2012 IL App (1st) 112214-U

FIRST DIVISION
FILED: June 18, 2012

No. 1-11-2214

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTHONY WILLIAMS, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 07 CR 14295 Honorable Timothy Chambers, Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying the defendant's motion to suppress his inculpatory statement, and the defendant established plain error based on the trial court's failure to conduct an inquiry as to whether he knowingly and intelligently waived the right to assert insanity as an affirmative defense. The defendant's convictions are vacated, and the cause is remanded for further proceedings.

¶ 2 Following a bench trial, the defendant, Anthony Williams, was convicted of one count each of attempt criminal sexual assault (720 ILCS 5/8-4(a), 12-13(a) (West 2006)), aggravated battery in a public place (720 ILCS 5/12-4(b)(8) (West 2006)), and unlawful restraint (720 ILCS 5/10-3(a)

(West 2006)). The trial court sentenced the defendant to serve three years' felony probation and ordered him to register as a sex offender for life. On appeal, the defendant argues that trial court erred in (1) denying the motion to suppress his inculpatory statement on the ground that his mental illness interfered with his ability to understand and waive his constitutional rights in accordance with *Miranda v. Arizona*, 384 U.S. 436 (1966), and (2) failing to conduct an inquiry as to whether he had knowingly and intelligently waived the right to assert a viable insanity defense. For the reasons that follow, we vacate the defendant's convictions and remand the cause for further proceedings.

¶ 3 The defendant was charged with the attempted criminal sexual assault, aggravated battery, and unlawful restraint of A. D. on June 6, 2007. Prior to trial, the defendant filed a motion to suppress his written inculpatory statement on the ground that he was legally insane at the time the statement was given. In particular, the defendant's motion asserted that he suffered from schizophrenia and was "actively psychotic and suffering delusions" and that his condition made it impossible for him to knowingly and intelligently waive his *Miranda* rights.

¶ 4 At the hearing on his motion to suppress, the defendant called Dr. Monica Argumedo, a Board-certified forensic psychiatrist, as an expert witness. Dr. Argumedo testified that she examined the defendant on November 10, 2009, and found that he was legally insane at the time of the offense and that he was unable to understand his *Miranda* rights at the time of his arrest. Dr. Argumedo's opinion was premised, in part, on the fact that the defendant previously had been diagnosed with schizophrenia, which is progressive in nature, and that, based on her examination, she agreed with that diagnosis. She also stated her belief that, at the time of the offense, the defendant was suffering from mental illness and exhibited symptoms of schizophrenia, though it was undiagnosed and

untreated. Dr. Argumedo further testified that she did not believe that someone who is insane has the capacity to understand the *Miranda* warnings. She explained that, in formulating her opinion, she relied on her interview with the defendant and other relevant documents and records, including the summary of the defendant's statement on the date of the offense; a police report dated October 8, 2009; the defendant's psychiatric treatment records; three social work reports prepared in August 2007, November 2009 and September 2010; as well as the examination reports and opinions of Dr. Fidel Echevarria, Dr. Mark Amdur, and Dr. Andrew Kulik.

¶ 5 Dr. Argumedo noted that the defendant had been referred for a psychological examination several times between June 2007 and September 2010. Dr. Echevarria examined the defendant on three different occasions between October 19, 2007 and January 2008. On each of these occasions, Dr. Echevarria found that the defendant was fit to stand trial with medication, but he had no opinion regarding the defendant's sanity at the time of the offense or his ability to understand his *Miranda* rights at the time of his arrest. Dr. Kulik subsequently examined the defendant on March 17, 2008, and found that, although the defendant suffered from an unspecific psychotic disorder, he was sane at the time of the offense and was able to understand his *Miranda* rights at the time of his arrest. Finally, Dr. Amdur found that the defendant was insane at the time of the offense, but he did not render any opinion as to the defendant's ability to understand or waive his *Miranda* rights.

¶ 6 Dr. Argumedo described her interview with the defendant, who told her that, after completing the honors program at Brother Rice High School, he attended Northwestern University and earned a degree in computer engineering in 2006. According to Dr. Argumedo, the defendant stated that he started to have difficulty concentrating, and his grades began to decline in his third year of

college. The defendant's mother also reported that he began to exhibit depressive symptoms and cognitive difficulties during this period and that he had been fired by six different employers in the year following his graduation from college. The defendant told Dr. Argumedo that, at one job, he carried his computer around with him because he thought his co-workers were trying to sabotage him. In addition, he left work for several hours in the middle of the day to perform odd, personal tasks. He also stated that he thought members of the general public had the power to insert and remove thoughts from his brain.

¶ 7 Dr. Argumedo further stated that the defendant described several incidents in which he engaged in behavior that she considered to be "bizarre." For example, the defendant reported that he jumped into Lake Michigan in the middle of the night during March 2007 after watching a movie because he believed he would have supernatural powers when he left the water. The defendant also told Dr. Argumedo that, in May 2007, he decided to move to Los Angeles after he had a dream about Angelina Jolie and Ashley Tisdale. The defendant reported that he boarded an airplane to Los Angeles without any plans as to where he was going to stay or how he would support himself. He took a bus to Santa Barbara, but realized that he had lost his wallet after sleeping outside in a field. He reported to Dr. Argumedo that he decided to walk to San Francisco along the shoulder of a highway and was picked up by police officers, who took him to a shelter. He then telephoned his parents, who sent him money to fly home to Chicago. The defendant's mother reported that, just prior to the trip to California, the defendant drove his father's car to Wisconsin and was found sleeping at a Ford dealership by Wisconsin police officers. He was then found by police in Iowa, and his parents brought him back to Chicago. In concluding that the defendant was suffering from

schizophrenia at the time of the offense, Dr. Argumedo considered the fact that his bizarre behaviors could be consistent with the symptoms of a person suffering from that mental illness. In addition, she considered the fact that the defendant's sister had been diagnosed with schizophrenia, which has a genetic basis, and that family history indicated that there was a good chance that the disease could occur in other family members.

¶ 8 Dr. Argumedo conceded that the defendant was able to relate to the police in June 2007 and that he said he understood the *Miranda* warnings when they were read to him. Yet, she stated that he tends to minimize his symptoms and might have said that he understood, "even if a lot of other things were happening in his mind that could prevent him from understanding." She acknowledged that Dr. Kulik, upon whose reports she relied in part, examined the defendant and concluded that he was fit to stand trial with medication and also understood the *Miranda* warnings given to him on the day of the offense. Dr. Argumedo explained that she believed her conclusions concerning the defendant's mental condition differed from that of Dr. Kulik because she had more information than Dr. Kulik had.

¶ 9 In discussing her analysis of the defendant, Dr. Argumedo conceded that she did not meet with anyone who was present at the time of the offense and she did not speak with the police officer or the prosecutor who interviewed him and advised him of his *Miranda* rights, nor did she speak directly with the defendant's mother. In addition, she acknowledged that the defendant's grades could have dropped because his course work at Northwestern was getting progressively more difficult, and the fact that the defendant had been able to interview for and obtain multiple jobs indicated that he had been able to communicate with and understand his employers. Dr. Argumedo

also conceded that the incident in which the defendant jumped into Lake Michigan had been reported by him alone and was not corroborated, and the fact that he dreamed of celebrities was not a symptom of schizophrenia or evidence of an inability to understand *Miranda* warnings. Dr. Argumedo acknowledged that her opinion was predicated on the fact that the defendant was suffering from schizophrenia at the time he gave his statement and that her opinion could change if he had been suffering from a psychotic disorder that did not affect him globally.

¶ 10 The State called Detective Mark Dobrowolski of the Evanston police department, who testified that he was at the scene when the defendant was arrested and also spoke to the defendant later at the police station. Detective Dobrowolski stated that, prior to the interview at the station, he advised the defendant of his *Miranda* rights by reading each right as printed on a form, asking the defendant whether he understood it, and then having the defendant initial the form next to each paragraph. Detective Dobrowolski testified that he asked the defendant a series of questions, and the defendant gave appropriate responses to those questions. In addition, the defendant told Detective Dobrowolski that he was not under the influence of drugs or alcohol and that he was not under a doctor's care or taking any medication. The defendant signed the form, indicating that he understood his *Miranda* rights, and then agreed to speak with Detective Dobrowolski.

¶ 11 According to Detective Dobrowolski, the defendant stated that he lived in the area and had graduated from Northwestern University with a degree in engineering. He stated that he had seen "a pretty female on Noyes [Avenue] and wanted to meet her and took it too far and that he was grounded in reality." When asked what he meant by the phrase "grounded in reality," the defendant responded that "he had knocked her to the ground and attempted to pull her pants down." According

to Detective Dobrowolski, the defendant also said that he "was aroused during the incident, [but] he did not have an erection."

¶ 12 Assistant State's Attorney (ASA) Sharon Kanter testified that she was working on felony review on June 7, 2007, the day following the defendant's arrest. ASA Kanter stated that she spoke with A. D. and Thomas Fischl, who witnessed the incident, prior to speaking with the defendant at the Evanston police station. Detective Dobrowolski, Detective Jason Kohl, and ASA Tom McGuire were present when she interviewed the defendant. After identifying herself as a prosecutor and advising the defendant of his *Miranda* rights, she asked him whether he wanted to speak to her. The defendant read his *Miranda* rights out loud from a printed form, explained to her what each right meant, initialed the form next to the statement of each right, and signed the bottom of the document. According to ASA Kanter, the defendant did not seem to be confused or disoriented, and he appeared to understand his *Miranda* rights and why he was at the police station. He then gave a verbal statement and agreed to have a summary of that statement memorialized in writing. When the written summary was complete, she and the defendant read through each line to ensure that it was correct. The defendant made some corrections, and she made others. ASA Kanter testified that each revision was initialed by herself, the defendant, Detective Dobrowolski, Detective Kohl, and ASA McGuire, and that all of them signed the bottom of the statement.

¶ 13 The trial court found that the defendant was able to understand and knowingly waive his *Miranda* rights. In reaching this conclusion, the court noted that the opinions rendered by Drs. Argumedo, Kulik, and Echevarria were conflicting. Dr. Argumedo found that the defendant was legally insane at the time of the offense and that he could not understand and waive his Miranda

rights; Dr. Kulik found the exact opposite; and Dr. Echevarria was unable to reach any conclusion with regard to these questions. In addition, the court observed that Dr. Argumedo's opinion was premised upon certain factors that are "somewhat nebulous," including that the defendant likely was suffering from schizophrenia at the time he gave his statement and had not received any treatment for that degenerative mental illness.

¶ 14 The court also pointed out that Dr. Argumedo believed, but could not say with certainty, that these factors existed, and she acknowledged that her opinion could change if they did not exist. Moreover, the court noted that Dr. Argumedo was attempting to make findings about the defendant's mental illness as it existed more than two years before she conducted her examination. The court further observed that Detective Dobrowolski and ASA Kanter personally interacted with the defendant at the time of his statement and testified that his conduct and responses to questions were consistent with being able to understand *Miranda*. Although the trial judge stated that he was "certain that [the defendant] was suffering from mental illness," the court did not know the extent of that illness and was not persuaded by Dr. Argumedo's opinion. Consequently, the trial court denied the motion to suppress the defendant's inculpatory statement.

¶ 15 On February 4, 2011, Susan Messina, a clinical psychologist, evaluated the defendant and found that he was fit to stand trial and was legally sane at the time of the offense. Immediately before the trial commenced, the following colloquy took place between defense counsel and the trial judge:

> "[DEFENSE COUNSEL]: [M]y client *** gets to make the choice as to what defense he employs. He has instructed me as his counsel that I am not to proceed or

file the affirmative defense of insanity. Despite my advice, we are moving forward obviously because he gets to make that choice.

THE COURT: He does.

[DEFENSE COUNSEL]: My review of the law indicates that I don't get to step in and make the choice for him.

THE COURT: There are several that are his and his alone. One is a jury trial. One is whether or not he wishes to testify, and another one is whether or not he wishes to make certain affirmative defenses. That being the case, we will accept your client's wishes. Thank you for informing us of that."

¶ 16 At trial, the State called A. D., the victim, and Thomas Fischl, an eyewitness, as well as Officer Nathaniel Basner and ASA Kanter. These witnesses testified to the following facts.

¶ 17 At approximately 6:40 p.m. on June 6, 2007, A. D. was going to work at the Noyes Cultural Arts Center near the campus of Northwestern University in Evanston, Illinois. After parking, she walked around her car to retrieve certain items from the passenger seat. As she was doing so, the defendant walked up and stood very close to her. She observed that he had a "blank expression" on his face and appeared to be "zoned out." Though A. D. did not feel threatened, she thought the defendant might have some "mental problems," and she told him to "go away." The defendant initially backed up but returned within a few seconds and stood very close to her. A. D. was alarmed by the fact that he came back a second time, and she again told him to leave her alone. She thought he had walked away, but then realized that he was still standing near her. When the defendant approached her the third time, A. D. felt threatened, and she emphatically told him to go away and

"leave [her] the f***k alone" or she would "call someone." Thereafter, the defendant walked away, and A. D. saw him try to open the door of a moving vehicle as it passed in front of him.

¶ 18 Because she was concerned about this "irregular behavior," A. D. called 911 and reported that the defendant was "a little disoriented." The 911 operator told her to stay on the phone while the police were dispatched. A. D. then heard footsteps behind her and turned to see the defendant running toward her, and he continued to chase her as she ran across the street. A. D. saw Thomas Fischl, who was walking his dog, and she screamed for help. The defendant caught up to her, and Fischl tried to get between them to stop the altercation, but the defendant tackled A. D. from behind by grabbing her around the waist, and pushed her down into some bushes. A. D. was lying on her stomach facing the ground, and the defendant was kneeling on top of her and straddling her between his legs. He then began grabbing at her pants and appeared to be trying to pull them down. Though A. D. struggled to get away, she was unable to do so because the defendant was on top of her. Fischl then pulled the defendant off of her and held him down on the ground for a few seconds until the police arrived. A. D. was on the phone with the 911 operator during the chase and physical altercation, and the defendant never said anything to her during the entire incident.

¶ 19 The trial testimony of ASA Kanter was substantially similar to that given at the hearing on the motion to suppress. She reiterated that she advised the defendant of his *Miranda* rights and that his verbal acknowledgments and demeanor indicated that he understood those rights and voluntarily agreed to waive them prior to making the inculpatory statement. ASA Kanter also published the substance of the written summary of the defendant's statement, which provided, in relevant part, as follows:

"On June 6, 2007[,] during the day, [the defendant] was trying *** to relive his college days and hung out around campus near students. ***

[He] saw a lady with dark hair and hazel eyes getting stuff out of her car. [The defendant] thought she was pretty and wanted to get to know her. [He] never saw the lady before . [The defendant] walked up to her and got real close. [He] didn't say anything to her but still wanted to get to know her. The lady told [him] to go away and [he] walked away from her to the sidewalk.

[The defendant] then walked back up to the lady because he wanted to get to know her some more. The lady turned to face [him] after [he] touched her on the shoulder. The lady told [him] to go away again and [he] listened to her and walked away.

[The defendant] saw the lady again when she was across the street. [He] walked across the street to try to talk to her one more time so they maybe could go out. At that time the lady took it the wrong way. The lady got scared and was walking away from [him] real fast. The lady told [him] to get the f**k away from her, but [he] came at her too quick. [The defendant] was excited by this lady and by excited [he] means sexually, but [he] never meant to hurt her. [He] saw a white guy and a dog near the lady and [the defendant] followed the lady, the lady was on her cell phone the whole time. [The defendant] was trying to catch up with her. [He] caught up to the lady and grabbed her on her waist and the lady fell into the bushes on her right side.

> [The defendant] did not let go of her when she went into the bushes, and [he] got on top of her with his whole body. [The defendant] was excited to be touching her. [He] was aroused which means he was attractively and sexually excited. [The defendant] want[ed] to be friendly first then sexually.
>
> When [he] was on top of the lady when she was in the bushes, she was wiggling around and had her hands on [his] hands. At that time the white guy with the dog pulled [him] off the lady[,] and the police came and took [him] to the station."

¶ 20 The defendant testified that he was living with his parents and sister and was receiving medication and treatment by a doctor for a mental illness, but stated that he had not been told the name of the illness and denied that he was being treated for any mental illness during June 2007. At that time, he was living in an apartment on the north side of Evanston and had been fired from his engineering job. In describing the incident involving A. D., the defendant testified that he saw her getting out of her car on the evening of June 6, 2007, and wanted to approach her "to get her name or see what she was about." The defendant stated that he saw A. D. crossing the street, and he followed her. She was walking quickly, and he finally caught up to her and put his hands around her waist "[j]ust to see what she would do, how she would react." According to the defendant, he touched A. D.'s waist in an "attempt to communicate with her" and as "an act of friendship." The defendant denied that he fell to the ground or into bushes with A. D., and he stated that the testimony describing such a scenario was false.

¶ 21 The defendant acknowledged telling ASA Kanter that he thought A. D. was pretty and that

he had approached her and briefly touched her around the waist, but he testified that he "then went about [his] business" and "was heading back to [his] apartment." He also stated that Fischl just decided to grab him and drag him to the ground and that A. D. was standing 10 feet away from him when this occurred. The defendant denied making the remainder of the statements in the written summary that was read by ASA Kanter during her testimony. In addition, he denied that he was mentally ill, but admitted that he takes medication on the suggestion of his doctors.

¶ 22 The trial court found the defendant guilty of attempted criminal sexual assault, aggravated battery on a public way, and unlawful restraint of A. D. The defendant's post-trial motion was denied, and the trial court sentenced him to serve a term of three years' felony probation and also ordered him to register as a sex offender for life. This appeal followed.

¶ 23 We initially address the defendant's claim that the trial court erred in denying the motion to suppress his inculpatory statement because his mental illness precluded him from adequately understanding and voluntarily waiving his *Miranda* rights. We cannot agree.

¶ 24 In reviewing a ruling on a motion to suppress, we employ a two-part standard of review. *People v. Cosby*, 231 Ill. 2d 262, 271, 898 N.E.2d 603 (2008). The trial court's factual findings are accorded great deference and will be reversed only if they are against the manifest weight of the evidence. *Cosby*, 231 Ill. 2d at 271. Yet, a reviewing court "remains free to undertake its own assessment of the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted." *Cosby*, 231 Ill. 2d at 271. Consequently, the court's ultimate decision to grant or deny the motion is subject to *de novo* review. *Cosby*, 231 Ill.2d at 271.

¶ 25 Where a defendant challenges the admissibility of an inculpatory statement, the State has the

burden of proving that the confession was voluntary by a preponderance of the evidence. 725 ILCS 5/114–11(d) (West 2008); *In re G.O.*, 191 Ill .2d 37, 49, 727 N.E.2d 1003 (2000). The concept of voluntariness includes proof that the defendant made a knowing and intelligent waiver of his privilege against self-incrimination and his right to counsel. *People v. Braggs*, 209 Ill. 2d 492, 505, 810 N.E.2d 472 (2003). In determining whether a statement or waiver of rights was voluntary, courts consider the totality of the circumstances surrounding the defendant's statement. *In re G.O.*, 191 Ill. 2d at 54. Among the factors to be considered are the defendant's age, education, intelligence, and physical condition at the time of the interrogation, whether he was advised of his constitutional rights, and whether he was subjected to any physical or mental coercion. *In re G.O.*, 191 Ill. 2d at 54.

¶ 26 Here, Detective Dobrowolski and ASA Kanter testified that, after being advised of his *Miranda* rights, the defendant stated verbally and in writing that he understood and waived those rights. In addition, Detective Dobrowolski and ASA Kanter were the only witnesses who personally interacted with the defendant at the time of his statement, and they testified that his conduct and responses to questions were appropriate. ASA Kanter also specifically stated that the defendant did not appear to be confused or disoriented. Although Dr. Argumedo testified that she believed the defendant was insane at the time of the offense and, therefore, could not understand or waive his *Miranda* rights, she also admitted that her opinion could change if the defendant were suffering from an unspecified psychotic disorder, as found by Dr. Kulik, and that certain of the behaviors that formed the basis of her opinion could be explained by circumstances other than the insanity of the defendant. Upon careful consideration of all of the evidence presented at the hearing, the trial court

determined that the opinion of Dr. Argumedo was not persuasive.

¶ 27 Based on our review of the record, we cannot say that the trial court's assessment of either the credibility of the witnesses or the weight to be accorded their testimony is against the manifest weight of the evidence. In addition, we find that admission of the defendant's inculpatory statement was proper where the trial court's conclusion that the defendant understood and voluntarily waived his *Miranda* rights is not erroneous as a matter of law.

¶ 28 We next consider the defendant's argument that the trial court erred in failing to conduct an inquiry as to whether he knowingly and intelligently waived his right to assert an insanity defense. The defendant acknowledges that he has forfeited this issue by failing to make a timely objection at trial and raise the issue in his post-trial motion. See *People v. Wheeler*, 226 Ill. 2d 92, 122, 871 N.E.2d 728 (2007). Despite this forfeiture, the defendant urges us to consider this issue under the plain-error rule, which permits review where the trial evidence was closely balanced or when the error is "so substantial that it affected the fundamental fairness of the proceeding, and remedying the error is necessary to preserve the integrity of the judicial process." *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403 (2007); Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). Under the second prong of the plain-error doctrine, " '[t]he court may * * * take notice of errors appearing upon the record which deprived the accused of substantial means of enjoying a fair and impartial trial, although no exceptions were preserved * * *.' " *People v. Pickett*, 54 Ill. 2d 280, 283, 296 N.E.2d 856 (1973) (quoting *People v. Burson*, 11 Ill.2d 360, 370, 143 N.E.2d 239 (1957)). In such a circumstance, prejudice to the defendant is presumed based on the importance of the right involved. See *People v. Herron*, 215 Ill.2d 167, 187, 830 N.E.2d 467 (2005).

¶ 29 A fundamental principle of criminal law is that responsibility for a criminal act cannot be charged to one who, by reason of mental disease or defect, is unable to control his conduct. *People v. Gettings*, 175 Ill. App. 3d 920, 924, 530 N.E.2d 647 (1988) (citing *Whalem v. United States*, 346 F.2d 812 (1965). As a result, " 'a defendant who chooses to forego an insanity defense relinquishes important safeguards intended to protect persons who are not legally responsible for their acts from punishment.' " *Gettings*, 175 Ill. App. 3d at 924 (quoting *Frendak v. United States*, 408 A.2d 364, 378 (App. D.C. 1979)). Considering the serious consequences of a decision to reject a viable defense of insanity against the advice of counsel, the issue raised here presents a question as to whether the defendant was deprived "of substantial means of enjoying a fair and impartial trial." See *Burson*, 11 Ill.2d 3at 370. As such, we conclude it involves a right that is "so substantial that it affected the fundamental fairness of the proceeding" and threatened the integrity and reputation of the judicial process. Accordingly, it is subject to plain-error analysis. See *Piatkowski*, 225 Ill. 2d at 565; *Herron*, 215 Ill.2d at 187.

¶ 30 This court has held that when a trial court is advised by defense counsel that a competent defendant has decided to waive a viable insanity defense, over defense counsel's objection, the court must conduct an inquiry to ascertain whether the waiver is voluntary and intelligent before it is accepted. *People v. Gettings*, 175 Ill. App. 3d 920, 923-24, 530 N.E.2d 647 (1988) (citing *Frendak v. United States*, 408 A.2d 364, 380 (App. D.C. 1979)); see also *People v. Taylor*, 409 Ill. App. 3d 881, 899-900, 949 N.E.2d 124 (2011). In order to make such a determination, the trial court must discuss with the defendant whether he or she has been advised of the availability of the defense, what reason the defendant has for waiving the defense, whether the defendant understands the

consequences of waiving an insanity defense, and whether the defendant understands the consequences of a successful insanity defense. *Gettings*, 175 Ill. App. 3d at 925; *Taylo*r, 409 Ill. App. 3d at 899-900.

¶ 31 In this case, the trial court was presented with a substantial amount of evidence indicating that the defendant was mentally ill and suffering from schizophrenia, and defense counsel informed the court that the defendant had elected not to assert insanity as a defense, against counsel's advice. Though defense counsel stated that this decision was contrary to his advice, there is nothing in the record affirmatively establishing that the defendant had been advised of the availability of the defense, that he understood the consequences of a successful insanity defense and the waiver of such a defense, or his reasons for choosing to waive the defense. Thus, the record is devoid of any facts that would assure the court that the defendant had knowingly and intelligently waived the insanity defense.

¶ 32 In asserting that the trial court's failure to conduct an inquiry did not result in any prejudice, the State relies on the fact that the defendant's competency to stand trial was not disputed. Thus, the State equates a finding of competency to stand trial with a presumption that the defendant knowingly and intelligently waived the insanity defense. This argument entirely misses the point of requiring the trial court to conduct an inquiry with regard to the defendant's decision to forego the defense. As set forth in *Frendak*, a finding of competency to stand trial is not, in itself, sufficient to show that the defendant is capable of rejecting an insanity defense. *Frendak*, 408 A.2d at 367. Such a determination indicates only that a defendant is able to understand the nature and purpose of the proceedings against him or to assist in his defense. 725 ILCS 5/104–10 (West 2008); *People v.*

Eddmonds, 143 Ill. 2d 501, 512, 578 N.E.2d 952 (1991). A person may be fit for trial although his mind may be otherwise unsound. *People v. Coleman*, 168 Ill. 2d 509, 524, 660 N.E.2d 919 (1995). The competency standard "is not intended to measure whether the defendant is also capable of making intelligent decisions on important matters relating to the defense." *Frendak*, 408 A.2d at 379. Although a defendant may be competent to stand trial, he may be unable to fully understand and engage in the complex process of deciding whether to assert the affirmative defense of insanity. Consequently, we reject the State's argument that the failure to conduct an inquiry necessarily was harmless merely because the defendant had been found to be fit to stand trial.

¶ 33 For the foregoing reasons, we vacate the defendant's convictions and remand this case to the trial court for an inquiry as to whether his waiver of the insanity defense was knowing and intelligent, in accordance with the principles articulated in *Gettings, Taylor, and Frendak.* If the court finds that the defendant did not knowingly and intelligently waive his right to assert a viable insanity defense, the court shall conduct a new trial. See *Gettings*, 175 Ill. App. 3d at 925. However, if the court determines that the defendant knowingly and intelligently waived his right to assert insanity as an affirmative defense, the court shall reenter the judgments of conviction for attempted criminal sexual assault, aggravated battery, and unlawful restraint and impose sentence for those offenses. See *Gettings*, 175 Ill. App. 3d at 925.

¶ 34 Vacated and remanded with directions.