

THIRD DIVISION  
SEPTEMBER 30, 2013

No. 1-11-1183

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 04 CR 17545
	)	
THOMAS MANGIARACINA,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Neville and Mason concurred in the judgment.

ORDER

¶ 1 *HELD:* Order of the circuit court finding defendant "not not guilty" of the offense of attempted murder reversed and the cause remanded for a new discharge hearing where defendant did not receive effective assistance of counsel during lower court proceedings.

¶ 2 After being pronounced unfit to stand trial, defendant Thomas Mangiaracina was found "not not guilty" of the attempted murder of his sister following a discharge hearing conducted in

1-11-1183

accordance with section 104-25 of the Code of Criminal Procedure of 1963 ("Code" or "Criminal Code") (725 ILCS 5/104-25 (West 2008)). On appeal, defendant challenges the court's not not guilty finding and argues that it should be reversed because he was denied his constitutional rights to due process and effective assistance of counsel. For the reasons set forth herein, we reverse the judgment of the circuit court and remand for proceedings consistent with this disposition.

¶ 3

### I. BACKGROUND

¶ 4 On July 9, 2004, defendant's sister, Melanie Mangiaracina, was stabbed multiple times. She received medical treatment for her injuries and survived. Immediately following the incident, defendant walked into the Calumet City police department and made statements implicating himself in the attack on his sister. Defendant was subsequently placed under arrest and charged with attempt first degree murder (720 ILCS 5/8-4(A); 720 ILCS 5/9-1(a)(1) (West 2010)).

¶ 5 Mangiaracina had a lengthy history of psychiatric illness. He had been diagnosed with paranoid schizophrenia in 1993 and hospitalized for psychiatric reasons on numerous occasions over the years. On August 10, 2004, at Mangiaracina's arraignment, his court-appointed attorney requested that Mangiaracina be sent to Forensic Clinical Services (FCS) to receive a Behavioral Clinical Examination (BCX). The examination was performed by Doctor Peter Lourgos, a staff forensic psychiatrist at FCS on September 24, 2004. During the interview, Doctor Lourgos found defendant's thought process to be "illogical" and noted that his "thought content revealed significant delusions." In addition, it was apparent that defendant experienced a number of

1-11-1183

auditory and visual hallucinations during the interview. Although defendant expressed some knowledge of the judicial process and judicial personnel, defendant indicated he had received communication from counsel and the judge "through [his] mind" and was told he would be released soon. Ultimately, Doctor Lourgos concluded that defendant was not mentally fit to stand trial. He explained: "Although Mr. Mangiaracina expresses an awareness of courtroom personnel and procedures, he is exhibiting significantly severe symptoms of a psychotic mental illness (schizophrenia, paranoid type). These symptoms preclude him from rationally cooperating with counsel in his defense." Doctor Lourgos, however, expressed no opinion as to defendant's mental state at the time of the offense.

¶ 6 A stipulated fitness hearing was held on September 24, 2004. After considering the stipulated findings and opinions of Doctor Lourgos, the court found defendant unfit to stand trial and remanded him to the care of the Department of Human Services (DHS) for treatment. Defendant remained in DHS custody for 22 months. During that time, he was re-examined at regular intervals and was repeatedly found unfit to stand trial.

¶ 7 Thereafter, on July 18, 2006, Doctor Lourgos conducted another psychiatric evaluation of defendant. This time, he found defendant "much improved." Doctor Lourgos observed that defendant's grooming and hygiene were appropriate and defendant did not appear to be experiencing any overt delusions or hallucinations during the interview. In addition, defendant's thought process appeared to be "logical and goal directed." Based on his examination, Doctor Lourgos opined that defendant was fit to stand trial with medication. He explained: "[Defendant] is cognizant of the charge, understands the nature and purpose of the legal proceedings, and

1-11-1183

shows the ability to cooperate with counsel in his defense. Mr. Mangiaracina suffers from schizophrenia which is being adequately controlled with medication. It is my opinion that Mr. Mangiaracina needs to continue his medication in order to maintain his fitness."

¶ 8 Based on Doctor Lourgos's new assessment, the parties stipulated that defendant was fit for trial during an August 11, 2006, court date. Defense counsel subsequently requested that defendant be evaluated for his mental fitness on the date of the offense. Doctor Lourgos conducted the examination on January 30, 2007, and concluded that defendant was "legally insane at the time of the alleged offense." Doctor Lourgos explained: "Mr. Mangiaracina has a significant history of schizophrenia and noncompliance with outpatient psychiatric treatment. Extensive documentation around the time of the alleged offense indicates that the defendant was actively psychotic and suffering from paranoid, persecutory delusions. Mr. Mangiaracina's behaviors appeared to have been precipitated by these delusional thoughts. As a result, it is my opinion that Mr. Mangiaracina lacked substantial capacity to appreciate the criminality of his conduct at the time [of the offense]."

¶ 9 The State requested a second opinion regarding defendant's mental fitness at the time of the charged offense and the request was granted. Accordingly, on March 26, 2007, Doctor Carol Flippen, another psychiatrist at FCS, attempted to examine defendant. However, defendant refused to participate in a diagnostic interview and Doctor Flippen was thus unable to render an opinion as to defendant's fitness at the time of the offense. Thereafter, on May 31, 2007, defendant was examined by Doctor Erick Neu. Doctor Neu agreed with the assessment of Doctor Lourgos and opined that defendant was legally insane at the time of the alleged offense.

1-11-1183

He noted that defendant "has a long history of schizophrenia, paranoid type and appears to have been acutely psychotic at the time of the alleged offense. His symptoms led him to lack substantial capacity to appreciate the criminality of his conduct at the time of the events at issue."

¶ 10 On October 24, 2007, after defendant had been found fit, he attempted to plead guilty but mentally ill to one count of attempted first degree murder. The court made several efforts to admonish defendant and ensure that defendant was aware of his rights and understood the nature of a guilty plea. The court ultimately terminated plea proceedings when it became apparent that defendant was unable to knowingly enter a guilty plea. Based on defendant's behavior during the plea proceedings, the court further ordered that defendant undergo another behavioral clinical examination.

¶ 11 In accordance with the court's order, a new exam was conducted on December 12, 2007, by Doctor Lourgos. He determined that defendant had "decompensated psychiatrically" since his prior examination and concluded that defendant was once again unfit to stand trial. In his written report, Doctor Lourgos explained that defendant had stopped taking his anti-psychotic medication and was "exhibiting significant symptoms of Schizophrenia" which would "preclude him from effectively cooperating with counsel in his defense and maintaining a meaningful presence inside the courtroom." On December 14, 2007, the court presided over another stipulated fitness hearing. Based on the latest findings contained in Doctor Lourgos' report, the court again found defendant unfit for trial and remanded him back to the care of the DHS. Defendant was once again examined at regular intervals to evaluate his progress; however, he was not restored to fitness.

1-11-1183

¶ 12 Accordingly, on February 26, 2009, defense counsel filed a motion for a discharge hearing pursuant to 725 ILCS 5/104-23(a), 5/104-25 (West 2008). In support of the motion, counsel observed that defendant had repeatedly been found unfit for trial and been remanded to the care of the Illinois Department of Mental Health and Developmental Disabilities (DMHDD). Although efforts had been made to treat defendant, counsel observed that he had not been restored to fitness within the one-year statutory period required by Illinois law and there was little likelihood of defendant becoming fit to stand trial in the foreseeable future.

¶ 13 Counsel's motion was granted and a discharge hearing was scheduled in accordance with section 104-25 of the Criminal Code (725 ILCS 5/104-25 (West 2010)). Prior to the hearing, defense counsel sought to have defendant evaluated for the purposes of determining whether or not he was able to knowingly, intelligently and voluntarily waive his *Miranda* warnings at the time that he made incriminating statements following his arrest. Counsel maintained that this evaluation was essential to determine the admissibility of that statement at the upcoming discharge hearing. The court, however, denied the motion, reasoning that because a discharge hearing was a civil proceeding rather than a criminal proceeding, it was not necessary to resolve issues pertaining the voluntariness and admissibility of defendant's statements prior to the hearing.

¶ 14 At the hearing, Bernard Begeske, a sergeant in the Calumet City police department patrol division, testified that on July 9, 2004, at approximately 6:30 a.m., he responded to an emergency "911" call. The caller was female and reported that her brother had stabbed her. In response to the call, Sergeant Begeske drove to a residence located at 503 Webb. As he was approaching the

1-11-1183

front door, Sergeant Begeske received a radio dispatch informing him that there was a gentleman at the police station who stated that he had stabbed his sister. He was advised that he might need to make a forced entry into the house if the victim was physically unable to answer the door.

¶ 15 After receiving the radio dispatch, Sergeant Begeske made forced entry into the residence and discovered a white middle-aged woman lying on the floor of a hallway. The woman had a number of "fresh" knife wounds to her "chest area, her side, and her back shoulder area."

Although the woman was bleeding, she was in "stable condition" and identified herself as Michelle Mangiaracina and relayed what had occurred. Thereafter, the paramedics arrived and transported her to St. Margaret's Hospital for treatment.

¶ 16 After the victim was removed from the scene, Sergeant Begeske secured and canvassed the residence. He found blood in a bedroom located adjacent to the hallway where Michelle had been found as well as a "hunting type knife, fishing type knife, on the floor." Sergeant Begeske maintained the integrity of the scene until the evidence technician arrived at the house. He acknowledged on cross-examination that he did not know who owned the knife or where the knife came from. He also acknowledged that he had no firsthand knowledge as to the reason for the blood stains in the residence, but noted that Michelle was the only person he observed bleeding at the scene.

¶ 17 Calumet City Police Department Captain Tom Stipanich was the watch commander on shift during the early morning hours of July 9, 2004. He testified that defendant walked into the police station early that morning wearing a tan winter coat. Defendant approached the front desk and said, "I'm here to turn myself in. I just killed my sister." Captain Stipanich immediately

1-11-1183

radioed another officer to join him at the front desk. He then buzzed defendant into the inner corridor of the department, and asked defendant to repeat what he said. Defendant again repeated that he stabbed his sister and that he "left [the knife] stuck in her belly." Captain Stipanich performed a cursory pat down of defendant's person and obtained defendant's address. He then radioed Sergeant Begeske and advised him that an offender had turned himself in and that there was a possible stabbing victim in a house located at 503 Webb. Captain Stipanich further advised Begeske that he should force entry into the residence if nobody answered the door. On cross-examination, Captain Stipanich acknowledged that during his interaction with defendant, after observing defendant's dress and mannerisms, he thought that it was "possible [that defendant] wasn't in his right mind."

¶ 18 Officer Ryan Govert testified that he was in the Calumet City police department in the early morning of July 9, 2004, when he responded to Captain Stipanich's request for assistance at the front desk. When Officer Govert arrived at the front desk, he observed defendant wearing a coat and heard defendant state that he had killed his sister. Officer Govert also noticed that there was a stain on defendant's tan jacket. Based upon his experience as a police officer, Officer Govert identified the stain as a bloodstain; however, he acknowledged that he did not know the source of the bloodstain. Officer Govert then took custody of the jacket.

¶ 19 Neither defendant nor his sister offered testimony at the hearing. At the time of the hearing, defendant's sister was receiving treatment for her own mental health issues and was not available to testify as a witness for either party. During closing arguments, defense counsel made several references to the State's "relaxed burden" and the "lower burden of proof" purportedly

applicable to discharge proceedings. Defense counsel reiterated his argument about the unreliability of defendant's statements and argued that the statements could not be considered. Given that neither defendant nor his sister testified and that his statements were not corroborated by other relevant competent evidence, defense counsel argued that the State failed to meet its burden of proof "even at the relaxed evidentiary requirements of th[e] proceeding" and urged the court to enter a judgment of acquittal.

¶ 20 After reviewing the evidence, the court found defendant not not guilty and remanded defendant to the custody of the DHS. Defense counsel subsequently filed a motion urging the court to reconsider its finding of not not guilty. The post-hearing motion was denied and this appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant argues that he was denied his constitutional right to due process of law and a fair hearing as well as his constitutional right to effective assistance of counsel. Because we find defendant's ineffective assistance of counsel claim to be dispositive, we will not address his additional arguments on appeal.

¶ 23 It is well-established that every criminal defendant has a constitutional right to receive effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I § 8; *Strickland v. Washington*, 466 U.S. 668, 685, 104 S. Ct. 2052, 2063, 80 L. Ed. 2d 674, 691-92 (1984). The right to effective assistance of counsel entails "reasonable, not perfect, representation." *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. To prevail on a claim of ineffective assistance of trial counsel, the defendant must satisfy the two-prong test set forth in

*Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) and establish that: (1) counsel’s performance fell below an objective standard of reasonableness, and (2) counsel’s deficient performance prejudiced defendant. *People v. Albanese*, 104 Ill. 2d 504, 525 (1984); *People v. Baines*, 399 Ill. App. 3d 881, 887 (2010). With respect to the first prong, the defendant must overcome the “strong presumption” that counsel’s action or inaction was the result of sound trial strategy. *People v. Jackson*, 205 Ill. 2d 257, 259 (2001); *People v. Shelton*, 401 Ill. App. 3d 564, 584 (2010). "In recognition of the variety of factors that go into any determination of trial strategy, \*\*\* claims of ineffective assistance of counsel must be judged on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review." *Wilborn*, 2011 IL App. (1st) 092802, ¶ 79, quoting *People v. Fuller*, 205 Ill. 2d 308, 330-31 (2002). To satisfy the second prong, the defendant must establish that but for counsel’s unprofessional errors, there is a reasonable probability that the outcome of the trial court proceeding would have been different. *People v. Peoples*, 205 Ill. 2d 480, 513 (2002). A reasonable probability that the trial result would have differed is “a probability sufficient to undermine confidence in the outcome— or put another way, that counsel’s deficient performance rendered the result of the trial unreliable or fundamentally unfair.” *People v. Evans*, 209 Ill. 2d 194, 220 (2004). A defendant must satisfy both the performance and prejudice prongs of the *Strickland* test to prevail on an ineffective assistance of counsel claim. *Evans*, 209 Ill. 2d at 220; *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008).

¶ 24 Here, defendant asserts that counsel was ineffective for failing to present an insanity

1-11-1183

defense. He maintains that the record contained ample evidence that he was legally insane at the time of the offense, and that counsel's failure to raise the defense was unreasonable and prejudicial because it is likely that he would have been acquitted had the affirmative defense been raised.

¶ 25 The State responds that defendant's ineffective assistance of counsel claim is without merit. The State argues that defense counsel made a strategic decision to challenge the sufficiency of the State's evidence rather than raise an insanity defense and that decisions pertaining to trial strategy do not support ineffective assistance of counsel claims. Moreover, the State suggests that there is no evidence that an insanity defense would have been successful and would have led to a different result if it had been raised.

¶ 26 Under Illinois law, "[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." 720 ILCS 5/6-2(a) (West 2010); *People v. Harrison*, 226 Ill. 2d 427 (2007). Insanity is an affirmative defense that must be raised by the defendant and he bears the burden of proving the defense by clear and convincing evidence. 720 ILCS 5/6-2(e) (West 2010); *People v. Manns*, 373 Ill. App. 3d 232, 239 (2007). The decision whether to present an insanity affirmative defense falls within the purview of trial strategy and is thus generally immune from ineffective assistance of counsel claims. *People v. Cundiff*, 322 Ill. App. 3d 426, 435 (2001); *People v. Anderson*, 266 Ill. App. 3d 947, 958 (1994). However, where counsel's failure to raise an insanity affirmative defense can be deemed a complete failure to subject the prosecution's case to meaningful adversarial testing, the outcome of the lower court

1-11-1183

proceedings is presumed to be inherently unreliable and counsel is deemed ineffective. *Manns*, 373 Ill. App. 3d at 239-40; *People v. Young*, 220 Ill. App. 3d 98, 107 (1991).

¶ 27 Here, prior to the discharge hearing, defense counsel voiced his intention to raise an insanity defense and sought to have defendant examined to ascertain his mental state at the time of the charged offense. Counsel's request was granted. Doctor Lourgos examined defendant on January 30, 2007, and opined that defendant was "legally insane at the time of the offense."

Doctor Lourgos' opinion was based on documentation completed near the time of the offense that indicated that defendant was "actively psychotic and suffering from paranoid and prosecutory delusions" which rendered him incapable of appreciating the criminality of his conduct. After receiving Doctor Lourgos' opinion, the State requested a second opinion and the request was granted. Accordingly, defendant was re-examined by Doctor Neu on May 31, 2007. Doctor Neu reached the same conclusion that had been reached by Doctor Lourgos and opined that defendant was legally insane at the time of the stabbing. Doctor Neu explained that defendant had "been acutely psychotic at the time of the alleged offense" which "led him to lack substantial capacity to appreciate the criminality of his conduct at the time of the events at issue."

¶ 28 Despite previously announcing his intention to raise an insanity defense, counsel failed to raise the affirmative defense at the discharge hearing. Although defense counsel cross-examined the State's witnesses and challenged the sufficiency of the State's evidence, counsel did not call the two psychiatrists who found that defendant was clinically insane at the time or any other witnesses on defendant's behalf. Based on the record and the evidence available to defense counsel, we find that counsel's failure to advance an insanity defense at the discharge hearing was

1-11-1183

objectively unreasonable.

¶ 29 Moreover, we find the failure to raise an insanity defense was ultimately prejudicial to defendant. Because defendant was found not not guilty, he is subject to confinement and treatment as well as to a criminal trial should he be restored to fitness. See 725 ILCS 5/104-25(d); *Waid*, 221 Ill. 2d at 470-71. However, had the court been presented with evidence to support an insanity defense and entered a finding of not guilty by reason of insanity, defendant would be absolved of guilt of the crime of attempted murder and would not face a criminal trial or punishment. *Harrison*, 226 Ill. 2d at 436-37. Although the State correctly observes that a defendant found not guilty by reason of insanity would also be subject to confinement and treatment, we note that "[h]is confinement does not result from his guilt but is imposed for his own safety and for the safety of society. Once it is determined that his confinement is no longer necessary for those purposes, his literal freedom will accompany his already guaranteed freedom from guilt." *Harrison*, 226 Ill. 2d at 438. Accordingly, because defense counsel failed to present evidence to support the only affirmative defense available to defendant, which, if successful, would have absolved him from criminal liability, we find that defendant was prejudiced by the lack of an insanity defense.

¶ 30 In so finding, we note that the decisions in *People v. Young*, 220 Ill. App. 3d 98 (1991), and *People v. Manns*, 373 Ill. App. 3d 232 (2007), are instructive. In *Young*, the Second District found that defense counsel was ineffective for failing to raise an insanity affirmative defense at the defendant's discharge hearing. The court noted that defense counsel called no witnesses and engaged in minimal cross-examination and argument. In addition, although the defendant had

1-11-1183

been examined by a number of experts who unanimously found that he suffered from delusional thinking and paranoia, counsel did not attempt to incorporate evidence of the defendant's mental health into the record. The court acknowledged that counsel would not have been ineffective for failing to raise an insanity defense if there had been no evidence to support the defense; however, because the argument that the defendant was insane at the time of the offense "was not so lacking in merit as to make it objectively unreasonable for defense counsel to forgo any meaningful attempt to raise it," the court found that the defendant had been denied effective assistance of counsel and remanded the matter for a new discharge hearing. *Young*, 220 Ill. App. 3d at 108-09.

¶ 31 The same conclusion was reached by the Fourth District in *Manns*. In that case, defense counsel failed to present an insanity affirmative defense even though the "accounts of [the] defendant's behavior at the time of the offense, statements he made in court, and his fitness evaluations demonstrate that he was delusional at the time of the offense and lend support to the defense he was unable to appreciate the criminality of his conduct." *Manns*, 373 Ill. App. 3d at 240. Citing *Young*, the court concluded that counsel was ineffective for failing to raise any argument or present any evidence about defendant's lack of sanity at the time of the offense because "an insanity defense in this case had merit, and it was objectively unreasonable to forego presenting the defense." *Id.* at 241. Given that an insanity defense was the only real viable defense available, the court further found that the defendant was prejudiced by counsel's failure to mount a meaningful challenge to the State's case by presenting the defense of insanity. *Id.* at 241-42.

¶ 32 As in *Young* and *Manns*, we find that the failure of defense counsel to present evidence

1-11-1183

supporting an insanity defense at defendant's discharge hearing was both unreasonable and prejudicial. Because we find defendant was denied his right to effective assistance of counsel, the results of the lower court proceedings are presumptively unreliable. Accordingly, we find it unnecessary to address his remaining claims; rather, we remand the cause for a new discharge hearing.

¶ 33

### III. CONCLUSION

¶ 34 Accordingly, we reverse the judgment of the circuit court and remand for proceedings consistent with this disposition.

¶ 35 Reversed.