

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FILED

December 11, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 141102-UB

NO. 4-14-1102

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from |
| Plaintiff-Appellee, |) | Circuit Court of |
| v. |) | Champaign County |
| NICOLE A. JACKSON, |) | No. 13CF862 |
| Defendant-Appellant. |) | |
| |) | Honorable |
| |) | Heidi N. Ladd, |
| |) | Judge Presiding. |

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant was not denied effective assistance of counsel.

¶ 2 In May 2013, the State charged defendant, Nicole A. Jackson, with attempt (first degree murder) (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012)), armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)), and aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2012)), all of which were related to her actions in May 2013. Before trial, the State dismissed the aggravated battery charge. In August 2013, defendant’s trial counsel filed a motion to suppress the statements defendant made to the police during a May 30, 2013, interview, arguing defendant’s statements were coerced and involuntary due to her mental illness and lack of understanding of her situation. After a September 2013 hearing, the Champaign County circuit court denied the motion to suppress. In May 2014, the court found defendant was unfit to stand trial and later found, in July 2014, defendant had been restored to fitness.

¶ 3 After a September 2014 trial, the jury found defendant guilty of both attempt (first degree murder) and armed robbery. Defendant filed a posttrial motion, challenging, *inter alia*, the circuit court's failure to suppress defendant's statements to police because defendant was found unfit to stand trial in May 2014 and she did not understand when she could exercise her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). At a joint October 2014 hearing, the court first denied defendant's posttrial motion and sentenced defendant to consecutive prison terms of 15 years for attempt (first degree murder) and 10 years for armed robbery. Defendant filed a motion to reconsider her sentence and a supplement, which the court denied. Defendant appeals, contending she received ineffective assistance of counsel because trial counsel failed to have her examined about her ability to understand and waive her *Miranda* rights due to her mental illness.

¶ 4 Initially, this court declined to address defendant's ineffective assistance of counsel claim, finding the claim was better suited for postconviction proceedings where a complete record could be developed. Defendant filed a petition for leave to appeal to the Illinois Supreme Court. In denying defendant's petition for leave to appeal, the Illinois Supreme Court entered a September 27, 2017, supervisory order, directing this court to (1) vacate our initial judgment; (2) reconsider whether defendant's ineffective assistance of counsel claim can be considered on direct appeal in light of *People v. Veach*, 2017 IL 120649; and (3) determine if a different result is warranted. *People v. Jackson*, No. 122083 (Sept. 27, 2017) (supervisory order). We now do so and affirm the circuit court's judgment.

¶ 5 I. BACKGROUND

¶ 6 The charges against defendant relate to a May 25, 2013, incident during which she stabbed Andrew Procell in the neck with a knife and took a laptop computer and cash. On

May 30, 2013, the police arrested defendant, and she was interviewed by Detective Mark Strzesak at 4 p.m. that day. During Detective Strzesak's interview, defendant admitted stabbing Procell.

¶ 7 In August 2013, defendant's trial counsel filed a motion to suppress defendant's statements during Detective Strzesak's interview, arguing defendant's statements were coerced and involuntary due to defendant's bipolar disorder and lack of understanding of her situation. The motion contended she did not understand if she was in custody or under arrest.

¶ 8 On September 4, 2013, the circuit court held a hearing on defendant's motion to suppress. The State presented Detective Strzesak's testimony, a copy of the *Miranda* rights form that defendant signed, and the audio recording of Detective Strzesak's interview. Defendant testified on her own behalf and presented the testimony of her mother, Carolyn Brumfield. The evidence relevant to the issue on appeal is set forth below.

¶ 9 Detective Strzesak testified his interview of defendant on May 30, 2013, was audio recorded and lasted about 42 minutes. It took place shortly after her arrest. During the interview, Detective Strzesak first explained to her what incident he was investigating and then read her *Miranda* rights from a form. Detective Strzesak did so by (1) reading each statement to defendant, (2) asking defendant if she understood what was read to her, and (3) having her place her initials next to the statement if she understood the statement. Defendant initialed each statement and signed the bottom of the form indicating she understood her rights. Detective Strzesak testified defendant did not express any confusion or need any more information about the statements. Defendant did ask if she was under arrest or in custody, and Detective Strzesak explained she was under arrest for the incident that happened on Saturday. Defendant never asked for an attorney or any family members during the interview. During the interview,

defendant seemed fairly intelligent and answered the questions that were asked. None of her answers indicated she did not understand the question asked.

¶ 10 Detective Strzesak further testified defendant's demeanor started out normal as she answered his questions. When he confronted defendant about the truthfulness of her story toward the end of the interview, defendant broke down crying and gave another account of what happened. Defendant did not appear to have a behavioral disorder or be under the influence of any drugs or alcohol. Defendant never mentioned having a behavioral disorder. Additionally, the arresting officer never suggested to Detective Strzesak that defendant had a behavioral disorder. Defendant initially denied knowing what Detective Strzesak was talking about, but by the end, she admitted to stabbing Procell because he tried to rape her.

¶ 11 Defendant testified she had been diagnosed with bipolar and paranoid schizophrenia in 2008. Since being in jail, she was taking Risperdal and Depakote for her conditions. Defendant was not taking those medications on May 30, 2013. Additionally, before her arrest, she was receiving disability payments from social security, which were sent to her mother. Her mother paid her rent and took her to appointments. Defendant testified she did not ask to speak to a lawyer during Detective Strzesak's interview because he kept saying she was in custody and did not say she was under arrest until the middle of the interview. She was confused and thought being in custody was different from being arrested. Defendant did not even hear the detective mention attempted murder until the end of the interview.

¶ 12 Brumfield testified she was the payee of defendant's social security payments and cared for defendant's son. Defendant had been diagnosed with bipolar disorder and paranoid schizophrenia. According to Brumfield, defendant only took her medication sometimes. Brumfield did not think defendant took her medications around May 30, 2013.

¶ 13 After hearing the parties' arguments, the circuit court denied defendant's motion to suppress. In reaching that conclusion, one of the things the court noted was no evidence correlated defendant's diagnosis, medication, or lack of taking medication with her ability to understand or function.

¶ 14 In March 2014, trial counsel filed a motion for the appointment of a psychiatrist to examine defendant as to her fitness to stand trial and sanity at the time of the charged offenses, which the court granted. The court appointed a psychiatrist, Dr. Lawrence Jeckel, to examine defendant's sanity as to both her fitness to stand trial and at the time of the offense. It ordered the report regarding defendant's sanity at the time of the alleged offense to only be sent to defendant's attorney, and that report is not in the record. In his April 2014 report on defendant's fitness to stand trial, Dr. Jeckel found defendant unfit. The report noted the jail records stated that, at the time of booking, defendant reported a history of bipolar disorder and having been prescribed antipsychotics at one time. The jail records also stated defendant's mental health at the time of booking was unremarkable. She did show increased frustration during her first week in jail. Defendant was first evaluated by a psychiatrist on August 18, 2013, who diagnosed defendant with bipolar disorder with psychotic features, history of drug abuse, and antisocial personality disorder. After a May 2014 hearing, the court found defendant was unfit to stand trial. In July 2014, the court found defendant had been restored to fitness based on a June 24, 2014, report from the Department of Human Services.

¶ 15 In September 2014, the circuit court held defendant's jury trial on the attempt (first degree murder) and armed robbery charges. Detective Strzesak testified at trial. The State sought to play the audio recording of his May 2013 interview of defendant, and defendant objected, raising the same claims as in the motion to suppress. The court overruled the

objection. At the conclusion of the trial, the jury found defendant guilty of both charges.

¶ 16 Defendant filed a timely motion for a new trial, contending, *inter alia*, the circuit court erred by failing to suppress defendant's statements to Detective Strzesak because defendant was found unfit to stand trial in May 2014 and she did not understand when she could exercise her *Miranda* rights. At a joint October 2014 hearing, the court first denied defendant's posttrial motion, noting the fact defendant was found unfit in April 2014 cannot be extrapolated back to show defendant's May 2013 statement was not knowing or voluntary. It then sentenced defendant to consecutive prison terms of 15 years for attempt (first degree murder) and 10 years for armed robbery.

¶ 17 Defendant filed a motion to reconsider her sentence and a supplement to her motion. After a December 19, 2014, hearing, the court denied defendant's motion to reconsider her sentence. On December 22, 2014, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Dec. 11, 2014). Thus, this court has jurisdiction of this cause under Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013).

¶ 18 II. ANALYSIS

¶ 19 Defendant asserts she did not receive effective assistance of counsel because trial counsel failed to reopen defendant's motion to suppress her statements to Detective Strzesak and request a fitness examination pertaining to her ability to waive her *Miranda* rights. The State disagrees, contending the record contains nothing establishing a *bona fide* doubt of defendant's fitness to waive her *Miranda* rights. "[W]hether defense counsel provided ineffective assistance involves a bifurcated standard of review, wherein we defer to the trial court's findings of fact unless they are against the manifest weight of the evidence, but make a *de novo* assessment of

the ultimate legal issue of whether counsel's actions support an ineffective assistance claim.”
People v. Stanley, 397 Ill. App. 3d 598, 612, 921 N.E.2d 445, 456 (2009).

¶ 20 This court analyzes ineffective assistance of counsel claims under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163 (1999). To obtain reversal under *Strickland*, a defendant must prove (1) his counsel's performance failed to meet an objective standard of competence and (2) counsel's deficient performance resulted in prejudice to the defendant. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the deficiency prong of *Strickland*, the defendant must demonstrate counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as “counsel” guaranteed by the sixth amendment (U.S. Const., amend. VI). *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. Further, the defendant must overcome the strong presumption the challenged action or inaction could have been the product of sound trial strategy. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163. To satisfy the prejudice prong, the defendant must prove a reasonable probability exists that, but for counsel's unprofessional errors, the proceeding's result would have been different. *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1163-64. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Evans*, 186 Ill. 2d at 93, 708 N.E.2d at 1164. The *Strickland* Court noted that, when a case is more easily decided on the ground of lack of sufficient prejudice rather than that counsel's representation was constitutionally deficient, the court should do so. *Strickland*, 466 U.S. at 697.

¶ 21 Defendant contends trial counsel should have reopened her motion to suppress and requested she be examined for her ability to waive her *Miranda* rights after the circuit court found her unfit for trial. However, the record does not show defendant lacked the ability to

waive her *Miranda* rights during the May 2013 interview. The circuit court found “there was nothing from the interaction that Detective Strzesak described that would in any way indicate any type of mental illness from his interactions or observations, or from what I heard on the tape.” Detective Strzesak testified defendant answered the questions that were asked of her and did not give any answers that suggested she did not understand the questions. Additionally, defendant testified she had been arrested seven times and knew the police read the rights before they even bring a person in. She further testified, “I know the rights and everything.” The circuit court found defendant’s waiver of her *Miranda* rights were “clearly the product of her free, knowing, voluntary, rational intellectual decision, and her own free choice.” Thus, the proceedings on the motion to suppress do not support defendant’s suggestion her ability to waive her *Miranda* rights was impaired by her mental illness during her interview with Detective Strzesak.

¶ 22 Dr. Jeckel’s April 2014 report finding defendant unfit also does not support defendant’s suggestion she did not have the ability to waive her *Miranda* rights at the time of Detective Strzesak’s interview. In finding defendant unfit, Dr. Jeckel noted that, since defendant “has been in jail for a significant amount of time and is facing a long prison sentence, malingering must be strongly considered.” Moreover, in his report, he noted the jail records described defendant’s mental status as “unremarkable” at the time of booking, which was near the time of Detective Strzesak’s interview. During her time in the jail, defendant occasionally complained of auditory hallucinations and had mood swings. Moreover, Dr. Jeckel’s report stated trial counsel had described defendant to have “an occasional inappropriate spacey affect and impaired communications.” When Dr. Jeckel interviewed her in April 2014, defendant either mumbled or stared off into space, not answering his questions. None of defendant’s

