees, and we hope he's on his medication, it's monitored, but.
>
> Dr. Mueller: There would be other forms, perhaps more restrictive, and it would certainly take away some of Mr. Curtis's independence, but he could be placed in a group home under twenty four hour supervision, where he is mandated by the Court to take his medication and he would have to comply.

(Tr. 194.) Although we are sympathetic to the trial court's concern for the community, "reject[ing] the insanity defense after concluding that the defendant could continue to be a danger to society because of an inadequate State mental health system" is not sufficient to sustain a GBMI finding where there is "no probative evidence from which an inference of sanity could be drawn." Galloway, 938 N.E.2d at 703. As our Indiana Supreme Court more fully explained:

> The Indiana General Assembly has chosen to return to our common law roots and hold criminally responsible only those defendants who are morally responsible for their actions. Judges must apply that law and find not responsible by reason of insanity those defendants who establish each component of the insanity defense by a preponderance of the evidence. It is not for the judicial branch to decide that a legally insane defendant should be convicted and sentenced to prison because of the condition of the State's mental health system.

938 N.E.2d at 717.

Here, the trial court erred by entering a judgment of GBMI when the evidence presented led only to a conclusion that Curtis was legally insane at the time of the offense.

Accordingly, we reverse the judgment of GBMI and remand for the entry of a judgment of not guilty by reason of insanity and corresponding commitment proceedings.

Reversed and remanded.

MATHIAS, J., and CRONE, J., concur.