IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CHARLES EDWARD PEARCE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D14-3224

Opinion filed December 31, 2015.

An appeal from the Circuit Court for Duval County.
Tatiana Salvador, Judge.

Nancy A. Daniels, Public Defender, and W. C. McLain, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Matthew Pavese, Assistant Attorney General, Tallahassee, for Appellee.

BENTON, J.

Convicted of first-degree murder of one victim and of attempted first-degree murder of another, Charles Edward Pearce appeals his convictions on grounds the trial court erred in refusing to let defense counsel show the jury part of a

videotaped interview the police conducted the day after his arrest. "All relevant evidence is admissible, except as provided by law." § 90.402, Fla. Stat. (2013). We reverse and remand for a new trial.

In her opening statement, defense counsel conceded that Mr. Pearce shot and killed Michael McCue, and shot at his own stepfather, Michael Otis, Sr., on February 9, 2011, in Duval County. Appellant left the state that day, evidence at trial showed, and was taken into custody in Yuma, Arizona on February 20, 2011, where the videotaped interview took place. Before trial, defense counsel had given the requisite notice of an insanity defense, and the authenticity of the videotape—which both state and defense experts had relied on—was not in dispute.

The appellant had the "burden of proving the defense of insanity." § 775.027(2), Fla. Stat. (2013); see Hall v. State, 568 So. 2d 882, 885 (Fla. 1990) ("In Florida a person is presumed sane, and, in a criminal prosecution, the burden is on the defendant to present evidence of insanity."). See also § 775.027(1), Fla. Stat. (2013) (making insanity "at the time of the commission of the acts constituting the offense" an affirmative defense); Sorge v. State, 834 So. 2d 268, 269-70 (Fla. 1st DCA 2002) ("Sanity is determined in Florida by the M'Naghten Rule; under that rule, a person is insane if the person is incapable of distinguishing right from wrong as a result of a mental infirmity, disease, or defect.").

The jury had to decide whether, when he shot one man and fired at another for reasons that are unclear, the appellant was insane. Mr. Otis, who was a witness for the state, and defense witness Curtis Vanderhoning, one of appellant's neighbors, both testified that, although the appellant had previously been kindhearted and helpful, he began to exhibit bizarre behavior some months before February 9, 2011. He stopped helping out around the house, and became "overprotective." He would sit on the washing machine to "protect" his clothes as they were being washed, and had barricaded his bedroom door to "protect" the contents, entering and exiting through a bedroom window. Other witnesses testified that the appellant came to believe (erroneously) that his stepbrother had injected a virus (HIV) into him, and believed employees where he bought coffee were putting poison in his coffee.

Expert witnesses also testified about appellant's mental state. Dr. Jerry Valente, a psychologist, testified that the appellant had a delusional disorder. Although he initially believed the appellant was sane at the time of the shooting, Dr. Valente ultimately concluded—after reviewing additional evidence—that the appellant was not sane when he shot Mr. McCue and took aim at Mr. Otis. Among the evidence he reviewed that changed his mind was the videotape of Detective Watkins' interview of the appellant, conducted in Arizona the day after he was taken into custody.

In rebuttal, the state presented the testimony of Dr. William Riebsame. Before forming his opinion, Dr. Riebsame also viewed the videotape of the appellant's February 21, 2011 interview in Arizona. Dr. Riebsame agreed the appellant had a delusional disorder, but concluded that he knew the consequences of his actions and knew his actions were wrong. Among other things, both Dr. Valente and Dr. Riebsame testified that the appellant believed, at the time of their evaluations, that his stepfather and others were stealing his inheritance.[1]

Mr. Vanderhoning and Mr. Otis testified that, before the shooting, the appellant began discussing an inheritance that he said he was to receive on his thirtieth birthday, assigning varying values to the putative inheritance—initially stating that he was to receive $30,000, later asserting he was to receive $300,000, and finally claiming he was to receive $30,000,000 at about the same time. Mr. Otis testified that the appellant began to appear unhealthy physically and would no longer eat with them because he thought his stepbrother and stepfather were poisoning his food.

Mr. Vanderhoning testified that the appellant claimed the (apparently wholly imaginary) inheritance had gone into the police and firemen's pension fund for the

[1] Mr. Vanderhoning testified that the appellant accused Mr. Vanderhoning, Mr. Otis, and Mr. McCue of stealing his inheritance. Mr. Otis testified similarly that the appellant accused him, Mr. Vanderhoning, and others in the neighborhood (including Mr. McCue) of stealing funds he was to inherit. Mr. Vanderhoning testified the appellant became upset after seeing him talk to Mr. McCue on July 4, 2010, because he thought they were talking about him.

City of Jacksonville Beach and that he felt Mr. Vanderhoning should somehow be able to withdraw the money from the pension system because Mr. Vanderhoning had worked for the City for twenty-five years. When Mr. Vanderhoning told him he could not help, the appellant made threats and demands for money. The appellant once told Mr. Vanderhoning he was going to kill all the police officers and firefighters in Jacksonville because they were all complicit in taking his money.

To assist the jury in choosing between competing expert opinions, defense counsel sought to introduce a videotape of the interview in Arizona, the interview to which both experts had alluded in testimony about appellant's mental condition at the time he discharged the pistol. The videotape depicted the appellant expressing his (delusional) belief that an oleander bush in a yard he mowed had been soaked in chloroform, voicing his (delusional) belief that a substantial inheritance was being kept from him, and recounting his failed efforts to obtain assistance from others (law enforcement agencies, neighbors, and a minister) in recovering his inheritance. The prosecution objected that, despite redactions, the videotape contained other, "self-serving statements" denying guilt (even though the defense had already conceded appellant was the shooter).

The trial court excluded the entire videotape on multiple grounds. It ruled the appellant's statements during the interview were inadmissible as hearsay.

Alternatively, the trial court ruled the videotape was irrelevant because the issue for the jury was appellant's mindset on the day of the incident, rather than some two weeks later. Finally, the trial court also noted testimony from other witnesses about his mental status in the months leading up to the incident and in the months after the incident, stating the videotape was cumulative and would be more confusing and prejudicial than probative.

"Any testimony offered to show the state of the defendant's mind, rather than offered to prove the truth of the matter asserted, is admissible as non-hearsay." Lebron v. State, 127 So. 3d 597, 603 (Fla. 4th DCA 2012). See § 90.801(1)(c), Florida Statutes (2013) ("'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."); Kent v. State, 704 So. 2d 121, 125 (Fla. 1st DCA 1997) ("An out-of-court statement is hearsay only if it is offered to prove the truth of the matter asserted."); Barber v. State, 576 So. 2d 825, 830 (Fla. 1st DCA 1991) ("[I]f an out-of-court statement is offered for a purpose other than proving the truth of its contents, the statement is admissible provided the purpose for which the statement is being offered is a material issue in the case."); see also Charles W. Ehrhardt, 1 Fla. Prac., Florida Evidence § 803.3a (2015 ed.) ("If an out-of-court statement of a person is offered as circumstantial evidence of his or her state of mind, the statements are not hearsay and are admissible, if relevant.").

The trial court erred in ruling the appellant's statements during the videotaped interview were hearsay.

"Trial judges have discretion to rule on some kinds of evidence issues, but whether a statement falls within the statutory definition of hearsay is a question of law." Powell v. State, 99 So. 3d 570, 573 (Fla. 1st DCA 2012). Plainly the videotape was not offered to prove the truth of the matters appellant asserted in the interview—the existence of an inheritance or the poisoning of an oleander bush—and should not have been excluded as hearsay.

The trial court also erred in ruling the videotape irrelevant. Dr. Valente and Dr. Riebsame both thought it important to view the videotape before rendering their opinions on the appellant's sanity at the time of the offenses, and Dr. Valente testified specifically that he relied on the videotaped interview in forming his opinion that the appellant was not sane at the time of the offenses. See Muehleman v. State, 503 So. 2d 310, 315 (Fla. 1987) (concluding trial court did not err in admitting into evidence a report detailing the defendant's juvenile criminal record, because "[t]he evidence became relevant when a psychiatric expert witness for the defense stated that he had considered the report in formulating his opinion"). Although generally a trial court is "granted broad discretion in determining the relevance of evidence," Jacobs v. State, 962 So. 2d 934, 936 (Fla. 4th DCA 2007),

the "exclusion of exculpatory evidence implicates the defendant's constitutional right to defend himself." McDuffie v. State, 970 So. 2d 312, 322 (Fla. 2007).

That the videotaped interview of the appellant occurred eleven days after the shooting did not make the videotape inadmissible.[2] Not uncommonly, expert testimony regarding a defendant's sanity at the time of the commission of an offense is based in part on the defendant's mental status and conduct some time after the offense occurs. See, e.g., Jones v. State, 289 So. 2d 725, 727, 729 (Fla. 1974) ("A psychiatrist should and must talk freely with the defendant and the results of such an interview becomes a part of the psychiatrist's opinion. . . . As stated in Wharton's Criminal Evidence, by Torcia (13th ed. 1972), Vol. 2, § 312, at 111-112: 'In general, a statement by an injured or diseased person to a physician as to past matters, although not admissible as evidence of the truth of the facts stated, may be included in the physician's testimony to show the basis for his opinion.' . . . A psychiatrist is required to investigate the behavior and thought of a patient and to depend a great deal upon what the patient says, how the patient says it, how the patient reacts to other people, and what occurred in the past and present.").

The jury was entitled to see the videotape themselves rather than having to rely on the experts' impressions. The experts thought it was relevant and relied on

[2] Both Dr. Valente and Dr. Riebsame testified that the appellant's delusional disorder, if untreated, was not going to go away. He had received no treatment, as far as the record reveals, between February 9 and February 20, 2011.

it in determining whether appellant was insane at the time he fired the pistol. But it was ultimately for the jury to decide whether appellant had proven his insanity defense. "The constitutional guarantees of due process provide for the admission of evidence relevant to the defense of the accused, and it is clear that '[f]ew rights are more fundamental than that of an accused to present witnesses [or evidence] in his own defense.'" Washington v. State, 737 So. 2d 1208, 1221 (Fla. 1st DCA 1999) (quoting Chambers v. Mississippi, 410 U.S. 284, 302 (1973)). The videotape was clearly relevant to appellant's only defense, his claimed insanity at the time of the offenses.

Finally, the trial court abused its discretion in excluding the videotaped interview on the purported authority of section 90.403, Florida Statutes (2013), which makes even relevant evidence "inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." The videotape plainly went to appellant's insanity defense, the main issue in the case, and should have created no confusion of or with other issues. It is not at all clear what unfair prejudice the trial judge imagined the state would suffer.

The state has not demonstrated how the erroneous exclusion of this evidence could be deemed harmless. "The jury in this case was entitled to hear [and view] this evidence as it helped put the defense theory of the case in a proper context."

Jacobs, 962 So. 2d at 936. "If there is any possibility of a tendering of evidence to create a reasonable doubt, the rules of evidence are usually construed to allow for its admissibility. . . . Regardless of how the trial court may view the evidence, it should be admitted as relevant if it tends to prove or support the theory of defense." Id.

We are unable to say beyond a reasonable doubt that exclusion of this evidence did not contribute to the jury's verdict. "The harmless error test . . . places the burden on the state . . . to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." State v. DiGuilio, 491 So. 2d 1129, 1135 (Fla. 1986). This test "'is not a sufficiency-of-the-evidence, a correct result, a not clearly wrong, a substantial evidence, a more probable than not, a clear and convincing, or even an overwhelming evidence test'" but rather focuses on the "'effect of the error on the trier-of-fact.'" McDuffie, 970 So. 2d at 328 (citation omitted). The excluded evidence was central to the defendant's sole theory of defense. Appellant's conviction must be reversed, and the case remanded for a new trial.

Reversed and remanded.

WOLF and MAKAR, JJ., CONCUR.