[Cite as *State v. Salim*, 2009-Ohio-4729.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-CA-1
RYAN SALIM	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Guernsey County Court of Common Pleas Case No. 07-CR-215
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	September 8, 2009

APPEARANCES:

For Plaintiff-Appellee:

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Delaney, J.

{¶1} Defendant-Appellant, Ryan Salim, appeals from his convictions of one count of aggravated robbery, one count of kidnapping, one count of abduction, one count of failure to comply with the order or signal of a police officer and one count of theft of drugs, all with gun specifications. The State of Ohio is Plaintiff-Appellee.

{¶2} On November 2, 2007, the Byesville City Police Department received a notification from Alarm One that a silent alarm had been activated at the Byesville Pharmacy. Officer George Lorenz of the Byesville Police Department also received a call from the Guernsey County Sheriff's Office dispatcher who advised that she had received a 911 call from a male stating that a man was inside the pharmacy robbing it with a gun.

{¶3} Officer Lorenz, along with Chief John Hornak, responded to the call. As the officers approached the rear of the pharmacy, they observed a male subject, later identified as Appellant, wearing black clothing, a hat, sunglasses, and carrying paper pharmacy bags, exit the rear door of the pharmacy. The officers ordered Appellant to stop, but he refused to comply. Instead, he continued to a maroon van that was parked in the pharmacy parking lot which was occupied by a female driver, who was later determined to be his girlfriend. Appellant ran around the van, crouched behind it, and hid from the officers. He then moved from behind the van with a black handgun in his hand. He pointed the gun at the female driver.

{¶4} The officers repeatedly instructed Appellant to drop his gun, and he refused to comply. He entered the passenger side of the van and pointed the gun at the driver's head after telling the officers that he would shoot the driver if the officers

followed him. The officers radioed the Guernsey County Sheriff's Office to advise them of the hostage situation.

{¶5} The officers followed Appellant and his girlfriend out of the parking lot and a high speed chase ensued across several highways and back roads. The Ohio State Highway Patrol and Guernsey County Sheriff's Office joined the chase. Officers reported that the van reached speeds of 90-100 miles per hour during parts of the chase. Finally, on State Route 22, Trooper Appleman of the Highway Patrol was able to deploy stop sticks that flattened the passenger side rear tire on the van.

{¶6} The driver pulled the van to the side of the road and officers could see Appellant was still pointing the gun at the driver. Officers repeatedly asked Appellant to release the driver and he finally did. Appellant then exited the vehicle and held the gun to his own head. Officers ordered him to drop the gun and he initially refused. He leaned up against the back of the van with the gun alternately pointed at his temple and in his mouth. He then dropped to his knees and continued to point the gun at himself. He finally threw the gun out in front of him and officers were able to take him into custody without further incident.

{¶7} By indictment filed on December 14, 2007, Appellant was charged with one count of aggravated robbery, one count of kidnapping, one count of abduction, one count of failure to comply with the order or signal of a police officer, and one count of theft of drugs, all with gun specifications. On December 20, 2007, Appellant entered a written plea of Not Guilty By Reason of Insanity ("NGRI"). The trial court accepted Appellant's written plea and ordered the Forensic Diagnostic Center to conduct an evaluation of Appellant for competency and sanity.

{¶8} On March 10, 2007, the court held a hearing regarding Appellant's competency to stand trial and his sanity. Dr. James Karpawich, a clinical and forensic psychologist who contracted with the Forensic Diagnostic Center, evaluated Appellant and submitted his report to the court, the prosecutor, and to defense counsel. Dr. Karpawich determined that Appellant was competent to stand trial and that he was sane at the time of the offense. Appellant's counsel did not object to the competency finding, but did object to the finding of sanity and requested an independent psychological evaluation on March 17, 2008. The trial court denied the motion on March 25, 2008.

{¶9} On May 29, 2008, the trial court ordered that Dr. Dennis Eshbaugh, a clinical and forensic psychologist, be permitted to evaluate Appellant at the Guernsey County Jail.

{¶10} Appellant proceeded to trial by jury on November 18, 2008, wherein he asserted his defense of not guilty by reason of insanity, and claimed that he could not remember any of the events of November 2, 2007, resulting in the criminal charges against him. The state called multiple witnesses, including employees of the Byesville Pharmacy, who all testified that when Appellant robbed the store, he was calm and polite; and officers from the Byesville Police Department, Guernsey County Sheriff's Office, and Ohio Highway Patrol, none of whom indicated that Appellant was belligerent or aggressive. During Appellant's case in chief, counsel called as witnesses Appellant's counselor, Robert Streidl, from Far West outpatient center in Westlake, Ohio, who stated that Appellant was a client of his as a result of a conditional release from Appalachian Behavioral Health Center in Athens, Ohio. The defense also called John Stiers, a correctional officer from the Guernsey County Jail; James Sudduth, Jr., a

volunteer firefighter who examined Appellant on November 2, 2007, when he was arrested; Appellant's father, Appellant, and Dr. Dennis Eshbaugh.

{¶11} Dr. Eshbaugh's testimony, which will be discussed below, alleged that Appellant suffered from dissociative disorder, not otherwise specified, marked by fugue states. Dr. Eshbaugh determined that Appellant was criminally insane at the time of the offense on November 2, 2007, and that he could not appreciate the wrongfulness of his actions at the time of the offense.

{¶12} In rebuttal, the State called Dr. James Karpawich, who disagreed with Eshbaugh's diagnosis, calling it the least accepted and most widely controversial diagnosis in the psychological and psychiatric community. Dr. Karpawich diagnosed Appellant with polysubstance abuse, antisocial personality disorder, and malingering.

{¶13} The jury returned guilty verdicts on all counts on November 21, 2008. Appellant was sentenced to a total of 15 years in prison.

{¶14} Appellant raises one Assignment of Error:

{¶15} "I. THE TRIAL COURT'S FINDING THAT THE APPELLANT WAS "GUILTY" AND NOT "NOT GUILTY BY REASON OF INSANITY" WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I.

{¶16} In his sole assignment of error, Appellant challenges his conviction as being against the manifest weight of the evidence, claiming that the trial court should have found him not guilty by reason of insanity.

{¶17} When analyzing a manifest weight claim, this court sits as a "thirteenth juror" and in reviewing the entire record engages in a limited weighing of the evidence

"and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 548, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Determinations of credibility and weight of the testimony remain within the province of the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

{¶18} A defendant's sanity is not an element of the crime with which the defendant is charged. The state need not prove that a defendant was sane at the time of the crime. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, 840 N.E.2d 1032, at ¶ 35. Insanity is an affirmative defense that must be proven by a preponderance of the evidence. *State v. Taylor*, 98 Ohio St.3d 27, 2002-Ohio-7017, 781 N.E.2d 72; R.C. 2901.05(A). The accused must persuade the trier of fact that "at the time of the commission of the offense, the [accused] did not know, as a result of a severe mental disease or defect, the wrongfulness of the [accused's] acts." *Hancock*, at ¶ 35, quoting R.C. 2901.01(A)(14).

{¶19} The Supreme Court rejected Hancock's manifest weight challenge that "overwhelming evidence" supported his insanity defense. Although the defense expert concluded that Hancock was insane at the time of the offense, the court-appointed examiner concluded that he was malingering. Hancock's mental health history reflected similar disagreement. Doctors at Warren Correctional Institution repeatedly sent him to Oakwood Forensic Center, a psychiatric facility, to be treated for mental disorders. But Oakwood staff repeatedly sent him back to Warren because extensive observation led

them to conclude that his disorders were feigned. See *Hancock*, at ¶40. The court also determined that Hancock's statements and actions at the time of the crime and following the crime strongly suggest that he understood the wrongfulness of his actions.

{¶20} In the present case, the defense presented Dr. Dennis Eshbaugh, a clinical and forensic psychologist, to establish his insanity defense. Dr. Eshbaugh testified that Appellant suffers from dissociative disorder marked by fugue states. He explained that this disorder involves an involuntary loss of a person's primary personality wherein a second, or alternate, personality emerges. He stated that the second personality is marked by an individual making an abrupt or unexpected leaving of home and all of the person's typical or usual activities. He stated that when the dominant personality emerges again, the person typically has amnesia as to what happened in the dissociative state.

{¶21} In making this diagnosis, Dr. Eshbaugh relied on the following information:

{¶22} He examined Appellant on June 16, 2008, at the request of defense counsel. The interview lasted approximately two and a half hours and Dr. Eshbaugh performed no testing on Appellant either before, during, or after the interview. At the time of the interview, Dr. Eshbaugh had reviewed Dr. Karpawich's previous evaluation of Appellant.

{¶23} Additionally, Dr. Eshbaugh reviewed discovery documents as to the events of November 2, 2007, because Appellant claimed he could not remember what occurred after he left his counselor's office that morning. Eshbaugh's understanding of the events was that Appellant left the Far West counseling center, drove to his girlfriend's house, and ordered her at gunpoint to take him to the pharmacy in Byesville,

where he first made her go into the pharmacy and purchase a box of Kleenex, and then had her wait in the van while he went in and robbed the pharmacy of drugs and money.

{¶24} Dr. Eshbaugh also reviewed two separate sanity evaluations done on Appellant; one by Dr. Karpawich in relation to the present offense, and one by a Mr. Malawista in 2005, which was completed after Appellant was charged with felony offenses for abducting his roommate and carrying two loaded handguns into a library at Ohio University in Athens, Ohio. Based on Mr. Malawista's report, the trial court in that case found Appellant not guilty by reason of insanity. Appellant was, at that time, committed to the Appalachian Behavioral Health Center for seventeen months, before being released on conditional release where he was monitored by the Far West center in Westlake, Ohio.

{¶25} Eshbaugh reviewed discharge summaries from various hospitals in 2001, 2005, and 2006 related to Appellant. He additionally discussed the events of November 2, 2007, with Appellant and also obtained a brief history of Appellant's background from him.

{¶26} Based on his review of the discovery documents, the medical records from Far West Center, Belmont Hospital, and Appalachian Behavioral Health Center, speaking briefly with Appellant's father, and his meeting with Appellant, he formed his diagnosis of dissociative disorder marked by fugue states. He also stated that Appellant has a "significant history" of polysubstance abuse and dependence, primarily from his adolescent years. Appellant admitted, and it was confirmed by various hospital records, that he was a chronic and excessive user of alcohol from the age of 11, a chronic user

of marijuana from the age of 12, and that he began abusing hallucinogens, LSD, and mushrooms during early adolescence.

{¶27} When asked about an episode in 2001 wherein Appellant turned himself into the police and was admitted to Belmont Hospital due to what he called "some kinds of dissociative state" after he spent a weekend drinking and smoking marijuana, Dr. Eshbaugh opined that this was likely one of Appellant's fugue states. Upon Appellant's admission to Belmont, he stated that he was experiencing blackouts and losing segments of time. The staff at Belmont did perform a toxicology screen and discovered that Appellant had both marijuana and cocaine in his system.

{¶28} Regarding the records Dr. Eshbaugh obtained from Appalachian Behavioral Health Center from Appellant's 2005-2006 stay with them after being found NGRI in Athens County, Ohio, Dr. Eshbaugh found that Appellant responded well to treatment and that his behavior was stable and that he did not exhibit any particularly inappropriate behavior. Eshbaugh noted that while Appellant was housed at Appalachian, his treating psychiatrist, Dr. Mark McGee diagnosed Appellant with "dissociative phenomenon."

{¶29} Dr. Eshbaugh also noted that in the records from Far West, Appellant complained about beginning to lose time and have gaps and lapses in memory. Approximately a week or so before November 2, 2007, Appellant reported that he had apparently engaged in an event where he became aggressive with his girlfriend and killed a duck in her parents' yard, but claimed that he did not recall doing so.

{¶30} Dr. Eshbaugh discounted Dr. Karpawich's diagnosis of antisocial personality disorder, calling the data "incomplete". He stated that the tests that Dr.

Karpawich gave to Appellant to determine if Appellant was malingering were not appropriate tools to use in determining if Appellant was a malingerer. He stated that the Structure Interview of Reported Symptoms Test (SIRS) is the most widely accepted test in the psychological community when determining whether a subject is feigning mental disorders and stated that Dr. Karpawich failed to administer that test.

{¶31} On cross-examination, Dr. Eshbaugh admitted that he was the first in a long line of psychologists or psychiatrists to diagnose Appellant with dissociative disorder not otherwise specified. He confirmed that Appellant's previous diagnoses were psychotic disorder not otherwise specified; schizophrenia, paranoid type; schizoaffective disorder, mixed episode; polysubstance abuse, hallucinogens, stimulants, opiods. Appellant's full diagnosis upon release from Appalachian Behavioral was schizophrenia, paranoid type, unspecified, in partial remission; history of extensive substance and hallucinogen abuse; history of dissociative phenomena in the context of psychosis."

{¶32} Dr. Eshbaugh also admitted on cross-examination that he did not perform any testing on Appellant to determine if he was malingering, but stated that Appellant would gain a benefit from malingering with regard to his criminal charges. He also stated that at no time did he observe a secondary or multiple personality emerge during his two and a half hour meeting with Appellant and that he did not consider performing hypnosis on Appellant, which usually brings out an alternate personality if it is there.

{¶33} Additionally, Dr. Eshbaugh conceded that with a dissociative identity disorder, the subject would typically take on an altered identity that would dramatically change the subject's actual personality. He further confirmed that the fugue state

requires travel away from home accompanied with confusion about personal identity or adoption of a separate identity.

{¶34} Dr. Eshbaugh confirmed that at age 16, Appellant had multiple felony and misdemeanor charges for carrying a concealed weapon, a taser and a stun gun and that he was expelled his junior year of high school for antisocial acts. Additionally, he confirmed that in 2001, Appellant was in possession of a .9 millimeter handgun prior to his admission to Belmont hospital and that in 2005, Appellant possessed a .45 caliber handgun and a revolver when he entered the library at Ohio University.

{¶35} Moreover, Dr. Eshbaugh confirmed that Appellant was described in the notes from his Far West counselor as being "nice and polite". The witnesses at the Byesville Pharmacy described Appellant as being "nice and polite." Reports from the police interview with Appellant's girlfriend indicated that on November 2, 2007, when he arrived at her house, he first apologized for their confrontation the week before and the incident at her parents' house with the duck before he ordered her into the van with him.

{¶36} Finally, Dr. Eshbaugh confirmed that Appellant did tell him that he "vaguely recall[ed]" being in the car on November 2, 2007. Dr. Eshbaugh also conceded that fleeing after the commission of an offense is "generally" a sign that a person is aware of the wrongfulness of their acts and that robbery is clearly an antisocial act. He also admitted that a person who suffers from blackouts due to alcohol and drug abuse does not meet the legal definition of insanity. His ultimate conclusion was that Appellant did not know the wrongfulness of his actions on November 2, 2007, and that he was criminally insane at the time of those events.

{¶37} Conversely, the State's expert, Dr. James Karpawich, also a clinical and forensic psychologist, testified that Appellant knew the wrongfulness of his actions and that he did not suffer from a dissociative disorder with fugue states, but rather that Appellant is a polysubstance abuser, has an antisocial personality disorder, and is a malingerer.

{¶38} Dr. Karpawich based his opinion on a four hour evaluation of Appellant on January 25, 2008, wherein he interviewed Appellant, and administered several psychological tests, including the Miller Forensic Assessment of Symptomatology (MFAST), the Structured Inventory of Malingered Symptomatology (SIMS), the Cognistat, and later on the Minnesota Multiphasic Personality Inventory (MMPI-II); a review of records from the prosecutor and court about the events; a social history including family interviews done by the director of Forensic District Center of Ohio, District 9; a review of mental health and medical records from Appalachian Behavioral Health Center, Far West, Shawnee Forensic Center, Belmont Hospital, the Guernsey County Jail, and from Appellant's community forensic monitor. He also reviewed Appellant's prior drug and alcohol history as well as his prior legal history.

{¶39} He explained that after his interview with Appellant, he believed that Appellant was faking or exaggerating symptoms and that he therefore decided to run several tests to either confirm or refute his belief. He administered the Cognistat test, which he described as a psychological test that measures cognitive abilities, attention, memory, orientation, and addresses abstract reasoning capabilities and judgment. He stated that after administering this test, he had no concerns of any cognitive problems with Appellant.

{¶40} He then administered the SIMS test, which is a 70 question test used to assist in determining if someone is faking or exaggerating a mental illness or defect. He stated that if someone scores higher than 14 on the test, there is a good probability that they are faking their symptoms. He testified that Appellant scored a 33 and that the only area that he did not appear to be faking was low intelligence. According to the results of the SIMS test, Appellant was faking in the following areas: neurological, psychological, schizophrenia, mood disorder, and amnesia.

{¶41} Dr. Karpawich additionally administered the MFAST test, which is a 25 question test that is also used to determine if someone is faking symptoms. He stated that if someone scores more than 6 out of 25 questions, that it would suggest that the subject is faking. Appellant scored a 15 out of 25.

{¶42} After scoring both the SIMS and the MFAST, Dr. Karpawich believed that Appellant was faking his symptoms but stated that in order to give him the benefit of the doubt, he would have the MMPI administered to him. The MMPI is a test also used to gauge the faking of symptoms as well as dealing with other personality problems that may be present.

{¶43} After administering the MMPI, Dr. Karpawich stated that all three tests confirmed his impressions in the interview and in reading Appellant's records that "this is a man that is faking or exaggerating problems. And he's doing it across the board. It's not just selecting certain items to fake. He's faking this. He's faking that. He's even losing track of which items he is faking."

{¶44} Dr. Karpawich testified that there was nothing in the Far West records to indicate that Appellant was in a state of psychosis. He was not having any delusions,

hallucinations, or thoughts that the police were out to get him. He did not exhibit any impairment in thinking or processing, showed no signs of severe depression or mania. Dr. Karpawich stated that the only thing that stood out in the Far West reports was that Appellant complained that his girlfriend was breaking up with him and that he was having memory blackouts. This contradicted what Appellant informed Dr. Karpawich that he told his counselor at Far West. According to Dr. Karpawich, Appellant told him that he conveyed to the team at Far West that he was having delusions, hearing voices, having blackouts. At that time, Dr. Karpawich stated that he believed Appellant may be malingering.

{¶45} Upon completing his evaluation of Appellant, Dr. Karpawich came to a three part diagnosis. He explained the diagnoses as follows:

{¶46} First, he stated that Appellant suffers from polysubstance dependence. Appellant started using drugs and alcohol at the age of 11 and the substance abuse is supported by numerous legal and medical records. According to the records, Appellant started marijuana at age 11, hallucinogens at age 12, alcohol at age 13, cocaine and narcotics at 14, heroin at 15. He used alcohol, marijuana and hallucinogens daily throughout his adolescence. He claimed that he stopped using drugs at age 19; however, records verified using of crack, opiates, heroin, ecstacy, LSD, marijuana and alcohol past that. At 21 years of age, Appellant had a positive drug screen for marijuana and cocaine. He also noted that Appellant sold drugs throughout his adolescence.

{¶47} Second, Dr. Karpawich stated that Appellant has antisocial personality disorder and described a person with the illness as an individual who has a long history

of disregard for societal rules and norms and who engages in criminal and illegal behavior with evidence of onset prior to age 15. Dr. Karpawich stated that there was evidence at age 15 that Appellant was engaging in antisocial behaviors based upon being arrested twice before then for engaging in underage consumption of alcohol and possession of marijuana. He also stated that Appellant's mother reported that she was having difficulty supervising and handling him prior to age 15.

{¶48} The antisocial behavior also extended past age 15. At age 16, Appellant was arrested for carrying a concealed weapon in the form of both a taser and a stungun, for possession of criminal tools to deal drugs (a scale and $3,000), and having drug paraphernalia. He also admitted to having a gun in 2001 after an altercation with his roommate and had at least two handguns and a shotgun at the time of the incident at the Ohio University library in 2005. According to the risk assessment report that Dr. Karpawich obtained from Appalachian Behavioral Health, Appellant stated that he carried guns for his own protection because he had been selling drugs.

{¶49} With respect to the diagnosis of malingering, Dr. Karpawich testified that there was no evidence that Appellant was suffering from psychotic symptoms when he met with his counselor on November 2, 2007. There were additionally no reports from Appellant's girlfriend that Appellant was suffering from any impaired reality, hallucinations or delusions when he came to her house and took her hostage. In fact, according to the police interview with the girlfriend, Appellant apologized for a previous argument and apologized before he took her hostage. He also threatened her that he would hurt her parents and child if she did not go with him. Additionally, Dr. Karpawich noted that Appellant was repeatedly described as nice, calm, and polite by those who

interacted with him prior to, during, and after the robbery, which is the same way he was described by people who observed him at times when he wasn't in an alleged "fugue state."

{¶50} Dr. Karpawich concluded that Appellant does not suffer from a severe mental disease or defect and that he could appreciate the wrongfulness of his actions. He stated that Appellant's actions on the date of the crimes in trying to evade arrest after robbing the pharmacy indicate that he knew that his conduct was wrong.

{¶51} When asked about Dr. Eshbaugh's diagnosis of dissociative disorder not otherwise specified, Dr. Karpawich testified that a diagnosis of dissociative disorder is the "most controversial diagnosis in the DSM" and that it is the "least accepted" diagnosis by most psychologists and psychiatrists. He also stated that the DSM-IV cautions that an examiner who is diagnosing this disorder always must give careful consideration to malingering. Specifically, it tells the examiner to "consider malingering especially in a legal or forensic context for the diagnosis of dissociative fugue, dissociative disorder. There is a warning they put in the report itself." He stated that such a diagnosis is "really a very vague diagnosis" that has "no criteria." Dr. Karpawich also discounted the diagnosis, noting that no one, in Appellant's extensive mental health history, had ever seen Appellant in a dissociative fugue state, particularly the person who diagnosed him with the disorder.

{¶52} He continued to state that he has never seen a legitimate case of dissociative fugue in his years of experience and that there is no scientific literature that has provided concrete evidence that a dissociative disorder results in memory loss.

{¶53} When questioned about the validity of the testing that he performed to determine that Appellant was malingering, Dr. Karpawich repeatedly testified that he did not rely on one test alone. He stated that "no one test should be used to determine if someone is faking or malingering" and that he used a combination of testing, interviewing, and review of records to determine that Appellant was malingering.

{¶54} When cross-examined as to why he did not use the SIRS test, which Dr. Eshbaugh stated that he should have used, Dr. Karpawich stated that while it is one test that can be used to assess exaggeration or faking, it is limited in what it assesses and is primarily used for those who are suspected of faking schizophrenia or psychosis. He stated that it does not assess those who are faking amnesia or memory problems.

{¶55} He concluded by stating that Appellant shows a lack of remorse for his past behavior, that he has a disregard for the safety of others, as is exhibited by his conduct, that he has a pattern of deceitfulness and cunning and consistent irresponsibility, all of which are symptoms of antisocial personality disorder.

{¶56} The jury additionally had the benefit of hearing Appellant testify at trial. At trial, Appellant testified that he began drinking at age 10, smoking marijuana at age 11, and that at age 12, he tried LSD for the first time. By the age of 13, he was drinking heavily and did "all kinds of drugs" that "ran the gamut" from street drugs to pharmaceuticals.

{¶57} He testified that at age 13, he got into trouble for drinking alcohol on the school bus and that he was caught with marijuana in school at age 14. He also related that in September, 1996, the Westlake High School principal searched his car and

found marijuana, drug paraphernalia, a stun gun and a handheld taser. Based on that incident, he was expelled from school.

{¶58} He asserted that he quit doing "hard drugs," such as opiates and crack, at the age of 19 and that he last smoked marijuana in 2005 and that he took his last drink of alcohol in 2004.

{¶59} He claimed to have experienced his first psychotic break at the age of 16 in January, 1997, where he woke up extremely disoriented, paranoid, and delusional. He stated that he thought that he was being persecuted by the authorities and that he was hearing voices and hallucinating. He recalled that his parents had him taken to the hospital and that he was transferred to the Cleveland Clinic for several days, and was diagnosed as being bipolar.

{¶60} He recalled his next psychotic break as occurring when he assaulted a friend from school and then left threatening messages on his phone all night.

{¶61} According to Appellant, his next break was when he was at school at Ohio State University. He claimed that he had been "partying" and that he got into an argument with his roommate and his roommate's girlfriend. He stated that he left the apartment and checked into a hotel, and that he was later told that he left threatening messages all night for his roommate. He stated that he later "came to my senses in a shopping mall with a loaded pistol in my possession." He claimed that at that time, he pulled over and turned himself in at the Belmont Sheriff's Office and that he was then admitted to the Belmont Hospital where he was diagnosed with psychosis not otherwise specified.

{¶62} Appellant testified that in April, 2005, while attending college at Ohio University in Athens, Ohio, he began to experience delusions, paranoia, and hallucinations again. He recalled being in the library on campus and that he had a .45 caliber handgun in a shoulder holster and a .38 caliber revolver in his pocket and that he had an extra magazine for the .45 in his other pocket. He remembered being in a car with his roommate prior to the occurrence at the library and then claimed the next thing that he remembered was having SWAT training their weapons on him in the library. He stated that after this event, he was diagnosed with schizophrenia, paranoid type, unspecified and dissociative phenomena in the context of psychosis.

{¶63} He admitted that he had cancelled two appointments with his counselor in the week preceding November 2, 2007, but that he had spoken to the counselor on the phone and assured the counselor that he was medicine compliant and that he was doing okay. He admitted that when he met with his counselor on November 2, 2007, that he told him that he did not need to go to the crisis center for the weekend because "he had been out of the hospital for a year and didn't want to go back." He then alleged that he did not recall leaving the Center and the next thing he remembered was being handcuffed in the back of a police cruiser.

{¶64} He claimed that he did not recall going to his girlfriend's house and telling her "I'm sorry for what happened the other day and I'm sorry for this right now." He did admit that he might have "what might be described as a memory fragment of being in the car with Micki" on November 2, 2007, even though he told Dr. Karpawich that he did not recall anything from the events of that day that led to his arrest.

{¶65} Based on the evidence presented, the jury chose to believe the testimony of Dr. Karpawich and reject Appellant's defense of not guilty by reason of insanity.

{¶66} "The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. This is not such a case. The evidence does not weigh heavily in favor of finding insanity. Appellant's assignment of error is overruled.

{¶67} For the foregoing reasons, we find Appellant's assignment of error to be without merit and affirm the judgment of the Guernsey County Court of Common Pleas.

By: Delaney, J.

Farmer, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS

[Cite as *State v. Salim*, 2009-Ohio-4729.]

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
RYAN SALIM	:	
Defendant-Appellant	:	Case No. 09-CA-1

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Guernsey County Court of Common Pleas is affirmed. Costs assessed to Appellant.

_____
HON. PATRICIA A. DELANEY

_____
HON. SHEILA G. FARMER

_____
HON. JULIE A. EDWARDS