

No. 1-09-3341

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 05 CR 4697
	)	
GLENN SIMS,	)	
	)	Honorable
Defendant-Appellant.	)	Timothy Joseph Joyce,
	)	Judge Presiding.
	)	

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

HELD: Circuit court's finding that defendant was guilty but mentally ill was not against the manifest weight of the evidence. Defendant failed to prove by clear and convincing evidence that he was insane at the time of the murder where the State's expert reviewed defendant's medical records prior to the murder, the police reports and statements defendant gave immediately after the murder, and the medical records from two facilities where defendant received treatment shortly after the murder in reaching his conclusion that defendant was sane. Moreover, the lay testimony and the expert's interviews with defendant supported this conclusion. Defendant's mittimus is corrected to reflect that he is entitled to 1,728 days of presentence custody credit.

Following a bench trial, the circuit court found defendant, Glenn Sims, guilty of first

degree murder but mentally ill. Sims was sentenced to 20 years in prison. On appeal, Sims contends that the circuit court erred in lending more weight to the State's expert in making its finding that Sims was sane at the time of the murder, where the State's expert relied on post-arrest statements and lay observations while the defense expert relied on Sims' history of mental illness. Sims also asks this court to correct the mittimus to reflect a credit against his sentence of 1728 days for time served in presentence custody. For the reasons that follow, we affirm the judgment of the circuit court and amend the mittimus.

BACKGROUND

Sims was charged with two counts of first degree murder for stabbing and killing Sarah McConnell on February 2, 2005. Following a bench trial, Sims was found guilty of first degree murder but mentally ill and sentenced to 20 years' imprisonment.

Evidence adduced at trial established that McConnell was living in a rooming house at 10556 South Torrence Avenue in Chicago, Illinois, with Andre Hooks. Their living quarters consisted of a living room and a bedroom that were separated by a curtain. The record contains conflicting evidence regarding the time Sims initially came to the residence, ranging from 9 p.m. on February 1, 2005, to 10 or 11 hours prior to the murder, to several days prior to the murder when Sims met McConnell at an Al-Anon meeting and stayed with her for a few days. Sims allegedly received a Social Security check on February 1 which he used to buy groceries that he put in the refrigerator of the residence, and also to buy alcohol and cocaine which he allegedly consumed at various times throughout the day. Sims also allegedly gave McConnell some money for letting him stay at her place.

Hooks testified that he had never seen Sims before he came to the residence with McConnell, but that McConnell and Sims were talking as if they had known each other for years. Hooks stated that Sims' demeanor was normal on February 1, and Sims and McConnell were talking about going to the show and to dinner. Hooks went to the bedroom and closed the curtain so he could go to sleep. Just as he was about to fall asleep, he heard what sounded like McConnell gagging. He went into the other room and saw Sims standing over McConnell holding a kitchen knife that belonged to Hooks. He saw blood shooting out of McConnell's neck. Hooks started struggling with Sims to get the knife away from him. He kept asking Sims what he was doing but Sims did not answer. A friend, Pierre Robinson, came into the residence and helped Hooks get the knife away from Sims. The police were called and Robinson and Hooks held Sims in the hallway until the police arrived.

Officer Steve Flores and his partner arrived at the residence at 3:30 a.m. on February 2, 2005. Flores went up the stairs to the second floor and saw two men struggling to hold down a third man in the doorway of a unit. Flores identified Sims as the man who was being held down and said that the other two men were shouting that Sims had stabbed the victim. Flores placed handcuffs on Sims. Another officer read Sims his *Miranda* rights in the hallway. Flores testified that Sims said, "Yes, I did it. I did it." Flores entered the unit and saw McConnell laying on the mattress, her face, neck and upper torso completely covered in blood. He called for an ambulance, but did not notice any signs of life. Flores stepped back into the hallway and heard Sims tell another officer that he and McConnell were smoking crack cocaine and McConnell started calling him names. Sims said that he got angry and stabbed her.

Sims was transported to police headquarters. Detective Patrick Madden spoke with Sims around 4 a.m. on February 2, 2005. Madden advised Sims of his *Miranda* rights. Sims said that he understood the rights. Madden said that Sims' demeanor was normal and calm and that he did not answer any questions at that time. Madden spoke with Sims again around 5:30 a.m. Detective McGrath was present for the second conversation. McGrath again read Sims his *Miranda* rights and Sims indicated that he understood. Sims told the detectives that he was an alcoholic and that he had been at an Al-Anon meeting earlier that day. He also told them that he had used crack cocaine. Madden testified that Sims did not appear to be under the influence of alcohol or narcotics and that he was calm and very lucid.

A third conversation took place around 8:30 a.m. with Madden, McGrath and Assistant State's Attorneys Faermark and Unruh. Faermark advised Sims of his *Miranda* rights and Sims said he understood. Sims told them that he met McConnell at an Al-Anon meeting. He said that he felt used because he had spent money on rent and had put food in the refrigerator. He said that he and McConnell were sleeping in the bedroom and that he got a kitchen knife and stabbed her in the neck because she reminded him of his father's wife, who broke up that marriage. Sims said that when he had money, everybody partied, and that he was using cocaine at the time. After about 20 minutes, Sims told them he wanted to go to sleep and he was allowed to do so. Faermark testified that Sims' demeanor was calm and cooperative. Faermark further testified that Sims did not mention anything about psychotropic medication.

Sims was taken to South Shore Hospital around 1 p.m. on February 2, 2005 after he complained of rib pain. The medical records from South Shore indicate that Sims was oriented

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to time and place, he was alert with normal mood and affect, and his vital signs were stable.

There were no mental status abnormalities noted in the hospital records. Sims was discharged at 3:15 p.m. back into police custody. Assistant State's Attorney Popielewski attempted to interview Sims again at 10:30 p.m. on February 2, but he told her he did not want to talk to her without being represented by a lawyer.

On February 3, 2005, Sims was taken to Cook County Jail, where Cermak Health Services conducted a medical intake procedure that included an evaluation of Sims' mental status at that time. The Cermak medical records indicate that Sims was acting appropriately and that no mental status abnormalities were found. He was cleared for housing in the general population. On February 17, 2005, Sims complained of hearing voices from the television set. Sims was transferred to the residential treatment unit at the jail and began receiving both a mood stabilizer and an antipsychotic medication.

Prior to trial, the circuit court ordered a number of psychiatric evaluations of Sims to be conducted by Cook County Forensic Clinical Services (FCS). The evaluations were ordered to determine whether Sims was fit to stand trial, whether he was sane at the time of the offense, and whether he was capable of understanding his *Miranda* rights. Dr. Peter Lourgos interviewed Sims on August 9, 2005, and determined that he was fit to stand trial, as long as he continued to take his medications. Dr. Lourgos interviewed Sims on January 20, 2006, and again on March 20, 2006, and was unable to make a determination from either interview whether Sims was sane at the time of the offense or whether he could understand and waive his *Miranda* rights. Dr. Lourgos explained that Sims' account of his thoughts and behaviors at the time of the offense

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were vague and contradictory, and the records from Cermak where Sims was treated shortly after the offense revealed conflicting data as to his mental state.

Dr. Nishad Nadkarni interviewed Sims on May 22, 2006, and again on September 18, 2007. After the first interview, Dr. Nadkarni indicated that he was unable to form an opinion as to Sims' sanity at the time of the offense because the data, including Sims' own disclosures, presented a vague and often contradictory picture of Sims' mental state at that time. After the second interview, Dr. Nadkarni concluded that Sims was legally sane at the time of the offense and was not suffering from any mental disease or defect that would have substantially impaired his capacity to appreciate the criminality of the offense. On November 6, 2007, Sims was interviewed by Dr. Andrew Segovia Kulik, who also concluded that Sims was sane at the time of the offense. Dr. Kulik noted that although Sims had a history of mental illness, there was no evidence from his review that suggested any prominent mental illness would have precluded Sims from being able to appreciate the criminality of his behavior at the time of the offense.

Dr. James Corcoran, retained by the defense, interviewed Sims on March 10, 2008. Dr. Corcoran concluded that Sims was suffering from a mental disease at the time of the offense and lacked substantial capacity to appreciate the criminality of his conduct. This conclusion was based on Sims' history of psychiatric illness and his description of his thought processes at the time of the offense. Dr. Corcoran explained that Sims was not taking his medication and his description of his thinking at the time was consistent with a person suffering from a chronic psychotic disorder. Dr. Corcoran interviewed Sims again on November 5, 2008, and concluded that Sims was unable to understand his *Miranda* rights at the time of his arrest.

Sims filed a motion to suppress his statements on the grounds that he was unable to appreciate and understand the full meaning of his *Miranda* rights. The circuit court ordered an additional evaluation of Sims for his ability to understand the *Miranda* warnings. On February 19, 2009, Dr. Nadkarni interviewed Sims for a third time and concluded that Sims would have been capable of understanding his *Miranda* rights at the time of his arrest. At the hearing on the motion to suppress, both Dr. Corcoran and Dr. Nadkarni testified.

Dr. Corcoran stated that in preparation for his interview with Sims, he reviewed police reports related to the offense, reports of evaluations performed by FCS, medical records from South Shore Hospital and numerous records from prior hospitalizations. Dr. Corcoran did not review the intake records from Cermak Health Services. Sims told Dr. Corcoran that he had been hospitalized for psychiatric reasons around 50 times. The hospital records included a number of different psychiatric diagnoses, including schizoaffective disorder, cocaine dependence and schizophrenia. Dr. Corcoran asked Sims about the *Miranda* warnings and Sims told him that he did not remember anyone saying those things to him.

Sims told Dr. Corcoran that he thought he was going to the gas chamber the night of his arrest and that he thought John Burge was involved somehow and was going to torture him and he would die that night. Sims mentioned his father, who previously worked as a deputy chief for the police department. Sims said he did not remember telling the police that he did not want to talk to them. He told Dr. Corcoran that he had not taken his medications for more than a month before the offense. Dr. Corcoran said that he based his opinion that Sims was not under control with his mental health on Sims' statement regarding the paranoia that he was going to be killed.

Dr. Corcoran stated that in his opinion, Sims may have had the intellectual capacity to understand and waive his *Miranda* rights but he did not have the cognitive ability at the time to organize his thinking well enough to make that decision. Dr. Corcoran acknowledged that in his first interview, Sims did not mention Burge or that he thought he was going to be killed that night. Dr. Corcoran interpreted the statement to the assistant state's attorney about not wanting to talk without counsel present as irritability caused by a withdrawal from street drugs and alcohol. He did not know when Sims last used drugs or alcohol prior to being taken into custody, and acknowledged that the records from South Shore Hospital did not indicate any withdrawal symptoms.

Dr. Nadkarni stated that in preparation for his first interview with Sims, he reviewed extensive medical records from outside hospitals, the records from both South Shore Hospital and Cermak Health Services, and other documentation relating to Sims' arrest. He noted that during the intake process and at South Shore, no abnormalities in mental status were observed and that it was not until February 17 that Sims complained of hearing voices. He testified that it was unclear from his review of Sims' medical history whether he presented with a primary psychotic illness or with drug abuse, as well as with some definite component of manipulation and antisocial personality traits. It was noted in the records for one of his hospitalizations that Sims presented himself to the hospital because he had no place to stay and was looking for a bed.

Dr. Nadkarni testified that he wanted to interview Sims a second time because he wanted to get more information to review and he also wanted to see if Sims' version of the events was consistent. He noted that in many areas, the version Sims recounted to him was inconsistent with

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what he told Dr. Lourgos. At the second interview, Dr. Nadkarni testified that Sims asked him how the courts determine whether he is insane or sane. In Dr. Nadkarni's opinion, Sims dramatically attempted to portray the impression of being mentally ill. Sims called Dr. Nadkarni's attention to psychiatric symptoms such as mania and visual hallucinations that were not consistent with what he told Dr. Nadkarni in the first interview.

Following the second interview, Dr. Nadkarni changed his diagnosis. He initially characterized cocaine and alcohol dependence as an Axis II diagnosis but changed it to a primary Axis I diagnosis after the second interview. Dr. Nadkarni explained that in looking at the entire clinical picture, Sims had stronger evidence of drug abuse and drug dependency than of a primary Axis I psychiatric illness. He also noted that he needed to rule out malingering, because some of the reports he reviewed seemed to indicate a secondary gain for hospitalizations and manipulative behaviors while on hospital units. He was also concerned because of Sims' inconsistent reporting of purported psychiatric symptoms.

At the third interview, Dr. Nadkarni concluded that his Axis I diagnoses were cocaine and alcohol dependence and a mood disorder with psychosis in remission on medications. His Axis II diagnosis was antisocial personality disorder with borderline traits. He was no longer as concerned about malingering because Sims was straightforward in the third interview and did not endorse any psychiatric symptoms except a vague paranoid ideation around the time of his arrest and statement. Dr. Nadkarni asked Sims about each phrase in the *Miranda* warnings and Sims was able to explain what each portion meant. Sims also explained that he refused to talk at one point after his arrest because he did not have counsel present and he knew that what he said could

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be used against him in court. Dr. Nadkarni concluded that Sims was sane at the time of the offense and that he would have been capable of comprehending his *Miranda* warnings at the time of his arrest and statement.

The circuit court found that Sims was able to understand his *Miranda* rights and denied the motion to suppress his statements. The court noted that the most compelling argument in favor of Sims' ability to understand is that he invoked his *Miranda* rights during one of the interviews. The matter then proceeded to trial on the issue of whether or not Sims was sane at the time of the offense.

Both sides stipulated that if called as a witness, the medical examiner would testify that the cause of death was a single penetrating stab wound to the neck. The wound started at the right side of the neck and went toward the victim's back. It was four inches deep and ended near the internal jugular vein. As a consequence of the wound, the internal carotid artery and the jugular veins on the right and left sides were severed. There was external blood loss, hemorrhage and blood into the airway which resulted in blood aspiration.

Dr. Corcoran testified that he had reviewed records from 11 different psychiatric hospitalizations before interviewing Sims. Dr. Corcoran diagnosed Sims with schizoaffective disorder and poly-substance dependence and stated that his diagnosis was consistent with the medical records he reviewed. Sims' final hospitalization prior to the offense was November 16, 2004, and he was discharged on December 27, 2004. He was prescribed depakote, a mood stabilizing medication, and risperdal, an antipsychotic medication.

Sims indicated to Dr. Corcoran that he was not compliant with taking his medications

after his release. The records from South Shore Hospital, where Sims was taken the day of his arrest, note that he was prescribed depakote and risperdal. Dr. Corcoran testified that people with psychosis have the ability to control themselves for a short period, but eventually the paranoia and disorganization in their thinking will become prominent. In Dr. Corcoran's opinion, Sims lacked the substantial capacity to appreciate the criminality of his conduct at the time of the offense because of his schizoaffective disorder, which had been untreated for approximately one month prior to the offense. Dr. Corcoran further opined that the drugs and alcohol merely fueled Sims' confusion, disorganized thinking, and paranoia.

Dr. Corcoran testified that Sims told him that at the time of the offense, he saw three presidents on television with pom-poms and they were cheering him on and he had more power than the president. Sims told him that he stood over McConnell for just seven seconds and stabbed her once. He said that it seemed like he was doing things and was under his own special power. Dr. Corcoran stated that he asked Sims in a very detailed fashion what he was experiencing at the time, but he did not know what the other clinicians had asked him or why Sims told them something different.

Dr. Nadkarni testified that he based his opinion of whether Sims was sane at the time of the offense on the statements Sims gave to police immediately after the offense and later at the police station, as well as on his review of medical records and his own interviews with Sims. Dr. Nadkarni noted that according to the records from South Shore Hospital the day Sims was arrested, Sims was oriented to time and place with a normal mood and affect, and no deficits were noted under the "neuro and psych" section of the records. He further noted that in the

Cermak Health Services intake process, no mental status abnormalities were found. Dr. Nadkarni stated that he was not able to find any tickets or reports from the Cook County Jail to indicate that Sims was not acting properly from February 3, 2005, until February 17, 2005.

In Dr. Nadkarni's opinion, it was difficult to diagnose Sims because of numerous conflicting reports of what seemed to be a primary mental illness, the effect of heavy substance abuse, and also antisocial personality traits and manipulative behavior. Dr. Nadkarni stated that Sims presented with a complex clinical picture and that one hospitalization record stated that it was unclear if Sims' contradictory information resulted from disorganization, manipulation, or a combination of the two. There was nothing in the police reports, the statements given by Sims, or the interviews with the detectives that would suggest to Dr. Nadkarni that Sims was suffering from schizoaffective disorder on February 2, 2005.

The circuit court noted that the State proved beyond a reasonable doubt that Sims committed the offense. The court further noted that for a defense of insanity, the burden is on the defendant to prove by clear and convincing evidence that he is not guilty by reason of insanity. The court found that Sims had not met that burden. In reaching its finding, the court observed that both experts acknowledged Sims' extensive history of mental illness. However, the court credited Dr. Nadkarni's testimony regarding whether Sims was sane at the time of the offense over the testimony of Dr. Corcoran because Dr. Nadkarni focused with much more specificity on the actual date and time of the offense. Almost immediately after the offense, Sims told the police that he stabbed McConnell because she called him names and he got angry. There was no mention initially of the presidents on television cheering him on. The court observed that there

was nothing in the records from South Shore Hospital to indicate Sims had presented in any manner consistent with schizoaffective disorder. Thus, the court entered a finding of guilty but mentally ill on both counts of first degree murder.

At the sentencing hearing, the circuit court noted that there were factors in aggravation and mitigation to consider. Sims committed an act that led to McConnell's death and he had "cognitive ability" criminal history. However, there had been no previous indication of violence and Sims had suffered from mental illness for years. Therefore, the court sentenced him to the minimum of twenty years in prison. Sims timely filed this appeal.

ANALYSIS

The only issue in dispute on appeal is whether the circuit court erred in finding Sims guilty of first degree murder but mentally ill. Sims contends that he should have been found not guilty by reason of insanity. A circuit court's sanity determination will not be reversed unless it was contrary to the manifest weight of the evidence. *People v. Urdiales*, 225 Ill. 2d 354, 428 (2007). A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary or not based on the evidence. *Id.* at 433.

Under section 6-2 of the Criminal Code of 1961 (Code), "[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 2004). If the defense of insanity is raised at trial, "the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of

insanity.” 720 ILCS 5/6-2(e) (West 2004).

Section 6-2 of the Code further provides that “[a] person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill.” 720 ILCS 5/6-2(c) (West 2004). “Mental illness” or “mentally ill” is defined as “a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person’s judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior.” 720 ILCS 5/6-2(d) (West 2004).

The credibility and weight given to psychiatric testimony are matters for the trier of fact, who is not obligated to accept the opinions of the defendant’s expert over those opinions presented by the State. *Urdiales*, 225 Ill. 2d at 431. The weight accorded to an expert opinion on sanity is to be determined by the reasons given for the conclusion and the facts supporting it. *People v. McCullum*, 386 Ill. App. 3d 495, 504 (2008). The trier of fact may even reject all expert testimony and base a determination of sanity solely on lay testimony. *People v. West*, 231 Ill. App. 3d 646, 650 (1992). Lay testimony is particularly relevant if it is based on observations made shortly before or after the crime was committed. *Id.* at 651. Moreover, the trier of fact may accept the testimony of one expert over that of another as long as the opinion is based on a credible diagnosis. *People v. McDonald*, 329 Ill. App. 3d 938, 946 (2002).

Sims contends that Dr. Nadkami selectively relied on Sims’ statements after his arrest and on lay observations in reaching his conclusion that Sims was sane at the time of the offense, while Dr. Corcoran based his opinion of insanity on Sims’ history of mental illness. We first

note that it is the defendant's mental state at the time of the offense that determines sanity, not his history of mental illness. *People v. Tylkowski*, 171 Ill. App. 3d 93, 100 (1988). Moreover, our review of the record discloses that Dr. Nadkarni relied on various factors in reaching his conclusion, including Sims' history of mental illness and psychiatric hospitalizations, circumstances surrounding his arrest, medical records from two independent evaluations shortly after Sims' arrest, lay observations at the time of the offense, and Sims' inconsistent statements at subsequent evaluations.

Conversely, Dr. Corcoran based his conclusion on Sims' history of mental illness, his most recent hospitalization and his assertion that he had not been taking his medications for about a month prior to the offense, and Sims' description to Dr. Corcoran of his thought processes at the time of the offense. Dr. Corcoran stated that people who are suffering from psychosis have the ability to control themselves for a short period of time. He also suggested that Sims gave him a different account of his thought processes than he had given in previous evaluations because of the specific questions Dr. Corcoran asked. Dr. Corcoran concluded that Sims was suffering from paranoia based on Sims' account that he thought he was going to be tortured by Burge and killed after his arrest. However, he acknowledged that Sims only mentioned Burge at his second interview and had not mentioned him to anyone else.

Dr. Corcoran's conclusion is not supported by lay observations or incidents immediately following Sims' arrest. Dr. Corcoran testified that when a person is psychotic, the disorganized thought processes and paranoia will eventually become prominent, but he did not give an estimate of when this would be likely to occur. Hooks testified that prior to the offense, Sims'

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demeanor was normal and he and McConnell were talking about going to dinner and to the show. The officers who responded to the scene testified that Sims was mad, but he was lucid and told them that McConnell called him names and he got angry, so he stabbed her. The detectives said his demeanor was calm and he was lucid and cooperative. When questioned at the police station, he said that he felt used because he had spent money on food and rent. He also said that McConnell reminded him of his father's wife. However, he never mentioned the presidents cheering him on from the television set. There was no mention to anyone of hearing voices or any other statements that could indicate paranoia or delusional thinking at that time. Moreover, the medical records from both South Shore Hospital and Cermak Health Services show that he was stable in mood and affect and no mental status abnormalities were noted. Sims did not report hearing voices until two weeks after his arrest, and his account about the presidents cheering him on was only given to Dr. Corcoran several years after the offense.

Deference to the judgment of the circuit court is most appropriate in situations where there are two experts with opposing conclusions and the circuit court must determine who is correct. *People v. Hill*, 297 Ill. App. 3d 500, 518 (1998). The circuit court gave more weight to Dr. Nadkarni's testimony because it found that he focused with much more specificity on the date and time of the offense. The court further noted that the medical records immediately following Sims' arrest and lay observations immediately before and after the offense supported Dr. Nadkarni's conclusion. We cannot say that an opposite conclusion is apparent, or that this finding was unreasonable, arbitrary, or not based on the evidence. Thus, we hold that the circuit court's finding of guilty but mentally ill was not against the manifest weight of the evidence.

As a final matter, defendant contends, and the State agrees, that although he was entitled to receive 1,728 days in presentencing custody credit, his mittimus incorrectly reflects that he is entitled to 1,701 days in presentencing custody credit. The record shows that defendant was arrested on February 2, 2005, and remained in custody for a total of 1,728 days until he was sentenced on October 27, 2009. A defendant shall be given credit on his sentence for the time spent in custody as a result of the offense for which the sentence was imposed. 730 ILCS 5/5-8-7(b) (West 2004). We therefore order that the mittimus be corrected to reflect 1,728 days of presentence custody credit. Ill. S. Ct. R. 615(b) (eff. Aug. 27, 1999).

Accordingly, we affirm the circuit court of Cook County's finding of guilty of first degree murder but mentally ill and order that the mittimus be amended.

Affirmed; mittimus amended.