

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANIBAL G. MELENDEZ,	§	
	§	No. 129, 2007
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. I.D. No. 0509024924
Appellee.	§	

Submitted: December 5, 2007

Decided: January 23, 2008

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

**ORDER**

This 23<sup>rd</sup> day of January 2008, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Anibal Melendez (“Melendez”), the defendant-below, appeals from the Superior Court’s denial of his motion for a psychiatric/psychological evaluation regarding his mental state at the time of the offense. Following the trial court’s denial of Melendez’s motion, the matter proceeded to a jury trial and resulted in a verdict of guilty. On appeal, Melendez claims that by not ordering the requested additional psychiatric/psychological evaluation, the Superior Court violated his constitutionally protected right to present a “mental state” defense. Because the

Superior Court committed no legal error by failing to order an additional psychiatric/psychological evaluation, we affirm.

2. Melendez and Charles Jones (“Jones”) were both incarcerated at the Delaware Correctional Center. On September 12, 2005, while Jones was sitting in a prison common area playing cards with a friend, Melendez approached and stabbed Jones in the eye with a sharpened toothbrush. Melendez was charged with two counts of assault and other weapon-related charges.

3. Melendez requested the Superior Court to order a psychological/psychiatric evaluation exploring his mental state at the time of the offense. The Superior Court granted the request, and an evaluation was conducted by Dr. Kathryn Sheneman at the Delaware Psychiatric Center. In her report filed with the court on March 14, 2006, Dr. Sheneman concluded that:

There is not sufficient clinical evidence to suggest that [Melendez’s] mental condition or mental state at the time of the commission of the alleged offenses would meet Delaware criteria for insanity or for a Guilty but Mentally Ill defense. In other words, at the time of the commission of the offense, he was not suffering from a psychiatric disorder that ... either caused him to lack substantial capacity to appreciate the wrongfulness or that disturbed his thinking, feeling, and behavior [...] His actions to both conceal the existence of the shank and to dispose of the shank following the assault suggest that [Melendez] made efforts to avoid detection and therefore appreciated the wrongfulness of his conduct.

4. In June 2006, after reviewing Melendez’s mental health treatment records created during the course of his incarceration, Dr. Sheneman wrote an

addendum to her original report. In the addendum, Dr. Sheneman opined that there was insufficient evidence to support a not guilty by reason of insanity defense, but that Melendez's condition met the Delaware standard for guilty but mentally ill. Dr. Sheneman emphasized that she had been unable to "interview the correctional officers or mental health workers who would have interacted with [Melendez] at the time of the offense," and concluded her addendum by stating:

[A]bsent are clear findings to suggest any conventional motive for the assault. [Melendez's] account [of the events] suggests a lack of intentionality. Since I was not able to interview other individuals who may have had information about the case, Mr. Melendez's motive or intention could not be affirmed with any reliability [...]

[S]hould the court find it appropriate to seek further clinical opinion regarding [Melendez's] mental state at the time of the offense, I would recommend referral to Andrew Donohue, DO, the current forensic pathologist in place [at] the Delaware Psychiatric Center.

5. In response to Dr. Sheneman's recommendation, the trial court referred the matter to Dr. Donohue, requesting him to complete any remaining interviews and advise the court by way of further addendum. In addition to reexamining Melendez, Dr. Donohue reviewed medical and prison records and conducted an interview of Joseph Richardson, an investigator at the Delaware Correctional Center. He also reviewed audiotaped interviews with Jones (the victim) and an inmate witness to the assault. Dr. Donohue filed his report with the Superior Court on December 19, 2006, in which he concluded that:

Melendez does not qualify for the Not Guilty by Reason of Insanity defense because:

- a. His acts were due to his Antisocial Behavior.
- b. He clearly appreciates the wrongfulness of [his] acts....

Melendez does not meet the criteria for Guilty but Mentally Ill because:

- a. His acts were the result of Antisocial Personality Disorder, rather than a mental disorder.

- b. There is no evidence that Melendez was suffering from any mental disorder at the time of the offense that either affected his ability to refrain from acting, or affected his thinking, feeling or behavior.
- c. Melendez's behavior was most likely motivated by a desire to retaliate against Jones due to a past fight in which Jones had gotten the better of him, rather than an unmotivated act related to a mental illness.

6. On February 16, 2007, after final case review and five days before trial, Melendez moved for an additional psychiatric/psychological evaluation regarding both his competency to stand trial and his mental state at the time of the offense. The Superior Court ruled on the motion on February 21 (the trial date). The record shows that the focus at the motion-related court proceedings was on "competency" *i.e.* on Melendez's then-current mental state. Neither Melendez nor his counsel reiterated or discussed the request for an additional evaluation of Melendez's mental state at the time of the offense or indicated that Melendez intended to pursue a guilty but mentally ill defense at trial. The court formally found Melendez competent to stand trial but did not formally rule on Melendez's request for an additional evaluation of his mental state at the time of the offense. The jury returned a verdict of guilty on all counts. This appeal followed.

7. Melendez contends that the Superior Court violated his constitutional right to present a mental health defense by failing to order that Melendez undergo a supplemental psychiatric/psychological evaluation of his mental state at the time of the offense. We review *de novo* claims alleging infringement of constitutional rights.<sup>1</sup>

8. As required by the United States Supreme Court in *Ake v. Oklahoma*,<sup>2</sup> Melendez was given a “fair opportunity to present his defense.”<sup>3</sup> Here, Melendez had access to a psychiatrist’s assistance (Dr. Sheneman) on the issue of his mental state at the time of the offense. An indigent defendant does not have a constitutional right to unlimited examinations, however. In *Ake*, the United States Supreme Court expressly held that “the obligation of the State is limited to provision of *one* competent psychiatrist.”<sup>4</sup> Although there may be situations where multiple evaluations are necessary to ensure that a defendant has a “fair opportunity” to present his defense, this case does not appear to fall in that category, for at least three reasons.

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<sup>1</sup> See *Keyser v. State*, 893 A.2d 956, 961 (Del. 2006) (citing *Capano v. State*, 781 A.2d 556, 607 (Del. 2001) and *Seward v. State*, 723 A.2d 365, 375 (Del. 1999)).

<sup>2</sup> 470 U.S. 68 (1985) (holding that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, the State must provide access to a psychiatrist’s assistance if the defendant cannot otherwise afford one).

<sup>3</sup> *Ake*, 470 U.S. at 76. See also *Chao v. State*, 780 A.2d 1060 (Del. 2001) (holding that the State is required to provide an indigent defendant the “basic tools of an adequate defense or appeal”).

<sup>4</sup> *Ake*, 470 U.S. at 79 (emphasis added).

9. First, it does not appear that Dr. Sheneman's and Dr. Donohue's evaluations were contradictory, as Melendez argues. Rather, Dr. Donohue's report completes Dr. Sheneman's analysis. Dr. Sheneman noted that, because she had not interviewed other individuals about the circumstances of the assault, she had not been able to ascertain whether Melendez had a conventional motive to assault Jones. Dr. Donohue performed that supplemental inquiry. He determined that Melendez had, in fact, a conventional motive to attack Jones and that as a result, Melendez did not meet the criteria for guilty but mentally ill.

10. Second, even if the evaluations were "conflicting," that did not preclude Melendez from pursuing a defense of guilty but mentally ill by calling Dr. Sheneman to testify on his behalf at trial. Melendez, however, chose not to follow that course. Under Superior Court Criminal Rule 12.2, "[i]f a defendant intends to introduce expert testimony relating to mental illness, defect, psychiatric disorder or any other mental or emotional condition" he must provide "timely" notice of his intention to rely on a mental condition defense.<sup>5</sup> Here, Melendez waited until the final case review date (five days before trial) to raise the issue of an additional mental evaluation, even though Dr. Donohue's report had been filed almost two months before.

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<sup>5</sup> Super. Ct. Crim. R. 12.2(b). A notice is "timely" when filed "within the time provided for the filing of pretrial motions or at such later time as the court may direct." Failure to comply with the timely notice requirements results in a waiver of the right to present a mental health defense. *See Webster v. State*, 2003 WL 23019195, at \*1 (Del. Supr.) and Super. Ct. Crim. R. 12.2(d).

11. Finally, Melendez failed to pursue his claim of constitutional entitlement to a “third” evaluation of his mental state at the time of the offense. Melendez’s motion requesting additional psychiatric/psychological evaluation articulated two separate grounds: (1) additional evaluation was necessary to determine his competency to stand trial; and (2) a “third” evaluation of his mental state at the time of the offense was constitutionally necessary to “break the tie ... between the two [previous] conflicting evaluations.” On the trial date, when the Superior Court addressed Melendez’s motion, Melendez and his counsel focused solely on his “competency” and his then-current mental state. They did not reiterate the request for a third evaluation of Melendez’s mental state at the time of the offense. As a result, the Superior Court found that Melendez was competent to stand trial, but did not formally rule on Melendez’s request for a “third” evaluation.

12. Melendez’s contention on this appeal (*i.e.*, that his constitutional right to present a guilty but mentally ill defense was violated) is without merit, because the record indicates that Melendez neither provided notice of his intent to pursue such a defense,<sup>6</sup> nor pursued his motion for an additional psychiatric/psychological evaluation. When it became apparent that the trial court “lost sight of the motion,”

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<sup>6</sup> With respect to his mental state at the time of the offense, the record shows that Melendez wanted to plead guilty but mentally ill, but that the State would not accept such a plea. The trial judge explained the situation to Melendez and informed Melendez that he could nevertheless present a mentally ill defense to the jury.

Melendez should have requested an explicit ruling on that request.<sup>7</sup> Because Melendez failed to take any of those steps, this Court finds that Melendez waived his constitutional claim of a violation of his right to present a “mental state” defense.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>7</sup> See *DeJesus v. State*, 655 A.2d 1180, 1199 (Del. 1995) (the “better practice would have been for defense counsel to request a ruling when the trial court apparently lost sight of the motion”).